

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 15903 OF 2024

- | | | | |
|----|--|---|----------------|
| 1. | Indus Tower Limited |) | |
| | Having Circle Office at |) | |
| | Office No. 2010, E-Core, |) | |
| | 2 nd Floor, Solitaire Business Hub, |) | |
| | Vimannagar, Pune-411014 |) | |
| | Through its authorized signatory |) | |
| | Lalita Vhatkar, Age 45m |) | |
| 2. | Ashok Yashwant Chougule |) | |
| | Age 70 years, |) | |
| | Occupation – Agriculturists, |) | |
| | Residing at 300/1, |) | |
| | Pnadharpur Road, |) | |
| | Chougule Mala, Tanang, |) | |
| | Taluka – Miraj, |) | |
| | District – Sangli. |) | ...Petitioners |

Versus

- | | | | |
|----|------------------------------------|---|----------------|
| 1. | Gram Panchayat |) | |
| | Tanang, Taluka-Miraj, |) | |
| | District – Sangli. |) | |
| | Through its Gramsevak. |) | |
| 2. | Sarpanch, |) | |
| | Gram panchayat, |) | |
| | Tanang, Taluka – Miraj, |) | |
| | District – Sangli. |) | |
| 3. | Village Development Officer, |) | |
| | (Gram Sevak) |) | |
| | Gram panchayat, Tanang, |) | |
| | Taluka – Miraj, District – Sangli. |) | ...Respondents |

Mr. Anil Anturkar, Senior Advocate a/w Mr. Sugandh Deshmukh, for the Petitioner.

Mr. Tejas Dande (VC) Sarvesh Deshpande, Pratik Sabrad, for the Respondent Nos. 1 to 3.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 06 JUNE 2025

JUDGMENT (Per Advait M. Sethna J.) :

1. This writ petition is filed under Article 226 of the Constitution of India praying for the following substantive reliefs :-

“[A] That this Honourable Court be pleased to issue a writ mandamus or writ certiorari or writ in the nature of mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India, 1950, quashing and setting aside the impugned Resolution No. 3 passed by the Respondent no. 1, Village Gram panchayat Tanang, Taluka - Miraj, District - Sangli dated 08.08.2024 thereby cancelled the No Objection Certificate (NOC) and stopped the installation work of mobile tower of the petitioner at Gat No. 300/1, Tanang, Taluka- Miraj, District – Sangli.

[B] That this Honourable Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India, 1950, be pleased to direct the Respondent No. 1 - Gram panchayat, their employees, their agent, or any other person claiming through the Respondent No.1 not to obstruct the installation of the mobile tower of the Petitioner - Company at Gat No. 300/1, Tanang, Taluka - Miraj, District - Sangli and be pleased to direct them to operate the allow the Petitioner to operate the mobile tower without any obstruction and hindrance by Respondent - Gram panchayat or by residents of the village or any other person claiming through the Gram panchayat.”

2. We have heard Mr. Anil Anturkr, learned senior counsel for the petitioner and Mr. Tejas Dande, for respondent nos. 1 to 3 and with their assistance we have perused the record.

3. The challenge in this petition is to a resolution no. 3 dated 8 August 2024 passed by the Gramsabha, Grampanchayat of Tanang, Taluka Miraj, Dist. Sangli, Kolhapur. (“**Impugned Resolution**”). By such resolution, the No Objection Certificate (“**NOC**”) granted to the petitioner for installing the mobile tower on the subject land owned by petitioner no. 2 is cancelled by which, the petitioner is aggrieved and hence approached this Court by way of this writ petition. We are called upon to examine the validity and legality of the impugned resolution in light of the legal position as applicable.

4. At the very outset, we are reminded of the following observations of Justice Sanjay Kishan Kaul (as His Lordship then was) in (**K.R. Ramaswamy vs. Government of India**)¹ when his Lordship observed :-

“To Be Or Not To Be” or rather “to have mobile phone towers or not to have mobile phone towers”, is the question

2. Petitioners seek regulations qua where the mobile phone towers should be installed on account of ill-effects of technology on human beings. But, none of the petitioners have any conclusive material to show such ill-effects of radiation from the mobile phone towers. The apprehension arises on account of what is stated to be the different studies to the effect that the existence of mobile phone towers may possibly amount to health hazards. The moot point is, though, whether there are actually any health hazard on account of mobile phone towers, and if so, what are the precautions necessary.”

5. The necessary facts for adjudication are as under :-

6. The petitioner no. 2 is the owner of land bearing survey no. 300/1 situated at village – Tanang who has agreed to install the mobile tower of

1. 2015 SCC OnLine Mad 5858

petitioner no. 1 on the said land. The petitioner no. 1 is the registered infrastructure provider for the mobile network having registration granted by the Department of Telecommunication (DOT) and having a license under section 4 of the Indian Telegraph Act, 1885.

7. The petitioner nos. 1 after due technical study/survey/report from all aspects including radio frequency, identified the location to improve the network connectivity and after negotiations entered into an agreement with petitioner no. 2 for installation of mobile tower on the land in question.

8. According to the petitioners before starting work of installation of mobile tower, the petitioners duly applied to the Gram Panchyat of the said village Tanang on 28 August 2023 for issuance of NOC for installation of the mobile tower and electricity connection.

9. The petitioner no. 2 also applied to the Gram Panchyat for the said village for NOC by an application dated 4 November 2023. Such application was filed along with the NOC from the adjoining villagers of the said village wherein the villagers who signed the NOC also expressed their desire for the requirement of installation of mobile tower in the area, due to issue of poor mobile network connectivity. In pursuant to such application made by the petitioner no. 2, Gramsabha of the said village passed the resolution [bearing no. 10/1] on 20 November 2023 to grant its NOC for installation of the mobile tower on the land/property of

petitioner no. 2. In pursuance of such resolution, the respondent nos. 2 and 3 issued to the petitioners an NOC on 4 December 2023.

10. The petitioner, after receipt of NOC from respondent no. 1, started the civil work to lay the foundation for installation of the mobile tower after incurring cost and expenses for construction and infrastructure. According to the petitioner, about 90% of such work has attained completion and mobile tower is almost ready for operation.

11. The petitioners contend that after completion of the foundation/civil work for the installation of the said mobile tower due to issues with some of the residents of the Gram Panchayat who raised a objections to the construction of such mobile tower mainly on health grounds, that the radio waves emitted from the mobile tower would be a health hazard. To this effect a complaint dated 19 December 2023 was filed by these residents with the Block Development Officer (“BDO”). The petitioners state that considering such complaint respondent nos. 2 and 3 issued a notice dated 22 December 2023 to the petitioners calling upon the petitioners to stop work until the issues in relation to the above complaint are sorted out.

12. The petitioners contends that the said stop work notice dated 22 December 2023 was illegal and respondent nos. 2 and 3 i.e., the Sarpanch and Gram Panchayat have no authority to stop such installation of the said mobile tower. In such circumstances, the petitioners filed an

application dated 29 December 2023 before the BDO of Miraj, Sangli making a grievance on the unjustified stoppage of work of installation of the said tower. The petitioner no. 2 in support of his application also enclosed a report of the World Health Organization (WHO) and decisions of the Court to support such application.

13. The BDO by an order dated 22 May 2024 *inter alia* directed that the respondent no. 1 – Gram Panchayat ought to give permission for the installation of such mobile tower, with a further direction to respondent nos. 2 and 3 to submit a report to the BDO.

14. It is the petitioners case that on the basis of the said order dated 22 May 2024 passed by the BDO. The respondent nos. 2 and 3 thereafter communicated on 18 June 2024 to the petitioner no. 2 that the stay on the work of the mobile tower granted by letter dated 22 December 2023 is vacated. The petitioners would submit that thereafter one resident of the said village along with eleven others with alleged ulterior motive made a complaint dated 24 July 2024 to the Gram Panchayat of the said village against the erection of the mobile tower on an apprehension, with regard to the radiations being emitted from such mobile tower, being dangerous to health of the locals in the village.

15. It is on such complaint again a notice was issued by respondent no. 3 on the even date directing petitioner no. 2 to stop the work of the mobile tower. According to the petitioner such notice was issued to the

petitioners without an opportunity of any personal hearing to the petitioners. Petitioner no. 1 furnished a detail reply to such notice dated 26 July 2024, to which petitioner no. 1 annexed all necessary documents and Court orders to urge that the complaint of the villagers was based on the misplaced apprehension on health issues.

16. On such backdrop, a meeting of the Gramsabha was called on 8 August 2024 in which the respondent Gram Panchayat passed the impugned resolution cancelling the NOC granted to the petitioners on 4 December 2023 by a resolution dated 20 November 2023, which was communicated to the petitioners by the Sarpanch and Gramsevak on 13 August 2024.

17. It is in these circumstances the present petition is filed under Article 226 of the Constitution of India.

Submissions :-

18. Mr. Anturkar, learned senior counsel at the outset submit that the action of the Gram Panchayat is high handed, arbitrary and in gross violation of principles of natural justice, no opportunity of a personal hearing was accorded to the petitioners nor was any intimation or prior notice was given to the petitioner no. 1.

19. He would next submit that merely on the basis of a haphazard complaint filed by some of the villagers with ulterior motive and without verifying the facts, the scientific evidence respondent no.1 in a high

handed manner revoked the NOC dated 4 December 2023 issued to the petitioners, pursuant to the Gramsabha Resolution No. 10/1 dated 20 November 2023. The petitioners were also directed to stop the tower installation work in a manner unknown to law.

20. It is submitted that the impugned action of the respondent Gram Panchayat to entertain such complaint alleging health risk from radiation so as to form the basis of the resolution is without any rationale and justification either in fact or in law. There was no evidence whatsoever or/any scientific data on the basis of which the residents could even remotely substantiate/justify such complaint. It is hence submitted that for such reasons, the impugned resolution is *ex-facie* arbitrary, and is based on extraneous considerations, which is untenable and legally unsustainable.

21. It is next submitted that the Gram Panchayat has no legal authority and or technical expertise on such issue of EMF (Electromagnetic Field) and related issues, which fall under the exclusive domain of Department of Telecommunication.

22. It is then submitted that the State Government has issued a Government Resolution dated 11 December 2015, to submit that NOC once granted by the Gram Panchayat, cannot be revoked. It is hence submitted that the revocation of NOC is without jurisdiction and contrary to the said GR dated 11 December 2015. It is submitted that also the GR dated 18 January 2024 issued by the Rural Development Department,

State of Maharashtra lays down comprehensive guidelines for setting out telecoms infrastructure in the State of Maharashtra. In this context Mr. Anturkar would refer to Clause – 10 B(3) of the Telecoms Policy dated 18 January 2024. The policy provides that no application shall be rejected unless the applicant has been given an opportunity of being heard on the reasons for such rejection. Therefore, the impugned resolution of the Gramsabha dated 8 August 2024 is completely contrary to the said telecom policy and guidelines.

23. Mr. Anturkar would submit that once the petitioners received permission for installation of the mobile tower and they have complied with all the requirements for such installation, then the Gramsabha or the respondent Gram Panchayat had no authority to stop work for such installation that too after substantial work stood completed. Mr. Anturkar would then refer to the ‘Indian Telegraph Right of Way Rules, 2016’, which are promulgated to facilitate the development of infrastructure, through smooth execution of digital communication projects, across the country by adhering to clear, transparent and consistent set of rules. It is submitted that pertinently, the amendment in the said Rules read with the Telecommunication Act of 2023 do not mandate a requirement of permission for right of way in respect of a telecommunication network (towers).

24. Mr. Anturkar would also place reliance on Section 14 (4) of the

Telecommunication Act, 2023 to submit that no person can have an authority to take any coercive action, such as sealing, preventing access or shutting down of the telecommunication network, with the exception of natural disaster or public emergency. It is submitted that such exceptions have not arisen in the present case, hence, the respondents have acted in violation, breach of the said statutory provisions.

25. Mr. Anturkar would finally submit that the impugned resolution dated 8 August 2024 passed by respondent no. 1 is contrary to law considered by any standards, and thus deserves to be quashed and set aside and the petition ought to be allowed.

26. Mr. Dande, learned counsel for the respondents would oppose the petition in countering the submissions of Mr. Anturkar. There is no written opposition/reply filed to the petition. He would submit that a bare perusal of the order dated 8 August 2024 would indicate that it is a speaking and reasoned order. Considering the serious health issues emanating from the radiations which are detrimental to the health, the impugned resolution has been passed in larger public interest.

27. According to Mr. Dande, the respondent no. 1 has duly considered the complaint made by 11 persons to stop the work of erecting the mobile tower in light of the serious health risks to the residents of the said village. It is submitted that only after due consideration of all such facts and circumstances the impugned resolution was correctly passed by respondent

no.1 which warrants no interference.

28. Mr. Dande, would submit that respondent no. 1 had taken into consideration the fact that the petitioners themselves spread rumors about the ill effect of mobile towers and the very same person wish to erect the same on the land belonging to them. Thus, there is clear vested interest of the petitioners in this regard, as the majority of the villagers opposed such installation. According to him this was a sufficient ground for taking the majority consensus into consideration and passing the impugned resolution.

29. Mr. Dande would then submit that there is no legal infirmity, and or irregularity in the impugned resolution which according to him is passed in accordance with law. It is premised on larger public interest, hence, the petitioners is completely misplaced. It is only after comprehensively analyzing all issues that the impugned resolution was passed in larger public good, which ought not to be interfered with the Mr. Dane's submission. He would hence pray that for all such reasons the petition be dismissed.

ANALYSIS

30. At the outset, we find that the impugned resolution of respondent no. 1 on 8 August 2024 is passed without any notice and hearing to the petitioner. As the civil rights of the petitioners were being prejudicially affected by such resolution, the petitioners ought to have been granted an

opportunity of being heard, as the settled principles of law would mandate. In our opinion, as such course of action was not resorted, and as not controverted by the respondents, there is substance in Mr. Anturkar's submission that the impugned resolution is arbitrary, in breach of the well settled principles of *audi alteram partem*.

31. We may observe that in the given facts and circumstances a NOC dated 4 December 2023 was granted in favour of the petitioners for installation of mobile tower on the land belonging to petitioner no. 2 by a resolution No. 10/1 of the Gramsabha of the said village, on 20 November 2023. Such valid NOC allowed the petitioner to carry on with such construction of the mobile tower, which could not have been revoked except in accordance with law. Thereafter, suddenly on 22 December 2023 petitioners were issued a notice to stop work when substantial work in this regard was completed, causing grave prejudice to the petitioners. The justification for passing the impugned resolution 8 August 2024 is rather peculiar, namely despite granting in favour of the petitioners an NOC dated 4 December 2023, some complaints were filed requiring such NOC to be revoked mainly on the ground that such mobile tower would cause health hazard/risk to the villagers, due to the radiations therefrom. The respondent no. 1 appears to have taken such complaint at its face value and without any materials to support their decision that the complaint as made would in any manner be justified.

32. Hence, we find force in the submission of Mr. Anturkar, that the impugned resolution was passed merely on the basis of unsubstantiated complaints based on purported health issues. Also, Respondent no.1 before passing the resolution has not independently verified the veracity of such complaint on the basis of any scientific materials. The impugned resolution suffers from the vice of non-application of mind and lacks the rationale to support such action. In such view of the matter, we are not persuaded to agree with Mr. Dande that such resolution was passed after comprehensively considering all aspects/issues, which is not the case.

33. We find substance in Mr. Anturkar's submission that the impugned resolution would run contrary to the Government Resolution dated 11 December 2015 ('GR'). A perusal of clause - 4 of the said GR indicates that once the Gram Panchayat has granted the NOC, it cannot be revoked/cancelled in any circumstances. Such contention is not controverted by the respondents for us to take a different view.

34. We may now refer to Section 14(4) of the Telecommunication Act, 2023 which reads thus :-

“(4)Notwithstanding anything contained in any other law for the time being in force, no public entity, except with the permission of an officer authorised by the Central Government for this purpose, shall have the authority to take any coercive action, such as sealing, preventing access, or forcible shutdown of the telecommunication network established by an authorised entity, except where such actions may be necessary to deal with any natural disaster or public emergency.”

35. We find that there are no such exceptional circumstances like natural disaster or public emergency which would compel the respondent/authorities to cancel/revoke the NOC dated 4 December 2023 already granted in favour of the petitioners, to otherwise justify the impugned resolution, as the respondents have not placed anything contrary on record, in this regard.

36. The petitioners have placed reliance on clause – 10B(3) of the Telecom Policy dated 18 January 2024 to urge that no application shall be rejected without giving an opportunity of being heard. So also, the Indian Telegraph Right of Way Rules, 2016, as amended read with the Telecommunication Act, 2003 aims at promoting and facilitating the development of such infrastructure including mobile towers, across the country especially in the contemporary modern times. Thus, the impugned resolution dated 8 August 2024, could not have been passed only on the basis of an unsubstantiated complaint which was contrary to the statutory framework.

37. On a perusal of the impugned resolution, we find that it also lacks reasons. It is a duty and obligation of a reasonable body of persons to support its conclusion with lawful reasons, this being a *sine qua non*. In the context of duty of a statutory body to record reasons in the Supreme Court in the case of **Sant Lal Gupta and others vs. Modern Cooperative**

Group Housing Society Limited and others,² has made the following significant observations :-

“27. It is a settled legal proposition that not only administrative but also judicial orders must be supported by reasons recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice delivery system, to make it known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice.

*"3. ... The giving of reasons for a decision is an essential attribute of a judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind."**

The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is the principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected. (Vide State of Orissa v. Dhaniram Luhar¹⁶, State of Rajasthan v. Sohan Lal, Vishnu Dev Sharma v. State of U.P., SAIL v. STO, State of Uttaranchal v. Sunil Kumar Singh Negi, U.P. SRTC v. Jagdish Prasad Gupta, Ram Phal v. State of Haryana, State of H.P. v. Sada Ram and Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity.)”

38. Additionally we also would be guided by the decision of Supreme Court in the case of **Raj Kishore Jha vs. State of Bihar and others³** and others where it was echoed that reason is the heartbeat of every conclusion. Without the same it becomes lifeless.

39. In the given facts and circumstances from the impugned resolution, we find that except for citing the complaint which made some

2. (2010) 13 SCC 336

3. (2003) 11 SCC 519

unsubstantiated apprehensions about the dangers of radiation from the mobile tower, there is no acceptable much less lawful any reason in passing the impugned resolution so as to render such decision lawful. Also, as noted above, the petitioners, in whose favour the NOC was already granted earlier, were suddenly asked to stop work mid-stream without being given any opportunity of being heard on the sole basis of some complaint referred to in the impugned resolution, which would bypass all settled norms of reasonableness and non-arbitrariness as recognized in administrative jurisprudence.

40. We are not in agreement with Mr. Dande, that impugned resolution is justified in larger public interest, in the absence of any material whatsoever to buttress such submission. We do not find any independent assessment of scientific material made by the respondent no. 1 before passing the impugned resolution dated 8 August 2024. We cannot therefore subscribe to the stand of the respondent no. 1, which is premised purely on surmises and conjectures and the perception of some complaint which apparently has no basis. Before adverting to such drastic action of cancelling the petitioner's NOC, the prudent norm of an independent scrutiny of such complaint was legally mandated.

41. We may observe that the plea of larger public interest which the respondent seeks to canvass, seems to be based on misplaced apprehensions. This would be clear from the following decisions of various

High Courts, which had the occasion to deal with such issues, many of which have been cited by Mr. Anturkar. Such judgments are summarized as under :-

42. In Biju K. Balan and others vs. State of Maharashtra⁴ and others, this Court in a similar context observed as under :-

“47. It was submitted on behalf of the petitioners that in the analysis, referred to in the report on possible Impacts of Communication Towers on Wildlife including Birds and Bees (Extracted above), majority of studies have shown impact of electro-magnetic radiation on humans, and, therefore, the permission for erecting the TCS/BS and installation of Equipments for Telecommunication Network is required to be stated.

48. We are unable to accede to this submission. The issue cannot be tested on the numerical strength of the reports without examining the nature of the scientific material and findings therein. It would be too simplistic way to deal with the issue. Unfounded and unsubstantiated claims do not command scientific weight. The mere fact that in majority of studies adverted to in the aforesaid Report some or other impact of the electro-magnetic waves was found on humans does not justify the conclusion that the electro-magnetic radiation emanating from TCS/BS has adverse and ill effects on human health and well-being.

55. Having examined the matters on the anvil of special burden of proof in environmental cases, as expounded by the Supreme Court, in the case of A.P. Pollution Control Board (supra), we find that the scientific material, as of today, does not indicate any identifiable risk of serious harm on account of non-ionized radiation emanating from TCS/BS and Equipments for Telecommunication Network. Thus, we are not inclined to exercise our jurisdiction under Article 226 of the Constitution of India on the basis of apprehensions which are not rooted in the facts and supported by reliable scientific material.”

43. In Kapil Choudhary & Anr. vs. Union of India & Others⁵ High Court of Delhi has taken a similar view as seen from the following relevant paragraphs of the said decision :-

“11. In the light of these facts, the writ petition was dismissed. However, the court passed the following directions.

4. (2019) 2 Bom CR 625

5. 2016 SCC OnLine Del 2558

12. In view of the above, it is clear that there is no scientific data available to show that installation of mobile phone towers and the emission of the waves by the said towers is in any way harmful for the health or hazardous to the health of citizens. There is no conclusive data to the said effect. The petitioner has not been able to produce any data whatsoever showing any such harmful effects on the health of human beings. The petitioner has also not been able to show violation of any norms by the respondent.

"31. Before parting with this matter, we deem it necessary to mention that the concerned authorities should, by way of communication through T.V., Radio etc. bring it to the notice of the people at large that there is no reason for them to fear the erection of the Base Transceiver Station, known as the Wi-Fi Mobile Tower. The reason why we are saying so is that the impression in the mind of a common man is that the Wi-Fi Mobile Towers erected all over the State has the potential to cause health hazard due to the emission of radio active waves from the said tower"

44. In the case of **Indus Tower Ltd Vs. Grampanchayat and Others**⁶

passed by this court has taken a similar view, the relevant paragraphs of this decision, reads thus :-

"3. The question that has to be dealt with in this petition is, whether or not the respondent-Grampanchayat could have passed a resolution, Resolution No. 7, directing the petitioner to stop the further work relating to erection of mobile tower, on the ground that some of the villagers have taken objection for erection of the mobile tower, because they believe that the radiation emitted by the mobile tower is harmful to the health of the villagers and can possibly be carcinogenic.

4. The role of the Grampanchayat in the matter of erection of mobile tower in the vicinity of the Grampanchayat, as rightly submitted by learned Senior Advocate for the petitioner, is confined to only issuing of No Objection Certificate in terms of the Government Resolution dated 11th December 2015 and, therefore, we are of the view that if any NOC has been issued by the Grampanchayat, as required under the G.R. dated 11th December 2015, the Grampanchayat loses its control over the subject of erection of mobile tower.

5. In the present case, the Grampanchayat, i.e. respondent no. 1, has already issued no objection vide its certificate dated 30th June 2022 in favour of the petitioner in the matter of erection of mobile tower in the vicinity of the Grampanchayat and, therefore, we are of the opinion that Grampanchayat could not have passed another resolution; Resolution No. 7, which is impugned herein, directing the petitioner to stop further work of erection of the mobile tower. There is no provision whatsoever made in the G.R. dated 11th December 2015 conferring any such

6. 2023 SCC OnLine Bom 1472

power upon any Grampanchayat and, therefore, the impugned resolution passed by the Grampanchayat is devoid of any authority in law and as such is illegal.

7. These observations would suffice us to say that the fear expressed by the villagers is without any basis. We may add here that today also, there is no change in the fact situation with regard to the absence of relevant scientific material, after the position which obtained on the date of rendering of the judgment in January 2019 in the aforesaid case of Biju K. Balan (Supra): The respondent no. 1, which has passed the impugned resolution, Resolution No. 7, based upon the apprehension that radiation emitted by a mobile tower has harmful and carcinogenic effect, is not based upon any scientific material. It is well settled law that any agency or institution or person which seeks to deny a benefit or right to another on a special ground like the ground of mobile tower radiation being harmful to the health of the citizens, such agency or institution or person has a special burden of proof to establish the soundness of such a ground. But, in the present case, the respondent-Grampanchayat has failed to discharge the special burden of proof which was on its shoulders."

8. In the result, we find that the impugned resolution, Resolution No. 7, passed on 22nd July 2022, cannot be sustained in the eye of law and it deserves to be quashed and set aside. We also find that the respondents are required to be directed to not obstruct installation of the mobile tower. Accordingly, we pass the following order:—

(i) The petition is allowed. The impugned resolution, Resolution No. 7, dated 22nd July 2022, passed by the respondent no. 1-Grampanchayat, is hereby quashed and set aside.

(ii) We direct that the respondents shall not obstruct the petitioner from operating the mobile tower so long as the occupation of the mobile tower is in accordance with law."

Considering the above, the resolution impugned in the said proceedings dated 22 July 2022 was set aside.

45. Again in the case of Indus Tower Limited, represented by its Authorised Signatory Vs. State of Goa, Through Its Chief Secretary and Others⁷ a bench of this Court at Goa has held thus:-

"48. It is clear from the Policy 2020 issued by the Goa Government and the Rules of 2016 that if the radiations are beyond the limit, the concerned authority is empowered to direct petitioner to relocate the said tower or even to stop operating it. Rule 13 quoted earlier gives right to the appropriate authority to seek removal of Telegraph Infrastructure. Similarly, clause 11 of

⁷ 2022 SCC OnLine Bom 6863

Policy 2020 gives right to the authority to seek removal of mobile towers which reads thus: —

'11. Right of the Authority to seek removal of Mobile Towers and OFC and other related telecom infrastructure.-- Wherever it is necessary and expedient to remove or alter any telecom infrastructure, the Nodal Officer shall issue a notice to the applicant, being the owner of such telecom infrastructure to remove or alter its location. On receipt of the notice, the applicant shall, forthwith and within a period of thirty days, proceed to submit, a detailed plan for removal or alteration of such telecom infrastructure. The Nodal Officer shall, after examination of the detailed plan submitted by the applicant, pass such orders as it deems fit. Provided that the Authority, shall, having regard to emergent and expedient circumstances requiring the removal or alteration of such telecom infrastructure, provide reasonable time to the applicant for removal or alteration of such telegraph infrastructure. Provided, further that the responsibility and liability, including the cost thereof, for removal or alteration of such telecom infrastructure shall be borne by the applicant"

49. Even if the petitioner is allowed to operate the said mobile tower the powers of certain authority can be exercised if it is found that the radiations emitting from such tower exceed the limit. However, the impugned order passed by respondent no. 2 followed by the letter dated 13.06.2022 issued by respondent no. 3 to the petitioner are clearly without any authority and violative of principles of natural justice and, therefore, needs to be quashed and set aside."

46. Also in the case of Muktipark Co-Operative Society Vs. Ahmedabad Municipal Corporations passed by the Gujarat High Court, the Court was pleased to take the following view :-

"31. Before parting with this matter, we deem it necessary to mention that the concerned authorities should, by way of communication through T.V., Radio etc. bring it to the notice of the people at large that there is no reason for them to fear the erection of the Base Transceiver Station, known as the Wi-Fi Mobile Tower. The reason why we are saying so is that the impression in the mind of a common man is that the Wi-Fi Mobile Towers erected all over the State has the potential to cause health hazard due to the emission of radio active waves from the said tower."

32. In view of the aforesaid discussion, we have reached to the conclusion that the petitioner are not entitled to any of the reliefs as prayed for in the petition. The petition, being devoid of any merit, is accordingly ordered to be rejected. No costs."

47. In Reliance Infocom Ltd. Vs. Chemanchery Grama Panchayat & Ors.⁹ passed by the Kerala High Court, similar view in the aforesaid decision was taken. The relevant paragraphs read thus:-

“7. The Telecom Regulatory Authority of India Act, 1997 has constituted the Telecom Regulatory Authority. Section 11 of the Act deals with powers and functions of the authority. Section 12 confers power on the authority to call for information, conduct investigations etc. Clause 9.1 of Ext. P7 obliges the licensee to furnish to the Licensor/TRAI, on demand in the manner and as per the time framed such documents, accounts, estimates, returns, reports or other information in accordance with the rules/orders as may be prescribed from time to time. Licensee shall also submit information to TRAI as per any order or direction or regulation issued from time to time under the provisions of TRAI Act, 1997 or an amended or modified statute. Clause 10 of Ext. P7 enables the authority to suspend, revoke or terminate the licence of the petitioner. Clause 16.2 states that all disputes relating to the licence will be subject to jurisdiction of Telecom Disputes Settlement and Appellate Tribunal (TDSAT) as per provisions of TRAI Act, 1997 including any amendment or modification thereof.

8. We notice that the Panchayat has as on today no scientific data or relevant materials to cancel the licence already granted on the ground that the installation of the Tower would cause any health hazards. Licence granted has been cancelled by the Panchayat based on an apprehension that the radiation may cause health hazards to the people of the locality. Further Ext. P5 also says that installation of generator would cause sound pollution. Petitioner has not installed any generator as on today and if the installation of generator would cause any sound pollution, evidently Pollution Control Board can give appropriate direction and the petitioner will have to obtain necessary consent from the Pollution Control Board for installation of generators, so that it would not cause any sound pollution. So also, if the installation of Tower and the emission of electromagnetic waves cause any air pollution, affecting human health the Pollution Control Board can take appropriate measures under Air (Prevention and Control of Pollution) Act, 1991.

10. We are therefore inclined to allow WP(C). 18242 of 2006 and quash Exits. P5 and P6 orders and there will be a direction to respondents 1 to 3 to give adequate and effective protection to the petitioner to install the tower in case any obstruction is caused by respondents 4 to 6 and their supporters.”

48. In Vijay Verma Vs. State of H.P. & Others¹⁰ the High Court of Himachal Pradesh made the following observations :-

9. 2006 SCC OnLine Ker 247

10. 2015 SCC OnLine HP 2722

"17. It is evident from the perusal of the aforesaid reports that the exposures to electromagnetic fields (EMF) do not have any notable effect on the health of human beings. Evidently, the studies conducted till date by the two premier organizations i.e. WHO and SCENIHR go to indicate that despite a large number of studies having been carried out for the last two decades to assess the potential health risk on account of emission of EMF, no major adverse health effect has been noticed.

18. What in fact emerges is that radio frequency radiation from the mobile towers and phones are in minuscule range and is lakhs of time weaker than X-rays or UV rays or even normal visible light. In fact, so low that they simply cannot cause any disturbance of electrons in the basic atoms of matter or living tissue and hence classified as "non-ionising radiation".

19. Radiation in itself is nothing new and has been there since life began on earth three and a half billion years ago. Radiation is all around us and we are all actually submerged in naturally occurring ionizing radiation reaching us from the outer space, even from the radioactive elements and materials around us. Sun shine in itself is a familiar form of radiation.

20. We in view of the overwhelming material are of the considered view that as of now there is no cause of alarm with regard to the possible ill-effect on human health by electromagnetic Field (EMF radiation) from mobile phone towers and mobile phones because the limits adopted in India cannot have any biological effect on human. In fact, the limits set by India are much lower than the internationally adopted recommendations of the International Commission of Non-Ionizing Radiation Protection (ICNIRP) which account for thermal and non thermal effect.

21. There is no conclusive evidence as on date which may have found any adverse health effect by EMF radiation from the mobile tower or mobile hand set by the WHO or SCENIHR and so long as EMP radiation power level in vicinity of Mobile Base Stations is below the prescribed limits, there should not be any cause or concern for adverse thermal effect on human beings living close to Mobile Base Station or in the nearby vicinity.

22. Now in teeth of the report submitted by the WHO and another report submitted by the SCENIHR, the individual opinions relied upon by the petitioners to claim that the EM radiations from the Mobile Base Stations are source of health hazard, for the time being, can conveniently be brushed aside as having no scientific backing whatsoever and therefore, any such reports relied upon by the petitioners shall have to give way to the opinion rendered by the WHO and SCENIHR. However, it appears that some myths are being spread and circulated simply in order to create fear amongst the people, but then as aptly said by Nobel laureate Marie Curie that "Nothing in life is to be feared, it is only to be understood. Now is the time to understand more, so that we may fear less."

49. All of the above decisions clearly do not accept the contentions similar to the one as canvassed by the complainants in the present case and

throw much needed light on the vexed issue of potential health risks of radiation from mobile towers, which is also raised in the given case. The above, decisions in our view, are squarely applicable to the given facts and circumstances in hand.

50. Before parting we may observe that in the modern age the inescapable reality is that mobile phones are no longer a luxury but an inevitable necessity, it be in the urban areas or in the remotest part of the country. In order to facilitate seamless communication throughout the country and to ensure that citizens of the remote areas are not deprived of revolution in technology which manifest itself in the form of mobile phones, mobile towers cannot be summarily dispensed with on misplaced information. The judgments of various Courts cited supra makes the position clear in this regard, leaving no room for ambiguity or uncertainty, for the present.

51. In light of the foregoing discussion, we are convinced that the petition deserves to be allowed. It is allowed in terms of prayer clause (A) and (B). No costs.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]