

M/S Indus Towers Ltd vs Gautam Nagar Residents Association ... on 9 December, 2022

Author: Tushar Rao Gedela

Bench: Tushar Rao Gedela

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CM(M) 1380/2022
M/S INDUS TOWERS LTD.

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Through: Mr. V. Lakshmikumaran, M
Agnihotri, Ms. Snehal K.
Yogendra Aldak and Ms. B
Shukla, Advocates

versus

GAUTAM NAGAR RESIDENTS ASSOCIATION
REGD. & ORS.

..... Re
Through: None

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA
ORDER

% 09.12.2022 [The proceeding has been conducted through Hybrid mode] CM No.53434/2022
(Exemption)

1. Allowed subject to all just exceptions.

CM(M) 1380/2022 and CM No.53433/2022 (stay)

2. Petitioner impugns order dated 19.07.2022 and order dated 20.09.2022 passed by National Green Tribunal (hereinafter in short, referred to as the 'Tribunal') in O.A. 232/2022 and Review Application No.27/2022 respectively.

3. By way of the impugned order dated 19.07.2022, the Tribunal has directed the Commissioner, Municipal Corporation of Delhi and the DPCC to take action in accordance with directions passed in the impugned order and directed removal of the cell tower of the Petitioner, which is installed at Sadbhawna Park, Opp. Gulmohar Enclave Gate No.4, Gautam Nagar, Ward No.62/S, New Delhi.

4. Mr. Lakshmikumaran submits that the Tribunal while passing the impugned order overlooked the fact that it did not have jurisdiction at all to entertain the lis. Learned counsel also submits that the Petitioner had relied upon the judgment rendered by four-Member Bench of the NGT in the case of Dr. Arvind Gupta v. Union of India and Ors. and other batch matters, pronounced on 10.12.2015 in

O.A. 61/2012, which had concluded that the Tribunal would not have any jurisdiction in respect of any activity which do not fall within Section 14 of the NGT Act.

5. This judgment was also brought to the notice of the Tribunal.

6. Learned counsel submits that the learned Tribunal overlooked the binding decision rendered by a larger Bench of the Tribunal in the case of Dr. Arvind Gupta (supra). Learned counsel referred to a judgment rendered by this Court in Indus Towers Ltd. Vs. North Delhi Municipal Corporation, 2022 SCC Online Del 568 in support of his submissions.

7. Learned counsel also refers to the judgment rendered by the Division Bench of the Allahabad High Court in the case of Residents Welfare Associates vs. Union of India and Ors., WP(C) No.16888/2022, rendered on 11.11.2022 whereby in a similar case pertaining to the Petitioner herein, the Division Bench had considered the case of Smt. Asha Mishra vs. Union of India and Ors., 2016 (4) AWC 3427 wherein the allegation regarding the ill effects of the radiation on human health arising out of installation of mobile cell towers was found to be without merits. Relying on the said judgment, the Division Bench upheld the view that there is no evidence that the installation of cell tower would cause any ill effects on the human health.

8. Learned counsel also relies upon judgment rendered by Division Bench of this Court in Kapil Chaudhary and Anr. Vs. Union of India and Ors., (2016) SCC Online Del. 2558 and draws the attention to para 12 to submit that the Tribunal not only exceeded its jurisdiction but also overlooked the judgments rendered by a Division Bench of the Allahabad High Court as well as that of this Court apart from the judgment rendered in the case of Dr. Arvind Gupta (supra) and has committed material irregularity in passing the impugned orders.

9. There is no representation on behalf of the Respondents. Mr. Lakshmikumaran submits that they have been served copies in advance.

10. Be that as it may, for the purpose of preliminary hearing, this Court has to consider whether prima facie there is any substance in the arguments put forth by learned counsel for the Petitioners.

11. The foremost aspect which comes to the mind of this Court is that when a larger Bench judgment is rendered by either a Court or any Tribunal, it would be in line with judicial discipline and propriety to follow the same unless there are factors, relevant to the issue, on the basis whereof the same can be distinguished.

12. This Court has considered the judgment rendered in the case of Dr. Arvind Gupta (supra) and relevant paragraph to the issue involved is extracted hereunder :-

"28. From the provisions of the various acts that we have reproduced above, it is clear beyond doubt that the radiation from electromagnetic waves resulting from such towers is not explicitly covered in any of the scheduled acts to the NGT Act. In fact, even under the NGT Act, relevant definition under provisions do not refer to the

radiation specifically..".

Para 33 of the said judgment is also relevant to the issue in dispute which is extracted hereunder :-

"33. In view of the above discussion, we are of the considered view that radiation i.e. emission of electromagnetic waves from the towers constructed by the respective respondents does not fall within the ambit, scope and jurisdiction vested in this Tribunal under the provisions of the NGT Act with reference Environment (Protection) Act, 1986."

13. From the above paragraphs, it is clear that four-Member Bench of the Tribunal had categorically concluded after a detailed discussion on various aspects that the emission of electromagnetic waves from the towers constructed by Institutions/Companies like the Petitioner and other similarly situated companies do not fall within the ambit, scope and jurisdiction vested in the Tribunal under the provisions of the NGT. This was rendered with reference to the Environment (Protection) Act, 1986.

14. Coming next to the case rendered by a Coordinate Bench of this Court in the matter of Indus Power Ltd. (supra), the Co-ordinate Bench had in fact reiterated the finding rendered by a Division Bench of this Court in Kapil Choudhary (supra) and held as under :-

"10. Further, it may be noticed that the objection raised by the residents that the tower is likely to cause harm to children, old people and pregnant women is no longer res integra as by judgment dated 26.04.2016 a Division Bench of this Court in W.P. (C) No. 5550/2015 titled Kapil Chaudhary & Anr. Vs. Union of India & Ors. has categorically held that there is no scientific data available to show that installation of mobile phone tower and emission of waves by the said tower is in anyway harmful for the health or hazardous to the health of citizens. There is no conclusive data to the said effect.

11. The Division Bench in Kapil Chaudhary (supra) was considering a public interest petition seeking removal of the mobile towers installed in residential area. The ground raised in the petition inter alia was that the presence of the towers will cause diseases on account of radiation that is emitted. The Union of India had filed a Counter Affidavit therein stating that "many studies have been conducted on the health hazard of radiations of mobile phone towers/networks. These studies have been conducted under the aegis of WHO. The studies have concluded that there is no conclusive scientific evidence of adverse health effects due to low level of RF emission from mobile phone towers."

12. The Division Bench after considering several Judgments of various High Courts wherein similar pleas had been rejected held as under:

"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."

13. In view of the above, the work stop notice issued by the respondent Corporation, solely on the ground of the above referred complaints received from residents, is not sustainable. Accordingly, the work stop notice dated 27.08.2021 is quashed."

15. It appears that in pursuance of the directions issued by the Tribunal, the Municipal Corporation of Delhi by letter dated 22.08.2022 informed the Tribunal as well as the present Petitioner that the subject site park is not to be used for any non-conforming purpose and thereby directing the Petitioner to remove the mobile tower from the subject site.

16. Mr. Lakshmikumaran referred to page 269 to submit that based on the impugned order, a deluge of applications are now being filed before the Tribunal against the present Petitioner seeking removal of the Cell towers from different locations in Delhi.

17. Be that as it may, that is not the subject matter of the present petition and therefore, no orders are expected to be passed thereon.

18. After having heard Mr. Lakshmikumaran and considering all the judgments, it appears, prima facie, that the learned Tribunal has overlooked the law on the said subject and mis-directed itself while passing the impugned orders. The issue with respect to the installation of the cell towers, the apprehension of ill-effects on the health of human lives as well as the larger issue as to whether the Tribunal had any jurisdiction to pass any such order, as the impugned one, needs consideration.

19. Issue notice to the Respondents of the CM(M) 1380/2022 as well as CM APPL.53433/2022, by all prescribed modes, additionally through counsel appearing before the Tribunal, returnable on 11.07.2023.

20. Reply be filed within four weeks. Rejoinder thereto, if any, be filed within four weeks thereafter.

21. In the meantime, impugned order dated 19.07.2022 passed in O.A. No.232/2022 and order dated 20.09.2022 passed in Review Application No.27/2022, case titled as Gautam Nagar Residents Association Regd. Vs. Commissioner, SDMC and Ors., passed by the Tribunal are stayed and consequently, the order date 18.08.2022 issued by Municipal Corporation of Delhi annexed at page 121 of the paper book is also kept in abeyance till further orders.

TUSHAR RAO GEDELA, J DECEMBER 9, 2022/yg