

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.26406 of 2018

ORDER:

In the present writ petition, challenge is to the endorsement issued by the Zonal Commissioner, Greater Visakhapatnam Municipal Corporation/the second respondent herein vide Grievance No.697/208/ACP-V dated 16.07.2018.

2. Heard the learned Senior Counsel Sri Ghanta Rama Rao representing Sri Md.Islamuddin Ansari, learned counsel for the petitioner and Sri S.Lakshminarayana Reddy, learned Standing Counsel for the respondent Corporation apart from perusing the material available before the Court.

3. By way of the impugned endorsement, the second respondent herein requested the petitioner to approach Andhra University and to submit Structural Stability Certificate for the building, proposed and approved for cell tower, bearing D.No.14-12-13/1, Ward No.50, Bhanoji Thota, B.C. Road, Gajuvaka and to submit NOC from TERM CELL OF DOT regarding radiation of the tower as per Rule 5 of G.O.Ms.No.146, Municipal Administration & Urban Development (M2) Department dated 19.06.2015 within 7 days, while referring to certain complaints. By way of the questioned endorsement, the second respondent herein also directed the petitioner not to proceed with the erection of cell tower till then.

4. According to the learned counsel for the petitioner, the impugned action is highly illegal, arbitrary, unreasonable, without jurisdiction and contrary to G.O.Ms.No.146, Municipal Administration & Urban Development (M2) Department dated 19.06.2015. It is also the contention of the learned

Senior Counsel that the second respondent has neither power nor jurisdiction to issue the impugned endorsement.

5. On the contrary, it is submitted by the learned Standing Counsel for the respondent Corporation that there is no illegality nor there exists any infirmity in the impugned action and in the absence of the same, the questioned action is not amenable for any judicial review under Article 226 of the Constitution of India; that since the impugned action is taken keeping in view the larger public interest, no interference of this Court is warranted.

6. On the application submitted by the petitioner company, on 09.04.2018, the respondent Corporation passed an order vide proceedings Rc.No.005141/2018/ACP-V/G2, dated 01.05.2018 granting permission for erection of cell tower in favour of the petitioner herein subject to acceptance of conditions and restrictions mentioned therein and other conditions as may be imposed by the Government of Andhra Pradesh/Greater Visakhapatnam Municipal Corporation from time to time.

7. Keeping in view, the guidelines issued by the telecommunication department, the Government of India, the State Government notified revised comprehensive guidelines for issuance of clearance for installation of 4G services and New Telecommunication Infrastructure Towers vide G.O.Ms.No.146, Municipal Administration & Urban Development (M2) Department dated 19.06.2015. Clause 5-C of the said guidelines deals with the submission of application for permit and according to the said Clause the application for permit needs to be accompanied by_

“(i) The Locational Plan, Site Plan, Section Plan showing the Cross Section of the structure & Elevation Plan including antenna shall show the site with reference to the surrounding existing developments, to the site extent and dimension, access street width

and Elevation Plan showing the structure of the Existing/ Proposed building over which the tower/room proposed.

(ii) Structural Stability Certificate - one copy (original) Structural Stability Certificate shall be submitted in respect of the Telecommunication Infrastructure Tower and room and also the building over which it will be erected.

a) The Structural Stability Certificate shall be obtained from a certified Structural Engineer, or from recognized institute like IITs, NITs and CBRI Roorkee or from the Engineering colleges recognized by AICTE or a Structural Engineer registered or employed in Central or State Government Service or Quasi-Government Organization.

(iii) Installation Telecommunication Infrastructure Tower (TIT) can be permitted on all buildings which are assessed for property tax except the buildings and sites mentioned at Rule-E.

(iv) Lease Agreement Deed / Consent Agreement deed - One copy (attested) signed by the applicant and the owner of the site / building along with Ownership Document - One copy (attested) to prove the ownership of the building 7 site.

(v) Agreement - [One copy (attested)] Executed with Department of Telecommunications or License or Permit issued by an Authority approved by Government of India from time to time along with the capacity of Tower or antenna in Megawatt.

(vi) In case the tower is In the vicinity or adjoining to high or low tension line-then its distance from the same shall be clearly indicated in the drawings.

(vii) Indemnity Bond (original) to take care of any loss or injury due to accident caused by the tower (including a declaration to the effect that the applicant shall take special precaution for fire safety and lightning and he shall be solely responsible for payino all kinds of compensation and damages and would be responsible for any civil or criminal case arising. there from).

(viii) No objection Certificate (if required) issued by

(a) The Andhra Pradesh State Disasters Response & Fire Services Department,

(b) The Andhra Pradesh State Environment and Forest Department.

(c) Copy of SACFA clearance or copy of SACFA application for the said location submitted W WPC wing of DoT with registration number as WPC acknowledgement along with undertaking that in case of any objection/ rejection, TSPs/IPs will take . corrective actions/ remove the tower

(d) Copy of Access Service License/ IP Registration certificate from Department of Telecommunications.

(ix) Permit Fee and charges as fixed by the Government from time to time (Appendix-D) and for Installation of Telecom Infrastructure Towers which are covered by interim orders of Honible High Court, it would be subject to final outcome of Writ Petitions.

(x) Copy of certificate issued by Automotive Research Association of India (ARAI) to the manufacturers of the DG sets [The DG sets used shall be as per the provisions under Environment (protection) Act 1986 & noise pollution (Regulation & Control) Rule 2000 as amended from time to time.] is to be submitted by the Telecom Service Providers/ Infrastructure Providers.

(xi) Acknowledgement receipt issued by TERM Cells (DoT) of the self-certificate submitted by Telecom Service Provider/Infrastructure Provider in respect of mobile tower/BTS (ground based/rooftop/Pole/wall mounted) in the format as prescribed by TEC, DoT, establishing / certifying that all General Public areas around the tower will be within safe EMR exposure limit as per beak traffic measurement after the antennae starts radiating."

8. Clause 5-D of the guidelines deals with scrutiny and disposal of application and Clause 5-F deals with basic requirements to erect Telecommunication infrastructure towers. Clause D (ii) is a work permit and it mandates completion of construction or erection of telecommunication tower or telecommunication pole structures or accessory rooms essential for the use of such tower or pole structure shall be completed within one year from the date of issue of such permit. Clause 5-F (vi) deals with the Completion Certificate and sub Clause (a) of the said Clause stipulates that after completion of the work of the telecommunication tower or pole structure and accessory rooms as per permit, the applicant and the engineer shall submit to the Sanctioning Authority completion certificate as in appendix-B along with a certificate of structural safety/stability of the tower and the building, if the tower or pole is constructed over a building.

9. A reading of the impugned endorsement vividly discloses that the Greater Visakhapatnam Municipal Corporation, obviously on the basis of the representations/complaints said to have been made by certain local residents and the representatives of the people saying that the building is not safe and there is radiation problem for the surrounding residents, the respondent Corporation issued the impugned endorsement. As rightly pointed out by the learned counsel for the petitioner, the non-submission of

the Structural Stability Certificate for the building does not find place nor it is a ground mentioned in the impugned endorsement, but in the counter affidavit the said reason is assigned for the first time. On the other hand, it is the categoric case of the petitioner herein that the petitioner herein submitted a Structural Stability Certificate certified by M/s. Bright Infotech who are certified structural engineers. This Court called for the records pertaining to the case and found therein certificate issued in the name of Bright Infotech. It is also not in dispute that after verification only the permission was accorded by the respondent Corporation. It is not the case of the Greater Visakhapatnam Municipal Corporation that any action taken against the persons responsible for granting permission initially on 01.05.2018. It is also required to be noted that Clause 5 F (vi) deals with the Certificate and according to the said Clause which deals with the basic requirement to erect telecommunication infrastructure towers, after completion of the work of the telecommunication tower or pole structure and accessory rooms as per permit, the applicant and the engineer shall submit to the Sanctioning Authority completion certificate as in Appendix-B along with a certificate of structural safety/stability of the tower and the building, if the tower or pole is constructed over a building. It is also specifically mentioned therein that the sanctioning authority shall, if satisfied that the work has been completed as per the permit, issue use certificate as in Appendix-C within 15 days, on the basis of which, the authorities concerned are required to allow the tower connection etc.

10. Having regard to the said safe-guards and having issued the permission after verification of the document submitted by the petitioner herein and in the absence of any action taken for improper verification of

the documents, if any, this Court does not find any justification on the part of the respondent Corporation for issuing the impugned endorsement.

11. For the aforesaid reasons, the writ petition is allowed, setting aside the endorsement issued by the Zonal Commissioner, Greater Visakhapatnam Municipal Corporation/the second respondent herein vide Grievance No.697/208/ACP-V dated 16.07.2018. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs

Date:31.12.2018
grk

A.V.SESHA SAI, J



THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.26406 of 2018

Dated:31.12.2018

grk