

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Writ Petition No.715 of 2018

ORDER :

Heard the learned counsel for the Writ Petitioner-M/s.ATC Telecom Tower Corporation Pvt.Ltd. who writ petition impugning the notice issued by the respondent-Municipality dt.13.12.2017 to remove the tower erected on the terrace of the buildings bearing No.11-231,232 and 233 (new and present) of Bharpet, Adoni, Kurnool district with supporting affidavit averments which show that it applied for the Cell Tower by identified the terrace of the private building supra and as the respondent/ Municipality granted permission, dt.06.04.2017 for the roof top cell tower, it commenced operation after erection however the Municipality suddenly issued impugned notice stating the provisional NOC was issued and in view of the public health, several objections received from Ward Members against the installation of the tower and observed lot of public nuisance including from the complaints by the neighbours for not satisfied with the statutory requirements of the Rules and Regulations of G.O.Ms.No.146, dt.19.06.2015, directed to shift to some other unobjectionable place by removing from the existing place and for that even a representation dt.27.12.2017 submitted but the respondent-Municipality is not considering and taking law into its hands.

2. The Written instructions of respondent/ Municipality show that what was granted was only a provisional NOC to the petitioner and it is made clear therein that any of the conditions of G.O.Ms.No.146, dt.19.06.2015 are violated, the NOC automatically stands cancelled and ceases its operation without further notice and action will be taken for the violations covered by G.O.Ms.No.146 supra and there is a condition E-III in G.O.Ms.No.146 relating to electrical lines for the distance of

tower from the electric line, poles or tower thereof shall not be less than height of tower + requisite safety distance from respective high or low tension line, a minimum safety distance both vertical and horizontal of 3mtrs shall be maintained between building/ TIT and the low tension electric lines and the petitioner did not follow said condition in erecting tower over the building in question and the tower erected over the building is at a height of 21 metres whereas the distance between the tower and low tension wire is only 15 metres and so far as the condition E-III, the distance between the tower and low tension electrical lines to the tower should be  $21+1.5=22.50\text{mtrs}$  and same distance not maintained as it is within 16 mts. against the 22.50mtrs therein also objections received from the public of Bharpet, Adoni and from the local Ward Counsellor in raising objections to the Cell Tower without observing of norms covered by G.O.Ms.No.146 supra, it is consequently the respondent-Municipality issued notice stating as permission is only provisional NOC with a direction to shift the tower, thereby the Writ Petition is liable to be dismissed.

3. The respondent-Municipality did not pass further orders to the representation submitted by the petitioner to the impugned notice.

4. Having regard to the above, there is nothing to keep the writ petition pending but for disposal by stay of operation of the Cell Tower forthwith and by directing the respondent-Municipality by treating earlier notice dt.13.12.2017 as provisional notice and consider the reply already submitted by the petitioner dt.27.12.2017 and pass orders within two weeks for requirement of the compliance under G.O.Ms.No.146 supra and by following guidelines laid down by the expression of this Court in W.P.No.10349 of 2015 and communicate the copy to the petitioner. In the meantime, in view of the stay of operation, the

respondents-Municipality shall not take further coercive steps for removing the tower. Further grievance of the petitioner is left open after communication of the order directed to be passed.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

Date: 12.03.2018  
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Dr. B. SIVA SANKARA RAO J,

