

**In the High Court at Calcutta**  
**Constitutional Writ Jurisdiction**  
**Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya**

**W.P. No.16267(W) of 2019**

**With**

**C.A.N. 10762 of 2019**

**Pradipta Kumar Jana**

**Vs.**

**State of West Bengal and others**

For the petitioner

: Mr. Supriya Chattapadhyay,  
Mr. Sudip Kumar Maiti

For the respondent no. 10

: Mr. Rajarshi Dutta,  
Mr. V.V.V. Sastry,  
Mr. Nischoy Mall

For the Pollution Control Board

: Mr. N.C. Bihani,  
Mrs. Papiya Banerjee

For the State

: Mr. Suman Sengupta,

Mr. Sanatan Panja

Hearing concluded on : 27.01.2020

Judgment on : 05.02.2020

**Sabyasachi Bhattacharyya, J.:-**

1. The petitioner is a villager in Jahanabad, Khejuri Anchal No.6, Block No.1, District: Purba Medinipur. The grievance of the petitioner is that, despite the petitioner and other co-villagers having given repeated representations to the authorities concerned, the respondent no.1-company, that is, the Reliance JIO Infocomm Limited, has started construction of a mobile tower in close proximity (about 5 metres laterally) to the petitioner's house, allegedly in a densely populated area.
2. Such representations were made to the Panchayat Authorities and to the Block Development Officer and an e-mail was even sent to the respondent no.10 itself.
3. The petitioner alleges that the installation of such tower shall emit harmful radiation, which will pose a serious health hazard to the residents of the neighbourhood.

4. It is further submitted that there are not only able-bodied adults but also aged and very young people and the sick and infirm, all of whom would suffer from various diseases, both immediate and potential, due to such sustained exposure to the emissions from the mobile tower.
5. It is further submitted on behalf of the petitioner that the respondent no. 10 has flouted the minimum distance and other norms provided in the relevant Guidelines issued by the Department of Telecommunications in that regard.
6. Such Advisory Guidelines (effective from August 1, 2013) are annexed at page-38 of the vacating application.
7. Certain Additional Guidelines to TERM Cells for auditing BTS for EMF Radiation, also effective from the said date, are annexed at page-41 of the vacating application.
8. By placing reliance on clause 4A, III and VIII, it is argued on behalf of the petitioner that a copy of SACFA clearance as well as No Objection Certificate (NOC) from building owner/entities having rooftop rights or rooftop tenants in case of roof based tower / land owner in case of ground based tower, as the case may be, are necessary, but not obtained by the respondent no.10.

9. Clause 2 of the Additional Guidelines also provides the minimum distance of the building/structure near the antenna(e) from such antenna(e), depending on the number of antennae pointed in the same direction. It is submitted that the said norms are also being violated blatantly by the respondent no.10.
10. As previously directed, C.A.N. 10762 of 2019, which is a vacating application, is treated to be an affidavit-in-opposition of the respondent no.10 to the writ petition.
11. A reply thereto is also on record.
12. Learned counsel for the respondent no.10, who is the main contesting respondent, argues that all the Advisory Guidelines have been followed by the said respondent.
13. All documents, as required under clause 4A of such Guidelines, have been duly deposited. It is submitted that sub-clause III of clause 4A contemplates not a copy of SACFA clearance only, but alternatively the copy of a SACFA application for the said location submitted to WPC wing of DoT with registration number as WPC acknowledgment, along with undertaking that in case of any objection/rejection, TSPs/IPs will take corrective actions/measures to remove the tower.

14. Sub-clause IX, on the other hand, envisages a self-certificate by the Telecom Service Provider/Infrastructure Provider in respect of mobile towers. As such, there is no question of any violation of such Guidelines, since the respondent no.10 has allegedly complied with all such norms.
15. It is submitted further that the safe distance of the building-in-question from the antenna, as provided in clause 2 of the Additional Guidelines, can only be measured after completion of the tower and at the time of installation of such antenna. It is argued on behalf of the respondent no.10 that clause 2 makes it clear that in case of both ground based towers and rooftop towers, there shall be no building right in front of the antenna(e) of equivalent height, taking into account the tilt of the lowest antenna on tower as per details in the table given thereinbelow. Other specifications, as given therein, can only be ascertained upon completion of the tower and subsequent installation of the antenna and as such, it is premature for the petitioner to complain that such Guidelines would not be followed.
16. Learned counsel for the respondent no.10 further submits that clause 4A of the Advisory Guidelines envisages the 'installation' of mobile towers, whereas only 'construction' of the steel structure, which would house such mobile tower, has commenced. He argues, it can only be said that there has been actual installation

of a mobile tower when the antenna(e) are installed. Hence, on such ground as well, the writ petition ought to be dismissed.

17. Both sides submit that there have been several directions of co-ordinate and division benches of this court, directing the State Government to immediately constitute Committees in terms of the letter of the Department of Telecommunications in the Ministry of Communication and IT dated October 28, 2014. In terms of the direction of this court in its judgment dated September 21, 2012 in W.P. No.19340 (W) of 2008, such Committees were to be constituted as Grievance Committees at the level of Municipal Corporations, Municipalities and at Block levels consisting of the panchayats for the effective implementation of the Rules, Regulations and Guidelines pertaining to erection and installation of mobile towers by service providers.

18. However, both sides accept that no such Grievance Committee has been constituted as yet.

19. The petitioner argues that, until and unless such Committees are in place, the construction of the mobile tower should be prevented.

20. On the other hand, by using the converse logic, respondent no.10 argues that, if one has to wait for the formation of such Grievance Committees for an indefinite period before construction of new mobile towers, the telecommunication services

provided by the service providers would be seriously disrupted in view of the phenomenal growth of mobile users and the necessity to upgrade the infrastructure to provide effective service to the mobile users. Moreover, the business interests of the respondent no.10 would also be adversely affected in view of the huge investments already made in the construction of the mobile tower.

21. The rival contentions make it abundantly clear that the primary concern of the petitioner is the health hazard posed to the people in the immediate neighbourhood of the proposed mobile tower, which may have a long-term effect on several generations. Such exposure to the emissions of the said tower is not only a health hazard but a question of radiation pollution as well, which is being deprecated throughout the world.
22. On the other hand, the concern of the respondent no.10 is to provide effective service to citizens for the use of mobile phones, which is also in public interest, even apart from the business interests specific to the respondent no.10 itself.
23. The authorities have taken a virtually neutral stand in the present case, merely relying on the Advisory Guidelines as mentioned above.
24. Undoubtedly, the apprehension of the petitioner is genuine and in the event radiations and other emissions from mobile towers are permitted recklessly, by

indiscriminate construction of mobile towers in densely populated areas, the same would be a genuine environment issue and the common citizen would suffer unnecessarily from some known and some still-unknown diseases caused by such radiations and emissions.

**25.** However, such public interest has to be balanced with the interest of the public in getting the benefits of modern technology provided by the mobile phone service providers. The use of mobile phones is now almost a basic necessity of human life. Even the financially backward stratum of society is fast becoming dependent on mobile phone services, particularly in view of several services by government authorities and other sectors now being extended through the mobile networks, including e-payment, social benefit schemes, banking, etc.

**26.** Specifically with a view to strike such a balance, the Department of Telecommunications has issued the Advisory Guidelines and Additional Guidelines, as annexed to the vacating application. Since the said guidelines have been accepted by both sides and because there is no specific law governing the modalities of installation of mobile towers apart from the said guidelines, those have to be taken as the yardstick to be adhered to while erecting mobile towers.



27. The objection taken by the respondent no.10, that the construction of the steel structure, which would house the mobile antenna(e), cannot be equated with installation of mobile towers, is unacceptable for two reasons.
28. First, 'installation of mobile towers' cannot be construed in any other manner but the construction of the towers housing antenna(e) to provide mobile network service. The 'steel structure' referred to by the respondent no.10 is nothing but a part of the mobile tower itself, since a 'tower' is comprised of not only the antennae but the entire structure housing the antenna(e) and cannot, by any stretch of imagination, be interpreted as the antenna(e) only.
29. Secondly, clause 4A of the Advisory Guidelines itself makes it abundantly clear that the documents mentioned therein are to be supplied prior to commencement of the construction of the tower itself. Hence, there is no scope of interpreting that the construction of the mobile tower can begin without the Advisory Guidelines being followed and that such specifications as provided therein can be complied with at the later stage of installation of the antenna(e) themselves.
30. Although there is substance in the contention of the respondent no.10 that the safe distance as provided in the Additional Guidelines can only be measured after the construction of the tower is complete and when the antenna(e) are going

to be installed, the other Guidelines are mandatorily to be followed for issuance of clearance for installation of mobile phone towers themselves.

31. A perusal of sub-clause III of clause 4A of the Advisory Guidelines reveals that a copy of SACFA clearance is not mandatory at the time of commencement of the construction, since, in the alternative, a copy of a received SACFA application, submitted to WPC wing of DoT with registration number as acknowledgment, would suffice. The same sub-clause also provides that such application has to be accompanied by an undertaking that in case of any objection/rejection, TSPs/IPs will take corrective actions/remove the tower. Such an undertaking itself indicates that the violation of the mandates provided in the said sub-clause can be rectified by implementing such undertaking at a later stage as well.

32. As far as sub-clause VIII is concerned, the same provides that the local bodies 'may' also seek submission of the copy of NOC from building owner/entities having rooftop rights or rooftop tenants in case of roof based tower and land owners in case of ground based tower, as the case may be. A discretion has been given to the State Government to seek fresh NOC at the time of renewal of site (tenancy) contract for the mobile tower as well. As such, it may be argued that sub-clause VIII is optional, since the term 'may' has been used to prefix the said provision.

33. It is to be noted that the expression 'may' has been used in the said sub-clause, which indicates that it is optional for the local bodies to insist upon such NOCs.
34. It is clear from sub-clause VIII that there is provision not only for the local bodies to seek submission of No Objection Certificates at the inception, but also for State Governments, as per their Rules in force, to seek fresh NOCs at the time of renewal of site (tenancy) contract for mobile towers.
35. However, in the event there is no Rule in force, there would be an element of discretion of local bodies regarding insisting upon such No Objection Certificates. As such, in the event no such Rules are in place at the present moment, it cannot be said that the construction of the mobile towers would be vitiated by illegality due to the local bodies not insisting upon such No Objection Certificates.
36. Moreover, such element of discretion has been apparently incorporated to avoid the owners of the neighbouring rooftops or lands from exploiting the said clause for making unlawful gains by unnecessarily withholding such No Objection Certificates.
37. That apart, in view of the other clauses of the Advisory Guidelines, sufficient precautionary measures have already been envisaged to prevent the radiation

emitted from the said towers to reach precarious proportions as far as the health hazards of the local people are concerned.

38. As far as the Additional Guidelines are concerned, the respondent no. 10 is correct in pointing out that the safe distance from the antenna(e) can only be measured after the total tower is constructed and when the antenna(e) are being installed. The relevant consideration here is, as per clause 2 of the Additional Guidelines, that the safe distance is measured between the antenna(e) and the building/structure "at the same height". That apart, the number of antenna(e) and the direction in which they point are also relevant factors to be considered.

39. Keeping in view the aforesaid discussions, it is evident that in the event the service provider, in this case the respondent no.10, complies with all the clauses as specified in the Advisory Guidelines, in particular those provided in clause 4A thereof, there is no bar in erecting a mobile tower.

40. Since options have been given in clauses I, III and IX of clause 4A, the respondent no.10 would be at liberty to continue with the construction of the mobile tower if it complies with any of such options.

41. As far as clause VIII is concerned, the same has to be read in a composite manner and it has to be construed in the light of any Rules being in force of the State

Government, which would be a guiding light for the local bodies to seek No Objection Certificates from the respective building/land owners.

42. Yet, it would be advisable, keeping in mind the health hazards which are at stake, that the local bodies at least invite objections from the residents of the immediate vicinity of the proposed mobile tower site, in the event submission of No Objection Certificates is not insisted upon, and adjudicate upon those objections, upon an enquiry as to there is substance in such objections and those are not frivolous objections for the sake of extorting service providers.

43. It is unfortunate that, despite several directions, the State Government has not complied with clause 4B, sub-clause VI as well as the several orders passed by this court, by constituting Public Grievance Committees. It is expected that such Committees would be formed at the earliest by the State Government.

44. In view of the aforesaid circumstances, W.P. No.16267(W) of 2019, along with C.A.N. 10762 of 2019 (treated to be an affidavit-in-opposition), are disposed of with the following directions:

- (i) The respondent nos.1 to 5 shall ascertain as to whether the Advisory Guidelines for issuance of clearance for installation of mobile towers, issued by the Department of Telecommunications,

as annexed at page-38, have been satisfied, insofar as clause 4A thereof is concerned, within a fortnight from date;

- (ii)** In the event any of such Guidelines have been flouted, the respondent nos.1 to 5 or any of them may direct the respondent nos.6 and 7 to ensure that the further construction of the mobile tower-in-question is stopped till the Guidelines provided in clause 4A are complied with. However, in the event such Guidelines have been followed, the respondent no.10 would be at liberty to resume the construction of the mobile tower from a fortnight hence;
- (iii)** The construction of the said tower shall remain stayed for a fortnight from date and, in the event the respondent authorities come to a conclusion that due compliance is lacking as regards clause 4A, as mentioned above, till such clauses are complied with to the satisfaction of the said authorities;
- (iv)** The local bodies, as represented by the respondent no.5, shall invite objections from the people in the immediate vicinity of the site of the proposed mobile tower, in the event No Objection Certificates, as contemplated in clause 4A, sub-clause VIII in terms of the Advisory Guidelines are not deposited. Upon due publication of

such invitation for filing objections, the respondent no.5 shall fix a cut-off date for filing such objections and, within a week thereafter, assess the veracity of such objections and submit a report thereon to the respondent no.4, who would forward the same to the respondent no.1. In the event the respondent no.1 finds substance in such report sufficient to castigate the respondent no.10 for violation of any of the other sub-clauses of clause 4A, than sub-clause VIII, of the Advisory Guidelines, the respondent no.1 shall forward the said objections to the Telecom Regulatory Authority of India (TRAI) within a reasonable period for the latter's consideration.

However, it is made clear that the entire exercise of invitation, assessment and forwarding report on such objections shall take place only in the event no copies of No Objection Certificates are furnished by the respondent no.10.

In the event such an exercise is undertaken, the entire process, including forwarding the report to the respondent no.1, shall be carried out within two months from this date.

It is made categorically clear that such exercise of deciding on objections shall not prevent the continuance of the construction of the mobile tower-in-question by the respondent no.10 in the meantime, subject to compliance of the sub-clauses other than sub-clause VIII of clause 4A of the Advisory Guidelines.

In the event adverse reports are forwarded to the TRAI, it would be open to the said authority to decide upon such objections and to enforce, if necessary, the undertaking given by the respondent no.10 under clause 4A, sub-clause III in case of serious violation of any of the provisions incorporated in clause 4A.

- (v) In the event of compliance of other formalities, apart from sub-clause VIII of clause 4A of the Advisory Guidelines, it would be open to the respondent no.10 to continue with the installation of the mobile tower-in-question.
- (vi) After completion of the structure of the tower and at the juncture of installation of the antenna(e), the Additional Guidelines, as annexed at page-41 of C.A.N. 10762 of 2019, shall come into play and it would be open to the petitioner to take objection before



appropriate authorities in the event such safe distances as provided therein are not followed.

- (vii)** It is made clear that the relevant point of time for consideration of the safe distance as provided in the chart under clause 2 of the Additional Guidelines, would be the date when the first such antenna is installed in the proposed mobile tower.

The expression “same height” in the right-hand column of the chart given in clause 2 of the Additional Guidelines has to be measured between the antenna(e) and the buildings/structures within the distance as provided therein. Such buildings/structures would mean not only the structures existing at that height on the date of installation of the antenna(e) but would also include the proposed height of buildings/structures as per construction plans already sanctioned as on the date of installation of the antenna(e), to ensure that valuable accrued rights of the neighbours to construct on their own property is not curtailed merely due to the installation of the mobile tower.

**45.** It is made clear that the aforesaid directions are to be mandatorily followed.

**46.** There will be no order as to costs.

47. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

( Sabyasachi Bhattacharyya, J. )

