

2023 SCC OnLine Bom 1472

In the High Court of Bombay
(BEFORE SUNIL B. SHUKRE AND RAJESH S. PATIL, JJ.)

Indus Towers Ltd. ... Petitioner;

Versus

Grampanchayat and Others ... Respondents.

Writ Petition No. 15779 of 2022

Decided on July 20, 2023

Advocates who appeared in this case :

Mr. A.V. Anturkar, Senior Advocate, with Mr. Sugandh B. Deshmukh,
for the Petitioner.

None for the Respondents.

The Judgment of the Court was delivered by

SUNIL B. SHUKRE, J.:— Heard learned Senior Advocate for the petitioner. Nobody is present for the respondents although the respondents have been duly served with notice for final disposal at the admission stage, not once but twice, as noted by this court in the order dated 8th June 2023. By this order, it was also made clear that respondent nos. 1 to 3, who were absent, were being granted further opportunity as a last chance to make their submissions in the matter, while alerting them that no further opportunity shall be granted to the parties for making their submissions and accordingly, the matter was stood over to 3rd July 2023. On 3rd July 2023, the board did not reach and, therefore, it was adjourned to 19th July 2023 and again it was adjourned to 20th July 2023 i.e. this date. The daily board of today puts the parties on sufficient notice that today this matter would be taken up for final disposal; yet, the respondents are absent.

2. Considering the fact that sufficient opportunity has already been granted to the respondents and also the fact that this matter has been already kept for final disposal at admission stage, today we have finally heard learned Senior Advocate for the petitioner. Hence, RULE. Rule is made returnable forthwith in terms of the order dated 8th June 2023.

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 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.

6. The matter can also be examined from another angle, which would require this court to examine the correctness or otherwise of the ground of the complaint made by some of the villagers, which has made the Grampanchayat to pass the impugned resolution. Their ground relates to their apprehension about the radiation emitted by the mobile tower being harmful to their health and may have the effect of causing cancer to the villagers. However, such an apprehension of the villagers, in another case, which is the case of *Biju K. Balan v. State of Maharashtra*, 2019 SCC OnLine Bom 97, has been dismissed by a Coordinate Bench of this court, (B.R. Gavai and N.J. Jamadar, J.J.), in its judgment rendered in Writ Petition No. 2152 of 2014, along with connected matters, on 4th and 23rd January 2019. It held that there is no scientific material or data warranting prohibition on installation of mobile tower and that jurisdiction under Article 226 of the Constitution of India cannot be exercised on the basis of apprehensions, which are not rooted in facts and which are not supported by reliable scientific material. It also noted that there was no scientific material as of the date of rendering of the judgment, which indicated any identifiable risk of serious harm on account of such radiations. Relevant observations have been made by the Division Bench in paragraph 55 of its judgment, which is reproduced as under:—

“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 v. Prof. M.V. Nayudu (Retd.), (1999) 2 SCC 718, 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.

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.

9. Rule is made absolute in the above terms. Petition is disposed of.