

13.04.2022
Court No.13
Item No.46
AP

WPA 6556 of 2022

**ATC Telecom Infrastructure Private Limited & Anr.
Vs.
The State of West Bengal and Ors.**

(Through Video Conference)

Mr. Abhrajit Mitra, Senior Advocate
Mr. Satadeep Bhattacharjee
Ms. Pritha Basu
Mr. D. Chakraborty

... For the Petitioners.

Mr. Samrat Sen
Ms. Sutapa Sanyal
Ms. Manali Ali

... For the State.

Mr. Mir Anuruzzaman

... For the Rajpur-Sonarpur Municipality.

Mr. Amitava Chaudhuri
Mr. N. Roy

... For the Private Respondent.

The petitioners are aggrieved by an order dated 23rd March 2022, passed by the District Magistrate, South 24-Parganas, in connection with Memo No.29 dated 16th March 2022. The question referred to the District Magistrate was whether the mobile tower set up by the petitioners at Rajpur-Sonarpur Municipality has been done in accordance with the guidelines of the Department of Telecommunication (DOT).

Ex facie, it appears from the order that the petitioners did not have a “No Objection Certificate” or any prior sanction whatsoever, from the authorities to set up the mobile tower.

Mr. Abhrajit Mitra, learned senior counsel appearing for the petitioners, would argue by reference to the notification dated 28th December, 2020, being 'Annexure P-3' of the writ petition, that the regulations, issued by the Department of Information Technology and Electronics, Government of West Bengal, conceives of only a single window clearance, and the provision of deemed approval would automatically apply entitling the petitioners to set up the mobile tower after lapse of a period of time from submission of the application. Particular reference in this regard is made to Clause 7(a)(iv), which is entitled 'Deemed To Have Been Approved'.

A plain reading of the said Clause clearly indicates that 'deemed approval' conceived of under the clause, is the approval of the District Level Committee (DLC), State Level Clearance Committee (SLCC) and State Level Appellate Authority (SLAA). This deeming appears to have been provided, to wipe out any delay that may occur within these authorities in the process of approving an application. However, the said deemed approval, cannot be applied to the main application of the petitioners, for the purpose of the final licence and/or approval to set up the mobile tower. After applying the provisions of 'Deemed Approval' by the DLC, SLCC and the SLAA, a formal No Objection

Certificate is absolutely mandatory. Admittedly, the petitioners do not have no objection certificate.

The District Magistrate has also found that the petitioners do not have clearances from other authorities either.

This Court is therefore of the view that there is no infirmity in the order of the District Magistrate. The order cannot therefore be interfered with. However, the petitioners may apply afresh to the concerned authorities for setting up of the mobile tower.

The District Magistrate, shall after carefully verifying the petitioners' application, and if permitted under the Rules, consider the same afresh, in accordance with law.

In the event it is found by the District Magistrate that the petitioners' application cannot otherwise be entertained for consideration of an ex post facto no objection certificate, the District Magistrate shall proceed to ensure execution of the impugned order.

Pending such consideration before the District Magistrate, the District Magistrate shall ensure that the electricity connection to the writ petitioners' tower is disconnected forthwith.

The concerned Station Manger, W.B.S.E.D.C.L., who is responsible for supplying electricity to the petitioners' tower, shall also ensure that electricity to the petitioner's tower is disconnected.

The petitioner shall serve a copy of this order on the W.B.S.E.D.C.L. and the other authorities referred to herein.

With the aforesaid observations, the writ petition is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)