IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4086 of 2014

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Vodafone Mobile Services Ltd. a Public limited company incorporated under the provisions of the Companies Act, 1956 having its registered office at C-48, Okhla Industrial Area, Phase- II, New Delhi - 110020, through Sri Manoj Ranjan Satpathy, constituted attorney, presently working as Manager (Legal), Circle Office, situated at 'Mayfair Court', Near Hinoo Bridge, Ranchi.

... ... Petitioner/s

Versus

1. Union of India, Department of Telecommunications, Ministry of Communications & IT, Government of India, Sanchar Bhawan, 20 Ashoka Road, New Delhi - 110 001, through its Secretary.
2. State of Bihar, through its Chief Secretary, New Secretariat, Off: Bailey Road, Patna.
3. Urban Development and Housing Department, Government of Bihar, through its Principal Secretary, New Secretariat, Off: Bailey Road, Patna.
4. Nagar Panchayat, Kahalgaon, through its Executive Officer.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jayanta Ray Chaudhury, Advocate
Mr. Rajendra Kumar

For the Respondent/s : Mr.Lalit Lishore, AG.
Mr. Dr. K.N.Singh, ASG
Mr. Manish Kumar, Advocate
Mr. Marunth Nath Roy, Advocate

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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 No. 4 has issued notice(s) to the petitioner (Annexure- 3 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- 3 series, on 20.02.2014 petitioner filed the instant Petition praying for the following reliefs:

> "(i) To declare that the Bihar Act No. 7 of 2011 namely Bihar Municipal (Amendment) Act, 2011 in so far as it relates to Amendment of Section 127 of the Bihar Municipal Act, 2007 in sub-section (1) clause (I) whereby and whereunder clause (I) has been substituted as follows, namely "(i) communication towers and related structures/ Disc antennas" is ultra-virus to Article 14, 19(1)(g) read with Article 251 and 254 of the Constitution of India:
>
> (ii) To declare that the Bihar Communication Towers and Related Structure Rules, 2012 (hereinafter referred to as the "Rules") framed by the State of Bihar in exercise of powers vested under section 127(1)(I) and section 419 of the Act of 2007 is ultra-virus to Article 14, 19(1)(g) read with Article 246 and 252 of the Constitution of India;
>
> (iii) To quash and cancel the order, as contained in Memo No. 3607/U.D&H.D/ Patna dated 4.10.2012, issued under signature of Arvind Kumar Singh, Joint Secretary,

whereby and whereunder the order passed by the Secretary, Urban Development and Housing Development, Bihar on 3rd October, 2012, rejecting the objections raised by the Telecom Infrastructure Companies, has been circulated to the petitioner;

(iv) Any other relief / reliefs (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;"

On 21.02.2014, this Court passed interim order to the following effect:-

"Admit.

To be heard with CWJC No. 15373 of 2012.

The petitioner seeks to challenge the constitutional validity of Clause (i) inserted in Sub-section (1) of Section 127 of the Bihar Municipal Act, 2007 on the ground of legislative incompetence.

Notice be issued to the learned Advocate General.

Notice for hearing and final disposal of the writ petition be issued to the respondent no.4 to be made returnable on 7th April 2014. Notice will be served through the Court process.

Requisites will be filed within one week from today.

Pending the writ petition, there shall not be coercive recovery from the writ petitioner pursuant to the demand dated 22nd May 2013 on condition that the petitioner will, within two weeks from today, pay the registration fee of Rs. 30,000/- and the renewal fee of Rs. 8,000/- for the current year for each tower constructed or installed by the petitioner within the limits of the respondent- Nagar Panchayat, Kahalgaon.

This order is made without prejudice to the rights and contentions raised in the writ petition and shall be subject to the final result of the writ petition."

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 21.02.2014 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.

(j) 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)

B.Kr./-

AFR/NAFR	
CAV DATE	
Uploading Date	06.10.2020.
Transmission Date	