

(2019) 07 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No. 55038 Of 2018 (Lb-Res)

Tower Vision India Private Limited

APPELLANT

Vs

Panchayath Development Officer

RESPONDENT

Date of Decision : 03-07-2019

Acts Referred:

Karnataka Gram Swaraj & Panchayat Raj Act, 1993 — Section 64(1)(5A)

Citation : (2019) 07 KAR CK 0017

Hon'ble Judges : G.Narendar, J

Bench : Single Bench

Advocate : Shivakumar. N, M.A. Subramani

Final Decision : Dismissed

Judgement

1. Heard the learned counsel for the petitioner and the learned High Court Govt. Pleader.

2. Learned High Court Govt. Pleader accepts notice on behalf of the second respondent.

3. The above petition is preferred praying for issuance of a writ of certiorari to secure the records and quash Annexure-L notice dated 23.11.2018

No/5/2018/19 issued by the first respondent and for a further writ, order or direction directing the first respondent not to interfere with the

petitioner's business of sharing infrastructure with other telecom operators and in the maintenance and operation of the mobile towers.

4. It is the contention of the petitioner that it is a Telecommunication company registered by the Govt. of India, Ministry of Communications &

Department of Telecommunications and licensed by the State Govt. for erecting Telecommunication towers for the purpose of providing infrastructure

to multiple Telecommunication service providers like Spice, Vodafone and BSNL.

It is contended that the petitioner identifies locations for the purpose of erecting a tower and installing an antenna and other electronic equipment.

5. It is submitted that the petitioner is a registered company incorporated with the Registrar of Companies and that as per the Rules and Regulations, the company is also registered with the Govt. of India with the Ministry of Communications, Department of Telecommunications, as an infrastructure provider. It is contended that company is one of the most respected companies in the field of business, rendering services to various other Telecommunication service providers.

6. That in the course of its business, the petitioner had identified the premises measuring 1600 square feet in property bearing Survey No.66/2, 67/2, 64/2 and 64/3 of Nelahal village, Bellavi Hobli, Tumkur Taluk and District and within the limits of Nelahal Gram Panchayat and that after obtaining consent of the landlady, entered into and executed a license deed for a period of 15 years and thereafter the petitioner commenced work for erection and installation of tower and equipment.

7. It is contended that the Panchayat Development Officer of the first respondent orally demanded for a payment of tower tax for a sum of Rs.1,000/- per month and on payment of the said sum towards tax the first respondent also furnished a no objection certificate.

8. It is contended that as per the circular bearing No.N3.55.GEL.2005 dated 02.03.2005 issued by the Govt. of Karnataka there is no bar on the installation of mobile towers and other equipments and persons like the petitioner are at liberty, to install towers in general, in both residential and commercial areas and as per the terms of the circular there is no compulsion on the petitioner to obtain any permission from the local authority for erection of the tower. That despite the same, the first respondent without rhyme or reasons has issued the impugned notice dated 23.11.2018 directing the petitioner to remove the installation.

9. On perusal of the impugned notice it is apparent that the notice is issued by the first respondent-Gram Panchayat pursuant to a resolution passed by the Panchayat and that resolution is an offshoot of the complaint to the authorities that the health of the children, who are attending a school, in whose vicinity the petitioner has established the tower, installing high power transmitters, is being affected by the radiation being emitted by these towers. It

is

the specific complaint of the Gram Sabha and the Panchayat that the tower is facilitating radiation, which in turn is having an adverse effect on the

health of the children who are attending the school and in that regard the petitioner has been directed to relocate the towers to a safer location.

10. There can be no dispute with regard to the fact that these towers are transponders/transmitting towers, transmitting signals from the

Telecommunications company who have installed the transmitters or transponders to relay the signals to their registered customers. The specific

allegation, of the transmission towers causing radiation is not denied in the writ petition. That apart the only ground of attack on which the petition is

canvassed is the circular of 2005.

11. On a bare reading of the circular of 2005 it is apparent that the State Govt. has exempted only the Telecommunication companies from the rigor of

obtaining a separate permission from the local authorities for the purpose of erecting transmission towers. Even that concession has stood withdrawn

by circular bearing NA A E 149 GEL 2014 dated 13.05.2014, Bangalore dated 13.05.2014. That apart much water has flowed since then and power

of regulating the erection of towers has also been vested in the Panchayats pursuant to the amendment to Section 64(1)[(5-A)] of The Karnataka

Gram Swaraj & Panchayat Raj Act, 1993 which came to be inserted by Act No.44 of 2015. Therefore, the contention that the petitioners are

exempted pursuant to the 2005 circular is highly misleading. That apart it is seen that the petitioner is also not a service provider to claim the benefit

under the circular also. This fact is borne-out by the petitioner's own document produced as Annexure-C wherein at serial No.2 the Govt. of India

has clearly prohibited the petitioner from carrying on any work of operating or providing telegraph service including end to end bandwidth as defined

under the Indian Telegraphic Act, 1885. In that view of the matter, the instant writ petition is misconceived and wholly devoid of merits and

accordingly, stands dismissed.