
(2011) 07 DEL CK 0187

In the Delhi High Court

Case No : Writ Petition (C) No. 8552 of 2009

Mrs. Sonia Singh and Others

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Citation : (2011) 07 DEL CK 0187

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Manjit Singh Ahluwalia, for the Appellant; Sushil Dutt Salwan, for R-1, 2, 3 and 12/GNCTD, Manmeet Kaur, for GNCTD, Rahul Srivastava, for Suparna Srivastava, for MCD, Sanjeev Ralli, for R-6/Bharti Airtel Ltd., Ajit Kumar Singh, for R-8/ Essar Ltd. and SI D.K. Tejwan, PS, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The fourteen Petitioners, all residents of the colony of Nehru Enclave (East), Kalkaji Extension, New Delhi, have filed this writ petition seeking directions for removal of the Cellular Towers installed on the rooftop of properties No. 11/8 and 11/12 in the said colony and for restraining the Respondents from installing any new Cellular Towers on rooftop of property No. 11/8 in the said colony. Declaration of Guidelines dated 10th January, 2008 issued by the Respondent No. 2 Government of NCT of Delhi (GNCTD) as illegal, arbitrary and ultra vires with respect to installation of Cellular Tower in residential areas has also been sought.

2. Notice of the petition was issued and vide interim order dated 28th April, 2009, it was directed that further towers in the said colony should not be permitted and the permissions already granted be verified to determine whether they conform to the standards prescribed or not.

3. Counter affidavits have been filed by the Respondent No. 3 Secretary (Environment), GNCTD, Respondents No. 4&5 MCD, Respondent No. 6 Bharti Airtel Ltd. and Respondent No. 8 M/s ESSAR Ltd. Respondent No. 7 Aircel Ltd. on 21st April, 2011 stated that it did not have and did not intend to install any

Cellular Mobile Tower and on such statement, it was deleted from the array of parties.

4. The counsel for the Department of Environment has today stated that another writ petition being W.P.(C) No. 9511/2006 titled Saraswati Jan Kalyan Trust v. UOI and Ors. also relating to emission of electro-magnetic radiation from electronic and electromagnetic components associated with the Cellular Towers and from the Cellular Towers was listed before the Chief Justice's Bench of this Court on 11th May, 2011 when the same was disposed of for the reason of matters involving similar issues pending before the Apex Court and holding that the decision of the Apex Court will be binding and complied with. He has stated that the present petition should also be similarly disposed of. It is also informed that a number of petitions pending before various High Courts alleging pollution and health problems associated with Cellphone Towers have vide order in W.P.(C) No. 471/2005 titled Karma Jyot Seva Trust of Gujarat v. Union of India pending before the Apex Court been ordered to be transferred to the Apex Court.

5. The Petitioners in the present petition also have objected to the Cellular Towers on the same grounds.

6. Besides the aforesaid, the Respondent No. 3 Secretary (Environment), GNCTD in his counter affidavit has stated that the towers and other equipments installed in properties No. 11/8 & 11/12 were inspected on 26th May, 2009 and the noise levels were found to be within the permissible limits.

7. The Respondent No. 8 M/s ESSAR Ltd. in its counter affidavit has pleaded that the Cellular Towers on the properties aforesaid were installed after obtaining requisite permissions and after fulfilling all the statutory requirements with respect thereto. Reliance is also placed on the report of the various studies to the effect that there is no evidence of any direct health hazard from exposure to Cellular Towers and Antenna.

8. The Respondent No. 6 Bharti Airtel Ltd. in its counter affidavit has besides the aforesaid also pleaded of having obtained permission for the Cellular Towers to which objection is taken, from the Delhi Pollution Control Committee.

9. The Respondents No. 4&5 MCD in its counter affidavit has informed of the state of permissions granted with respect to the properties and has pleaded that the permissions have been issued on the basis of guidelines in force on the date of installation and the guidelines of 10th January, 2008 have been issued subsequently.

10. I may mention that I have in Cellular Operators Association of India and Others Vs. Municipal Corporation of Delhi etc. etc., made a recommendation for change in Laws/Bye-Laws so as to make specific provision for such towers which are of recent origin.

11. The counsel for the Petitioners has today urged that the argument of the counsel for the Respondents No. 4&5 MCD and of the counsel for the Respondent

No. 6 Bharti Airtel Ltd. that the Cellular Towers installed prior to coming into force of the 2008 Notification would continue to be governed by the guidelines/regulations in force at the time of installation thereof is fallacious inasmuch as, since they continue to remain in existence, they ought to comply with the regulations in force from time to time. It is contended that in such situation there is no question of prospectivity or retrospectivity as contended by the counsel for the Respondent No. 6 Bharti Airtel Ltd.

12. However, since the Supreme Court is seized of the matter and further since the Division Bench of this Court also for the said reason has refused to entertain other writ petitions, it is not deemed expedient to entertain this writ petition. The same is disposed of:

- (i) With liberty to the Petitioners to if so deem necessary to participate in the proceedings before the Supreme Court;
- (ii) With liberty to the Petitioners to make representations/complaints to the authorities concerned for breach/violation of any of the applicable laws, rules, bye laws and regulations;
- (iii) With a direction to the parties concerned to look into such complaints/representations of the Petitioners and to ensure strict adherence to all applicable laws, bye laws and regulations; and
- (iv) With a direction that the towers subject matter of this petition shall be dealt with in accordance with the judgment of the Apex Court.

No order as to costs.