

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.03.2015

CORAM

The Honourable MR. JUSTICE M.DURAI SWAMY

W.P.No.1679 of 2015

and

M.P.No.1 of 2015

Viom Networks Limited

Celestial Point

No.45 Damodaran St.

T.Nagar Chennai-17

Regd. Office: D-2 5th Floor

Southern Park, Saket New Delhi

Rep. by Dy. Legal Manager.

[Petitioner]

Vs

1 The Assistant Engineer
Operation and Maintenance
TNEB West Division Guduvanchery.

2 Tamilnadu Generation and
Distribution Corporation Ltd. (TANGEDCO)
Rep. by its Chairman NPKR Maligai
144 Anna Salai
Chennai-600 002.

[Respondents]

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records resulting in the impugned order of the 1st respondent the Assistant Engineers Letter No. AE/D&M/ West Division / Guduvanchery/L.258/14 dated 10.02.2014 and to quash the same and direct the respondents to supply electricity to the BTS Tower erected in the vacant terrace space admeasuring approximately 300 sq.ft. of the building located at site bearing Survey No. 506/5 Plot No.48 Govindarajapuram Nandhivaram Village Chenglepet Taluk Kancheepuram District-603 202 belong to Mr.S.Thangaraj S/o.Mr.Subramanian.

For Petitioner : Mr.Jose John for
M/s King and Partrindge

For Respondents : Mr.P.Gunaraj, Standing Counsel

ORDER

Heard Mr.M.Vijayan, learned counsel for the petitioner and Mr.P.Gunaraj, learned Standing Counsel for the respondents, who took notice for the respondents and with their consent, the main writ petition is taken up for disposal at the admission stage.

2. The above writ petition has been filed to issue a writ of certiorarified mandamus to call for the records in respect of the impugned order dated 10.02.2014 and to quash the same and to direct the respondents to supply electricity to the BTS Tower erected in the vacant terrace space measuring approximately 300 sq.ft. of the building located at site bearing Survey No. 506/5, Plot No.48, Govindarajapuram, Nandhivaram Village, Chenglepet Taluk, Kancheepuram District, belonging to one S.Thangaraj.

3. According to the petitioner, it is the India's largest independent telecommunication infrastructure company, owning over 42000 towers spread across India that support the communication networks of mobile services operators in India like BSNL, Bharti Airtel, Aircel, MTS, Vodafone, Idea, Uninor and Tata Teleservices among others. As per the new Telecom Policy, the Central Government is committed to provide access to basic telegraph services to people in rural or remote areas at affordable and reasonable prices under the "Universal Service Obligation". The mobile services providers are licencees of telecommunication services under Section 4 of the Indian Telegraph Act, 1885 and are conferred with powers of the telegraph authority under Part III of the aforesaid Act. The telecommunication towers are known as Base Trans receiver Station (BTS) Towers erected by telecom companies did not even require plan approvals or permits from the relevant Town and Country Planning Authorities. By G.O.Ms.No.177, Municipal Administration and Water Supply Department, dated 17.12.2002, the Government of Tamil Nadu has exempted the ;BTS Towers from the Tamil Nadu District Municipalities Building Rules, 1972 and Multi-storey and Public Building Rules, 1973. By G.O.Ms.No.302, Housing and Urban Development Department, dated 12.12.2002, the Government has directed that the installation of BTS Towers shall be permitted in all the land use zones in the master plan and the same was also reiterated in the Energy (C3) Department letter dated 26.03.2009.

4. The petitioner Company entered into an agreement with the owners of the vacant terrace space on 03.01.2014 and erected the BTS tower at a cost of approximately Rs.30 lakh. Thereafter, the petitioner Company applied for supply of LT electricity on 10.02.2014 to the BTS Tower erected in the vacant terrace space

measuring approximately 300 sq.ft. of the building. However, the 1st respondent, rejected the petitioner's application proceedings dated 10.02.2014 on the ground that the general public of the 6th ward Govindarajapuram, Nandhivanam, Guduvancherry objected to the same.

5. The respondents, in their counter affidavit, have stated that the residence of the said locality had objected to the installation of the tower since they apprehend danger to their health. Further, the respondents have stated that one Kalpana adjoining house owner has filed a suit in O.S.No.47 of 2014 on the file of the District Munsif Court, Chengalpattu, objecting to the erection of the Cell Phone Tower, as against the owner of the building viz., Thangaraj and the TANGEDCO authorities.

6. According to the learned counsel for the petitioner, the petitioner is not a party to the said civil suit. However, the learned counsel submitted that the Civil Court has not granted any order of injunction in favour of the plaintiff therein.

7. Further, the respondents have stated in the counter affidavit that the petitioner has neither obtained no objection certificate from the Municipality nor from the Telegraph authority as per the Rules and Regulations of the authority concerned.

8. According to the learned counsel for the petitioner, the petitioner do not require to get no objection certificate either from the Municipality or from the Telecom authorities.

9. The learned Standing Counsel for the respondents is also not in a position to point out the relevant rules which require the petitioner to seek for No Objection Certificate from the authorities. In these circumstances, the contention raised by the respondents cannot stand.

10. With regard to the health hazards raised by the residents of the locality, a Division Bench of Gujarat High Court in Special Civil Application No.5548 of 2014 with Civil Application No.5597 of 2014 etc. in the case of Muktipark Co.operative Society - Part IV vs. Ahmedabad Municipal Corporation by order dated 05.09.2014 has held as follows:-

"17. Considering the public concerns over the issue, an Inter-Ministerial Committee was constituted in August 2010 to examine the effect of the EMF radiation from the BTS and mobile phones, which, after examining the matter, submitted its Report, inter alia, recommending

that the RF exposure limits in India may be lowered to 1/10th of the existing level.

....
23. Thereafter, several faculty members at the IITs and IISc in the area of communications, being concerned about the reports of adverse impact of radio frequency radiation from cellular towers on human health, examined the issue and prepared a Statement on the issue in September 2013 wherein they noted that the DoT had implemented the reduction of emission levels from the mobile towers in the country to 1/10th of the ICNIRP standards and that India thus became one of the 10% countries having the most stringent norms of the EM exposure. They concluded that the recommendations of the DoT were sensible and based on international best practices at this point of time and that they should be strictly implemented. They further recommended creation of a public database where all study reports on the health implication of the EM radiation should be placed and conduction of multiple scientific studies on the subject of health implications of the EM radiation, etc".

The Division Bench of the Gujarat High Court had elaborately discussed the radiation level of the Cell Phone Towers and gave a clear finding that the Cell Phone Tower if installed as per the provisions of the Act, will not cause any health hazards to the public.

11. That apart, this Court in W.P.No.25398 of 2014 dated 18.09.2014 (Viom Networks Ltd., vs. The Assistant Engineer, O & M, Enjambakka, TANGEDCO) set aside a similar impugned order and directed the respondents to consider the application of the petitioner. In that case also, the residents of the locality raised objections and this Court, while allowing the writ petition, observed that if the respondent has got any legal reasons for not giving supply to the tower erected by the petitioner, the same has to be spelt out in the order and without giving any such reasons, the petitioner therein cannot be directed to satisfy the residents of the locality and get their consent for getting electricity supply. The ratio laid down in the said order squarely applies to the facts and circumstances of the present case.

12. In these circumstances, I am of the view that the order of the respondents cannot stand for the reason that the residents of the locality objected for giving supply to the tower erected by the

petitioner, in the absence of any legal reason for not giving supply to the tower erected by the petitioner. As rightly held in W.P.No.25398 of 2014 cited supra, the petitioner cannot be directed to satisfy the residents of the locality and to get their consent for getting electricity supply to the BTS.

13. In these circumstances, the impugned order passed by the 1st respondent is liable to be set aside. Accordingly, the same is set aside. The respondents are directed to consider the application of the petitioner and give electricity supply to BTS subject to any interim order granted in O.S.No.47 of 2014, pending on the file of the District Munsif Court, Chengalpattu, within a period of four weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

rg

To

- 1 The Assistant Engineer
Operation and Maintenance
TNEB West Division Guduvanchery.
- 2 The Chairman
Tamilnadu Generation and
Distribution Corporation Ltd. (TANGEDCO)
NPKR Maligai
144 Anna Salai Chennai-600 002.

1 CC to Mr.P.Gunaraj, Advocate SR.No. 14320

1 CC to M/s King and Partrindge, Advocate SR.No. 14143

W.P.No.1679 of 2015

KM (CO)
PSI (26.03.2015)