



GOVERNMENT OF KERALA

Abstract

Local Self Government Department - Urban Affairs – Establishment – Kannur Municipality - Irregularities in the construction of multi storied building violating the norms of CRZ notification of 1991 and other rules – Vigilance Surprise Check - Disciplinary action initiated against Shri.B.K.Balaraj, Secretary – Finalised – Orders issued.

LOCAL SELF GOVERNMENT (E.U.) DEPARTMENT

G.O.(Rt)No. 3810/2017/LSGD Dated,Thiruvananthapuram,27/11/2017

- Read: 1. Letter No.E13(SC 5/14/KNR) 1755/14 dated 21.01.2015 from the Director, Vigilance & Anti-Corruption Bureau, Thiruvananthapuram.
2. Memo of Charges No.LSGD-EU/229/2015-LSGD dated 30.07.2015 served on Shri.B.K.Balaraj, former Secretary, Kannur Municipality.
3. Written Statement of Defence dated 14.05.2016 submitted by Shri.B.K.Balaraj.
4. Letter No. V2-14606/2015 dated 06.09.2015 from the Director of Urban Affairs, Thiruvananthapuram.

ORDER

Based on the petition of Shri.K.P.Reghunathan regarding the allegation that Shri.K.P.Veerankutty,MD, Zewar Commercial Constructions Pvt Ltd has constructed a 19 storied building violating norms of CRZ notification of 1991, the Vigilance & Anti-Corruption Bureau has conducted a Surprise Check at Kannur Municipality on 25/03/2014, which revealed that the permission was granted violating KMBR and violating the norms of CRZ notification of 1991. The Enquiry Officer has recommended departmental action against Sri.B.K.Balaraj, the then Secretary who are responsible for the irregularity. Hence, disciplinary action for minor penalty was initiated against the officer and Memo of Charges read as 2nd paper above has been served on him.

2. Shri.B.K.Balaraj submitted the Written Statement of Defence

read as 3rd paper above, in which he has requested to grant him an opportunity of being heard in person, if his reply is unsatisfactory.

3. Accordingly he was heard in person by the Special Secretary, Local Self Government Department on 29.11.2016. The allegations leveled against Sri.B.K.Balaraj former Secretary, Kannur Municipality are as follows:

a. The plot is located at the landward side of an existing road (Ayikkara-City-Thayyil Road), so construction of the building was permissible in accordance with CRZ Notification, 1991, which was in force at the time of issuing building permit. But environmental clearance from the Ministry of Environment and Forests, Government of India or concerned authorities was required as per the norms laid down for 'Regulation of permissible Activities' mentioned in the Notification. It is seen that the suggestion of TPO for obtaining the clearance was once sanctioned by Municipal Secretary and later given up after receiving an application from the owner for issuing building permit without getting environmental clearance. The maximum allowable Floor Area Ratio (FAR) as per CRZ Notification, 1991 is to be within the limits of 'existing' norms of FAR as laid down in Annexure-1 of Notification and according to Rule 17 of the Kerala Building Rules, 1984 which was in force during 1991 year and the maximum permissible F.A.R is only 1.5 for Residential Occupancy buildings and without noticing this, permission was granted for a higher F.A.R of 3.64, which is more than double of the permissible FAR. It is the clear violation of KMBR.

b. The installation of motor for drawing ground water at construction site is also an irregularity against the norms mentioned in sub Para IV of para 2 (Prohibited activities) which states that harvesting or drawl of ground water in the 200m to 500m zone, it shall be permitted only when done manually through ordinary wells for drinking, horticulture, agriculture and fisheries.

c. Consent from the Pollution Control Board has not obtained at the time of granting building permit. As per receipt No.281 dated 25.02.2014 of Pollution Control Board, it is found that owner has applied for Consent from Pollution Control Board.

d. The clearance from the Authorities of the nearby Defense establishment (Kannur Cantonment Board) is not obtained before issuing building permit

and this is a violation of Rules 7 (5) of The Kerala Municipality Building Rules, 1999.

The above irregularities were noticed during a surprise check in the Municipal Office, Kannur by the Vigilance & Anti-Corruption Bureau.

4. Regarding the first allegation, environmental clearance from the Ministry of Environment & Forest GOI or concerned authorities were required as per CRZ notification 1991 and also as per KMB Rules 1984. The contention of Sri.B.K.Balaraj is that the construction of the building was proposed on the landward side of the existing ancient road namely Kannur-Thazhe Chowa City road. The said motorable public road has been in existence from time immemorial. The CRZ notification 1991 does not prevent construction of a building on the landward side of the existing road or authorized structures. The Town Planning Officer, after having inspected the site on 08.09.2008, specifically reported that the provisions of CRZ notifications are not at all applicable to the instant case and recommended for granting permit, after taking in to consideration the application submitted by Sri.Veerankutty. The Town Planning Officer has also reported that the Municipality has a proposal to construct a fish market in front of the proposed site. Therefore, he contented that there was nothing wrong in allowing the application for Building Permit. The said report was subsequently placed before the Executive Engineer who had also concurred with the above recommendation. Therefore, he cannot obtain the consent from the Ministry of Environment and Forest or any other agency at that time as it was not recommended either by the Town Planning Officer or by any of the other officers

5. The FAR was as per the provisions of KMBR 1999. It is specifically provided in the 1991 CRZ notifications that, the existing norms of FSI/FAR are to be followed while granting building permit under CRZ-II category. If that the case at the time of granting building permit on 29/10/2008, the law governing the building permit was the Kerala Municipal Building Rules 1999. Therefore under the provisions of the KMB Rules 1999, additional FAR can be considered by collecting adequate fees. The building permit was granted with an FAR of 3.64 as recommended by the Town Planning Officer and also by the Municipal Engineer after collecting additional fees. Also the CRZ Notification 1991 was superseded by CRZ notifications 2011. His contentions can be accepted and it can be presumed that in this case KMB Rules was not

violated.

6. Regarding the second allegation his contention is that permit was granted on 29.10.2008 and the V & ACB conducted the inspection only on 05/03/2014 ie. after a lapse of 5 years. He did not permit the builder to draw ground water by installing a motor pump. There was no such request from the part of the builder also. Even the Municipal Officials who had inspected the site for the renewal of the building permit, could not even find out the irregularity. Therefore, he cannot be held responsible for the same.

7. The third allegation is that he has not obtained consent from Pollution Control Board at the time of granting permit. He argued that the officer who conducted the Inspection did not bring this fact to his notice at any point of time before issuing permit.

8. The last allegation leveled against Shri.B.K. Balaraj is that he has not obtained clearance from defense establishment ie Kannur Contonment Board. His contention is that he neither inspect the site at any point of time nor there was any report in the file regarding the clearance to be obtained from Defence establishment. It was also not reported that the proposed site was situated within the contonment area. The officer who inspect the site never mentioned about the need for the clearance from Defence authorities. Therefore he is not responsible for the latches.

9. From the aforesaid facts it can be presumed that, it is the duty of the Engineers to take steps to prevent unauthorised constructions as per the provisions of KMBR. It is also the duty of the Town Planning Officer to enforce the provisions laid down in the Building Rules.

10. Government have examined the matter in detail. Eventhough Shri. B.K.Balaraj is in no way responsible for the irregularities or latches, he cannot be exempted from the responsibility as a Controlling Officer of the said Municipality. Therefore the disciplinary action initiated against Shri. B.K.Balaraj, as per the Memo of Charges read as 2nd paper above, is finalised by awarding him "Censure" under Rule 11(1)(i) of KCS & CCA Rules 1960.

(By Order of the Governor)
S. MOHANDAS
ADDITIONAL SECRETARY.

To

The Director of Urban Affairs, Thiruvananthapuram
The Director, Kerala State Audit Department, Thiruvananthapuram
The Principal Accountant General (Audit/A&E), Kerala, Thrissur
The Secretary, Kannur Municipal Corporation

Shri. B.K. Balaraj, former Secretary, Kannur Municipal Corporation
The Vigilance Department (vide U.O No. Vig-D1/17/2017-Vig
dated 02.11.2017)

✓ The Executive Director, Information Kerala Mission, Thiruvananthapuram
(For publishing this Order in the website)
Stock File

Forwarded by Order



Section Officer