

(2020) 09 PAT CK 0376

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17035 Of 2016

Chennai Network Infrastructure Limited 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 14, 19(1)(g), 265

Citation : (2020) 09 PAT CK 0376

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

Bench : Division Bench

Advocate : Saket Tiwary, Sanjeev Kumar Dubey, Lalit Kishore, Pawan Kumar, Satya Prakash Tripathy, Satya Vrat, Anshuman Singh, Prakash Verma, S.D.Sanjay, Awadhesh Kumar, Prasoon Sinha, Awadhesh Kumar, Rajeev Ranjan, R.K. Singh, Arabind Nath Pandey, Raghwanand

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, Respondent nos.4 to 85 have issued notice(s) to the petitioner (Annexure-4 series) 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(s), Annexure-4 series, on 05/10/2016 petitioner filed the instant Petition praying for the following reliefs:

â?? For issue of a writ, direction or order, declaring that Clause I of Sub Section 1 of Section 127 of the Bihar Municipal Act, 2007 as substituted by

Act 7 of 2011 as invalid and the resultant Bihar Communication Towers and

Related Structures Rules, 2012 (hereinafter called the "Rules"), purporting levy of Fees and Annual Renewal Fees based on the number of completed years of the Tower having been installed, with retrospective effect, is unconstitutional and ultra vires Articles 14, 19(1)(g), and 265 of the Constitution of India, is beyond the legislative competence of the Respondent No.1 and 2 and is patently illegal and arbitrary. As stated in detail hereinafter the impugned levy & recovery is ex facie beyond the legislative competence/jurisdiction of the Respondent No.1.

On 26.10.2016 this Court passed interim order to the following effect:-

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

Learned counsel for the petitioners states that the similar question is pending before the Hon'ble Supreme Court in the case of Ahmedabad

Municipal Corporation Vs. GTL Infra. Ltd. & Ors. (Civil Appeal No. 5360-5363 of 2013). The Hon'ble Supreme Court in the said appeal has

permitted the local bodies on 9.7.2013 that it may determine the tax on mobile towers and raise demand on the respondents. However, such demand shall not be enforced against the respondents until disposal of the Appeals. Moreover, determination of such tax shall be subject to the final decision in the Appeals.

In view of the interim order dated 27.08.2012 passed in CWJC No. 15373 of 2012 (Reliance Communications Ltd. Vs. The State of Bihar & Ors.)

and that of Supreme Court, we order that the local bodies may determine the tax on mobile towers and raise demand on the respondents but such

demand shall not be enforced against the respondents. In the meantime, the petitioners shall pay the 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 the renewal fee of Rs. 10,000/-for the each year for each

tower within the limits of the respective Municipal Councils.

List this case along with C.W.J.C. No. 15373 of 2012 and to be posted after the decision of the Supreme Court in the case of Ahmedabad

Municipal Corporation Vs. GTL Infra. Ltd. & Ors. On deposit of the necessary charges in the light of the order passed, the sealed tower, if any, shall

be unsealed.â??

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. Vs. The State of Bihar & Ors., making the

same applicable, mutatis mutandi, also in the instant case.

However, learned counsel for the petitioner clarifies that the case of the petitioner is not covered to the extent of issuance of Bank Guarantee, for the

amount stands deposited in terms of the interim order dated 26.10.2016, reproduced supra.

This Court on 29.09.2020 in CWJC No.3300 of 2013 titled as ATC Telecom Infrastructure Pvt. Ltd. & Anr. Vs. The State of Bihar & Ors., being the

lead case had passed the following order:-

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

â??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.â??

5. The matter was taken up to Honâ??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:-

â??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.â??

(Emphasis supplied)

6. However, subsequently, Honâ??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:-

â??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.â??

(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:-

â??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.â??

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 Stateâ??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 Honâ??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 petitionersâ?? 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 petitionersâ?? 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 Honâ??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 Honâ??ble Apex Court in

Ahmedabad Municipal Corporation Versus GTL Infrastructure Limited and others, (2017) 3 SCC 545.

18. We are inclined to accept the petitionersâ?? 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 petitionersâ?? 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) Petitionersâ?? 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.â??

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.

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