

## Indus Towers Ltd. Vs The Sub Inspector of Police

**Court:** High Court Of Kerala

**Date of Decision:** Sept. 2, 2014

**Acts Referred:** Kerala Municipalities Act, 1994 " Section 448, 448(1), 448(1)(b), 450  
Kerala Panchayat Raj Act, 1994 " Section 233, 233(1), 233(1)(b), 233(b), 233B

**Citation:** (2014) 4 KHC 81 : (2014) 4 KLT 306

**Hon'ble Judges:** Ashok Bhushan, Acting C.J.; A.M. Shaffique, J

**Bench:** Division Bench

**Advocate:** V. Philip Mathew, Advocate for the Appellant; P. Vijayaraghavan, P.C. Haridas, Gigimon Issac, Advocates and N. Nagaresh, Assistant Solicitor General, Advocate for the Respondent

### Judgement

A.M. Shaffique, J.

These writ petitions, except W.P. (C) No. 6675/2014, are filed for a direction to provide adequate police protection

for putting up mobile telecommunication towers (hereinafter referred as "MT Towers") for facilitating mobile telecommunication services. W.P. (C)

No. 6675/2014 is filed by a private party, who is a resident in a location where M.T. Tower is proposed to be installed. He seeks for a direction

to the Kerala State Pollution Control Board and Shornur Municipality to take effective measures to stop erection of M.T. Tower. Since the issues

involved in these writ petitions are substantially the same, these writ petitions are decided by a common judgment.

2. Some of the petitioners are Telecommunication service providers who have valid license from the Ministry of Communications and IT

Department, Government of India. Some of the petitioners are companies involved in the business of providing infrastructural development and

construction of MT Towers for Telecommunication service providers who have valid license from the Ministry. They have taken contracts from

mobile service providers to put up MT Towers after acquiring land either by way of purchase or by way of lease, license etc. In W.P. (C) No.

3297/2014, the petitioner is a contractor of Bharat Sanchar Nigam Limited.

3. The petitioners claim to have obtained necessary building permit from the local authority. Once MT Tower is constructed, the same is utilised by

the service providers to install necessary equipments for the purpose of Telecommunication services and other permissible uses.

4. Common contention raised by the petitioners is that several persons in the locality, who are party respondents in these writ petitions, have

physically obstructed construction of the MT Tower alleging either health hazard or nearness to their residential or commercial buildings.

Predominantly, complaint is regarding the health hazard that may be caused due to electromagnetic radiation (for short "EMR") when the MT

Tower becomes operational. They also allege nuisance on account of the pollution caused by operation of diesel generator sets and other activities

on account of the radiation that could be caused while operating the MT Tower.

5. It is contended on behalf of the petitioners that the issue relating to the health hazard is no longer res integra on account of the judgment of this

Court in *Essar Telecom Infrastructure v. C.I. of Police, Angamaly*, [2010(2) KLT 762 (FB) ] and *Essar Telecom Infrastructure (P) Ltd. Vs. State*

of Kerala, .

6. It is pointed out that Kerala Municipality Building Rules, 1999 (for short "KMBR") framed under the Kerala Municipalities Act provides a

separate Chapter 19 for giving permission in respect of telecommunication tower which inter alia includes towers for mobile service communication

as well. Similarly, the Kerala Panchayat Building Rules, 2011 (for short KPBR) framed under the provisions of the Kerala Panchayat Raj Act,

1994 has also provided Chapter 20 specifying the manner in which and conditions under which permission could be granted for installing

telecommunication tower. It is argued that all the petitioners have valid building permit from the local authority under the provisions of the KMBR

or KPBR depending upon the situs of the construction.

7. When the petitioners have complied with the norms prescribed under the above said statutory provisions and have obtained such building

permits, without challenging the said permits by invoking the statutory remedy of filing an appeal, the party respondents cannot take law into their

own hands and prevent construction of the MT Towers.

8. Learned counsel for the petitioners have further submitted that the guidelines issued by the Government from time to time, which is produced in

W.P. (C) No. 19527/2014, does not run contrary to their demand and even assuming that the party respondents has any complaint regarding

installation of MT Towers they have to approach such authorities. Reference is made to the recent notification dated 2.8.2014 issued by the

Government of Kerala, Information Technology Department. By virtue of the aforesaid Government Order, all earlier Government Orders in this

regard have been superseded. The Government decided to constitute a District Telecom Committee (DTC) consisting of 14 members to consider

the grievances raised by the public regarding installation of mobile towers and certain duties and functions have also been stipulated, which inter alia

included consideration of public grievances, power to send recommendations to the Local self Government Institution to cancel permits granted by

local authorities, to issue stop memo, to take action for violation of Government of India or State Government guidelines, Building Rules, etc., and

certain other matters relating to the same. Similarly, a State Telecom Committee (STC) is also constituted as an appellate body.

9. It is therefore argued that if at all the party respondents have any complaint regarding the installation of MT Towers, their remedy is to approach

DTC and they cannot take law into their own hands by physically causing obstruction or threatening the workers and employees of the petitioners.

10. It is also submitted that though the police was requested to provide adequate protection, they have failed to do so on account of which the

petitioners are constrained to approach this Court seeking the reliefs sought for.

11. Most of the party respondents having filed counter affidavit and have inter alia taken the following contentions:

(i) That the license/permit obtained by the petitioners was without reference to Government Order dated 24.8.2013 by which guidelines for issue

of clearance/permit for installation of mobile towers were specifically mentioned and since the petitioners have obtained licenses/permits without

complying with the requirements then prevailing, there is no reason to grant police protection for carrying out the work with an illegal permit.

(ii) The installation of mobile tower is a health hazard to the public at large, especially when it is put up very near to residential buildings, schools,

play grounds etc.

(iii) The EMR emanating from the use of MT Towers will cause damage to the human organs and is also carcinogenic.

(iv) That the MT Towers is an environmental hazard and shall not be permitted to be installed in the vicinity of residential buildings.

(v) No permission has been obtained from the local authority for installation of any machinery or equipment in the premises.

11. Learned State Attorney on behalf of the State Government has produced all the relevant circulars which are as under:

(i) Circular dated 10.8.2009 issued by the Government of Kerala, Local self Government (RD) Department. This circular indicates that in the

event there are public complaints regarding the land proposed for the construction of tower, meeting should be convened under the auspices of the

administrative committee by participating the Telecom Service Providers and the general public and suitable site is to be found out after having

discussion in this regard.

(ii) Notification dated 21.8.2013. By this notification, the Government has decided to constitute District level and State level Telecom Committees

for the review of all telecom infrastructure related matters, including clearance of installation for mobile towers. Guidelines for issue of

clearance/permit for installation of mobile towers inter alia provides that the TERM Cell of Department of Telecommunication is the competent

agency to tender advice on EM Radiation related matters of mobile towers. It was further indicated that the concerned Local self Government

Institution will issue permit to the telecommunication company based on the single window clearance issued by the District Collector and also

based on relevant provisions in the Municipal/Panchayath Building Rules. Detailed procedure has also been prescribed in the matter of conducting

enquiry. Clause 8 of the said notification further reads as under:

8. Procedure for submitting application before Local self Government Institution for permit: The Telecom Company shall submit application to the

Secretary of the concerned Local Self Government Institution as per provisions contained in the Municipal/Panchayath Building Rules along with

the clearance issued by the District Collector. The concerned Local Self Government Institution may issue permit as per their norms and in

accordance with the provisions of Municipal/Panchayath Building Rules. The Local self Government Institution shall not issue permit if the

clearance from the District Collector is not produced.

(iii) Notification dated 24.8.2013. By virtue of this Notification, the District Collector was authorized to issue clearance for the installation of

mobile towers.

(iv) Government Order dated 15.3.2014 as per G.O. (Ms)

No. 14/2014/ITD, reads as under:

As per G.O. read as first paper above Telecom Committees were constituted to review all Telecom related matters including clearance for

installation of Mobile Towers.

2. As per letter read as paper 2nd above the Secretary, Department of Telecommunication (DoT) had instructed all State Governments to take

suitable action for the installation of mobile tower by the Telecom Service Providers (TSPs) in line with the guidelines issued by Department of

Telecommunication (DoT), Government of India in this regard.

3. Government have examined the matter in detail and are pleased to accord sanction to follow the guidelines issued by the Department of

Telecommunications (DoT), Government of India for installation of Mobile Tower by the Telecom Service Providers (TSPs) in the state which is

appended as Annexure I & II to this order. The guidelines appended are issued in supersession of all earlier guidelines and Government

order issued as 1st paper above on the subject.

4. Government order regarding the formulation of State and District committees to address public grievances and nominal one time fee for issuing

permission for installation of towers as detailed in the guidelines of Department of Telecommunication (DoT), read as 2nd paper above shall be

issued separately from time to time.

5. Clearance (permit) for the installation of Mobile Towers by the Telecom Service Providers (TSPs) should be given by the Local Self

Government (LSG) Institutions only in accordance with Rule 130 to 142 of the Kerala Municipal Building Rules (KMBR), 1999 (Chapter 19) and

Rule 118 to 131 of the Kerala Panchayat Raj building Rules (KPRBR), 2010 (Chapter 20).

Annexure I to the above Government Order Ext. R2(d) is the advisory guidelines for State Governments for issue of clearance for installation of

mobile towers and clause 3 is relevant, which reads as under:

3. India has adopted strict limit for radiation from Base Transceiver Station (BTS) as below which is 1/10th of the international norms (ICNIRP):

(v) Order dated 2.8.2014 issued by Government of Kerala. This order prescribes the methodology in which District Telecom Committee (DTC)

has to function. The duties and functions of DTC are prescribed in Ext. R2(e), which is stated hereunder:

(i) DTC shall deal with public grievances relating to installation of Mobile Towers and issues related to telecom infrastructure in the respective

district.

(ii) DTC shall initiate Suo motu actions based on public protest/complaint/petition/press/media reports etc. in connection with Mobile Tower

installation.

(iii) The DTC shall have powers to send recommendation to LSGI to cancel the permit granted by LSGIs for installing Mobile Towers or to issue

stop memo if the committee finds:

a) The operator violates Government of India/State Government guidelines, building rules of LSGD.

b) Any other institutions involved have given adverse remarks against the TSP.

(iv) The committee (DTC) may give the company (Telecom Service Provider) an opportunity to rectify the defects, if the committee feel so.

(v) Telecom Service Provider or petitioner/complainant may file appeal before STC within 15 days from the date of receipt of the DTC's final

decision, under intimation to Local Self Government Institutions concerned.

(vi) The recommendations of DTC shall be adhered to by LSGI/Police Department or any other authority related to the subject.

(vii) The TSP can also approach DTC for redressing their grievances, if any.

12. It is therefore argued by the learned State Attorney that as matters stand now, all matters relating to the installation of MT Tower, the public

grievances, violation of any statutory provisions and even a claim for request for police assistance can be considered by the DTC. When such an

elaborate system has been provided by the Government, there is no reason for the petitioners to approach this Court without exhausting the

procedure as per the aforesaid Government Order.

13. Learned counsel for the party respondents has narrated the grievances relating to the health hazard by highlighting a report of IIT Bombay,

which inter alia mentioned about health hazard caused to EMR on account of the mobile telecommunication towers, mobile phones etc. It is also

argued that a building permit in terms of Chapter 19 of KMBR or Chapter 20 of KPBR will not suffice and the petitioners are under obligation to

obtain necessary permit by submitting application under Section 233 of the Panchayat Raj Act in case MT Tower is installed in a Panchayat area

or under section 448 of the Municipality Act, if the installation is in the Municipal area. Failing to do so has resulted in a situation where they cannot

be permitted to proceed with the construction of the MT Tower and therefore they cannot claim police protection as well.

14. Heard the learned counsel for the petitioners and the learned counsel for party respondents and State Attorney appearing on behalf of the

State Government and ASG on behalf of Union of India.

15. The first issue to be considered is the validity of the building permits obtained by the petitioners. The main contention urged on behalf of the

party respondents with reference to the building permit is that despite the Government having issued guidelines as per order dated 24.8.2013,

which inter alia provided that the Local self Government Institutions shall issue permit to the Telecommunication Company only based on the Single

Window Clearance issued by the District Collector, those building permits were obtained without complying with such requirements. First of all,

there is no dispute regarding the fact that there is non-compliance of the provisions of the KMBR or KPBR. Though the local authorities have

issued such permits without complying with the guidelines issued as per Government Order dated 21.8.2013, the said Government Order is

superseded by another Government Order dated 15.3.2014, which requires only permit from the Local Self Government Institutions in

accordance with Chapter 19 of KMBR and Chapter 20 of KPBR. Therefore, when a building permit has already been issued and the restriction

imposed in terms of the Government Order dated 21.8.2013 has already been superseded by Government Order dated 15.3.2014, it may not be

possible for the party respondents to contend that building permit is invalid, especially when the building permits had been issued in accordance

with the statutory provisions under KMBR and KPBR.

16. The next question to be considered is whether in addition to obtaining building permits, there is necessity on the part of the petitioners to obtain

permission under Section 233 of Panchayat Raj Act, or Section 448 of the Kerala Municipality Act.

17. Sub-section 448(1) of Kerala Municipality Act reads as under:

448. Application to be made for construction, establishment or installation of factory, workshop or workplace in which steam or other power is to

be employed--

(1) Every person intending-

(a) to construct or establish any factory, workshop or work place in which it is proposed to employ steam power, water power or other

mechanical power or electrical power or any other factory which does not employ any such power; or

(b) to install in any premises any machinery or manufacturing plants driven by steam, water or other power not being machinery or manufacturing

plant exempted by this Act or the rules made thereunder shall, before beginning such construction or establishment make an application to the

Municipality in the prescribed form addressed to the Secretary for permission to undertake the intended work.

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It is argued that if the intention is to construct or establish a workshop or workplace or install in any premises, any machinery in addition to the

building permit, one has to obtain permission under Section 448 as well, before beginning such construction. This contention according to us is not

acceptable on account of the fact that Section 448(1) has two sub-clauses (a) and (b). The words "before beginning such construction or

establishment" applies only with reference to clause (a), i.e., construction or establishment of a factory, workshop or workplace. As far as sub-

clause (b) is concerned, the restrictive provision "before beginning such construction or establishment" does not apply, since a situation for installing

any machinery in the premises has not arisen. What is being done is only construction of the MT Tower. Probably, if any machinery is installed in

the said premises at that time, such an issue may arise. In fact, the petitioners have a case that they do not require to take any permission other than

the building permit, especially in the light of the judgment of the Division Bench of this Court in Essar Telecom Infrastructure (P) Ltd. Vs. State of

Kerala, . A reference to paragraphs 87 to 93 have elaborately dealt with this issue, which read as under:

87. There is a further case for the petitioners that S. 233(b) of the Panchayat Raj Act providing for permission for installation of machinery in any

premises must be read in conjunction with Clause (a) and, therefore, no permission is required for installation of component parts, even if it is

machinery, unless a mobile tower is a workplace which, it is not. In this connection, we must remind ourselves that S. 233 of the Panchayat Raj

Act, after providing that no person shall without permission of the Village Panchayat construct or establish any factory, workshop or workplace,

inter alia, install in any premises any machinery, inter alia, driven by power, as aforesaid. The words ""as aforesaid"" would appear to refer to the

types of power which attracts sub-s. (a), namely steam power, water power or other mechanical power or electrical power. No doubt, Clause (b)

is not attracted in respect of machinery exempted by the provisions of the Act or Rules made thereunder. Undoubtedly, S. 233B provides for

exemptions. It is, however, apposite to refer to sub-s. (2) of S. 233. It provides as follows:

An application for permission under Sub-section (1) shall be submitted to the Village Panchayat addressed to the Secretary in such form and with

such details as prescribed.

R. 12 of the Kerala Panchayat Raj (Issue of Licence to Dangerous And offensive Trades and Factories) Rules, 1996 reads as follows:

12. Application to be made for constructing or establishing factory, workshop or workplace wherein steam power or other power is to be used.-

Every person intending.-

(a) to construct or establish any factory, workshop or workplace wherein it is proposed to use steam power, water power or other mechanical

power or electricity; or

(b) to install, on any land a machinery or a manufacturing plant operated by steam power, water power or other power as aforesaid, not being

machinery or manufacturing plant exempted under Rule 16, shall submit an application in writing before the Village Panchayat for permission to

undertake such work before so constructing or establishing.

Sub-rule (2), thereafter, inter alia, provides that the application shall be accompanied by details of machinery that the Panchayat may call for. We

may also notice the corresponding provision in the Kerala Municipality Act, namely S. 448. The relevant portion of S. 448 reads as follows:

448. Application to be made for construction, establishment or installation of factory, workshop or workplace in which steam or other power is to



be employed.-

(1) Every person intending-(a) to construct or establish any factory, workshop or work place in which it is proposed to employ steam power,

water power or other mechanical power or electrical power or, any other factory which does not employ any such power; or

(b) to install in any premises any machinery or manufacturing plants driven by steam, water or other power not being machinery or manufacturing

plant exempted by this Act or the rules made thereunder, shall, before beginning such construction or establishment make an application to the

Municipality in the prescribed form addressed to the Secretary for permission to undertake the intended work.

Therefore, we may notice that in the Rules provided pursuant to sub-s. (2) of S. 233 of the Kerala Panchayat Raj Act and S. 448 of the Kerala

Municipality Act itself, the law contemplates the making of an application ""before so constructing or establishing"" in the case of Rule 12"" and

before beginning such construction or establishment"" in S. 448 of the Municipality Act clearly relate to Clause (a) of S. 233(1) of the Panchayat

Raj Act and Clause (a) of S. 448 of the Municipality Act. In other words, the words ""construct and establish"" appear in conjunction with the

words ""factory, workshop or workplace"". The impression that would appear to be generated would be that even in respect of installation of

machinery, there is no separate application contemplated and the application is contemplated as a composite one at the time before the

construction or establishment of the factory, workshop or workplace. This would appear to advance the case that the installation of ""machinery

contemplated in both the Kerala Panchayat Raj Act and the Kerala Municipality Act, though stated to relate to ""any premises"" may have to take its

context and colouring from the words ""factory, workshop or workplace"".

88. No doubt, the question could be posed as to what would happen in a situation where fresh or additional ""machinery"" is to be installed after the

commencement of the ""factory, workshop or workplace."" Could it be said that they could be installed without obtaining permission ?

89. However, on the other hand, we may also notice the kind of machinery which are exempted both under S. 233B of the Panchayat Raj Act and

S. 450 of the Municipality Act. They would appear to create the impression that the word ""premises"" is not limited with reference to the words

factory, workshop or workplace"". For instance, electrical and non-electrical appliances installed for agricultural purposes and electrical and non-

electrical appliances and machinery intended to be used for domestic or personal purposes. Quite clearly, it could be said that they are in no way

relatable to a factory, workshop or workplace.

90. Further more, we notice that R. 133(3) and (4) of the Municipality Building Rules reads as follows:

133 (3): Installation of electricity generator may be allowed if the generator is covered with insulated soundproof cabin.

(4) Every construction or installation ancillary or necessary for the telecommunication system shall conform to the relevant rules applicable to such

construction or installation and licence or permit required under such rules shall also be obtained.

Are the words ""installation, ancillary or necessary for the telecommunication system"" to take in the component parts and which are the relevant

Rules, the rule maker had in mind, are all not matters which are canvassed before us. It is not even clear that they have intended to refer to any

Rules made under the Central Legislation. Further, could it not be said that R. 133(3) of the Building Rules indicates that generator would, at any

rate, be ""machinery"" within the meaning of S. 233 of the Kerala Panchayat Raj Act and the corresponding Municipal Law.

91. As far as sub-r. (3) is concerned, the rule maker appears to provide for allowing installation of electricity generator, if it is covered with

insulated sound proof cabin. Would it be a case of an exemption contemplated in S. 233(1)(b) of the Panchayat Raj Act and S. 448(1)(b) of the

Municipality Act, even though clearly it does not expressly say that generators (in conditions mentioned) are exempted which is the expression

used in the parent enactment. Does it contemplate permission being granted ? If it is a question of permission having to be granted, will it not be

traceable to the power under S. 233(1)(b) of the Panchayat Raj Act and S. 448(1)(b) of the Municipality Act. Further, if it is a question of

installation of a generator, when it is not covered with insulated sound proof cabin, does not R. 133(3) of the Building Rules further indicate that it

would be ""machinery"" within the meaning of S. 233 of the Panchayat Raj Act and corresponding Municipal Law ?

92. We must remind ourselves that in the state of affairs and the nature of the pleadings or rather the absence of the same, it may not be

appropriate that we resolve this issue. We reiterate that there is no local body which has come forward for setting up a case to the effect that

machinery"" with which we are concerned, falls under S. 233(b) of the Kerala Panchayat Raj Act and the corresponding provision of the Kerala

Municipality Act and they require permission.

93. However, we make it clear that we are leaving this issue open and this judgment will not stand in the way of any local body taking the stand

that the component parts are ""machinery"", the installation of which requires permission under S. 233 of the Panchayat Raj Act and the

corresponding provisions of the Municipality Act, in which case, it will be open to the petitioners/operators to challenge the same in properly

constituted proceedings.

In the said circumstances, we do not think that the party respondents are entitled to take such a contention as the issue has already been decided in

the judgment in Essar Telecom case (supra).

18. The next question is whether the EMR causes any health hazard. This matter is no longer res integra on account of the judgment of the Full

Bench in Essar Telecoms Infrastructure v. C.I. Of Police, Angamaly, 2010 (2) KLT 762 and the judgment of the Division Bench in Essar's case

(supra).

19. The learned counsel for the party respondents had relied upon a report of IIT Mumbai to substantiate the fact of health hazard on account of

EMR. In the judgment reported in Essar Telecom Infrastructure (P) Ltd. Vs. State of Kerala, , this Court has elaborately considered the entire

material relating to health hazard including the report of IIT Mumbai, which is referred by learned counsel for party respondents and has come to

the conclusion at paragraphs 38 and 39 as under:

38. Mobile phone works on Electromagnetic radiation. In the state of materials on record the radiation involved can safely be treated as non-

ionizing. It does cause thermal effect. But the thermal effect produced is far too insignificant to constitute a perceptible health hazard provided the

radiation is confined to internationally prescribed standards. Apparently, it is non-thermal effect which is engaging the attention of researchers all

over the world. We have already noticed the concept of Electromagnetic Hypersensitivity.

39. There is an international body concerned with the effects of such radiation. The standards prescribed by the said body is sought be enforced

by Government of India also. It is the view taken by the large number of scientific experts that radiation in conformity with the said standards have

not been established to produce any health hazards as such. At any rate, we do not think that it is appropriate for this Court with the material as

such on record alone to hold that the respondents have established that sitting of the tower would pose a health hazard sufficient enough to warrant

this court to decline jurisdiction to grant police protection if the petitioners are otherwise entitled to the same. We must notice that we are not called

upon to decide upon the question of health hazards emanating from the use of mobile phones and a distinction must be maintained between the use

of mobile phones and the alleged dangers emanating from the operation of a mobile tower. Going by the materials, it does appear that there are

international standards. Radiation in deviation from the said standards is, in law, liable to be visited with serious consequences including stoppage

of the operations. It is not established before us that these standards are being violated. We have to remind ourselves that the use of mobile phone

is a modern day wonder and the contribution of technological advancement which has marked the twentieth century, in particular. Undoubtedly, its

use is invaluable, not only to the individual as such, but to the Nation itself, as it would be instrumental in bridging the communication gaps that

isolate, otherwise inaccessible areas of the country. Its uses in a vast array of areas is so formidable that it can in one sense be treated as a

priceless boon of science. It cannot be gainsaid that nothing comes without a price-tag and the resolution of every problem of this nature must be in

the adoption of a balanced view. Needless to say, we do not mean that we have precluded the rights of the respondents to approach the civil court

and seek relief against the petitioners by letting and producing materials as they are advised in which case necessarily the civil court shall decide the

matter untrammelled by anything contained in this judgment.

20. The Full Bench of this Court in the first Essar's case observed that ""In the instant cases, there is absolutely no question of any pollution and

there is no pleading or proof as to any such instance and the only apprehension is with regard to the "health hazards" likely to be created by the

"EMR". As mentioned already, the Radio frequency waves are non ionizing radiation, which cannot emit any electrons, unlike "X rays" and that

apart, no Scientific Committee Report has been procured or produced to controvert the findings rendered by the Division Bench in Reliance

Infocom Ltd. Vs. Chemanchery Grama Panchayat, .

21. Having regard to the aforesaid findings of the Full Bench as well as Division Bench, we do not think that with the available materials, it may not

be possible for this Court to appreciate the argument of counsel for the respondents that EMR from MT Towers used for mobile services would

cause any health hazard.

22. However, it is clear from the Government Orders issued by the Central Government as well as State Government, that they are concerned

with the apprehension expressed by the public at large as well as the difficulties faced by telecommunication providers and it is in the said

background that the Government has issued order dated 2.8.2014 to constitute DTC. The duties and functions of DTC as extracted above clearly

indicates that the public who apprehends difficulties faced on account of the installation of mobile towers as well as the apprehension expressed by

the Telecom Service Providers could approach the said authority for redressing their grievances. In other words, DTC has been constituted for the

purpose of redressing all grievances of the stake holders including public at large. When an issue is identified by a service provider or an agency

engaged by them for setting up a MT Tower, or if there is objection from the people in the locality, the DTC can either suo motu or on an

application by any person involved, i.e. either the public who objects to the putting up of mobile tower or any official of the Government, service

provider or infrastructure provider, adjudicate all such aspects and redress the grievance. The functions of the DTC is so wide that it may also

consider any apprehension expressed by the petitioners by way of objection from the local residents in the locality. If it is found by the DTC that

the grievance raised by the public are not genuine, it is always open for the DTC to direct the police to render necessary assistance for putting up

MT Tower or energizing the same.

23. Some of the party respondents has a contention that the construction of M.T. Tower is not based on the building permit. If there is any such

violation, the party respondents are free to take up the matter before the competent authorities including DTC.

24. Having regard to the Government Orders issued as stated above and the power given to DTC, we are of the view that before approaching this

Court, the petitioners as well as the party respondents will have to approach the DTC for the purpose of ventilating their grievances.

25. Lastly, State Attorney submits that urgent steps have been taken by the Government to constitute the DTC. If the said authorities are not

constituted, urgent steps are to be taken to constitute the DTC within a time frame so that the issues relating to construction of mobile tower and

energizing the same can be considered in accordance with the procedure prescribed.

26. The Government Order also has provided for an appellate remedy before the State Telecom Committee (STC) and their duties and functions

have also been narrated.

27. Therefore, when an effective procedure has been provided for the purpose of resolving all issues relating to installation or energizing of MT

Towers, before coming to this Court, seeking police assistance, the petitioners will have to exhaust such remedies.

28. In regard to W.P. (C) No. 6675/2014, the claim of the petitioner is that no permission had been obtained by the agency installing M.T. Tower

from the Kerala State Pollution Control Board. Apparently, no materials are produced to indicate that any such permission is required. That apart,

as already indicated, if he has any grievance, the same can be taken up before DTC.

29. In W.P. (C) No. 3297/2014, yet another contention urged by the party respondent is that BSNL has not obtained necessary building permit.

The petitioner has relied upon a circular issued by the Government on 30.10.2010 indicating that since BSNL is under the complete ownership of

Central Government, it is not necessary to get permission to construct a mobile tower as per Rule 130 of the KMBR. In the light of the aforesaid

circular, it is not open for the party respondent to take a contention that BSNL is required to take necessary building permit as contemplated under

KMBR.

In the result, these writ petitions are disposed of as under:

(i) If the DTC or STC has not been constituted by the Government, necessary steps in that regard shall be made and DTC and STC shall be

constituted within a period of two weeks from the date of receipt of a copy of this judgment.

(ii) Petitioners in these cases are permitted to approach the DTC for redressing their grievances and on submission of such

representations/applications, the DTC shall consider the same, after notice to the affected parties and take appropriate steps as expeditiously as

possible in accordance with the procedure prescribed.