

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17035 of 2016

1. Chennai Network Infrastructure Limited, a company incorporated under the Companies Act, 1956, having its Registered Office at Door no.34/1 DL, New No.403/L, Samsom Tower, 7th Floor, Pantheon Road, PO & PS Egmore, Chennai, PIN-600008, Tamilnadu, and its Circle Office at Markandey Complex, 3rd Floor, Gayatri Mandir Road, PO-Lohia Nagar, PS-Kankarbagh, Kankarbagh, Patna, PIN-800020, Bihar, represented through the authorized representative Mr.Gaurav Kishore, S/O Sri Kaushal Kishore, Address- Markandey Complex, 3rd Floor, Gayatri Mandir Road, PO- Lohia Nagar, PS- Kankarbagh, Kankarbagh, Patna, PIN- 800020, Bihar.
2. GLT Infrastructure Limited, a company incorporated under the Companies Act, 1956, having its Registered Office at 3rd Floor, Global Vision, Electronic Sadan No II, MIDC TTC Industrial Area, PO & PS Mahape, Navi Mumbai, PIN-400710, Maharashtra, and its Circle Office at 3rd Floor, Markandey Complex, Gayatri Mandir Road, PO-Lohia Nagar, PS-Kankarbagh, Kankarbagh, Patna, PIN-800020, Bihar, represented through the authorized representative Mr.Gaurav Kishore, S/O Sri Kaushal Kishore, Address- Markandey Complex, 3rd Floor, Gayatri Mandir Road, PO- Lohia Nagar, PS- Kankarbagh, Kankarbagh, Patna, PIN- 800020, Bihar, working for gain at GTL Infrastructure Limited as Assistant Manager- Legal, Bihar Circle.

... .. Petitioner/s

Versus

1. The State Of Bihar through its Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Urban Development and Housing Department, Government of Bihar
3. Union of India, through the Secretary, Department of Telecommunications, Ministry of Communications and Information Technology, Department of Telecommunications, 1300-A, Sanchar Bhawan, PO & PS New Delhi, dist-New Delhi-110001,
4. Municipal Corporation, Muzaffarpur, through its Town Commissioner, District Muzaffarpur, Bihar.
5. The Town Commissioner, Municipal Corporation, Muzaffarpur.
6. Municipal Corporation Patna through its Town Commissioner, Patna.
7. The Town Commissioner, Patna Municipal Corporation, Patna.
8. Nagar Parishad, Mokama, Mokama, Through its Executive Officer, Mokama.
9. The Executive Officer, Mokama Nagar Parishad, Mokama.
10. Nagar Panchayat Lalgunj, Lalgunj, through its Executive Officer, Lalgunj Vaishali.
11. The Executive Officer, Lalganj Nagar Panchayat, Lalgunj Vaishali.
12. Nagar Panchayat, Bikram, Through its Executive Officer, Bikram Nagar, Panchayat, Bikram.



13. The Executive Officer, Bikram Nagar Panchayat, Bikram, Patna.
14. Nagar Parishad, Arwal Through its Executive Officer, Arwal.
15. The Executive Officer, Arwal Nagar Parishad, Arwal.
16. Nagar Panchayat Barahiya, Through its Executive Officer, Barahiya.
17. The Executive Officer, Barahiya Nagar Panchayat, Barahiya.
18. Nagar Parishad Shekhpura, through its Executive Officer, Shekhpura Nagar Parishad, Shekhpura.
19. The Executive Officer, Shekhpura Nagar Parishad, Shekhpura.
20. Nagar Panchayat Islampur, through its Executive Officer, Islampur, Bihar.
21. The Executive Officer, Islampur Nagar Panchayat, Islampur, Bihar.
22. Nagar Parishad Chapra, through its Executive Officer, Nagar Parishad, Chapra. null null
23. The Executive Officer, Chapra Nagar Parishad, Chapra.
25. The Executive Officer, Nawada Nagar Parishad, Nawada. null null
26. Municipal Corporation Katihar, through it's Town Commissioner, Katihar.
27. The Town Commissioner, Katihar Municipal Corporation, Katihar.
28. Nagar Panchayat Mirgunj, through its Executive Officer, Mirgunj.
29. The Executive Officer, Mirgunj Nagar Panchayat, Mirgunj.
30. Municipal Corporation Gaya, through its Town Commissioner, Gaya.
31. The Town Commissioner, Gaya Municipal Corporation, Gaya.
32. Municipal Corporation Darbhanga, through its Town Commissioner, Darbhanga.
33. The Town Commissioner, Darbhanga Municipal Corporation, Darbhanga.
34. Nagar Panchayat, Rafigunj, through its Executive Officer, Rafigunj.
35. The Executive Officer, Rafigunj Nagar Panchayat, Rafigunj.
36. Nagar Panchayat, Areraj through its Executive Officer Areraj, East Champaran.
37. The Executive Officer, Areraj Nagar Panchayat, Areraj.
38. Nagar Panchayat Bakhtiyarpur, through its Executive Officer, Bakhtiyarpur.
39. The Executive Officer, Nagar Panchayat Bakhtiyarpur, Bakhtiyarpur.
40. Nagar Parishad Betah, through its Executive Officer Betiah.
41. The Executive Officer, Betaih Nagar Parishad, Betiah.
42. Nagar Parishad, Jehanabad, through its Executive Officer, Jehanabad.
43. The Executive Officer, Jehanabad Nagar Parishad, Jehanabad.
44. Nagar Panchayat Simri Bakhtiyarpur, through its Executive Officer Simri Bakhtiyarpur.
45. The Executive Officer, Simri Bakhtiyarpur Nagar Panchayat, Simri Bakhtiyarpur.
46. Nagar Panchayat Koilwar, through its Executive Officer, Koilwar.



47. The Executive Officer, Koilwar Nagar Panchayat, Koilwar.
48. Nagar Panchayat Dumra Through its Executive Officer Dumra.
49. The Executive Officer, Dumra Nagar Panchayat, Dumra.
50. Nagar Parishad Rakshaul, through its Executive Officer Raksaul.
51. The Executive Officer, Nagar Parishad, Raksaul.
52. Nagar Panchayat Maheshi East Champaran, through its Executive Officer, Maheshi East Champaran.
53. The Executive Officer, Maheshi Nagar Panchayat, Maheshi East Champaran.
54. Nagar Parishad, Jamui, through its Executive Officer, Jamui.
55. The Executive Officer, Nagar Parishad Jamui, Jamui.
56. Nagar Parishad Khagariya, through its Executive Officer, Khagariya.
57. The Executive Officer, Nagar Parishad Khagariya, Khagariya.
58. Nagar Panchayat Koaath Rohtas, through its Executive Officer Koaath Rohtas.
59. The Executive Officer, Nagar Panchayat Koaath, Rohtas.
60. Nagar Panchayat, Sonpur Saran, through its Executive Officer Nagar Sonpur Saran.
61. The Executive Officer, Nagar Panchayat, Sonpur Saran.
62. Nagar Panchayat Gogri Jamalpur, through its Executive Officer Gogri Jamalpur.
63. The Executive Officer, Nagar Panchayat Gogri Jamalpur.
64. Municipal Corporation Bhagalpur, Town Commissioner, Bhagalpur.
65. The Town Commissioner, Bhagalpur Municipal Corporation, Bhagalpur.
66. Nagar Panchayat Revilgunj, through its Executive Officer, Revilgunj.
67. The Executive Officer, Revilgunj Nagar Panchayat, Revilgunj Saran.
68. Nagar Panchayat Mahua, through its Executive Officer, Mahua Vaishali.
69. The Executive Officer, Mahua Nagar Panchayat, Mahua Vaishali.
70. Municipal Corporation Bihar Sharif through its Town Commissioner, Bihar Sharif.
71. The Town Commissioner, Bihar Sharif Municipal Corporation, Bihar Sharif.
72. Municipal Corporation Purnia, through its Town Commissioner, Purnia.
73. The Town Commissioner Purnia Municipal Corporation, Purnia.
74. Nagar Panchayat Maner through its Executive Officer, Maner.
75. The Executive Officer, Maner Nagar Parishad, Maner.
76. Nagar Parishad, Forbishgunj through its Executive Officer, Forbishgunj.
77. The Executive Officer, Nagar Parishad Forbishgunj, Forbishgunj.
78. Nagar Parishad, Gopalganj, through its Executive Officer, Gopalganj.
79. The Executive Officer, Gopalganj Nagar Parishad, Gopalganj.



80. Nagar Panchayat Sahpur, through its Executive Officer, Sahpur.
81. The Executive Officer, Nagar Panchayat Sahpur, Sahpur.
82. Nagar Parishad Masaurhi, through its Executive Officer, Mashuri.
83. The Executive Officer, Masaurhi Nagar Parisad, Mashuri.
84. Municipal Corporation Arra, through its Town Commissioner, Arra.
85. The Town Commissioner, Municipal Corporation Arra, Arra.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Saket Tiwary, Advocate Mr.Sanjeev Kumar Dubey, Advocate
For the Respondent/s	:	Mr.Lalit Kishore- AG Mr.Pawan Kumar, AC to AG Mr.Satya Prakash Tripathy, Advocate Mr.Satya Vrat, Advocate Mr.Anshuman Singh, CGC Mr.Prakash Verma, Advocate Mr.S.D.Sanjay, Sr.Advocate Mr.Prasoon Sinha, Advocate Mr.Awadhesh Kumar, Advocate Mr.Rajeev Ranjan No.II Mr.R.K. Singh Mr.Arabind Nath Pandey Mr.Raghwand , Advocates

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-09-2020

Petitioner who is engaged in the business of telecommunications has established passive infrastructure, over private properties, at different places within the State of Bihar.

Concerning that, Respondent nos.4 to 85 have issued notice(s) to the petitioner (Annexure-4 series) asking it to pay fee/charges in terms of and under the provisions of the Bihar



Communication Towers and Related Structures Rules, 2012.

(Referred to as the 2012 Rules).

Challenging these Rules as also the notice(s), Annexure-4 series, on 05/10/2016 petitioner filed the instant Petition praying for the following reliefs:

“ For issue of a writ, direction or order, declaring that Clause I of Sub Section 1 of Section 127 of the Bihar Municipal Act, 2007 as substituted by Act 7 of 2011 as invalid and the resultant Bihar Communication Towers and Related Structures Rules, 2012 (hereinafter called the ‘Rules’), purporting levy of Fees and Annual Renewal Fees based on the number of completed years of the Tower having been installed, with retrospective effect, is unconstitutional and ultra vires Articles 14, 19(1)(g), and 265 of the Constitution of India, is beyond the legislative competence of the Respondent No.1 and 2 and is patently illegal and arbitrary. As stated in detail hereinafter the impugned levy & recovery is ex facie beyond the legislative competence/jurisdiction of the Respondent No.1.”

On 26.10.2016 this Court passed interim order to the following effect:-

“The present writ application has been preferred to challenge the constitutional validity of Clause (1) of Section 127 of the Bihar Municipal Act, 2007 on the ground of legislative incompetence of the State legislature.

Learned counsel for the petitioners states that the similar question is pending before the Hon’ble Supreme Court in the case of Ahmedabad



Municipal Corporation Vs. GTL Infra. Ltd. & Ors. (Civil Appeal No. 5360-5363 of 2013). The Hon'ble Supreme Court in the said appeal has permitted the local bodies on 9.7.2013 that it may determine the tax on mobile towers and raise demand on the respondents. However, such demand shall not be enforced against the respondents until disposal of the Appeals. Moreover, determination of such tax shall be subject to the final decision in the Appeals.

In view of the interim order dated 27.08.2012 passed in CWJC No. 15373 of 2012 (Reliance Communications Ltd. Vs. The State of Bihar & Ors.) and that of Supreme Court, we order that the local bodies may determine the tax on mobile towers and raise demand on the respondents but such demand shall not be enforced against the respondents. In the meantime, the petitioners shall pay the registration fee of Rs. 40,000/-for the area of each Municipal Council and Rs. 50,000/-in respect of area of Municipal Corporation and the renewal fee of Rs. 10,000/-for the each year for each tower within the limits of the respective Municipal Councils.

List this case along with C.W.J.C. No. 15373 of 2012 and to be posted after the decision of the Supreme Court in the case of **Ahmedabad Municipal Corporation Vs. GTL Infra. Ltd. & Ors.**

On deposit of the necessary charges in the light of the order passed, the sealed tower, if any, shall be unsealed.”



Learned counsel for the parties submit that the present petition be disposed of in view of the contentions recorded; observations made; and directions issued on 29.09.2020 in **CWJC No.3300 of 2013** titled as **ATC Telecom Infrastructure Pvt. Ltd. & Anr. Vs. The State of Bihar & Ors.**, making the same applicable, *mutatis mutandi*, also in the instant case.

However, learned counsel for the petitioner clarifies that the case of the petitioner is not covered to the extent of issuance of Bank Guarantee, for the amount stands deposited in terms of the interim order dated 26.10.2016, reproduced supra.

This Court on **29.09.2020** in **CWJC No.3300 of 2013** titled as **ATC Telecom Infrastructure Pvt. Ltd. & Anr. Vs. The State of Bihar & Ors.**, being the lead case had passed the following order:-

“4. On 18.04.2013, this Court rejected petitioners’ prayer seeking modification of interim relief in the following terms:-

“This application is made by the writ petitioners for modification of the interim relief so that the writ petitioners may give bank guarantee in lieu of the registration fee and the renewal fee.

Application is rejected.”

5. The matter was taken up to Hon’ble the Apex Court, wherein the parties to the instant *lis* were also parties and vide order dated 9th December, 2013 in **Civil**



Appeal Nos.11001-02 of 2013, titled as ATC India Tower Corp. Pvt. Ltd. & Anr. Versus State of Bihar & Ors., the Court passed the following order:-

“Leave granted.

Heard Mr. Harish N. Salve, learned senior counsel appearing for the appellants and Mr. Ranjit Kumar, learned senior counsel appearing for the respondents at some length.

Looking at the facts of the case, we request the High Court to dispose of the batch of Writ Petitions pending before it expeditiously, preferably within six months from the date of communication of this order to it.

In the meantime, the appellants shall give before the High Court a Bank Guarantee in respect of the amount which has been demanded so far and for the amount which they might have to pay by way of the demand, if raised in future.

It is made clear that there shall not be any interim refund in the meantime.

With the above observations and directions, the Civil Appeals are disposed of as allowed with no order as to costs.”

(Emphasis supplied)

6. However, subsequently, Hon’ble the Apex Court passed an order dated 04.11.2019 in **Petition (s) for Special Leave to Appeal (C) No(s).25447/2019, titled as Bharti Infratel Ltd. Versus The State of Bihar & Ors.** which reads as under:-

“Application for exemption from filing official translation is allowed.

Application for permission to file additional documents/facts/annexures is allowed.

Issue notice.

There shall be no recovery under the new demands till the next date.

The towers sealed, in the meantime, be de-sealed.”

(Emphasis supplied)



7. It is not in dispute that this order continues to be in operation.

8. In the month of June 2020, all old matters of different categories (challenging the Constitutional Validity of Acts/ Income Tax/Sales Tax/ and other fiscal statutes) were listed for hearing.

9. On its turn, a bunch consisting of the present matter, being the lead case, was taken up and on 18th August, 2020, we had passed the following order:-

“Having heard learned counsel for the parties, Substitution Application is allowed.

Registry to make necessary correction in the memo of parties.

Re: CWJC No.3300 of 2013

As prayed for, list on 7th September, 2020.

Learned counsel for the State states that the pleadings of the case shall be transmitted through an electronic mode both to the learned counsel for the petitioner as also to the Court Master.

Wherever the Bank Guarantee furnished by the petitioner has expired or is likely to expire in the near future, the same shall be got renewed immediately/ or within time, as the case may be. On receipt of fresh Bank Guarantee wherever otherwise required, the Registry shall take up steps for returning the documents of renewable/expired Bank Guarantee.”

10. It is not in dispute that in terms of the orders reproduced supra, petitioners have furnished the bank guarantees in favour of the Registrar General of this Court, which are still alive.

11. Petitioners herein claimed to be governed only under the Indian Telegraph Right of Way Rules, 2016 (Referred to as the 2016 Rules) as extended in the year 2018 to the petitioners who fall under category I.P.-I,



whereas the State's action is based on the applicability of 2012 Rules.

12. Significantly, during the pendency of the present Petition, the State Government has now issued a Notification dated 19th August, 2020, notifying the Bihar Mobile Towers, Optical Fibers Cables (OFC) and Related Telecom Infrastructures Rule, 2020 (Referred to as the 2020 Rules) thereby also repealing the 2012 Rules.

13. In this view of the matter, learned counsel for the petitioners, while maintaining its stands, submits that if only the petitioners' interest stands protected to the extent of interim orders passed by the Hon'ble Apex Court/this Court, petitioners will take recourse to the mechanism provided under the 2020 Rules or as per law. However, this would be without prejudice to the petitioners' right of agitating all issues before the authority established under the 2020 Rules or as per law. Also, petitioners would keep the bank guarantee alive till such time a proper decision stands taken, per law, by the authority on all the issues, be it regularization of the petitioners' actions; payments/dues under all or any one of the Rules referred to supra.

14. Sri Gopal Jain, learned counsel for the petitioners further submits that petitioners' cases are not governed under the 2012 Rules. In fact, they are governed under the 2016 Rules as extended to the petitioners in the year 2018. Hence, the question of payment of any fee under the 2012 Rules does not arise. Also, under the 2020 Rules, there is no dispute resolution mechanism for payment of fee/ charges.



15. Also, at this point, petitioners would not press the relief (a), reserving liberty to agitate the same, if the need so arises subsequently on the very exact cause of action. Further, there is no predicament or bar of this Court in disposing of this Petition, even though the matter on the larger issue is pending before Hon'ble the Apex Court.

16. Sri P.N. Shahi, learned AAG-VI, has no objection to the same, save and except that under all circumstances, the interest of the Revenue is protected, be it by way of keeping the bank guarantees alive or depositing the amount and the issue to be adjudicated by the authority constituted under the 2020 Rules. Also liberty be given to all, for raising all pleas, available to them as per law.

17. Mr. P. N. Shahi, learned AAG-VI, further clarifies that the issue is no longer *res integra* and stands settled by the Hon'ble Apex Court in **Ahmedabad Municipal Corporation Versus GTL Infrastructure Limited and others, (2017) 3 SCC 545**.

18. We are inclined to accept the petitioners' prayer and as such dispose of the present Petition on the following terms:-

- (a) Liberty, as prayed for, is granted.
- (b) Petitioners are allowed to take recourse to such measures as are provided under the 2020 Rules.
- (c) This, they must positively do so within the time frame prescribed thereunder or within four weeks from today, whichever is later.
- (d) With the receipt of the application, the authority constituted under the 2020 Rules shall positively decide all issues within a period of three months.



- (e) Bank guarantees shall be kept alive till such time, the petitioners' application stands finalized.
 - (f) Prayer (a) reproduced supra stands left open to be agitated subsequently, on the same cause of action, if so required and desired.
 - (g) Equally, all issues on merits are left open to be agitated under and in terms of 2020 Rules or other remedies available in law.
 - (h) Demand, if at all, to make payment under the 2012 Rules is left open to be considered and adjudicated as per law. However, no demand in terms of notices, Annexure-4 series, shall be enforced until the process under 2020 Rules stands finalized.
 - (i) If the petitioners fail to take action within the stipulated time, respondents can encash the bank guarantees without any further reference to this Court.
 - (j) Petitioners' motion shall be without prejudice to their right to challenge the validity of 2020 Rules.
 - (k) Liberty is reserved to the petitioners to approach this Court on the same and subsequent cause of action.
19. The Petition stands disposed of in the above terms."



As prayed for, petition stands disposed of in terms of the judgment dated **29.09.2020** passed in **C.W.J.C. No. 3300 of 2013**, titled as **ATC Telecom Infrastructure Pvt. Ltd. & Anr. Vs. The State of Bihar & Ors.**, reproduced supra. The directions issued shall be applicable to the extent possible also to the facts of the instant case.

All applications and petitions stand disposed of in the aforesaid terms.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.10.2020
Transmission Date	

