

GAHC010084162022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2968/2022

KANAK LATA BORAH
W/O- DHIRAM BORAH
R/O- VILLAGE SALBARI, PABBATI PATH
P.O AND P.S- NOONMATI
DIST- KAMRUP (M), ASSAM
PIN-781020

VERSUS

THE STATE OF ASSAM AND 9 ORS
REPRESENTED BY THE COMMISSIONER SECRETARY TO THE GOVT OF
ASSAM, INFORMATION TECHNOLOGY DEVELOPMENT DEPTT. DISPUR,
GUWAHATI- 6

2:THE MEMBER SECY.
POLLUTION CONTROL BOARD
ASSAM

P.O-BAMUNIMAIDAM
GUWAHATI-781021

3:THE CHIEF SECY.
CUM- CHAIRMAN STATE TELECOM COMMITTEE
GOVT. OF ASSAM
BLOCK-C
3RD FLOOR
ASSAM SACHIVALAYA
DISPUR
GUWAHATI781006

4:THE DEPUTY COMMISSIONER
KAMRUP METRO CUM- DISTRICT TELECOM COMMITTEE

PANBAZAR
GUWAHATI-781001

5:THE RELIANCE TELECOM LTD.
G.S ROAD
CHRISTIAN BASTI
P.O- DISPUR
DIST- KAMRUP (M)
ASSAM
PIN-781006

6:THE COMMISSIONER
GAUHATI MUNICIPAL CORPORATION
RIVERFRONT BEHIND SBI
PANBAZAR
GUWAHATI-781001

7:THE CHIEF EXECUTIVE OFFICER
GAUHATI METROPOLITAN DEVELOPMENT AUTHORITY
3RD FLOOR
STATFED BUILDING
HOSPITAL ROAD
BHANGAGARH
GUWAHATI-781005

8:THE CHIEF GENERAL MANAGER (D)
APDCL
LAR
BIJULEE BHAWAN
PALTANBAZAR
GUWAHATI-781001

9:SULEMAN ALI KHAN
S/O- HASAN ALI KHAN
R/O- SALBARI (BAPUJINAGAR)
NOONMATI
P.O
P.S- NOONMATI
GUWAHATI-20
DIST- KAMRUP (M)
ASSAM
PIN-781020

10:SUMMIT DIGITAL INFRASTRUCTURE LIMITED
(FORMERLY KNOWN AS RELIANCE JIO INFRATEL PVT. LTD.) IS A
COMPANY INCORPORATED UNDER THE COMPANIES ACT
1956 HAVING ITS REGISTER OFFICE AT UNIT-2
9TH FLOOR

TOWER-4
EQUINOX BUSINESS PARK
LBS MARG
KURLA (WEST)
MUMBAI- 400070
MAHARASTHRA

Advocate for the Petitioner : MS. S K NARGIS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

27.03.2023

1. Heard Mr. S. Borthakur, learned counsel for the petitioner. Also heard Mr. M. Barman, learned counsel for the respondent nos.1, 3 & 4, Mr. S. Barua, learned counsel for respondent no.2, Mr. D. Gogoi, learned counsel for respondent no.8, Ms. E. Nath, learned counsel appearing on behalf of Mr. J. Roy, learned counsel for the respondent no.10 and Mrs. S. Bora, learned counsel for respondent nos.6 & 7.

2. The grievance of the petitioner is that a mobile tower has been illegally and unauthorizedly installed by the respondent no.9, on the second floor of his residential building in Noonmati locality, under Guwahati Municipal Corporation. The petitioner's counsel submits that the installation of the mobile tower has been made without following "the Guidelines for Issuance of Clearance and Permit for Installation of Mobile Towers in Assam and Disposal of Public Grievance in this regard", hereinafter referred to as "the Guidelines" issued by the Commissioner & Secretary to the Government of Assam, Information

Technology Department. The petitioner's counsel submits that though various residents of Noonmati locality had made complaints against the illegal and unauthorized installation of the mobile tower, no decision has been taken by the District Telecom Committee (DTC), chaired by the Deputy Commissioner, Kamrup(M) with regard to the complaints. He submits that the writ petition can be disposed of, if a direction is issued to the Deputy Commissioner, Kamrup (M), to take a decision on the grievance of the petitioner, with regard to the illegal and unauthorized installation of a mobile tower in the premise of respondent no.9.

3. The learned counsels for the respondents submit that they have got no objection with the prayer made by the respondents counsel, if the DTC takes a decision on the petitioner's grievance, provided the petitioner submits a fresh representation to the DTC, chaired by the Deputy Commissioner, Kamrup(M).

4. I have heard the learned counsels for the parties.

5. The grievance of the petitioner with regard to installation of the mobile tower, is not only on account of the same not having been done in terms of "the Guidelines for Issue of Clearance and Permit for Installation of Mobile Towers in Assam and Disposal of Public Grievance in this regard", but also due to the alleged fact that the mobile tower is the source of harmful and hazardous electromagnetic radiation.

6. On perusing the affidavit of the respondent no.10, it is seen that the

respondent no.10 has taken a stand that the installation of the mobile tower had been done after taking the prior permission of the Deputy Commissioner, Kamrup (M). The above being said, the Division Bench of this Court disposed of PIL No.88/2013, by observing that the Union of India had issued necessary advisory/guidelines for all the State Governments, for issuance of permits/clearance for installation of mobile towers. Pursuant to the said advisory/guidelines of the Union of India, the State Government in its Information Technology Department framed "Guidelines for issuance of clearance/permission for installation of mobile tower in Assam as well as for disposal of any such public grievances in that regard", hereinafter referred to as "the Guidelines".

7. Clause 17 of the Guidelines provides for disposal of public grievances and Clause 18 of the said Guidelines provides for disposal of appeals and other petitions.

8. Clause 17 of the said Guidelines relates to disposal of public grievances, which reads as follows-

"Disposal of Public Grievance: If there is any individual or public grievance related to establishment or operation of a Mobile Tower or if the TSP/IP has some grievance, the same shall be placed before the DTC for disposal as per guidelines laid down, provided that the aggrieved party may prefer an appeal to the STC within 45 days of disposal by the DTC if it is not satisfied with the decision of the DTC."

9. Clause 17 of the Guidelines provides that if there is any grievance relating to the establishment or operation of a mobile tower, the same should be placed

before the DTC. Thereafter if aggrieved, the complainant can always file an appeal before the State Telecom Committee (STC) within 45 (forty five) days thereafter

10. The District Telecom Committee (DTC in short) as per the said Guidelines comprises of the (i) Deputy Commissioner as the Chairman (ii) Superintendent of Police (iii) TERM Cell representative (iv) Commissioner/Executive Officer / Chairman/ of all ULBs of the district (v) CEO Zilla Parishad /Principal Secretary of the 6th Scheduled Council (vi) One representative of the Pollution Control Board (vii) Joint Director of Health Services (viii) Executive Engineer, PWD (Rural Road) (ix) Executive Engineer, PWD (Bldg) (x) District Head of BSNL (xi) District Head of each Telecom/ Infrastructure Service Provider and (xii) Additional Deputy Commissioner (Magistracy).

The State Telecom Committee (STC in short) comprises of (i) Chief Secretary, as the Chairman (ii) Addl, Chief Secretary (Home etc) (iii) Deputy Director General (TERM), Assam (iv) Senior most Secretary, Home Department (v) Senior most Secretary, GAD (vi) Senior most Secretary, Health Department (vii) Senior most Secretary, PWD (viii) Senior most Secretary, P&RD (ix) Senior most Secretary, Revenue and Disaster Management Department (x) Senior most Secretary, Forest and Environment Department (xi) Chairman, State Pollution Control Board (xii) State Head of BSNL (xiii) State Head of each Telecom/Infrastructure Service Provider and (xiv) Senior most Secretary, IT.

11. Moreover, Clause 19 of the said Guidelines clarifies that the

recommendation of the DTC/STC, as the case may be, shall be adhered to by the Local Bodies, Police, the TSP/OP or any other authority related to the subject.

12. Clause 21 of the said Guidelines provides for removal of difficulties which reads as follows-

“Removal of Difficulties: The Govt. of Assam may amend this guidelines or issue further guidelines, as necessary, for removal of any difficulties that may arise for issue of clearance or permit for installation of Mobile Towers in Assam”

13. This Court is of the view that as the petitioner has an alternative remedy available, the present writ petition should not be kept pending any longer before this Court.

14. Accordingly the writ petition is closed, with liberty being given to the petitioner to approach the DTC in terms of Clause 17 of the Guidelines with regard to her grievance. If the event, the petitioner submits her application, the same should be disposed of by the DTC within a reasonable period.

15. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant