

**CM-7782-2022 in/and CWP-4424-2021
CWP-PIL-43-2021(O&M)
CWP-13058-2021 (O&M)
CWP-11442-2021 (O&M) and
CWP-23236-2021 (O&M)**

**Simarjeet Singh
V/S
State of Punjab and others**

Present: Mr. Aashish Chopra, Sr. Advocate with
Ms. Rupa Pathania, Advocate and
Mr. Gurpreet Singh, Advocate for the petitioner
in CWP-4424 of 2021 and
for respondent No.3 in CWP No.11442 of 2021.

Mr. R.S. Saroha, Advocate for the petitioner
in CWP-PIL-43 of 2021.

Ms. Sarika Gupta, Advocate for the petitioner
in CWP No.23236 of 2021.

Mr. Rakesh Nehra, Sr. Advocate with
Ms. Bindu Tanwar, Advocate for the petitioner
in CWP No.13058 of 2021.

Mr. V.G. Jauhar, Addl.AG, Punjab.

Mr. Satya Pal Jain, Addl. Solicitor General of India with
Mr. Arvind Moudgil, Sr. Counsel, Govt of India with
Ms. Jyotika Panesar, Advocate for respondent No.1
in CWP No.13058 of 2021,
for respondent No.2 in CWP No.11442 of 2021 and
for respondent No.5 in CWP No.4424 of 2021.

Mr. J.S. Dosanjh, Advocate for respondent No.2.

Mr. Ilyas Khan, Advocate for respondent No.2
in CWP No.4424 of 2021.

Mr. Sumeet Goel, Sr. Advocate with
Mr. Samir Rathaur, Advocate for respondent No.3
in CWP No.4424 of 2021.

Mr. Deepak Balyan, Advocate for respondent No.3
in CWP-PIL-43/2021.

Mr. I.S. Saggu, Advocate for respondent Nos.6 to 10
in CWP No.4424 of 2021.

Misc. application No.CM-7782-CWP-2022 has been filed by the respondent – State of Punjab for clarification of the order dated 08.04.2021 passed by this Court.

The clarification sought is as to whether in the light of this order, NOC for installation of mobile towers can be issued to other Telecom Infrastructure Providers apart from Respondents No.3 and 4, if they are found eligible as per Rules and Instructions of the Government with regard to Roof Top Towers which have come up on structurally safe and approved buildings.

In order to dispose of this application it would be necessary to refer to the relevant previous orders passed in this case.

This writ petition has been filed by the petitioner -Simarjeet Singh assailing the show cause notice dated 08.02.2021 issued to him by the Estate Officer, GMADA calling upon him to remove the mobile tower installed on the roof of his house No.535, Phase-10 SAS Nagar. As per the show cause notice this was in violation of the conditions of the Allotment letter and Building Bye- Laws. The notice also stated that in the event of the petitioner failing to do so action u/s 45(3) of the Punjab Regional and Town Planning and Development, Act, 1995 to cancel the allotment would be taken.

When the case came up for preliminary hearing on 25.02.2021 the Court posed certain queries to the Ld. Counsel for the petitioner regarding the weight and height of the tower and the number of

poles erected on the building.

Thereafter, the case was listed on March 3, 2021 when the following order was passed:

“Case has been heard through Video Conferencing on account of COVID-19 Pandemic.

CM-3471-CWP-2021

This is an application for taking on record photographs as Annexures P-8 and P-9.

Application is allowed and the photographs are taken on record.

CWP-4424-2021

Notice of motion.

Ms. Anu Chatrath, Additional Advocate General, Punjab accepts notice on behalf of respondent No.1.

On the last date of hearing, following order was passed:-

“Following queries have been put to learned counsel representing the petitioner:-

i) Whether the construction of the building is pillar construction or based on foundation only?

ii) The weight, height etc. of the tower/pole and how much number of poles erected in the building in question.

Learned counsel for the petitioner shall be at liberty to move an application to clarify the aforesaid queries.

To be listed as and when appropriate application is moved.”

Today, learned counsel for the petitioner has informed us that the construction of the building is a pillar based and height of the poles is 6 mts.and weight thereof is 200 kgs.

An additional query has been put to learned counsel for the petitioner whether there is a mandatory requirement for installing solar panel for use.

Learned State counsel shall be at liberty to file a short affidavit regarding the query raised above. It shall also be made clear whether uniform policy is being adopted all over the State of Punjab or a stand alone instructions have been given for

SAS Nagar. Another question that arises is whether due to wind velocity at times, there can be a danger of the tower being dislocated and endanger the lives of the people. It appears apart from the tower, there are batteries on the roof which may not be able to bear the burden.

As a larger question has arisen before this court regarding installation of towers on residential building, as an interim measure we direct that State shall not allow installation of towers on the residential buildings till further orders. As regards the building of the petitioner, status quo shall be maintained till the next date of hearing. This order is being passed in view of the fact that installation of towers in a haphazard manner may endanger lives and property of the people and would violate their rights under Article 21 of the Constitution.

To come up on 10.3.2021.”

Being of the view that the petition raised a larger question of installation of towers on residential buildings and that the installation of such towers in a haphazard manner may endanger the life and safety of the inhabitants, as an interim measure, it was directed that the State shall not allow installation of towers on residential buildings till further orders. As regards the building of the petitioner status quo was directed to be maintained till the next date of hearing.

Application (CM-4053-CWP-2021) was moved by respondent No.3 - Bharti Airtel for vacation of interim order dated 03.03.2021. It was urged that detailed guidelines dated 07.12.2020 had been framed by the State Government in the light of Rules issued by the Ministry of Communications (Department of Telecommunications). Similar prayer for vacation of stay order was made on behalf of respondent No.4 - ATC Telecom Infrastructure Private Ltd.

The order dated March 19, 2021 recorded as under:

“Case has been taken up on Video Conferencing in view of COVID-19 Pandemic.

Mr. Mittal has prayed for vacation of interim order dated 03.03.2021. According to him detailed guidelines dated 07.12.2020 have been framed by the State Government in light of Rules, Annexure R-3/1 issued by the Ministry of Communications (Department of Telecommunications).

Learned counsel appearing for respondent no.4 has made a prayer on similar lines.

This apart, we have noticed that in judgment reported as Smt Asha Mishra Vs. State of U.P. & 7 others Public Interest Litigation (PIL) No. 48084 of 2015 decided on 12.04.2016 The Allahabad High court has observed as under:-

“The State of U.P. has framed building byelaws with reference to the powers conferred upon it by Section 57 of the Urban Planning and Development Act, 1973. As per the salient features of these byelaws, permission is accorded to the service provider only upon him having submitted a layout plan of the proposed tower prepared by an architect registered with the Council of Architects along with a structural safety certificate. The service provider is required to obtain an NOC from the Residents’ Welfare Association and the byelaws strictly prohibit the installation of such towers on buildings which have been illegally erected or are situate in narrow lanes. The byelaws further require the service operator and the landlord of the premises to submit a joint affidavit indemnifying against any human or property loss which may occur.”

A query has been put to State counsel whether conditions similar to aforesaid have been incorporated in the Rules relating to erecting of mobile towers in the residential area. He prays for some time to seek instructions from the concerned department. Let affidavit of an Officer not below the rank of Additional Chief Secretary of the concerned department be filed within three days from today.

Adjourned to 23.03.2021.”

On 08.04.2021 after taking note of the reply of the Union of India and the State of Punjab and the fact that the entire issue of erection of towers is governed and regulated under the Indian Telegraph (Right of Way) Rules 2016 (These Rules are framed under the Indian Telegraph Act, 1885 to regulate under ground infrastructure i.e., optical fibre and over ground infrastructure i.e., mobile towers) [hereinafter referred to as '2016 Rules'] and that the State Government had also issued guidelines dated 07.02.2021 regulating the installation of mobile towers, and also in view of the importance of the telecommunication services and that the prayer for vacation of stay was not opposed either by the Government of India or the State of Punjab, the order dated March 3, 2021 was directed to remain in abeyance till the next date of hearing. It was directed that respondent No.3- Bharti Airtel shall be entitled to carry out its further operations.

The Court also directed the constitution of a Panel to monitor all the activities pertaining to erection of towers in the State of Punjab during the pendency of the petition. The panel was to ensure that no activity in violation of 2016 Rules or Instructions was undertaken.

The said order is reproduced below:

“Case has been heard through Video Conferencing in view of COVID-19 pandemic.

This court is seized of the matter in view of a petition preferred by the petitioner-Simarjeet Singh to seek a writ in the of certiorari for setting aside the show cause notice dated 08.02.2021, Annexure P-3, whereby he was directed to remove/eject the towers installed on the roof of the petitioner.

During the hearing of the matter on February 25, 2021, we raised certain queries as to the ability of

the building to withstand weight of two towers erected on the same; whether the constructions of the buildings was pillar based or on normal foundation.

On the next date of hearing i.e. March 3, 2021, some other questions arose as regard uniform policy, if any, formulated by the Government.

Inter alia, a question was put whether the roofs in the residential and commercial buildings were structurally strong enough to bear the burden of poles, water tanks, batteries, solar panels, etc. Whether such haphazard installation of towers would endanger life and property of people.

In response, a detailed reply was filed by UOI as well as State of Punjab. The court has been apprised that the entire issue of erection of poles was considered by the Department of Telecommunication and Indian Telegraph Right of Way Rules, 2016 (to be referred hereinafter as "Rules, 2016") were framed which govern all aspects pertaining to such matters. State of Punjab, in turn, submitted that it had issued instructions dated December 7, 2020. Ms. Anu Chatrath, Additional Advocate General, Punjab referred to Para 1.4 of the said rules to contend that all safeguards are contained in the relevant clauses incorporated therein. This is done with a view to ensure the structural stability of the ground-based towers. She also referred to Para 4 of the affidavit filed on behalf of the State. Same reads as under:-

"The Infra/Telecom Guidelines, dated 07.02.2021, hereinafter referred to as "State Guidelines", have been issued in pursuance of provision of the Indian Telegraph Right of Way Rules, 2016 and in supersession of earlier Notification of the Department of Industries & Commerce, Punjab dated 05.12.2013 and 11.12.2015 respectively. Clause 1.4 of the Guidelines enlists and explains the Documents to be submitted along with the applications. For the convenience of this Hon'ble Court, relevant part of Clause 1.4(iv) of the Guidelines is reproduced as under:-

"In case of roof top BTS towers, structural stability certificate for the building and tower based on written approvals of any authorized Structural Engineer of State/Local Bodies/Central Buildings Research Institute, Roorke/IIT/NIIT or any other agency authorized by the local body".

From the bare perusal of Clause 1.4(iv) of the State Guidelines it is quite apparent that for roof top BTS towers, structural stability certificate is required to be issued for both building and tower by an authorized Structural Engineer. It is, however, clarified that the Telecom Policy does not distinguish between mounting of tower on pillar or foundation’.

Apart from the pleadings which have come on record, an application (CM-4053-CWP-2021) has been moved by respondent No.3- Bharti Airtel Ltd. for vacation of stay order date March 03, 2021. Mr. Gopal Jain, learned Senior counsel appearing for respondent No.4 has made a prayer in similar terms.

Mr. Mittal has emphatically submitted that the entire project to install towers has come to a stand-still resulting in connectivity problems. Referring to Para 2 of the application, which is supported by an affidavit, he submits that mobile phones is important for growth of the economy. Since the lockdown due to COVID-19 Pandemic, its importance has increased manifold. The telecommunication services and data services have played an important roles in maintaining the social, commercial and economical connectivity. Even schools and other institutions are functioning due to such connectivity. As per him, about 21,000 telecom towers are installed and approximately 73, 310 KMs of optical fibre cable (OFC) has been rolled out in Punjab and more connectivity is required for future expansion.

We feel that the matter needs a detailed examination and the question whether any alternative mode except using the roofs of buildings, particularly, residential in nature needs to be answered.

However, we feel that present application seeking vacation of stay needs immediate attention.

It needs to be noticed that this prayer is not opposed either by the Government of India or the State of Punjab. Their only plea is that the applicant i.e. Bharti Airtel Ltd. should act within the four corners of the law, 2016 Rules framed by the Government of India and Instructions issued by the Government of Punjab pursuant thereto.

At this stage, we have put a query to Ms. Anu Chatrath, Additional Advocate General, Punjab whether a High Powered Committee can be constituted for the purpose of monitoring further erection of towers, laying down the optical fiber on the buildings and check violation of Rules or haphazard manner of

this erection. She expresses no hesitation in this regard.

We, thus, direct that a panel of K.A.P. Sinha, IAS, Parbodh Kumar, IPS and a Legal Remembrancer, Punjab shall monitor all the activities pertaining to erection of towers in the State of Punjab during the pendency of this petition. The Panel shall submit a status report on or before the next date of hearing. They shall be at liberty to submit the same in a sealed cover, if necessary. The Committee shall ensure that no activity which is violative of 2016 Rules or Instructions laid down thereunder is undertaken. The said Committee shall be at liberty to point out any deficiencies which come to their notice and any suggestions for improvement/innovation which need to be incorporated in the instructions.

With this condition, order dated March 03, 2021 passed by this court shall remain in abeyance till the next date of hearing and the applicant-respondent No.3 shall be entitled to carry out its further operations. As regards the petitioner, status quo be maintained regarding his building till the next date of hearing. The concerned authority shall be at liberty to give an opportunity of hearing to the petitioner pertaining to the show cause notice issued to him and apprise the court of further action.

To come up on 25.05.2021.

The application of intervener (CM-5103-CWP-2021) shall also be heard on the next date of hearing.”

When the case came up for hearing on 13.09.2021, it was again directed that the order dated 03.03.2021 would be held in abeyance till the next date of hearing.

The said order is as under:

“CM-8832-2021:

Matter has been taken up through Video Conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Application is allowed as prayed for.

Exemption as prayed for is granted.

Application is disposed of.

CM-8838-2021:

Application is allowed as prayed for. The accompanying short reply filed on behalf of respondent No.5 is taken on record. Copy thereof is stated to have been furnished to counsel opposite.

Application is disposed of.

CM-5103-2021:

Issue notice in the application to counsel for the petitioner/non-applicant, returnable for 14.12.2021.

CM-4053-2021:

Pursuant to the order dated 08.04.2021 passed by this Court, the report of the Committee has been produced by learned State counsel in a sealed cover.

Main case:

List for further consideration on 14.12.2021.

The order dated 03.03.2021 would be held in abeyance till the next date of hearing.”

Later, on 14.12.2021 the interim directions were continued by the following order:

*“List on 22.02.2022.
Interim directions to continue.”*

As the competent-authorities of the respondent - State entertained a doubt as to whether the order dated 18.04.2021 directing that the earlier order dated 03.03.2021 be held in abeyance is limited only to respondents No.3 and 4 who had moved the application for vacation of the interim order or it would also extend to any other Service Provider who applies for NOC to instal mobile towers, this application has been filed by the State of Punjab seeking clarification as to whether in the light of this order, NOC for installation of mobile towers can be issued to other Telecom Infrastructure Providers, apart from Respondents No.3 and 4, if they are found eligible as per the applicable Rules and Instructions of the Government.

It has been stated that many Telecom Infrastructure Providers have approached the applicant- Department of the State that their applications for setting up of over ground telecom infrastructures are not being considered and approved by the competent authorities. Only the applications of the respondent No.3 and 4 are being approved as the order dated 08.04.2021 is being interpreted as being applicable only to respondents No.3 and 4. The applications of the other Telecom Infrastructure Providers are pending for approval with the competent authority.

It is further stated that because of the likely launch of 5G services in the State, it is important to urgently strengthen the telecom infrastructure in the State.

We have heard Ld. Counsel for the parties.

Ld. Counsel have referred to following decisions of different High Courts: **K.R. Ramaswamy @ Traffic Ramaswamy vs. The Secretary Department of Telecommunications, Government of India and others**, W.P.24976 of 2008 (Madras), **(2) Kapil Choudhary & Anr vs. Union of India @ Ors.** W.P © 5550 of 2015, **(3) Reliance Infocom Ltd vs. Chemanchery Grama Panchayat and Ors**, WP (c) No.18242 and 16724 of 2006, **(4) Muktipark Co Operative Society vs. Ahmedabad Municipal Corporation and Others**, SCA No.5548 of 2014, **(5) Manivannan vs. District Collector Tuticorin District and 6 Ors** (2019) 6 MLJ 641, **(6) Vijay Verma vs. State of H.P and others**, (2015) 78 R.C.R. (Civil) 572, **(7) Biju K Balan vs. The State of**

Maharashtra & Ors (2019) 2 AIR BOM R 251, (8) Smt Asha Mishra vs. State of UP and Others, 2016 (4) ADJ 389, (9) Vijay Verma vs. State of H.P and Others, 2015 (78) RCR (Civil) 572 and (10) Kapil Choudhary & Ors vs. UOI and Others, W.P (c) No.5550 of 2015.

In these cases, the respective petitioners had challenged the installation of Mobile Towers in residential areas primarily on the ground that such installation will be injurious to the health and safety of the residents. After detailed and elaborate discussion and reference to scientific studies, it was concluded that the apprehensions that the EMF radiations from the Mobile Base Stations are source of health hazard were without any scientific basis. The petitions were dismissed.

Sh. Satya Pal Jain, Ld. Additional Solicitor General for the Union of India has asserted that the matter is now regulated by the 2016 Rules and Government of India has no objection to the installation of mobile towers in strict compliance with the relevant Rules and Regulations.

Mr. V.G. Jauhar, Ld. Additional Advocate General, Punjab urged that there is urgent need to strengthen the telecom infrastructure in the State. The Competent Authority should be permitted to grant NOC for installation of Roof Top Towers on structurally safe authorized buildings strictly as per the notification dated 07.12.2020 issued by the State of Punjab which is in consonance with the 2016 Rules.

The order dated 03.03.2021 directing that installation of mobile towers on residential buildings be not allowed till further orders

was passed as an interim measure in view of the apprehension that installation of towers in a haphazard manner may endanger the life and safety of the inhabitants.

On 08.04.2021 after taking note of the replies of the Union of India, the State of Punjab and the fact that the entire issue of erection of towers is governed and regulated under the 2016 Rules and that the State Government had also issued guidelines dated 07.02.2021 regulating the installation of mobile towers, and also considering the importance of the telecommunication services and that the prayer for vacation of stay was not opposed either by the Government of India or the State of Punjab, the order dated 03.03.2021 was directed to remain in abeyance till the next date of hearing.

Though this order was passed on the application of respondent No.3, but from reading of this order, it does not appear to be limited only to respondent No.3. Nor is there any such limitation in the orders dated 13.09.2021 and 14.12.2021 whereby again the order dated 03.03.2021 was directed to be held in abeyance

Considering the aforesaid and in continuation of the previous orders dated 08.04.2021, 13.09.2021 and 14.12.2021 the interim order dated 03.03.2021 directing the State of Punjab not to allow installation of mobile towers on residential buildings is vacated.

Consequently, it would be open to the respondent- State of Punjab to consider and decide the applications of all Telecom Infrastructure Providers/ Telecom Service Providers if they are found

eligible as per applicable Rules/ Regulations/Instructions/ Guidelines of the Union/State Government with regard to Roof Top Towers. The respondent-State/ Competent Authority would ensure that the Towers are erected only on structurally safe and approved buildings.

The Panel constituted vide order dated 08.04.2021 would continue to monitor the activities pertaining to erection of towers in the State of Punjab strictly in terms of the directions contained in the order dated 08.04.2021.

Misc. application No.CM-7782-CWP-2022 in CWP-4424-2021 stands disposed of accordingly.

Main case and connected matters:

List on 23.02.2023.

(HARINDER SINGH SIDHU)
JUDGE

November 24, 2022
gian

(LALIT BATRA)
JUDGE