

(2020) 09 PAT CK 0107

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17771 Of 2016

Bharti Infratel Limited

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 0107

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

Bench : Division Bench

Advocate : Gopal Jain, Rajesh Ranjan, Shakti Suman Kumar, Lalit Kishore,
Prasoon Sinha, Dr. K.N.Singh, Nivedita Nirvikar, Gyan Prakash Ojha

Final Decision : Disposed Of

Judgement

Petitioner who is engaged in the business of telecommunications has established passive infrastructure, over private properties, at different places within the State of Bihar.

Concerning that, Municipal Corporation, Muzaffarpur has issued notice dated 16.08.2016 to the petitioner (Annexure-6) asking it 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).

Challenging these Rules as also the notice, Annexure-6, on 25.10.2016 petitioner filed the instant Petition praying for the following reliefs:

"(i) To issue an appropriate writ/order/direction to hold and declare clause (1) of sub section (1) of Section 127 of the Bihar Municipal Act, 2007 (hereinafter referred as the Act) inserted by Bihar Act 7 of 2011 as ultra vires the provisions as contained in Article 265 and 246 of the Constitution of India.

(ii) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the Bihar Communication Towers and Related Structures Rules, 2012

(hereinafter referred to as the Rule) as contained in Annexure-3 on the ground of same being illegal, ultra vires Article 265 and 246 of Constitution of India and suffering from vices of excessive delegation.

(iii) Consequent upon the quashing of the Rule as contained in Annexure-3, a writ of certiorari may be issued for quashing the demand notice contained in Memo no.3045 dated 16/08/16 annexed as Annexure-6 whereby a demand of Rs.3,33,96,000/-(Rs.Three Crore Thirty Three Lakh Ninety Six Thousand) is made for 416 antennas installed on 54 towers situated within the territorial jurisdiction of Muzaffarpur Municipal Corporation from the petitioner company on the basis of the Rules.

(iv) To any other relief or reliefs for which the petitioner is found entitled in the facts and circumstance of the case."

On 27.10.2016 this Court passed interim order to the following effect:-

"The present writ application has been preferred to challenge the constitutional validity of Section 127 (1) of the Bihar Municipal Act, 2007 on the ground of legislative incompetence of the State legislature.

Few writ petitions are pending before this Court on the identical issues wherein there is an interim order of payment of registration fee of Rs. 40,000/- for the area of each Municipal Council and Rs. 50,000/- in respect of area of Municipal Corporation and renewal fee of Rs. 10,000/- for the current year for each tower has been passed. But in the case of the petitioner itself, the Hon'ble Supreme Court (Civil Appeal No. 11001-11002 of 2013) has passed an order on 09.12.2013 for furnishing bank guarantee in respect of amount which has been demanded as well as future fee.

In the first writ petition, which led to the above mentioned appeal, the petitioner has challenged the levy on the mobile towers located in area other than Muzaffarpur Municipal Corporation. The challenge in the present writ petitions is to mobile towers and antennas located within the Muzaffarpur Municipal Corporation. Such Corporation has found that a sum of Rs. 3,33,96,000/- has not been paid as the amount of fee vide communication dated 16.08.2016.

The Hon'ble Supreme Court in Civil Appeal No. 5360-5363 of 2013 (Ahmedabad Municipal Corporation Vs. GTL Infra. Ltd. & Ors.) has ordered that the local bodies may raise demand but shall not enforce the same against the respondents.

On the other hand, in the case of the present petitioner itself, the Hon'ble Supreme Court in the case of other local bodies has ordered the petitioner to furnish bank guarantee of the previous and future demands. Since a sum of Rs. 3,33,96,000/- has been found to be the fee payable to the Corporation, therefore, in the interest of justice, the petitioner is directed to furnish the bank guarantee of half of the amount demanded within two weeks. On furnishing the bank guarantee of half of the amount demanded, the towers and antennas shall not be sealed and, if any found sealed, shall be unsealed.

List this case along with C.W.J.C. No. 15373 of 2012."

Learned counsel for the parties submit that the present petition be disposed of in view of the contentions recorded; observations made; and directions issued on 29.09.2020 in CWJC No.3300 of 2013 titled as ATC Telecom Infrastructure Pvt. Ltd. & Anr, making the same applicable, mutatis mutandi, also in the instant case.

Further, that the petitioner shall revive/replace/ furnish a fresh Bank Guarantee in favour of the Registrar General of this Court within a period of two weeks. Statement accepted and taken on record.

This Court on 29.09.2020 in CWJC No.3300 of 2013 titled as ATC Telecom Infrastructure Pvt. Ltd. & Anr, being the lead case had passed the following order:-

"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.

(i) 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."

As prayed for, petition stands disposed of in terms of the judgment dated 29.09.2020 passed in C.W.J.C. No. 3300 of 2013, titled as ATC Telecom Infrastructure Pvt. Ltd. & Anr. Vs. The State of Bihar & Ors., reproduced supra. The directions issued shall be applicable to the extent possible also to the facts of the instant case.

Bank Guarantee be revived/replaced/furnished in terms of the statement made by the learned counsel.

All applications and petitions stand disposed of in the aforesaid terms.