AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 02.12.2019

Judgment Delivered on : 10.02.2020

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 6324 of 2011

1. Reliance Infratel Limited, (A subsidiary of Reliance Communications Ltd.), a Company incorporated and registered under Indian Companies Act, 1956 having its registered office at Block-H, Dhirubhai Ambani Knowledge City, Kopar Khairane, Navi Bombay inter alia circle office at Poojari Complex, Pachpedi Naka, Raipur (C.G.)
2. Reliance Communications Ltd., a Company incorporated and registered under Indian Companies Act, 1956 having its registered office at Block-H, Dhirubhai Ambani Knowledge City, Kopar Khairane, Navi Bombay inter alia circle office at Poojari Complex, Pachpedi Naka, Raipur (C.G.)
3. Reliance Telecom Ltd, (A subsidiary of Reliance Communications Ltd.), a Company incorporated and registered under Indian Companies Act, 1956 having its registered office at Block-H, Dhirubhai Ambani Knowledge City, Kopar Khairane, Navi Bombay inter alia circle office at Poojari Complex, Pachpedi Naka, Raipur (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, Through its Secretary, Department of Urban Administration & Development, Mantralaya, D.K.S. Bhavan, Raipur (C.G.)
2. Director, Directorate of Urban Administration & Development, Department of Urban Administration & Development, Mantralaya, D.K.S. Bhavan, Raipur (C.G.)
3. Union of India, Through its : Secretary, Department of Telecommunication, New Delhi (India)

---- Respondents

WPC No. 129 of 2017

- M/s Ascend Telecom Infrastructure Private Ltd., Formerly Known As M/s Aster Infrastructure Pvt. Ltd. Having Registered Office At A 25 And 26, 2nd Crescent Road, Sainikpuri, Secunderabad- 500094 And Having Madhya Pradesh And Chhattisgarh Circle Office At 283 C H, Scheme No. 74 C, Vijay Nagar, Indore Madhya Pradesh 452010, Through Power Of Attorney Holder Mr. Ravindra Upadhyay, S/o Late Shri R. S. Upadhyay, Aged About 47 Years, Working As Circle Head In The Petitioner Company, Having Office At 283 Ch, Scheme No. 74 C, Vijay Nagar, Indore Madhya Pradesh.

---- Petitioner

Versus

1. State of Chhattisgarh Through Its Principal Secretary, Department Of Urban Administration And Development, Indravati Bhawan, Naya Raipur, Chhattisgarh
2. Director, Urban Administration And Development Department, Indravati Bhawan, Naya Raipur, Chhattisgarh

3. Union of India, Through Secretary, Department of Telecommunication, New Delhi
4. Municipal Corporation, Raipur, Through Its Commissioner, Raipur, Chhattisgarh

---- Respondents

WPC No. 154 of 2019

1. Bharat Sanchar Nigam Limited, Through Chief General Manager, Office of Circle Chief General Manager, Bharat Sanchar Nigam Limited, Administrative Building (Vidhansabha- Road) Khamardih Raipur, District Raipur, Chhattisgarh
2. The General Manager, Bharat Sanchar Nigam Limited, O/o Gmtd, Durg, District Durg, Chhattisgarh

---- Petitioners

Versus

1. The State Of Chhattisgarh Through Secretary, Department Of Urban And Urban Administration And Development Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh
2. Director, Panchayat And Rural Development Department Raipur, District Raipur, Chhattisgarh **---- Respondents**

WPC No. 192 of 2013

1. Tower Vision India Private Limited A Company Registered Under The Companies Act, 1956, Regd Office: L-2A, Hauz Khas Enclave, New Delhi, Branch Office At A-201, 2nd Floor, Muskan Residency, Opposite-Colors Mall, Pachpedi Naka, Raipur CG Through Its Power Of Attorney Holder Shri Shailendra Shinde, Aged About 32 Years, S/o Shri D. S. Shinde Working As Executive Legal Raipur, CG. Tower Vision India Private Limited, Office At A-201, 2nd Floor, Muskan Residency, Opposite Colors Mall, Pachpedi Naka, Raipur, Chhattisgarh, P.S. Pachpedi Naka, P.O. Pachpedi Naka Raipur CG, Pin 495006

---- Petitioner

Versus

1. State of Chhattisgarh Through Its Principal Secretary Department Of Urban Administration And Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
2. The Director Urban Administration And Development Department, R D A Building, G E Road, Near Shastri Chowk, Raipur, Chhattisgarh
3. Municipal Corporation, Raipur, Through Its Commissioner, Raipur
4. Municipal Corporation, Bilaspur, Through Its Commissioner, Bilaspur
5. Municipal Corporation, Durg, Through Its Commissioner, Durg
6. Municipal Corporation, Chirmiri, Through Its Commissioner, Chirmiri
7. Municipal Corporation, Korba, Through Its Commissioner, Korba
8. Executive Engineer Municipal Corporation, Korba
9. Union Of India Through Its Secretary, Department Of Telecommunication, Shastri Bhawan, New Delhi

---- Respondents

WPC No. 207 of 2012

1. Idea Cellular Ltd. A Company Incorporated Under The Companies Act 1956 Having Its Registered Office At Suman Tower, Plot No. 18, Sector-11, Gandhi Nagar 382011 Gujrat, Having Its Circle Office At 139-140, Electronic Complex, Pardeshipura Indore M.P., Through- Its D.G.M.-Legal And Regulatory Shri Bhargov Sarma Having Zonal Office At Ashoka Millennium Complex 3rd Floor Ring Road No.2, New Rajendra Nagar, Raipur 492601.

---- Petitioner

Versus

1. State of Chhattisgarh, Through – The Secretary, Development Urban Administration And Development, Mantralaya, Raipur, Distt. Raipur (C.G.)
2. Directorate of Urban Administration & Development, Through – Its Director, Raipur(C.G.)
3. Union Of India, Through – The Secretary, Department Of Telecommunication, New Delhi.
4. C.G. State Power Distribution Co. Ltd., Through – The Managing Director, Danganiya, Raipur-(C.G.)
5. Municipal Corporation, Rajnandgaon, Through- The Commissioner, Rajnandgaon-(C.G.)
6. Municipal Corporation, Bilaspur, Through- The Commissioner, Bilaspur-(C.G.)
7. Municipal Corporation, Chirimiri, Through – The Commissioner, Chirimiri, Distt: Korea-(C.G.)
8. Municipal Corporation, Korba, Through – The Commissioner, Korba, Distt: Korba-(C.G.)
9. Municipal Corporation, Durg, Through – The Commissioner, Durg, Distt: Durg-(C.G.)
10. Municipal Corporation, Ambikapur, Through – The Commissioner, Ambikapr, Distt: Surguja-(C.G.)
11. Municipal Corporation, Raipur, Through – The Commissioner, Raipur, Distt: Raipur-(C.G.)
12. Municipal Corporation, Bhilai, Through – The Commissioner, Bhilai, Distt: Durg-(C.G.)
13. Nagar Palika Parishad Baloda Bazar, Through – The Chief Municipal Officer, Distt : Raipur-(C.G.)
14. Nagar Palika Parishad Dhamtari, Through – The Chief Municipal Officer, Distt : Dhamtari-(C.G.)
15. Nagar Palika Parishad Champa, Through – The Chief Municipal Officer, Distt : Janjgir Champa-(C.G.)
16. Nagar Palika Parishad Birgaon, Through – The Chief Municipal Officer, Distt : Raipur-(C.G.)
17. Nagar Palika Parishad Bemetara, Through – The Chief Municipal Officer, Distt : Durg-(C.G.)

18. Nagar Palika Parishad Bade Bacheli, Through – The Chief Municipal Officer, Distt : South Bastar Dantewada-(C.G.)
19. Nagar Palika, Bhilai - Charoda, Through – The Chief Municipal Officer, Bhilai – Charoda, Distt : Durg-(C.G.)
20. Nagar Palika, Kharsia , Through – The Chief Municipal Officer, Distt : Raigarh-(C.G.)
21. Nagar Panchayat, Rajpur, Through – The Chief Municipal Officer, Rajpur, Distt : Balrampur-(C.G.)
22. Nagar Panchayat, Saja, Through – The Chief Municipal Officer, Distt : Durg-(C.G.)
23. Nagar Panchayat, Aarang, Through – The Chief Municipal Officer, Aarang, Distt : Raipur-(C.G.)
24. Nagar Panchayat, Dongargaon, Through – The Chief Municipal Officer, Dongargaon, Distt : Rajnandgaon-(C.G.)
25. Nagar Panchayat, Dharamjaigarh, Through – The Chief Municipal Officer, Dharamjaigarh, Distt : Raigarh-(C.G.)
26. Nagar Panchayat, Shivpur Churcha, Through – The Chief Municipal Officer, Shivpur Churcha, Distt : Korea-(C.G.)
27. Nagar Panchayat, Charama, Through – The Chief Municipal Officer, Chrama, Distt : North Bastar Kanker-(C.G.)
28. Nagar Panchayat, Bodri, Through – The Chief Municipal Officer, Bodri, Distt : Bilaspur-(C.G.)
29. Nagar Panchayat, Bodla, Through – The Chief Municipal Officer, Bodla, Distt : Kabirdham-(C.G.)
30. Nagar Panchayat, Bilha, Through – The Chief Municipal Officer, Bilha, Distt : Bilaspur-(C.G.)
31. Nagar Panchayat, Bilaigarh, Through – The Chief Municipal Officer, Bilaigarh, Distt : Raipur-(C.G.)
32. Nagar Panchayat, Bhanupratappur, Through – The Chief Municipal Officer, Bhanupratappur, Distt : North Bastar, Kanker-(C.G.)
33. Nagar Panchayat, Bhakhara, Through – The Chief Municipal Officer, Bhakhra, Distt : Dhamtari-(C.G.)
34. Nagar Panchayat, Basna, Through – The Chief Municipal Officer, Basna, Distt : Mahasamund-(C.G.)
35. Nagar Panchayat, Bagbahera, Through – The Chief Municipal Officer, Bagbahera, Distt : Mahasamund-(C.G.)
36. Nagar Panchayat, Abhanpur, Through – The Chief Municipal Officer, Abhanpur, Distt : Raipur-(C.G.)
37. Nagar Panchayat, Ahiwara, Through – The Chief Municipal Officer, Ahiwara, Distt : Durg-(C.G.)

---- Respondents

WPC No. 784 of 2014

1. Vodafone Spaceted Limited, A Company Incorporated Under The Company Act, 1956 Having Its Registered Office At C-48, Okhla Industrial Area, Phase-Ii, New Delhi-110020 And Having Its Circle Office At First Floor, Centre Point, New Market, Bhopal-462003, Through Its

Deputy General Manager, Shri Rabindra Purohit S/O Shri K.C.Purohit Age 38 Years, Having Zonal Office At : Pujari Complex, Pachpedi Naka, Raipur, C.G. Having Fax No.0755-4000400 And Email Id Rabindra.Purohit@Vodafone.Com

---- Petitioner

Versus

1. State Of Chhattisgarh, Through- The Secretary, Panchayat And Rural Development Department, Mantralaya, D.K.S. Bhawan, Raipur, Dist Raipur, Chhattisgarh
2. Director Panchayat And Rural Development Department, Raipur, Dist Raipur, Chhattisgarh
3. Union Of India, Through-The Secretary, Department Of Telecommunication, New Delhi

---- Respondents

<u>WPC No. 800 of 2010</u>

- Vodafone Essar Spacetel Ltd., Registered Office At C-48, Okhla Industrial Area, Phase-Ii, New Delhi-110 020: Circle Office At Centre Point, 2nd Floor, Tt Nagar, Bhopal And Zonal Office At Shop No. 1-8: Ashoka Millenium, Ring Road No. 1, New Rajendra Nagar, Raipur, C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Urban Administration & Development, Mantralaya, D.K.S. Bhawan, Raipur, C.G.
2. Municipal Corporation Of Raipur, Through : The Commissioner, Municipal Corporation Of Raipur, Raipur (C.G.)
3. Municipal Corporation Of Rajnandgaon, Through : The Commissioner, Municipal Corporation Of Rajnandgaon, Rajnandgaon (C.G.)
4. Municipal Corporation Of Durg, Through : The Commissioner, Municipal Corporation Of Durg, Durg (C.G.)
5. Municipal Corporation Of Bilaspur, Through : The Commissioner, Municipal Corporation Of Bilaspur, Bilaspur (C.G.)
6. Municipal Corporation Of Dhamtari, Through : The Commissioner, Municipal Corporation Of Dhamtari, Dhamtari (C.G.)
7. Union Of India Through Its Secretary Department Of Telecommunication New Delhi

---- Respondents

<u>WPC No. 859 of 2017</u>

1. Bharti Infratel Limited Through Its Authorised Signatory, H-3, 4th Floor, Metro Tower, Nr. Vijay Nagar Sqr., A. B. Road, Indore Madhya Pradesh Having Its Registered Office At Bharti Crescent, 1, Nelson Mandela Road Phase- II, Vasant Kunj, New Delhi 110070, Delhi

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mantralaya D.K.S. Bhawan, Raipur, Distt. Raipur Chhattisgarh

2. Director, Panchayat And Rural Development Department Raipur, District Raipur Chhattisgarh
3. Union of India, Through The Secretary, Department of Telecommunications, New Delhi

---- Respondents

WPC No. 1405 of 2010

1. Bharti Infratel Ltd, A Company Incorporated Under The Companies Act 1956 Having Its Registered Office At Aravali Crescent, 1, Nelson Mandela Road, Vasant Kunj, Phase-Ii, New Delhi-110070 And Its Circle Office At H-3, Ground Floor, Metro Tower, Near Vijay Nagar Sqr., Skim No.-54, A.B. Road, Indore (M.P.)

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Its Secretary, Department Of Urban Administration & Development, Mantralaya, D.K.S. Bhawan, Raipur (c.g.)
2. Commissioner, Directorate Of Urban Administration & Development, Department Of Urban Administration & Development, R.D.A. Building, G.E. Road, Near Shastri Chowk, Raipur (c.g.)
3. Municipal Corporation Of Raipur, Through: The Commissioner, Municipal Corporation Of Raipur, Raipur (c.g.)
4. Municipal Corporation Of Durg, Through: The Commissioner, Municipal Corporation Of Durg, Durg (c.g.)
5. Municipal Corporation Of Bilaspur, Through: The Commissioner, Municipal Corporation Of Bilaspur, Bilaspur (C.G.)
6. Municipal Corporation Of Rajnandgaon, Through: The Commissioner, Municipal Corporation Of Rajnandgaon, Rajnandgaon (C.G.)
7. Municipal Corporation Of Bhilai, Through: The Commissioner, Municipal Corporation Of Bhilai, Durg (C.G.)
8. Municipal Corporation Of Ambikapur, Through: The Commissioner, Municipal Corporation Of Ambikapur, Surguja (C.G.)
9. Municipal Corporation Of Raigarh, Through: The Commissioner, Municipal Corporation Of Raigarh, Raigarh (C.G.)
10. Municipal Corporation Of Jagdalpur, Through: The Commissioner, Municipal Corporation Of Jagdalpur, Bastar (C.G.)
11. Municipal Corporation Of Korba, Through: The Commissioner, Municipal Corporation Of Korba, Korba (C.G.)
12. Municipal Council Of Champa, Through: Chief Municipal Officer, Distt. Janjgir-Champa (C.G.)
13. Municipal Council Of Janjgir-Naila, Through: Chief Municipal Officer, Distt. Janjgir-Champa (C.G.)
14. Union Of India Through Its Secretary Department Of Telecommunication, Sanchar Bhawan, 20 Ashoka Road, New Delhi-110001

---- Respondents

<u>WPC No. 1485 of 2010</u>

1. Reliance Infratel Ltd. A Subsidiary Of Reliance Communications Ltd., A Company Incorporated And Registered Under Indian Companies Act, 1956 Having Its Registered Office At Block-H, Dhirubhai Ambani Knowledge City, Koper, Khairane, Navi Bombay Inter Alia Circle Office At Ashoka Millennium, Ring Road No.-1, Raipur (C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Urban Administration And Development, Mantralaya, D.K.S. Bhawan, Raipur, (C.G.)
2. Director, Directorate Urban Administration And Development, Department Of Urban Administration And Development, R.D.A. Building, G.E. Road, Near Shastri Chowk, Raipur (C.G.)
3. Municipal Corporation Of Raipur, Through : The Commissioner, Municipal Corporation Of Raipur, Raipur (C.G.)
4. Municipal Corporation Of bilaspur, Through : The Commissioner, Municipal Corporation Of bilaspur, bilaspur (C.G.)
5. Municipal Corporation Of Korba, Through : The Commissioner, Municipal Corporation Of Korba, Korba (C.G.)
6. Municipal Corporation Of Ambikapur, Through : The Commissioner, Municipal Corporation Of Ambikapur, Distt. Surguja (C.G.)
7. Chhattisgarh State Power Distribution Company Ltd., Through The Chairman / Principal Officer, Cspdcl, Dangania, Raipur (C.G.)
8. Union of India Through Its Secretary Department Of Telecommunication, New Delhi

---- Respondents

<u>WPC No. 1743 of 2013</u>

- Tower Vision India Private Ltd. A company registered under indian companies act, 1956 Having Its Registered Office At L-2a, Hauz Khas Enclave, New Delhi, Branch Office At A-201, 2nd Floor, Muskan Residency, Opposite Colors Mall, Pachpedi Naka, Raipur, C.G. Through Its Authorized Signatory Mr. Shailendra Singh Shinde, S/o Shri D.S.Shinde, Age 32 Yrs Working As Executive Legal In Tower Vision India Pvt. Ltd, Office At L-2A, Muskan Residency, Opposite Colors Mall, Pachpedi Naka, Raipur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Principal Secretary, Panchayat And Rural Development Department, Mantralaya, Naya Raipur, Distt Raipur, CG
2. Director Panchayat And Rural Development Department, Post G.P.O., PS Gole Bazar, Raipur, Distt Raipur, CG
3. Union Of India, Through Secretary, Department Of Telecommunication, New Delhi

4. Gram Panchayat Dhaneli Through Its Sarpanch, Vikaskhand Gurur, Distt Balod, CG
5. Gram Panchayat Bhurkoni Through Its Sarpanch, Janpad Panchayat Pithora, Distt Mahasamund, CG
6. Gram Panchayat Bhanbeda Through Its Sarpanch, Janpad Panchayat Bhanupratappur, Distt North Bastar, Kanker, CG
7. Gram Panchayat Sontara, Thorugh Sarpanch, Vikaskhand Tilda, Distt Raipur, CG
8. Gram Panchayat Podi Uproda, Through Sarpanch, Janpad Panchayat Podi Uproda, Distt Korba, CG
9. Gram Panchayat Nikum Through Sarpanch, Janpad Panchayat Durg, Distt Durg, CG
10. Gram Panchayat Jhamlmala Through Sarpanch, Janpad Panchayat Kawardha, Distt Kabirdham, CG
11. Gram Panchayat Dhanora Through Sarpanch, Janpad Panchayat, Durg, Distt Durg, CG
12. Gram Panchayat Kutela Bhata Through Sarpanch, Janpad Panchayat, Durg, Distt Durg, CG
13. Gram Panchayat Pirda Through Sarpanch, Vikaskhand Pithora, Distt Mahasamund, CG
14. Gram Panchayat Sodh Through Sarpanch, Janpad Panchayat Berla, Distt Durg, CG
15. Gram Panchayat Pandariya Through Sarpanch, Vikaskhand Baloda Bazar, Distt Raipur, CG

---- Respondents

<u>WPC No. 1752 of 2012</u>

- Bharti Infratel Limited A Company Incorporated Under The Companies Act, 1956 Having Its Registered Office At H-5/12, Bharti Ambience, Mehrauli Road, New Delhi 110 030 And Its Circle Office At H-3 Fourth Floor, Metro Tower, Near Vijay Nagar Square, Scheme No.-54 A.B.Road,Indore, Madhya Pradesh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Deptt Of Urban Administration And Development, Mantralaya, Dks Bhawan, Raipur, Cg, Chhattisgarh
2. Directorate Of Urban Administration And Development Through its Director, R.D.A. Building, Ge Road, Near Shastri Chowk, Raipur, Cg
3. C.G. State Power Distribution Co. Ltd Trough Its Managing Director, Dangarniya, Raipur, Cg
4. Union Of India Through Its Secretary Deptt Of Telecommunication, New Delhi

---- Respondents

<u>WPC No. 2058 of 2015</u>

- A T C Telecom Infrastructure Pvt. Ltd. (Formerly Known As Viom Networks Ltd.) A Company Registered Under The Companies Act, 1956, Having Registered Office At 403, 4th Floor, Skyline Icon, Andheri Kurla

Road, Andheri East, Mumbai, Mumbai City, Maharashtra, India, 400059 And Circle Office At Plot No. 162, Modi Heights, M. P. Nagar, Zone- II, Bhopal Madhya Pradesh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Principal Secretary, Panchayat And Rural Development Department, Mantralaya, Naya Raipur Chhattisgarh
2. Director, Panchayat And Rural Development Department, Post G. P. O., P. S. Gole Bazar, Raipur C G
3. Union Of India, Through Secretary, Department Of Telecommunication, New Delhi
4. Gram Panchayat Gatauri Through Its Sarpanch, Janpad Panchayat Bilha, District Bilaspur C G

---- Respondents

<u>WPC No. 2092 of 2012</u>

1. Reliance Infratel Ltd. A subsidiary of reliance communication ltd. A company incorporated and registered under indian companies act, 1956 having its registered office at Block-H, Dhirubhai Ambani Knowledge City, Kopar Khairance, Navi Bombay Inter Alia C. Off. At Poojari Cmplx, Panchepedi Naka, Raipur C.G. pin 492001
2. Reliance Communications Ltd. A company incorporated and registered under indian companies act, 1956 having its registered office at Block-H, Dhirubhai Ambani Knowledge City, Kopar Khairane, Navi Bombay Inter Alia C.Off. At Poojari Compx., Panchpedi Naka, P.S. Tikrapara, Raipur C.G. pin 492001
3. Reliance Telecom Ltd. A subsidiary of reliance communication ltd. A company incorporated and registered under indian companies act, 1956 having its Reg. Off. Block-H, Dhirubhai Ambani Knowledge City, Kopar Khairane, Navi Bombay Inter Alia C.Off. At Poojari Compx., Panchpedi Naka, P.S. Tikrapara, Raipur C.G. pin 492001

---- Petitioners

Versus

1. State Of Chhattisgarh Thru Its Secrty., Deptt. Of Rural And Panchayat Devel. Mantrly. Mahanadi Bhawan, Naya Raipur C.G., Chhattisgarh
2. Union Of India Thru Its Secrty. Deptt. Of Telecommunication, New Delhi India, District

---- Respondents

<u>WPC No. 2227 of 2012</u>

- Idea Cellular Ltd. A company incorporated under the companies act, 1956 having its registered office at suman tower, plot no. 18, sector-11, gandhi nagar 382011 gujrat, having its circle office at 139-140, electronic complex, pardeshipura, indore (M.P.) through its-DGM- Legal & regulatory shri bhargov sharma, having zonal office at Ashoka Millennium Complex, 3rd Flr, Ring Road No. 2, New Rajendra Nagar, Post Rajendra Nagar, Ps. Pandri, Raipur 492601, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Thru The Secrty. Panchayat And Rural Devel. Deptt. Mantrly. Post And Ps. Rakhi Raipur C.G., Chhattisgarh
2. Director, Panchayat And Rural Devel Deptt. Post G.P.O., Ps. Golebazar Raipur C.G., District : Raipur, Chhattisgarh
3. Union Of India Thu The Secrty., Deptt. Of Telecommunication, Post And Ps. New Delhi, District : New Delhi, Delhi
4. C.G. State Power Distb. Co. Ltd. Thru The Md, Danganiya Post Danganiyak, Ps. Sarasawati Nagar Raipur C.G.
5. Gram Panchayat Chandi Thru The Sarpanch, Janpad Panchayat Berla, Dist. Bemetara C.G., District : Bemetara, Chhattisgarh
6. Gram Panchayat, Tulsi Thru The Sarpanch, Janpad Panchayat Aarang, Post And P.S. Aarang, Dist. Raipur C.G., District : Raipur, Chhattisgarh
7. Gram Panchayat, Chanwaridand Thru The Sarpanch, Janpad Panchayat Manendragarh, Post And Ps. Manendrgarh, Dist. Koriya C.G., District : Koriya (Baikunthpur), Chhattisgarh
8. Gram Panchayat Parsapani Thru The Sarpanch, Block Nagri, Post And P.S. Nagari, Dist. Dhamtari C.G., District : Dhamtari, Chhattisgarh
9. Gram Panchayat, Karandola Thru The Sarampanch, Janpad Panchayat Bastar, Post And P.S. Bastar, Dist. Bastar C.G., District : Bastar(Jagdalpur), Chhattisgarh
10. Gram Panchayat, Gadhfuljhar Thru The Sarampanch, Block Basna, Post And Ps. Basna, Dist. Mahasamund C.G., District : Mahasamund, Chhattisgarh
11. Gram Panchayat, Amora Thru The Sarpanch, Block Bemetara, Post And P.S. And Dist. Bemetara C.G., District : Bemetara, Chhattisgarh
12. Gram Panchayat, Binjhara Thru The Sarpanch, Block Podi Uproda, Post And Ps. Podi, Uproda, Dist. Korba C.G., District : Korba, Chhattisgarh
13. Gram Panchayat, Navapara Thru The Sarampanch, Janpad Panchayat Baloda, Post And Ps. Baloda, Dist. Janjgir-Champa C.G., District : Janjgir-Champa, Chhattisgarh
14. Gram Panchayat, Podatarai Thru The Sarampanch, Block Pussaur, Post And P.S. Pussaur, Dist. Raigarh C.G., District : Raigarh, Chhattisgarh
15. Gram Panchayat, Tilai Thru The Sarampanch, Block ,ps. And Post And Dist. Rajnandgaon C.G., District : Rajnandgaon, Chhattisgarh
16. Gram Panchayat, Navapara Thru The Sarampanch, Janpad Panchayat Dharamjaigarh, Post And Ps. Dharamjaigarh Dist. Raigarh C.G., District : Raigarh, Chhattisgarh
17. Gram Panchayat, Nipania Thru The Sarampanch, Janpad Panchayat-Bhatapara, Post And Ps. Bhatapara Dist. Baloda Bazar C.G., District : Balodabazar-Bhathapara, Chhattisgarh
18. Gram Panchayat, Badearapur Thru The Sarampanch, Janpad Panchayat Tokapal, Post And P.S. Tokalpur, Dist. Bastar C.G., District : Bastar(Jagdalpur), Chhattisgarh

---- Respondents

WPC No. 3482 of 2018

1. Bharat Sanchar Nigam Limited Through Chief General Manager, Office Of Circle Chief General Manager Bharat Sanchar Nigam Limited, Administrative Building (Vidhansabha- Road) Khamardih Raipur, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. The General Manager Bharat Sanchar Nigam Limited, O/o Gmtd, Durg, District Durg, Chhattisgarh.

---- Petitioners

Versus

- State Of Chhattisgarh Through Secretary Department Of Urban And Urban Administration And Development, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondent

WPC No. 6527 of 2011

- Vodafone Essar Spacetel Limited A Company Incorporated Under The Companies Act, 1956 Having Its Registered Office At C-48, Okhla Industrial Area, Phase - II, New Delhi - 110020 And Having Its Circle Office At First Floor, Centre Point, New Market, Bhopal - 462003, Through Its Sr. Manager - Legal, Shri Rabindra Purohit S/o Shri K. C. Purohit Aged About 36 Years, Having Zonal Office At Pujari Complex, Pachpedi Naka, Raipur C G Having Fax No. 0755-4000400 And Email Id rabindra.purohit@vodafone.com

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Department Of Urban Administration And Development, Govt. Of Chhattisgarh, Mantralaya, D. K. S. Bhavan, Raipur C.G., Chhattisgarh
2. Municipal Corporation Of Raipur Through The Commissioner, Municipal Corporation Of Raipur, Raipur (C.G.)
3. Municipal Corporation Of rajnandgaon, Through The Commissioner, Municipal Corporation Of Rajnandgaon, rajnandgaon (C.G.)
4. Municipal Corporation Of bhilai Through The Commissioner, Municipal Corporation Of bhilai, durg (C.G.)
5. Nagar Palika Parishad , Bhilai Charoda, Through: Its CMO, Bhilai Charoda Distt. Durg (C.G.)
6. Nagar Palika Parishad , Jamul, Through: Its CMO, Jamul, Distt. Durg (C.G.)
7. Nagar Palika Parishad , Dongergarh, Through: Its CMO, Dongergarh, Distt. Rajnandgaon (C.G.)
8. Nagar Palika Parishad , Balod, Through: Its CMO, Balod, Distt. Durg (C.G.)
9. Nagar Palika Parishad , kumhari, Through: Its CMO, Kumhari Distt. Raipur (C.G.)
10. Nagar Palika Parishad , Baloda Bazar, Through: Its CMO, Baloda Bazar, Distt. Raipur (C.G.)

11. Nagar Panchayat, Naya Baradwar, Through Its CMO, Distt Janjgeer Champa (C.G.)
12. Nagar Panchayat, Rajim, Through Its CMO, Distt Raipur (C.G.)
13. Nagar Panchayat, Bhilainagar, Through Its CMO, Distt Raipur (C.G.)
14. Nagar Panchayat, Manacamp, Through Its CMO, Distt Raipur (C.G.)
15. Nagar Panchayat, Chandrapur, Through Its CMO, Distt Janjgeer Champa
16. Nagar Panchayat, Dabhra, Through Its CMO, Distt Janjgeer Champa
17. Nagar Panchayat, Ahiwara, Through Its CMO, Distt Durg(C.G.)
18. Nagar Panchayat, Patan, Through Its CMO, Distt Durg (C.G.)
19. Nagar Panchayat, Saraipali, Through Its CMO, Distt Mahasamund (C.G.)
20. Nagar Palika Parishad, Mahasamund, Through Its CMO, Distt Mahasamund (C.G.)
21. Nagar Panchayat, Kurud, Through Its CMO, Distt Dhamtari (C.G.)
22. Nagar Panchayat, Bhatagaon, Through Its CMO, Distt Surguja (C.G.)
23. Nagar Panchayat, Sahashpur, Through Its CMO, Distt Kabirdham (C.G.)
24. Chhattisgarh State Power Distribution Co. Ltd. Through the Managing Director Dhangania, Raipur CG
25. Directorate of Urban Administration and Development through its Director, Raipur
26. Union of India through its Secretary Department of Telecommunication, New Delhi

---- Respondents

<u>WPC No. 7334 of 2011</u>

- A T C Telecom Infrastructure Private Limited Formerly Viom Networks Limited A Company Registered Under The Companies Act 1956 Registered Office D- 2, 5th Floor, Southern Park, Saket Place, Saket New Delhi 110017 And Circle Office At Plot No. 162, Modi Hights, M. P. Nagar Zone- II, Bhopal M.P., Madhya Pradesh

---- Petitioner

Versus

- State Of Chhattisgarh Through Its Principal Secretary Department Of Urban Administration And Development, D K S Bhawan, Mantralaya, Raipur, Chhattisgarh

---- Respondent

<u>WPC No. 7359 of 2011</u>

- A.T.C. Telecom Tower Corp. Pvt. Ltd. a Company Registered under the Companies Act 1956 having its registered Office at 403, Fourth Floor Sky Line Icon Near Mittal Estate Andheri, Kurla Road, Andheri (East) Mumbai – 400 059 and having its Circle Office at SM 1-B, Third Floor, Mansarover Complex, Bhopal – 462 011 through its Authorised Signatory, Shri Sameer Singh Bhal, aged about 43 years, S/o Shri Ranbir Singh Bhal, working as Senior Manager, Estate Management and Acquisition, M.P./C.G. R/o 273-A, Chuna Bhatti, Bhopal (M.P.)

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Department Of Urban Administration And Development, Govt. Of Chhattisgarh, Mantralaya, D. K. S. Bhavan, Raipur C.G., Chhattisgarh
2. Municipal Corporation Of Raipur Through The Commissioner, Municipal Corporation Of Raipur, Raipur (C.G.)
3. Municipal Corporation Of Rajnandgaon, Through The Commissioner, Municipal Corporation Of Rajnandgaon, rajnandgaon (C.G.)
4. Municipal Corporation Of Bhilai Through The Commissioner, Municipal Corporation Of bhilai, durg (C.G.)
5. Nagar Palika Parishad , Bhilai Charoda, Through: Its CMO, Bhilai Charoda Distt. Durg (C.G.)
6. Nagar Palika Parishad , Jamul, Through: Its CMO, Jamul, Distt. Durg (C.G.)
7. Nagar Palika Parishad , Dongergarh, Through: Its CMO, Dongergarh, Distt. Rajnandgaon (C.G.)
8. Nagar Palika Parishad , Balod, Through: Its CMO, Balod, Distt. Durg (C.G.)
9. Nagar Palika Parishad , kumhari, Through: Its CMO, Kumhari Distt. Raipur (C.G.)
10. Nagar Palika Parishad , Baloda Bazar, Through: Its CMO, Baloda Bazar, Distt. Raipur (C.G.)
11. Nagar Panchayat, Naya Baradwar, Through Its CMO, Distt Janjgeer Champa (C.G.)
12. Nagar Panchayat, Rajim, Through Its CMO, Distt Raipur (C.G.)
13. Nagar Panchayat, Bhilainagar, Through Its CMO, Distt Raipur (C.G.)
14. Nagar Panchayat, Manacamp, Through Its CMO, Distt Raipur (C.G.)
15. Nagar Panchayat, Chandrapur, Through Its CMO, Distt Janjgeer Champa
16. Nagar Panchayat, Dabhra, Through Its CMO, Distt Janjgeer Champa
17. Nagar Panchayat, Ahiwara, Through Its CMO, Distt Durg(C.G.)
18. Nagar Panchayat, Patan, Through Its CMO, Distt Durg (C.G.)
19. Nagar Panchayat, Saraipali, Through Its CMO, Distt Mahasamund (C.G.)
20. Nagar Palika Parishad, Mahasamund, Through Its CMO, Distt Mahasamund (C.G.)
21. Nagar Panchayat, Kurud, Through Its CMO, Distt Dhamtari (C.G.)
22. Nagar Panchayat, Bhatagaon, Through Its CMO, Distt Surguja (C.G.)
23. Nagar Panchayat, Sahashpur, Through Its CMO, Distt Kabirdham (C.G.)
24. Chhattisgarh State Power Distribution Co. Ltd. Through the Managing Director Dhangania, Raipur CG
25. Directorate of Urban Administration and Development through its Director, Raipur
26. Union of India through its Secretary Department of Telecommunication, New Delhi

---- Respondents

WPC No. 7445 of 2010

1. Essar Telecom Infrastructure Pvt. Ltd. 403, 4th Floor Skyline Icon, near Mittal Industrial Estate, Andheri Kurla Road, Andheri (East), Mumbai 400-059 through its Authorised Signatory Shri Manoj Chaturvedi, aged about 33 years, S/o Shri L.M. Chaturvedi, working as Assistant Manager, Site Acquisition, R/o AS-1, Shivlok, Phase-III, Piplani, Bhopal (M.P.)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Department of Urban Administration and Development, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
2. Municipal Corporation, Raipur, through Commissioner, Municipal Corporation, Raipur (C.G.)
3. Nagar Palika Ambikapur, through its Chief Executive Officer, Nagar Palika, Ambikapur, Surguja (C.G.)
4. Union of India, through Secretary, Department of Telecommunication, New Delhi.

---- Respondents

For respective Petitioners	:	Mr. Brian D'Silva, Sr. Advocate with Mr. Sachin Singh Rajput, Mr. Vaibhav Shukla, Mr. Amiyakant Tiwari, Smt. Astha Shukla, Mr. Swajeet Singh, Mr. Shishir Dixit and Mr. Sandeep Dubey, Advocates.
For Respondent/State	:	Mr. Gagan Tiwari, Deputy Govt. Advocate
For respective Respondent/ Municipal Corporation	:	Mr. H.B. Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, Mr. A.S. Kachhawaha, Mr. B.D. Guru and Mr. Sourabh Sharma, Advocates
For Respondent/UOI	:	Mr.B.Gopa Kumar, Assistant Solicitor General

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Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

CAV JUDGMENT

Per P. R. Ramachandra Menon, Chief Justice

1. The common challenge raised in all these writ petitions is in respect of the power and authority of the State / local authority to realise tax / fees on erection of mobile towers by the Petitioners and also as to the exorbitant

hike in the 'initial permit fee'; the subsequent yearly 'renewal fees' and also the 'compounding / settlement fees'. The main ground of challenge is that no power or authority is vested with the State to issue any Circulars/ Directions/ Rules; it being a subject coming under Entry No. 31 of List I of the Seventh Schedule of the Constitution of India, to which field there cannot be any intrusion by the State. It is also pointed out that the impugned proceedings are in conflict with the clear stipulations under Sections 10(c) and 12 of the Indian Telegraph Act, 1885 (for short 'the Act, 1885'); insofar as it enables realisation of only the 'expenses' incurred by the local authority and no other amount is payable for installation of mobile towers by the Petitioners, who are the licensees under Section 4 of the Act, 1885. It is further contended that the Central Government had recently notified 2016 Rules i.e. the Indian Telegraph Right of Way Rules, 2016 (for short, '2016 Rules') and in the said circumstance, since the field is taken over by the Central Government and since the same has been implemented in the State, no tax or fees can be realised by the local authorities with reference to the Instructions/ Directions/ Rules issued by the State.

2. The genesis of the dispute reveals that, way back on 06.06.2006, a Circular was issued by the State, addressing to the local authorities to cause realisation of one time permit fee while granting sanction for erection of mobile towers in the area under jurisdiction of the Municipal Corporations / Municipalities / Gram Panchayats and also for realisation of the yearly renewal fees. The fee structure was as given below :

S.No.	Local Authority	One Time Permit Fee	Yearly Renewal Fee
1.	Municipal Corporation	15,000/-	1,500/-
2.	Municipalities	10,000/-	1,000/-
3.	Gram Panchayat	5,000/-	500/-

No grievance was raised from any corner with regard to the stipulation or as to the authentication of the Circular and the amount due was being satisfied by the parties concerned. Things took a different turn, when the aforesaid Circular was superseded by a subsequent Circular bearing No.6137/175/18/2006 dated 18.11.2009, whereby the fee structure was enhanced by several folds as given below :

S.No.	Local Authority	One Time Permit Fee	Yearly Renewal Fee
1.	Municipal Corporation	75,000/-	15,000/-
2.	Municipalities	50,000/-	10,000/-
3.	Gram Panchayat	25,000/-	5,000/-

Apart from the hike, it was also stipulated that those who had unauthorisedly erected the Towers could settle the matter on payment of settlement / compounding fee to an extent of 15 to 50 times of the one time permit fee. In view of the enhanced permit fee by 5 times and renewal fee by way of 10 times and settlement fee by 15 to 50 times, the above Circular dated 18.11.2009 was subjected to challenge by various service providers / licensees by filing different writ petitions. Writ Petition (C) Nos. 800/2010, 1485/2010, 1405/2010, 7445/2010 are the cases involving similar challenge against the Circular.

3. Later, the State Government issued the Chhattisgarh Municipal Corporation (Erection of Temporary Tower or Structure for Cellular Mobile Phone) Rules, 2010 (for short, 'the 2010 Rules') providing for realisation of one time permit fee, the yearly renewal fee and the compounding/settlement fee as given in the earlier Circular dated 18.11.2009. This made the aggrieved parties to challenge the said Rules by filing separate writ petitions, raising almost similar challenge as to legislative competency and ultra *vires* nature of the Rules stated as in conflict with the specific provisions contained in the Act, 1885 and all such other grounds. Writ Petition (C) Nos. 6324/2011, 6527/2011, 7334/2011, 7359/2011, 207/2012, 1752/2012, 192/2013, 129/2017 and 3482/2018 raise the challenge against the Rules as above.

4. Meanwhile, the Government issued an instruction / Circular bearing No./459/निर्देश/वि./2009 dated 28.03.2012 invoking the power under Section 77(2) of the Panchayat Raj Adhiniyam, 1993 (for short, 'the Act, 1993') read with S.No. (9) of Schedule-2, whereby the Gram Panchayats were set at liberty to realise the one time permit fee in connection with the erection of the mobile towers in the panchayat area, with the annual renewal fee and also stipulating the compounding fee / settlement fee. The one time permit fee was stipulated as Rs. 25,000/-, whereas the yearly renewal fee was fixed as Rs.10,000/- and compounding the fee was to be 15 to 50 times of the one time permit fee. The service providers / licensees who set up mobile towers in the panchayat areas, came to be aggrieved by the said Circular, who sought to challenge the same by filing writ petitions; such as Writ Petition (C) Nos.2092/2012,

2227/2012, 1743/2013, 784/2014, 2058/2015, 859/2017 and 154/2019. The grounds of challenge are almost similar.

5. One case stands a little apart from the nature of challenge in the other cases and this is WPC No. 1243/2010, which has been filed by the Petitioner, who has already moved this Court by filing Writ Petition (C) No.800/2010 challenging the Circular dated 18.11.2009 issued by the State. The Petitioner in the said petition had challenged the coercive steps taken from the part of the different local authorities, arrayed as Respondents in WPC No.800/2010, simultaneously seeking to set aside the Circular dated 18.11.2009 claiming exorbitant amounts for registration / renewal / compounding. There was an interim order in the said case, as mentioned already, for causing the towers sealed by the local authorities to be de-sealed, subject to satisfaction of the amount as per the first Circular issued on 06.06.2006 and on such other terms. But, Ambikapur Municipal Corporation was never made a respondent in the said writ petition; i.e. WPC No.800/2010. The towers of the Petitioner erected in the area of the Ambikapur Municipal Corporation came to be sealed for non-satisfaction of the fees in connection with the erection / renewal, which made the Petitioner to file a fresh case as WPC No.1243/2010. It was observed by this Court on 26.03.2010 that the tower sealed by the Ambikapur Municipal Corporation was later de-sealed and hence no interim relief was required. It is stated that the Petitioner in the said case was satisfying the amounts as per Circular dated 06.06.2006 as ordered by this Court in the connected cases, but a formal NOC is still to be issued and hence the grievance. It is also

pointed out that the Petitioner has filed Annexure-P/3 series applications in respect of the different towers before the Ambikapur Municipal Corporation, which have not been finalized so far, despite the endorsement as to the receipt by affixing seal of Municipal Corporation; by virtue of which, the Petitioner is stated as having 'deemed permission'. No reply / return has been filed by the Municipal Corporation in the said case and since the application was submitted before the date of the Circular issued on 18.11.2009, in view of the deemed permission, the Petitioner is stated as not liable to satisfy any enhanced registration fee or settlement charges in respect of the existing towers covered by Annexure-P/3 series applications and that the dispute, if at all, could only be in respect of the revised annual renewal fee. The submission of the application on time is not denied by the Municipal Corporation and hence the contention is that there cannot be any penalty as well, to be mulcted upon the Petitioner.

6. As mentioned already, the challenge raised against the Circulars/Rules is with reference to the alleged legislative incompetency of the State to deal with the subject. The main ground raised is that it is a Central subject under Entry No.31 of the List I of the Seventh Schedule, which is exclusively within the domain of the Central Government and hence no power is vested with the State of legislate or cause to realise any tax / fees in respect of mobile towers. The State however contends that, it does not come within the purview of Entry No.31 of the List I of the Seventh Schedule and that the State is having sufficient power to legislate upon the subject, mobile tower being a structure coming within

the Entry No.49 of List II of the Seventh Schedule dealing with 'land and building'. Support is sought to be drawn with reference to Entries No.5, 18 and 66 as well, of the State list.

7. Meanwhile, a similar dispute which arose in the State of Gujarat had come up for consideration before the Apex Court in ***Ahmedabad Municipal Corporation Vs. GTL Infrastructure Ltd.*** (2017) 3 SCC 545. After in-depth analysis, the Apex Court held that Entries in the List of the different Schedules in the Constitution had to be widely interpreted, clearly holding that 'mobile tower' will definitely come within the Entry No. 49 of List II, dealing with 'land and building'. On bringing the said issue to the notice of this Court, it was observed on 11.01.2017, that the decision rendered by the Apex Court had almost covered the entire case. But then, reliance was sought to be placed by the Petitioners on the Indian Telegraph Right of Way Rules, 2016 framed on 15.11.2016 by the Central Government. This Court observed that, in view of the decision rendered by the Apex Court in ***Ahmedabad Municipal Corporation*** (supra), the stay granted in favour of the Petitioners may have to be vacated, however the matter was adjourned on the request made by the Petitioners. It will be worthwhile to extract the order dated **12.09.2012** passed by this Court (after considering the question of confirmation of the interim order granted on 09.12.2011 and the subsequent orders passed on 09.01.2012, 09.02.2012 and 23.08.2012); the operative portion of which is to the following effect :

"Having heard the learned counsel for the parties and on appreciating the controversy involved, in the light of the submission urged and further keeping in view various judgments rendered by the different High Courts in the country on somewhat identical issue, declaring the impugned impost as ultra vires, which is subject matter of these petitions, we are inclined to confirm the interim orders passed by this Court subject to the following modifications and imposing terms and conditions, which are required to be complied with by the respective parties to their writ petitions during the pendency of this writ petition.

> (A) The petitioner/s shall continue to pay/deposit permission fees in terms of the Circular dated 6.6.2006 (Annexure P/6 in W.P.(C) No. 6324/2011), issued by the State (Urban Administration Department to the concerned municipalities / local authorities.
>
> (B) The petitioner/s shall submit/furnish an undertaking in writing with concerned local authorities/ bodies that in the event of petition being dismissed and impugned demand/ levy/ impost, which is challenged in this writ petition by the petitioner/s, is upheld as being constitutional and intra vires, then in that event the petitioner/s shall pay the entire demand/s raised by the respondent/s with interest as may be determined by this Court at the time of final hearing within a period of one month from the date of the judgment / order and consequential demand.
>
> (C) In the event of petition being allowed and impugned levy/ demand/ impost is declared ultra vires/ illegal then whatever amount the petitioner/s may have deposited with the local authorities the same shall be refunded to the petitioner/s by passing appropriate order in that regard by this Court at the time of final hearing.
>
> (D) The respondent/s shall not disturb, demolish, seal, seize, confiscate or in any way create any disturbance/ hindrance in the installation of the tower which the petitioner/s have erected for providing mobile service to public at large.

(E) The respondent/s if have sealed/seized/ confiscated any installed tower during the pendency of any of the writ petitioner, then the same should be restored back in favour of the petitioner/s by lifting/ removing seal etc. put on such tower subject to condition that if seizure was effected for non-payment of the duties then the petitioner/s will pay the amount in terms of the Circular dated 6.6.2006, as indicated supra, if not already paid and then the tower would be released as per this condition.

With the aforesaid terms/ condition/ directions, the application made by the petitioner/s in all these writ petitions for grant of ad interim writ stands accordingly disposed of.

Parties are directed to complete the pleadings within three months. "

8. The **order dated 11.01.2017**, extracting paragraphs 28 to 31 of the verdict passed by the Apex Court in ***Ahmedabad Municipal Corporation*** (supra) and observing the necessity to vacate the interim stay is to the following effect :

"The Respondents have placed before this Court a judgment of the Apex Court rendered in *Ahmedabad Municipal Corporation v. GTL Infrastructure Ltd. & Others (Civil Appeal No.s.5360-5363 of 2013)*, wherein the Apex Court has no in uncertain terms held that the mobile towers falls within the ambit of the phrase 'Land' and 'Building'. Relevant portion of the judgment reads as follows:-

"28. Coming specifically to the expression "building" appearing in Entry 49 List II of the Seventh Schedule in view of the settled principles that would be applicable to find out the true and correct meaning of the said expression it will be difficult to confine the meaning of the expression "building" to a residential building as commonly understood or a structure raised for the purpose of habitation. In

Government of Andhra Pradesh and Others Vs. Hindustan Machine Tools Ltd., AIR 1975 SC 2037 = (1975) 2 SCC 274 a tax on a building housing a factory has been understood to be a tax on building and not on the factory or its plant and machinery. A general word like 'building' must be construed to reasonably extend to all ancillary and subsidiary matters and the common parlance test adopted by the High Court to hold the meaning of levy of tax on building and machinery does not appear to be right keeping in mind the established and accepted principles of interpretation of a constitutional provision or a Legislative Entry. A dynamic, rather than a pedantic view has to be preferred if the constitutional document is to meet the challenges of a fast developing world throwing new frontiers of challenge and an ever changing social order.

29. The regulatory power of the Corporations, Municipalities and Panchyats in the matter of installation, location and operation of 'Mobile Towers' even before the specific incorporation of Mobile Towers in the Gujarat Act by the 2011 Amendment and such control under the Bombay Act at all points of time would also be a valuable input to accord a reasonable extension of such power and control by understanding the power of taxation on 'Mobile Towers' to be vested in the State Legislature under Entry 49 of List II of the Seventh Schedule.

30. The measure of the levy, though may not be determinative of the nature of the tax, cannot also be altogether ignored in the light of the views expressed by this Court in Goodricke (supra). Under both the Acts read with the relevant Rules, tax on Mobile Towers is levied on the yield from the land and building calculated in terms of the rateable value of the land and building. Also the incidence of the tax is not on the use of the plant and machinery in the Mobile Tower; rather it is on the use of the land or building, as may be, for purpose of the mobile tower. That the tax

> *is imposed on the "person engaged in providing telecommunication services through such mobile towers" (Section 145A of the Gujarat Act) merely indicates that it is the occupier and not the owner of the land and building who is liable to pay the tax. Such a liability to pay the tax by the occupier instead of the owner is an accepted facet of the tax payable on land and building under Entry 49 List II of the Seventh Schedule.*
>
> *31. Viewed in the light of the above discussion, if the definition of "land" and "building" contained in the Gujarat Act is to be understood, we do not find any reason as to why, though in common parlance and in everyday life, a mobile tower is certainly not a building, it would also cease to be a building for the purposes of Entry 49 List II so as to deny the State Legislature the power to levy a tax thereon. Such a law can trace its source to the provisions Entry 49 List II of the Seventh Schedule to the Constitution."*

This decision almost covers the entire case. However, now the Petitioners want to place reliance on the Rules framed on 15.11.2016 known as Indian Telegraph Right of Way Rules, 2016. These rules were enacted before the judgment was passed by the Apex Court but it appears that none of the companies some of which are represented before us even thought it fit to bring the Rules to the notice of the Apex Court.

We are not sure whether these rules have any impact on the decision of the case because these rules deal with the matters relating to setting up of underground and overground telegraph infrastructure. The rules lay down the manner in which the applications have to be filed.

In view of the judgment of the Apex Court in Ahmedabad Municipal Corporation (supra), we are of the view that the stay order granted in favour of the Petitioners may have to be vacated. The Petitioners should have been ready to argue the matter. Now, they want an adjournment. However, before doing so, we deem it proper to give one more opportunity to the Petitioners.

List these matters on 1.3.2017.

It is made clear that the Petitioners should be ready

> to argue the case on the said date. If the Petitioners are not ready to argue the case or seek adjournment on the next date, the stay order shall stand automatically vacated.

The rival contentions have to be analysed and appreciated in the above context.

9. We heard Mr. Brian D'silva, Senior Advocate on behalf of the Petitioners supported by Mr. Sachin Singh Rajput, Mr. Vaibhav Shukla, Mr. Amiyakant Tiwari, Mr. Shishir Dixit and Mr. Sandeep Dubey. The version of the Central Government, who virtually, has filed two different returns (with diametrically opposite pleadings; the first one against the Petitioners and in support of the State / local authorities; wehreas the second one, virtually in support of the Petitioners and against the State) was put forth by Mr. B. Gopa Kumar, the learned Assistant Solicitor General. The case on behalf of the State was asserted by Mr. Gagan Tiwari, the learned Deputy Government Advocate and the version of the local authorities was put forth by Mr. Ashutosh Kachawaha, the learned counsel appearing on behalf of Municipal Corporation Bilaspur, Durg and Rajnandgaon.

10. The main contention raised by the Petitioners, as noted already, is with reference to the absence of legislative competence of the State and the right of the Local Authorities to prescribe or realise tax / fees. The basis for the said contention is that, ***"post and telegraphs, telephones, wireless, broadcasting and other like forms of communication"*** are specifically included under Entry No.31 of List I of the Seventh Schedule, which is a Central subject and hence there cannot be any legislation by

the State in this regard. When the State does not have any power to legislate, it cannot issue any Circular to realise the tax / fees in respect of such instances. Reliance is also sought to be placed on Entry No. 96 of List I, which deals with fees in respect of any of the matters in List I, but not inclusive of the fees taken in any Court. Further reference is made to Entry No. 97 of the very same List which deals with any other matters not enumerated in List II or III including any tax not mentioned in either of those Lists. By virtue of the residual entry under 97 of List I and further since there is no entry in List II enabling the State to legislate upon telecommunication (by virtue of specific Entry No. 31 of List I), there is a total bar of entry in this regard and hence the impugned proceedings / Circulars / Rules framed / issued by the State are to be set aside. This is more so, since no tax can be levied without any authority of law as per the mandate of Article 265 of the Constitution of India.

11. The above contention is sought to be rebutted by the State with reference to Article 243H of the Constitution dealing with the power of the State to authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees to the extent as specified therein as well as the power under Article 243X dealing with similar power of the State to authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees as mentioned therein. The version of the Petitioners is that, such power has to be exercised by the State "by law" i.e. by legislating a proper Enactment which is conspicuously absent in the instant case. The State further contends that in respect of the Panchayats, Section 77 of the Act, 1993 authorises the Panchayats to realise “other taxes”.

Section 77(1) deals with the 'Obligatory tax' as dealt with under Schedule No.I, like property tax, whereas Section 77(2) is in respect of 'Optional taxes' as deals with under Schedule No.II. It is also pointed out that as per Annexure-P/1 in WPC No.2092/2012; it has been made clear that Panchayat is at liberty to realise one time permit fee / renewal fee / compounding fee. What is sought to be realised is only a fee (शुल्क) and not a tax (कर). It is further pointed out that it is for the Municipality / Panchayat to ensure proper check and balance in respect of the erection of mobile towers and to ascertain the infringement of the statutory provisions / conditions, if any, by deploying sufficient number of staff and incurring much expenses in this regard, which necessitates satisfaction of the one time permit fee and yearly renewal fee, the adequacy of which cannot be questioned by the Petitioners. Reference is also made to the enabling provisions by way of Section 132 of the Chhattisgarh Municipalities Act, 1961 (for short, 'the Municipalities Act') – Power of State Government to grant exemption from taxes. Sections 355 – Power to make rules and Section 356 – General provisions regarding rules. Similar provisions, as contained in Chhattisgarh Municipal Corporation Act, 1956 (for short, 'the Municipal Corporation Act'), Section 317A - Laying railways, tramways or electrical, telephone poles and Section 433 – Power of State Government to make rules, are also sought to be pressed into service. It is further pointed out that, insofar as the State is having power to legislate on the subject by virtue of Entry No.49 of the List II, read with Entries 5, 18 and 66 and such other enabling provisions as referred to above, in the absence of any statutory Rules, it is quite open for issuance of executive instructions which will be having the sanctity of law, by virtue of Article 162 of the Constitution of India.

12. The Petitioners contend with reference to the law declared by the Supreme Court in ***Ahmedabad Municipal Corporation*** (supra), holding 'mobile tower' as “land / building” under Entry No. 49 of List II, that the relevant provision in the statute, applicable in the Gujarat State was amended to include 'mobile tower' as well. It is also pointed out that the judgment has to be read as a whole and that it cannot be read as a statute. Reliance is sought to be placed on the judgments passed by the Apex Court in ***Goan Real Estate and Construction Limited and Another vs. Union of India and Others***[1] (para 31) and ***Bihar School Examination Board vs. Suresh Prasad Sinha***[2] (para 18) in this regard. It is also pointed out that the meaning of the particular term in a particular statute cannot be the same as given in another statute. There is no dispute with regard to this settled propositions, but so far as the Act, 1993 is concerned, the term "building" is not defined and in the said circumstance, it can be ascertained with reference to the meaning of the term given in other similar statutes like Section 5(7) of the Municipal Corporation Act and Section 3(2) of the Municipalities Act. Similarly, reference is made from the part of the State to Section 5(31) defining the term "land" under the Municipal Corporation Act (which include the benefits from the attachment to the earth) as well as Section 3(16) of the Municipalities Act, by virtue of which mobile tower is to be included as part of the land and hence the State is competent to legislate upon the

[1] (2010) 5 SCC 388
[2] (2009) 8 SCC 483

said subject with reference to Entry No.49 of List II. Reference is also made to Section 5(41) of the Municipal Corporation Act defining the term "occupier" and similar term as mentioned under Section 3(23) of the Municipalities Act, by virtue of which the Petitioners, being occupiers, are liable to meet the demand. Under Section 5 (56-a) of the Municipal Corporation Act, the term "tax" is defined which includes toll, cess, fee etc. which is almost similar to the said term defined under Section 3(37) of the Municipalities Act. Obviously the Municipality is imposing only a 'fee' and not a 'tax', though the term "tax" includes fee. What the fee payable need not necessarily be a tax and as such, the reliance sought to be placed on Article 265 of the Constitution of India is not applicable to the given context. Various provisions of the Madhya Pradesh (Rajya) Bhumi Vikas Nigam Adhiniyam, 1976 (for short, 'the Act, 1976') and the Madhya Pradesh Bhumi Vikas Rules, 1984 (for short, 'the Rules, 1984') are also referred to, in particular, Rule 3(2) of the Rules, 1984; which says that, for erection of the building, Rules will apply for designs and constructions; Rule 14(2) with regard to the permission to be obtained; Rule 17(6) as to 'building plan' and Rule 17(5) as to the 'Sub-Division / Layout Plan'.

13. The Petitioners further contend that the 2010 Rules formulated by the State had to be tabled in the Legislative Assembly as envisaged under Section 433(3) of the Municipal Corporation Act as well as under Section 356(4) of the Municipalities Act and admittedly since this has not been done, the Rule is invalid. This is sought to be rebutted from the part of the State, pointing out that the Rules have come into effect on the date of

notification in the official gazette and that the 'non-tabling' of the Rules in the Assembly is only an irregularity, which is a curable defect and it will not invalidate the Rules. That apart, it is pointed out that the necessity to have the Rules tabled in the Legislative Assembly was existing only in the State of Madhya Pradesh and it was not there; insofar as State of Chhattisgarh is concerned, where the said provision was incorporated only with effect from 09.08.2012 and hence the Rules which were framed and notified before 09.08.2012 cannot attract any invalidity in this regard, it being only prospective. It is also pointed out by the learned counsel for the State, that as per Rule 17 of the '2010 Rules', the course and proceedings pursued earlier, based on the Circular dated 18.11.2009, have been validated and hence the executive order has been given legal effect; apart from the fact that it was quite open and legally valid to have issued such Circular by virtue of the mandate under Article 162 of the Constitution of India.

14. It is brought to the notice of this Court by the learned counsel for the State that the Madhya Pradesh Bhumi Vikas Rules, 1984 have been framed, which is applicable to the State of Chhattisgarh as well, and that it is for providing layout plans for construction of building; by virtue of which there is power to regulate the activities in this regard. Under Chapter 24 of the Municipal Corporation Act, permission has to be obtained for construction of building. Mobile tower, being a building as held by the Apex Court in Ahmedabad Municipal Corporation case (supra), it requires permission. Reference is made to Section 5(23) of the Municipal Corporation Act and Section 3(11) of the Municipalities Act in this regard. Similarly, reference

is made to Section 293 of the Municipal Corporation Act dealing with prohibition of erection or reconstruction of building without permission; Section 294 as to the application to the Commissioner for permission; Section 295 power of the Commissioner to refuse permission and Section 308-A providing for penalty and compounding of offences for construction of building without permission. Reference is also made to various provisions of the Municipalities Act, such as Section 187 application / notice of the intention to construction the building (and also to the effect that no construction shall be affected without permission); Section 187-A regarding compounding of offences; Section 191 issuance of completion certificate; Section 194 where permission is stated as necessary for certain projections. With reference to the above provisions, it is asserted that the State has got power to legislate upon the subject involving mobile tower and that only a fee is sought to be realised in connection with erection, which is not a tax and that it can be effected by executive orders / circulars in view of the power under Article 162 of the Constitution of India; which stand validated as per Annexure-P/2 the 2010 Rules. By virtue of mushrooming of mobile towers set up by various companies, it has to be regulated which involves the safety, security, health and such other instances affecting the general public and that local authority is rendering a service in this regard; for which it is entitled to be adequately compensated and hence the fees. Rule 6 of the 2010 Rules clearly points out that, it is only permit fee / renewal fee and not a tax. It is pointed out that, even in the town of Bilaspur itself, there are more than 200 towers and part of the service in connection with erection of the mobile towers, laying of lines along the road, digging and various incidental activities require are to be supervised by the team of Engineers / staff of the local authority. Many service providers have already erected mobile towers without any prior permission, which amounts to offences and hence a provision is made for compounding the same by satisfying the settlement fee, which is quite optional, as the parties are at liberty to face the consequences / appropriate proceedings, in case any offence is involved and if it is not settled / compounded.

15. Coming to the main challenge, it is to be noted that the pleadings and prayers have been moulded, pointing to the alleged legislative incompetency of the State to issue Circulars / Rules, contending that it will amount to encroachment into the arena where the Central Government alone is having the jurisdiction, by virtue of the Entry No.31 of List I of the Seventh Schedule. The said Entry reads as follows :

> ***"31. Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication."***

Even a plain reading of the said Entry clearly reveals that, it is in respect of <u>different forms of communication</u>; such as postal, telegraphs, telephones, wireless, broadcasting and other like forms. Erection of mobile tower is not a form of communication, but is only a means / structure to hold or support such device used for the above purposes.

16. Entry No.49 of List II is in respect of tax on 'lands and buildings'. As mentioned already, Section 2 (xxviii) of the Act, 1993, Section 5(56-a) of the Municipal Corporation Act and Section 3(37) of the Municipalities Act

clearly define the term "tax" which includes 'fee' as well. The Apex Court has already held in ***Ahmedabad Municipal Corporation*** (supra) that 'mobile tower' will come under 'land / building' enlisted under Entry No.49 of List II and this being the position, erection of mobile tower cannot be a Central subject, but a State subject. Hence the alleged violation of the constitutional provision is without any pith or substance.

17. It is the contention of the Petitioners that the impugned Circulars / Rules are in conflict with the provisions of the Act, 1885. Specific reference is made to Section 10(c) and Section 12 of the Act, 1885, pointing out that the Municipality can realise 'only the expenses' as a reasonable condition to be imposed under Section 12 for granting permission under Section 10(c) of the Act, 1885.

18. Infact, the earlier statute i.e. the Indian Telegraph Act, 1876 was found inadequate due to certain anomalies therein, when it was felt necessary to have a new legislation, in turn leading to the Indian Telegraph Act, 1885. As per the earlier Act, the Governor-General in Council and his licensees had no power to place telegraph lines upon the land of Municipal or other similar bodies or of private persons. When the property belongs to local authority, the powers conferred by the Act cannot be exercised without the consent of that authority. Consent may be given subject to conditions; one among which requires that any expenses to which the local authority may be put by exercise of the power shall be made good. But, no provision was incorporated for payment of compensation on any other count to a local authority whose property is used of for this purpose; construction of telegraph being a

matter in which the public is interested. At the same time, it was sought to be ensured that, when it involves a private property, full compensation has to be paid for exercising the power.

19. As per the Act, 1885, 'three' amendments were brought to the existing Indian Telegraph Act, 1876, whereby definition of term "telegraph" was widened to an appropriate extent as one of the 'three' amendments. Definition of the terms "telegraph" under Section 3 (1AA), "telegraph line" under Section 3(4), "post" under Section 3(5) and the term “telegraph authority” under Section 3(6) are relevant, which are reproduced below :

> “3. **Definitions.** -
>
> (1AA) ‘telegraph’ means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, radio waves or Hertzian waves, galvanic, electric or magnetic means.
>
> Explanation.—"Radio waves" or "Hertzian waves" means electro-magnetic waves of frequencies lower than 3,000 giga-cycles per second propagated in space without artificial guide;]
>
> (4) ‘telegraph line’ means a wire or wires used for the purpose of a telegraph, with any casing, coating, tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same;
>
> (5) ‘post’ means a post, pole, standard, stay, strut or other above ground contrivance for carrying, suspending or supporting a telegraph line;
>
> (6) 'telegraph authority' means the Director-General or Post and Telegraphs], and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act.”

20. To have a proper understanding as to the mandate of Section 10(c) and 12 of the Act, 1885, which are heavily relied on by the Petitioners and allegedly violated; the said provisions are reproduced below for easy reference :

> "**10. Power for telegraph authority to place and maintain telegraph lines and posts.-**
>
> xxx xxx xxx
>
> (c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and
>
> xxx xxx xxx
>
> 12. Power for local authority to give permission under section 10, clause (c), subject to conditions.—Any permission given by a local authority under section 10, clause (c), may be given subject to such reasonable conditions as that authority thinks fit to impose, as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or as to the time or mode of execution of any work, or as to any other thing connected with or relative to any work undertaken by the telegraph authority under those powers."

21. The main contention raised by the Petitioners is that they are licensees, having obtained necessary licences under Section 4 of the Act, 1885 with exclusive privilege as enjoyed by the Central Government to establish and maintain 'telegraph' as defined under Section 3(1AA) of the Act, 1885. Insofar as the involvement of the Municipality is concerned, it is contended that, for drawing / erecting / establishing such telegraph, the only requirement is the permission of the Municipality and nothing else. For granting such permission under Section 10(c), the Municipality can

fix reasonable conditions as provided under Section 12; which only provides for satisfaction of 'expenses', if any, to be incurred by the Municipality, in consequence of exercising the powers conferred under Section 10(c) for granting the permission.

22. Here, it is to be noted that the permission to be granted by the Municipality under Section 10(c) is in respect of the instance when the property concerned is '**vested in**' or '**under the control or management**' **of the local authority**. The terms "vested in or under the control or management of the local authority" are clearly mentioned under Section 82 of the Municipal Corporation Act, which clearly mentions under 'Clause h' that, it will not involve private land or Government land. Admittedly, in all these cases, the mobile towers are established or sought to be established in private property and not in any property vested in or under the control or management of the local authority. When the installation is in a private property, it is separately dealt with under Section 10(d) which provides that, in such cases, the Telegraph Authority / Petitioners, when they exercise the power in respect of any property other than the property referred to in Section 10(c), shall pay full compensation to all persons interested, any damage sustained by them by the reason of exercise of those powers. Since the reasonable condition for granting permission, accepting only the 'expenses' as envisaged under Section 12 is with specific reference to an instance covered by 10(c) i.e. where the property is exclusively 'vested in' or 'under the control or management' of the local authority and not with reference to a property owned by a private individual {which stands

separately covered under Section 10(d)}; the plea as to the alleged infringement of Section 10(c) and 12 does not hold any water. The whole idea and understanding of the Petitioners in this regard is thoroughly wrong and misconceived and we hold that Section 10(c) and 12 of the Act, 1885 are not applicable to a case involving erection of mobile tower in a 'private property' as coming under Section 10(d).

23. As mentioned already, when the matter was considered by this Court on 11.01.2017, the challenge was noted as almost covered against the Petitioners, in the light of the verdict passed by the Apex Court in ***Ahmedabad Municipal Corporation*** (supra) insofar as 'mobile tower' will become part of the land / building (with reference to Entry No.49 of List II) and hence that the interim order was to be vacated. The Petitioners then sought to rely on the Central Rules i.e. **the Indian Telegraph Right of Way Rules, 2016** to contend that the field had been taken over by the Central Government and hence the State Rules cannot have any further application. The Central Rules have been formulated in exercise of the power under sub-Section (1) and (2)(e) of Section 7, read with Sections 10, 12 and 15 of the Act, 1885 to regulate the underground infrastructure (optical fibre) and overground infrastructure (mobile towers). It was pointed out that said Rules have been accepted and implemented by the State Government and a Nodal Officer has already been appointed in terms of Section 4 of the said Act. The contention of the Petitioners is that, under Rule 9 of the said Rules, an application has to be filed by the licensee for establishing overground telegraph infrastructure under sub-Rule (1) alongwith supporting documents

mentioned under sub-Rule (2). Proviso to sub-Rule (3) to Rule 9 clearly stipulates that, it shall be accompanied with a fee to meet the administrative expenses for scrutiny of the application as the appropriate authority may, by general order deem it fit. The proviso stipulates that the 'one time fee' in this regard shall not exceed Rs.10,000/-.

24. To understand the scope of the above provision, it is relevant to note that, the application to be submitted by the licensee, as mentioned under Rule 5, has to contain some vital information (along with supporting documents). Rule 5(2) (vi) and (vii) of the said Rules 2016 (Central Rules) are to the following effect :

> **"5. Application by a licensee.—** (1) A licensee shall, for the purposes of establishment of telegraph infrastructure under any immovable property vested in or under the control or management of any appropriate authority, make an application, supported by such documents, to that authority in such form and manner as may be specified by that appropriate authority.
>
> (2) The information along with supporting documents to be provided by the licensee in the application made under sub-rule (1) shall include-
>
> xxx xxx xxx
>
> xxx xxx xxx
>
> (vi) the inconvenience that is likely to be caused to the public and the specific measures proposed to be taken to mitigate such inconvenience;
>
> (vii) the specific measures proposed to be taken to ensure public safety during the execution of the work."

25. Scrutiny of the application is with reference to the different parameters mentioned under Rule 6 of the 2016 Rules (Central Rules) which is in the following terms :

“6. **Grant of permission by appropriate authority.-** (1) The appropriate authority shall examine the application with respect to the following parameters, namely:-

(a) the route planned for the proposed underground telegraph infrastructure and the possible interference, either in the establishment or maintenance of such telegraph infrastructure, with any other public infrastructure that may have been laid along the proposed route;

(b) the mode of execution;

(c) the time duration for execution of the work and the time of the day that the work is proposed to be executed;

(d) the estimation of expenses that the appropriate authority shall necessarily be put in consequence of the work proposed to be undertaken;

(e) the responsibility for restoration of any damage that the appropriate authority may necessarily be put in consequence of the work proposed to be undertaken;

(f) assessment of measures to ensure public safety and inconvenience that the public is likely to be put to in consequence of the work proposed and the measures to mitigate such inconvenience indicated by the licensee;

(g) any other matter, consistent with the provisions of the Act and these rules, connected with or relative to the establishment or maintenance of underground telegraph infrastructure, through a general or special order, by the Central Government, appropriate State Government or the appropriate local authority.

(2) The appropriate authority shall within a period not exceeding sixty days from the date of application made under rule 5-

(a) grant permission on such conditions including, but not limited to, the time, mode of execution, measures to mitigate public inconvenience or enhance public safety and payment of restoration charge, as may be specified, subject to the provisions of the Act and these rules; or

(b) reject the application for reasons to be recorded in writing:

Provided that no application shall be rejected unless the applicant licensee has been given an opportunity of being heard on the reasons for such rejection:

Provided further that the permission shall be deemed to have been granted if the appropriate authority fails to either grant permission under (a) or reject the application under (b); and the same shall be communicated in writing to the applicant not later than five working days after permission is deemed to have been granted.

(3) Where the appropriate authority accepts the undertaking by the licensee to discharge the responsibility to restore the damage that such appropriate authority shall necessarily be put in consequence of the work, the appropriate authority, while granting permission under clause (a) of sub-rule (2), may seek a bank guarantee for an amount in lieu of expenses for restoration of such damage, as security for performance in the discharge of the responsibility.

(4) The appropriate authority shall not charge any fee other than those prescribed under sub-rule (3) of rule 5 and clause (a) of sub-rule (2) from the licensee for establishing underground telegraph infrastructure."

26. The above provision clearly points to the fact that, it is only in respect of the "inconvenience" likely to be caused to the public and the specific measures to mitigate the same, ensuring public safety during the execution of work. This is applicable only when mobile tower is erected in a 'public property', where the general public is having access and it cannot have any application insofar as the erection is done in a private property, as in the instant case. Rule 9 of the above Rules deals with the documents to be produced by the Licensee along with the application, reads as follows :

"**9. Application by a licensee.—**(1) A licensee shall, for the purposes of establishing overground telegraph infrastructure, upon any immoveable property vested in or under the control or management of any appropriate authority, make an application, supported by such documents, to that appropriate authority in such form and manner as may be specified by that appropriate authority.

(2) The information along with supporting documents to be provided by the licensee in the application made under sub-rule(1) shall include-

(i) a copy of the licence granted by the Central Government;

(ii) the nature and location, including exact latitude and longitude, of post or other above round contrivances proposed to be established;

(iii) the extent of land required for establishment of the overground telegraph infrastructure;

(iv) the details of the building or structure, where the establishment of the overground telegraph infrastructure, is proposed;

(v) the copy of approval issued by the duly authorised officer of the Central Government for location of the above ground contrivances proposed to be used for the transmission of Radio waves or Hertzian waves;

(vi) the mode of and the time duration for, execution of the work;

(vii) the inconvenience that is likely to be caused to the public and the specific measures proposed to be taken to mitigate such inconvenience;

(viii) the measures proposed to be taken to ensure public safety during the execution of the work;

(ix) the detailed technical design and drawings of the post or other above ground contrivances;

(x) certification of the technical design by a structural engineer attesting to the structural safety, of the overground telegraph infrastructure;

(xi) certification, by a structural engineer, attesting to the structural safety of the building, where the post or other above ground contrivances is proposed to be established on a building;

(xii) the names and contact details of the employees of the licensee for the purposes of communication in regard to the application made;

(xiii) any other matter relevant, in the opinion of the licensee, connected with or relative to the work proposed to be undertaken; and

(xiv) any other matter connected with or relevant to the work as may be specified, through a general or special order, by the Central Government or appropriate State Government or appropriate local authority.

(3) Every application under sub-rule (1) shall be accompanied with such fee to meet administrative expenses for examination of the application and the proposed work as the appropriate authority may, by general order, deem fit:

Provided that the one-time fee, to meet administrative expenses, accompanying every application shall not exceed ten thousand rupees."

27. Rule 9(1) of the 2016 Rules (Central Rules) clearly shows that, it is having application only in respect of establishing of infrastructure upon any immovable property <u>vested in or under the control or management of the appropriate authority.</u> It is with reference to such application, that sub-Rule (3) of Rule 9 stipulates the payment of administrative expenses for examination of the application; maximum of which is sealed at Rs.10,000/- as given under the proviso. The property vested in or under the control or management of any appropriate authority can only be a property which is belonging to the Government / local authority or such other authority where public is having an access. Even the farthest stretch of imagination cannot connect it to a 'private property' envisaged under Section 10(d) of the Act, 1885 (as involved herein).

28. The picture becomes more clear, when the various documents to be produced by the licensee in support of the application, as enlisted under sub-Rule (2) of Rule 9, are looked at. It is also discernible from Rule 10, as to granting of permission by the appropriate authority, particularly, with reference to various parameters including under '(f)' is extracted below :

> **10. Grant of permission by appropriate authority.-** (1) The appropriate authority shall examine the application with respect to the following parameters, namely:-
>
> xxx xxx xxx
>
> xxx xxx xxx
>
> (f) assessment of the inconvenience that the public is likely to be put to in consequence of the establishment or maintenance of the overground telegraph infrastructure, and the measures to mitigate such inconvenience indicated by the licensee;

This being the position, the averment of the Petitioners that by virtue of the Central Rules, 2016, the field is taken over by the Central Government with regard to erection of mobile towers and that of the State Governments' entry to the field is forbidden, is far from the track of truth. We hold that the 2016 Rules are not applicable to erection of mobile towers in 'private property' as involved herein.

29. We have already noted that the State Rules, 2010 stipulate for payment of 'fees' in connection with the erection of mobile tower as a one time permit fee, with periodical / yearly renewal fee; besides providing fee for compounding / settlement of the offences on violations. Rule 17 clearly validates the course ordered to be pursued earlier as per Circulars. Rule 18 provides for installation of several devices upon the one and the

same tower, subject to payment of requisite extent of fees in this regard, which is also put to challenge by the Petitioners. It is only by virtue of Rule 18, that the Petitioners have been able to place different devices on the same mobile tower, curtailing their expenses and saving money and hence they cannot validly challenge the above Rule, which otherwise would be suicidal.

30. Power is conferred upon the Telegraph Authority to place and maintain telegraph and posts under Section 10 of the Act, 1885. This power (all or any) can be delegated by the Central Government by notification in the official gazette to a licensee under Section 4, subject to appropriate conditions / restrictions to the extent such power is enjoyed by the Telegraph Authority possessed in Part III of the said Act, to establish or maintain by the Government or to be so established or maintained. The primary question is whether such power of the Telegraph Authority extends to set up a mobile tower in a private property. To find answer to this question, it will be worthwhile to have an idea of the scheme of the statute, particularly, with reference to definition of the terms "telegraph" {Section 3(1AA}, "telegraph line" {Section 3(4)}, "post" {Section 3(5)} and "telegraph authority" {Section 3(6)} of the Act, 1885; which terms have already been extracted above.

31. The term "telegraph" is defined under Section 3(1AA) to the effect that it means any appliance, instrument, material or apparatus used or capable to use for transmission or reception of signs, signals, images etc. This clearly shows that it is a 'technical device' used or capable to use for transmission or reception. Mobile tower is only a simple structure to

carry or to fix such 'technical device' and it obviously is not included within the definition of "telegraph". Mobile tower is only intended to place the apparatus / instrument / technical device at a higher level and nothing else. Depending upon the altitude of the location, such technical device/ apparatus /instrument can be fixed even without the help of a mobile tower. To illustrate it further, such device may be possible to be fixed on the top of a blunt tree trunk or on the top / side portion of a building or could be placed / tagged by wrapping around a rock on the hill top. To a question put forth by this Court as to whether, on such instance, could the tree / building / rock be called a "telegraph", it is fairly conceded by the learned counsel for the Petitioners that it cannot. As it stands so, it cannot be said that mobile tower is included as part of the term "telegraph" under Section 3(1AA).

32. The next question is whether it will come within the definition of term "telegraph line" under Section 3(4) or "post" under Section 3(5). The term "telegraph line", as defined, means a wire or wires used for the purpose of telegraph with any casing, coating, tube or pipe enclosed in the same and any appliance and apparatus connected therewith <u>for the purpose of fixing or insulating the same</u>. Obviously, this also will not take in a mobile tower. Similarly, definition of the term "Post" under Section 3(5) shows that it means a post, poll, standard, stay, struck or other above ground contrivance <u>for carrying, suspending or supporting a telegraph line</u>. In other words, a mere post by itself will not to be within purview of the Act, unless it is carrying a 'telegraph line'. Mobile tower does not carry, suspend or support any telegraph line and hence it

cannot come within the purview of the statute as per the definitions cited above. That apart, it is also relevant to note that all the 'three' definitions of the terms "telegraph", "telegraph line" and "post" under Section 3(1AA, 3(4) and 3(5) of the Act, 1885 respectively, clearly define such terms as "they mean", which is clearly exhaustive and not inclusive, by virtue of which, nothing else can be added on or brought within the purview of the said definitions.

33. The position becomes still more clear, on looking at the powers of the Central Government to frame the Rules as given under Section 7 of the Act, 1885. Such Rule making power is in respect of all or any of the matters dealt with under Section 7(2), which are as given below :

> **“7. Power to make rules for the conduct of telegraphs —**(1) xxx xxx xxx
>
> (2) Rules under this section may provide for all or any of the following among other matters, that is to say:-
>
> (a) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted within India;
>
> (b) the precautions to be taken for preventing the improper interception or disclosure of messages;
>
> (c) the period for which, and the conditions subject to which, telegrams and other documents belonging to, or being in the custody of, telegraph officers shall be preserved;
>
> (d) the fees to be charged for searching for telegrams or other documents in the custody of any telegraph officer;
>
> [(e) the conditions and restrictions subject to which any telegraph line, appliance of apparatus for telegraphic communication shall be established, maintained, worked, repaired, transferred, shifted, withdrawn or disconnected;]

[(ee) the charges in respect of any application for providing any telegraph line, appliance or apparatus;]

[(eea) the manner in which the Fund may be administered;

(eeb) the criteria based on which sums may be released.]

(f) the charges in respect of –

(i) the establishment, maintenance, working, repair, transfer or shifting of any telegraph line, appliance or apparatus;

(ii) the services of operators operating such line, appliance or apparatus;

(g) the matters in connection with the transition from a system whereunder rights and obligations relating to the establishment, maintenance, working repair, transfer or shifting of any telegraph line, appliance or apparatus for telegraphic communication attach by virtue of any agreement to a system whereunder such rights and obligations attach by virtue of rules made under this section;

(h) the time at which, the manner in which, the conditions under which and the persons by whom the rates, charges and fees mentioned in this sub-section shall be paid and the furnishing of security for the payment of such rates, charges and fees;

(i) the payment of compensation to the Central Government for any loss incurred in connection with the provision of any telegraph line, appliance or apparatus for the benefit of any person –

(a) where the line, appliance or apparatus is, after it has been connected for use, given up by that person before the expiration of the period fixed by these rules, or

(b) where the work done for the purpose of providing the line, appliance or apparatus is, before it is connected for use, rendered abortive by some act or omission on the part of that person;

[(j) the principles according to which and the authority by whom the compensation referred to in clause (i) shall be assessed;]

[(jj) the qualifications to be possessed and the examinations, if any, to be passed by the persons employed for the establishment, maintenance or working of any telegraph and the fees to be charged for

> admission to such examinations;] and
>
> (k) any other matter for which provision is necessary for the proper and efficient conduct of all or any telegraphs under this Act.”

None of the above provisions, in particular, sub-Clauses **'(e), (ee) or (f)'** of **Section 7(2) of the Act, 1885** does provide anything in connection with the erection of mobile towers, but for mentioning the instances in connection with the 'telegraph line', 'appliance' or 'apparatus' established, maintained, repaired, transferred or shifted.

34. It is in the above context, that the power conferred upon the 'telegraph authority' under Section 10 of the Act, 1885 is to be read and understood; which obviously is with reference to 'telegraph lines' and 'posts' and it does not include a mobile tower. This is further discernible from Section 11 of the Act, 1885 which confers power upon the 'telegraph authority' to enter into property to repair or remove the 'telegraph lines' or 'post', which again does not include a mobile tower. Same is the position with regard to the stipulation under Section 12 of the Act, 1885, dealing with the power of the local authority, subject to conditions i.e. in respect of a property vested in or under the control or management of the local authority, to give permission under Section 10(c) of the Act, 1885.

35. It will be worthwhile to have look at the 'dispute resolution mechanism' provided under the statute. Obviously, though permission is given by the local authority under Section 10(c) of the Act, 1885 to install the lines / posts in the property 'vested in or under the control or management of the local authority', it is possible to require the 'telegraph authority' for removal or alteration of the 'telegraph lines' or 'post' as mentioned in

Section 13. If there is dispute in this regard, Section 15 provides the remedy by causing it to be determined by such officer as the Central Government has appointed in this regard; simultaneously mentioning under sub-Section (2) of Section 15 that any appeal in this regard shall be finalized by the Central Government. Similarly, in the case of dispute in respect of 'private property', it is to be resolved in the manner as specified under Section 16. Section 17 provides for removal or alteration of the 'telegraph line' proposed on the property other than that of a local authority. The above provisions clearly reveal that objection can be raised against erection of a mobile tower in a private property by the Central Government / Telegraph Authority or by the licensees like the Petitioners and it can be set up only on the basis of specific consent / agreement, subject to the terms agreed between the parties. When even the Central Government does not have a vested right to erect mobile tower in a private property, there is no question of delegation of such power under Section 19B of the Act, 1885 to the licensees under Section 4. The crux of the discussion is that the statute does not provide any power either, to Central Government or the Delegatees / Petitioners / Licensees, to install a 'mobile tower' in any private property; unlike the power of the Telegraph Authority / Licensee to install telegraph lines / electricity lines or posts in such private property, subject to satisfaction of the requirements in this regard.

36. With regard to the challenge raised against Annexure-P/1 Circular in WPC No.2092/2012 and connected cases, in the case of Panchayats, it is specifically pointed out from the part of the State that it is only a

'guideline' to have common application throughout the State, which is supplemental to the existing legal provisions, particularly, under Section 77(2) of the Act, 1993 enabling the Panchayats to realize 'other taxes' which includes a fee as well, as defined under Section 2 (xxviii) of the Act, 1993. Section 77 deals with 'Obligatory taxes' as dealt with under sub-Section (1) read with Schedule I, besides the 'Optional taxes' dealt with under sub-Section (2) read with Schedule II. This is evident from Clause 11 of Annexure-P/11, where it is stated that, it only amounts to 'standard guideline' provided to have uniformity throughout the State, supplemental to the Rules. Clause 5 of Annexure-P/1 Rules specifically points to the necessity to abide by the relevant Rules and its scope is discernible from the other Clauses as well. Section 86 of the Act, 1993 enables the State to issue instructions to the Panchayat in connection with the works in public interest. The plea of the Petitioners is that, even if such power is there, it has to be exercised by the Gram Panchayat and not as dictated by the State. It is also pointed out that imposition of such tax is subject to the riders mentioned under the above provision i.e. with the prior approval of the authority concerned / specified. It is to be noted that the purpose of the 'prior approval' is to ensure that no arbitrary exercise of power is done in the matter of fixation of the liability as to the genuineness or the quantum. Since installation of mobile tower is not confined to a particular Panchayat and is being carried out throughout the State, the necessity to provide some guidelines to have uniform pattern was felt by the Government and it was accordingly, that Annexure-P/1 Circular dated 28.03.2012 was issued, stipulating a sum of one time fee as Rs.25,000/- and an yearly renewal fee of Rs.10,000/-; simultaneously providing for a compounding fee to regularise the unauthorised installations. Compounding fee is only to save the parties concerned from other adverse consequences - which is an 'option' always available to the party concerned, who need not go for any compounding or settlement and can face the proceedings on merit.

37. There is a plea for the Petitioners that the amount prescribed is much on the higher side and since they are having several mobile towers, the burden will be very high. This Court is not much impressed with the said submission, insofar as fixation of the amount depends upon various facts and figures including the job requirement / service to be performed by the local authority and its officials who are to maintain a constant vigil upon the erection, maintenance, repair and of the violation, if any. It is also with reference to the public safety to be ensured all throughout, by conducting periodical visits incurring much expenditure. That apart, the need to install more towers is a pointer to the fact that the service providers / Petitioners are intending to widen the business activities by providing connections to more and more customers. It is also relevant to note in this context that several antenna of different service providers are being fixed on the same mobile tower; resulting in reduction of overhead expenditure for installation of mobile towers for holding / fixing the device; but for which separate towers would be required to be constructed. Hence, it is only a portion of the actual amount / profit, which otherwise would have been spent by the parties for erecting separate mobile towers, that is sought to be realised for fixation of more antenna to the

same mobile tower, which cannot be held as arbitrary in any manner. Reference can be made to Section 55 of the Act, 1993 which deals with the control of erection of a building and Section 78 of the Act, 1993 enabling the collection of the tax / fees in this regard; to connect it with the cause; as 'mobile tower' comes under the entry 'building' within the purview of Entry 49 of the List-II of the Seventh Schedule, as held by the Apex Court in ***Ahmedabad Municipal Corporation*** (supra). Since Mr. Sachin Singh Rajput, the learned counsel for the Petitioners submitted that the '*quid pro quo* doctrine' is not pressed much, this Court does not find it necessary to deal with the said question more elaborately.

38. In ***Ahmedabad Municipal Corporation*** (supra) the Apex Court made an in-depth analysis of the various provisions of law in connection with the scope of the Entries in the different Lists of the Seventh Schedule. The meaning of the term “land and building” and the conclusion have been drawn in 'paragraphs 29, 30 and 31' which are reproduced below; besides 'paragraphs 32 and 33' which are also relevant in this context.

> 29. The regulatory power of the Corporations, Municipalities and Panchyats in the matter of installation, location and operation of ‘Mobile Towers’ even before the specific incorporation of Mobile Towers in the Gujarat Act by the 2011 Amendment and such control under the Bombay Act at all points of time would also be a valuable input to accord a reasonable extension of such power and control by understanding the power of taxation on ‘Mobile Towers’ to be vested in the State Legislature under Entry 49 of List II of the Seventh Schedule.
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> 30. The measure of the levy, though may not be determinative of the nature of the tax, cannot also be altogether ignored in the light of the views expressed by this Court in Goodricke (supra). Under both the Acts read with the relevant Rules, tax on Mobile Towers is levied on the yield from the land and building calculated

> in terms of the rateable value of the land and building. Also the incidence of the tax is not on the use of the plant and machinery in the Mobile Tower; rather it is on the use of the land or building, as may be, for purpose of the mobile tower. That the tax is imposed on the "person engaged in providing telecommunication services through such mobile towers" (Section 145A of the Gujarat Act) merely indicates that it is the occupier and not the owner of the land and building who is liable to pay the tax. Such a liability to pay the tax by the occupier instead of the owner is an accepted facet of the tax payable on land and building under Entry 49 List II of the Seventh Schedule.
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> 31. Viewed in the light of the above discussion, if the definition of "land" and "building" contained in the Gujarat Act is to be understood, we do not find any reason as to why, though in common parlance and in everyday life, a mobile tower is certainly not a building, it would also cease to be a building for the purposes of Entry 49 List II so as to deny the State Legislature the power to levy a tax thereon. Such a law can trace its source to the provisions Entry 49 List II of the Seventh Schedule to the Constitution.
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> 32. Though several other decisions of this Court and also of different High Courts have been placed before us we do not consider it necessary to refer to or to enter into any discussion of the propositions laid down in the said decisions as the views expressed in all the aforesaid cases pertain to the meaning of the expressions 'land' and 'building' as appearing in the definition clause of the statutes in question.
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> 33. We, therefore, set aside the judgment passed by the Gujarat High Court and answer the appeals arising from the order of the Bombay High Court; transferred cases and the writ petitions accordingly. However, we leave it open, so far as the cellular operators in the Bombay cases are concerned, to agitate the issue with regard to the retrospective operation of the assessment/demand of tax and the quantum thereof before the appropriate forum, if so advised. Consequently, and in the light of the above all the appeals, writ petitions and the transferred cases are disposed of.

39. There is no dispute to the contention of the petitioners that judgment has to be read as a whole and it cannot be read as a statute, in view of the

dictum laid down by the Apex Court in ***AP Asmeta Captive Power Company Private Limited and Another vs. Lafarge India Private Limited*** (2013) 15 SCC 414 {paragraphs 32 and 34}, ***Goan Real Estate and Construction Limited and Another vs. Union of India, Through Secretary, Ministry of Environment and Others*** (2010) 5 SCC 388 {paragraph 31} and ***Bihar School Examination Board vs. Suresh Prasad Sinha*** (2009) 8 SCC 483 {paragraph 18}. There is also no dispute to the proposition that a regulation / rule has to be within the framework of the Act, as held by the Apex Court in ***St. Johns Teachers Training Institute vs. Regional Director, National Council for Teacher Education and Another*** (2003) 3 SCC 321 {paragraph 10}. Sub-Section (3) of Section 317A of the Municipal Corporation Act and sub-Section (3) of Section 355 of the Municipalities Act stipulate that nothing in the said provisions will bar the situations where the Act, 1885 are applicable and it is only in respect of the other aspects that the rule making power is conferred upon the State, as given under Section 433 of the Municipal Corporation Act and Section 356 of the Municipalities Act. As mentioned already, the Act, 1885 does not deal with any right of the Central Government / Telegraph Authority or the Licensees under Section 4 of the Act, 1885 to erect mobile towers in a 'private property'; except in respect of “telegraph” under Section 3(1AA), “telegraph line” under Section 3(4) and “post” under Section 3(5) – which may be installed in private property as well (which do not cover 'mobile tower').

40. There is a plea on the part of the Petitioners that 'mobile tower' is part and parcel of 'communication'. This has already been dealt with by this Court

in previous paragraphs with reference to the specific definition of the terms “telegraph”, “telegraph line” and “posts” and the mandate of Section 10 conferring power upon the Central Government / Telegraph Authority and the delegation of such power under Section 19B of the Act, 1885. The State Rules, 2010 issued by the State enables the Municipal Corporation / Municipalities to realise the one time permit fee in respect of mobile towers, also providing for the renewal fees and the compounding fees. The basic challenge with reference to the absence of power of the State because of the alleged absence of legislative authority stands already repelled. No tenable ground has been brought to the notice of this Court to draw any inference as to the ultra *vires* nature of the Rules and hence this challenge is also repelled. The above Rules also validate the Circular dated 18.11.2009 and the quantum of fees in the Circular are exactly the same in the Rules as well. In the case of Panchayats, the guidelines pointed out by the Government (also with reference to the statutory provisions) have been accepted by the Panchayats and they have decided to implement the same, to have uniformity throughout the State. No violation of any statutory or Constitutional provision has been substantiated before this Court.

41. In the above facts and circumstances, we are of the view that the challenge raised in these writ petitions against the Guidelines / Circulars / Rules is devoid of any merit and is liable to be repelled. Consequently, all the writ petitions are liable to be dismissed. It is ordered accordingly. By virtue of the interim order passed by this Court on 12.09.2012 in WPC No. 6324/2011 and connected cases, granting interim stay subject to

certain conditions, on dismissal of the writ petitions, the consequences shall follow. Hence, it is open for the Respondents concerned to proceed with further steps, based on the said conditions and in accordance with law. All the writ petitions stand dismissed accordingly. No cost.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Chandra