



W.P(MD)No.13137 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.07.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13137 of 2015
and
M.P.(MD)No.1 of 2015

The Parish Council,
Our Lady of Ransom Church,
Rep. by its Secretary,
F. Xavier, Kanyakumari District.

... Petitioner

Vs.

- 1.The District Collector,
O/o. the District Collector,
Nagercoil,
Kanyakumari District.
- 2.The Assistant Director of Town Panchayat,
District Collector Office Campus,
Nagercoil, Kanyakumari District.
- 3.The Executive Officer,
Kanyakumari Town Panchayat (Special Grade),
Kanyakumari District.
- 4.Panchayat Union Council,
Kanyakumari Panchayat Union,
Kanyakumari, Kanyakumari District.



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5.Reliance Jio Infocom Ltd.,
Rep. by its Legal Manager,
Having its Circle Office at A1 Tower,
8th Floor 89-90, Dr. Radhakrishnana Salai,
Mylapore, Chennai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the Respondents No. 1 to 4 to forbear the Respondent No.5 from erecting 4G Towers in the Kanyakumari Town, without Permission from the Respondent Nos.3 and 4 herein as per the Section 160 of the Tamil Nadu Panchayats Act 1994.

For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.S.Shanmugavel,
Addl. Government Pleader for R1 & R2.
Mr.Aayiram K.Selvakumar for R3.
Mr.R.G.Shankar Ganesh for R5.

ORDER

Heard the learned counsel on either side.



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2.The petitioner wants this Court to ensure that before the fifth respondent erects their mobile phone towers in Kanyakumari Town, they obtain clearance from the local bodies on every occasion.

3.The writ petition was filed in the year 2015 and we are now in 2023. Quite a few statutory developments have taken place. Originally, the telecom companies were constrained to get obtain no objection certificates from the local bodies. Thereafter, G.O.(Ms)No.2 Information Technology Department dated 01.04.2002 was issued mandating that permission for installing towers, equipments and generators etc. on case to case basis will be issued by the concerned District Collector. In the year 2016, the Government of India notified the Indian Telegraph Right of Way Rules to regulate underground telegraph infrastructure (optical fiber cable) and overground telegraph infrastructure (mobile towers). To implement the said rules, the Government of Tamil Nadu issued G.O.(Ms)No.1 Information Technology Department dated 21.02.2018. Since G.O.(Ms)No.2 dated 01.04.2002 was holding the field, the Hon'ble Division Bench in W.P.(MD)Nos.15974 of 2018 etc batch dated



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29.08.2019 directed that the telecom companies must obtain prior permission from the District Collector before installing mobile phone towers. At this stage, the Government of India modified the Indian Telegraph Right of Way Rules in the year 2021.

4.After consideration of the existing position, the Government of Tamil Nadu formulated the Tamil Nadu Telecom Infrastructure Policy, 2022 in consonance with the Indian Telegraph Right of Way Rules, 2016. G.O.(Ms)No.4 Information Technology Department dated 25.01.2022 was issued making it clear that the permission must be obtained from the Nodal Officer (District Collector concerned).

5.But there has been a further amendment to the Indian Telegraph Right of Way Rules, 2016. The amendment was made on 17.08.2022. Rule 10B has now been inserted. It reads as follows:-

“10B. Establishment of telegraph infrastructure over private property. – Where the licensee proposes the establishment of overground telegraph infrastructure over any private property, the licensee shall not require any permission from the appropriate authority:



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Provided that in case of establishment of mobile tower or pole over a private building or structure, the licensee shall submit an intimation, in writing, to the appropriate authority, prior to commencement of such establishment:

Provided further that along with the intimation, he shall also submit the details of the building or structure, where the establishment of mobile tower or pole is proposed, and a copy of certification by a structural engineer, authorised by the appropriate authority, attesting to the structural safety of the building or structure, where the mobile tower or pole is proposed to be established.”

Therefore prior permission from the appropriate authority need not be obtained. Rule 2(b) of the Rules defines an “appropriate authority” in the following terms:-

“2.(b) “appropriate authority” means the Central Government, respective State Governments, local authority or such authority, body, company or institution incorporated or established by the Central Government or the State Government, in respect of property, under, over, along, across, in or upon which underground or overground telegraph infrastructure, is to be established or maintained,



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vested in, or under, the control or management of such appropriate authority;”

6.While obtaining prior permission has been dispensed with, the licensee is expected to adhere all the other norms and requirements set out in the rules. I must of course refer to the contention of the learned counsel for the petitioner that while introducing Rule 10B, the authorities have not chosen to amend the other provisions of the rules. After incorporation of Rule 10B, the provisions relating to obtaining prior permission had become redundant. But they still continue to find place in the rule book. Therefore, the Ministry of Communications must amend the rules as a whole. Whenever an amendment is sought to be introduced, it must be seen whether any of the other provisions of the statute book also will have to be correspondingly amended. In this case, such an exercise does not appear to have been undertaken. I, therefore expect the Ministry of Communications to come out with the revised Indian Telegraph Right of Way Rules as expeditiously as possible.



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7.Since there is no legal provision requiring that clearance must be obtained from the local body before installing the mobile phone towers, the petitioner's request cannot be accepted. The writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

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- 2.The Assistant Director of Town Panchayat,
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G.R.SWAMINATHAN, J.

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