(2020) 09 PAT CK 0382

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 20756 Of 2019

Tower Vision India Pvt. Ltd		APPELLANT
	Vs	
State Of Bihar And Ors		RESPONDENT

Date of Decision: Sept. 29, 2020

Acts Referred:

- Bihar Municipal Act, 2007 - Section 127(1)
- Constitution Of India, 1950 - Article 246, 265

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

Bench: Division Bench

Advocate: Shakti Suman Kumar, Rajesh Ranjan, P.N. Shahi, Dr. K.N.Singh, Priyadarshi Matri Sharan, Rajesh Kumar Verma

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, Bettiah Nagar Parishad has issued notice dated 16.09.2019 to the petitioner (Annexure- 5) 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, Annexure-5, on 15.10.2019 petitioner filed the instant Petition praying for the following reliefs:

â€œ(i) To issue an appropriate writ/order/direction to hold and declare clause (1) of sub section (1) of Section 127 of the Bihar Municipal Act, 2007

(hereinafter referred as the Act) inserted by Bihar Act 7 of 2011 as ultra vires the provisions as contained in Article 265 and 246 of the Constitution of

India.

(ii) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the Bihar Communication Towers and Related Structures

Rules, 2012 (hereinafter referred to as the Rule) as contained in Annexure-3 on the ground of same being illegal, ultra vires Article 265 and 246 of

Constitution of India and suffering from vices of excessive delegation.

(iii) Consequent upon the quashing of the Rule as contained in Annexure-3, a writ of certiorari for quashing the demand notice as contained in memo

no.1262 dated 16.09.2019 by the respondent Bettiah Nagar Parishad whereby demand have been made for 4 mobile towers to the tune of Rs.

1,65,57,913 (Rs. One Crore Sixty Five Lac Fifty Seven Thousand Nine Hundred and Thirteen only), towards registration fee, annual renewal fee from

the date of installation, additional antenna fee and interest for delayed payment, as contained in Annexure-5 may be issued.

(iv) During the pendency of the present writ application operation of the aforesaid memo no.1262 dated 16.09.2019 may be stayed and the respondent

Bettiah Nagar Parishad may be restrained from taking any coercive action including sealing/removal of towers belonging to the petitioner company.

(v) To any other relief or reliefs for which the petitioner is found entitled in the facts and circumstance of the case.â€

On 17.10.2019 this Court passed interim order to the following effect:-

â€œHeard learned counsel for the petitioner and learned counsel for the State.

2. In this case, the petitioner is challenging the demand notice issued by the Municipal Corporation challenging the constitutional validity of Section 127

(1) of the Bihar Municipal Act, 2007 on the ground of legislative incompetence of the State Legislature.

3. The large number of cases are pending before this Court and one of the matters went upto Honâ€™ble Supreme Court for grant of interim relief.

The Honâ€™ble Supreme Court in the case of ATC India Tower Corporation Private Limited and another vs. State of Bihar and others in Civil

Appeal Nos.11001- 02 of 2013, passed the following order:-

â€œLeave 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€

4. In view of the order passed by the Honâ€™ble Supreme Court, the petitioner would furnish the bank guarantee amount of Rs.1,65,57,913/- (Rupees

one crore sixty five lakh fifty seven thousand nine hundred and thirteen only) in the High Court within a period of four weeks. If the petitioner

furnishes the bank guarantee of the aforesaid amount, in that circumstance, there will not be any recovery from the petitioner. However, the authority

would not take coercive action against the petitioner for four weeks. But it is made clear that if no such bank guarantee is furnished within the

aforesaid period, the Municipal Corporation is at liberty to take action in accordance with law. Any bank guarantee will be subject to final decision

rendered in this case.

5. List this case after four weeks.â€

Petitioner approached the Honâ€™ble Supreme Court and vide order dated 13.11.2019 passed in Special Leave to Appeal (C) No. 26639/2019 the

Honâ€™ble Supreme Court passed the following order:

â€œApplications for exemption from filing official translation and exemption from filing certified copy of the impugned judgment are allowed.

Issue notice.

There shall be no recovery under the new demands, in the meantime.

Tag with SLP (Civil) No. 25447 of 2019â€

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, making the same applicable, mutatis mutandi,

also in the instant case.

This Court on 29.09.2020 in CWJC No.3300 of 2013 titled as ATC Telecom Infrastructure Pvt. Ltd. & Anr, being the lead case had passed the

following order:-

â€œ4. On 18.04.2013, this Court rejected petitionersâ€™ prayer seeking modification of interim relief in the following terms:-

â€œThis 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€œLeave 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€œApplication 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€œHaving 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.

(j) 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.