

372. 09.02.2023
bd. Ct.15

W.P.A. 34082 of 2013

M/s. Indus Towers Limited & Anr.
-vs-
The State of West Bengal & Ors.

Mr. Sakya Sen
Mr. Subhankar Chakraborty
Mr. Saptarshi Bhattacharya
... for the petitioners.

Mr. Pantu Deb Roy
Mr. Subrata Guha Biswas
... for the State.

Affidavit of service filed on behalf of the petitioners pursuant to the previous order passed by this Court is taken on record.

The writ petition is heard in presence of the learned advocates representing the petitioners and the State respondents. In spite of service of notice upon the Siliguri Municipal Corporation being respondent nos. 2, 3 and 4 the said corporation remains unrepresented today before the Court.

It has been pointed out by Mr. Sen, learned advocate representing the petitioners that by issuing notice dated 16th August, 2013 the Commissioner of Siliguri Municipal Corporation being respondent no. 4 asked for payment of Rs.13 lakhs each for installation of mobile towers by the petitioners. Being aggrieved by such alleged exorbitant demand made by the respondent no. 4 the present writ petition was instituted challenging the validity and legality of such demand. At the ad-interim stage a coordinate Bench passed an order

on 21st November, 2013 directing the petitioners to pay Rs.75,000/- for each mobile tower and it has been submitted by Mr. Sen that pursuant to such direction dated 21st November, 2013 based on calculation at the rate of Rs. 75,000/- against each mobile tower payment was accordingly made by the petitioners. However, at the same time notice has been drawn to the observation of the coordinate Bench as contained in the order dated 21st November, 2013 that such payment was made without prejudice to the rights and contention of the parties in the pending writ petition. It has been submitted on behalf of the petitioners that accordingly Rs.20,25,000/- (Rupees twenty lakhs twenty five thousand) was paid.

Today during course of hearing of this writ petition one supplementary affidavit affirmed on behalf of the petitioners on 31st January, 2023 has been filed which is taken on record.

It has been contended on behalf of the petitioners upon placing reliance on circular dated 21st December, 2022 at pages 26 and 27 of the said supplementary affidavit, issued by the Joint Secretary to the Government of West Bengal Department of Information Technology & Electronics that the petitioners are required to pay Rs.10,000/- for each mobile tower for regularisation of installation in the event applicant does not possess no objection certificate issued by the competent authority prior to enforcement of guidelines of 2020. According to the petitioners, the demand made by the Siliguri Municipal Corporation

under the purview of such circular dated 21st December, 2022 needs to be recalculated. It is submitted on behalf of petitioners that in terms of the said guidelines of 2020 petitioners are willing to apply on the designated portal and to comply the necessary formalities, if required.

It has also been submitted on behalf of the petitioners that in view of circular dated 21st December, 2022 and in consideration of the payment made against each mobile tower in terms of the order passed by the coordinate Bench on 21st November, 2013 petitioners are entitled to get refund.

State respondents are represented by Mr. Deb Roy, learned additional Government Pleader who has made submission based on the provisions as contained in the guidelines of 2020. It has also been submitted on behalf of the State respondents since the payment was made by the petitioners for installation of mobile towers much before implementation of the guidelines of 2020 the issue needs to be revisited by the competent authority of the Siliguri Municipal Corporation.

Having considered the submissions made on behalf of the respective parties though Siliguri Municipal Corporation is not represented in spite of service, this Court in consideration of the circular dated 21st December, 2022 directs the Commissioner of Siliguri Municipal Corporation being respondent no. 4 to revisit the demand raised for installation of mobile towers as it was intimated

to the petitioners vide impugned notice dated 16th August, 2013 within a period of eight weeks from the date of communication of this order.

The respondent no. 4 is also directed to take decision and to make necessary calculation afresh if required in terms of such circular dated 21st December, 2022. Final decision to be taken by the respondent no. 4 after granting opportunity of hearing to the petitioners or their representative. The decision to be taken by the respondent no. 4 shall be communicated to the petitioners within two weeks thereafter.

At the time of taking decision in terms of the aforesaid order if the respondent no. 4 is required to hear the representative of the concerned department of the State Government necessary notice shall be served upon the concerned official of the said department of the State Government for being represented before the respondent no. 4 at the time of consideration of the issue.

The stay of impugned notice dated 16th August, 2013 subsisting as on date shall continue till two weeks after the decision to be taken by the respondent no.4.

With the aforesaid direction the writ petition stands disposed of. However, there shall be no order as to costs.

This order shall be communicated to the respondent Nos. 2,3 and 4 within 15 days from date

failing which stay of impugned notice dated 16th August, 2013, shall stand vacated without any further reference to this Court.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)