

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

Writ Appeal No. 385 of 2018

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal is preferred against the order passed by the learned Single Judge in I.A. No. 1 of 2018 in W.P. No. 4511 of 2018 dated 14.2.2018 dismissing the I.A. wherein a direction was sought to respondents 1 to 4 to stop the illegal and unauthorized erection of a telecommunication infrastructure tower in the Panchayat road, under the guise that it was given on lease to the 6th respondent, as illegal.

In the order under appeal, the learned Single Judge, after taking note of the appellant-writ petitioner's assertion that the Gram Panchayat had resolved not to permit respondents 5 and 6 to erect a cell tower, held that the Panchayat had no *locus standi*, since there was no requirement of obtaining any permission from the Gram Panchayat to construct a cell tower; and the Gram Panchayat had no role to play.

Sri Sai Gangadhar Chamarthy, learned counsel for the appellant, would draw our attention to the Andhra Pradesh Gram Panchayat (Erection of Telecommunication Towers) Rules, 2012 (hereinafter referred to as "the 2012 Rules), notified in GO Ms. No. 334 dated 9.10.2012, to submit that these Rules now require permission of the Gram Panchayat to be obtained for erection of cell towers.

On the other hand, Sri G. Seshadri, learned Standing Counsel for the Gram Panchayat, would draw our attention to the judgment, of a learned Single Judge of this Court, in **M. Balaram vs. Bharat Sanchar Nigam Limited**¹ to contend that, in terms of the law declared therein,

¹ 2010 (6) ALT 648

the Gram Panchayat has no role to play in grant of permission to erect a cell phone tower.

The Judgment in **M. Balaram**¹ was pronounced on 4.8.2010 more than two years before the 2012 Rules came into force. The 2012 Rules have statutory force, as they were made by the Government in the exercise of power conferred on them under Section 268(1) read with Section 119 of the Andhra Pradesh Panchayat Raj Act, 1994. Rule 3 of the 2012 Rules relates to the norms for issuing licences, and reads as under:

“3. Norms for issuing license:

- (a) The Inter-Ministerial Committee on EMF radiation in its report has recommended that mobile towers should not be installed near high density residential areas, schools, play grounds and hospitals. Accordingly, the Executive Authority of Gram Panchayat shall impose restrictions on installation of mobile towers near high density residential areas, schools, playgrounds and hospitals as far as possible.
- (b) Every application filed by any Telecom company shall be scrutinized by the Executive Authority of Gram Panchayat in two (2) stages. In the first stage the Executive Authority of Gram Panchayat shall issue a preliminary license called “Temporary permit” to those telecom companies whose applications fulfilled the locational (site) norms. No public road shall be used for erection of telecom structures. However, other public sites (other than public roads) including the Gram Panchayat properties shall not be used for erection of Telecom structures without taking the site by the company on lease. The terms and conditions of lease shall be as per G.O.Ms.No.215 PR&RD(Pts-III) Dept., dt.25.06.2001.
- (c) In every case, where the locational norms as prescribed in these rules and the Act are met by the Telecom Company, the Executive Authority shall issue a temporary permit to erect the towers and related structures.
- (d) The Gram Panchayat may collect a fee of Rs.1000/- along with the application and grant a temporary permit to erect the towers and related structures to all eligible applicants who fulfilled the site norms prescribed above.
- (e) In the second stage, on completion of the erection/installation work, the applicant should obtain and furnish a structural stability certificate to the Gram Panchayat, issued by a qualified Structural Engineer having license with the sanctioning authority of the respective Gram Panchayat and obtain a license to operationalize the

structures. Gram Panchayat may levy installation and license renewal fee as per the following :-

Sl.No	Category	Fee to be levied by Gram Panchayats
1	Cell tower installation fee (One time) a) Ground based towers b) Roof top towers	Rs.15,000/- Rs.12,000/-
2	Licence renewal fee (Annual) For Land based/Roof top towers	Rs.1,000/-

(f) Apart from the installation and license fee levied by the Gram Panchayat the applicant will pay lease rent to the owner of land/building on which the structure will be put at a negotiated rate.

(g) Every application for renewal of license must be supported by an updated structural stability certificate issued by a qualified Structural Engineer having license with the sanctioning authority of the respective Gram Panchayat.

(h) In case, the Executive Authority of Gram Panchayat fails to convey its decision within 30 days or rejected the application on certain grounds, the aggrieved party (Telecom company) may prefer the first appeal before the Gram Panchayat Committee, who decide the appeal based on the locational norms, prescribed in these rules within 30 days of filing appeal. Further appeal on the decision of the Gram Panchayat Committee shall lie to the Commissioner or his/her nominee within 30 days on which the authority shall pass orders within 30 days of receipt of such appeal. Final appeal on the orders of the Commissioner or his/her nominee shall lie before the Government in the form of a Revision Petition under Section 264 of the Andhra Pradesh Panchayat Raj Act, 1994.

It is evident, from the aforesaid Rules, that power has been conferred on the Gram Panchayat to impose restrictions, and scrutinize the application submitted by any telecom company at two stages. Reliance placed on the judgment of this Court in **M. Balaram**¹ (which was delivered on 4.8.2010) is mis-placed since, subsequently, statutory

rules have been made and notified in GO Ms. No. 334 dated 9.10.2012. The order under appeal is, therefore, set aside.

As the question whether the unofficial respondents have obtained permission in accordance with the 2012 Rules can only be examined after the respondents herein file their respective counter-affidavits, we consider it appropriate to restore I.A. No. 1 of 2018 to file. Sri G. Seshadri, learned Standing Counsel for the Gram Panchayat, submits that a counter-affidavit would be filed, in the Writ Petition pending before the Learned Single Judge, within three weeks from today. It is open to Sri Sai Gangadhar Chamorthy, learned counsel for the appellant-writ petitioner, to request the learned Single Judge to take up I.A. No.1 of 2018 any day after three weeks.

The Writ Appeal stands disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

12th March, 2018

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Date:12.3.2018

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