

(2020) 09 PAT CK 0102

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3300 Of 2013

Atc Telecom Infrastructure Pvt. Ltd. And Anr

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 29-09-2020

Acts Referred:

Bihar Municipal Act 2007 — Section 127(1)
Constitution Of India, 1950 — Article 246, 265

Citation : (2020) 09 PAT CK 0102

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Gopal Jain, Rajesh Ranjan, Shakti Suman Kumar, Pankaj Kumar, Dr. K. N. Singh, P.N. Shahi, Vikash Kumar, Prasoon Sinha, Nityanand Mishra, Santosh Kumar, Purushottam Jha, Rajesh Kumar Verma

Final Decision : Disposed Of

Judgement

1. Petitioners who are engaged in the business of telecommunications have established passive infrastructure, over private properties, at different places within the State of Bihar.

2. Concerning that, different Municipal bodies within Bihar have issued notices to the petitioners (Annexure-4 series varying from 25.08.12 to 02.02.2013) asking them to pay fee/charges in terms of and under the provisions of the Bihar Communication Towers and Related Structures Rules, 2012. (Referred to as the 2012 Rules).

3. Challenging these Rules as also the notices, Annexure-4 series, on 13.02.2013 petitioners filed the instant Petition praying for the following reliefs:

"(a) That this Hon'ble Court do issue an appropriate Writ/Order/direction to hold and declare clause (I) of sub-section 1 of Section 127 of Bihar Municipal Act, 2007 as substituted by Act 7 of 2011 is ultra vires Article 265 and 246 of the Constitution of India;

(b) That this Hon'ble Court do hold and declare that the Bihar Telecommunication Tower and related Structure Rules 2012 is ultra vires the Constitution of India.

(c) That this Hon'ble Court do issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the Respondent No.1 to 15 to refrain from collecting any registration fees and/or Renewal fees for operation of their already erected communication towers or for future sites.

(d) That this Hon'ble Court do issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate Writ/order/direction directing the Respondent No.2 to 15 to withdraw the impugned demand notices at Annexure 4 series hereto;

(e) That pending the hearing and final disposal of this Petition, the operation & effect of the impugned Rules being Annexure 5 hereto be stayed;

(f) That pending the hearing and final disposal of this Petition, the operation & effect of the impugned demand Notices being Annexure 4 series hereto be stayed;

(g) That pending the hearing and final disposal of this Petition, the Respondents, their agents and servants be directed to allow the Petitioners to set up its telecommunication sites without insisting on any payment as per the impugned Rules Annexure-5 hereto;

(h) That pending the hearing and final disposal of this Petition, the Respondents, their agents and servants be restrained by an order and injunction of this Hon'ble Court from in any manner demanding or levying or imposing or recovering Registration Fees or Annual renewal Fees or any interest or penalty from the petitioners in respect of Petitioners' Mobile Towers or taking any coercive action pursuant to the impugned Rules;

(i) For ad-interim relief in terms of prayers (e) to (g) above;

(j) For costs; and

(k) For such other and further reliefs as the nature and circumstances of the case may require and thought fit by this Hon'ble Court."

4. On 18.04.2013, this Court rejected petitioners' prayer seeking modification of interim relief in the following terms:-

"This application is made by the writ petitioners for modification of the interim relief so that the writ petitioners may give bank guarantee in lieu of the registration fee and the renewal fee.

Application is rejected."

5. The matter was taken up to Hon'ble the Apex Court, wherein the parties to the instant lis were also parties and vide order dated 9th December, 2013 in Civil

Appeal Nos.11001-02 of 2013, titled as ATC India Tower Corp. Pvt. Ltd. & Anr. Versus State of Bihar & Ors., the Court passed the following order:-

"Leave granted.

Heard Mr. Harish N. Salve, learned senior counsel appearing for the appellants and Mr. Ranjit Kumar, learned senior counsel appearing for the respondents at some length.

Looking at the facts of the case, we request the High Court to dispose of the batch of Writ Petitions pending before it expeditiously, preferably within six months from the date of communication of this order to it.

In the meantime, the appellants shall give before the High Court a Bank Guarantee in respect of the amount which has been demanded so far and for the amount which they might have to pay by way of the demand, if raised in future.

It is made clear that there shall not be any interim refund in the meantime.

With the above observations and directions, the Civil Appeals are disposed of as allowed with no order as to costs."

(Emphasis supplied)

6. However, subsequently, Hon'ble the Apex Court passed an order dated 04.11.2019 in Petition (s) for Special Leave to Appeal (C) No(s).25447/2019, titled as Bharti Infratel Ltd. Versus The State of Bihar & Ors. which reads as under:-

"Application for exemption from filing official translation is allowed.

Application for permission to file additional documents/facts/annexures is allowed.

Issue notice.

There shall be no recovery under the new demands till the next date.

The towers sealed, in the meantime, be de-sealed." (Emphasis supplied)

7. It is not in dispute that this order continues to be in operation.

8. In the month of June 2020, all old matters of different categories (challenging the Constitutional Validity of Acts/ Income Tax/Sales Tax/ and other fiscal statutes) were listed for hearing.

9. On its turn, a bunch consisting of the present matter, being the lead case, was taken up and on 18th August, 2020, we had passed the following order:-

"Having heard learned counsel for the parties, Substitution Application is allowed.

Registry to make necessary correction in the memo of parties.

Re: CWJC No.3300 of 2013

As prayed for, list on 7th September, 2020. Learned counsel for the State states that the pleadings of the case shall be transmitted through an electronic mode both to the learned counsel for the petitioner as also to the Court Master.

Wherever the Bank Guarantee furnished by the petitioner has expired or is likely to expire in the near future, the same shall be got renewed immediately/ or within time, as the case may be. On receipt of fresh Bank Guarantee wherever otherwise required, the Registry shall take up steps for returning the documents of renewable/expired Bank Guarantee."

10. It is not in dispute that in terms of the orders reproduced supra, petitioners have furnished the bank guarantees in favour of the Registrar General of this Court, which are still alive.

11. Petitioners herein claimed to be governed only under the Indian Telegraph Right of Way Rules, 2016 (Referred to as the 2016 Rules) as extended in the year 2018 to the petitioners who fall under category I.P.-I, whereas the State's action is based on the applicability of 2012 Rules.

12. Significantly, during the pendency of the present Petition, the State Government has now issued a Notification dated 19th August, 2020, notifying the Bihar Mobile Towers, Optical Fibers Cables (OFC) and Related Telecom Infrastructures Rule, 2020 (Referred to as the 2020 Rules) thereby also repealing the 2012 Rules.

13. In this view of the matter, learned counsel for the petitioners, while maintaining its stands, submits that if only the petitioners' interest stands protected to the extent of interim orders passed by the Hon'ble Apex Court/this Court, petitioners will take recourse to the mechanism provided under the 2020 Rules or as per law. However, this would be without prejudice to the petitioners' right of agitating all issues before the authority established under the 2020 Rules or as per law. Also, petitioners would keep the bank guarantee alive till such time a proper decision stands taken, per law, by the authority on all the issues, be it regularization of the petitioners' actions; payments/dues under all or any one of the Rules referred to supra.

14. Sri Gopal Jain, learned counsel for the petitioners further submits that petitioners' cases are not governed under the 2012 Rules. In fact, they are governed under the 2016 Rules as extended to the petitioners in the year 2018. Hence, the question of payment of any fee under the 2012 Rules does not arise. Also, under the 2020 Rules, there is no dispute resolution mechanism for payment of fee/ charges.

15. Also, at this point, petitioners would not press the relief (a), reserving liberty to agitate the same, if the need so arises subsequently on the very exact cause of action. Further, there is no predicament or bar of this Court in disposing of this Petition, even though the matter on the larger issue is pending before Hon'ble the Apex Court.

16. Sri P.N. Shahi, learned AAG-VI, has no objection to the same, save and except that under all circumstances, the interest of the Revenue is protected, be it by way of keeping the bank guarantees alive or depositing the amount and the issue to be adjudicated by the authority constituted under the 2020 Rules. Also liberty be given to all, for raising all pleas, available to them as per law.

17. Mr. P. N. Shahi, learned AAG-VI, further clarifies that the issue is no longer res integra and stands settled by the Hon'ble Apex Court in Ahmedabad Municipal Corporation Versus GTL Infrastructure Limited and others, (2017) 3 SCC 545.

18. We are inclined to accept the petitioners' prayer and as such dispose of the present Petition on the following terms:-

(a) Liberty, as prayed for, is granted.

(b) Petitioners are allowed to take recourse to such measures as are provided under the 2020 Rules.

(c) This, they must positively do so within the time frame prescribed thereunder or within four weeks from today, whichever is later.

(d) With the receipt of the application, the authority constituted under the 2020 Rules shall positively decide all issues within a period of three months.

(e) Bank guarantees shall be kept alive till such time, the petitioners' application stands finalized.

(f) Prayer (a) reproduced supra stands left open to be agitated subsequently, on the same cause of action, if so required and desired.

(g) Equally, all issues on merits are left open to be agitated under and in terms of 2020 Rules or other remedies available in law.

(h) Demand, if at all, to make payment under the 2012 Rules is left open to be considered and adjudicated as per law. However, no demand in terms of notices, Annexure-4 series, shall be enforced until the process under 2020 Rules stands finalized.

(j) If the petitioners fail to take action within the stipulated time, respondents can encash the bank guarantees without any further reference to this Court.

(j) Petitioners' motion shall be without prejudice to their right to challenge the validity of 2020 Rules.

(k) Liberty is reserved to the petitioners to approach this Court on the same and subsequent cause of action.

19. The Petition stands disposed of in the above terms.

20. Interlocutory Application, if any, shall stand disposed of.