

(2018) 09 CHH CK 0288

Chhattisgarh High Court

Case No: Writ Petition (C) No. 2361 Of 2018

M/s Bharti Airtel Ltd.

APPELLANT

Vs

Municipal Corporation And Ors

RESPONDENT

Date of Decision: Sept. 18, 2018

Acts Referred:

- Indian Telegraph Right Of Way Rules, 2016 - Rule 2(1)(e)

Hon'ble Judges: Prashant Kumar Mishra, J

Bench: Single Bench

Advocate: Brian D'Silva, Vaibhav Shukla, HB Agrawal, Iturani Mukherjee, Samir Behar

Final Decision: Disposed Of

Judgement

Prashant Kumar Mishra, J

1. The petitioner has invoked writ jurisdiction of this Court to assail the action of the respondent - Municipal Corporation, Raipur (for short 'the

Corporation'), who has seized and sealed 5 numbers of the petitioner's pole antenna on 8.6.2018 and has raised demand on 16.7.2018 for depositing

Rs.75,000/- for each pole antenna, as according to the Corporation, the same would amount to installation of towers, which has been done without

seeking prior permission of the Corporation.

2. Referring to the definition of overground telegraph infrastructure as defined under Rule 2 (1)(e) of the Indian Telegraph Right of Way Rules, 2016,

it is urged that the seized antennas are only boosters to enhance the efficiency of the mobile towers, therefore, the antennas or boosters cannot be

treated as mobile towers on stand alone basis. They are auxiliary apparatus for improving efficiency of the mobile towers and are erected temporarily

depending upon such need in a particular area. The petitioner has disputed the Corporation's power to require obtainment of prior permission and payment of charges under the Government notifications which require mobile towers to pay certain charges.

3. As soon as the petitioner received demand notice and antennas have been seized, it has submitted a representation (Annexure-P/10) dated 20th

July, 2018, addressed to the Zonal Commissioner-3, Municipal Corporation, Raipur giving details as to why roof top pole antennas are different than

the roof top towers, therefore, not liable to pay any charges to the Corporation.

4. Shri Brian D'Silva, learned Senior Counsel for the petitioner would submit that without deciding the representation or letting the petitioner know as

to under which provision of law such roof top antennas would need prior permission of the Corporation, seized antennas have not been released and

the petitioner's working for improved mobile facility is adversely affected.

5. Shri HB Agrawal, learned Senior Counsel appearing for the respondent-Corporation would submit that the petitioner has already paid charges for 3

antennas, although under protest, and the Corporation is willing to decide the petitioner's representation within 4 weeks.

6. At this stage, Shri D'Silva would submit that no useful purpose would be served if the Corporation continues to seize the antennas, as it is of no use

for the Corporation, rather public at large would be benefited if the same is put to use in the areas where they are needed.

7. Considering the entire fact situation of the case and the nature of service provided by the petitioner company, it appears, the respondent-

Corporation should decide the representation by a reasoned order, at the earliest, preferably within a period of 3 weeks from today. Since the

petitioner has already paid charges demanded by the Corporation for 3 antennas and is willing to pay charges up to 50% of the demand notice for the

remaining 2 antennas, it is directed that on petitioner's depositing 50% of the charges for the remaining 2 antennas, all the antennas be de-sealed by

the Corporation immediately upon payment of 50% amount by the petitioner.

8. Depending upon the order passed by the respondent-Corporation, the petitioner would be at liberty to move afresh before this Court.

9. With the aforesaid directions/observations, the Writ Petition is disposed of.