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IN THE SUPREME COURT OF INDIA
EXTRAORDINARY CIVIL JURISDICTION
B.V. NAGARATHNA; J., UJJAL BHUYAN; J.
SLP(C) NO(S).16014-16015 OF 2020; SEPTEMBER 21, 2023
BHARAT SANCHAR NIGAM LIMITED & ANR. *versus* THE STATE OF CHHATTISGARH & ANR.

Constitution of India, 1950; Entry 49 of List II – Fees on erection of mobile tower – Held, the State Government has the authority to impose permit fees on the erection of mobile towers. The tax or fee applicable is on the use of the land and building where the mobile tower is installed, not on the tower itself. *(Para 13)*

WITH SLP(C) NO(S). 12476-12478/2020, SLP(C) NO(S). 1724-1725/2021, SLP(C) NO(S). 4749-4751/2022

(Arising out of impugned final judgment and order dated 10-02-2020 in WPC No. 154/2019 10-02-2020 in WPC No.3482/2018 passed by the High Court of Chhatisgarh at Bilaspur)

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O R D E R

These Special Leave Petitions have been preferred by the petitioners herein, being aggrieved by the order dated 10.02.2020 passed by the High Court of Chhattisgarh.

2. In the writ petitions filed before the High Court, the challenge was to the power and authority of the State Government/local authority to realise tax/fee or a charge on erection of mobile towers by the petitioners herein and also as to the exorbitant quantum of tax/fee (being "initial permit fee") as well as the subsequent yearly renewal fee as well as the compounding/settlement fee. The main ground of challenge was with regard to the State or local authority not having any power vested with them to issue any Circulars/Directions/Rules as the subject would fall within the scope of Entry 31 of List I of the Seventh Schedule of the Constitution of India, in respect of which there cannot be any intrusion by the State Legislature or any authority of the State. It was contended that under the provisions of the Indian Telegraph Act, 1885, the Central Government had notified the Indian Telegraph Right of Way Rules, 2016 ("2016 Rules", for short) and therefore the field of legislation being within the Central Government's domain, the State had no power to impose any tax or fee much less the local authorities.

3. A Circular was issued by the State of Chhattisgarh dated 06.06.2006, addressed to the local authorities to cause realisation of one time permit fee while granting sanction for erection of a mobile tower in the area under jurisdiction of the Municipal

Corporations/Municipalities/Gram Panchayats and also for realisation of the yearly renewal fee. There was no grievance raised from any quarter with regard to the said Circular. However, the aforesaid Circular was superseded by a subsequent Circular whereby the fee structure was enhanced several fold. It was also stipulated that those who had unauthorisedly erected the mobile towers could settle the matter on payment of settlement or compounding fee to an extent of 15 to 50 times of the one time permit fee. In view of the enhancement of the permit fee by five times and renewal fee by 10 times and settlement fee by 15 to 50 times, the Circular dated 18.11.2009 was assailed in several writ petitions before the High Court. Subsequently, the State Government issued the Chhattisgarh Municipal Corporation (Erection of Temporary Tower or Structure for Cellular Mobile Phone) Rules, 2010 ("2010 Rules", for short) for collection of one time permit fee, yearly renewal fee and the compounding/settlement fee as stipulated in the earlier Circular dated 18.11.2009. These Rules were assailed by the petitioners herein in several writ petitions. Thereafter, the State Government issued an Instruction/Circular dated 28.03.2012 under Section 77(2) of the Panchayat Raj Adhiniyam, 1993 (for short, "the Act of 1993") read with S.No. (9) of Schedule II, whereby the Gram Panchayats were at liberty to realise one time permit fee in connection with the erection of the mobile towers in the panchayat area, with the annual renewal fee and also stipulating the compounding fee/settlement fee. Being aggrieved by the said Circular, several writ petitions were filed before the High Court.

4. In a sense, the challenge to the Circulars and Rules is in the context of the legislative competence being absent in the State to deal with the subject. This is on the premise that the subject comes under Entry 31 of List I of the Seventh Schedule of the Constitution, which is exclusively within the domain of the Central Legislature namely the Parliament. Therefore, the State Legislature had no power to realise any tax, fee or charge in respect of erection and operation of the mobile towers.

5. It was, however, the stand of the State Government before the High Court that a mobile tower being a structure on land or building coming within the scope of Entry 49 of List II of the Seventh Schedule dealing with land and building, therefore the State Legislature had the competence to frame the impugned Rules. This was because the subject land and building was squarely covered within the domain of State List, namely, Entry 49 of List II of the Seventh Schedule. In this regard, reliance was placed in Entries 5, 18 and 66 of the State List or List II of the Seventh Schedule.

6. The High Court has upheld the circulars as well as the Rules and therefore, dismissed the writ petitions. Being aggrieved, the writ petitioners before this Court have filed these special leave petitions.

7. We have heard learned senior counsel and learned counsel for the petitioners and learned senior counsel for the respondent-State and learned Additional Solicitor General for Union of India at length and perused the material on record.

8. At the outset, we wish to refer to Entry 31 List I and Entry 49 List II of the Seventh Schedule of the Constitution which read as under:

Entry 31 List I of the Seventh Schedule of the Constitution:

"31. Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication."

This is a general Entry.

Entry 49 List II of the Seventh Schedule of the Constitution:

"49. Taxes on lands and buildings."

This is a taxation Entry.

8.1 Insofar as the interpretation to be given to the Entries of the Lists in Seventh Schedule are concerned, this Court in several judgments has highlighted as in the scope and ambit of the Entries in various Lists of Seventh Schedule. We may refer to some of the judgments as under on the interpretation of the legislative Entries in the context of Article 246 of the Constitution of India.

9. In ***State of Karnataka vs. State of Meghalaya, (2023) 4 SCC 416***, a co-ordinate Bench of this Court of which one of us (Nagarathna, J.) was a member has observed as under:

56. Some of the salient aspects concerning the distribution of the legislative powers between Parliament and State Legislature as per the three Lists of Seventh Schedule to the Constitution in the backdrop of provisions could be alluded to. Article 246 of the Constitution deals with the distribution of legislative powers between the Union and the States. The said Article has to be read along with the three Lists, namely, the Union List, the State List and the Concurrent List. The taxing powers of the Union as well as the States are also demarcated as separate entries in the Union List as well as the State List i.e. List I and List II respectively. The entries in the Lists are the fields of legislative powers conferred under Article 246 of the Constitution. In other words, the entries define the areas of legislative competence of the Union and State Legislature.

57. Article 246 deals with subject-matter of laws made by Parliament and by the Legislatures of States as follows:

57.1. Clause (1) of Article 246 states that notwithstanding anything in clauses (2) and (3) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I (Union List). In this case, we are concerned with Entry 40 of List I, which deals with lotteries organised by the Government of India or the Government of a State.

57.2. Clause (2) of Article 246 of the Constitution, states that notwithstanding anything in clause (3), Parliament and the Legislature of any State also have the power to make laws with respect to any matters enumerated in List III (Concurrent List).

57.3. Clause (3) thereof, states that the Legislature of any State has exclusive power to make laws for the State with respect to any matters enumerated in List II (State List). However, clause (3) of Article 246, is subject to clauses (1) and (2) which begin with a non obstante clause.

58. The power to legislate which is dealt with under Article 246 has to be read in conjunction with the entries in the three Lists which define the respective areas of legislative competence of the Union and State Legislatures. While interpreting these entries, they should not be viewed in a narrow or myopic manner but by giving the widest scope to their meaning, particularly, when the vires of a provision of a statute is assailed. In such circumstances, a liberal construction must be given to the entry by looking at the substance of the legislation and not its mere form. However, while interpreting the entries in the case of an apparent conflict, every attempt must be made by the Court to harmonise or reconcile them. Where there is an apparent overlapping between two entries, the doctrine of pith and substance is applied to find out the true character of the enactment and the entry within which it would fall. The doctrine of pith and substance, in short, means, if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature. Also, in a situation where there is overlapping, the doctrine has to be applied to determine to which entry, a piece of legislation could be related. If there is any trenching on the field reserved to another legislature, the same would be of no consequence. In order to examine the true character of enactment or a provision thereof, due regard must be had to the enactment as a whole and to its scope and objects. It is said that

the question of invasion into another legislative territory has to be determined by substance and not by degree.

59. In case of any conflict between entries in List I and List II, the power of Parliament to legislate under List I will supersede when, on an interpretation, the two powers cannot be reconciled. But if a legislation in pith and substance falls within any of the entries of List II, the State Legislature's competence cannot be questioned on the ground that the field is covered by Union list or the Concurrent list vide Prafulla Kumar Mukherjee v. Bank of Commerce Ltd. According to the pith and substance rule, if a law is in its pith and substance within the competence of the legislature which has made it, it will not be invalid because it incidentally touches upon the subject lying within the competence of another legislature vide State of Bombay v. F.N. Balsara.

60. In Atiabari Tea Co. Ltd. v. State of Assam, it has been observed by this Court that the test of pith and substance is generally and more appropriately applied when a dispute arises as to the legislative competence of the legislature and it has to be resolved by reference to the entries to which the impugned legislation is relatable. When a question of legislative competence is raised, the test is to look at the legislation as a whole and if it has a substantial and not merely a remote connection with the entry, the same may well be taken to be a legislation on the topic vide Ujagar Prints (2) v. Union of India.

61. The expression used in Article 246 is “with respect to” any of the matters enumerated in the respective Lists. The said expression indicates the ambit of the power of the respective legislature to legislate as regards the subject-matters comprised in the various entries included in the legislative Lists. Hence, where the entry describes an object of tax, all taxable events pertaining to the object are within that field of legislation unless the event is specifically provided for elsewhere under a different legislative head. Thus, the Court has to discover the true character and nature of the legislation while deciding the validity of the legislation. Applying the doctrine of pith and substance while interpreting the legislative lists what needs to be seen is whether an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it. If it does, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature vide F.N. Balsara.

62. In Ujagar Prints (2), it was observed that the entries in the legislative Lists must receive a liberal construction inspired by a broad and generous spirit and not in a narrow and pedantic manner. This is because the entries are not sources of legislative power but are merely topics or fields of legislation. The expression “with respect to” in Article 246 brings in the doctrine of pith and substance in the understanding of the exertion of the legislative power and wherever the question of legislative competence is raised, the test is whether the legislation, looked at as a whole, is substantially “with respect to” the particular topic of legislation. For applying the principle of pith and substance, regard must be had : (i) to the enactment as a whole, (ii) to its main object, and (iii) to the scope and effect of the provision.

63. Once the legislation is found to be “with respect to” the legislative entry in question unless there are other constitutional prohibitions, the power would be unfettered. It would also extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in that topic or category of legislation vide United Provinces v. Atiqa Begum.

64. Another important aspect while construing the entries in the respective Lists is that every attempt should be made to harmonise the contents of the entries so that interpretation of one entry should not render the entire content of another entry nugatory vide Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B. This is especially so when some of the entries in a different List or in the same List may overlap or may appear to be in direct conflict with each other, in such a situation, a duty is cast on the Court to reconcile the entries and bring about a harmonious construction. Thus, an effort must be made to give effect to both entries and thereby arrive at a reconciliation or harmonious construction of the same. In other words, a construction which would reduce one of the entries nugatory or dead letter, is not to be followed.

65. The sequitur to the aforesaid discussion is that if the legislature passes a law which is beyond its legislative competence, it is a nullity ab initio. The legislation is rendered null and void for want of jurisdiction or legislative competence vide R.M.D. Chamarbaugwalla v. Union of India.

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81. …… The principles have been succinctly summarised and restated by a Bench of three learned Judges of this Court on a review of the available decision in Hoechst Pharmaceuticals Ltd. v. State of Bihar. They are:

(1) The various entries in the three Lists are not"powers" of legislation but "fields" of legislation. The Constitution effects a complete separation of the taxing power of the Union and of the States under Article 246. *There is no overlapping anywhere in the taxing power and the Constitution gives independent sources of taxation to the Union and the States.*

(2) In spite of the fields of legislation havingbeen demarcated, the question of repugnancy between law made by Parliament and a law made by the State Legislature may arise only in cases when both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List and a direct conflict is seen. If there is a repugnancy due to overlapping found between List II on the one hand and List I and List III on the other, the State law will be ultra vires and shall have to give way to the Union law.

(3) *Taxation is considered to be a distinct matter for purposes of legislative competence*. There is a distinction made between general subjects of legislation and taxation. The general subjects of legislation are dealt with in one group of entries and power of taxation in a separate group. *The power to tax cannot be deduced from a general legislative entry as an ancillary power.*

(4) The entries in the lists being merely topics orfields of legislation, they must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The words and expressions employed in drafting the entries must be given the widest possible interpretation. This is because, to quote V. Ramaswami, J., the allocation of the subjects to the lists is not by way of scientific or logical definition but by way of a mere simplex enumeratio of broad categories. *A power to legislate as to the principal matter specifically mentioned in the entry shall also include within its expanse the legislations touching incidental and ancillary matters.*

(5) Where the legislative competence of thelegislature of any State is questioned on the ground that it encroaches upon the legislative competence of Parliament to enact a law, the question one has to ask is whether the legislation relates to any of the entries in List I or III. If it does, no further question need be asked and Parliament's legislative competence must be upheld. Where there are three lists containing a large number of entries, there is bound to be some overlapping among them. In such a situation the doctrine of pith and substance has to be applied to determine as to which entry does a given piece of legislation relate. Once it is so determined, any incidental trenching on the field reserved to the other legislature is of no consequence. The court has to look at the substance of the matter. The doctrine of pith and substance is sometimes expressed in terms of ascertaining the true character of legislation. The name given by the legislature to the legislation is immaterial. Regard must be had to the enactment as a whole, to its main objects and to the scope and effect of its provisions. Incidental and superficial encroachments are to be disregarded.

(6) The doctrine of occupied field applies onlywhen there is a clash between the Union and the State Lists within an area common to both. There the doctrine of pith and substance is to be applied and if the impugned legislation substantially falls within the power expressly conferred upon the legislature which enacted it, an incidental encroaching in the field assigned to another legislature is to be ignored. While reading the three Lists, List I has priority over Lists III and II and List III has priority over List II. However, still, *the predominance of the Union List would not prevent the State Legislature from dealing with any matter within List II though it may incidentally affect any item in List I.*"

(emphasis in original)

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84. Further, the entries in List I and List II must be construed if possible, so as to avoid conflict. If there appears to be a conflict between entries of List I and List II, what has to be decided is whether there is any real conflict. If there is none, the question of application of the non obstante clause "subject to" does not arise. If there is a conflict, the correct approach to the question is to see, whether, it is possible to effect a reconciliation between the two entries so as to avoid a conflict and overlapping. It was reiterated that in the event of a dispute arising it should be determined by applying the doctrine of pith and substance in order to find out whether between two entries or legislative fields assigned to two different legislatures, the particular subject of the legislation falls within the ambit of the one or the other. Where there is a clear and irreconcilable conflict of jurisdiction between the Union and a State Legislature, it is the law of the Union that must prevail.

85. Reliance was placed on the words of Sabyasachi Mukharji, J. (as his Lordship then was), speaking for six out of the seven Judges constituting the Bench in Synthetics & Chemicals. It was held that under the constitutional scheme of division of powers in the Seventh Schedule, there are separate entries pertaining to taxation and other laws. A tax cannot be levied under a general entry. It was observed that the above principles continued to hold the field and have been followed in cases after cases.

86. Delving further on the subject, it was observed by this Court that the power of regulation and control is separate and distinct from the power of taxation. This was illustrated with reference to several judgments of this Court, particularly, Hingir-Rampur Coal Co. Ltd. v. State of Orissa wherein this Court dealt with Entry 54 of List I and Entry 23 of List II. Reference was also made to State of Orissa v. M.A. Tulloch & Co.

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92. The aforesaid discussion could be summed up in a nutshell by culling out the following principles stated in Kesoram Industries:(SCC pp. 322-25, para 129)

(1) In the scheme of the Lists in the Seventh Schedule, there exists a clear distinction between the general subjects of legislation and heads of taxation. They are separately enumerated.

(2) Power of "regulation and control" is separate and distinct from the power of taxation and so are the two fields for purposes of legislation. Taxation may be capable of being comprised in the main subject of general legislative head by placing an extended construction, but that is not the rule for deciding the appropriate legislative field for taxation between List I and List II. As the fields of taxation are to be found clearly enumerated in Lists I and II, there can be no overlapping. There may be overlapping in fact but there would be no overlapping in law. The subject matter of two taxes by reference to the two lists is different. Simply because the methodology or mechanism adopted for assessment and quantification is similar, the two taxes cannot be said to be overlapping. This is the distinction between the subject of a tax and the measure of a tax.

(3) The nature of tax levied is different from the measure of tax. While the subject of tax is clear and well defined, the amount of tax is capable of being measured in many ways for the purpose of quantification. Defining the subject of tax is a simple task; devising the measure of taxation is a far more complex exercise and therefore the legislature has to be given much more flexibility in the latter field. The mechanism and method chosen by the legislature for quantification of tax is not decisive of the nature of tax though it may constitute one relevant factor out of many for throwing light on determining the general character of the tax.

(4) The entries in List I and List II must be so construed as to avoid any conflict. If there is no conflict, an occasion for deriving assistance from non obstante clause "subject to" does not arise. If there is conflict, the correct approach is to find an answer to three questions step by step as under:

One — Is it still possible to effect reconciliation between two entries so as to avoid conflict and overlapping?

Two — In which entry the impugned legislation falls by finding out the pith and substance of the legislation?

and

Three — Having determined the field of legislation wherein the impugned legislation falls by applying the doctrine of pith and substance, can an incidental trenching upon another field of legislation be ignored?

(5) The primary object and the essential purpose of legislation must be distinguished from its ultimate or incidental results or consequences, for determining the character of the levy. A levy essentially in the nature of a tax and within the power of the State Legislature cannot be annulled as unconstitutional merely because it may have an effect on the price of the commodity.

(6) The heads of taxation are clearly enumerated in Entries 83 to 92-B in List I and Entries 45 to 63 in List II. List III, the Concurrent List, does not provide for any head of taxation. Entry 96 in List I, Entry 66 in List II and Entry 47 in List III deal with fees. The residuary power of legislation in the field of taxation spelled out by Article 248(2) and Entry 97 in List I can be applied only to such subjects as are not included in Entries 45 to 63 of List II.

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149.5. On a close perusal of the entries in the three Lists of the Seventh Schedule to the Constitution, it is discerned that the Constitution has divided the topics of legislation into the following three broad categories:

(i) Entries enabling laws to be made;

(ii) Entries enabling taxes to be imposed; and

(iii) Entries enabling fees and stamp duties to be collected.

Thus, the entries on levy of taxes are specifically mentioned. Therefore, per se, there cannot be a conflict of taxation power of the Union and the State. Thus, in substance the taxing power can be derived only from a specific taxing entry in an appropriate List in the Seventh Schedule. Such a power has to be determined by the nature of the tax and not the measure or machinery set up by the statute.

10. Entry 49 List II came up for consideration by this Court in the context of mobile towers in the case of *Ahmedabad Municipal Corporation vs. GIL Infrastructure Ltd. (2017) 3 SCC 545 ("Ahmedabad Municipal Corporation")*. In the said case, while interpreting the expression land and building namely Entry 49 List II, in paragraphs 29 to 31, it was observed as under:

"29. Coming specifically to the expression "building" appearing in Schedule VII List II Entry 49 in view of the settled principles that would be applicable to find out the true and correct meaning of the said expression it will be difficult to confine the meaning of the expression "building" to a residential building as commonly understood or a structure raised for the purpose of habitation. In State of A.P. v. Hindustan Machine Tools Ltd. a tax on a building housing a factory has been understood to be a tax on building and not on the factory or its plant and machinery. A general word like "building" must be construed to reasonably extend to all ancillary and subsidiary matters and the common parlance test adopted by the High Court to hold the meaning of levy of tax on building and machinery does not appear to be right keeping in mind the established and accepted principles of interpretation of a constitutional provision or a legislative entry. A dynamic, rather than a pedantic view has to be preferred if the constitutional document is to meet the challenges of a fast developing world throwing new frontiers of challenge and an ever changing social order.

30. The regulatory power of the corporations, municipalities and panchayats in the matter of installation, location and operation of "mobile towers" even before the specific incorporation of mobile towers in the Gujarat Act by the 2011 Amendment and such control under the Bombay Act at all points of time would also be a valuable input to accord a reasonable extension of such power

and control by understanding the power of taxation on "mobile towers" to be vested in the State Legislature under Schedule VII List II Entry 49.

31. The measure of the levy, though may not be determinative of the nature of the tax, cannot also be altogether ignored in the light of the views expressed by this Cours is Goodricke, under both the Acts read with the relevant Rules, tax on mobile towers is levied on the yield from the land and building calculated in terms of the rateable value of the land and building. Also the incidence of the tax is not on the use of the plant and machinery in the mobile tower; rather it is on the use of the land or building, as may be, for purpose of the mobile tower. That the tax is imposed on the "person engaged in providing telecommunication services through such mobile towers" (Section 145-A of the Gujarat Act) merely indicates that it is the occupier and not the owner of the land and building who is liable to pay the tax. Such a liability to pay the tax by the occupier instead of the owner is an accepted facet of the tax payable on land and building under Schedule VII List II Entry 49.

32. Viewed in the light of the above discussion, if the definition of "land" and "building" contained in the Gujarat Act is to be understood, we do not find any reason as to why, though in common parlance and in everyday life, a mobile tower is certainly not a building, it would also cease to be a building for the purposes of List II Entry 49 so as to deny the State Legislature the power to levy a tax thereon. Such a law can trace its source to the provisions of Schedule VII List II Entry 49 to the Constitution."

10.1 Although, under the provisions of the Ahmadabad Municipal Corporation Act, the expression mobile towers was inserted and defined, which in our view, was by way of abundant caution, nevertheless, the interpretation made by this Court of the expression land and building in the context of erection of a mobile tower is relevant for the purpose of this case. It is necessary to note that this Court observed that in the context of a mobile tower located on land and building, incidence of a tax or charge or fee is not on the structure of the mobile tower as such, rather it is on the use of the land and building on which the mobile tower is erected. Therefore, the person who is using the land and building for the purpose of installation of the mobile tower so as to make use of the said structure for the purpose of telecommunication or telegraph services is liable to pay the tax or fee or charge. Hence, the said payment is not upon the owner of the land and building but on the person who is responsible for erecting of the mobile tower on the land and building and is thus using the land or building for erection of the mobile tower. Hence, Entry 49 List II is the only Entry which can enable the state Government to collect tax or fee or charge, as the case may be, with regard to the use of land and building for the purpose of erection of the mobile towers located within a municipal corporation, municipality or a nagar panchayat or any other land and building within the state of Chhattisgarh.

11. This Court in *Ahmedabad Municipal Corporation* held that mobile tower is covered within the subject enumerated in Entry 49 of List II which deals with land and building and therefore, was a subject covered under the State List or List II of the Seventh Schedule of the Constitution.

12. Learned senior counsel for the petitioners however contended that the Right of Way Policy notified on 12 March 2021 (hereinafter referred to '2021 Policy') by the State Government is not permitted as telegraph is a central subject and only the Central Government can make such Rules as has been done in the year 2016. However, on a reading of the said 2016 Rules, we find that the same is restricted to installation of mobile towers on land or buildings belonging or under the control and management of the municipal corporation, municipality or any other local authority under the panchayat raj institution. The said Rules would not apply to the private buildings or private land of citizens/persons. The reason for the same are not far to see. This is because the municipal

authorities and the panchayat raj institutions would not impose tax or charge a fee in respect of their own land or land under their control and management therefore, the regulation insofar as the municipal land and the land under the control and management of the municipal corporations, municipalities and panchayat raj institutions is regulated by the 2016 Rules. There is no challenge to their validity in these matters and hence, the said question is left open.

13. On the other hand, insofar as land and buildings belonging to the private citizens or persons are concerned, the Central Rules i.e. 2016 Rules are silent in context of the levy of any tax, fee or charge on the installation of mobile towers on such land or building. This is deliberately so because the subject land and buildings is a subject falling within List II or the State List and it is only the State Legislature which can impose a tax, fee or a charge, in respect of the land and buildings or use thereof by private persons or citizens. Therefore, the impugned Circulars and Rules can be squarely related to Entry 49 List II of the Constitution which is in the matter of regulation of the use of land and buildings in the context of erection of mobile towers etc. in the State of Chhattisgarh.

13.1 In this regard, the provisions of the Municipal Corporation and the Municipalities Act as well as the Panchayat Raj Adhiniyam, 1993 which were pointed out during the course of submissions are relevant and have been considered in detail.

14. As opposed to the Municipal laws, the Indian Telegraph Act, 1876, which defines telegraph line, post and telegraph authority are only concerned with the transmission or reception of signs, signals etc., for the purpose of communication with the help of contrivances or devices etc. such as mobile towers etc. and not with use of land and buildings as such for the purpose of erection of mobile towers thereon.

15. In the circumstances, we find that having regard to the conspectus reading of the Telegraph Act and the 2016 Rules in the backdrop of Entry 31 List I and Entry 49 List II of the Seventh Schedule, we find that the Chhattisgarh State Legislature and the Chhattisgarh Government had the legislative competence to frame the impugned Rules which are framed as per the respective Municipal laws.

16. In fact, during the course of submissions, learned senior counsel Shri Sidhharth Bhatnagar, appearing for the State of Chhattisgarh also drew our attention to the 2021 Rules and submitted that under the said Rules, relief has been granted to the mobile tower providers wherein unauthorized mobile towers would be regularized and therefore the petitioners herein, to that extent, have been granted relief insofar as the settlement or compounding fee is concerned provided they make their applications to the concerned authorities and seek orders of regularization under the 2021 Rules.

17. Having heard learned senior counsel for the respective parties and on a consideration of the provisions of law in the backdrop of the pertinent Entries in List I and List II of the Seventh Schedule of the Constitution and particularly in the context of the judgment of this Court in *Ahmedabad Municipal Corporation*, we find that the High Court of Chhattisgarh was right in upholding the Circulars and Rules and repelling the challenge made to the same as being devoid of any merit. Consequently, the writ petitions were dismissed and the interim orders were vacated.

18. We find that the order of High Court would not call for any interference in these petitions.

18.1 We, once again, reiterate that Chhattisgarh Legislature had the legislative competence to issue the Circulars as well as the 2019 Rules impugned in the writ petitions before the High Court. The High Court was justified in interpreting the aforesaid provisions

in the light of the Indian Telegraph Act, 1885 and the Municipal Laws of the State of Chhattisgarh and the relevant Entries in Lists I and II of the Seventh Schedule of the Constitution.

19. Having held as, we clarify that in view of the 2021 Policy of the respondent State, the petitioners or any other infrastructure provider similarly situated as the petitioners, are at liberty to make the requisite application before the concerned authorities for regularization of the existing mobile towers which may have been erected unauthorizedly. It is needless to observe that on such applications being made, the same shall be considered in the light of the 2021 Policy of the respondent State and in accordance with law.

The special leave petitions are disposed of in the aforesaid terms.

No costs.