

Court No. - 1

Case :- P.I.L. CIVIL No. - 24271 of 2020

Petitioner :- Amarjit Samuel Datt

Respondent :- U.O.I. Thru. Secretary Deptt. Of Telecomm., New Delhi & Ors.

Counsel for Petitioner :- Abhishek Singh, Prashant Kumar

Counsel for Respondent :- C.S.C., A.S.G.

Hon'ble Ritu Raj Awasthi, J.

Hon'ble Manish Mathur, J.

1. Heard learned counsel for the petitioner as well as Mr. J.N. Mathur, learned Senior Advocate assisted by Mr. Aakash Prasad, learned counsel for the opposite party no.7 and Mr. S.B. Pandey, learned Assistant Solicitor General of India assisted by Mr. Ambrish Rai, learned Central Government Counsel for opposite party nos. 1 to 4 and the learned Standing Counsel for the opposite party nos. 5 and 6.

2. The writ petition has been filed seeking the following reliefs:-

i) *Issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the opposite parties to remove the installation and operation of Mobile Tower and 4G Base Transmitting Station (BTS) by the opposite party no.7 at the plot of the opposite party no.8.*

ii) *Issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the opposite parties to publish the result or conclusion of the study on the possible impact of EMF radiation exposure from mobile tower and hand set on life and related initiative conducted by opposite party no.1.*

iii) *Issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the opposite parties to include the "Non-Ionizing Electromagnetic Radiation" as pollutant under Environment (Protection) Act, 1986 and insert a schedule therein detailing the safety norms/guidelines.*

iv) *Any other appropriate writ order or direction this Hon'ble Court may deem just and necessary in the facts and circumstances of the case may also be passed; and*

v) *to allow this writ petition with costs."*

3. Learned counsel for petitioner submits that opposite party no.7 has erected mobile tower and 4G Base Transmitting Station at the adjacent plot of the residence of the petitioner. It is located in the densely populated area and the emission of radiation from the tower has adverse effect on the health of the petitioner and his family members and the people living nearby.

4. It is also submitted that no uniformed policy is being followed for installation of the mobile towers and the advisory on use of mobile towers considering the impact on wildlife including birds and bees, has not been considered as well as the questions raised in this regard before the Parliament and the answers given by the Ministry of Telecommunication has also not been considered. It is submitted that the petitioner had filed the instant writ petition in the nature of Public Interest Litigation, however subsequently the writ petition has been treated in the Miscellaneous Bench jurisdiction as the petitioner has come forward showing that the petitioner himself is aggrieved with the action of the opposite parties in installation of 4G Base Transmitting Station and mobile tower on the plot adjacent to the house of the petitioner.

5. Mr. J.N. Mathur, learned Senior Advocate appearing for the opposite party no.7, on the other hand, submits that the controversy raised in the writ petition has been considered and decided by a judgment of Division Bench of this Court in the case of ***Smt. Asha Mishra Vs. State of U.P. and others***;2017 (1) UPLBEC 261, which has been consistently followed in subsequent judgments and orders of this Court. He has placed a compilation of the judgments passed in this regard by this Court. The compilation placed before the Court is taken on record.

6. Learned counsel for petitioner tried to submit that the judgment passed by this Court in the case of ***Smt. Asha Mishra (Supra)*** is distinguishable from the case of the petitioner on the ground that in that case under challenge was the installation of mobile towers and 4G Base Transmitting Towers being established in the entire State of U.P. whereas in the present case the petitioner has specifically pleaded that the opposite party no.7 has installed mobile tower and 4G Base Transmitting Station adjacent to the residence and area of the petitioner which is densely populated. It is also submitted that the

Court has not considered the earlier orders passed by the Division Bench of this Court on 29.1.2015 in Writ-C No. 1626 of 2015; *Chhedilal Vs. Union of India and others* wherein the writ petition was disposed of with direction that the mobile towers shall not be established on the land in dispute in contravention of the guidelines issued by the Government from time to time.

7. It is to be noted that the Division Bench of this Court headed by the then Hon'ble Chief Justice while deciding the case of **Smt. Asha Mishra (Supra)** has framed the issues which have fallen for consideration. The said issues have been noted in Paragraphs 5 of the judgment. For convenience Paragraph 5 of the judgment is reproduced below:-

"5. Upon a review of the material placed before us and the submissions advanced we find that the following broad issues fall for our consideration:

"I. Whether the contention of the petitioners including those related to the deleterious effect of EMF radiation upon human health and safety is liable to be sustained;

II. Whether the seventh respondent is in compliance with the statutory and regulatory framework presently in vogue;

III. Whether the Court in exercise of its jurisdiction under Article 226 would be justified in granting the reliefs as sought; and

IV. Further directions if any."

8. The answer to these issues start from Paragraphs 19 onwards. The Court has answered each and every issue in the judgment. Paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of the said judgment are reproduced below:-

"19. Having traversed and noticed the vast field of scientific material gathered by different committees and organisations, the precedents rendered on the subject we now proceed to deal with the issues raised before us on merits.

F. ON MERITS

I. Whether the contention of the petitioners including those related to the deleterious effect of EMF radiation upon human health and safety is liable to be sustained?

20. *The primary contention of the petitioners as noted above is based upon a perceived present and imminent danger to human health and safety caused by EMF radiation. The report of Prof.*

Girish Kumar forms the fundamental bedrock upon which these submissions are based. We however find that this is not the first time that this report has been utilized or pressed into service for laying a challenge to the roll out and establishment of mobile towers. In fact this very report was noted by the Division Bench of the Court at Lucknow in Shriram Singh Jauhararia when taking note of the said report the Bench constituted a committee to examine the conclusions and undertake a comprehensive review on the subject of EMF radiation and the ill effects of mobile telephony on human health. As the record would reveal and as would be evident from the findings of the committee that we have extracted above, the conclusion arrived at was that there was no material which justified the conclusions arrived at by Prof. Kumar. The Committee, in fact went to the extent of characterizing the perceived threats as voiced by Prof. Kumar as being a misrepresentation. Once that be the state of the record we find that the report of Prof. Kumar does not advance the case of the petitioners any further.

21. However since the issue raised in the petitions related to public health and safety and bearing in mind the command of Article 21 we delved even further to consider whether there was any material, which justified the invocation of our constitutional powers to injunct the seventh respondent from establishing the mobile towers or BTS's.

22. We felt constrained to burden this judgment with various extracts of the findings and recommendations of DOT, the Parliamentary Standing Committee as well as the WHO in order to establish that a plethora of material gathered by experts clearly negatives the perceived and alleged imminent threat and danger to health as was sought to be canvassed before us. All the experts have unanimously voiced their opinion that the present body of scientific research does not justify the threat to health and life as is sought to be portrayed by some quarters including the petitioners before us.

23. On the above state of the record we find no merit in the challenge raised by the petitioners on this score. Bearing in mind the present conclusions and findings on the subject as expressed by experts across the board we find that there exists no justification for the submission of a present and imminent danger or threat to human health from the radiation emitted by mobile towers and BTS's. We further note that the studies undertaken both in India as well as by other international organizations have unanimously opined that the emissions from these equipments are minuscule and do not warrant the anxiety or fear which is sought to be generated in this batch of petitions. Our conclusion so recorded is of course not intended to relieve DOT or the Union Government from its obligation of continuing a scientific review

of the subject. However in light of what we have found above, we rule against the petitioners insofar as Issue No. I is concerned.

Issue No. 2 Whether the seventh respondent is in compliance with the statutory and regulatory framework presently in vogue?

24. We find that the petitioners have clearly failed to establish on the basis of any material on record that the seventh respondent was in breach of the statutory requirements placed and enforced by DOT. In order to be assured independently, we as a matter of abundant caution called upon the TERM Cell to carry out a technical audit of all the proposed sites. The report of the TERM Cell placed before us upon affidavit did not find any of the sites to be in violation of the statutory and regulatory norms governing the field. We further note that as per the regulatory provisions prevalent, none of the mobile towers or BTS's of the seventh respondent would be entitled to be energized for commercial operations unless and until the self certification process is complied with and requisite papers filed before the TERM Cell. We therefore and in light of the above, find no ground which may warrant a restraint upon the establishment of the mobile towers and BTS's being established by the seventh respondent.

Issue No. III. Whether the Court in exercise of its jurisdiction under Article 226 would be justified in granting the reliefs as sought?

25. The submissions of learned counsel for the petitioners advanced on these petitions on more than one aspect would require us to travel into the realm of testing policy measures as well as evaluation of scientific material gathered by experts. The Court in exercise of its powers of judicial review undertakes an exercise of testing actions of the State on the touchstone of our Constitution and the laws of the land. Articles 21 and 38 clearly mandate the State to take measures to ensure the safety, health and well being of all citizens. Its measures and actions must be aimed at alleviating the living conditions of all citizens and the environment of the nation as a whole. The Court in exercise of its constitutional mandate is therefore obliged to enquire into and test all actions of the State bearing in mind the breath and content of Articles 21 and 38. However at the same time, it cannot lose sight of certain inherent limitations placed upon the exercise of this power. The Court is not an arena for scientific debate nor is it a forum for the testing of conflicting scientific studies and findings of experts. That is surely not its province. The Courts exercise their power of judicial review to test a lis or a cause necessarily against legal norms or legal parameters. Legal norms and legal parameters do not, nay, cannot be left to rest upon competing or nebulous scientific research or opinion.

26. We may in this connection usefully refer to two causes, which travelled to the Supreme Court for an amplification of what we have held. The first was a challenge to the construction of the Tehri Dam. The second more recent and of far greater import than the subject which falls for our determination - the use of nuclear energy. *N.D. Jayal Vs. Union of India*¹⁰ dealt with a challenge to the establishment of the Tehri Dam. The Supreme Court dealing with the challenge held: -

"20. This Court cannot sit in judgment over the cutting edge of scientific analysis relating to the safety of any project. Experts in science may themselves differ in their opinions while taking decisions on matters related to safety and allied aspects. The opposing view points of the experts will also have to be given due consideration after full application of mind. When the Government or the authorities concerned after due consideration of all viewpoints and full application of mind took a decision, then it is not appropriate for the court to interfere. Such matters must be left to the mature wisdom of the Government or the implementing agency. It is their forte. In such cases, if the situation demands, the courts should take only a detached decision based on the pattern of the well settled principles of administrative law. If any such decision is based on irrelevant consideration or non-consideration of material or is thoroughly arbitrary, then the court will get in the way. Here the only point to consider is whether the decision-making agency took a well informed decision or not. If the answer is "yes", then there is no need to interfere. The consideration in such cases is in the process of decision and not in its merits."

27. Dealing with the challenge to the establishment of a nuclear power plant in *G. Sundarrajan Vs. Union of India*¹¹ the Supreme Court ruled: -

"15. India's national policy has been clearly and unequivocally expressed by the legislature in the Atomic Energy Act. National and international policy of the country is to develop control and use of atomic energy for the welfare of the people and for other peaceful purposes. NPP has been set up at Kundankulam as part of the national policy which is discernible from the Preamble of the Act and the provisions contained therein. It is not for courts to determine whether a particular policy or a particular decision taken in fulfillment of a policy, is fair. The reason is obvious, it is not the province of a court to scan the wisdom or reasonableness of the policy behind the statute.

200. Much hue and cry has been raised by some sections of the people about the possible impact of radiation from KKNP Units 1 and 2, a point which has been addressed by AERB, NPCIL, MoEF and all the Expert Committees constituted to go into the impact and effect of radiation from the units not only on humans

but also on ecology. The Experts Committees are of the unanimous opinion that there will not be any deleterious effects due to radiation from the operation of KKNP, and that adequate safety measures have already been taken. We cannot forget that there are many potential areas of radiation reflected in many uses of radioactive materials. Radioactive materials are used in hospitals, surgeries and so on. Mobile phone use, though minor, also causes radiation. In a report of the Department of Telecommunication "Mobile Communication -- Radio Wave and Safety" released in October 2012, it has been stated that a human body is exposed to more electromagnetic field radiation in case of a call from mobile phone in comparison to the radiation from a mobile tower.

201. We have, therefore, to balance "economic scientific benefits" with that of "minor radiological detriments" on the touchstone of our national nuclear policy. Economic benefit, we have already indicated has to be viewed on a larger canvas which not only augment our economic growth but alleviate poverty and generate more employment. NPCIL, while setting up the NPP at Kundankulam, have satisfied the environmental principles like sustainable development, corporate social responsibility, precautionary principle, inter-/intra-generational equity and so on to implement our National Policy to develop, control and use of atomic energy for the welfare of the people and for economic growth of the country. Larger public interest of the community should give way to individual apprehension of violation of human rights and right to life guaranteed under Article 21.

205. This Court in Chameli Singh v. State of U.P. [(1996) 2 SCC 549] held that in an organized society, the right to live as a human being is not ensured by meeting only the animal needs of man, but secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. Right to shelter includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and civil amenities like road, etc. so as to have easy access to his daily avocation.

206. Nuclear power plant is being established not to negate right to life but to protect the right to life guaranteed under Article 21 of the Constitution. The petitioner's contention that the establishment of nuclear power plant at Kundankulam will make an inroad into the right to live guaranteed under Article 21 of the Constitution, therefore has no basis. On the other hand, it will only protect the right to life guaranteed under Article 21 of the Constitution for achieving a larger public interest and will also achieve the object and purpose of the Atomic Energy Act. "

28. *Bearing in mind the principles which must guide the exercise of the power of judicial review as enunciated by the Supreme*

Court we are of the opinion that this Court while exercising its jurisdiction under Article 226 would clearly not be justified in proceeding on the basis of the conclusions of an author of a scientific study which itself has not found acceptance amongst its peers.

29. Our reluctance to accede to the submissions advanced by the learned counsel for the petitioners also stemmed from the factual backdrop of the present proceedings. There was no conclusive material which was brought to our attention which may have even remotely be read as evidencing, underlining or supporting the perceived threat to human health voiced by the petitioners. Further we note that the seventh respondent is in the process of rolling out and establishing its 4G network on the basis of licenses and permissions granted by the Union Government which are not under challenge before us. It is also not established from the record that the seventh respondent is in breach of the conditions of its license or that its installations violate the regulatory framework put in place by the Union and State governments.

30. The present policy regime as approved by the Union Government grants authority to the seventh respondent to establish a 4G mobile telephony and data network in accordance with the license issued to it. Mobile telephony is an enterprise which is duly permitted and has the sanction of the State. The subject of the so called and alleged effects of its usage on public health is a debate which continues both at the national as well as the international level. The fact however remains that as on date there is no conclusive material or scientific study which may justify or be read as conclusive proof of the canvassed ill effects of EMF radiation on human health. We are also mindful of the fact that DOT has adopted and put in place national standards which peg the maximum emission levels at 1/10th of the international norm prescribed by ICNIRP. This in our opinion should have been sufficient to allay the fears and anxieties of the petitioners. Moreover the scientific experts in the field have found no justification in the findings recorded by Prof. Girish Kumar. The report of the Committee comprised of eminent persons who are experts in their field is liable to be accorded judicial deference. We accordingly find no ground which would warrant the issuance of the writs as prayed for.

Issue No IV Further directions

31. Though having found no justification for the imposition of a prohibition or restraint upon the installation of mobile towers and BTS's there remain certain issues which in our opinion do require notice. As per the admitted stand of the Union, the TERM Cells carry out a random inspection of 10% of the mobile tower sites falling within their respective jurisdictions. No periodicity of

inspections appears to be fixed. There also does not appear to be in place a system for verification of the self-certification which is filed by the prospective service provider. The other area of concern appears to be, as was evident from the common refrain of all the petitioners, the lack of a complaint redressal mechanism or at least the absence of an effective, robust and transparent grievance redressal machinery.

32. The absence of determinative scientific data does not lead us to hold that the technology and its perceived effect on health and well being does not require a continuous monitoring or sustained scientific study or research. It is evident from the body of material placed before us that internationally a close watch is being maintained on the effects of EMF radiation. All studies indicate that presently there appears to be no definitive scientific material or data which may warrant EMF radiation being classified as endangering health. However the state of the research can at present, as we have noted above, be best described as being still nebulous and tenuous. This is perhaps the reason for research in the field being continued and ongoing. The standards adopted in our country are stated to be more stringent than those suggested by the WHO. However the fixation of a standard is but one aspect of the oversight mechanism which must necessarily be put in place. The more important and fundamental issue appears to be the requirement of a system which ensures the adherence to the standards fixed. This aspect, in our opinion, cannot be left to depend solely upon a 10% random annual check carried out by TERM Cells. "

9. After answering the issues the Court has also considered the question of Grievance Redressal Mechanism while delivering the aforesaid judgment and in this regard has issued certain directions which are given in Paragraph 33. Paragraph 33 of the judgment is reproduced below:-

"33. The other aspect as noted above relates to the grievance redressal mechanism. From the submissions advanced and the material placed before us we find that there does exist the need for the establishment of a grievance redressal and information dissemination mechanism which may take note of complaints and allay the various doubts which stand raised in respect of the subject in question. The absence of an effective machinery was also noted by the Parliamentary Standing Committee which found the reply of DOT to be unsatisfactory and reiterated its recommendations for the system being made more robust and responsive. Bearing in mind the serious concerns raised in respect of the above two issues, we proceed to issue the following directions: -

1) DOT will expeditiously and not later than within 2 months from the date of this judgment frame guidelines for the TERM Cells carrying out periodical inspection of mobile towers and BTS stations falling within their respective jurisdictions;

2) DOT while framing the guidelines shall also consider and if thought feasible incorporate appropriate provisions for inspection of all or such percentage of cell towers as may be deemed appropriately by the TERM Cells;

3) DOT shall also consider and implement a mechanism where the testing of cell sites is not left to depend upon the self certification procedure of the service provider solely;

4) The directions issued shall mandate the TERM Cells to disclose their findings of compliant and non-compliant mobile towers and BTS's for the information of the general public;

5) The TERM Cells shall also make known to the general public the action taken against erring and non-compliant mobile towers and BTS establishments;

6) DOT shall ensure that the particulars of TERM Cells including the particulars of its Nodal Officer for different regions are made known to the members of the general public;

7) DOT shall establish a complaint cell in the various regions details of which are given wide publicity in the area concerned, to receive and address public complaints relating to mobile towers and BTS;

8) DOT shall also issue necessary directions to ensure that the complaint cell duly looks into, enquires and disposes of such complaints within a reasonable period of time."

10. It is to be noted that this judgment has been followed by this Court in deciding the controversy involved with respect to the installation and operation of mobile towers and 4G Base Transmitting Stations in the subsequent writ petitions and all those writ petitions have been dismissed in terms of the judgment passed in the case of **Smt. Asha Mishra (Supra)**.

11. So far as the contention of learned counsel for the petitioner that the case of the petitioner is different from the case of **Smt. Asha Mishra (Supra)** and as such that judgment is not to be considered while deciding the present controversy involved in this writ petition is concerned, we are of the considered view that pith and substance of the issues raised in the writ petition are by and large the same as have been framed by the Court while deciding the case of **Smt. Asha Mishra (Supra)** and as such the judgment of

Smt. Asha Mishra (Supra) covers the controversy involved in the instant writ petition.

12. It is also to be noted that so far as the contention of counsel for the petitioner that the advisory on the use of mobile towers considering the impact on wildlife including birds and bees are not followed is concerned, it is to be observed that they are only advisory and not mandatory in nature.

13. So far as the contention of learned counsel for the petitioner that the question raised in the Parliament and the answers to those questions given by the Ministry of Telecommunication have not been considered are concerned, we are of the considered view that the discussion made in the Parliament are not to be considered while deciding the case in a judicial Court.

14. So far as the contention of learned counsel for the petitioner that the judgment of this Court in the case of *Chhedilal (Supra)* is concerned, we are constrained to observe that the said judgment does not lay any *ratio decidendi*. It only says that the erection of mobile towers shall be made as per the guidelines issued by the Government from time to time.

15. Learned counsel for the petitioner has not been able to show that the erection and operation of the impugned mobile tower and 4G Base Transmitting Station by the opposite party no.7 is in contravention of any order or direction of the State Government or any other authority.

16. In this view of the matter, the writ petition lacks merit and is *dismissed*.

[Manish Mathur, J.]

[Ritu Raj Awasthi, J.]

Order Date :- 8.2.2021

Arjun/-