
(2021) 12 BOM CK 0125
In the Bombay High Court
Case No : Writ Petition No. 4815 Of 2021

ATC Telecom Infrastructure Pvt.Ltd.

APPELLANT

Vs

Bokhara Gram Panchayat And Others

RESPONDENT

Date of Decision : 22-12-2021

Acts Referred:

Citation : (2021) 12 BOM CK 0125

Hon'ble Judges : A.S.Chandurkar, J;G.A.Sanap, J

Bench : Division Bench

Advocate : S.V.Butada, Yash J. Maheshwari, S.S.Chauhan

Final Decision : Allowed

Judgement

A.S.Chandurkar, J

1. On 29.11.2021 notice for final disposal of the writ petition was issued making it returnable on 14.12.2021. Despite service there was no appearance on behalf of the respondent no.1. Hence the matter was kept today. Today, also there is no appearance on behalf of the respondent no.1.

2. We have heard the learned counsel for the petitioner and the learned counsel for the respondent no.2 by issuing Rule and making the same returnable forthwith.

3. The petitioner is a Telecom Company who had sought permission from the respondent no.1 for erection of mobile tower alongwith necessary equipment within the jurisdiction of Gram Panchayat, Bokhara. On 22.03.2021 the Gram Panchayat issued a no-objection to the petitioner for erection of mobile tower. Pursuant thereto the petitioner claimed to have taken necessary steps in that regard and has commenced the work of erection of the mobile tower. On 10.11.2021 however the petitioner was directed to stop the work of installation/operation of the mobile tower on the ground that complaints were received from the local residents. This action is challenged in the present writ petition

principally on the ground that having initially granted no-objection to the petitioner, it was impermissible for the Gram Panchayat to have withdrawn the same and that too, without granting any opportunity to the petitioner.

4. The learned counsel for the petitioner has invited attention to the policy decision of the State Government dated 17.02.2018 with regard to Telecom Infrastructure Policy. He submits that as per Clause 7 thereof a permission for installation of mobile tower once granted would valid for a period of five years from the date of such permission. On the strength of this clause, it is submitted that in view of the no-objection granted on 22.03.2021 rights had been created in favour of the petitioner and it was impermissible for the Gram Panchayat to have directed the petitioner to stop the work in question that too without granting any opportunity of hearing. It is submitted that substantial investments have been made by the petitioner in that regard and such action on the part of Gram Panchayat was unwarranted.

5. As noted above, the respondent no.1 has not chosen to remain present to oppose the prayers made in the writ petition. The learned counsel for the respondent no.2 claims to be the owner of the plot where the mobile tower is proposed to be erected. He submits that subject matter of dispute is principally between the petitioner and the respondent no.1.

6. On perusal of the documents annexed to the writ petition, it becomes clear that on 22.03.2021 Gram Panchayat, Bokhara granted no-objection to the petitioner to erect mobile tower. In terms of Clause 7 of the Telecom Infrastructure Policy such permission was to be valid for a period of five years from that date. In this backdrop, the Gram Panchayat was not justified in unilaterally directing the petitioner to stop the work in connection with the mobile tower. If at all the Gram Panchayat had any grievance in that regard or if it was of the view that there was violation of any terms and conditions on the basis of which the no-objection was granted, it ought to have first issued notice to the petitioner and thereafter taken further steps. It goes without saying that by granting such no-objection, rights were created in favour of the petitioner and same could not be taken away without granting an opportunity to it of explaining its position. Hence on this short ground, the impugned communication dated 10.11.2021 issued by the Gram Panchayat Bokhara is liable to be set aside.

7. Accordingly the communication dated 10.11.2021 issued by the Gram Vikas Adhikari, Gram Panchayat, Bokhara is set aside. If the Gram Panchayat proposes to take any action against the petitioner consequent to the issuance of no-objection, it shall comply with the principles of natural justice and thereafter proceed in the matter.

It is clarified that we have not examined the grounds on which the impugned communication has been issued. It has been set aside for want of prior notice to the petitioner.

Rule is made absolute in aforesaid terms. No costs.