
(2011) 01 PAT CK 0150
In the Patna High Court
Case No : Criminal WJC No. 633 of 2010

Vodafone Essar Spacetel Limited

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133(1)

Citation : (2011) 2 PLJR 436

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Judgement

Sheema Ali Khan, J.—This application has been filed challenging the order, passed by the S.D.M., Sadar, Munger by which he has held that the Vodafone tower situated in Naya Tola, Madhopur, P.S.-Kotwali, District-Munger is causing nuisance inasmuch that the tower has to be run with the help of generator set.

2. The residents of the area complaint that the generator set used is creating nuisance inasmuch as it emits smoke and run with the help of K. Oil which is inflammable and it is therefore, dangerous to the inhabitants of the colony.

3. Counsel for the Respondents submits that there is hardly any electricity in the township of Munger and because of the continuous use of the generator, there is noise pollution as well as pollution due to emission of smoke from the generator. On the basis of an order passed by this Court, an inspection was made of the area and the S.D.M. has come to the conclusion that in fact the generator set emits fuels and is very noisy.

4. The provisions of Section 133(1)(b) of the Code of Criminal Procedure reads as follows:

that the conduct of any trade or occupation or the keeping of any goods or merchandise; is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof

regulated;

5. On perusal of the aforesaid provision, it is clear that any trade or occupation or the keeping of any goods or merchandise is injurious to health or causes physical comfort then it should be prohibited or regulated and such merchandise should also be removed or be regulated.

6. Setting up a Vodafone tower for providing mobile services is a perfectly legal profession and it cannot be said that the setting up of a tower is prohibited and is a health hazard as it is a duly licensed business. The question that the generator set causes discomfort or is injurious to the health of the inhabitants of the colony concerned can be regulated in a manner so that the company or the person incharge of the tower utilize a generator set, which is duly approved by the Pollution Control Board and is as soundless as possible. Therefore, the Petitioner's company would have to change the generator set and replace with a set in consonance with the provisions of the Pollution Control Board and also in consonance with the order of this Court that the generator set should be pollution free and as soundproof as possible.

7. In the circumstances, the Petitioner would be required to change the generator set within a period of eight weeks on receiving a copy of this order. The order impugned is thus modified and clarified to the extent mentioned in this order.

8. This application is, thus, disposed of.