
(2016) 05 DEL CK 0123
In the Delhi High Court
Case No : W.P.(C) 6525 of 2012

Vikas Luthra

APPELLANT

Vs

M.C.D. and Ors.

RESPONDENT

Date of Decision : 05-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 157 DRJ 463

Hon'ble Judges : Mr. A.K. Pathak, J.

Bench : Single Bench

Advocate : Ms. Nishtha Garg, Advocate, for the Appellant; Mrs. Biji Rajesh, Advocate for Mr. Gaurang Kanth, Advocate, Mr. Malak Bhatt, Advocate, Ms. Jaya Tomar, Advocate, Mr. Laxmi Singh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Pathak, J.(Oral) - Petitioner has filed this writ petition, under Article 226 of the Constitution of India, seeking direction against the respondent no.1 to remove the illegal cell towers of Vodafone Essar Telecom Ltd. (Respondent no.2) and AIRCEL Telecom Ltd. (Respondent No.3) installed on the premises bearing no.FF-6, Mangal Bazar, Laxmi Nagar, Delhi-110092. As per the petitioner, respondent nos.2 & 3 have illegally installed the cell towers without taking prior permission of the Municipal Corporation of Delhi (Respondent no.1) and other concerned authorities. Petitioner has alleged that cell towers release radiation in large quantity, which causes blood pressure, prostate cancer, heart problems etc., with which petitioner had been suffering. As per the petitioner he was suffering from above ailments due to the radiation emitted by the cell towers in question.

2. During the pendency of the writ petition, petitioner has died on 2nd July, 2013 and his legal heirs have been brought on record vide order dated 5th December, 2013.

3. Respondent no.1 has filed a short affidavit stating therein that cell towers were installed with its permission. Respondent no.3 has reiterated in its counter affidavit that cell towers have been installed with the permission of the respondent no.1. It is further submitted that Radio Frequency waves of electric and magnetic energy emanating from an antenna/tower are "Non-Ionized" in nature and are not harmful, as per the scientific studies conducted by various organisations, such as, Federal Communications Commission (FCC) [an independent United States Government Agency established under the Communications Act of 1934 and which is charged with the regulating the Radio Frequency radiation in the United States of America], World Health Organization and most specifically the facts sheet No. 304 published in May 2006, wherein it has been concluded that considering the very low exposure levels and research results collected to date, there is no convincing scientific evidence that the RF signals from base stations and wireless networks cause adverse health effects. It is further stated that RF exposures from mobile base stations are much less than from radio, FM radio and television transmissions and that the consensus of scientific community is that the radiation from mobile phone base stations is far too low to produce health hazards. Similar is the stand of the respondent no.2.

4. Petitioner has not placed any evidence on record to show that radiation emitting from such towers is harmful and injurious to health or that petitioner had contacted heart problem, prostate cancer and high blood pressure on account of radiation emitted from the impugned cell towers. Mere bald assertions in this regard are not sufficient to direct removal of cell towers, in absence of any scientific analysis and/or data to support the contention of the petitioner.

5. In W.P. (C) No.8661/2015 titled as Resident Welfare Association v. UOI, similar issue was involved and vide order dated 9th September, 2015, the Learned Single Judge held as under:-

"4. The entire case of the petitioner, as aforesaid, is based on the report of the IMC of the year 2010-2011. It is however not as if, while framing the advisory guidelines and in pursuance where to the communication dated 28th October, 2014 for constitution of State Level Telecom Committee and District Level Telecom Committee was issued, the authorities concerned were not conscious of the said report of the IMC. Rather, it is the case of the petitioner itself in ground (G) that the Standing Committee on Information Technology, which made the said guidelines, did not accept the recommendation aforesaid of the IMC. The petitioner finds fault in, the Standing Committee accepting some of the recommendations contained in the report of the IMC and not accepting others. It is also not as if the Standing Committee on Information Technology, without any reason did not accept the recommendation in the IMC report, on which the petitioner relies upon. The Standing Committee has observed that the said recommendation is for unfounded reasons which are not based on scientific study or facts.

5. I am of the opinion that the said matters fall in the domain of policy making

and the Courts, neither have the jurisdiction to nor where-with-all to take a call thereon. The appropriate authority has made the policy and while framing such policy, the report of the IMC has been duly considered. It is not for the Court to enter into the arena of finding out, whether the policy made by the expert body constituted, for going into the said question, is correct or not and that too on the basis of an opinion of some persons in the process of such decision making. It is the settled position in law (see *Surgical Electronics v. Union of India*, 60 (1995) DLT 359 (DB) and *Rajinder Kumar Khatri v. Delhi Development Authority*, that such comments/opinions during the decision making process cannot form the basis of the challenge to the ultimate decision, even if contrary to the opinion at one level in the decision making process. Supreme Court also, in *Sethi Auto Service Station v. Delhi Development Authority*, (2009) 1 SCC 180 and in *Jasbir Singh Chhabra v. State of Punjab*, (2010) 4 SCC 192 has reiterated that favourable notings during the decision making process cannot form the basis of a claim when the ultimate decision making authority has decided against the claimants. The Interministerial Committee and its recommendations are but a stage in the making of the policy aforesaid.

6. The counsel for the respondent No.1 UOI appearing on advance notice has stated that a similar petition is pending before the Division Bench being W.P.(C) No.5550/2015 titled *Kapil Choudhary v. Union of India* and has drawn attention to the order dated 27th May, 2015 in the said petition which takes notice of several judgments of the Kerala High Court vis. *M/s. Essar Telecom Infrastructure (P) Ltd. v. C.I. of Police, Angamali Police Station, (FB)*, *Indus Towers Ltd. v. The Sub Inspector of Police, (DB)* and *Sudevan v. Mundur Grama Panchayat*, holding that mobile phone towers do not pose any health hazard, as well as the judgment of the Rajasthan High Court in *Justice I.S. Israni (Retd.) v. Union of India*, in the context of mobile phone towers on hospitals, school buildings and playgrounds.

7. I may also notice that a learned Single Judge of this Court also vide order dated 31st May, 2010 in W.P.(C) No.3267/2010 titled *Cellular Operators Association of India v. Municipal Corporation of Delhi* had directed a Committee to be constituted to submit a report on effect if any of mobile phone towers on public health and safety and regulating the installation of cellular towers and antennas but which order was set aside by the Division Bench in appeals, vide order dated 4th June, 2010 / 8th July, 2010 and the final judgment in the said writ petition reported in 179 (2011) DLT 381 also did not issue any directions in this regard.

8. This Court cannot, upon being approached by residents or by association of residents, interfere with the works undertaken in accordance with the prevalent policy. In fact, I have asked the counsel for the petitioner that why not all the residents of Sector-C, Pocket-4, Vasant Kunj give up the use of cellular phones, to obviate any threat perception from the use thereof or from the telecom towers essential to enable the use thereof. The counsel for the petitioner has chosen not

to give any reply. Citizens not wanting to give up use of cell phones cannot approach the Court to push the towers and antennas essential for use thereof, from their own door steps to another person's door step; if at all they feel that the technology is harmful for them, all they have to do to give up the use of the same and in which case there would also be no need for towers and antennas required to be installed for enabling use thereof.

9. There is thus no merit in the petition. Dismissed."

(emphasis supplied)

6. It may be noted that one Seeta Devi also filed W.P.(C) No.2536/2013, thereby seeking directions for removal of the cell towers from the terrace of a property but same has been dismissed by a Learned Single Judge of this Court vide order dated 27th November, 2015, by following the law laid down in Resident Welfare Association (Supra).

7. In W.P. (C) No.5550/2015, titled Kapil Choudhary and Anr. v. Union of India & Ors., similar issue of removal of towers came for consideration and the Division Bench, after considering various reports has held that no scientific data was available to show that installation of mobile phone towers and the emission of the waves by the said towers is in any way harmful for the health of citizens. In the said case, in paras 8, 9, 10, 11 & 12, the Court has observed thus:-

"8. The counter affidavit, on the other hand, has placed on record detailed facts to demonstrate that radiations from mobile phone tower are not known to have any adverse health effect. Some of the relevant portion of the counter-affidavit reads as follows:-

"16. ? WHO has referred to approximately 25,000 studies, conducted around the world over past 30 years, and based on an in-depth review of scientific literature, has concluded: "current evidence does not confirm the existence of any health consequences from exposure to low level electromagnetic fields". ?

17. That with reference to Electromagnetic Radiation emanating from cellular mobile towers, World Health Organization (WHO) in its Fact Sheet No. 304, May 2006 on Electromagnetic Fields and Public Health (Base Stations and Wireless Technologies) has concluded that "considering the very low exposure levels and research results collected to date, there is no convincing scientific evidence that the weak RF Signals from base stations and wireless networks caused adverse health effects. From all evidence accumulated so far, no adverse short or long term health effects have been shown to occur from the RF Signals produced by based stations."

9. Reference may also be had to the judgment of the Division Bench of the Kerala High Court in the case of Reliance Infocom Ltd. v. Chemanchery Grama Panchayat & Ors., 2006 SCC Online Ker., 247: AIR 2007 Kerala 33. That was a case in which the mobile phone company was seeking to erect a mobile base station. The plan was approved by the Panchayat and the petitioner was issued a

building permit. However, when the petitioner started preparation for constructing the tower, certain segments of the local population raised objections. The Panchayat acting on complaints received from the local residents cancelled the permit issued to the petitioner apprehending that apart from pollution, the radiation from the tower would cause a health hazard. The Kerala High Court noted that the panchayat had no scientific data or relevant material to cancel the license already granted on the ground that the installation of the tower would cause any health hazard. Based on the same, the writ petition was allowed. Reference may be had to the following observations of the court.

"2. ?.. The above issue came up for consideration before a Division Bench of the Bombay High Court in WP No. 2112 of 2004. The Bench directed the Ministry of Health and Family Welfare, Government of India to conduct a scientific study on the issue. The ministry of Health and Family Welfare on the direction of the Bombay High Court constituted a Committee under the Chairmanship of Dr. N.K. Ganguly, DG ICMR to evaluate the following aspects.

1. Whether it is advisable to frame and/or adopt interational guidelines pertaining to installation of Base Stations by mobile telephone service providers, so as to avoid any potential risk to health and safety to public at large.

2. Explore the possibility for studying the course of action and framing a reaserach project. ?.

3. Report submitted before the Bombay High Court was made available by Shri Santhosh Mathew, Advocate which gave us considerable scientific insight for resolving the problem posed before us. Petitioner has also stated that the experiments conducted in and around BTS towers at points where the public is likely to be exposed has proven that emission at these points are 150,000 times below the level at which significant heating can occur. Petitioner has also produced a chart showing a comparison between mobile base station and other sources of radio frequency which stated that 200 microwatts is the safe exposure limit set by different regulatory bodies. Petitioner has made a comparison of power density (Microwatts/sq.cm.) between AM Radio, FM Radio, Mobile Base Station, UHF TV, VHF TV, Paging Services etc. and submitting that radiation from the Mobile Base Station is less compared to that of AM Radio and FM Radio. Atomic Energy Regulatory Board also submitted a report before the Bombay High Court in WP No.2112 of 2004. Report states that radio frequency waves used for mobile phones are not covered under the definition of "radiation" as given in the Atomic Energy Act, 1962 and non ionizing radiations do not have the capability to ionize the matter with which they interact. Radiation Protection Division (NRPB) of the U.K.Health Protection Agency in the year 2000 has reported that the balance of evidence indicates that there is no general risk to the health of people living near the base stations on the basis that exposures are expected to be small fractions of guidelines. Scientific data made available to the Court would indicate that the use of mobile phone, AM Radio, FM Radio etc. is more harmful to the human beings compared to the power emission from the base Transcieving

Stations and that of Mobile Towers. Surveys conducted in proximity to base stations indicate that the public is exposed to extremely low intensity RF fields in the environment and all the evidence indicates that they are unlikely to pose a risk to health. We may in this connection also refer to the order of the Delhi High Court in OS 1121/02 wherein the court opined that so far there is neither any conclusive research nor authoritative scientific evidence to show that the radiations emitted by such Transmission Towers are dangerous to the health of human beings."

10. Reference may also be had to the judgment of the Division bench of the Ahmadabad High Court in the case of Muktipark Co-operative Society v. Ahmedabad Municipal Corporation (supra). That case was also filed in public interest by local residents claiming that the installation of WiFi mobile towers was in violation of the guideline issued by Union of India and is likely to cause a potential health threat due to the emission of radio-active waves from the said towers. The High Court relying upon the above-noted judgment of the Kerala High Court further held as follows:-

"19. Based on such recommendations of the Inter-Ministerial Committee, the Government of India has now adopted stricter norms for emission from the base stations, being 1/10th of the limits prescribed by ICNIRP. Accordingly, the licence conditions of all the telecom service providers in India were again amended to this effect. The letter dated 26.6.2013 issued by the DoT refers to the amendment made to the Licence Agreements in this regard.

20. The DoT has thereafter issued guidelines effective from 1.8.2013, which, inter alia, reflect the adoption of 1/10th of the limits prescribed by ICNIRP. The comparative table given in the reply of the respondent no. 2 and also reproduced herein below gives the norms prevalent in India as against those prescribed by the Icnirp:

Frequency (in Mega Hertz or MHz)

Power Density Limit prescribed by ICNIRP (in Watt/meter 2 or W/m2)

Power Density Limit prescribed by DoT (in Watt/meter 2 or W/m2)

900

4.5

0.45

1800

9

0.9

2100 and above

10.5

1

11. In the light of these facts, the writ petition was dismissed. However, the court passed the following directions.

"31. Before parting with this matter, we deem it necessary to mention that the concerned authorities should, by way of communication through T.V., Radio etc. bring it to the notice of the people at large that there is no reason for them to fear the erection of the Base Transceiver Station, known as the Wi-Fi Mobile Tower. The reason why we are saying so is that the impression in the mind of a common man is that the Wi-Fi Mobile Towers erected all over the State has the potential to cause health hazard due to the emission of radio active waves from the said tower."

12. In view of the above, it is clear that there is no scientific data available to show that installation of mobile phone towers and the emission of the waves by the said towers is in any way harmful for the health or hazardous to the health of citizens. There is no conclusive data to the said effect. The petitioner has not been able to produce any data whatsoever showing any such harmful effects on the health of human beings. The petitioner has also not been able to show violation of any norms by the respondent."

8. For the foregoing reasons, writ petition is dismissed being devoid of merits.