

GAHC010216182024



2024:GAU-AS:10887

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

Case No. : WP(C)/5540/2024

SWAPAN KANTI CHOUDHURY AND ANR
S/O LATE HIMANGSHU CHOUDHURY
VILL- JOYPUR PART-I, P.S.LAKHIPUR
P.O. PAILAPOOL,
DIST. CACHAR, ASSAM
PIN-788107

2: SRI SANTOSH ACHARJEE
S/O LATE SUNIL ACHARJEE
VILL- JOYPUR PART-I
P.S. LAKHIPUR P.O.PAILAPOOL
DIST. CACHAR
ASSAM PIN-78810

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, TO THE GOVT.
OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI-6.

2:UNION OF INDIA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF TELECOMMUNICATION
NEW DELHI.

3:DISTRICT COMMISSIONER
CACHAR
SILCHAR.

4:THE SUB-DIVISIONAL OFFICER (C)
LAKHIPUR SUB- DIVISION
LAKHIPUR
DIST. CACHAR.

5:THE SECRETARY
JOYPUR GAO PANCHAYAT

VILL- JOYPUR

P.S. LAKHIPUR
DIST. CACHAR
ASSAM PIN-788107

6:THE BHARATI TELECOM LTD.
REPRESENTED BY ITS MANAGER
SILCHAR
CACHAR
ASSAM

PIN-788001.

7:SRI JITENDRA SINGH
S/O LATE RAMMURAT SINGH
VILL- PAILAPOOL

P.S. LAKHIPUR
DIST. CACHAR
PIN-78810

Advocate for the Petitioner : MR. I ALAM, MR. T SK

Advocate for the Respondent : GA, ASSAM, SC, P AND R.D.,DYS.G.I.

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

06.11.2024

Heard Mr. T. Sk, learned counsel for the petitioners; Mr. S. Duta, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for the respondent nos. 1 & 5; Ms. S. Baruah, learned Central Government Counsel [CGC] for the respondent nos. 2 & 6; Mr. S. Baruah, learned Junior Government for the respondent nos. 3 & 4.

2. Having regard to the grievance raised by the petitioners in this petition and the submissions advanced by the learned counsel for the parties, this writ petition is taken up for disposal at the motion stage itself.

3. The two petitioners herein have claimed that they are permanent residents of Village – Joypur, Part-I, Post Office – Poronga, District – Cachar. According to the petitioners, the respondent no. 6, M/s Bharti Telecom Limited [Airtel], a telecom service provider, is presently proceeding with the works of installation of a mobile tower within a plot of land belonging to the respondent no. 7 and the said plot of land is adjacent to the lands of the two petitioners. According to the petitioners, the proposed site for installation of the mobile tower would be at a distance about 50 Ft. from the dwelling houses of the petitioners. Apprehending health hazards and adverse environmental impact from the proposed mobile tower, the petitioners have approached this Court by this writ petition.

4. The petitioners have averred that they had initially approached the respondent no. 4 and the respondent no. 6 ventilating their grievances and at one point of time, the respondent no. 4 after enquiry, had stopped the construction of the mobile tower at the proposed site. But subsequently, the installations works have been resumed. Thereafter, the petitioners had also submitted a representation before the respondent no. 4 on 23.09.2024 with a prayer to relocate the mobile tower to some other place. The petitioners have further projected that the no-objection certificate [NOC] issued earlier by the jurisdictional Gaon Panchayat i.e. Joypur Gaon Panchayat has since been recalled and as on date, there exists no approval from the Gaon Panchayat.

5. With the above projections, the petitioners have preferred this writ petition seeking inter alia a direction to the respondent no. 4 to restrain the respondent no. 6 and the respondent no. 7 to proceed with the works of installing the mobile tower.

6. Earlier, the Information Technology Department, Government of Assam by an Order dated 11.08.2015 had framed “the Guidelines for Issue of Clearance and Permit for Installation of Mobile Towers and Disposal of Public Grievance” in this regard. Subsequently, the Information Technology Department, Government of Assam has notified another guidelines, namely, “the Guidelines for granting Right of Way to Telecommunication Infrastructure in Assam, 2023” [‘the Guidelines’, for short] to bring uniformity, clarity and simplicity for the matters related to the Telecommunication

Infrastructure across the State of Assam and the Guidelines have received assent of the Assam Cabinet on 22.02.2023.

7. Chapter-IX of the Guidelines has provided for constitution of a State Level Committee [STC] and a District Level Committee [DTC] in each district. The State Level Committee [STC] in the State acts as the apex committee for overall guidance, monitoring and implementing the Guidelines under the chairpersonship of the senior most Secretary to the Government of Assam, Information Technology Department with fifteen other members. In addition, there is a District Level Committee [DTC] in each district to implement the Guidelines under overall supervision of the State Level Committee [STC]. The Deputy Commissioner of the district is the Chairperson of the District Level Committee [DTC] and the members of District Level Committee [DTC] are as under :-

Sl No	Designation	Membership
1	Deputy Commissioner	Chairperson
2	Superintendent of Police	Member
3	Chief Executive Officer, Zila Parishad	Member
4	Chairman, ULUBs in the District	Member
5	Joint Director of Health Services of the District	Member
6	District Manager, DITEC	Member
7	Executive Engineer, PWD (Building) of Respective jurisdiction	Member
8	Executive Engineer, PW(NH) of the Respective jurisdiction	Member
9	Executive Engineer, PWD(Roads) of Respective jurisdiction	Member
10	Assistant General manager, APDCL of Respective jurisdiction	Member
11	Representative from Concerned Licensee	Member
12	Addl. Deputy Commissioner, e-Governance	Member Secretary

8. It is evident from Clause 26 of the Guidelines, quoted below, that the duties and responsibilities of the STC and DTC within their jurisdiction include resolving public grievances

arising from establishing mobile towers or any other overground Telecommunication Infrastructure or laying underground cables in the State. Clause 26 of the Guidelines reads as under :-

26. Duties and responsibilities of STC and DTC within their jurisdiction are as follows :-

- [1] Implementation of these guidelines for development of Telecommunication Infrastructure in the State.
- [2] Resolving public grievances arising from establishing mobile towers or any other overground Telecommunication Infrastructure or laying underground cables in the State.
- [3] Seizure/removal of unauthorized Telecommunication Infrastructure in the State.
- [4] Designate 1 [one] no. of authorized representation not below the rank of Assistant Engineer from PWD [Building], PWD [NH] and PWD [Roads] Department for each administration district in consultation with the respective DTC for the works related to PWD while implementing these guidelines.

9. Chapter-X of the Guidelines has provided for appeals, dispute resolution, public grievances and removal of difficulties. Clause 27 of Chapter-X is as under :-

27. Appeals/ Dispute Resolution/ Public Grievances

- [1] Any dispute arising between a licensee and the Nodal officer in consequence of these guidelines or any complaint/grievance by any individual/ organization shall be taken up as an agenda in the DTC meeting within 30 days.
- [2] Any party aggrieved by the decision of DTC may file an appeal before the STC within 30 (thirty) days of the order of DTC. The STC shall decide the dispute/dispose of the complaint/ grievance within a 30(thirty) days of receipt of the grievance which shall be final.
- [3] In case of any mishap/accident/damage caused due to installation of small cells, Telecom cables etc. the responsibility will be equally shared between/amongst user[s] [TSP/IP] and owner of street furniture provider.
- [4] The Government of Assam may notify any other order, amendment or notification as required for establishment of Telecommunication Infrastructure from time to time.

[5] The Director, DITEC may notify any changes at the web-portal developed for the purpose these guidelines in consultation DoT.

10. From the Guidelines, it is noticed that the DTC deals with matters related to public grievance for installation of mobile towers and other issues related to Telecom Infrastructure in the concerned district.

11. Having regard to the above Guidelines, this Court is of the considered view that instead of keeping this writ petition pending, the same can be disposed of granting liberty to petitioners to prefer an representation/complaint before the District Telecom Committee [DTC] highlighting/ventilating their grievances about the installation of the proposed mobile tower in the vicinity of their area of residence, that is, in the plot of land of the respondent no. 7 by the respondent no. 6, before the Additional Deputy Commissioner, e-Governance, Cachar who is the Member Secretary of the District Telecom Committee [DTC], Cachar. In the event such a representation/complaint is preferred, the Member Secretary shall place the same before the DTC for consideration and thereafter, the DTC shall dispose of the said representation/complaint on its own merits. It is accordingly ordered. It is further observed that the DTC shall dispose of the representation/complaint so preferred, by passing a speaking order. It is necessary to mention that at the time of consideration of the application, all the stakeholders shall be put on notice and an opportunity of personal hearing be accorded to such interested stakeholders, if any such request is made. The entire exercise shall be completed as expeditiously as possible, within the timeline stipulated in the Guidelines, after receipt of a certified copy of this order and the representation/complaint from the petitioners, by the Member Secretary of the DTC, Cachar. On receipt of the application, the DTC may also consider about passing of an appropriate interim order, if the prevailing situation justifies so.

12. With the observations made and the directions given above, the writ petition stands disposed of. No cost.

JUDGE

Comparing Assistant