

03.09.2024
Court No.13
Item No.7
AP

FMA 467 of 2021

**Reliance Jio Infocomm Limited
Vs.
Pradipta Kumar Jana & Ors.**

Mr. Sabyasachi Chowdhury
Mr. Rajarshi Dutta
Mr. V.V.V. Sastry
Mr. Sourav Roy

...For the Appellant.

Mr. Supriyo Chattopadhyay
Mr. Sudip Kumar Maiti

...For the Respondent.

Mr. Amitesh Banerjee
Mr. Tarak Karan

...For the State.

1. This matter has been assigned to this Bench. The appeal itself is taken up by consent of the parties.

2. CAN 3 of 2020 has been filed by the respondent/writ petitioner raising objections to the report of the District Magistrate dated 7th October, 2020. CAN 4 of 2021 has been filed by the appellant/Telecom Service Provider (hereinafter referred to “the TSP”) seeking implementation of the order of the District Magistrate.

3. The sum and substance of the lis between the writ petitioner/respondent and the TSP is with regard to the installation of a Ground Based Mobile Tower (GBMT) for the purpose of providing better communication and network to its users.

4. The respondent/writ petitioner firstly claims that the tower has been installed only 5 meter away from his house. He submits that he has an ailing father, who is 90 years old and is likely to be affected by the presence of the tower. It is thereafter submitted that the entire village is against setting up of the tower.

5. Learned counsel for the State has clarified before this Court as also the Single Bench that the local Panchayat has given permission for installation of the tower.

6. In the course of hearing of the appeal and with the view to allay the apprehensions of the respondent/writ petitioner a coordinate Bench had directed the District Magistrate to look into the complaints of the writ petitioner and the compliances by the TSP.

7. The District Magistrate held a meeting on 5th July, 2020. The Department of Telecom (DoT) was not present in such meeting.

8. Based on the further orders of coordinate Benches dated 30th June, 2020 and 26th August, 2020 the District Magistrate held another meeting on 7th October, 2020. The DoT was represented thereat. The petitioner was present and so was the TSP.

9. The DoT is stated to have indicated the applicable rules under which the TER cell of the DoT at the West Bengal is guided by such rules are required to be strictly

complied with by the appellant/TSP. The District Magistrate primarily found all the rules have been complied with.

10. What remained was the report of the Standing Advisory Committee on Frequency Allocation (hereinafter referred to as “the SACFA”). The SACFA clearance has been obtained by the appellant on 8th March, 2021. It must, therefore, be inferred that the emissions from the subject GBMT are within the limits prescribed by the DoT.

11. Learned counsel for the respondent/writ petitioner submits that the agreement between the landlord and the appellant is in violation of the Registration Act. It is further submitted that the installation of the tower is itself contrary to the West Bengal Panchayat Act, 1973, West Bengal Land Reforms Act, 1955 and Rules 31 of the West Bengal Gram Panchayat Administration Rules, 2004.

12. Having regard to the above and the proceedings that have taken place till date, this Court is prima facie satisfied that there is no health hazard in so far as the installation of the mobile tower is in question. A mobile tower provides better connectivity to a large cross-section of the citizens. The individual grievances based on the health of the petitioner’s father cannot stand in the way of the installation of the aforesaid mobile tower.

13. However, if the installation of the tower and the procedure followed therefore is in violation of the Statute indicated hereinabove, the District Magistrate and the persons invested with the authority under the aforesaid statutes shall be at liberty to take steps in accordance with law.

14. The appellant shall therefore be entitled to make operational the mobile tower in question forthwith. The appellant shall ensure strict and continued compliance of all the guidelines of the DoT. All parties and stakeholders shall act in terms of this order.

15. With the aforesaid directions, the appeal is allowed and disposed of.

16. Accordingly, CAN 3 of 2020 and CAN 4 of 2021 are disposed of.

17. In view of the disposal of the main appeal, all other connected pending applications, if any, shall also stand disposed of.

18. There shall be no order as to costs.

19. All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)