THE HIGH COURT OF TRIPURA
A G A R T A L A

W.P(C) No. 464 of 2014

Petitioner :

M/s. Bharti Infratel Limited.
Having its registered office at
1, Bharti Crescent, Nelson Mandela Marg,
Vasant Kunj, Phjase-II, New Delhi-110 070.
Through its authorized signatory

By Advocate :

Mr. K. N. Bhattacharjee, Sr. Adv.
Mr. S. Acharjee, Adv.

Respondents :

1. **The State of Tripura,**
Represented by its Chief Secretary, Govt. of Tripura, New Capital Complex, Lichubagan, P.O-Kunjaban, Agartala, Tripura-799 006.

2. **The Commissioner-cum-Secretary,**
Urban Development Department, Having its office at Civil Secretariat, New Capital Complex, Lichubagan, P.O- Kunjaban, Agartala, Tripura-799 006.

3. **The Director,**
Urban Development Department, Government of Tripura, Gorkhabasti, P.O-Kunjaban, Agartala, West Tripura-799 006.

4. **The Agartala Municipal Corporation,**
Represented by the Municipal Commissioner, Agartala Municipal Corporation having its office at Hospital Road, West Tripura-799 001.

5. **The Executive Officer,**
Central Zone, Agartala Municipal Corporation, Having its office at Hospital Road, West Tripura-799 001.

6. **The Executive Officer,**
South Zone, Agartala Municipal Corporation, Having its office at Hospital Road, West Tripura-799 001.

7. **The Executive Officer,**
East Zone, Agartala Municipal Corporation, Having its office at Hospital Road, West Tripura-799 001.

By Advocates :

Mr. S. Deb, Sr. Adv.
Mr. S. Chakraborty, Addl. G. A.
Mr. K. K. Pal, Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. TALAPATRA

Date of hearing &
Judgment & Order : **15th June, 2015.**

Whether fit for reporting **:**

Yes	No

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, C.J.)

The petitioner is a cellular operator company providing mobile services in the State of Tripura. They have set up towers all over the State of Tripura but we are dealing with matters relating to the towers which have been set up within the municipal area of Agartala Municipal Corporation.

[2] At the time when the towers were set up the petitioner company sought for permission of the Agartala Municipal Corporation to set up the towers and installation fee was charged. Thereafter annual licence fee was also charged. The petitioner paid this amount but later the annual fees as well as the installation fees have been enhanced substantially and after these fees were enhanced the petitioner filed this writ petition in which the main ground of challenge is that the Municipal Corporation has no power to levy any tax or fees on the installation or use of such towers.

[3] On behalf of the Municipal Corporation as well as State of Tripura it is contended that the Corporation has the power to levy the fees in terms of Section 97, 121, 192(1)(e), 201, 202 and 203 of the Tripura Municipal Act, 1994 (for short the Act). At this stage we are not going into the merits of the dispute because even under Section 201 of the Act the fees on licence and permits issued under the Act has to be determined by the municipality from time to time with the approval of the State Government. Any tax or levy can be imposed only in accordance with the provisions of Article 265 of the Constitution of India read with Article 243X of the Constitution of India. This approval has to be a prior approval. It cannot be post facto approval. We are saying this because Article 265 of the Constitution reads as follows:

> ***"265. Taxes not to be imposed save by authority of law.- No tax shall be levied or collected except by authority of law."***

It is thus clear that no authority can impose any tax or collect any tax unless it is duly authorized by law. Article 243X reads as follows:

> ***"243X. Power to impose taxes by, and Funds, of, the Municipalities.-- The Legislature of a State may, by law--***
>
> ***(a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;***
>
> ***(b) assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State-Government for such purposes and subject to such conditions and limits;***
>
> ***(c) provide for making, such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and***
>
> ***(d) provide for constitution of such Funds for crediting all moneys received respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom,***
>
> ***as may be specified in the law"***

Under this article the legislature of a State may by law authorize a municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits.

[4] We are clearly of the view that it is for legislature and not the executive to authorize the municipality to collect and appropriate the taxes. Not only the collection and appropriation of the taxes has to be authorized by the State legislature but the procedure and the limits of such taxation must also be laid down by the legislature. We are not entering into the other questions as to whether under Section 201 the State legislature can empower the Corporation to levy taxes on installation and maintenance of cellular towers. What will be the impact of Section 10 and 12 of the Indian Telegraph Act, 1885 is not being gone into because those questions do not rise at this stage. However, we are clearly of the view that before the Municipal Corporation levies any tax the State Government must authorize the municipality to levy, collect and appropriate such taxes, duties, tolls and fees. A conjoint reading of Article 265 and 243X leaves no manner of doubt that there can be no imposition and recovery of any tax, toll or fees by a municipality unless the legislature of the State in exercise of its powers under Article 243X authorises the municipality to levy and collect such taxes and fees etc. The Government no doubt has the statutory power to frame such a scheme but that power must be exercised in accordance with the Constitution and the law and executive orders cannot replace what has to be done by legislature.

[5] As far as present case is concerned till date no notification has been issued either by the municipal corporation or the State. There is not even an executive order. There is only a command by the Officer of the Municipal Corporation to pay these taxes. There is no statutory basis for levy of such fees as envisaged under the Constitution. Therefore, we are constrained to strike down the action of the municipal corporation in imposing the fees both installation and annual fees for erecting and operating the cellular towers within the municipal areas of Agartala. We would, however like to make it clear that if any cellular operators including the petitioner have without any protest paid the fees they will not be entitled to recover the same. Only that portion of the fees which may have been deposited either under protest or under the orders of the Court shall be refunded by the Municipal Corporation to the petitioner. As far as other cellular operators are concerned who have not approached this Court they will not be entitled to refund of any money but no fresh fees shall be imposed on them till the State Government statutorily empowers the municipality to impose such fees. The amounts which are to be refunded to the petitioners be refunded within 3(three) months from today, failing which the municipal corporation shall be liable to pay interest @ 9% per annum.

It is also clarified that the disposal of this petition shall not be a bar to the State Government for exercising the statutory powers in accordance with law. While framing such a scheme the State Government shall keep in view the provisions of the Constitution referred to above and may also take note of the judgment of the Guijarat High Court in ***Indus Towers Ltd. Vrs. State of Gujarat : CDJ 2010 GHC 072*** as well as the Supreme Court judgment in ***Commissioner of Income Tax, Udaipr, Rajasthan Vrs. Mcdowell and Company Limited : (2009) SCC 10 755.***

[6] The petition is disposed of in the aforesaid terms. No order as to costs.

JUDGE **CHIEF JUSTICE**

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