

AYUSH DEPARTMENT

6.4 Irregular construction of a pharmaceutical factory costing ₹3.76 crore in a residential zone violating Zonal Regulations

Government of Kerala irregularly assigned land falling under ‘residential zone’ for construction of a pharmaceutical factory resulting in denial of mandatory clearances from local body and consequent idle investment and locking up of funds to the tune of ₹3.76 crore.

Under the Town Planning Act, 1933, the General Town Planning Scheme for Thiruvananthapuram as amended in 2007 lays down Zoning Regulations, which stipulate that all future developments in Thiruvananthapuram would be in conformity with the provisions of the Development plan for the district. Accordingly, areas have been zoned under various uses such as residential, commercial, industrial, public and semi-public, etc. Details regarding the nature of uses ‘permitted’, uses ‘restricted’ and uses ‘prohibited’ in each zone are also enlisted under the Zoning Regulations. The ‘Uses permitted’¹⁶⁰ in a Zone cover the uses that could be normally accommodated in the relevant zone. Cases could be categorised as ‘Uses Restricted’¹⁶¹ where it might be possible for the executive authority with the concurrence of the Chief Town Planner to Government (CTP), to permit some other uses also, which were not likely to affect the quality and environment in a zone specified for a particular use. ‘Uses prohibited’¹⁶² enlist the various objectionable uses in each zone which are not specified under the other two uses and which shall not be permitted under normal circumstances. The Zoning Regulations permitted operation of only such non-obnoxious, non-nuisance type of service or Light industries engaging not more than three workers, with power limited to 3 HP or six workers without power, in residential zones. The Zoning Regulations also stipulated that large scale development proposals in an area not less than two Hectares¹⁶³, exceeding an investment of ₹50 crore, which provide direct employment to not less than 500 may be permitted in all zones subject to recommendation of a committee¹⁶⁴ constituted by the Government for this purpose.

Audit of the Pharmaceutical Corporation (Indian Medicines) Kerala Ltd., Thrissur (Oushadhi)¹⁶⁵ for the period 2015-16 conducted during January-February 2017 revealed violation of the above Zoning Regulations leading to idle investment of ₹3.76 crore, as detailed below.

¹⁶⁰ ‘Uses Permitted’ category under Residential Zones – All residences, retail shops, professional/commercial offices/establishments upto 200 sq.m, nursery, kindergarten, primary schools, clinics (out-patient) diagnostic centres, small service industries of a non-nuisance nature, etc.

¹⁶¹ ‘Uses Restricted’ category under Residential Zones -Hostels, boarding houses, commercial offices/shops/restaurants upto 500 sq.m, Markets, Gymnasium, Automobile showrooms/workshops, Research and Development Institute, Hospitals and Healthcare upto 20 beds, Service Industries upto 20 workers without power or 10 workers with 10 HP, Local/State/Central/Public sector offices, schools, etc.

¹⁶² ‘Uses Prohibited’ category under Residential Zones – Any use other than those specified in ‘Uses Permitted’ and ‘Uses Restricted’.

¹⁶³ One hectare = 100 ares.

¹⁶⁴ Committee consisting of Secretary LSGD, CTP, District Town Planner, Secretary, Thiruvananthapuram Development Authority and Secretary, Thiruvananthapuram Corporation.

¹⁶⁵ A fully owned Government of Kerala undertaking engaged in the business of Ayurvedic Medicines.

The Managing Director (MD) of Oushadhi requested GOK (November 2012) to provide approximately one acre of land for constructing a Panchakarma Institute at Thiruvananthapuram. Accordingly, Government of Kerala (GOK) informed Oushadhi (June 2014) of its intention to transfer on lease, 40.47 ares¹⁶⁶ of land situated in Survey No. 2615 of Muttathara village in Thiruvananthapuram district for the purpose. However, Oushadhi informed GOK (July 2014) its decision to construct a pharmaceutical factory on the site and requested to levy only a nominal rate as lease charges. GOK issued orders (May 2015) transferring 40.47 ares of land to Oushadhi at a nominal lease rent of ₹100 per are for 30 years. Audit observed that the proposed factory did not figure in the list of services/light industries permissible in residential zones.

The work of preparing a Project Report to set up a unit for the production of proprietary Ayurvedic medicines was entrusted (May 2015) to M/s. KITCO Ltd. (KITCO)¹⁶⁷ by Oushadhi. Agreement was later executed (September 2015) with KITCO for obtaining consultancy services within the scope of work including preparation of project report, engineering¹⁶⁸, procurement¹⁶⁹ and construction management for the project as well as providing technical expertise during construction and commissioning of the project. The agreement also provided for KITCO to provide technical assistance to Oushadhi in seeking approval from Government and statutory bodies like Pollution Control Board, Electricity Board, Water Authority, Factory Inspectorate, Electrical Inspectorate, etc.

KITCO submitted (July 2015) the final Project Report for setting up a state of the art production facility at Muttathara in Thiruvananthapuram at an estimated cost of ₹6.56 crore. Agreement was executed (October 2015) by Oushadhi with M/s. Crescent Construction Company, Thiruvananthapuram (Contractor) for taking up Civil Works at a contract price of ₹3.44 crore. The time of completion of the work was fixed as four months from the date of the agreement. The work of construction of the factory building was completed at an expense of ₹3.76 crore and the building inaugurated in February 2016. The machinery for the first phase was supplied by March 2017 for which an expenditure of ₹1.14 crore was incurred. Despite completion of factory building and procurement of necessary equipment, the factory is yet to commence its operation (February 2018).

Audit noticed that the land leased out by GOK to Oushadhi at Muttathara was situated in a residential zone wherein construction of factory was not permissible. It is evident that Oushadhi with its envisaged state-of-the-art production facility, targeting to engage 33 persons directly and 150 persons indirectly, was not eligible to set up and run the factory in a residential area. The project report prepared by KITCO for the factory also recognised the fact that the land for the factory was situated in a green zone which necessitated prior approval of CTP to be obtained before commencement of any construction

¹⁶⁶ 40.47 Ares = One Acre.

¹⁶⁷ A Public Ltd. Company and an Accredited Agency for execution of public works.

¹⁶⁸ Engineering services included providing technical assistance to Oushadhi for identification, negotiation and finalisation of all plant, equipment, parts etc., required for the project and negotiation with contractors for civil, structural, mechanical, electrical instrumentation, erection, etc.

¹⁶⁹ Procurement services included identification of project packages, preparation of tenders (Both technical and commercial), preparation of Tender Notices, techno-commercial discussions with the bidders, techno-commercial evaluation of offers and recommendation thereof, drafting and forwarding letter of award of contract to the client to issue to the contractor, operation of contract, processing of bills for payment, etc.

activity. Initial clearances for the project from the Fire and Safety Department, Local Body, Factories and Boilers Department, Pollution Control Board, Ground Water Department and Ministry of Civil Aviation were also to be obtained.

Audit further noticed that Oushadhi sought permission (September 2015) for conversion of land situated in a residential zone into industrial zone from CTP. Without waiting for any formal approval, Oushadhi commenced the construction of the factory devoid of statutory clearances, which was a serious violation of extant rules, on its part. Audit later observed (January 2016) that even the CTP, from whom formal approval was sought for by Oushadhi, was not competent to accord the same and the matter was taken up with GOK.

Though the proposed factory of Oushadhi did not satisfy any of the aforesaid criteria laid down in the Zoning Regulations, it was decided (July 2017) in a meeting of Ministers of Health and Local Self Government Departments, Government Secretaries of Local Self Government and Ayush Departments, CTP, the Secretary, Corporation of Thiruvananthapuram and the Chairman/MD Oushadhi that in view of the likely delay in obtaining building permit, the Corporation was to grant temporary UA number¹⁷⁰ to Oushadhi within one week from the date of receipt of application from Oushadhi. This was clearly indicative of a move towards regularising the Zonal violation and consequent irregular construction. Temporary UA number was allotted to the building in October 2017.

After the matter was referred (September 2017) to GOK, Audit was informed (October 2017) that Government proceeded with construction of the factory with the bonafide belief that zone regularisation would take place in due course. It was also stated that as the Government had since taken a positive decision on the subject, the factory could be operationalized within a short period.

The reply of the Government was not acceptable because Government cannot proceed with serious issues such as construction of factories in residential zones on the basis of assumptions and belief that regularisation would occur in due course. Government has to function within the parameters prescribed by Acts and Regulations. The matter assumes seriousness when Government violates the Rules and Regulations formulated by itself, which calls for fixation of responsibility on the Officers at fault.

HIGHER EDUCATION DEPARTMENT

6.5 Violation of AICTE norms in placement to posts of Associate Professors

Director of Technical Education violated AICTE norms/GOK orders while making placement to posts of Associate Professors resulting in inadmissible payment of at least ₹1.46 crore in 24 cases test-checked.

The All India Council for Technical Education (AICTE) notified (March 2010) Regulations prescribing the Pay scales, Service conditions and Qualifications

¹⁷⁰ Permit number given to Unauthorised Constructions.