BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
IA No. 597/2023
In
OA NO. 333/2023

In the matter of:
Vasant Vihar Welfare Association ...Applicant

Versus

Commissioner, Municipal Corporation Delhi & Ors ...Respondents

NDOH:-08.08.2023

INDEX

Filed by:

(Dr. B.M.S. Reddy)
Sr. Environmental Engineer

New Delhi:

Dated: 08.08.2023

(1)

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

IA No. 597/2023

In

OA NO. 333/2023

In the matter of:

Vasant Vihar Welfare Association ...Applicant

Versus

Commissioner, Municipal Corporation Delhi & Ors ...Respondents

STATUS REPORT ON BEHALF OF DELHI POLLUTION CONTROL COMMITTEE WITH RESPECT TO ORDER DATED 29.05.2023.

IT IS MOST RESPECTFULLY SHOWETH:

1. That this Hon`ble Tribunal took up the above referred matter on 29.05.2023 and pleased to issue notice to Commissioner (MCD), Director (MCD) and DPCC for appearance and filing replies/ responses.

2. That the grievance in this OA is related to removal of the Mobile towers setup in the public parks in the Vasant Vihar colony and restoration of the parks at the costs of the respondents and also to seized and desist for permitting construction/installation of mobile towers in any public parks in Delhi.

3. That, DPCC issued letter dated 28.06.2023 to Commissioner (MCD), Director General, (COA of India) for taking necessary action against the installation of Mobile Tower in the public in the Vasant Vihar

(2)

colony and restoration of the parks. Copy of the letter dated 28.06.2023 is annexed herewith as **ANNEXURE- R-1.**

4. That as per the "awareness note on mobile tower radiation and its impacts on environment", as circulated by the Central Pollution Control Board ("CPCB"),{https://cpcb.nic.in/uploads/upc/Note_Mobile_Tower_Radiation_UPCD_Div.pdf}. The following are salient points that highlight the role of Pollution Control Boards/ committees with regard to installations of Mobile Tower Base Stations (MTBS);

   A. Under The Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986 'air pollutant' is defined as:

      ' any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment'

      The above definition shows that 'radiations' is excluded from the above definition that includes Electro Magnetic Radiation (EMR) emitted from mobile tower, a non-air pollutant.

   B. 'No person shall, without the previous consent of the State Board, establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or an extension or addition thereto' as per section 25/26 of the Water (Prevention & Control of Pollution) Act, 1974 and /or under section 21/22 of the Air (Prevention & Control of Pollution) Act.

   C. For the user end of MTBS, the user has to seek consent from the concerned SPCBs / PCCs for installation of the DG sets, if that is a source of power supply. The regulatory agency ensures that the DG sets functions as per approved guidelines with respect to emission & noise.

5. In India, Mobile Tower Radiation testing and monitoring is regulated by Telecom Enforcement Resource & Monitoring (TERM) cell of Department of Telecommunications (Ministry of Communications & Information Technology).

(3)

6. That time and again various the issues raised in the instant case has arisen before this Hon'ble Tribunal as well as various High Courts. However, till date, it has not been established upon any scientific study that mobile tower radiation is injurious to health. Some of the cases are as under:

(a) This Hon`ble Tribunal in the case of "*Arvind Gupta v Union of India,* {MANU/GT/0202/2015} observed that "it is clear beyond doubt that the radiation from electromagnetic waves resulting from the mobile towers is not explicitly covered in any of the scheduled acts to the NGT Act, 2010. In fact, even under the NGT Act, 2010, relevant definition under provisions does not refer to the radiation specifically." Further, this Hon`ble Tribunal held that the issue of radiation i.e. emission of electromagnetic waves from the towers constructed by the respective respondents does not fall within the ambit, scope and jurisdiction vested with the NGT under the provisions of the NGT Act with reference to the Environment (Protection) Act, 1986.

Copy of judgement *Arvind Gupta v Union of India,* {MANU/GT/0202/2015} is annexed herewith as **ANNEXURE- R-2**

(b) In the case of "*Reliance Infocomm Ltd. Vs. Chemanchery Grama Panchayt*" {AIR 2007 Ker 33} it was hold that Right to Life enshrined under Article 21 includes all those aspects of life which make life meaningful, complex and worth living. Development of technology has its own ill-effects on human beings, but, at times people will have to put up with that at the cost of their advantages.

Copy of judgement passed in "*Reliance Infocomm Ltd. Vs. Chemanchery Grama Panchayt*" {AIR 2007 Ker 33} is annexed herewith as **ANNEXURE- R-3**

(4)

(c) In recent judgement passed by Hon'ble High Court of Bombay in Indus Towers Ltd. vs. Grampanchayat, Chikhalhol and Ors. (20.07.2023 - BOMHC) : MANU/MH/2809/2023 has held:

"...5. In the present case, the Grampanchayat, i.e. respondent no.1, has already issued no objection vide it's certificate dated 30th June 2022 in favour of the petitioner in the matter of erection of mobile tower in the vicinity of the Grampanchayat and, therefore, we are of the opinion that Grampanchayat could not have passed another resolution, Resolution No.7, which is impugned herein, directing the petitioner to stop further work of erection of the mobile tower. There is no provision whatsoever made in the G.R. dated 11th December 2015 conferring any such power upon any Grampanchayat and, therefore, the impugned resolution passed by the Grampanchayat is devoid of any authority in law and as such is illegal.

6. The matter can also be examined from another angle, which would require this court to examine the correctness or otherwise of the ground of the complaint made by some of the villagers, which has made the Grampanchayat to pass the impugned resolution. Their ground relates to their apprehension about the radiation emitted by the mobile tower being harmful to their health and may have the effect of causing cancer to the villagers. However, such an apprehension of the villagers, in another case, which is the case of Biju K. Balan and Ors. Vs. State of Maharashtra and Ors., MANU/MH/0076/2019, has been dismissed by a Coordinate Bench of this court, (B.R. Gavai and N.J. Jamadar, J.J.), in it's judgment rendered in Writ Petition No.2152 of 2014, along with connected matters, on 4th and 23rd January 2019. It held that there is no scientific material or data warranting prohibition on installation of mobile tower and that jurisdiction under Article 226 of the Constitution of India cannot be exercised on the basis of apprehensions, which are not rooted in facts and which are not supported by reliable scientific material. It also noted that there was no scientific material as of the date of rendering of the judgment, which indicated any identifiable risk of serious harm on account of such radiations. Relevant observations have been made by the Division Bench in paragraph 55 of it's judgment, which is reproduced as under

:- "55. Having examined the matters on the anvil of special burden of proof in environmental cases, as expounded by the

(5)

Supreme Court, in the case of A.P. Pollution Control Board Vs. Prof. M.V. Nayudu (Retd.), MANU/SC/0032/1999 : (1999) 2 SCC 718, we find that the scientific material, as of today, does not indicate any identifiable risk of serious harm on account of non-ionized radiation emanating from TCS/BS and Equipments for Telecommunication Network. Thus, we are not inclined to exercise our jurisdiction under Article 226 of the Constitution of India on the basis of apprehensions which are not rooted in the facts and supported by reliable scientific material.

7. These observations would suffice us to say that the fear expressed by the villagers is without any basis. We may add here that today also, there is no change in the fact situation with regard to the absence of relevant scientific material, after the position which obtained on the date of rendering of the judgment in January 2019 in the aforestated case of Biju K. Balan (Supra). The respondent no.1, which has passed the impugned resolution, Resolution No.7, based upon the apprehension that radiation emitted by a mobile tower has harmful and carcinogenic effect, is not based upon any scientific material. It is well settled law that any agency or institution or person which seeks to deny a benefit or right to another on a special ground like the ground of mobile tower radiation being harmful to the health of the citizens, such agency or institution or person has a special burden of proof to establish the soundness of such a ground. But, in the present case, the respondent-Grampanchayat has failed to discharge the special burden of proof which was on it's shoulders...."

Copy of judgement passed by Hon'ble High Court of Bombay in Indus Towers Ltd. vs. Grampanchayat, Chikhalhol and Ors. (20.07.2023 - BOMHC) : MANU/MH/2809/2023 is annexed herewith as **ANNEXURE- R-4.**

The present status report may kindly be taken on record.

(Dr. B.M.S. Reddy)
Sr. Environmental Engineer

Annexure-R-1 (6)

By Speed Post

DELHI POLLUTION CONTROL COMMITTEE
DEPARTMENT OF ENVIRONMENT, (GOVT. OF NCT OF DELHI)
5TH FLOOR, ISBT BUILDING, KASHMERE GATE, DELHI-6
visit us at : http://dpcc.delhigovt.nic.in

DPCC/RDPC/Mobile Tower/Complaints/3960-3961 Date: 28-06-2023

To,

1) The Commissioner,
Municipal Corporation of Delhi
Civic Centre, Minto Road
New Delhi – 110002

2) Director General,
Cellular Operator Association of India
14, Bhai Veer Singh Marg,
New Delhi 110001

Sub: Complaint against mobile tower.

Sir,

This refers to the complaint filed by the Vasant Vihar Welfare Association before the Hon'ble NGT against installation of Mobile towers in the public parks in the Vasant Vihar colony and restoration of the parks. You are requested to look into the matter and direct the concerned officials to take necessary action in compliance of the order of the Hon'ble Tribunal. Copy of the order of the Hon'ble NGT is enclosed herewith for your ready reference.

Incharge, RDPC

Encl: As above

Annexure-R-2 (7)

MANU/GT/0202/2015

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 61 of 2012, M.A. No. 6 of 2013, Original Application No. 78 of 2014, M.A. No. 193 of 2014, M.A. No. 279 of 2015, Original Application No. 129 of 2015, M.A. No. 367 of 2015, Original Application No. 147 of 2015, M.A. No. 522 of 2015, Original Application No. 247 of 2015, M.A. No. 617/2015, Original Application No. 379 of 2015, M.A. No. 1095 of 2015 and Original Application No. 383 of 2015, M.A. No. 913 OF 2015

Decided On: 10.12.2015

Appellants: **Arvind Gupta and Ors.**
Vs.
Respondent: **Union of India and Ors.**

Hon'ble Judges/Coram:
Swatanter Kumar, J. (Chairperson), M.S. Nambiar, J. (Member (J)), Dr. D.K. Agrawal and Bikram Singh Sajwan, Members (E)

Counsels:
For Appellant/Petitioner/Plaintiff: Raj Panjwani, Sr. Advocate and Maneka Kuar, Advocate

For Respondents/Defendant: Ardhendumauli Kumar Prasad, Priyanka Swami and Jigdal G. Chankapa, Advocates

JUDGMENT

Swatanter Kumar, J. (Chairperson)

1. By this common judgment we will dispose of all the above seven applications as a common question of law comes up for consideration of this Tribunal though on somewhat different facts in these cases.

2. The applicant in the Main Application has preferred this application under Section 18(1) read with Section 14(1) of the National Green Tribunal Act, 2010 (for short 'NGT Act'). Challenging on the one hand inaction on the part of the respondents in not devising proper Rules/guidelines and on the other, in not implementing the existing regulations pertaining to installation of mobile towers in accordance with the Office Memorandum dated 9th August, 2012 issued by the Ministry of Environment, Forest and Climate Change (for short MoEF & CC), reproduce hereby as under:--

"Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi-110003
Date: 9th August 2012

F. No. 15-11/2010/WL-I

OFFICE MEMORANDUM

Sub: Advisory on the use of Mobile Towers to minimize their impact on Wildlife including Birds and Bees-conveyed.

In pursuance to the report submitted by the Expert Committee constituted by

e/140

the Ministry of Environment and Forests to study the possible impacts of communication towers on wildlife including birds and bees and subsequent consultations held with the stakeholders, an advisory containing the actions to be undertaken by various agencies involved in providing, regulating and dealing in any other manner with the EMR based services has been prepared by the Ministry with the objective to avoid and mitigate the impacts of EMR on such species.

A copy of the aforesaid advisory is enclosed for information, record and requisite action on the part of concerned stakeholders.

(Vivek Saxena)
Deputy Inspector General (WL)"

The basic grievance of the applicant is that the exposure to Electromagnetic Radiation (EMR) or electromagnetic field needs to be minimised since the radiations are creating adverse impact on both Flora and Fauna of urban and rural environmental setup. The applicant challenges the illegal and questionable action of the respondent companies, more particularly respondent No. 5 for not complying with the legal requirements.

The applicant, a conscious public spirited person has also raised issue in relation to respondent No. 5 issuing and mobilising public money for private profits in the field of construction of telecom towers. According to the Telecom Policy, 2012 the number of telephone connections, at the end of February, 2012, was 943 million as compared to 41 million at the end of December, 2001. This phenomenal growth has been fuelled by the cellular segment which alone accounted for 911 million connections at the end of February, 2012. The telecom industry is growing continuously with the active support of the Government. The installed base of telecommunication towers is expected to increase from 3,76,000 at the end of March 2012 to 4,20,000 at the end of March, 2017. The radio frequency sources in India are the transmitting towers such as AM, FM radio towers, TV Towers, Cell Phone towers, etc. and are emitting radio frequency/microwave radiations continuously. The level of EMF from sources has risen exponentially. The radio frequency radiation creates irreversible health hazards due to harmful exposures to electromagnetic radiation. The telecommunication tower radiation in India is governed by guidelines drawn from the recommendations of the International Commission on Non-Ionizing Radiation Protection. All service providers were asked to get their BTSs self-certified. The self-certification details were to be submitted to respective TERM cells of Department of Telecommunication (for short 'DoT') by November, 2010. Further, the private sector has flouted these norms. According to the applicant WHO International Agency for Research on Cancer has classified the Electromagnetic radiation from mobile phones and other sources possibly carcinogenic to human and advised the public to adopt safety measures to reduce exposure. The Government of India adopted the guidelines developed by the International commission on Non-Ionizing Radiation Protection for Electromagnetic Radiation from mobile towers, which are reproduced as hereunder:--

Frequency Range	Power Density (Watt/sq. Meter)
400MHz to 2000MHz	f/200

Since, the cellular GSM services are being operated at 900 MHz and 1800 MHz frequency band in India, wherein the permissible Power Density is 4.5 W/Sqm for 900 MHz and 9 W/Sqm. for 1800 MHz.

C/139

3. Based on public grievance, the Inter Ministerial Committee consisting of officers from DoT, Indian Council of Medical Research, Department of Biotechnology and MoEF & CC was constituted on 24th August, 2010 to examine the effect of EMF radiation from base stations and mobile phones. The Committee after studying 90 international and national studies and papers recommended for lowering the mobile towers EMF exposure limits to 1/10th of the existing prescribed limit as a matter of abundant precautions. It recommended the frequency range of 400-2000 MHz and power density of f/2000. According to the DoT guidelines safeguarding public health and steps to be taken for regulating radiation from base tower were also recommended. The Expert Group studied the Possible Impacts of Communication Towers on Wildlife Birds and Bees which was constituted by Ministry of Environment and Forest on 30th August, 2010 and report was submitted, which amongst others suggested possible mitigating measures to be taken and to formulate guidelines for regulating the large scale installation of Mobile Towers in the country. The applicant also refers to various other reports in support of his contention that these mobile towers leads to adverse effects of electromagnetic radiation on environment and human health.

4. The applicant also relied upon the PILs filed in various High Courts like High Court Rajasthan, Delhi, Punjab and Haryana, Tamil Nadu, which was in relation to health hazardous from mobile towers. PIL was filed in Rajasthan High Court in which the Court passed the final Judgment giving certain directions. The promotors of the private sector just for commercial benefits are indiscriminately installing towers anywhere and everywhere, irrespective of whether it is a ground area, densely populated area or open area. For having the site of a mobile tower tested, a person has to pay a fee of Rs. 4,000 which is not affordable and is not reasonable. The growing public concern of adverse health effects due to EMF radiation has noticed various health hazards in India and abroad. The applicant has referred to a report, Spanish (2004), Israel (2004), Germany (2004), Austria (2005) which indicates the ill-effects of radiation from mobile towers that can be fatigue, sleeping disorder, cardiovascular problems, breathlessness and respiratory problems and even cancer. In some countries according to him the distance has been specified and these cases were higher in the patients who lived closer or even 400 meter to the towers. Further, according to the applicant, keeping in view the Article 19(1)(g), Article 21 of the Constitution there should be a Regulatory Regime in place and if a telecom and cell phone tower are not banned, atleast there has to be complete guidelines in consonance with the scientific data to protect environment, human health and Ecology On the above facts the applicant has made the following prayers before the Tribunal:--

1. Implementing the guidelines and regulations pertaining to installation of Telecom Towers (Base Section) in accordance to Office Memorandum No. F. No. 15-11/2010/WL-I dtd. 09/08/2012 of the Ministry of Environment and Forest.

2. Directing the SEBI not to Clear any DRHP/IPO offering Prospectus filled by the Respondent Companies to the gullible investors for raising public money for private gains causing irreversible environmental and health hazard due to adverse radiation effect on human lives, birds, bees and environment until the final disposal of this appeal;

3. Direction may be issued to the respondents for implementing the Inter-Ministerial Committee recommendation to relating to the EMF exposure limits;

4. Direction may be issued for widely publicizing the complaint handling system of TERM for Electro Magnetic Field Radiation from Mobile Tower;

c/138

10

5. Putting place the complaint handling system of TERM throughout India within stipulated time period;

6. Issue an appropriate direction to all the High Courts for the transfer of all matters related to the radiation from mobile tower to Hon'ble National Green Tribunal for speedier and expeditious disposal of cases;

7. Direct the respondent No. 1, 2, 3 and 4 to constitute a High Power Committee of Experts to lay guidelines for limiting cell phone radiation norms before for installing any new Cell Phone Towers in urban and rural India;

8. Any other reliefs/order/directions as this Hon'ble Tribunal may deem fit and proper in the interest of larger public for meaningful environmental justice.

5. MoEF & CC, Respondent No. 2 filed a reply wherein it has stated that the present application is misconceived, mis-narrated and an abuse of the process of law and it raises no substantial question of law within the provisions of NGT Act and therefore is not maintainable. Further, it is stated that the Office Memorandum dated 9th August, 2012 issued by the Ministry is an advisory issue to the concerned authorities/department involved in providing regulations and delay in any manner of DMR based services, including the installation of mobile towers. The Ministry had prepared the order as an advisory document with the objective of sensitising the various agencies on impact of EMR on life forms so that the concerned agencies, while adopting the norms for regulation and fixing standards for safe limits of EMR's, will take into consideration the impacts on the living beings. The DoT has recently lowered the permissible limit of mobile tower to 1/10th of the impacts from 12th September, 2012. This is based upon international commission on Non-Ionising Radiation Protection Guidelines.

Other private respondent Nos. 5 to 9 have filed their respective replies. Objection in regard to maintainability of the application being beyond the jurisdiction of the Tribunal has been taken by all of them. It is contended that the present application is beyond the scope and purview of Section 14 and Schedule I of the NGT Act. In fact the application is even barred by time.

Objections has also been taken in regard to the applicant not claiming any relief against SEBI and the matters connected thereto. Such money disputes cannot lie before the Tribunal. The allegations that these private players are not complying with the norms setup by the Central Government with respect to Electromagnetic field radiation from mobile towers are specifically denied. The establishment of Telecommunication towers is a case for ruling out a licensed environment for providing Cellular mobile telephone services. Telecom towers are required to be erected which ultimately allow usage from one subscriber to another. Under the United Access License granted to the service provider, an obligation is imposed on the licensee to ensure the quality of service while providing telecom services. If the construction of tower has started, the service provider would have or they are called upon to take all requisite permissions and sanctions. Then the service provider would have various hindrances whenever a new tower is erected. If the service provider does not erect a cell phone tower then the same would have effect on their obligation under UASL for which they are liable. They even pray that the interim order granted by the Tribunal should be related where they had been directed that no construction of cell phone towers shall be made without following the mandatory provisions of law and without obtaining necessary permissions from the concerned authorities. It is of course stated by each one of them that there is no

Regulatory Regime directly dealing with the towers as of now. However, one of the private respondents have taken up the plea that the subject matter of the present application is clearly governed under the provisions of Indian Telegraph Act, 1885, Indian Wireless Telegraphy Act, 1933 and Telecom Regulatory Authority of India Act, 1997. Under Section 7 of the Telegraph Act 1885, the Central Government have the authority to make rules consistent with the Act. For the conduct of the Telegraph Act, 1885, the Central Government has also issued guidelines in respect of electromagnetic radiation. The provisions of Environment Protection Act, 1986 (for short 'Act of 1986), which in any case do not have any concern with electromagnetic emissions, loud ways and hertz ways galvic electric and magnetic means do not get covered under the Act of 1986. The applicant has substantially prayed for issuance of Writ of Mandamus, the power of which is vested in the Constitutional Courts. An obligation has also been taken in relation to the Locus Standi of the applicant to file the application.

6. Delhi Development Authority (DDA), respondent No. 1 has also filed its separate reply. In some of the above cases, from amongst the afore-noticed cases, the allegations beside the ones made in O.A. No. 61 of 2013 are that the towers are being erected in the green belt, public parks, district parks and number of such towers are being erected within a very close vicinity of each other. This, besides being contrary to the master and zonal plan of the area and in complete violation of the guidelines, they are also very seriously hazardous to the human health and environment. It is also contended in the case that on some of the erected towers there are many antennas which is again not permissible. The DDA has responded thereto that the current evidence does not conform the existence of any health hazards from exposure of EMF radiation. As an abundant precautionary measure and to lower the harmful effects of EMF radiation exposure in February, 2004 the limit was reduced by the committee and norms were reduced to one tenth of the existing limits prescribed by ICNRIP. No restriction has been imposed in the advisory guidelines on installation of towers on specific building such as schools, hospital and play grounds. Whenever antenna are mounted on the wall of the building on pole on the road, their height should be 5 meters above the ground level. The master and the zonal plan of Delhi does not prescribe construction of tower in any area, particularly green belt. We may also notice that parties have referred to various judgments of the High Courts in some of which the High Courts have interfered and even issued certain directions while in other, the High Courts have chosen not to issue specific directions.

7. The parties appearing in the case were primarily heard by the Tribunal on the question of maintainability of the present application and other preliminary objections as raised by the respondents. We had made it clear to the parties appearing in the case that the Tribunal would not proceed with the detailed hearing on merits except touching thereupon issues limited to the extent it is necessary for determining the preliminary issues raised by the respondents. The following preliminary issues arise for consideration of the Tribunal.

a. Whether the applicant has locus standi to file the present application.

b. Whether the present application is barred by limitation.

c. Whether the application as framed is maintainable and is covered under any of the Scheduled Acts, to the NGT Act, 2010.

8. For the purpose of discussion, we will take up the first 2 issues together. It is not the submission of all respondents that the applicant does not have a locus standi to file the

C/136

12

present application. Section 14 of the NGT Act gives jurisdiction to the Tribunal over all civil cases, where a substantial question relating to the environment, more importantly, including enforcement of any legal right relating to environment is involved. Such question should arise out of the implementation of the enactments specified under Schedule I. Section 14 does not define or states as to who can be an applicant. It is only sub section 3 and proviso thereto that uses the word applicant. This is not in contra distinction to the functioning of Section 16 of the NGT Act, where any person aggrieved has to file appeal as contemplated. Section 18 then provides for the application under Section 14 and 16 has to contain the particulars as accompanied by such facts as prescribed. As prescribed in terms of Section 18(2) without approach to the provisions contained under Section 16, an application for grant of relevant compensation or settlement of dispute to be made to the Tribunal by the person who is aggrieved, who has sustained injury, whose property has been damaged, legal representative of a deceased and the Government as stated. Under Rule 2(c) of the NGT (Practice and Procedure) Rules, 2011 provides that any person who files the application before the Tribunal would be an applicant. Section 14 has intentionally been worded by the legislature to cover all cases which falls under any of the specific category i.e. where substantial question relating to environment arises or where enforcement of any legal right relating to environment arises. In these circumstances, if the case falls under either of these categories then the locus of the applicant can hardly be questioned. Furthermore, the object of the NGT Act is to make environmental justice easily accessible and for expeditious disposal of environmental cases. According to the applicant, he has a legal right arising under Article 21 of the Constitution of India, so as to ensure that he receives a decent and clean environment and any activity which is affecting them or is a threat to environment and public health would be actionable under the NGT Act. Whether the applicant would succeed on merit or fail, even on some issues preliminary or otherwise, would be a different matter. But the applicant cannot be denied the consideration of the application at the threshold on the ground of locus standi. The applicant may not have suffered a personal injury thus he may not personally aggrieved. Still he will have a right to approach the tribunal for a precautionary relief. If the matters are covered under any of the Scheduled Acts, the applicant has a right to invoke the jurisdiction of the Tribunal and make appropriate prayers.

9. The main consideration before the Tribunal would be a substantial question relating to environment or any issue arising from implementation of the Scheduled Acts. A person can approach the Tribunal even when he claims enforcement of a legal right in relation to environment.

We may refer to the judgment of the Tribunal in the case of Goa Foundation v. Union of India, 2013, All India (NGT) Reporter (New Delhi) 234 where on the question of locus standi, the Tribunal held as under:

> **25.** The very significant expression that has been used by the legislature in Section 18 is 'any person aggrieved'. Such a person has a right to appeal to the Tribunal against any order, decision or direction issued by the authority concerned. 'Aggrieved person' in common parlance would be a person who has a legal right or a legal cause of action and is affected by such order, decision or direction. The word 'aggrieved person' thus cannot be confined within the bounds of a rigid formula. Its scope and meaning depends upon diverse facts | and circumstances of each case, nature and extent of the applicant's interest and the nature and extent of prejudice or injury suffered by him. P. Ramanatha Aiyar's The Law Lexicon supra describes this expression as 'when a person is

given a right to raise a contest in a certain manner and his contention is negative, he is a person aggrieved' [Ebrahim Aboodbakar v. Custodian General of Evacuee Property [MANU/SC/0058/1952 : AIR 1952 SC 319]. It also explains this expression as 'a person who has got a legal grievance i.e. a person wrongfully deprived of anything to which he is legally entitled to and not merely a person who has suffered some sort of disappointment'.

41. The implication of jurisdiction is, of course, not at the discretion of the judge but is relatable to the legislative intent and may be expanded within the framework of the statute. Once the legislature has intended to include 'all civil cases' in contradistinction to criminal cases, then it is not desirable for the Tribunal to carve out another class of cases which are to be excluded from the jurisdiction of the Tribunal. This will amount to adding words to a statute which are not provided otherwise. In a civil case which raises a question relating to environment, the Tribunal shall have jurisdiction to decide disputes arising out of such a question. Therefore, there is no need to carve out any exception for exclusion which is not spelt out by the legislature itself.

42. Under the scheme of the Act, an anticipated action will also fall within the ambit of the jurisdiction of the Tribunal. Section 20 of the NGT Act provides that, while deciding cases before it, the Tribunal shall take into consideration the three principles -- principle of sustainable development, precautionary principle and the polluter pays principle. The precautionary principle would operate where actual injury has not occurred as on the date of institution of an application. In other words, an anticipated or likely injury to environment can be a sufficient cause of action, partially or wholly, for invoking the jurisdiction of the Tribunal in terms of Sub-sections (1) and (2) of Section 14 of the NGT Act. The language of Section 20 is referable to the jurisdiction of the Tribunal in terms of Sections 14 and 15 of the Act. The precautionary principle is permissible and is opposed to actual injury or damage. On the cogent reading of Section 14 with Section 2(m) and Section 20 of the NGT Act, likely damage to environment would be covered under the precautionary principle, and therefore, provide jurisdiction to the Tribunal to entertain such a question. The applicability of precautionary principle is a statutory command to the Tribunal while deciding or settling disputes arising out of substantial questions relating to environment. Thus, any violation or even an apprehended violation of this principle would be actionable by any person before the Tribunal. Inaction in the facts and circumstances of a given case could itself be a violation of the precautionary principle, and therefore, bring it within the ambit of jurisdiction of the Tribunal, as defined under the NGT Act. By inaction, naturally, there will be violation of the precautionary principle and therefore, the Tribunal will have jurisdiction to entertain all civil cases raising such questions of environment. Such approach is further substantiated by the fact that Section 2(c), while defining environment, covers everything. Section 2(m) brings into play a direct violation of a specific statutory environmental obligation as contemplated under Section 5 of the Environment Act as being substantial question relating to environment These provisions, read with Section 3(1) and Section 5 of the Environment Act, which place statutory obligation and require the Government to issue appropriate directions to prevent and control pollution, clearly show that the legislature intended to provide wide jurisdiction to the Tribunal to deal with and cover all civil cases relating to environment, as stated by the Supreme Court in the case of S.A.L. Narayan Row & Anr. v. Ishwarlal Bhagwandas & Anr. [MANU/SC/0160/1965 : AIR 1965 SC 1818). The character of the proceedings

is normally not with reference to the relief that the Tribunal can grant but upon the nature of the right violated and the appropriate relief which can be claimed.

10. In view of the above stated principle, facts and circumstance of the present case, we are of the view that the applicant has a locus standi to file the present application.

11. Coming to the second limb of the contention that the application is barred by time. We are again of the stated view that the application is not barred by limitation in terms of the Section 14 of the NGT Act. In the connected matters the applicants are personally aggrieved by conversion of the Green Belt, Public Park and district parks for erection and construction of mobile towers etc. which according to them is a violation of Master Plan, which itself would be part and parcel of environment and ecology which these authorities have a right to protect. It is true that the application has to be filed within a period of 6 months from the date when the Cause of Action first arose. The Tribunal is vested with the power to condone the delay in terms of proviso to Section 14 if the application is filed beyond 6 months. This power can be exercised for condoning the delay but under and not in excess of 60 days. The term 'cause of action' has been used in contra distinction to continuing cause of action. In case of a continuing cause of action, 'cause of action first arose' has completely a distinct and different role while computing the period of limitation. However, it is not equally applicable and does not have the same consequences in a case where the cause of action is recurring complete cause of action. In other words, whenever subsequent act or subsequent breach is a complete cause in itself and its consequences are different, then such cause of action would enable an applicant to bring action before the Tribunal on the strength of the subsequent act. The limitation would be computed from the date of the subsequent breach or act. In this regard, we may refer to the judgment of the Tribunal in the case of The Forward Foundation V. State of Karnataka, MANU/GT/0089/2015 : 2015 ALL (I) NGT Reporter (2) (DELHI) 81 where the similar question of adherence arose. After hearing the law in detail the Tribunal held as under:

> **23.** 'Cause of Action' as understood in legal parlance is a bundle of essential facts, which it is necessary for the plaintiff to prove before he can succeed. It is the foundation of a suit or an action. 'Cause of Action' is stated to be entire set of facts that give rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In other words, it is a bundle of facts which when taken with the law applicable to them gives the plaintiff, the right to relief against defendants. It must contain facts or acts done by the defendants to prove 'cause of action'. While construing or understanding the cause of action, it must be kept in mind that the pleadings must be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or passage and to read it out of the context, in isolation. Although, it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, from the pleading taken as a whole. [Ref. Shri Udhav Singh v. Madhav Rao Scindia, MANU/SC/0302/1975 : (1977) 1 SCC 511, A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, [MANU/SC/0001/1989 : AIR 1989 SC 1239].
>
> **27.** Whenever a wrong or offence is committed and ingredients are satisfied and repeated, it evidently would be a case of 'continuing wrong or offence'. For instance, using the factory without registration and licence was an offence committed every time the premises were used as a factory. The Hon'ble

C/133

18

Supreme Court in the case of Maya Rani Punj v. Commissioner of Income Tax, Delhi, MANU/SC/0082/1985 : (1986) 1 SCC 445, was considering, if not filing return within prescribed time and without reasonable cause, was a continuing wrong or not, the Court held that continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued. The penalty is imposable as long as the default continues and as long as the assessee does not comply with the requirements of law he continues to be guilty of the infraction and exposes himself to the penalty provided by law. Hon'ble High Court of Delhi in the case of Mahavir Spinning Mills Ltd. v. Hb Leasing And Finances Co. Ltd., MANU/DE/5386/2012 : 199 (2013) DLT 227, while explaining Section 22 of the Limitation Act took the view that in the case of a continuing breach, or of a continuing tort, a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues. Therefore, continuing the breach, act or wrong would culminate into the 'continuing cause of action' once all the ingredients are satisfied. Continuing cause of action thus, becomes relevant for even the determination of period of limitation with reference to the facts and circumstances of a given case. The very essence of continuous cause of action is continuing source of injury which renders the doer of the act responsible and liable for consequence in law.

12. The applicant has only prayed for the implementation of the Office Memorandum dated 9th August, 2012. The application was filed on 12th November, 2012 before the Tribunal well within the period of 6 months. Consequently the violation claimed by the applicant in this application relates to lack of regulatory regime, statutory or otherwise and violation of the prescribed guidelines while constructing/erecting towers every day. Construction of every new tower in a different colony in a different place public park, district centre or Green area would be an independent cause of action. In other connected matters, the cause of action is very recent, for instance where the towers are under construction and application have been brought before the Tribunal. These are the cases which will consequently fall within the prescribed period of limitation but as each illegal construction would be an independent cause of action in itself and the period of limitation would have to be counted therefrom. Thus these applications are not barred by time. We may refer to the Judgment of the Tribunal in the case of Forward Foundation (Supra)-

ISSUE NO. 3: Whether the application as framed is maintainable and is covered under any of the Scheduled Acts, to the NGT Act.

13. All the emphasis have been laid down by the learned Counsel appearing for the respondents on the question of maintainability of the present applications. The submission is that the Radiations of Electromagnetic Waves from Mobile Towers or other Towers does not fall directly or indirectly under any of the scheduled acts to the NGT Act. Radiation from towers does not cause any pollution. It does not fall under the expression 'environmental pollution' under Section 2(b) of the Act of 1986 or for that matter under the provisions of any of the scheduled acts. Radio electromagnetic waves are not the 'hazardous substance' in terms of Section 2(e) of the Act of 1986. On the true construction of Section 14 read with Section 2(c) and 2(f) of the NGT Act, to which the Rule of strict construction has to be applied, the radiation would neither be covered under the definition of environment nor under the definition of hazardous substance and, therefore, would not fall within the ambit and scope of Section 14 of the NGT Act. It is not a pollutant as it is not a solid, liquid or gaseous substance which is present in such concentration which may or tend to be injurious to the environment. Even if the

definitions afore-referred are given liberal construction, then also radiation would not be covered under any of the scheduled acts. Under the Act of 1986, the legislature wherever intended to add or expand the scope of any term or expression particularly pollution, it has so stated under the provisions of the said Act. It is contended that for instance, Section 3 empowers the Central Government to take measures to protect and improve environment. These measures could relate to the matters or any one of them specified under sub Section 2(iii) inter-alia it could also related to laying down standards in relation to quality of environment in its various aspects. Similarly, Section 5 empowers the Central Government to issue directions subject to the provisions of the Act of 1986 but notwithstanding anything contained in any other law in force. These directions could relate to the closure, prohibition or regulation of any industry, operation or process amongst others. Section 6 vests the Central Government with the power of issuing notification in the official gazette and to make rules in respect of all or any of the matters referred to in Section 3 of the Act. Amongst others, the rules could relate to the standards of quality of Air, Water and Soil for various areas and purposes. Section 6(2)(b) empowers the government to frame rules and issue notification as to the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas. Section 6(2)(b), thus, shows that the legislature wherever intended have incorporated the words specifically. Inclusion of the word 'noise' shows that the legislature unambiguously wanted the rule making authority to prescribe noise standards. Unlike this, in any of the provisions of the Act of 1986, reference have not been made to radiation by cellular towers or other towers directly or even impliedly, which shows that the framers of law did not desired to extend the jurisdiction of the Tribunal over such matters.

14. It is also contended on behalf of the respondents that the subject matter of the present applications is specifically covered under the Indian Telegraph Act, 1885, Indian Wireless Telegraphy Act, 1933 and Telecom Regulatory Authority of India Act, 1997, and under these acts, license is required by the private stakeholders and such licenses are incorporated with all conditions and standards which the service providers are expected to perform or meet because there is a specific legislation covering this field. There is no occasion for the Tribunal to exercise jurisdiction by expanding the definition of words and expression under these laws as well as the provision relating to jurisdiction of the Tribunal in terms of Section 14 of the NGT Act.

15. It is also a contention on behalf of the respondents that after recommendations of the Committee constituted by the Government, the terms and conditions of the license were amended and consequently amended licenses with more details and specific conditions were issued by the DOT to which all the service providers particularly, the respondents should comply with. Firstly, this subject is beyond the jurisdiction of the Tribunal. Secondly, no legal right of the applicants has been violated. The field is squarely covered by the guidelines issued by the DOT and the Tribunal would not issue directions for providing statutory or other regulatory regime which does not fall within its jurisdiction. Therefore, submission is that the application should be dismissed as not maintainable.

16. Sharply responded to the above contentions on behalf of the respondents, the applicants have argued that on the co-joint reading of object of the Act, definition under Section 2(a) of the Act of 1986 in light of the provisions of NGT Act, it is evident that the present application is maintainable. Radiation might not have been specifically provided under the Act of 1986 but it is a hazardous substance, an environment pollutant and has adverse impacts on human health. It is contended while relying upon the judgment of the Rajasthan High Court in the case of 'Justice I.S. Israni (Retd.) &

Anr. v. Union of India & Ors., D.B. Writ Petition No. 2774/2012 that it is a hazardous substance and injurious to human health and it requires that a proper regulatory regime should be in place in the interest of environment and human health. It is also contended on behalf of the applicants that Section 3 of the Act of 1986 empowers the Central Government to take measures to protect and improve the environment. Under Section 3(2)(iii) and (xiv) the Central Government has to lay down standards for quality of environment in its various aspects and even in relation to such other matters as the government deem necessary or expedient for the purpose of securing effective implementation of the provisions of the Act. This would clearly imply that there is an obligation on the part of the Central Government to protect the environment and human health from the ill effects of radiation and thus to specify a regulatory regime and standards in that regard. Act of 1986 is an Umbrella Act of environment and the legal right of the applicants read with Article 21 of the Constitution is being violated.

17. The other acts like Air (Prevention and Control of Pollution) Act, 1981, were enacted much prior to coming into operation of these activities of mobile towers, therefore, mere fact that they have not specifically been provided therein should not act as an impediment in the way of the Tribunal to give proper meaning and compliance to the provisions of 1986 Act. Thus, the Tribunal should exercise jurisdiction and the present case is maintainable.

18. It is also the contention of the applicants that Section 5 of the Act of 1986 opens with a non-obstante clause. Even if the contention of the respondents that the subject matter is covered under other Act is accepted, still because of the non-obstante clause the provision of the Act of 1986, has to prevail. However, it is contended that Tribunal has wide jurisdiction to deal with all environmental aspects in terms of the provisions of the NGT Act. In any case, if there is no proper policy in place for installation of towers and there are no guidelines then the matter would be squarely covered under the provisions of the Act of 1986, particularly, when the entire concept of construction and installation of towers is being dealt with arbitrarily. The arbitrariness is evident from the fact that in some places one tower is being constructed while in near to that site in another place, 15 towers are being constructed or have been constructed. In the Master Plan of Delhi, only limited activity is permissible in the green areas and installation of towers being hazardous cannot be permitted in that area. Operationalization of such towers in those areas is violation of the advisory caution issued by MoEF&CC vide its letter dated 9th August, 2012 as well as Master Plan. Thus applicants can enforce their legal right before the Tribunal to prevent such construction.

19. At the cost of repetition, we make it clear that we are only deliberating upon the preliminary objections raised as to the maintainability of the application and the jurisdiction of the Tribunal to entertain this application. We are neither noticing the factual controversies raised in this application nor other legal issues indicated therewith. Suffice it to say that if we take the view that the present application is not maintainable or the Tribunal has no jurisdiction to entertain this application, it will be futile to discuss or deliberate upon other factual or legal aspects of this case. Different studies/reports have also been placed on record by the respective parties in support of their contentions as to whether electromagnetic radiation waves emitting from the towers are hazardous substance and have adverse impacts for human health and environment. We may also notice that no study has been placed on record which concludes in definite terms either way based on research.

20. It is also true that the various High Courts in the country have taken different views in relation to the regulatory regime, statutory or otherwise, need or requirement of such

(18) C/130

regime and issuance of directions but including prohibitory directions in relation to erection of towers and their impact on human health. The Madhya Pradesh High Court in writ petition No. 866 of 2015 had declined to interfere and rejected the prayers vide judgment dated 9th September, 2015. The Gujarat High Court in the case of Mukti Park Cooperative Society v. Ahmedabad Municipal Corporation & Ors. Special Civil Application No. 5548 of 2014 and other matters, while disposing of the writ petition, the court had even made observations that there is no reason for people to fear the erection of Base Transceiver Station, known as Wi-Fi mobile towers. There was an impression in mind of common man that the Wi-Fi Mobile Towers erected all over the state has the potential to cause health hazard due to the emission of radioactive waves from the said towers.

21. The Rajasthan High Court in the case of Justice IS. Israni (Retd.) (Supra) by a detailed judgment had dealt with a direct question of radiation waves causing health hazards and being a hazardous substance. It also noticed that the Inter Ministerial Committee afore referred had made certain recommendations which were not disagreed by the DoT and had taken precautionary approach. There was a recommendation that multiple antennas should not be there on towers. The Bench of Rajasthan High Court had then proceeded to hold that the Expert Report of Inter-Ministerial Committee was being considered by the Court which was based on overwhelming material and various reports have been referred there. The Court further said 'even if the report of Professor Girish Kumar is discarded, there was ample material available on record in case of EMF radiation is processed then prescribed, it would cause health hazardous and various disease. The reports are not conclusive as to the ill effects of EMF radiations. If it is kept at the prescribed level, it may still be dangerous for human beings. With these observations, the High Court hold the policy decision of the State Government, passed various directions and disposed of the petition. Based upon the judgment of the Rajasthan High Court, the Bhopal Bench of the Tribunal in Original Application No. 320/2014 vide its judgment dated 13th August, 2015 had even directed removal of towers from certain places including the schools. The judgment of the Bhopal Bench of the Tribunal was challenged in the statutory appeal preferred by the Cellular Operators Association of India v. Parveen Patkar Civil Appeal No. 85 of 2015 upon which the Hon'ble Supreme Court of India vide its order dated 16th October, 2015 issued notice and granted stay of the judgment of the Tribunal. Special leave petition against judgment of the High Court of Rajasthan has also been filed before the Supreme Court which is stated to be pending. An interim order has been passed by the Hon'ble Supreme Court of India even in that case.

22. Delhi High Court in the case of Resident Welfare Association v. Union of India & Ors., Writ Petition No. 866/2015 had dismissed the writ petition wherein the resident association had raised a grievance of construction of towers in Sector-C, Pocket-4, Vasant Kunj Colony Delhi and had also stated that there should be proper advisory guidelines prepared by the authorities and challenge was also raised to the standing committee accepting some other recommendations contended in the report of the Inter-Ministerial Committee.

23. We have noticed these various judgments of the High Courts and the Tribunal and orders of the Hon'ble Supreme Court, just as preface to deal with the main issue of jurisdiction before the Tribunal. These judgements clearly show that the controversy in the present case has been a subject matter of adjudication before higher judiciary in different cases and now is pending for final determination before the Hon'ble Supreme Court of India. Now, we must refer to the various provisions of the Environment (Protection) Act, 1986, Atomic Energy Act, 1962 and the National Green Tribunal Act,

(19) 4/129

2010 which are the statutes primarily related upon by the learned counsel appearing for the respective parties for advancing their submissions on the question of maintainability of the application and the jurisdiction of this Tribunal. First and foremost, we must refer to the provisions of the NGT Act, which have been referred to by the respective parties. The NGT Act while defines environment there, for definition of hazardous substance, it refers to the definition of the expression in the Act of 1986. The Act also deals with what is substantial question relating to environment as Section 14 gives jurisdiction to the Tribunal only in relation to civil cases which raise a substantial question relating to environment including enforcement of legal right relating to environment and in relation to implementation of the enactments specified in the schedule. Thus, the jurisdiction under Section 14 is controlled upon by these provisions of the Act. We may now refer to these provisions:

> "2.(c). "environment" includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property;
>
> (f). "hazardous substance" means any substance or preparation which is defined as hazardous substance in the Environment (Protection) Act, 1986 (29 of 1986, and exceeding such quantity as specified or may be specified or may be specified by the Central Government under the Public Liability Insurance Act, 1991 (6 of 1991);
>
> (m). "substantial question relating to environment" shall include an instance where,-
>
> (i). there is a direct violation of a specific statutory environmental obligation by a person by which,-
>
> (A). the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or
>
> (B). the gravity of damage to the environment or property is substantial; or
>
> (C). the damage to public health is broadly measurable;
>
> (ii). the environmental consequences relate to a specific activity or a point source of pollution;"

24. We may also notice that in terms of sub-section (ii) of Section 2 the word/expression used in the Act but not defined are to have meaning and reference as given to them under the other scheduled acts or the acts specified in the section.

While referring to the provisions of the Atomic Energy Act, 1962, the applicants have particularly contended that the radiation finds a specific exclusion under the provisions of this Act and therefore it would be automatically covered under the Act of 1986. Of course, according to other respondents the subject matter is not specifically dealt with under this Act of 1962 but is controlled by the other three Acts namely Indian Telegraphy Act, 1885, Indian Wireless Telegraphy Act, 1933 and Telecom Regulatory Authority of India Act, 1997 and the jurisdiction of the Tribunal is ousted. Thus, we must refer to the following Acts i.e. Atomic Energy Act, 1962:

C/128

(20)

2.(1) (a). "atomic energy" means energy released from atomic nuclei as a result of any process, including the fission and fusion processes:

(g). "prescribed substance" means any substance including any mineral which the Central Government may, by notification, being a substance which in its opinion is or may be used for the production or use of atomic energy or research into matters connected therewith and includes uranium, plutonium, thorium, beryllium, deuterium or any of their respective derivatives or compounds or any other materials containing any of the aforesaid substances;

(h). "radiation" means Gamma rays, X-rays, and rays consisting of alpha particles, beta particles, neutrons, protons and other nuclear and sub-atomic particles, but not sound or radio waves, or visible, infrared or ultraviolet light;

(i). "radioactive substance" or "radioactive material" means any substance or material which spontaneously emits radiation in excess of the levels prescribed by notification by the Central Government."

25. Now, we may come to the relevant provisions of the Environment (Protection) Act, 1986 which according to the applicant is an Umbrella Act in relation to environmental laws and would thus cover all matters which are not otherwise specifically provided in other scheduled acts or even under the said act by necessary implications. According to the respondents, Act of 1986 cannot be given a sweeping operation so as to include everything in the atmosphere or in the environment which has been specifically stipulated therein or not and which is otherwise covered by other statutes or not. According to them, Act of 1986 has to be given a proper and limited operation. The relevant provisions of this Act which we would prefer to refer at this stage are as follows:

2.(a) "environment" includes water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants micro-organism and property;

(b) "environmental pollution" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment;

(e) "hazardous substance" means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants micro-organism, or the environment.

(g) "prescribed" means prescribed by rules made under this Act.

3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT

(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.

C/127

21

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:--

(i) co-ordination of actions by the State Governments, officers and other authorities-(a) under this Act, or the rules made thereunder, or (b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act; (xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

C/126

22

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise and powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

5. POWER TO GIVE DIRECTIONS

Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions. Explanation--For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct and Ors.

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) stoppage or regulation of the supply of electricity or water or any other service.

24. EFFECT OF OTHER LAWS

(1) Subject to the provisions of sub-section (2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

(2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.

25. POWER TO MAKE RULES

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following

 c/125

(23)

matters, namely-

(a) the standards in excess of which environmental pollutants shall not be discharged or emitted under section 7;

(b) the procedure in accordance with and the safeguards in compliance with which hazardous substances shall be handled or caused to be handled under section 8;

(c) the authorities or agencies to which intimation of the fact of occurrence or apprehension of occurrence of the discharge of any environmental pollutant in excess of the prescribed standards shall be given and to whom all assistance shall be bound to be rendered under sub-section (1) of section 9;

(d) the manner in which samples of air, water, soil or other substance for the purpose of analysis shall be taken under sub-section (1) of section 11;

(e) the form in which notice of intention to have a sample analysed shall be served under clause (a) of sub section (3) of section 11;

(f) the functions of the environmental laboratories, the procedure for the submission to such laboratories of samples of air, water, soil and other substances for analysis or test; the form of laboratory report; the fees payable for such report and other matters to enable such laboratories to carry out their functions under sub-section (2) of section 12;

(g) the qualifications of Government Analyst appointed or recognised for the purpose of analysis of samples of air, water, soil or other substances under section 13;

(h) the manner in which notice of the offence and of the intention to make a complaint to the Central Government shall be given under clause (b) of section 19;

(i) the authority of officer to whom any reports, returns, statistics, accounts and other information shall be furnished under section 20;

(j) any other matter which is required to be, or may be, prescribed."

26. It is a settled principle of law that while dealing with the interpretation of statutory provisions, the Tribunal would apply the rule of plain construction. The interpretation to be given to the provisions particularly relating to jurisdiction has necessarily not to be unduly liberal and unduly strict. The Tribunal is a creation of a statute and therefore it would exercise jurisdiction within the four-corners of the statute. There would be no occasion for the Tribunal, particularly in the fact and circumstances of this case, to extend its jurisdiction if it otherwise falls beyond the statutory jurisdiction vested in the Tribunal. It is also a settled principle of law that where jurisdiction of civil court is excluded and the jurisdiction is conferred upon the authorities or the Tribunals then

c/124

(24)

such provisions are to be construed strictly. The Tribunal will exercise its jurisdiction which is vested in it by the legislature. More often than not, difficulties had arisen in applying these principles because there is no clear cut demarcation between the jurisdictional and non-jurisdictional question of fact and law. The Tribunal would also have jurisdiction to decide finally, even apparently jurisdictional fact and such a determination is not liable to be questioned on the ground that it has wrongly decided the jurisdiction fact, as was stated in case of Rai Brij Raj Krishna and Another v. S.K. Shaw and Brothers MANU/SC/0053/1951 : 1951 SCR 145. The principle of nullity coulc be brought into aid where the Tribunal has decided a matter without jurisdiction. In other words decision is completely beyond the provisions of the Act. In this regard, we may refer to some judgments on the issue of jurisdiction as passed by the larger benches of the Tribunal in the recent past in the case of Kalpavriksh Vagholkar v. Union of India, MANU/GT/0070/2014 : (2014) ALL (I) NGT Reporter (2) (Delhi) 282:

23.1. The ambit and scope of Section 14 and its features came to be discussed by the Tribunal in its judgment in the case of Goa Foundation v. Union of India, (2013) 1 All India NGT Reporter 234, wherein the Tribunal held as under:

> "19. The Preamble may not strictly be an instrument for controlling or restricting the provisions of a statute but it certainly acts as a precept to gather the legislative intention and how the object of the Act can be achieved. It is an instrument that helps in giving a prudent legislative interpretation to a provision.
>
> In light of this language of the Preamble of the NGT Act, now let us refer to some of the relevant provisions. Section 14 of the NGT Act outlines the jurisdiction that is vested in the Tribunal. In terms of this Section, the Tribunal will have jurisdiction over all civil cases where a substantial question relating to environment arises. The Tribunal will also have jurisdiction where a person approaches the Tribunal for enforcement of any legal right relating to environment. Of course, in either of these events, a substantial question arises out of the implementation of the enactments specified in Schedule I to the NGT Act. Section 15 of the NGT Act provides for awarding of relief and compensation to the victims of pollution and other environmental damage, restitution of property damaged and restitution of the environment for such area(s) as the Tribunal may think fit, in addition to the provisions of Section 14(2) supra. Section 16 provides for the orders, decisions or directions that are appealable before the Tribunal. Any person aggrieved has the right to appeal against such order, decision or direction, as the case may be. This Tribunal, thus, has original as well as appellate jurisdiction. This wide jurisdiction is expected to be exercised by the Tribunal in relation to substantial question relating to environment or where enforcement of a legal right relating to environment is the foundation of an application. In terms of Section 14(2) of the NGT Act, the Tribunal shall hear disputes relating to the above matters and settle such disputes and pass orders thereupon.
>
> **20.** The expression 'civil cases' used under Section 14(1) of the NGT Act has to be understood in contradistinction to 'criminal cases'. This expression has to be construed liberally as a variety of cases of civil nature could arise which would be raising a substantial question of

environment and thus would be triable by the Tribunal. P. Ramanatha Aiyar's The Law Lexicon, 3rd ed. 2012, explains 'civil cases' as below: "In the short sense, the term 'civil case' means cases governed by the Civil Procedure Code (5 of 1908). It is 27 used in a large sense so as to include proceedings in income-tax matters...".

21. The word 'case' in ordinary usage means, 'event', 'happening', 'situation', and 'circumstance'. The expression 'case' in legal sense means a 'case', ' suit', or 'proceedings' in the Court or Tribunal. Civil case, therefore, would be an expression that would take in its ambit all legal proceedings except criminal cases which are governed by the provisions of the Criminal Procedure Code. The legislature has specifically used the expression 'all civil cases'. Reference to Section 15 of the NGT Act at this juncture would be appropriate. The legislature has specifically vested the Tribunal with the powers of granting reliefs like compensation to the victims of pollution and other environmental damage, for restitution of property damaged and for restitution of the environment for such area or areas. Once Section 14 is read with the provisions of Section 15, it can, without doubt, be concluded that the expression 'all civil cases' is an expression of wide magnitude and would take within its ambit cases where a substantial question or prayer relating to environment is raised before the Tribunal.

22. The contents of the application and the prayer thus should firstly satisfy the ingredients of it being in the nature of a civil case and secondly, it must relate to a substantial question of environment. It could even be an anticipated action substantially relating to environment. Such cases would squarely fall within the ambit of Section 14(1). Next, in the light of the language of Section 14(1), now we have to examine what is a substantial question relating to 'environment'. Section 2(1)(c) of the NGT Act explains the word 'environment' as follows:

> "'environment' includes water, air and land and the interrelationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property."

23.2. Section 2(m) defines the term 'substantial question relating to environment' as follows: "It shall include an instance where,-

(i) there is a direct violation of a specific statutory environmental obligation by a person by which,-

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

(B) the gravity of damage to the environment or property is substantial; or

(C) the damage to public health is broadly measurable; 28(ii) the environmental consequences relate to a specific activity or a point source of pollution"."

24. The jurisdiction vested in the Tribunal under Section 14, which is a very wide jurisdiction, is in addition to the appellate jurisdiction under Section 16 and the special jurisdiction under Section 15 of the NGT Act. Under Section 14, it is not only that Tribunal can try all civil cases where a substantial question relates to environment and arises out of the implementation of the enactments specified in Schedule I of the Act but also where enforcement of any legal right relating to environment arises. Section 14 specifically refers to a substantial question relating to environment which itself has been defined and accepted in Section 2(m) of the NGT Act. The definition under Section 2(m) is an inclusive definition and thus, it has to be construed in a liberal manner in order to give it a wider connotation. In the case of Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and Ors. MANU/SC/0073/1987 : 1987 1 SCC 424, the Supreme Court while dealing with the expression 'includes' stated that:

> "All that is necessary for us to say is this: Legislatures resort to inclusive definitions (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it, (2) to include meanings about which there might be some dispute, or, (3) to bring under one nomenclature all transactions possessing certain similar features but going under different names. Depending on the context in the process of enlarging, the definition may even become exhaustive."

24.1. Touching upon the liberal construction of Sections 14 and 2(m) of the NGT Act, the Tribunal in the case of Kehar Singh v. 29 State of Haryana, (2013) ALL (I) NGT REPORTER (Delhi) 556, stated:

> "13. The NGT Act has been enacted with the object of providing for establishment of this Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and for giving other contemplated reliefs and even dealing with matters incidental thereto. The Tribunal thus, has original jurisdiction in terms of Section 14 of the NGT Act. This wide jurisdiction is expected to be exercised by the Tribunal in relation to substantial questions relating to environment or enforcement of legal rights relating to environment, when it arises from the implementation of one or more of the Acts specified in Schedule I to the NGT Act. The pre-requisite for the applicant to invoke original jurisdiction of the Tribunal, subject to other limitations stated in Section 14 of the NGT Act, is that the application must raise substantial question relating to environment. This Tribunal, in the case of Goa Foundation & Anr. v. Union of India & Ors., pronounced on 18th July, 2013, on the scope of the expressions 'substantial question relating to environment' as well as 'dispute', as referred to in Section 14 of the NGT Act, held as follows:
>
> > "24. Section 2(m) of the NGT Act classifies 'substantial question relating to environment' under different heads and states it to include the cases where there is a direct violation of a specific statutory environmental obligation as a result of which the community at large, other than an individual or group of individuals, is affected or is likely to be affected by the environmental consequences; or the gravity of damage to

the environment or property is substantial; or the damage to public health is broadly measurable. The other kind of cases are where the environmental consequences relate to a specific activity or a point source of pollution. In other words, where there is a direct violation of a statutory duty or obligation which is likely to affect the community, it will be a substantial question relating to environment covered under Section 14(1) providing jurisdiction to the Tribunal. When we talk about the jurisdiction being inclusive, that would mean that a question which is substantial, debatable and relates to environment, would itself be a class of cases that 30 would squarely fall under Section 14(1) of the NGT Act. Thus, disputes must relate to implementation of the enactments specified in Schedule I to the NGT Act. At this stage, reference to one of the scheduled Acts i.e. Environment Protection Act, 1986 may be appropriate. The object and reason for enacting that law was primarily to address the concern over the state of environment that had grown the world over. The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. These were the considerations that weighed with the legislature to ensure implementation of the UN Conference on the Human Environment held at Stockholm in June, 1972 to take appropriate steps for protection and improvement of human environment. The essence of the legislation, like the NGT Act, is to attain the object of prevention and protection of environmental pollution and to provide administration of environmental justice and make it easily accessible within the framework of the statute. The objects and reasons of the scheduled Acts would have to be read as an integral part of the object, reason and purposes of enacting the NGT Act. It is imperative for the Tribunal to provide an interpretation to Sections 14 to 16 read with Section 2(m) of the NGT Act which would further the cause of the Act and not give an interpretation which would disentitle an aggrieved person from raising a substantial question of environment from the jurisdiction of the Tribunal.

***

35. The expression 'disputes' arising from the questions referred to in sub-section (1) of Section 14 of the NGT Act, is required to be examined by us to finally deal with and answer the contentions raised by the parties before us. The expression used in sub-section (1) supra is the expression of wide magnitude. The expression 'question' used in subsection (1) in comparison to the expression 'dispute' used in sub-section (2) of section 14 is of much wider ambit and connotation. The disputes must arise from a question that is substantial and relates to environment. This question will obviously include the disputes referred to in Section 14(2). It is those disputes which

C/120

(28)

would then be settled and decided by the Tribunal. These expressions are inter-31 connected and dependent upon each other. They cannot be given meaning in isolation or de hors to each other. The meaning of the word 'dispute', as stated by the Supreme Court in Canara Bank v. National Thermal Power Corporation MANU/SC/0768/2000 : (2001) 1 SCC 43 is "a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other". The term dispute, again, is a generic term. It necessarily need not always be a result of a legal injury but could cover the entire range between genuine differences of opinion to fierce controversy. Conflicts between parties arising out of any transaction entered between them is covered by the term 'dispute'.

36. The counsel appearing for the respondents, while referring to this expression, relied upon the judgment of the Supreme Court in the case of Inder Singh Rekhi v. DDA, MANU/SC/0271/1988 : (1988) 2 SCC 338 to support the contention that the dispute, as referred under the Arbitration Act, 1940 arises where there is a claim and there is a denial and repudiation of such claim.

37. The judgment relied upon by the respondents is not of much help to them inasmuch as the Arbitration Act, 1940 operates in a different field and the meaning to the expression dispute appearing in that Act has to be understood with reference to the provisions of that Act specifically. The said Act is only intended to resolve the disputes between two individuals arising out of a transaction under the Arbitration law. However, the present case, the NGT which relates to environment as such. It is not individual or a person centric but is socio-centric, as any person can raise a question relating to environment, which will have to be decided by the Tribunal with reference to the dispute arising from such a question. It is not necessary that such a question must essentially be controverted by other person or even the authority. The essence of environmental law is not essentially adversarial litigation. To give an example, could any authority or person deny the question relating to cleanliness of river Yamuna? Any person could approach the Tribunal to claim that the pollution of Yamuna should be controlled, checked and even prevented. None of the parties or authorities may be able to dispute such a fact may even contend that steps are required to be taken to control, prevent and ensure restoration of clean water of Yamuna. 32 Thus, dispute as understood to be raising a claim and being controverted by the other party is not apparently the sine qua non to invocation of Tribunal's jurisdiction under the scheme of Sections 14 to 16 of the NGT Act. This approach is further substantiated from the use of the expressions 'cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and

 c/14

(29)

compensation for damages to persons and property and for matters connected therewith or incidental thereto' used in the preamble of the Act 14. In the present case, the applicant has invoked the jurisdiction of the Tribunal under Section 14 of the NGT Act with regard to establishment of STP on a location which, according to the applicant, is bound to create environmental problems and would adversely affect the public health. It will result in pollution of underground water besides causing emission of obnoxious gases and creating public nuisance, owing to being adjacent to residential colony and religious places. Thus, it would certainly involve a question relating to environment arising from the implementation of Acts specified in Schedule I to the NGT Act. Thus, the present case indisputably falls within the jurisdiction of the Tribunal, of course, subject to the plea of limitation."

25. We have to examine the jurisdiction of the Tribunal with reference to prevalent law of the land that right to clean and decent environment is a fundamental right. Dimensions of environmental jurisprudence and jurisdiction of this Tribunal, thus, should essentially be examined in the backdrop that the protection of environment and ecology has been raised to the pedestal of the Fundamental Rights. Right to clean and decent environment is a Fundamental Right under Article 21 of the Constitution of India. The Supreme Court in the cases of Virender Gaur and Ors. v. State of Haryana and Ors., MANU/SC/0629/1995 : (1995) 2 SCC 577 and N.D. Jayal and Anr. v. Union of 33 India (UOI) and Ors., MANU/SC/0649/2003 : (2004) 9 SCC 362, has held that enjoyment of life and its attainment, including, their right to live with human dignity encompasses within its ambit the protection and preservation of environment and ecological balance free from pollution of air and water. Clean and healthy environment itself is a fundamental right.

27. The jurisdiction of the Tribunal thus, would extend to all civil cases which raise the substantial question of environment and arise from the implementation of the Acts stated in Schedule I of the NGT Act. There has to be thus, a direct nexus between the cases brought before the Tribunal and a substantial question relating to environment. The 'cause of action' as contemplated under the provisions of the NGT Act would be complete only when the stated three ingredients, i.e. firstly, civil cases, secondly, concerns or raises a substantial question of environment or an enforcement of a legal right relating to environment and lastly that 38 such question arises in regard to implementation of the Schedule Acts, are fulfilled. In the case of Kehar Singh (supra), the Tribunal unambiguously stated the principle that there has to be a direct nexus or link between the case advanced by the applicant and the substantial question relating to environment. It has to be a civil dispute raising an environmental issue and arising from any/or all of the Scheduled Acts.

28. However, the Tribunal may not have jurisdiction to entertain and decide such proceedings even when above nexus is established, as there is still another sine qua non for exercise of the jurisdiction by the Tribunal, that is, it must arise or be relatable to the implementation of the Acts specified in Schedule I of the NGT Act. Thus the most significant expression in this entire gamut of law is the expression 'implementation'. The legislature in its wisdom has specified different class of civil cases that would fall within the jurisdiction

C/118

30

of the Tribunal. The first class of cases may per se raise a substantial question relating to environment while others may relate to enforcement of legal right relating to environment. These classes of cases must arise out of implementation of enactment specified in Schedule I. Thus, now we should examine the meaning of the word 'implementation'. The expression 'implementation' appears under different Acts even under environmental laws. The Preamble as well as Section 22A of the Air (Prevention and Control of Pollution) Act, 1981 uses the word 'implement'. In the Preamble, it is stated that, 'whereas it is 39 considered necessary to implement the decisions' while Section 22A states, 'where the Board is competent to direct the person to implement the direction in such a manner as may be specified by the Court'. The Environmental (Protection) Act, 1986, in its Preamble as well as Section 3(2)(xiv) uses the word 'implement' and 'implementation' respectively. The expression 'implement' has been used in the Preamble while 'implementation' in Section 3(2)(xiv) relates to whether the Central Government vested with the power to take such measures in relation to matters as the Central Government deems necessary or expedient for the purpose of securing effective implementation of the provisions of the Act under Article 243G(b) of the Constitution of India which vests powers in the Panchayats and Authorities in relation to various matters. The State can vest the Panchayat with the power to exercise the Authority to implement the schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

31. Implementation', therefore, within the provisions of Section 14 of the NGT Act would relate to implementation of the various provisions, rules, regulations and the notifications issued in exercise of subordinate or delegated legislation with regard to any or all of the Acts stated in Schedule I of the NGT Act. It is not only implementation of the enactments, but even the questions which arise out of such implementation that would clearly fall within the ambit of Section 14 of the NGT Act. 'Implementation', would therefore cover all questions relating to application, enforcement and regulations under these enactments. There should be a nexus between the pleaded cause of action and the environment, making it a substantial question of environment. This may be in relation to environment or even enforcement of any legal right relating to environment. The word 'implementation' thus, has to be understood in its wider perspective and connotation. The interpretation should be one which would further the cause of effective implementation of the provisions of the Scheduled Acts. Any matter in relation thereto would 43 squarely fall within the jurisdiction of the Tribunal. The nexus with environment could be direct or even indirect. The present case is one, which would fall in the latter category. It will be obligatory to constitute appropriate expert committees in consonance with the provisions of the scheduled Acts and the Notifications issued thereunder otherwise this is bound to have adverse effects on effective prevention and control of pollution."

27. In light of the above principle, it can be safely stated that a case raising a substantial question of environment which is civil in nature must essentially fall within the scope and implementation of the scheduled acts to the NGT Act, 2010. Implementation should have a direct nexus and must directly arise from such acts and a mere remote connection thereto would not be sufficient for invoking the jurisdiction of the Tribunal particularly when they are actually or are required to be covered under other laws in force.

c/117

31

28. From the provisions of the various acts that we have reproduced above, it is clear beyond doubt that the radiation from electromagnetic waves resulting from such towers is not explicitly covered in any of the scheduled acts to the NGT Act. In fact, even under the NGT Act, relevant definition under provisions do not refer to the radiation specifically. The only act which refers to radiation per se is the Atomic Energy Act, 1962. Section 2(a) defines atomic energy while section 2(g) defines prescribed substance which means any substance including any mineral which the Central Government may prescribe. Further substance may be used for the production or use of atomic energy or research into the matters connected therewith. Various metals and substance have been referred in this very section. It does not specify radiation as a substance or for that matter the process covered under the definition of atomic energy. Section 2(h) is the relevant provision which defines radiation as Gamma rays, X-rays, and rays consisting of alpha particles, beta particles, neutrons, protons and other nuclear and sub-atomic particles. But this definition specifically excludes sound or radiation waves or feasible infra or ultraviolet lines. Once the provision itself by a specific language excludes radiation or radio waves, then it is not permissible to read such expression. Thus it is impermissible to read the same in any settled norms of interpretation. Radioactive substance or radioactive material has specifically been defined under Section 2(i) of the Atomic Energy Act. This clearly shows the intent of law framers that they did not wish to include radio waves as part of this act. Possibly there can be no difficulty in our way to come on to conclusion that radioactive waves are not covered under the Atomic Energy Act, 1962.

29. In light of the principle that we have afore-noticed, now we will refer to the Act of 1986 and the NGT Act collectively. It is clear that that Section 14 of the NGT Act would vest jurisdiction in the Tribunal in relation to the following: (i) all civil cases (ii) where a substantial question in relation to environment is raised (iii) enforcement of a legal right relating to environment (iv) it should arise out of the implementation of the enactments specified in schedule-I to the NGT Act, 2010.

30. All these conditions have to be cumulatively satisfied in cases falling under either of the categories under head (ii) and (iii). We have already noticed that it is not covered under any of the provisions of the 7 scheduled acts. The Act of 1986 is certainly paramount legislation of the present day's environmental jurisprudence in India. The definition of environment under Section 2(a) has very wide meaning and would practically cover everything in relation to environment. Section 2(b) defines environmental pollutant as solid, liquid or gaseous substances present in such concentration as may be or did not injurious to environment. The radioactive waves would not fall under any of these categories as it is neither a solid nor a liquid or a gaseous substance. Section 2(e) defines hazardous substance. Section 2(f) of the NGT Act, for defining hazardous substance only relies upon the definition provided under 1986 Act. It defines hazardous substance means any substance or preparation which by reason of its chemical or physio-chemical properties or handling, is likely to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment. To cover it under Section 2(e) of Act of 1986, it has to be any substance or preparation which by reason of its chemical or physio-chemical properties is liable to cause harm to human beings, other living creatures or plants etc. The radioactive waves are neither a substance nor a preparation. It is not even a radiation as defined under the Atomic Energy Act, 1962 and the ingredients stated therein do not fit in with the framework of hazardous substance or an environmental pollutant.

31. Section 3 of the Act of 1986, empowers the Central Government to take measures to protect and improve the environment. In terms of section 3(1) it can take measures

C/116

32

in relation to all or any of the categories specified under Section 3(2). Section 3(2)(iii) and (xiv) have been read together by the learned Counsel appearing for the Applicant to contend that it is obligatory upon the Central Government to lay down standards in relation to all aspects including radiation. This is more so because of the residual clause contained under section 3(2)(xiv). Radiation results in adverse impacts on the environment. It is true that there is an obligation on the part of the Central Government to take measures as well as prescribe requisite standards. The residual clause contained under Section 3(2)(xiv) cannot go beyond what is specifically provided. If the subject is not otherwise covered under the substantive provisions of the Act of 1986, by implication it cannot fall under general clause. Furthermore, the general clause has to operate only for the purpose of securing effective implementation of the provisions of this Act. The non-obstante clause appearing in section 5 has been made subject to the provisions of the act by legislature itself. The power to issue directions under the act cannot travel beyond the provisions of the act. If a subject is not specifically covered under the field and provisions of the scheduled acts, then the Central Government would obviously have no powers to issue directions in exercise of powers vested in it under section 5 of the act. The purpose of Section 5 of the Act is to give overriding effect to the directions issued by the Central Government in relation to closure, prohibition or regulation of a non-operation or process to overcome a given situation and to achieve the object of the Act of 1986. Similarly Sections 24 and 25 of the Act of 1986 have been construed and understood on the same principles. None of the statutory provisions of the act can have application de-hors or beyond the purview of the act of which it is a part. While interpreting any provision of the act, the language of section in eventuality, scheme of the act, purpose and object of the act are to be taken into consideration. The Tribunal would give an interpretation which would be more tilted in the interest of environment and ecology, keeping in view the object and reasons and preamble of the Act of 1986. But still the Tribunal would not be able to provide of such wide dimensions to these statutory provisions so as to practically travel beyond the scope of the jurisdiction vested in the Tribunal. The wide jurisdiction vested in the Tribunal has to be within the four corners of the law that constitutes the Tribunal. The other aspect that we must notice here is that all the service providers are subject to and can only operate, provided they are granted license for that purpose by DoT. As it appears from the record that after the reports submitted by the Inter Ministerial Committee, licenses were issued containing more specific and rigorous conditions in relation to conduct of service providers. The provisions of the Indian Telegraph Act, 1885 and Indian Wireless Telegraphy Act, 1933 and Telecom Regulatory Authority of India Act, 1997, do cover these fields to some extent, but may be their object and purpose is different and is only to regulate the actual activity of transmission by service providers. They ex-facie do not appear to be dealing with the environmental and human health aspects. We do not consider it necessary to deliberate this issue any further.

32. The contention of the respondents that the applicant has no legal right do not appear to be correct. There is violation of legal right which would arise in failing of the applicant from mandate of Article 48(a), 51(a)(g) and 21 of the Constitution of India. If carrying on all these activities is injurious to human health and environment, it would be an apparent violation of constitution, of the legal right of the applicant and they would have a right to invoke the remedy available to them in accordance with law. What we are concerned with is that the remedy available to such applicants does not fall within the ambit and scope of the Act of 1986 and Section 14 of the NGT Act, 2010.

33. In view of the above discussion, we are of the considered view that radiation i.e. emission of electromagnetic waves from the towers constructed by the respective respondents does not fall within the ambit, scope and jurisdiction vested in this

 C/115

(33)

Tribunal under the provisions of the NGT Act with reference Environment (Protection) Act, 1986.

34. While holding the above, we make it clear that we have not recorded any finding in regard to whether radiation is a pollutant generally or under any other specific law. We have also not dealt with the question whether it is an environmental pollutant, generally or under other laws in force. We have also not dealt with the question whether the Central Government or other State Governments are liable to be directed to frame statutory or other regulatory regime covering the construction, its specification, sites and operation of mobile towers and other towers. We have also not rejected any finding as to whether radiation is above prescribed limits and the guidelines and/or beyond them is actually injurious to human health and environment. The present judgment relates only to the issue whether this Tribunal has jurisdiction to entertain this application under the laws afore-stated.

35. We leave all the contentions open and the present judgment is without prejudice to the rights and contentions of the respective parties. We may also notice here that the various High Courts have taken divergent views on this subject and now the matter is pending before the Hon'ble Supreme Court of India and that is another aspect which has persuaded us to take the view that we are taking in this case.

36. Thus, we dismiss all these applications while holding that the Tribunal has no jurisdiction to entertain these applications. We dismiss all the applications, however, without any order as to costs.

Annexure-R-3 (34)

Kerala High Court
Reliance Infocom Ltd. vs Chemanchery Grama Panchayat on 12 October, 2006
Equivalent citations: AIR 2007 Ker 33, 2006 (4) KLT 695
Author: K Radhakrishnan
Bench: K Radhakrishnan, K P Nair
JUDGMENT K.S. Radhakrishnan, J.

1. Use of mobile phone is a common phenomena throughout the country and has made drastic changes in the peoples' life style. Users range from a common man to multimillionaire and this tiny instrument has revolutionized the medium of communication throughout the world. Constant use of mobile phone, it is reported, may have its own adverse ill effects on human health as well. Mobile phones produce radio-frequency. Magnetic energy moving through space is generally called radio frequency electro magnetic radiation (EMR). EMR is of course a part of everyday life. EMR is emitted by natural sources like the sun, the earth and the ionosphere and also by artificial sources such as electrical and electronic equipments, radar facilities, broadcast towers and mobile phone base stations etc. EMR absorbed in human body is measured in units called the specific absorption rate (SAR) which is usually expressed in units of watts per kilogram (w/kg.) or milliwatts per gram (mw/g.). There are multiple sources of exposures to electromagnetic fields including radio, FM radio, Television and other household gadgets. Exposure standards for Radio Frequency Energy have been developed by various countries and organizations. Based on these scientific data, the National Council for Radiation Protection and Measurement of US A and the Australian Communication Authority urges a public exposure limit of 200 microwatts per square centimetre in the 30 to 300 MHz range. Direct use of mobile phones including radio, FM radio, Television and other household gadgets would have some illeffects on human beings. A workshop conducted by World Health Organization (WHO) in Prague in 2004 reached the following conclusions, viz., that (1) reported symptoms are very unspecific and could have other causes; (2) there is no casual association demonstrated between exposure and symptoms; (3) that patients who display those symptoms should be medically examined for alternative explanations and causes including psychiatric/psychological ones and other environmental factors; (4) lowering the safety limits for handset radiation (SAR levels) will not affect the situation. Study conducted would show that there is no scientific evidence for a casual relationship between the reported clusters of symptoms and exposure to microwave radiation used in cell phones, well below the safety standards.

2. Question that is posed for consideration in this case is not with regard to ill effects of the use of mobile phones but whether installation of mobile base station and its functioning would cause any health hazards to the people who are residing nearby. Apprehension has also been voiced that radiation emanating from large telecommunication towers would expose human beings living within the magnetic field to fatal deceases like cancer, embryo disruption and changes in DNA Structure. The above issue came up for consideration before a Division Bench of the Bombay High Court in WP No.2112 of 2004. The Bench directed the Ministry of Health and Family Welfare, Government of India to conduct a scientific study on the issue. The Ministry of Health and Family Welfare on the direction of the Bombay High Court constituted a Committee under the Chairmanship of Dr.N.K.Ganguly, DG ICMR to evaluate the following aspects.

35

1. Whether it is advisable to frame and/or adopt international guidelines pertaining to installation of Base Stations by mobile telephone service providers, so as to avoid any potential risk to health and safety to public at large.

2. Explore the possibility for studying the course of action and framing a research project.

The Committee after extensive discussions and deliberations expressed the following remarks.

* There are multiple sources of exposures to electromagnetic fields including radio, FM radio, Television and other household gadgets. There is a need to acknowledge the confounding effects on these sources of RF.

* There are different types of Mobile Base Stations depending on the requirements of a particular system (GSM or CDMA) prevalent in India, however GSM system outnumbers CDMA.

* RF exposures from Mobile Base Stations are much less than from radio, FM radio and television transmissions.

* The height of Mobile Base Station antennae is nominally 36 metres and the effect of radio waves depends on the distance from the base stations since the antennae are directed horizontally with a 5 degree downwards tilt.

* The strength of radio frequency fields in front of the antennae varies with the distance. Persons standing directly in front of the antennae in these high density zones will get higher exposures.

* There are two main types of effects of electromagnetic waves: thermal and non-thermal which includes electrophysiological behavioural effects. These can be sleep disorders, cognitive disorders, memory disturbances, hearing disorders, etc. * Factors like urbanization, siting of base stations, distance from the towers, existence of multiple towers and multiple providers etc. all may have confounding effects which could be difficult to quantify.

* Subjective symptoms such as sleep disorders, cognitive disorders, memory disturbances, hearing disorders, etc. have been reported. However, the three completed human studies pertaining to base stations conducted by Santini R et al (2002), Bortkiewicz et aI(2004) & Hutter & kundi et al (2006) do not report any quntitative parameters related to health hazards.

* ICNIRP Guidelines in respect of restriction on Specific Absorption Rate (SAR) are available internationally and have been adopted by various European countries, such as UK, Australia, Malaysia and Korea. But China has adopted more stringent criteria.

* Various studies conducted across the world on RF from Mobile Base Stations have shown that the exposures are of a such lower magnitude than the internationally accepted levels.

* At the moment there is no concrete evidence of any health hazard and WHO has the same opinion as mentioned in the latest Fact Sheet modified in May 2006. The Committee felt that more objective research is needed in the above disorders to quantify the effect on human health.

* WHO in its Fact Sheet No.304 regarding EMF in relation to Base Stations and wireless technology which has been updated in May 2006 recommends "National Authorities should adopt international standards to protect their citizens against adverse levels of RF fields".

* Taking the above mentioned into account, the Committee opined that overall there is not enough evidence to show direct health hazards of RF exposures from Mobile Base Stations.

The Committee on the basis of the above findings recommended that a precautionary approach should be adopted till further research data is available. Further it was also opined that it will not be amiss to adopt the ICNIRP Guide lines for limiting EMF Exposure. Committee also reported that the protocols to be allowed and necessary guidelines for siting of mobile phone base stations may need to be developed as per its applicability for India. Further it was also recommended that periodic review of the status of knowledge in this area should be done and the recommendations may be revised accordingly. Committee however, opined that there is not enough evidence to show any direct health hazards of RF exposure from Mobile Base Stations. Recognizing that, committee has however opined, that data be generated through appropriate epidemiological studies (covering urban/rural population & varied exposure levels) and appropriate funds should be made available to the Institutions conducting these studies.

3. Report submitted before the Bombay High Court was made available by Shri Santhosh Mathew, Advocate which gave us considerable scientific insight for resolving the problem posed before us. Petitioner has also stated that the experiments conducted in and around BTS towers at points where the public is likely to be exposed has proven that emission at these points are 150,000 times below the level at which significant heating can occur. Petitioner has also conducted a chart showing a comparison between mobile base station and other sources of radio frequency which stated that 200 microwatts is the safe exposure limit set by different regulatory bodies. Petitioner has made a comparison of power density (Microwatts/sq.cm.) between AM Radio, FM Radio, Mobile Base Station, UHF TV, VHF TV, Paging Services etc. and submitting that radiation from the Mobile Base Station is less compared to that of AM Radio and FM Radio. Atomic Energy Regulatory Board also submitted a report before the Bombay High Court in WP No.2112 of 2004. Report states that radio frequency waves used for mobile phones are not covered under the definition of "radiation" as given in the Atomic Energy Act, 1962 and non ionizing radiations do not have the capability to ionize the matter with which they interact. Radiation Protection Division (NRPB) of the U.K.Health Protection Agency in the year 2000 has reported that the balance of evidence indicates that there is no general risk to the health of people living near the base stations on the basis that exposures are expected to be small fractions of guidelines. Scientific data made available to the Court would indicate that the use of mobile phone, AM Radio, FM Radio etc. is more harmful to the human beings compared to the power emission from the base Transcieving Stations and that of Mobile Towers. Surveys conducted in proximity to base stations indicate that the public is exposed to extremely low intensity RF fields in the environment and all the evidence indicates that they are unlikely to pose a risk to

(37)

health. We may in this connection also refer to the order of the Delhi High Court in OS 1121/02 wherein the court opined that so far there is neither any conclusive research nor authoritative scientific evidence to show that the radiations emitted by such Transmission Towers are dangerous to the health of human beings.

4. The petitioner is a company engaged in providing telecommunication and related services to the general public. The Ministry of communication, Department of Telecommunication, Government of India under Section 4 of the Indian Telegraph Act, 1885 has awarded a licence to the petitioner to provide basic telephone services in Kerala by virtue of which the petitioner can establish, install, operate and maintain basic telephone services on a non-exclusive basis in the service area of the Kerala Telecom Circle. Ext.P1 is the licence granted to the petitioner. In order to provide service petitioner has to establish large number of microwave installations and Base Transceiving Stations in various parts of Kerala. Such stations are essential for transmitting the receiving signals installed and maintained by all telecom service providers. To install such tower petitioner has entered into a lease agreement with a private party and as per terms of the agreement petitioner has taken on lease 3.26 cents of land in re-survey No.29/3 and 29.6 of the Vengalam Village, Koyilandy Taluk in Kozhikode District. Petitioner then submitted the plan for the BTS before the Chemancherry Panchayat for approval. Plan was approved by the Panchayat and the petitioner was issued a building permit on 20.3.2006. When the petitioner started preparation for constructing the tower, certain local people raised objection. Petitioner filed a complaint before the police and then preferred WP(C). 16724 of 2006 seeking police protection for carrying out the construction work and this Court granted interim police protection. Panchayat later acting on a complaint received from the local residents cancelled the permit issued to the petitioner apprehending that installation of the diesel generators would cause sound pollution and that the radiation from the Tower would likely to pose health hazards. Petitioner was served with Ext.P6 letter dated 14.6.06 by which petitioner was directed to stop further construction of the tower. Aggrieved by the same petitioner has filed WP(C) No. 18242 of 2006.

5. We have already found that RF exposures from Mobile Base Stations are much less than from radio, FM radio and television transmissions and that the consensus of scientific community is that the radiation from Mobile Phone Base Stations is far too low to produce health hazards if people are kept away from direct access to the antenna and the overall evidence indicates that they are unlikely to pose a risk to health. The strength of radio frequency fields in front of the antennae varies with the distance. Persons standing directly in front of the antennae in these high density zones will get higher exposures. We have also found that the height of Mobile Base Station antennae is normally 36 metres and the effect of radio waves depends on the distance from the base stations since the antennae are directed horizontally with a 5 degree downwards tilt. Human studies pertaining to base stations conducted by Santini R et al (2002), Bortkiewicz et al (2004) & Hutter & kundi et al (2006) do not report any quantitative parameters related to health hazards. Therefore it can safely be concluded that the permission granted for installation of Mobile Base Station by the Panchayat would not cause as such any health hazards nor will it affect the fundamental rights guaranteed to citizens under Article 21 of the Constitution. Right to life enshrined under Article 21 includes all those aspects of life which make life meaningful, complex and worth living. Development of technology has its own ill-effects on human beings, but, at times people will have to put up with that

at the cost of their advantages. Petitioner and others for installing towers will have necessarily to comply with the statutory provisions contained in Chpater XIX of the Kerala Municipal Building Rules. 1999 which permits construction of telecommunication towers over buildings. Petitioner has submitted that it has already satisfied all those conditions and in such circumstance Panchayat has granted the licence.

6. Petitioner has the privilege of getting a licence under the provisions of Indian Telegraph Act. Licence agreement specifically says that the licence shall be governed by the provisions of Indian Telegraph Act, 1885, Indian Wireless Telegraphy Act, 1933 and Telecom Regulatory Authority of India Act, 1997 as modified or replaced from time to time. Clause 2.2(d)(i) says that the licensee is permitted to provide service by utilizing any type of network equipment, including circuit and/or packet switches, that meet the relevant International Telecommunication Union (ITU)/Telecommunication Engineering Centre (TEC)/International standardisation bodies such as 3GPP/3GPP-2/ETS1/ETF/ANSI/E1A/TIA/IS. Petitioner has therefore necessarily to comply with those standards.

7. The Telecom Regulatory Authority of India Act, 1997 has constituted the Regulatory Authority. Section 11 of the Act deals with powers and functions of the authority. Section 12 confers power on the authority to call for information, conduct investigation etc. Clause 9.1 of Ext.P7 obliges the licensee to furnish to the Licensor/TRAI, on demand in the manner and as per the time framed such documents, accounts, estimates, returns, reports or other information in accordance with the rules/orders as may be prescribed from lime to time. Licensee shall also submit information to TRAI as per any order or direction or regulation issued from time to time under the provisions of TRAI Act, 1997 or an amended or modified statute. Clause 10 of Ext.P7 enables the authority to suspend, revoke or terminate the licence of the petitioner. Clause 16.2 states that all disputes relating to the licence will be subject to jurisdiction of Telecom Disputes Settlement and Appellate Tribunal (TDSAT) as per provisions of TRAI Act, 1997 including any amendment or modification thereof.

8. We notice that the Panchayat has as on today no scientific data or relevant materials to cancel the licence already granted on the ground that the installation of the Tower would cause any health hazards. Licence granted has been cancelled by the Panchayat based on an apprehension that the radiation may cause health hazards to the people of the locality. Further Ext.P5 also says that installation of generator would cause sound pollution. Petitioner has not installed any generators on today and if the installation of generator would cause any sound pollution, evidently Pollution Control Board can give appropriate direction and the petitioner will have to obtain necessary consent from the Pollution Control Board for installation of generators, so that it would not cause any sound pollution. So also, if the installation of Tower and the emission of electromagnetic waves causes any air pollution, affecting human health the Pollution Control Board can take appropriate measures under Air (Prevention and Control of Pollution) Act, 1991.

9. Counsel appearing for the Panchayat submitted that if the petitioner is aggrieved, the remedy open to the petitioner is to file an appeal under Section 276 of the Panchayat Raj Act. We have no reason to think that the Panchayat had not taken into consideration all aspects of the matter before granting licence. Licence was cancelled not based on any scientific data that the installation of Ba

(39)

Station would cause any health hazards to the people of the locality but on the mere apprehension, that it would, which in the facts and circumstances, cannot be sustained in the absence of any scientific data. Considering the facts and circumstances of these cases we are however inclined to give a general direction to the TRAI to make periodical inspection to ascertain whether radiation emanated from the Mobile Base Stations would cause any health hazards to the people of the locality.

10. We are therefore inclined to allow WP(C) 18242 of 2006 and quash Exts.P5 and P6 orders and there will be a direction to respondents 1 to 3 to give adequate and effective protection to the petitioner to install the tower in case any obstruction is caused by respondents 4 to 6 and their supporters.

Writ Petitioners are disposed of as above.

(40)

Annexure-R-24

MANU/MH/2809/2023

IN THE HIGH COURT OF BOMBAY

Writ Petition No. 15779 of 2022

Decided On: 20.07.2023

Appellants: **Indus Towers Ltd.**
Vs.
Respondent: **Grampanchayat, Chikhalhol and Ors.**

Hon'ble Judges/Coram:
S.B. Shukre and Rajesh S. Patil, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: A.V. Anturkar, Senior Advocate and Sugandh B. Deshmukh

JUDGMENT

S.B. Shukre, J.

1. Heard learned Senior Advocate for the petitioner. Nobody is present for the respondents although the respondents have been duly served with notice for final disposal at the admission stage, not once but twice, as noted by this court in the order dated 8th June 2023. By this order, it was also made clear that respondent nos.1 to 3, who were absent, were being granted further opportunity as a last chance to make their submissions in the matter, while alerting them that no further opportunity shall be granted to the parties for making their submissions and accordingly, the matter was stood over to 3rd July 2023. On 3rd July 2023, the board did not reach and, therefore, it was adjourned to 19th July 2023 and again it was adjourned to 20th July 2023 i.e. this date. The daily board of today puts the parties on sufficient notice that today this matter would be taken up for final disposal; yet, the respondents are absent.

2. Considering the fact that sufficient opportunity has already been granted to the respondents and also the fact that this matter has been already kept for final disposal at admission stage, today we have finally heard learned Senior Advocate for the petitioner. Hence, RULE. Rule is made returnable forthwith in terms of the order dated 8th June 2023.

3. The question that has to be dealt with in this petition is, whether or not the respondent-Grampanchayat could have passed a resolution, Resolution No.7, directing the petitioner to stop the further work relating to erection of mobile tower, on the ground that some of the villagers have taken objection for erection of the mobile tower, because they believe that the radiation emitted by the mobile tower is harmful to the health of the villagers and can possibly be carcinogenic.

4. The role of the Grampanchayat in the matter of erection of mobile tower in the vicinity of the Grampanchayat, as rightly submitted by learned Senior Advocate for the petitioner, is confined to only issuing of No Objection Certificate in terms of the Government Resolution dated 11th December 2015 and, therefore, we are of the view that if any NOC has been issued by the Grampanchayat, as required under the G.R. dated 11th December 2015, the Grampanchayat loses it's control over the subject of erection of mobile tower.

 (41)

5. In the present case, the Grampanchayat, i.e. respondent no.1, has already issued no objection vide it's certificate dated 30th June 2022 in favour of the petitioner in the matter of erection of mobile tower in the vicinity of the Grampanchayat and, therefore, we are of the opinion that Grampanchayat could not have passed another resolution, Resolution No.7, which is impugned herein, directing the petitioner to stop further work of erection of the mobile tower. There is no provision whatsoever made in the G.R. dated 11th December 2015 conferring any such power upon any Grampanchayat and, therefore, the impugned resolution passed by the Grampanchayat is devoid of any authority in law and as such is illegal.

6. The matter can also be examined from another angle, which would require this court to examine the correctness or otherwise of the ground of the complaint made by some of the villagers, which has made the Grampanchayat to pass the impugned resolution. Their ground relates to their apprehension about the radiation emitted by the mobile tower being harmful to their health and may have the effect of causing cancer to the villagers. However, such an apprehension of the villagers, in another case, which is the case of Biju K. Balan and Ors. Vs. State of Maharashtra and Ors., MANU/MH/0076/2019 has been dismissed by a Coordinate Bench of this court, (B.R. Gavai and N.J. Jamadar, J.J.), in it's judgment rendered in Writ Petition No.2152 of 2014, along with connected matters, on 4th and 23rd January 2019. It held that there is no scientific material or data warranting prohibition on installation of mobile tower and that jurisdiction under Article 226 of the Constitution of India cannot be exercised on the basis of apprehensions, which are not rooted in facts and which are not supported by reliable scientific material. It also noted that there was no scientific material as of the date of rendering of the judgment, which indicated any identifiable risk of serious harm on account of such radiations. Relevant observations have been made by the Division Bench in paragraph 55 of it's judgment, which is reproduced as under :-

> "55. Having examined the matters on the anvil of special burden of proof in environmental cases, as expounded by the Supreme Court, in the case of A.P. Pollution Control Board Vs. Prof. M.V. Nayudu (Retd.), MANU/SC/0032/1999 : (1999) 2 SCC 718, we find that the scientific material, as of today, does not indicate any identifiable risk of serious harm on account of non-ionized radiation emanating from TCS/BS and Equipments for Telecommunication Network. Thus, we are not inclined to exercise our jurisdiction under Article 226 of the Constitution of India on the basis of apprehensions which are not rooted in the facts and supported by reliable scientific material.

7. These observations would suffice us to say that the fear expressed by the villagers is without any basis. We may add here that today also, there is no change in the fact situation with regard to the absence of relevant scientific material, after the position which obtained on the date of rendering of the judgment in January 2019 in the aforestated case of Biju K. Balan (Supra). The respondent no.1, which has passed the impugned resolution, Resolution No.7, based upon the apprehension that radiation emitted by a mobile tower has harmful and carcinogenic effect, is not based upon any scientific material. It is well settled law that any agency or institution or person which seeks to deny a benefit or right to another on a special ground like the ground of mobile tower radiation being harmful to the health of the citizens, such agency or institution or person has a special burden of proof to establish the soundness of such a ground. But, in the present case, the respondent-Grampanchayat has failed to discharge the special burden of proof which was on it's shoulders.

8. In the result, we find that the impugned resolution, Resolution No.7, passed on 22nd

 (42)

July 2022, cannot be sustained in the eye of law and it deserves to be quashed and set aside. We also find that the respondents are required to be directed to not obstruct installation of the mobile tower. Accordingly, we pass the following order :-

(i) The petition is allowed. The impugned resolution, Resolution No.7, dated 22nd July 2022, passed by the respondent no.1- Grampanchayat, is hereby quashed and set aside.

(ii) We direct that the respondents shall not obstruct the petitioner from operating the mobile tower so long as the occupation of the mobile tower is in accordance with law.

9. Rule is made absolute in the above terms. Petition is disposed of.