

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.29255 of 2017
and
WMP.No.31523 of 2017

Reliance Jio Infocomm Limited
rep. by Legal Head,
State of Tamil Nadu
Mr.D.Kalaimani,
No.89-91, Dr.Radha Krishnan Salai,
Mylapore, Chennai-600 004. ... Petitioner

-vs-

- 1.Tamil Nadu Generation & Distribution Corporation Limited rep. by its Chairman & Managing Director, No.800, Anna Salai, Chennai-600 002.
- 2.The Assistant Engineer, O&M/M.R.Nagar Section, TANGEDCO, M.R.Nagar, Chennai-600 018.
- 3.The Assistant Divisional Engineer, TANGEDCO, M.R.Nagar Section, Chennai-600 118.
- 4.C.G.Palani ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the 2nd respondent to assign a separate service connection to the petitioner for commencement of operation of mobile towers in the premises on the roof top space admeasuring about 500 sq.ft. on the terrace and 100 sq.ft. of open space in the ground floor situate at Door No.9/79, West Portion, Kodungaiyur Village, comprised in Survey No.151/1B within Chennai Corporation Limits after duly complying with the statutory requirements under law.

For Petitioner : Mr.R.Abdul Mubeen
For Respondents : Mr.P.R.Dhilipkumar,
Standing Counsel for R1 to 3

ORDER

This Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the 2nd respondent to assign a separate

service connection to the petitioner for commencement of operation of mobile towers in the premises on the roof top space admeasuring about 500 sq.ft. on the terrace and 100 sq.ft. of open space in the ground floor situate at Door No.9/79, West Portion, Kodungaiyur Village, comprised in Survey No.151/1B within Chennai Corporation Limits after duly complying with the statutory requirements under law.

2. Learned Counsel appearing for the petitioner submitted that petitioner company is a reputed mobile service provider. Therefore, to ensure uninterrupted services signal network, it is erecting mobile towers in the vantage points in and around the city of Chennai. While so, they have also entered into a Lease Agreement with one Mr.C.G.Palani, the 4th respondent herein dated 30.11.2016 to instal and operate a mobile tower in the premises on the roof top space admeasuring 500 sq.ft. on the terrace and 100 sq.ft. of open space in the ground floor at Door No.9/79, West Portion, Kodungaiyur Village, comprised in Survey No.151/1B within Chennai Corporation Limits. Thereafter, the petitioner applied for separate service connection in respect of the petition mentioned premises and the second respondent has also issued a Demand Note requiring the petitioner to pay a sum of Rs.22,450/-. When the petitioner was ready and willing to pay the amount, the second respondent failed to receive the said sum on the ground that there has been an objection raised by a third party Mr.Maruthupandiyan to instal a mobile tower in the vicinity in which he has been residing as the radiation emanates from the waves could cause health hazards. Citing a reason that an objection was made from the neighbours for erecting mobile tower as it has been emanating radiation, the respondent cannot without any scientific reason or basis refuse to assign the electricity connection to the mobile towers installed in the petitioner premises, it is pleaded.

3. The learned Counsel for the petitioner further submitted that it is an admitted case that emission of radiation from mobile towers is not of high intensity. Moreover, it has to be seen that uninterrupted service connection is also mandatory and usage of mobile phones is required in every aspect of human life. Ignoring this aspect, merely on the ground that one third party has given the objection that radiation emanates from the waves would cause health hazards, the 2nd respondent who is an authority under law cannot unreasonably refuse the request of the petitioner for providing electricity service connection to the mobile tower.

4. In support of his contention, the learned Counsel for the petitioner relied on a decision of a Division Bench of this Court in K.R.Ramaswamy V. Government of India reported in 2015 SCC OnLine Mad 5858, in which it has been held that the Court would not venture into uncharted territory of technical expertise to determine the area where it should be installed.

This Court, at best can place this matter before the appropriate Committee to look into this matter which the Kerala High Court already did so as to have the benefit of the conclusion arrived at in those proceedings. Therefore, merely, on a complaint given by some third party, the request of the petitioner cannot be refused since the petitioner investing huge cost has already completed the installation work of the mobile tower, a direction be given to the 2nd respondent to give electricity service connection to the mobile tower installed on the premises of the petitioner.

5.A detailed counter affidavit has been filed by the 2nd respondent.

6.Learned Standing Counsel appearing for the respondents 1 to 3 submitted that as far as these respondents are concerned, they have no objection to provide electricity service connection to the petitioner premises. Since one Mr.Maruthupandiayan has given a complaint stating that he is also residing in the same locality where the mobile tower has been erected and that if electricity service connection is given, the radiation will be more that may affect the people living in and around that area, the 2nd respondent has not come forward to provide the electricity service connection.

7.But this Court finds it difficult to agree with the objections raised and the delay caused by the 2nd respondent. When this Court had an occasion to consider a similar issue in 2015 SCC OnLine Mad 5858 as pointed out by the learned Counsel for the petitioner, it has been held as follows:

''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. This 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.'

Therefore, in this case, when there is no any specific material showing that erection of mobile tower would be causing any radiation effect, neither the respondents, nor the Court would venture into uncharted territory of technical expertise to determine where it should be installed. Hence, this Court, following the order passed by this Court cited supra, hereby directs the 2nd respondent to provide electricity service connection to the petitioner mobile tower-in-question, within a period of four weeks from the date of receipt of a copy of this Order.

8. With the above observation and direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (JJ ACT)

//True Copy//

Sub Assistant Registrar

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To

1. Chairman & Managing Director,
Tamil Nadu Generation & Distribution
Corporation Limited, No.800, Anna Salai,
Chennai-600 002.

2. The Assistant Engineer, O&M/M.R.Nagar
Section, TANGEDCO, M.R.Nagar,
Chennai-600 018.

3. The Assistant Divisional Engineer,
TANGEDCO, M.R.Nagar Section,
Chennai-600 118.

+1cc to Mr.P.R.Dhilip Kumar, Advocate, S.R.No. 100266
+1cc to Mr.R.Abdul Mubeen, Advocate, S.R.No. 99841

W.P. No.29255 of 2017

SPD(CO)
GN(12/02/2020)