

BEFORE THE NATIONAL GREEN TRIBUNAL, CENTRAL ZONAL BENCH, BHOPAL

Original Application No.31/2013

**Ramakant Mishra & Ors Vs. Bharat Sanchar Nigam Ltd., Chhindwara & Ors.**

**CORAM : HON'BLE MR. JUSTICE DALIP SINGH, JUDICIAL MEMBER  
HON'BLE MR. P.S.RAO, EXPERT MEMBER**

**PRESENT : Applicant : Shri Ramakant Mishra, Advocate  
Ms. Sheetal Saraswat, Advocate  
Ms. Rusha, Advocate  
Respondent No. 1 : Shri Deepesh Joshi, Advocate**

<b>Date and Remarks</b>	<b>Order of the Tribunal</b>
<b>Item No. 3</b> <b>17<sup>th</sup> December, 2013</b>	<p>This matter arises out of a suit initially filed before the Civil Court at Chhindwara wherein the plaintiffs prayed for a permanent injunction against the defendant Bharat Sanchar Nigam Limited (BSNL), Rekha Dohale and the Gram Panchayat, Gram Loniya Karbal to be restrained from raising the construction of the Mobile Antenna Tower and further to be restrained for making it operational on the grounds that it was harmful to the health of the plaintiffs and other residents of the area. Along with <b>plaintiff application for the grant of temporary injunction was also filed under Order 39 Rule 1 &amp; 2. The Learned Trial Court which heard the matter dismissed the application</b> vide its order dated 02.02.2011. Aggrieved, the plaintiff preferred a Civil Miscellaneous Appeal under Section 43-1 (R) before the Learned District Judge, Chhindwara which came to be transferred for being heard by the V<sup>th</sup> Additional District Judge, Chhindwara. During the pendency of the aforesaid miscellaneous appeal taking note of the judgment of the Hon'ble Supreme Court in the case of Bhopal Gas Peedith Mahila Sangathan &amp; Ors. Vs. Union of India the Hon'ble High Court of Madhya Pradesh issued directions for <b>transfer of the matter to the National Green Tribunal constituted under the NGT Act, 2010. With this background the matter has come before the Central Zonal Bench of NGT at Bhopal.</b></p> <p>The matter was heard on 23.10.2013 on which date the Learned Counsel for the BSNL had filed its response by way of additional reply</p>

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accompanied by certain documents including the guidelines issued by the Department of Telecommunication (DOT), Govt. of India, for installation of mobile antenna tower in this behalf and the precautions to be taken.

During the course of hearing the judgement of the Hon'ble High Court of Rajasthan dated 27.11.2012 was brought to our notice wherein the Division Bench of Hon'ble High Court of Rajasthan in the interest of litigation after considering the entire facts and circumstances *inter alia* directed relocation and shifting of the mobile phone towers from three locations namely (i) proximity of educational institutions (ii) proximity of hospitals (iii) proximity of play grounds, as it was in our opinion that there may be reasons to believe that installation of the mobile towers in close proximity of the above mentioned three places was not conducive and may have adverse effect on the people.

It was also brought to our notice that being aggrieved by the order of the Hon'ble High Court of Rajasthan, Special Leave Petition was filed before the Hon'ble Supreme Court with a prayer for staying the operation of the judgement, more particularly the directions with regard to shifting mobile towers. The Hon'ble Supreme Court after hearing the matter declined to stay the operation of the judgement of the Hon'ble High Court of Rajasthan and only extended the time period for its compliance by two months, though, the appeal has been kept pending before the Hon'ble Supreme Court.

Taking note of the aforesaid, replies were submitted by the Respondent no. 1 and the guidelines issued by the DOT, Govt. of India on 01.08.2013 had also been filed by way of additional reply before us. We enquired from the Learned Counsel for the BSNL (respondent no. 1) to inform the Tribunal whether the DOT had taken into consideration the judgement of the Hon'ble High Court of Rajasthan dated 27.11.2012 and incorporated the safeguards with regard to the three locations mentioned in the judgement of the Hon'ble High Court of Rajasthan in

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its guidelines issued on 01.08.2013. We also sought a clarification from the Learned Counsel for the respondent No. 1 (BSNL) whether the DOT had consulted the Ministry of Environment & Forests, Govt. of India in this regard before issuing the new set of guidelines on 01.08.2013.

Today, during the course of hearing an additional affidavit has been filed on behalf of the BSNL and the Learned Counsel conceded that the required information could not be obtained and the Tribunal may consider issuing notices to the Department of Telecommunications, Govt. of India in this behalf.

Accordingly, we would direct issuance of notice to the Secretary, Department of Telecommunications, Govt. of India, New Delhi. The notice be sent by registered post acknowledgement due as well as to be given Dasti to the Learned Counsel for the respondent no. 1 for being served upon the newly added respondent no. 4, Secretary, Department of Telecommunications, Govt. of India.

Let a copy of this order be also sent alongwith notice to the newly added respondents.

Apart from other aspects we would also like the Department of Telecommunications, Govt. of India to respond to the following :

(1) Whether the concern shown by the Hon'ble High Court of Rajasthan in its judgement dated 27.11.2012 with regard to the location of the mobile phone towers and its adverse effect was taken into consideration by the Department of Telecommunications, Govt. of India, before issuing new set of guidelines dated 01.08.2013.

(2) Whether the Department of Telecommunications, Govt. of India, at any point of time considered it appropriate to consult the MoEF, Govt. of India in this behalf on various issues of environmental concern as a result of the construction, installation and operation of mobile phone

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towers including use of the same premises by more than one service provider and the cumulative effects of radiation as a result thereof.

(3) Also, alongwith the above, whether they have taken into consideration the impact of location of mobile phone towers and antenna in close proximity to residential and densely populated areas.

From the guidelines that were filed as Annexure R-8 by the BSNL, issued by the Department of Telecommunications, Govt. of India dated 01.08.2013 we find that in the information to be provided before construction of any mobile tower by the cellular operator there is no requirement of indicating the aforesaid issues particularly of the vulnerable places such as schools and other educational institutions, children play grounds and hospitals and nursing homes and minimum distance to be maintained from the proposed site of the construction of the tower. We would also while drawing attention of the DOT to the aforesaid, would like to know whether the DOT considered incorporating the aforesaid requirement in the application to be submitted by the service providers to the concerned authority before getting the clearance for the site in question.

From the documents annexed by the respondent no. 1 as Annexure R-10 which is a document released by the DOT, Govt. of India with the heading 'Mobile Communication; Radio Waves and Safety', it is mentioned that research has shown no conclusive or no convincing evidence that radio waves from the mobile phones cause adverse health effects, yet it has advised for adoption of precautions. The aforesaid are also available in the aforesaid booklets in the paragraph titled 'Precautionary Guidelines for mobile users'. We find that so far as the precautions are concerned which are numbered as many as 15, there is hardly any mention of creating awareness on the effect of mobile handsets either by the DOT or by the mobile service providers

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or manufacturers or retailers who are selling the mobile handsets in the market. We would therefore, like to know from the DOT, Govt. of India whether it would consider making it mandatory for the manufacturers / retailers to fix standards for mobile handsets to create awareness among the general public with regard to the ill effects on the health as a result of the extensive use of mobile phones which are below the prescribed international standards.

In the aforesaid documents, there are also standards prescribed for the mobile handsets including the SAR levels and other requirements under the heading “Standards and Guidelines”. Under the aforesaid heading, the safety measures and standards which have been laid down for the handsets may not be known to the consumers or buyers of such products and for making it obligatory, what steps the Department of Telecommunications, Govt. of India has taken to create awareness among the general public and making it mandatory for ensuring the compliance of the aforesaid standards by the manufacturers so that a common man may be in a position to know whether the product which he is buying or using, is conforming to the standards as fixed by the Department of Telecommunications taking into consideration the benefits and precautions to be adopted by the users of such product. Apart from the above, since it is considered that at present there is no conclusive proof as mentioned by the respondent in its reply and in its document about the adverse health effect due to use of mobile phones and the radiation from the mobile towers, as a precaution to advise the common man regarding the possible ill effects and precautions to be taken which have been enumerated in the said documents. We are of the opinion that since such documents do not always come to the notice of the common man, though, these precautions which have been enlisted by the Department of Telecommunications may have been put on the public domain but it is necessary to create awareness pertaining to the extensive use or otherwise of the mobile phones and the harmful effects

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of being in close proximity of the mobile towers to the dwelling units, should be known to the common man and more particularly its ill effects on the younger generations as was considered by the Hon'ble High Court of Rajasthan. We consider it necessary, therefore, to draw the attention of the Department of Telecommunications, Govt. of India to the aforesaid issues as well as other concerned issues which have been raised during the course of the hearing before us that they must respond to the aforesaid notice and take note of the above issues in public interest as also the effects on the environment as we are told that a study was already ordered to be conducted with regard to the harmful effects due to radiation of mobile towers on avi fauna by the MoEF. We are told that the aforesaid study has not yet been completed. Nonetheless, we would expect a response from the Department of Telecommunications, Govt. of India on the aforesaid issues as well.

List the matter on **31.01.2014**.

.....JM  
**(DALIP SINGH)**

.....EM  
**(P.S.RAO)**

