



## GOVERNMENT OF KERALA

No.15885/RD3/2011/LSGD

Local Self Government (RD) Department  
Thiruvananthapuram, Dated: 26/04/2011

### CIRCULAR

Sub:- Local Self Government Department - Smoking in public places -  
Prohibition of directions of the Hon'ble High Court - Instructions to  
the Local Self Government Institutions - issued.

The Hon'ble High Court of Kerala in its judgment dated 12/07/1999 in OP No.24160/98, K. Ramakrishnan & another Vs.State of Kerala (AIR 1999 Ker.385) observed that smoking in public places will vitiate atmosphere so as to make it noxious to health of persons who happened to be there and therefore smoking in public place is an offence punishable under Section 278 IPC. The Court therefore declared and held as follows:

"(i) Public smoking of tobacco in any form whether in the form of cigarettes, cigars, beedies or otherwise is illegal, unconstitutional and violative of Article 21 of the Constitution of India. We direct the District Collectors of all the districts of the State of Kerala who are suo motu impleaded as Additional respondents 39 to 52 to promulgate an order under Section 133 (a) Cr.PC. prohibiting public smoking within one month from today and direct the 3rd respondent Director General of Police, Thiruvananthapuram, to issue instructions to his subordinates to take appropriate and immediate measures to prosecute all persons found smoking in public places treating the said act as satisfying the definition of "public nuisance" as defined under Section 268 IPC in the manner indicated in this judgment by filing a complaint before the competent Magistrate and direct all other respondents to take appropriate action by way of display of 'Smoking Prohibited' boards etc. in their respective offices or campuses.

(ii) There will be a further direction to Additional respondents 39 to 52 to issue appropriate directions to the respective RTOs to strictly enforce the provisions contained in Rule 227 (1) (d) and 227 (5) of the Kerala Motor Vehicles Rules, 1989.

(iii) Tobacco smoking in public places falls within the mischief of the penal provisions relating to "public nuisance" as contained in the Indian Penal Code and also the definition of "Air Pollution" as contained in the statutes dealing with the protection and preservation of the environment, in particular the Air (Prevention and Control of Pollution) Act, 1981.

The respondents, repositories of wide statutory powers and enjoined by the statutes and Rules to enforce the penal provisions therein are duty bound to require that the invidious practice of smoking in public places, a positive nuisance, is discouraged and offenders visited with prosecution and penalty as mandated by law. Accordingly the respondents are liable to be compelled by positive directions from the Court to act and to take measures to abate the nuisance of public smoking in accordance with law. Directions on the above lines are hereby issued.

(v) The continued omission and inaction on the part of the respondents to comply with the constitutional mandate to protect life and to recognize the inviolability of dignity of man and their refusal to countenance the baneful consequences of smoking on the public at large has resulted in extreme hardship and injury to the citizens and amounts to a negation of their constitutional guarantee of decent living as provided under Article 21 of the Constitution of India.

Subsequently Contempt Case C.C (C) No.1445/2010 was filed in the Hon'ble High Court complaining that in spite of the High Court Judgment in 1999 prohibiting smoking in public places, with direction to the District Collectors and the Police to ensure compliance with the direction in the judgment, all over Kerala still there are instances of smoking in public places in violation of the directions. In the judgment dated 22/11/2010, in the Contempt Case, the High Court observed that the judgment dated 12/07/1999 can be enforced completely, by bringing instances of violation to the notice of the Police for taking action of prosecution, failing which the petitioner in the Contempt Case can approach the higher authorities in Police for taking disciplinary action against Police Officers for their failure to comply with the judgment. The Contempt Case was disposed with direction to the Police Authorities



to ensure that those who violate the judgment by smoking in public places are prosecuted. The Court further stated that if there is inaction on the part of the Police, it is for the petitioner or any person to bring it to the notice of higher authorities for initiating appropriate action including disciplinary proceedings.

In the light of the judgment dated 12/07/1999 and 22/11/2010, following instructions are issued to the Local Governments for immediate compliance.-

1. The Secretaries of the Local Governments Institutions will arrange to display 'SMOKING PROHIBITED' boards at public places, and at the premises of the offices under the control of the Local Governments, indicating in such boards that the prohibition is as per the order of the Hon'ble High Court.

2. The Secretaries of the Local Governments and the staff may bring to the notice of the local Police, any instance of smoking in public places, for taking action as per the directions of the High Court.

3. Since smoking in public places is a nuisance, as observed by the Hon'ble High Court, the Secretaries of the Local Governments themselves may take prosecution steps under Section 440 of the Kerala Municipality Act and/or Section 42 of TC Public Health Act or Section 44 of Madras Public Health Act, as the case may be.

4. While granting the D&O Trade Licenses and the Factory Licences under the Kerala Municipality Act/ Kerala Panchayat Raj Act, the Local Governments shall insist a condition to the effect that the licencees shall not allow smoking in their premises and shall display 'No Smoking' boards in such premises.

5. Municipalities, Corporations and Village Panchayaths will undertake public awareness campaigns with the involvement of ayalkoottam/kudumbashree units, to discourage the habit of smoking, use of tobacco products and their sale.

**S.M.VIJAYANAND**  
**Additional Chief Secretary (LSGD)**

To

All Secretaries/Presidents of Grama Panchayats/Block Panchayats/  
District Panchayats (through Director of Panchayats).

All Secretaries/Chairpersons of Municipalities/Municipal Corporations  
(through Director of Urban Affairs)

All District Collectors

The Director of Panchayats, Thiruvannanthapuram

The Director of Urban Affairs, Thiruvannanthapuram

All Deputy Directors of Panchayats in all Districts

The Regional Joint Directors of Urban Affairs, Kollam/Kochi/Kozhikode

The Director General of Police, Thiruvannanthapuram

✓ The Director, Information Kerala Mission (For publishing in website)

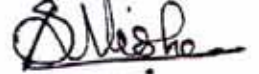
The Director of Information & Public Relations, Thiruvannanthapuram

PS to Minister (LSGD)

PA to Additional Chief Secretary (LSGD)

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Section Officer