

**BEFORE THE NATIONAL GREEN TRIBUNAL PRINCIPAL BENCH****NEW DELHI****O.A. NO. 809 OF 2022****IN THE MATTER OF ::****Jan Seva Welfare Society****...Applicant****VERSUS****Govt. of NCT of Delhi &ors****...Respondents****N.D.O.H:- 21.12.2022****INDEX**

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Through


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**BEFORE THE NATIONAL GREEN TRIBUNAL PRINCIPAL BENCH****NEW DELHI****OA NO. 809 OF 2022****IN THE MATTER OF ::****Jan Seva Welfare Society****...Applicant****VERSUS****Govt. of NCT of Delhi &ors****...Respondents****Reply on behalf of the respondent No. 5 to the Application under Section 18 r/w Section 14,15 and 17 of the National Green Tribunal Act.****Respectfully Showeth :****The respondent No. 5 most humbly submits as under:-**

1. That the above titled Application is pending before this Hon'ble Court and fixed for hearing on 21.12.2022.
2. That it is submitted that Telecommunications has been recognized the world-over as an important tool for socio-economic development of a nation. It has become core infrastructure required for rapid growth and modernization of various sectors of the economy. There has been a phenomenal growth of the telecom sector in terms of subscribers and usage over the past two decades in India. Today, India is amongst top three of the largest and one of the fastest growing telecom markets in

the world. The Indian telecom industry has grown from a tele-density of 3.58% in March 2001 to 84.86% in September, 2022. This great leap in both the number of subscribers and usage from telecom services has contributed significantly to the growth in GDP and employment.

3. That it is submitted that the current information revolution has been brought through the use of mobile broadband/ internet. However, the penetration of mobile internet is very low in country in comparison to other nations. Large investments and efforts from industry as well as Government are required to expand the mobile telephony related infrastructure, which includes telecom towers, with a view to expand the mobile telephony based services and take these to rural and remote areas. This needs to be done, so that the dream of broadband for all can be realized and benefit of this technology can be reaped by all sections of society. According to various reports, there is a direct correlation between increase in penetration of broadband and the GDP of a country.
4. That it is also submitted that telecom towers are critical installations on which the backbone of mobile communication rests. These are essential for realizing the vision of inclusive growth. The success of initiatives like Digital India, Smart Cities and right to Broadband, which the Government intends to implement in mission mode, depends on this critical and essential infrastructure. Mobile communication plays important role in social and economic growth and disaster management for which telecom towers are a pre-requisite. A robust and scalable mobile infrastructure, including towers, is must for universal access to communication, effective delivery of services to citizens and financial

inclusion. Realizing the significance of mobile towers, Government of India has included it in the harmonized list of infrastructure vide its Gazette notification dated 27-03-2012. Government has announced a new National Digital Communications Policy 2018 with an objective to prepare the country and its citizens for the future and seeks to unlock the transformative power of digital communications networks i.e. to achieve the goal of digital empowerment and improved well-being of people of India and towards this end, attempts to outline a set of goals, initiatives, strategies and intended policy outcomes. One of the strategies includes facilitating the establishment of telecom tower Infrastructure by way of extending incentives and exemptions for the construction of telecom towers.

5. That it is submitted that section 4 of Indian Telegraph Act, 1885 describes the privileges and powers of the Government in respect of telegraphs and power to grant licenses. Para 4(1) of Section 4 of Indian Telegraph Act, 1885 is reproduced below:

*4(1) – “Within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs:*

*Provided that the Central Government may grant a license, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India.”*

6. That it is submitted that Department of Telecommunications, Government of India, has thus granted licenses, under Section 4 of

Indian Telegraph Act, 1885, for Cellular Mobile Telephone Service (CMTS), Unified Access Service (UAS), etc. to Indian registered companies to establish, maintain and work on telegraph for providing mobile telephone services in the licensed area. Under these licenses, the Telecom Service Providers (TSPs) are establishing telecom towers to provide the coverage of mobile services in their service area.

7. That it is further submitted that **to support the faster growth of telecom infrastructure** including telecom tower, Department of Telecommunications (DoT) has also created a separate registration category known as Infrastructure Providers Category-I (IP-I). The Infrastructure Provider-I registered companies are permitted to establish and maintain assets such as dark fibre, Right of Way, duct space and tower for the purpose to grant on lease/ rent/ sale basis to the licensees of Telecom Service licensed under Section 4 of Indian Telegraph Act, 1885. For IP-1 registration, an applicant company needs to pay **only a nominal processing fee** of Rs 5,000 (non-refundable) as against the other licensees who need to pay 'Entry Fees' and 'Licence Fee' {on their Adjusted Gross Revenue (AGR)}.
8. That it is submitted that considering the importance of Telecom Towers, Government of India vide gazette notification no 81 dated 28.03.2012 has given **infrastructure status to Telecom towers**. Considering the importance accorded by Government of India to the telecom infrastructure, especially the telecom towers, as mentioned in para-7 and 8 above, it is submitted that this activity may not be treated as a purely commercial activity as it is in the public interest to develop telecom services for digital inclusion of the general public.

9. That it is submitted that as per Clause 41.6 of the terms and conditions of UAS license, the Licensee is required to ensure that the Telecommunication installation carried out by it should not become a safety hazard and is not in contravention of any statute, rule or regulation and public policy.
10. That it is submitted that as per terms and conditions of the CMTS / UAS/ UL license and IP-I registration, the responsibility of obtaining Permission/ Right of Way for establishing telecom towers lies with the TSPs/ IP-I companies.
11. That it is submitted that for providing the mobile services in the country, the telecom service providers have to establish Base Transceiver Stations (**BTS**), at suitable locations, as per their Radio Frequency (RF) Network Planning for proper coverage of the area. Prior to installation of telecom towers, the telecom service providers have to obtain Site clearance from Standing Advisory Committee on Frequency Allocation (SACFA) of Department of Telecommunications (DoT) for every site from the point of view of interference with other wireless users, aviation hazards and obstruction to any other existing microwave links. The IP-I / TSPs have also to obtain necessary clearances from concerned local authorities such as municipal corporation, Gram Panchayat etc. before installation of telecom tower.
12. That it is submitted that the permission/clearance for erection of telecom tower (interchangeably referred as mobile phone tower, cell phone tower, mobile tower or simply as tower) is regulated by the State Government, Municipal Corporation, Local Bodies as per their Building Bye-Laws. In this regard, Department of Telecommunication

(DoT) has issued an advisory guideline for State Governments for issuance of clearance for installation of telecom towers. Also, in exercise of the powers conferred by sub-section (1) and clause (e) of sub-section (2) of section 7 read with sections 10, 12 and 15 of the Indian Telegraph Act, 1885(13 of 1885), the DoT/ Central Government issued the Indian Telegraph Right of Way (ITRoW) Rules, 2016 to regulate underground and overground infrastructure. **As per the advisory guideline and the ITRoW Rules, there is no restriction for the installation of telecom tower in any specific area including Park.** A Copy of the Advisory Guidelines is annexed herewith as **Annexure-R-1** and a Copy of the consolidated ITRoW Rules (including amendments upto August-2022) is annexed herewith as **Annexure-R-2.**

13. That it is submitted that as per clause 4. A (IV) of the above guidelines for obtaining clearance from local bodies / state governments for installation of mobile towers, the TSPs/ IPs-I are to submit, inter alia, copy of structural stability certificate for ground based tower. In case of roof top BTS towers, structural stability certificate is required for the building and tower based on written approvals of any authorized Structural Engineer of state/local bodies/Central Building Research Institute (CBRI), Roorkee/ IIT/NIT or any other agency authorized by local body.
14. That Hon'ble Madurai Bench of Madras High Court in a WP(MD) No 9854 of 2021 filed by M/s ATC Telecom Infrastructure Pvt Ltd (Registered Infrastructure Provider Category -I *company* vs The Superintendent of Police, District Police, Nagercoil, Kanyakumari

District & Ors has made the following observations regarding cell phone towers in its order dated 10.06.2021:

*“7. As rightly pointed out by the learned counsel for the petitioner, erection of cell phone towers to connect India through its length and breadth is absolute need of the hour. We have close to nearly for 16 months so far, due to the prevailing pandemic situation, not in a position to move, interact and do our regular business freely. The situation is that the students are being taught only through online education. Business transaction and official meeting are being held through video conferencing. In fact, the conduct of Court proceedings are being done through video conferencing. Therefore, it is necessary that the information and communication technology network should be expanded for meeting the growing need. Installation and erection of cell phone towers is one of the necessary steps to be taken for the effective and robust communication network.”*

15. That Hon’ble Madras High Court dismissed the petition W.P. no. 27956/2014 on 27-10-2014, which was filed against installation of mobile tower in residential area, stating:

*“2. If we have to accept the aforesaid plea of the petitioner, then we would have to shut down mobile services practically throughout Tamil Nadu. In Chennai, most areas would be thickly populated and if this test is applied, then there would be no mobile services available in Chennai.*

⑧

*3. Whether the society should live with or without mobile services or with other subject matters of perceived development, are matters relating to the policy decision of the Governments, which are elected by the people. It is not permissible for each individual to canvass his thinking on such issues and seek judicial restraint orders.”*

16. That **WP (C) No. 8661 of 2015** filed in Hon’ble **High Court of Delhi** seeking a mandamus to the Union of India (UOI) to make proper amendments and issue new advisory guidelines incorporating the Recommendation No.13 of the IMC report of the year 2010-2011, of imposing restrictions on installation of mobile phone towers near high density residential areas, schools, playgrounds and hospitals has been dismissed by the Hon’ble court on **09-09-2015**. The Hon’ble court stated:

*“Citizens not wanting to give up use of cell phones cannot approach the Court to push the towers and antennas essential for use thereof, from their own door steps to another person’s door step; if at all they feel that the technology is harmful for them, all they have to do to give up the use of the same and in which case there would also be no need for towers and antennas required to be installed for enabling use thereof.”*

17. That all the individual paras are not related to DoT as such, comments against each para is neither required nor being given and hence without entering into para-wise reply of the petition, the answering respondent meeting only those averments which have a bearing on the issues involved. However, the answering respondent craves leave of the Hon’ble Court to file a para-wise reply, if and when required.

18. That while deciding the case on merit the above facts, reasons, and circumstances stated in the preceding paragraphs may be considered by the Hon'ble Court.
19. That an affidavit in support of this reply is also attached herewith. The undersigned has been authorized by the respondent No. 5 to file this reply on its behalf

**PRAYER**

In view of the above facts and circumstances, it is therefore, most respectfully and humbly prayed that this Hon'ble Court may kindly be pleased to:

- i. Dismiss the Original Application of the Applicant against the respondent No. 5; and
- ii. Pass any such or further orders as may deem fit and proper in the facts and circumstances of the present case, in the interest of justice.



**(Sandeep Kumar)**  
**Director (Admin) Delhi LSA**  
**Department of Telecom, Govt of India**  
**FOR the Respondent No.5**  
**(Union of India, Department of Telecommunications, New Delhi)**

Through



**GIGI.C.GEORGE**  
**ADVOCATE**  
**STANDING COUNSEL(UOI)**  
**Chamber No.457, Block-I**  
**Delhi High Court, New Delhi**

DELHI

27/12/2022

**BEFORE THE NATIONAL GREEN TRIBUNAL PRINCIPAL  
BENCH**

**NEW DELHI**

**O.A. NO.809 OF 2022**

**IN THE MATTER OF ::**

**Jan Seva Welfare Society**

**...Applicant**

**VERSUS**

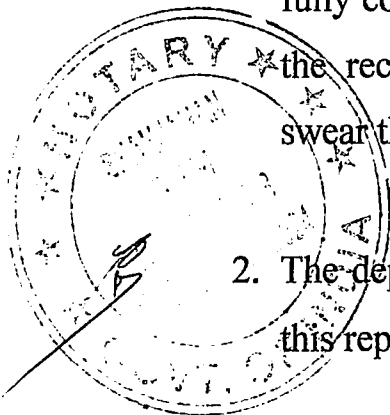
**Govt. of NCT of Delhi & Ors.**

**...Respondents**

**AFFIDAVIT**

I, Sandeep Kumar S/o. Shri Rati Ram aged about 49 years working as Director (Admin) Delhi LSA, Department of Telecommunications, Union of India, do hereby solemnly affirm and declare as under:-

1. That the deponent is the employee of the respondent No. 5 and is fully conversant with the facts and circumstances of the case as per the records maintained by the department and is competent to swear this affidavit.
2. The deponent has been authorized by the respondent No. 5 to file this reply on its behalf.



3. That the contents of the accompanying Reply have been drafted by our counsel under our instructions and the same are true to my personnel knowledge derived from records and are based on legal advice received and believed to be correct.

*[Handwritten signature]*

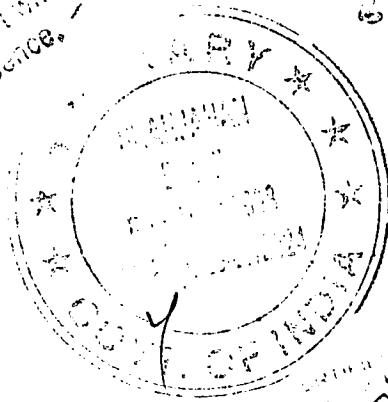
**DEPONENT**

**VERIFICATION:**

22 DEC 2022

Verified at New Delhi on this 21<sup>st</sup> day of December 2022 that the contents of the above affidavit are true and correct to the best of my knowledge and belief.

*[Handwritten signature]*  
I have read the contents of the above affidavit and have verified the same in my presence.



22 DEC 2022

*[Handwritten signature]*

**DEPONENT**

*[Handwritten signature]*  
*[Handwritten signature]*  
*[Handwritten signature]*  
Notary Public

(12)

**DEPARTMENT of TELECOMMUNICATIONS**  
**ADVISORY GUIDELINES FOR STATE GOVERNMENTS FOR**  
**ISSUE OF CLEARANCE FOR INSTALLATION OF MOBILE TOWERS**  
**(Effective from 01.08.2013)**

1. The Indian telecom sector has witnessed phenomenal growth and mobile telephony in particular has revolutionized in the country over the past decade. Providing telephone coverage across the country has been one of DoT's top priority areas. Out of 921 million connections, 891 million are wireless, as on May 2013. The popularity of cell phone and wireless communication devices has resulted in a proliferation of cell towers across the country.
2. Fixation of standards for exposure limits of radio frequency field emissions from mobile base stations, monitoring their compliance, all radiation related technical issues, issues of Access Service Licence / Infrastructure Provider registration and SACFA clearance for frequency allocation at any location are dealt with by DoT.
3. India has adopted strict limit for radiation from Base Transceiver Station (BTS), as below, which is  $1/10^{\text{th}}$  of the International norms (ICNIRP):

Frequency in MHz	Power density limit
900	0.45 watt/m <sup>2</sup>
1800	0.9 watt/m <sup>2</sup>
2100 and above	1 watt/m <sup>2</sup>

4. Broad guidelines for issue of clearance for installation of mobile phone towers were issued on 23.08.2012 and later modified on 26.03.2013. Subsequently, on the basis of feedback received after deliberations made with the state government officials and various stake holders on 16.04.2013 and holding further consultations thereafter, the guidelines have been finalized for the state governments. These are detailed in A and B below. ***These guidelines are issued in supersession of all earlier guidelines on the subject.***

**A. Documents to be submitted by Telecom Service Providers/ Infrastructure Providers for obtaining clearance from local bodies / state governments for installation of mobile towers:**

- I. Copy of relevant license / Infrastructure Provider Registration Certificate from Department of Telecommunications.
- II. Data Sheet
  - a) Name of Service/Infrastructure Provider
  - b) Location
  - c) Tower Reference:
    - i) Height, ii) Weight iii) Ground/Roof Top iv) Pole/wall mounted v) Number of antennae
- III. Copy of SACFA clearance / copy of SACFA application for the said location submitted to 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.

- IV. Copy of structural stability certificate for ground based tower. 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 Building Research Institute (CBRI), Roorkee/ IIT/NIT or any other agency authorized by local body.
- V. Copy of the type test certificate issued by Automotive Research Association of India (ARAI) to the manufacturers of the Diesel Generator (DG) Sets.
- VI. Copy of clearance from Fire Safety Department only in case for high rise buildings where Fire Clearance is mandatory.
- VII. For forest protected areas, the copy of clearance from State Environment & Forest Department, if applicable.
- VIII. The local bodies may also seek submission of the copy of No Objection Certificate (NOC) from Building Owner / entities having roof top rights or roof top tenants in case of roof based tower/ land owner in case of ground based tower, as the case may be. As per their rules in force, State Governments, at their discretion, may seek fresh NOC at the time of renewal of site (tenancy) contract for mobile tower.
- IX. 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/ roof top/ 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 peak traffic measurement after the antennae starts radiating.

#### **B. Action by State government/Local body**

- I. Nominal one time Administrative Fee as may be decided by the State Government to recover its costs on the issue of permission for installation of Tower.
- II. Single Window Clearance may be provided in a time bound manner to telecom service provider / infrastructure provider by the local body / State Government. This will ensure issuance of faster clearances.
- III. Telecom towers have been given infrastructure status by Government of India vide gazette notification no 81 dated 28.03.2012. All benefits, as applicable to infrastructure industry, should be extended. **Electricity connection may be provided to BTS site on priority.**
- IV. Telecom installations are lifeline installations and a critical infrastructure in mobile communication. In order to avoid disruption in mobile communication, an essential service, sealing of BTS

towers / disconnection of electricity may not be resorted to without the consent of the respective TERM Cell of DoT in respect of the EMF related issues.

- V. State Governments along with DoT may organise public awareness programmes involving civil society members.
- VI. In order to effectively address **Public Grievances** relating to installation of towers and issues related to telecom infrastructure, State Governments may setup:
  - State Level Telecom Committee (STC) consisting of officers from TERM Cells, State Administration, representative(s) of concerned Telecom Service Provider(s) and eminent public persons etc.
  - District Level Telecom Committee (DTC) consisting of officers from District Administration, representative(s) of concerned Telecom Service Provider(s) and eminent public persons etc.

### C. Action by DoT/ TERM Cells

- I. Public awareness programme (Through DoT web portal / Govt. Publication).
- II. a) For all the existing as well as new BTSs / Towers, Telecom Service Providers are required to submit self-certificates periodically in the format as prescribed by TEC, DoT, in order to ensure that normally all general public areas around the site are within the safe EMR exposure limits. Any violation noticed attracts heavy penalties on Telecom Service Provider(s) and may also lead to shut down of BTS in case the violation persists.  
  
b) The TERM Cells have been given clear instructions with regard to the technical audit of BTS, including for radiation from towers within safe limits. These include roof top/ ground based/ pole mounted/ wall mounted towers. They will also verify antenna orientation, safe distance from the tower (exclusion zone) etc. Installation and augmentation of BTS and antenna is a continuous process. DoT is organizing frequent workshops for these officers to ensure observance of the latest guidelines issued by DoT on the subject of EMF radiation and public safety. Additional Guidelines for TERM Cells as follows:

15

Additional Guidelines to TERM Cells for auditing BTS  
For EMF radiation  
(Effective from 01.08.2013)  
\*\*\*\*\*

1. Instructions/guidelines have been issued to the TERM Cells for auditing the RF radiations from BTS for compliance to the prescribed norms. Following are additional guidelines to TERM Cells in the matter.
2. With a view to strengthen monitoring and compliance of safety aspects / provisions in regard to radio frequency emissions from mobile towers, TERM Cells may take the following also into account while conducting their audits for the purpose of ensuring that all general public areas are within safe EMF exposure limits as prescribed by DoT.
  - o In case of both ground based towers & roof top 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 below. Further, the antennae at the same height only are to be counted, as the beam width of the mobile antennae, in the vertical direction, is very narrow.

Number of antenna(e) pointed in the same direction	Building/Structure safe distance from the antenna(e) at the same height (in meters)
1	20
2	35
4	45
6	55

- o The distance figures in the above table are based on empirical estimation considering that all the antennae are emitting at their maximum RF power of 20 Watts and exactly in the same direction with same height (a worst case scenario). In practice, the values of safe distance of buildings will depend upon actual deployment scenarios and mostly, may be far less than depicted above.
3. Wall Mounted/Pole mounted Antenna:
    - o Wherever the antennae are mounted on the wall of building or pole on/along the road, their height should be at least 5 meters above ground level /road level. However, such installations will have to comply with the radiation limits.
    - o As far as safe distance of buildings from antenna is concerned, guidelines as given above will apply.

\*\*\*\*\*

(16)

**The Indian Telegraph Right of Way Rules, 2016**  
**[As amended from time to time (in 2017, 2021 and 2022)]**

**GOVERNMENT OF INDIA**  
**MINISTRY OF COMMUNICATIONS**  
**(Department of Telecommunications)**

**NOTIFICATION**

**New Delhi, the 15<sup>th</sup> November 2016**

**G.S.R. 1070(E).** — In exercise of the powers conferred by sub-section (1) and clause (e) of sub-section (2) of section 7 read with sections 10, 12 and 15 of the Indian Telegraph Act, 1885(13 of 1885), the Central Government hereby makes the following rules to regulate underground infrastructure and overground infrastructure, namely: -

**CHAPTER I**

**PRELIMINARY**

**1. Short title and commencement.** -(1) These rules may be called the Indian Telegraph Right of Way Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

**2. Definitions.** -(1) In these rules, unless the context otherwise requires, -

(a) "Act" means the Indian Telegraph Act, 1885 (13 of 1885);

(b) "appropriate authority" means the Central Government, respective State Governments, local authority or such authority, body, company or institution incorporated or established by the Central Government or the State Government, in respect of property, under, over, along, across, in or upon which underground or overground telegraph infrastructure, is to be established or maintained, vested in, or under, the control or management of such appropriate authority;

(c) "State Government" means the State Government having jurisdiction, and includes the administration of a Union territory;

(d) "licensee" means any person holding a licence issued under sub-section (1) of section 4 of the Act;

(e) "overground telegraph infrastructure" means a telegraph or a telegraph line established over the ground and includes posts or other above ground contrivances, appliances and apparatus for the purpose of establishment or maintenance of the telegraph or the telegraph line;

(f) "rule" means the Indian Telegraph Right of Way Rules, 2016.

(g) "underground telegraph infrastructure" means a telegraph line laid under the ground and includes manholes, marker stones, appliances and apparatus for the purposes of establishment or maintenance of the telegraph line.

(h) "Schedule" means a Schedule appended to these rules."

(2) Words and expressions used and not defined herein but defined in the Act shall

have the meaning assigned to them in the Act.

3. **Applicability.** - The appropriate authority shall exercise the powers under these rules on an application for establishment and maintenance of underground or overground telegraph infrastructure by any licensee on whom the powers of the telegraph authority have been conferred by notification under section 19B of the Act, subject to any conditions and restrictions as may be imposed in such notification.

4. **Nodal officer to be designated by local authority, etc.**-(1) Every appropriate authority shall designate a nodal officer for the purposes of these rules.

(2) Every application for permission under these rules shall be made by the licensee on an electronic portal developed by the Central Government.

## CHAPTER II

### ESTABLISHMENT AND MAINTENANCE OF UNDERGROUND TELEGRAPH INFRASTRUCTURE

5. **Application by a licensee.** — (1) A licensee shall, for the purposes of establishment of telegraph infrastructure under any immovable property vested in or under the control or management of any appropriate authority, make an application, supported by such documents, to that authority in such form and manner as may be specified by that appropriate authority.

(2) The information along with supporting documents to be provided by the licensee in the application made under sub-rule (1) shall include-

- (i) a copy of the licence granted by the Central Government;
- (ii) the details of underground telegraph infrastructure proposed to be laid;
- (iii) the mode of and the time duration for, execution of the work;
- (iv) the time of the day when the work is expected to be done in case the licensee expects the work to be done during specific time of the day;
- (v) the details of expenses that such appropriate authority will necessarily be put in consequence of the work proposed to be undertaken by the licensee;
- (vi) the inconvenience that is likely to be caused to the public and the specific measures proposed to be taken to mitigate such inconvenience;
- (vii) the specific measures proposed to be taken to ensure public safety during the execution of the work;
- (viii) any other matter relevant, in the opinion of the licensee, connected with or relative to the work proposed to be undertaken; and
- (ix) any other matter connected with or related to the work as may be specified, through a general or special order, by the Central Government or appropriate State Government or appropriate local authority:

Provided that the licensee shall, while making the application, give a specific commitment on whether he undertakes to discharge the responsibility for restoration, to the extent reasonable and prudent, of the damage that the appropriate authority shall necessarily be put in consequence of the work proposed to be undertaken.

(3) Every application under sub-rule (1) shall be accompanied with such fee to meet administrative expenses for examination of the application and the proposed work as the appropriate authority may, by general order, deem fit:

Provided that such fee to meet administrative expenses shall not exceed the amount specified in Part-I of the Schedule.

**6. Grant of permission by appropriate authority.**- (1) The appropriate authority shall examine the application with respect to the following parameters, namely: -

(a) the route planned for the proposed underground telegraph infrastructure and the possible interference, either in the establishment or maintenance of such telegraph infrastructure, with any other public infrastructure that may have been laid along the proposed route;

(b) the mode of execution;

(c) the time duration for execution of the work and the time of the day that the work is proposed to be executed;

(d) the estimation of expenses that the appropriate authority shall necessarily be put in consequence of the work proposed to be undertaken;

(e) the responsibility for restoration of any damage that the appropriate authority may necessarily be put in consequence of the work proposed to be undertaken;

(f) assessment of measures to ensure public safety and inconvenience that the public is likely to be put to in consequence of the work proposed and the measures to mitigate such inconvenience indicated by the licensee;

(g) any other matter, consistent with the provisions of the Act and these rules, connected with or relative to the establishment or maintenance of underground telegraph infrastructure, through a general or special order, by the Central Government, appropriate State Government or the appropriate local authority.

(1A) The area of the underground telegraph infrastructure proposed to be established shall be the length of duct multiplied by the diameter of the duct multiplied by the number of the ducts.

Explanation. - "duct" means a pipe, permanently lubricated or of any other kind, used as underground cable conduit for telegraph line.

(1B) The appropriate authority shall be entitled to receive such compensation from the licensee, not exceeding the amount specified in Part-III of the Schedule, for the use

of the property under which the underground telegraph infrastructure is proposed to be established, as may be determined by the appropriate authority.

(2) The appropriate authority shall within a period not exceeding sixty days from the date of application made under rule 5-

(a) grant permission on such conditions including, but not limited to, the time, mode of execution, measures to mitigate public inconvenience or enhance public safety and payment of restoration charge, not exceeding the amount specified in Part-II of the Schedule:

Provided that where horizontal directional digging technology is used for establishing underground telegraph lines, restoration charges shall be levied for pits only; or

(b) reject the application for reasons to be recorded in writing:

Provided that no application shall be rejected unless the applicant licensee has been given an opportunity of being heard on the reasons for such rejection:

Provided further that the permission shall be deemed to have been granted if the appropriate authority fails to either grant permission under (a) or reject the application under (b); and the same shall be communicated in writing to the applicant not later than five working days after permission is deemed to have been granted.

(3) Where the appropriate authority accepts the undertaking by the licensee to discharge the responsibility to restore the damage that such appropriate authority shall necessarily be put in consequence of the work, the appropriate authority, while granting permission under clause (a) of sub-rule (2), may seek a bank guarantee for an amount, not exceeding the amount specified in Part-II of the Schedule, in lieu of expenses for restoration of such damage, as security for performance in the discharge of the responsibility.

(4) The appropriate authority shall not charge any fee and compensation other than those prescribed under sub-rule (3) of rule 5, sub-rule (1B) and clause (a) of sub-rule (2), from the licensee for establishing, maintaining, working, repairing, transferring or shifting underground telegraph infrastructure.

**7. Obligations of licensee in undertaking work.** -(1) The licensee shall make the payment of expenses or submit the bank guarantee as determined by the appropriate authority within a period of thirty days from the date of grant of permission and prior to the commencement of work of laying the underground telegraph infrastructure:

Provided that the appropriate authority may, at its discretion, extend the said period for payment of expenses or submission of bank guarantee on an application made by the licensee seeking such extension.

(2) The licensee shall ensure that -

(a) prior to the commencement of work of laying the underground telegraph infrastructure and at all times during the execution of work, the measures to mitigate public inconvenience and provide for public safety are implemented; and

(b) the work of laying underground telegraph infrastructure is carried out in accordance with the conditions specified in the grant of permission by the appropriate authority.

(3) The licensee shall ensure provision of positional intelligence, through appropriate technology, of all underground telegraph infrastructures to enable the appropriate authority to obtain real time information on its location.

**8. Powers of appropriate authority to supervise the work.** -(1) The appropriate authority may supervise the execution of work to ascertain if the conditions imposed in the grant of permission under clause (a) of sub-rule (2) of rule 6 are observed by the licensee.

(2) The appropriate authority may, on the basis of such supervision, impose such other reasonable conditions as it may think fit.

(3) If the appropriate authority comes to the conclusion that the licensee has willfully violated any of the conditions for grant of permission under clause (a) of sub-rule (2) of rule 6, it may forfeit, in full or in part, the bank guarantee submitted by the licensee and withdraw the permission granted to the licensee, for reasons to be recorded in writing:

Provided that no action shall be taken under this sub-rule unless the licensee has been given an opportunity of being heard.

### CHAPTER III

#### ESTABLISHMENT OF OVERGROUND TELEGRAPH INFRASTRUCTURE

**9. Application by a licensee.** — (1) A licensee shall, for the purposes of establishing overground telegraph infrastructure, upon any immovable property vested in or under the control or management of any appropriate authority, make an application, supported by such documents, to that appropriate authority in such form and manner as may be specified by that appropriate authority.

(2) The information along with supporting documents to be provided by the licensee in the application made under sub-rule (1) shall include-

(i) a copy of the licence granted by the Central Government;

(ii) the nature and location, including exact latitude and longitude, of post or other above ground contrivances proposed to be established;

(iii) the extent of land required for establishment of the overground telegraph infrastructure;

(iv) the details of the building or structure, where the establishment of the overground telegraph infrastructure, is proposed;

(v) the copy of approval issued by the duly authorised officer of the Central Government for location of the above ground contrivances proposed to be used for the

transmission of Radio waves or Hertzian waves;

- (vi) the mode of and the time duration for, execution of the work;
- (vii) the inconvenience that is likely to be caused to the public and the specific measures proposed to be taken to mitigate such inconvenience;
- (viii) the measures proposed to be taken to ensure public safety during the execution of the work;
- (ix) the detailed technical design and drawings of the post or other above ground contrivances;
- (x) certification of the technical design by a structural engineer attesting to the structural safety, of the overground telegraph infrastructure;
- (xi) certification, by a structural engineer, attesting to the structural safety of the building, where the post or other above ground contrivances is proposed to be established on a building;
- (xii) the names and contact details of the employees of the licensee for the purposes of communication in regard to the application made;
- (xiii) any other matter relevant, in the opinion of the licensee, connected with or relative to the work proposed to be undertaken; and
- (xiv) any other matter connected with or relevant to the work as may be specified, through a general or special order, by the Central Government or appropriate State Government or appropriate local authority.

Provided that the documents mentioned in clauses (ii), (iii), (v) (ix), (x) and (xi) shall not be required in case of application made for establishment of overground telegraph line—:

Provided further that the documents related to route plan for establishment of overground telegraph line shall be required to be provided by the licensee with the application made for establishment of overground telegraph line:

(3) Every application under sub-rule (1) shall be accompanied with such fee to meet administrative expenses for examination of the application and the proposed work as the appropriate authority may, by general order, deem fit:

Provided that the one-time fee, to meet administrative expenses, accompanying every application shall not exceed the amount specified in Part-I of the Schedule.

**10. Grant of permission by appropriate authority.** -(1) The appropriate authority shall examine the application with respect to the following parameters, namely: -

- (a) the extent of land required for the overground telegraph infrastructure;
- (b) the location proposed;
- (c) the approval issued by the duly authorised officer of the Central Government for location of the aboveground contrivances proposed to be used for transmission of Radio waves or Hertzian waves;

- (d) the mode of and time duration for execution of the work;
- (e) the estimation of expenses that the appropriate authority shall necessarily be put in consequence of the work proposed to be undertaken;
- (f) assessment of the inconvenience that the public is likely to be put to in consequence of the establishment or maintenance of the overground telegraph infrastructure, and the measures to mitigate such inconvenience indicated by the licensee;
- (g) certification of the technical design by a structural engineer attesting to the structural safety of the overground telegraph infrastructure;
- (h) certification, by a structural engineer, of the structural safety of the building on which the post or other above ground contrivances is proposed to be established;
- (i) any other matter, consistent with the provision of the Act and these rules, connected with or related to the laying of overground telegraph infrastructure, through a general or special order or guidelines by the Central Government, appropriate State Government or the appropriate local authority:

Provided that the parameters mentioned in clauses (a), (b), (c), (g) and (h) shall not be necessary for examination of the application made for establishment of overground telegraph line:

Provided further that the appropriate authority shall examine the route plan for the proposed overground telegraph line and the possible interference in regard to the establishment or maintenance of such overground telegraph line with regard to any other public infrastructure that may have been laid along the proposed route: —

(1A) The area of the overground telegraph infrastructure (mobile tower) proposed to be established shall be the area occupied by the mobile tower and the supporting infrastructures, such as base transceiver station, engine alternator, etc. at the ground.

(2) Where the establishment of the overground telegraph infrastructure renders the immovable property, vested in the control or management of any appropriate authority over which such overground telegraph infrastructure is established, unlikely to be used for any other purpose, the appropriate authority shall be entitled to compensation for the value of the immovable property, either once or annually, assessed on such rates as that appropriate authority may, by general order, specify.

Provided that the compensation payable for the immovable property for the establishment of poles for installation of small cells and telegraph line shall not exceed the amount specified in Part-III of the Schedule.

(3) The appropriate authority shall, within a period not exceeding sixty days from the date of application made under rule 9 -

(a) grant permission on such conditions including, but not limited to, the time, mode of execution, measures to mitigate public inconvenience or enhance public safety or structural safety and payment of restoration charge not exceeding the amount specified in

Part-II of the Schedule, or compensation, as specified in sub-rule (2); or

(b) reject the application for reasons to be recorded in writing:

Provided that no application shall be rejected unless the applicant licensee has been given an opportunity of being heard on the reasons for such rejection:

Provided further that the permission shall be deemed to have been granted if the appropriate authority fails to either grant permission under clause (a) or reject the application under clause (b) and the same shall be communicated in writing to the applicant not later than five working days after permission is deemed to have been granted.

(4) The appropriate authority shall not charge any fee and compensation other than those mentioned under sub-rule (3) of rule 9, sub-rule (2) and clause (a) of sub-rule (3) from the licensee for establishing, maintaining, working, repairing, transferring or shifting overground telegraph infrastructure.

(5) For the purposes of this rule, and rule 10B and the Schedule, the expression, -

(a) "mobile tower" means any above-ground contrivance for carrying, suspending or supporting a telegraph and does not include pole;

(b) "pole" means any above-ground contrivance of height not exceeding eight meters for carrying, suspending or supporting a telegraph and does not include mobile tower;

(c) "small cell" means a low powered cellular radio access node that has a coverage of distance from ten meters to two kilometers."

**10A. Usage of street furniture for installation of small cells and telegraph line.**-(1) A licensee shall for the purpose of installation of small cell and telegraph line submit an application, along with details of street furniture and a copy of certification by a structural engineer authorised by appropriate authority, attesting to the structural safety of the street furniture where installation of small cells and telegraph line is proposed to be deployed, to the appropriate authority for permission to use street furniture for installation of small cells and telegraph line.

(2) The application under sub-rule (1), shall be accompanied with such fee as may be determined by the appropriate authority to meet administrative expenses for examination of the application, which shall not exceed the amount specified in Part-I of the Schedule.

(3) The appropriate authority shall, within a period not exceeding sixty days from the date of application made, grant permission or reject the application for reasons to be recorded in writing:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard on the reasons for such rejection:

Provided further that the permission shall be deemed to have been granted if the appropriate authority fails to either grant permission or reject the application.

(4) The appropriate authority shall be entitled to receive such compensation from the licensee, not exceeding the amount specified in Part-III of the Schedule, for use of street furniture for installation of small cells and telegraph line, as may be determined by the appropriate authority.

(5) The appropriate central authority may permit installation of small cells on their buildings and structures.

(6) For the purposes of sub-rule (5), the "appropriate central authority" means the Central Government or the authority, body, company or institution, incorporated or established by the Central Government, in respect of property, under, over, along, across, in or upon which underground or overground telegraph infrastructure, is to be established or maintained, vested in, or under, the control or management of such Government, authority, body, company or institution.

**10B. Establishment of telegraph infrastructure over private property.** – Where the licensee proposes the establishment of overground telegraph infrastructure over any private property, the licensee shall not require any permission from the appropriate authority:

Provided that in case of establishment of mobile tower or pole over a private building or structure, the licensee shall submit an intimation, in writing, to the appropriate authority, prior to commencement of such establishment:

Provided further that along with the intimation, he shall also submit the details of the building or structure, where the establishment of mobile tower or pole is proposed, and a copy of certification by a structural engineer, authorised by the appropriate authority, attesting to the structural safety of the building or structure, where the mobile tower or pole is proposed to be established.

**11. Obligations of licensee in undertaking work.** — (1) The licensee shall ensure that –

(a) prior to the commencement of establishment and maintenance of overground telegraph infrastructure and at all times, the measures to mitigate public inconvenience and ensure public safety, including structural safety of such overground telegraph infrastructure are implemented;

(b) the work of establishment and maintenance of overground telegraph infrastructure is carried out in accordance with the conditions specified in the grant of permission by the appropriate authority.

**12. Powers of appropriate authority to supervise the work.** — (1) The appropriate authority may supervise the establishment and maintenance of overground

telegraph infrastructure to ascertain if the conditions imposed in the grant of permission under clause (a) of sub-rule (3) of rule 10 are observed by the licensee. (25)

(2) The appropriate authority may, on the basis of such supervision, impose such other reasonable conditions, as it may think fit.

(3) If the appropriate authority comes to the conclusion that the licensee has willfully violated any of the conditions for grant of permission under clause (a) of sub-rule (3) of rule 10, it may withdraw, for reasons to be recorded in writing, the permission granted to the licensee:

Provided that no action shall be taken under this sub-rule unless the licensee has been given an opportunity of being heard.

#### CHAPTER IV

#### RIGHT OF APPROPRIATE AUTHORITY TO SEEK REMOVAL OF UNDERGROUND OR OVERGROUND TELEGRAPH INFRASTRUCTURE

13. **Right of appropriate authority to seek removal, etc.**—(1) Where the appropriate authority, having regard to circumstances which have arisen since the establishment of any underground or overground telegraph infrastructure under, over, along, across, in or upon, any immovable property vested in or under the control or management of that appropriate authority, considers that it is necessary and expedient to remove or alter such telegraph infrastructure, it shall issue a notice to the licensee, being the owner of such telegraph infrastructure, to remove or alter its location.

(2) On receipt of the notice under sub-rule (1), the licensee shall, forthwith and within a period of thirty days, proceed to submit, to the appropriate authority, a detailed plan for removal or alteration of such telegraph infrastructure.

(3) The appropriate authority shall, after examination of the detailed plan submitted by the licensee under sub-rule (2), pass such orders as it deems fit:

Provided that the appropriate authority shall, having regard to emergent and expedient circumstances requiring the removal or alteration of such telegraph infrastructure, give a reasonable time of not less than ninety days to the licensee for removal or alteration of such telegraph infrastructure:

Provided further that the responsibility and liability, including the cost thereof, for removal or alteration of such telegraph infrastructure shall be borne by the licensee.

#### CHAPTER V

#### DISPUTE RESOLUTION

14. **Disputes between licensee and appropriate authority.** — (1) Any dispute arising between a licensee and the appropriate authority in consequence of these rules, shall be referred to the officer designated by the Central Government.

(2) The Central Government shall designate, by notification, officers with such jurisdiction as may be mentioned in the notification, for the purpose to referring disputes under sub-rule (1).

(3) The officer designated by the Central Government shall determine the disputes referred to in sub-rule (1) within a period not exceeding sixty days in such manner as may be specified by the Central Government from time to time.

### THE SCHEDULE

[See rules 5 (3), 6 (1B), 6 (2) (a), 6 (3), 9 (3), 10 (2), 10 (3) (a), 10A (2), 10A (4)]

Rule (1)	Item (2)	Amount (3)
Part-I Fee		
5(3)	For establishment of underground telegraph infrastructure	One thousand rupees per kilometer.
9(3)	For establishment of overground telegraph infrastructure	(i) Ten thousand rupees for establishment of mobile towers (ii) One thousand rupees per kilometer for establishment of overground telegraph line. (iii) Nil for establishment of poles, for installation of small cells and telegraph line, on the immovable property vested in, or under control or management of appropriate central authority (iv) One thousand rupees per pole for establishment of poles, for installation of small cells and telegraph line, on the immovable property vested in, or under control or management of appropriate authority, other than appropriate central authority.
10A (2)	For installation of small cells and telegraph line using the street furniture	Nil.
Part-II Charges for restoration		
6(2)(a)	Establishment of underground telegraph infrastructure where undertaking is not given by the licensee to discharge the	Sum required to restore immovable property as per the rate prescribed by central public works department for that area or as per the rate prescribed by state public works department for that area, if no rate has been

	responsibility to restore the damages	prescribed by central public works department for that area.
6(3)	Bank guarantee as security for performance in case of establishment of underground telegraph infrastructure where undertaking is given by the licensee to discharge the responsibility to restore the damages	20% of the sum required to restore immovable property as per the rate prescribed by central public works department for that area or as per the rate prescribed by state public works department for that area, if no rate has been prescribed by central public works department for that area.
10(3)(a)	Establishment of overground telegraph infrastructure	Sum required to restore immovable property as per the rate prescribed by central public works department for that area or as per the rate prescribed by state public works department for that area, if no rate has been prescribed by central public works department for that area. Further, licensee shall restore the damage incurred in case of establishment of poles for installation of Small Cells and telegraph line.
Part-III Compensation		
6(1B)	Establishment of underground telegraph infrastructure	Nil.
10(2)	Establishment of poles for installation of small cells and telegraph line	Nil
10A (4)	Usage of street furniture for installation of small cells and telegraph line	(i) For installation of small cells: Three hundred rupees per annum for urban area and one hundred and fifty rupees per annum for rural areas per street furniture. (ii) For installation of telegraph line: One hundred rupees per annum per street furniture.

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* notification number G.S.R. 1070 (E), dated the 15<sup>th</sup> November, 2016 and subsequently amended *vide* G.S.R. 407 (E), dated the 21<sup>st</sup> April, 2017, G.S.R. 749 (E), dated the 21<sup>st</sup> October, 2021 and G.S.R. 635 (E), dated the 17<sup>th</sup> August, 2022.



Dheeraj Singh &lt;dheeraj.adv001@gmail.com&gt;

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**Reply on behalf of the Respondent No. 5**

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**Dheeraj Singh** <dheeraj.adv001@gmail.com>  
To: Dheeraj Singh <dheeraj.adv001@gmail.com>

23 December 2022 at 17:32

----- Forwarded message -----

From: **Dheeraj Singh** <dheeraj.adv001@gmail.com>  
Date: Fri, 23 Dec 2022 at 17:31  
Subject: Reply on behalf of the Respondent No. 5  
To: [mrclegal65@gmail.com](mailto:mrclegal65@gmail.com) <[mrclegal65@gmail.com](mailto:mrclegal65@gmail.com)>

Dear Sir,

I am annexing Reply on Behalf of the Respondent No. 5 to the application under Section 18 r/w section 14,15,17 of the National Green Tribunal Act in Case title Jan Seva Welfare Society Vs Govt. of NCT of Delhi & Ors

Thanks &amp; regards

Dheeraj Singh, Adv

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**Jan Seva Welfare Society.pdf**

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