

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.No. 2341 of 2019

and

W.M.P.Nos. 2588, 2590 & 2594 of 2019

M/s. Ezhil Nagar Nalavazhvu Sangam,
Rep. by its Secretary Mr.R.Kesavarajan
Regn No. 103/2006 at Thandhai Periyar Park,
Ayappakkam, Chennai - 600 077.

...Petitioner

Vs.

- 1.Union of India represented by
Department of Telecommunication, thro'
its Secretary, Ministry of Communications,
Sanchar Bhavan, No.20, Ashoka Road,
New Delhi - 1.
- 2.The Secretary, Ministry of Environment,
Forest & Climate Change,
Indira Paryavanan Bhavan, Jorbagh Road,
New Delhi.
- 3.The Government of Tamilnadu,
rep. by its Principal Secretary, Information
Technology Department,
Secretariat,
Chennai - 600 009.
- 4.The District Collector,
Thiruvallur District Collectorate,
Thiruvallur.
- 5.M/s.ATC India,
Rep. by its Regional Head,
Celestial Point, No.45,
Damodharan Street,
T.Nagar,
Chennai - 600 017.
- 6.Thiru D.Pandian
- 7.The Tahsildhar,
Avadi Taluk, Avadi,
Thiruvallur District.

8.The Block Development Officer,
Villivakkam Panchayat Union, Ambattur,
Chennai - 600 053.

9.The Assistant Engineer - Avadi,
Tamilnadu Electricity Board,
(Opposite to St.Peter's Engineering College)
Avadi, Chennai - 600 054.

10.The Inspector of Police,
Tirumullaivoil Police Station,
Tirumullaivoil, Chennai - 600 062.

11. Illayaperumal

12.V.Nandakumar

13.Y.Supraja

(R11 to R13 are impleaded vide order dated
05.04.2019 made in W.M.P.No.10974 of 2019
in W.P.No. 2341 of 2019) ...Respondents

Prayer: Writ petition filed under Article 226 of the
Constitution of India seeking issuance of writ of mandamus,
directing the official respondents to remove the installation /
erecting of the cell phone towers of the 5th respondent in the
premises located at No.37, Ezhil Nagar, Corner Plot-South Side
4th Street, West Side-2nd Street, Ayyapakkam, Avadi Taluk,
Thiruvallur District.

For Petitioner : Mrs.G.Daisy John

For Respondents: Mr.G.Babu, CGSC for R1 & R2
Mr.V.ShanmugaSundaram, Spl.G.P
for R3, R4, R7 & R10
Mr.J.Ravikumar for R5

Mr.R.Dhilipkumar for R9

Mr.V.Jayaprakash Narayan for R8

M/s.S.Varsha for R11 to 13

O R D E R

This writ petition is filed as against the installation of
Cell phone tower by the 5th respondent at Plot No.37, Ezhil
Nagar, South side 4th Street, West side - 2nd Street, Ayyapakkam,
Avadi Taluk, Thiruvallur District. This writ petition is filed
by the Ezhil Nagar Nala Vazhvu Sangam through its Secretary as
against the respondents.

2. The grievance of the petitioner / association is that the

site proposed by the 5th respondent for erection of cell phone tower which is very near to a primary health centre and the establishment of the cell phone tower would cause enormous health problems to the patients and it will affect their health condition.

3. Mrs.G.Daisy John, learned counsel appearing on behalf of the petitioner would submit that Ayyapakkam lake is situated very near to the proposed site and there are thousands of migratory birds like Pelicans, Hornbills and other migratory birds from various countries visit the said lake during July-August for breeding apart from local birds and this establishment of cell phone tower would certainly affect the eco-system of the Ayyapakkam Lake. It is also the contention of the learned counsel appearing for the petitioner that the 5th respondent / Service provider has not obtained prior permission from the Authority concerned as per G.O.MS.No.2 dated 01.04.2002 and relied upon the counter affidavit filed by the Block Development Officer, Villivakkam, who is the 8th respondent in this writ petition.

4. In the said counter affidavit, the 8th respondent has taken a specific stand that pursuant to the legal notice issued by the Petitioner / Association, the 8th respondent has taken a follow up action and also issued a 'Stop Work' notice vide letter No.R.C.No.4145/2018/A6 dated 05.02.2019 to the 5th respondent / Service Provider and directed him to follow the due provisions of Environment Protection Act, 1986 and Erection of Cell Phone Tower Guidelines, 2006 and according to the 8th respondent, no prior consent of the local authorities has been obtained.

5. A similar issue has been dealt with in detail in W.P(MD). No. 15974 of 2017 etc batch., dated 29.08.2019 in Manivannan Vs. The District Collector, Tuticorin wherein, the a Division Bench of this Court (Madurai Bench) has elaborately discussed the issue and the operative portion of the said order reads as follows:-

"12.4.The increased use of mobiles in India has raised the public concern over possible health issues associated with exposure to electro magnetic energy and electro magnetic field radiation and this concern is prevailing all over the world. The World Health Organisation [WHO] is conducting a detailed study in this regard. The International Commission on Non Ionising Radiation Protection [ICNIRP] has issued various guidelines and norms as recommended by the World Health Organisation. WHO, by referring to approximately 25,000 articles published around the

world over the past 30 years, on the health issues arising out of the BTS Towers has concluded that the available evidence does not confirm the existence of any health hazards to the mankind from exposure to low level electro magnetic field.

12.5.WHO in its report No.304, issued in May 2006 on electro magnetic field and public health for base station and wireless technologies has concluded that, there is no convincing scientific evidence that the weak radiation frequency (RF Signals) from base stations and wireless networks cause adverse health effects. The said finding was also reiterated in the year 2011 that no adverse health effects have been established as being caused by mobile phone towers. In September 2013, with regard to a query, WHO in online answered that the status to date provide no indication that environmental exposure to radio frequency fields such as from base stations increases the risk of cancer or any other disease.

12.6.WHO had also established the EMF project in the year 1996 to assess the scientific evidence of possible health effects in the frequency range from 0 to 300 GHZ. Over 15 National Authorities are involved in the EMF project and it is also overseen by 8 International Organisations. The Government of India adopted the ICNIRP guidelines in the year 2008 for basic restrictions and limiting reference levels of electric magnetic radiation from mobile towers. The above prescribed limits for EMF radiation from base station in India are 1/10th of International Prescribed limits of ICNIRP. The Government of India, Ministry of Tele Communication and Information Technology in their official memorandum No.17-63/2011-CS-III, dated 27.02.2014 issued EMF norms pursuant to the report of the committee constituted in compliance of the direction of the High Court of Allahabad, Lucknow on issues relating to electro magnetic field radiation.

12.7.In a writ petition filed before the High Court of Allahabad, at Lucknow Bench, the Court directed the Government to constitute a High Level Committee including members from IIT, Kharagpur, Kanpur, Delhi, Rurki and Bombay and from other scientific institutes of the country including Indian Council of Medical Research (ICMR) and All India Institute of Medical Science, Delhi to asses the possible health hazards and adverse impact on ecology from BTS Towers and mobile phones. The said Committee submitted its report on 17.01.2014 and based on the same, the Government of India decided

that the present prescribed precautionary EMF safe exposure limits are adequate and need no further change at this stage.

12.8.A similar batch of writ petitions have been moved before the Principal Seat of this Court, in WP No.24976 of 2008 etc, batch [K.R.Ramasamy @ Traffic Ramaswamy Vs. The Secretary, Department of Telecommunications, Government of India, New Delhi] and the same was disposed of by a Division Bench of this Hon'ble Court by order dated 05.03.2015, wherein it has been held as follows:

" 10. We are, thus, of the view that in a judicial proceeding these aspects cannot be analysed. There being no materials atleast as on date, which can finally suggest any health hazards from these towers and the solution thereof, the Court would not venture into uncharted territory of technical expertise to determine the area where it should be installed. The Court, at best can place this matter before the appropriate Committee to look into this matter which the Kerala High Court already did and we have the benefit of the conclusion arrived at in those proceedings, as noticed above.

11. We are of the view that no further directions are required in these matters, other than to say that the concerned authorities would continue to analyse the materials as and when it emerges to look into the concern raised by the petitioners, especially, in view of the fact that there is no final view as yet on these aspects. Science grows and evolves and one does not know what may happen tomorrow. It is, in this context, we have made these observations."

12.9.Following the above said decision, a Division Bench of the Bombay High Court in the case of Biju K.Balan Vs. State of Maharashtra, reported in 2019 SCC Online 97.

12.10. When a similar issue was raised before the Principal Seat of this Court, in the case of P.Balasubramaniam Vs The District Collector, Namakkal District, Namakkal [W.P.No.3006 of 2018, decided on 19.02.2018], a Division Bench of this Court, by following the decision taken in Dr.K.R.Ramaswamy @ Traffic Ramaswamy's case, W.P.No.24967 of 2008, decided on 05.03.2015], cited supra, disposed the same.

12.11.According to the learned Counsel, the

service providers once in a 45 days submit a report on the frequency level to the Ministry of telecommunication and it is available in the website also and it can be monitored through EMF portal. If any individual intends to verify the EMF emission level at a particular tower nearby his residence, he can very well avail the same by paying a nominal fee of Rs.4,000/- online and if any violations are found the service providers are liable for penalty upto Rs.10,00,000/-.

12.12. In view of the specific stand taken by the department of telecommunication and the reports of WHO, there are no materials on record to confirm the existence of any health hazard from exposure to low level electro magnetic field and as stated by the three earlier orders of the different Division Benches of this Court, this Court cannot dwell into those aspects as an expert. The issue No.1 is answered accordingly."

6. Since the issue has already been dealt with by a Division Bench of this Court (Madurai Bench) on the basis of the specific stand taken by the Department of Telecommunication and the reports of WHO to the effect that there are no materials on record to confirm the existence of any health hazard from exposure to low level electromagnetic field, this Court is not inclined to entertain this writ petition on the ground that health hazards would be caused due to erection of cell phone towers by the 5th respondent. However, it is made clear that the 5th respondent is permitted to erect the cell phone tower only after obtaining the due permission from the Competent Authority as per the G.O.MS.No. 2 as stipulated in the order of the Hon'ble Division Bench referred to above.

7. With the above directions, this writ petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Secretary,
Union of India represented by
Department of Telecommunication, thro'
Ministry of Communications,
Sanchar Bhavan, No.20, Ashoka Road,
New Delhi - 1.
- 2.The Secretary, Ministry of Environment,
Forest & Climate Change,
Indira Paryavanan Bhavan, Jorbagh Road,
New Delhi.
- 3.The Principal Secretary,
Government of Tamilnadu,
Information Technology Department,
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(Opposite to St.Peter's Engineering College)
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- 8.The Inspector of Police,
Tirumullaivoil Police Station,
Tirumullaivoil, Chennai - 600 062.

+1cc to Mr.G.Daisy John, Advocate, S.R.No. 1333
+1cc to Mr.V.Jayaprakash Narayanan, Advocate, S.R.No. 2013
+1cc to Mr.J.Ravikumar, Advocate, S.R.No. 1281
+2cc to Mr.S.Varsha, Advocate, S.R.No. 1589

W.P.No. 2341 of 2019
and

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AJS (CO)
GN(19/03/2021)