



SANCHAR NIGAM EXECUTIVES' ASSOCIATION
KERALA CIRCLE
(Recognised Majority Association of Executives in BSNL)
SNEA Bhavan, Dharmalayam Road, TVM-695001

Circle President

George Varghese
DGM(OP &Mktg)
Ernakulam. 944716900 (M)

Circle Secretary

T.Santhosh Kumar,
SDE , Manacaud,
Trivandrum. 9446072525 (M)

Circle Treasurer

G.Premkumar,
SDE, Vellayambalam,
Trivandrum. 9447102277 (M)

No:- SNEA/KLA/CGM/2018-19/ dtd at TVM, the 23/06/2018

To
The CGMT
BSNL, Kerala Circle,
Thiruvananthapuram.

Sub: Effective Legal actions to protect the interest of BSNL and its executives in BSNL W.R.T.PROPERTY TAX of BSNL Mobile Towers reg:-

Respected Sir,

The issue related to levy of arbitrary and exorbitant property tax on telecom towers at different rates/amounts by different local authorities including Municipal Corporations, Municipalities and Grama Panchayaths coupled with coercive actions such as sealing of towers, disconnection of power supply, issuing revenue recovery orders, nuisance at sites, use of force, and damage to telecom sites etc has again come to light in recent times.. The BSNL Company has put up Telecommunication towers at 4160 places in Kerala Telecom Circle as on date. All Grama Panchayaths/Municipalities/Corporations initiated on the alleged ground of outstanding tax payments resulting in huge impact on telecommunication service and inconvenience to public at large and pressurizing BSNL to effect such payments w.r.t. the judgement in WP(C) No.30376 of 2012 dtd 28th day of November, 2017. BSNL Kerala had filed a case before Hon'ble High Court of Kerala vide WP(C) 30376 of 2012 against the Government of Kerala Order No.GO(Rt) No.2640/2012/LSGD date 19/09/2012 wherein Govt. of Kerala rejected the request of BSNL to exempt it from payment of property tax on mobile tower and the Hon'ble High Court of Kerala has delivered its judgement on the above writ on 28/11/2017 that "the tax on the mobile towers can be levied on the yield from the land and building so used and not on the plant and machinery in the mobile tower".

In the meantime, certain Panchayaths approached Magistrate Courts and filed criminal cases against the executives of BSNL under Section 210 of Kerala Panchayath Raj Act. More than 100 nos. of summons have so far been issued by various Judicial 1st Class Magistrate courts in Kerala against Sub Divisional Engineers/Divisional Engineers/Assistant General Managers/General Managers on charges of violation of Kerala Panchayath Raj Act for non-payment of Property Tax for mobile towers.

Thus, BSNL Kerala filed a review petition challenging the Judgment dated 28th day of November, 2017 in W.P(C) No. 30376 of 2012 in as much as it suffers from errors of law that are Apparent on the face of the Record. In the Review petition it was contended inter alia that imposing property tax on telecommunication towers is contrary to Article 265 of the Constitution of India. The Honorable High Court of Kerala in its Order in RP No. 176 of 2018 in WP[C] 30376 of 2012 has held as follows, viz; *“In Ext P2, the Government has considered the question relating to the rates of taxes on item [iv] of sub-section 2[a] of Section 203 of the Kerala Panchayat Raj Act, 1994. Further, sub-section 2 [b] empowers the Government to prescribe the rates on item [iv] by notification. Therefore, there should be a notification prescribing various rates applicable to Corporation area, Municipal area, and Panchayat area, and if similar rates are applied, no doubt, it will be disproportionate. The said clarification is made to the judgement passed by this Court in W.P[C] 30376 of 2012.”* The Notification No 17/11 of the Local Self Government Department dated 14.1.2011 was with respect to Municipalities and Corporations under the Kerala Municipalities Act, 1994. In the said notification the basic tax for Mobile Telephone Tower was fixed in the range of Rs 400-500. This notice was considered and clarified as above by the High Court of Kerala as per which basic tax for Mobile Telephone Towers in Panchayats should be different. However, Notification No 19/2011 of Local Self Government dated 14/1/2011 under the Kerala Panchayat Raj Act,1994, has fixed the same amount as basic tax for Mobile Telephone Towers i.e., in the range of Rs 400-500. Honourable High Court of Kerala have categorically declared that such a notification fixing same basic tax in Panchayat Area under Kerala Panchayat Raj Act, 1994, as that in Corporations/Municipalities under Kerala Municipality Act, 1994, is incorrect and illegal. In such circumstances, the coercive actions for tax from BSNL are all without jurisdiction.

The prosecution proceedings going on at various Magistrate Courts in Kerala against BSNL executives without considering the judgement in RP No.176 of 2018 in WP[C] 30376 of 2012 by the Panchayath Secretaries are illegal. As per the legal opinion of the BSNL counsel dealing with the prosecution cases in various BAs , BSNL is contesting the case on the grounds of the judgment of Hon'ble High Court in RP No. 176 of 2018. But continuing the litigation against each LSGs at local level will spoil the goodwill at local level and will be a cumbersome procedure and expensive . It is most likely for divergent decisions from different courts. **Further the accused in each of these cases may have to take bail, since there is no stay order for payment of property tax by BSNL. This will cause serious inconveniences since the numbers of cases are increasing day by day and it affects the Vigilance Clearance of those prosecuted executives in the verge of their promotion. The prosecuted executives are honest officers, should be protected not only in their interest, but in larger interest of society. If this is not happened, it would be very difficult for the executives to discharge their duties in free and fair manner. BSNL Executives and their family members are suffering a great ordeal of mental agony due to the malicious, willful prosecution proceedings against these Honest BSNL Executives by the Panchayath Secretaries. Since none of the Executives in the field units are either responsible or competent to take decision on the subject and make payment they are wrongly arrayed as accused in the court proceedings. Hence this fact may be communicated to the Judicial/ government authorities to get them dropped from the criminal proceedings.**

We request Kerala BSNL Administration to take immediate action against the Director of Panchayaths/Principal Secretary (LSGD), Govt. of Kerala and compel them to withdraw all the demand notices issued by the Panchayath Secretaries in this issue and shall initiate appropriate legal steps and a relief may be obtained from High Court of Kerala at the earliest, so that the Panchayaths may be refrained from filing such cases till a proper notification as mentioned in Order dtd. 12/04/2018 of Hon'ble High of Kerala in RP No. 176 of 2018 is issued by them prescribing rates applicable to various areas.

Sincerely Yours



T Santhosh Kumar
Circle Secretary
SNEA, Kerala Circle.

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