
Dhup Singh Vs Union of India

CWP No. 12047 of 2013 (O&M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 9, 2014

Acts Referred:

Constitution of India, 1950 – Article 226, 227#Telegraph Act, 1885 – Section 4, 4(1)

Citation: (2014) 176 PLR 564

Hon'ble Judges: Ritu Bahri, J

Bench: Single Bench

Advocate: Jitender Dhanda, Advocate for the Appellant; Ruchi Sen, Advocate for Deepali Puri and Naresh Kumar Joshi, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Ritu Bahri, J.

This petition under Article 226/227 of the Constitution of India is for issuance of writ in the nature of prohibition restraining

the official respondents from installing mobile tower in the residential area in the village of the petitioners being harmful due to radiation side effects

to the residents of the nearby houses.

2. The petitioners are residents of the area where the official respondents are installing the mobile towers on site which is nearby to the house of the

petitioners. A representation dated 28.02.2013 in this regard has been submitted by the petitioner along with certificate of Sarpanch. They are

seeking cancellation of installation of BSNL mobile tower in village Haibatpur as it will cause adverse effect on the health of all the villagers and will

cause noise pollution. Petitioner No. 1 is suffering from cancer and already undergoing chemotherapy at PGIMS Rohtak. Petitioner No. 3 is

already having two stunts in his heart valves and also an old patient of cancer who had already undergone chemotherapy from PGIMS Rohtak

about 3 years back and is still undergoing treatment. Petitioner No. 4 is a young boy and has undergone heart surgery at the Indraprastha Apollo

hospital Delhi in the year 2010 wherein the doctor certified that he should not be exposed to strong electromagnetic radiation and should avoid

even a metal detector.

3. On notice, a written statement has been filed on behalf of respondent No. 1 and stating that as per Section 4(1) of Section Indian Telegraph

Act, 1885, the department of Telecommunications, Government of India has granted licensees u/s 4 for CMTS and UAS to Indian registered

companies to establish, maintain and work on telegraph for providing mobile telephone services in the licensed area. Under CMTS and UAS

license, the telecom service providers are establishing towers to provide the category of mobile services in their service area. As per clause 41.6 of

the terms and conditions of UAS license, the licensee is required to ensure that the telecommunication installation carried out by it should not

become a safety hazard and is not in contravention of any statute, rule or regulation and public policy. As per terms and conditions of the

CMTS/UAS license and IP-I registration, the responsibility of obtaining permission/right of way for establishing towers lies with the telecom

service providers/IP-I companies. Prior to installation of mobile towers, the telecom service providers have to obtain site clearance from standing

Advisory committee on Frequency Allocation (SACFA) of department of Telecommunications (DOT) for every site from the point of view of

interference with other wireless users, aviation hazards and obstruction to any other existing microwave links. DOT is responsible for regulating the

EMF radiation from BTS installed at the towers and State Government, M.C., Local Bodies regulate the installation of towers as per their building

bye-laws.

4. WHO in its Fact Sheet No. 304, May 2006 on Electromagnetic Field and Public Health (Base Stations and Wireless Technologies) has

concluded that ""considering the very low exposure levels, there is no convincing scientific evidence that the weak RF signals from base stations and

wireless networks cause adverse health affects.

5. International commission on Nonionizing Radiation Protection (ICNIRP) in its report of April 1988 has prescribed the following levels, limiting

EMF emission from BTSs as safe for general public:-

6. ICNIRP in its statement published in 2009 reiterated that ""it is the opinion of ICNIRP that the scientific literature published since 1998

guidelines has provided no evidence of any adverse effects below the basic restrictions and inserted the additional clause in the access Service

Licenses vide its amendment letter dated 04.11.2008 (R-3).

7. DOT vide letter dated 08.04.2010 directed all CMTS/UAS licensees for compliance of the reference limits/levels prescribed by ICNIRP by

way of self certification of their BTS for meeting the EMF radiation norms (R-4). All new BTS sites starting radiating only after self certificate has

been submitted to relevant TERM cells. That the TERM cell tests upto 10% of total BTS sites randomly at its discretion. Additionally, the BTS

sites against which there are public companies are also tested by TERMS cell. If a site fails to meet the EMR criterion, there is provision of levying

a penalty of Rs. 10 lakh per BTS service provider. Service provider must meet the criterion within one month of the report of TERM cell in such

cases, after which the site will be shut down.

8. With respect to radiation from Mobile Handsets, also ICNIRP, DOT has prescribed values for SAR limit as 2 watt/kg averaged over 10 gm

issue. DOT in the year 2008 vide letter dated 01.09.2008 (R-5) notified for compliance of mobile handsets being manufacture in India as well as

the handsets being imported to conform to SAR limit of 2 w/kg.

9. It is further highlighted that based on media reports and public concerns, IMC consisting of officers from DOT, ICMR (Ministry of Health)

Department of Biotechnology and Ministry of Environment and Forest was constituted on 24.08.2010 to examine the effect of radiation from base

stations and mobile phones. Based on the recommendations by IMC, action has been taken by DOT as mentioned in R-6 of the reply.

10. SAR level for mobile handset has been revised from 2 watt per kg averaged over a mass of 10 gram human tissue to 1.6 watt per kg averaged

over a mass of 01 gram human tissue. Directions in this regard including other recommendations related to mobile handset has been issued, vide

DOT letter dated 17.08.2012 (R-7). Further DOT vide letter dated 23.08.2012, has issued guidelines for issue of clearance for mobile tower

installation and the same has been forwarded. These guidelines have further been revised w.e.f. 01.08.2013 (R-8). Precautionary guidelines issued

by DOT is Annexure R-9. DOT has issued a handbook on mobile communication radio waves and safety (R-10).

11. SERB under Department of Science and Technology has constituted a Expert Committee/Task Force vide letter dated 04.09.2013 (R-1) to

evaluate, R & D proposal to study the possible impact of EMF Radiation exposure from mobile tower and handset on life and related initiatives.

12. Reference has been made to Writ Petition NO. 11275 (M/B) of 2010 of Allahabad High Court filed by Ram Singh Jauhari vs. UOI and

others. The Court vide order dated 10.01.2012 has given direction to Govt. of India to constitute a committee consisting of five members of

Electrical Engineering Dept. of IITS Bombay, Kharagpur, Kanpur, Delhi, Roorkeet including Prof (Dr.) Girish Kumar and four other prominent

persons of other scientific institutions of the country like AIIMS Delhi), Indian Council of Medical research etc, to submit report so that the

Government may take necessary precaution while granting permission for establishment of mobile towers as well as to regulate sale of mobiles with

necessary precautions. In compliance of above said order, a committee has been constituted vide office letter dated 20.08.2012 (R-12). The

committee has submitted its report to the Hon"ble Allahabad High Court.

13. In the written statement filed by respondent No. 2 it has been submitted that BSNL Jind has called upon the application of the residents of

village Haibatpur to offer their site for the installation of mobile tower by way of advertisement in the newspaper Dainik Bhaskar and Punjab

Kesari dated 18.07.2013. Four residents had applied to offer their site for installation of mobile tower. All the sites were inspected and the said

committee had found fit and feasible the present site of Suraj Bhan. The suitability of the present site was also approved by AGM, ambala vide

letter dated 24.11.2012. The site of Suraj Bhan was taken on lease vide agreement dated 30.01.2013 and thereafter, the construction of

foundation was commenced on 18.04.2013 and the construction has been completed by spending huge amount of Rs. 4,75,000/-.

14. On 01.05.2013, Smt. Durga Devi, Hawa Singh, Rajpal all residents of village Haibatpur filed a civil case in the Court of Civil Judge (Sr. Divn.)

Jind for restraining the installation of mobile tower in the residential colony and in the plot of Sh. Suraj Bhan. Hawa Singh was also an applicant for

offering his site for the installation of mobile tower. The learned Court dismissed the stay application, vide order dated 22.05.2013. An appeal was

filed against this order, which was fixed for 19.09.2013 by the learned District Judge, Jind. As per the reply filed, the installation of the said mobile

tower is completely in accordance with the rules and regulations and guidelines of BSNL Function of mobile tower is always started after checking

of emission of radiation by Telecom Enforcement Resource & Monitoring (TERM) Cell of the Department of Telecommunication in consonance

with letter dated 08.04.2010 issued by Government of India, Ministry of Communication and Information Technology, Department of Telecom,

New Delhi, Audit of Towers are conducted as prescribed by ICNIRP from time to time and all new BTS are audited and made to start radiating

only after self certificate has been submitted to TERM cell of the Government of India, Department of Telecommunication.

15. The petitioners and Suraj Bhan are relatives/far off relatives and the present writ petition has been filed by Dhup Singh and others by procuring

a vague certificate without any factual foundation from the Sarpanch of the village Haibatpur. However, neither the Gram Panchayat nor the

Sarpanch of Gram Panchayat, Haibatpur have lodged any complaint with the BSNL or with any other authority, in this regard.

16. After going through the material on record and the information given by UOI in its detailed reply, this Court is of the view that the

Telecommunication department has issued certain guidelines from time to time. Initially as per (R-5), the limitation provided for handset

manufactured in India, which were to conform to SAR limit of 2 watt/kg averaged over 10 gm issue, it was revised vide letter dated 17.08.2012

(R-7). These directions have now become effective w.e.f. 01.09.2013.

17. Reference can be made to a judgment of Kerala High Court in a case of Essar Telecom Infrastructure (P) Ltd. Vs. The Circle Inspector of Police

and Others, In paragraph 4, it has been held as under:-

4. We heard the learned counsel on both sides. Whether the electromagnetic fields upto 300 G.Hz will have any adverse effect on the health of

persons exposed to it, is a disputed question. Many environmentalists assert, they have adverse impact, whereas the mobile phone service

providers, whose operations generate EMF upto 300 G.Hz make assertions to the contrary. Following the precautionary principle, many countries

have introduced restrictions regarding the level of radiation from such towers. In India Ext. R8(a) guidelines are being enforced, governing

installation of mobile phone towers. Mr. Santhosh Mathew, learned counsel for the petitioner mainly relied on the decision of this Court in support

of his submissions, in Reliance Infocom Ltd. Vs. Chemanchery Grama Panchayat, wherein this Court quashed the order of the Chemanchery

Grama Panchayat, cancelling the building permit for erecting a mobile phone tower and also ordered the police to grant necessary protection for

the construction of the tower. In view of the said decision, this Court may grant police protection to the petitioner to construct the tower, it is

submitted. According to the learned counsel, the decision of the Government of India to enforce Ext. R8(a) guidelines has not brought about any

qualitative change in the situation. He also submits that the companies providing mobile phone service will undertake to abide by the

aforementioned guidelines. The learned counsel relied on sub-sections (b) and (c) of Section 29 of the Kerala Police Act and submitted that the

police have a duty to prevent commission of cognizable offences and also to preserve peace. He referred to Rule 158 of the Kerala Municipality

Building Rules and submitted that if the tower constructed is dangerous to health, the remedy of the persons in the neighbourhood is to move the

Secretary of the Municipality concerned. The said officer can take action under sub-rule (2) of Rule 158, it is pointed out.

18. In the present case, respondent No. 2 had given an advertisement for allotment of the site and applications were given by four persons. Smt.

Durga Devi, Hawa Singh, Rajpal all residents of village Haibatpur filed a civil case in the Court of Civil Judge (Sr. Divn.) Jind for restraining the

installation of mobile tower in the residential colony and in the plot of Sh. Suraj Bhan. Hawa Singh was also an applicant for offering his site for the

installation of mobile tower. The learned Court dismissed the stay application, vide order dated 22.05.2013. An appeal was filed against this

order, which was fixed for 19.09.2013 by the learned District Judge, Jind. Thereafter, the present writ petition has been filed.

19. In view of the fact that Union of India had taken steps as mentioned in their detailed reply, no ground is made out for restraining the official

respondents from installing mobile tower in the residential area.

20. The writ petition is dismissed.