

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-03-2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.4607 OF 2016

Viom Networks Limited,
Formerly known as
Wireless TT Info Services Limited.
Rep.by its Deputy Manager(Legal)

... Petitioner

-Vs-

1. The Assistant Engineer,
Works and Maintenance,
TANGEDCO, Edapadi.
2. Tamil Nadu Generation and Distribution
Corporation Limited (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 culminating in the impugned order of the first respondent letter No.AE/W&M/Na/Edappadi/File Complaint/A.No.252/15, dated 17.11.2015, to quash the same, and direct the respondents to supply electricity to the Ground Based Tower erected in the vacant land admeasuring approximately 2400 sq.ft. located in Nainampatti Street, Avaniperur Keelmugam Village, Edapadi Post & Taluk, Salem District-637 101, belonging to Mrs.Kanagam, wife of late Mr.Shanmuga Sundaram.

For petitioner : Mr.Jose John,
for M/s.King and Partridge.

For respondents : Mr.S.K.Raameshuwar

O R D E R

Petitioner has filed this Writ Petition, challenging the proceedings of the first respondent, refusing to grant electricity service connection to the Cell Phone Tower erected by the petitioner, on the ground that the public are objecting to the same.

2. Learned counsel for the petitioner submitted that apart from the objections being frivolous, there is absolutely no legal basis for the first respondent to refuse to grant electricity service connection to the Cell Phone Tower of the petitioner. Further, it is submitted that the first respondent failed to adhere to the mandatory stipulations under Section 43 of the Electricity Act, 2003, and it is the duty of the respondents to provide supply within a period of thirty days in terms of Regulation 4 of Tamil Nadu Electricity Distribution Standards of Performance Regulations, 2004, and Regulation 27 of Tamil Nadu Electricity Distribution Code. It is further submitted that in W.P.No.25398 of 2014 in the case of Viom Networks Ltd. v. Assistant Engineer, O&M, TANGEDCO, Chennai EDC South, Enjambakkam, Chennai-115, this Court considered somewhat an identical case and allowed the Writ Petition. It is further submitted that another writ petition was filed by the petitioner in W.P.No.1679 of 2015 for identical relief and this Court, after taking into consideration the decision of the Gujarat High Court in the case of Muktipark Co-operative Society v. Ahmedabad Municipal Corporation, in Special Civil Application No.5548 of 2014, dated 05.09.2014, allowed the Writ Petition.

3. When the matter came up for admission on 08.02.2016, this Court directed the learned Standing Counsel to accept notice for the respondent Board and file counter. Subsequently, the matter was posted on 22.02.2016 and further two weeks' time was granted to file counter.

4. Today, counter affidavit has been filed by the first respondent, in which, apart from stating about the objections of one K.Thiruselvam and others, there is no other objection submitted by the first respondent and it is stated that the respondents have not given service connection till-date and that they are willing to abide by any order that may be passed by this Court in this regard.

5. It is noteworthy to point out, at this juncture, that similar objections raised by way of a Public Interest Litigation was considered by the Hon'ble First Bench of this Court in the case of K.R.Ramaswamy @ Traffic Ramaswamy v. Government of India and others, reported in 2015 SCC Online Mad 5858. In the said judgment, a decision of the Kerala High Court in the case of Reliance Infocomm Ltd. v. The Sub Inspector of Police, Koyilandi, Kozhikode, was taken into consideration, wherein a Division Bench judgment of the Bombay High Court was referred to, and the said matter was disposed of with the following observations/directions :

"10. We are, thus, of the view that in a judicial proceeding these aspects cannot be analysed. There being no materials

atleast as on date, which can finally suggest any health hazards from these towers and the solution thereof, the Court would not venture into uncharted territory of technical expertise to determine the area where it should be installed. The Court, at best can place this matter before the appropriate Committee to look into this matter which the Kerala High Court already did and we have the benefit of the conclusion arrived at in those proceedings, as noticed above.

11. We are of the view that no further directions are required in these matters, other than to say that the concerned authorities would continue to analyse the materials as and when it emerges to look into the concern raised by the petitioners, especially, in view of the fact that there is no final view as yet on these aspects. Science grows and evolves and one does not know what may happen tomorrow. It is, in this context, we have made these observations.

12. Writ petitions and the writ appeal, accordingly, stand disposed of. No costs. Consequently, all connected Miscellaneous Petitions are closed."

6. Based on the above decision, batch of cases, which were filed on similar lines, were also disposed of. Further, it would be a matter of interest to know that the Gujarat High Court, in the case of Muktipark Co.operative Society, cited supra, analysed various reports, including the report of the International Commission on Non-ionizing Radiation Protection (ICNIRP), the Fact Sheet of the World Health Organisation, and all other records, and it is pointed out that based on such recommendations of the Inter-ministerial Committee, the Government of India, has now adopted stricter norms for emission from the base stations, being 1/10th of the standard prescribed by ICNIRP and, accordingly, licence conditions of all the telecom service providers in India were again amended.

7. In the light of the above proceedings and the judgments, the first respondent cannot refuse to grant electricity supply to the Cell Phone Tower erected by the petitioner. Hence, this Writ Petition is allowed, as prayed for, and the impugned proceedings are set aside. The first respondent is directed to grant electricity supply to the

petitioner's Cell Phone Tower at the place mentioned in the writ petition within a period of three weeks from the date of receipt of a copy of this order and, if there is necessity, the first respondent may seek for police aid, at the cost of the writ petitioner. No costs. Consequently, the connected W.M.P.No.3967 of 2016 is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

dixit

To

1. The Assistant Engineer,
Works and Maintenance,
TANGEDCO,
Edapadi.
2. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
NPKR Maligai,
144, Anna Salai,
Chennai-600 002.

+1cc to Mr.S.K.Raameshuwar, Advocate, S.R.No.15853
+1cc to M/s.King and Partridge, Advocate, S.R.No.15606

W.P.No.4607 OF 2016

MP (CO)
CA(29/03/2016)

WEB COPY