

BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH,

NEW DELHI

O.A. NO. 24 OF 2023

IN THE MATTER OF:-

Guldeep Bhatia & ors.

.....Applicant

Versus

Govt of NCT of Delhi & ors.

....Respondents

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Through



PUJA KALRA

Standing Counsel MCD

Chamber No. 430, Block-I,

Delhi High Court, New Delhi.

Mob. 9312839323

New Delhi
Dated :- 10.07.2023

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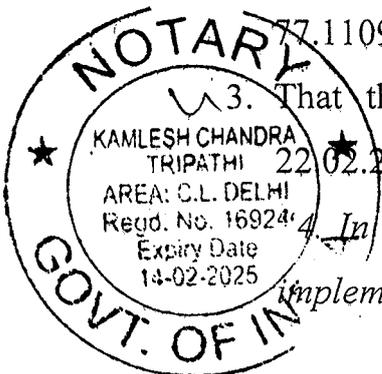
Affidavit of Bhaskar Seal S/o Sh. P.C. Seal, Aged about 45 years, Remunerative Project Cell, Municipal Corporation of Delhi, on behalf of the MCD.

I the above named deponent do hereby solemnly affirm and declare here as under:-

1. That it is humbly submitted that I am presently working as Assistant Commissioner, RP Cell, MCD and fully conversant with the facts of the case on the basis of the record maintained and made available in this regard and as such am competent to depose and swear the present affidavit on behalf of the respondent/ MCD.
2. That it is humbly submitted that the present application was filed by the applicant against the mobile tower installed at a park situated at SDMC (Now MCD), Park F-Block, Hari Kunj, opposite BSES, DDA Market, Hari Nagar, Ward No. 10/S (Latitude: 28.620046 Longitude: 77.110966)

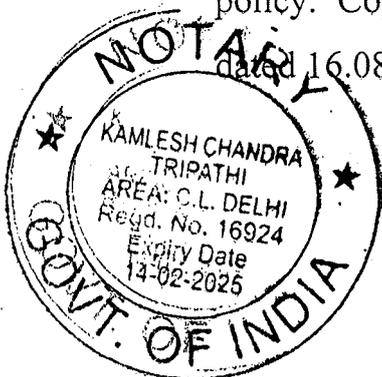
3. That the present matter was listed before this Hon'ble NGT on 22.02.2023 wherein this Hon'ble Tribunal passed directions as follow:

4. In our view a substantial question relation to environment due to implementation of Scheduled Enactments under NGT Act, 2010 has



arisen but before taking any further action in the matter, we find it appropriate to obtain a factual report for which purpose we constitute a joint committee comprising DPCC, District Magistrate, west Delhi and MCD who shall submit a report within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of image PDF."

4. That as per record the Municipal Corporation of Delhi passed a policy vide resolution no. 259 dated 04.01.2020 for permission for installation of Cellular Towers on Wheels (COW) in South Delhi Municipal Corporation (erstwhile) areas. Copy of the Policy dated 04.01.2020 is annexed herewith as **ANNEXURE-A**.
5. That as per record the applicant applied for installation of Cellular Tower On Wheels (COW) at South Delhi Municipal Corporation (Now Municipal Corporation of Delhi), Park F-Block, Hari Kunj, opposite BSES, DDA Market, Hari Nagar, Ward No. 10/S (Latitude: 28.620046 Longitude: 77.110966).
6. That as per record the permission vide letter no. AC/RPC/SDMC/2021/D-199 dated 16.08.2021 issued by Assistant Commissioner, Remunerative Project Cell, SDMC permitting to M/s Indus Towers Ltd. to set up Cellular Towers on Wheels (COW) at SDMC (Now MCD), Park F-Block, Hari Kunj, opposite BSES, DDA Market, Hari Nagar, Ward No. 10/S (Latitude: 28.620046 Longitude: 77.110966) has granted as per norms of the policy. It is further submitted that there is no violation of the rules as per the existing policy. Copy of the permission bearing no. AC/RPC/SDMC/D-199 dated 16.08.2021 is annexed herewith as **ANNEXURE-B**.



7. That it is submitted that the Hon'ble High Court of Delhi vide orders dated 09.12.2022 (Annexure-E) in the matter CM (M) 1380/2022 titled M/S Indus Towers Ltd. V/S Gautam Nagar Residents Association Regd. & ORS has directed the following :-
 "In the meantime, impugned order dated 19.07.2022 (Annexure-C) passed in O.A. No.232/2022 and order dated 20.09.2022 (Annexure-D) passed in Review Application No.27/2022, case titled as Gautam Nagar Residents Association Regd. Vs. Commissioner, SDMC and Ors., passed by the Tribunal are stayed.

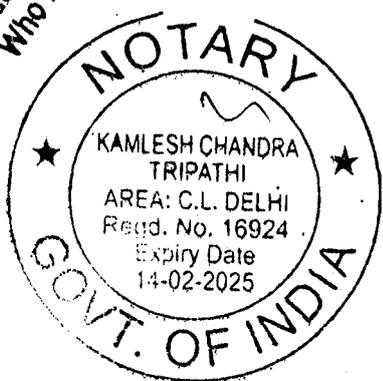
[Signature]
10.07.2023

DEPONENT

VERIFICATION: 10 JUL 2023

Verified at Delhi on this ____ day of July 2023, that the contents of the above affidavit are true and correct to my knowledge derived from the official records maintained by the MCD and I believe the same to be true and correct.

[Signature]
I identify Executant/Deponent Who has Signed in my Presence



CERTIFIED THAT THE CONTENTS EXPLAINED TO THE DEPONENT EXECUTANT WHO IS SEEMED PERFECTLY UNDERSTAND AFFIRMED & DEPOSED BEFORE ME AT NEW DELHI
[Signature]
 IDENTIFY THE EXECUTANT/DEPONENT WHO HAS SIGNED IN MY PRESENCE
 KAMLESH CHANDRA TRIPATHI, Advocate Reg. No. 16924
 NOTARY PUBLIC (C.L. DELHI)

[Signature]
10.07.2023

DEPONENT

be (41) 16/76

10 JUL 2023

के प्रस्ताव संख्या
मुद्र संख्या

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की प्रतिलिपि।

Item No. 14 :— Policy for permission of setting up Communication Cellular Mobile Towers on Wheels (COWs) in South Delhi Municipal Corporation areas.

(i) Commissioner's letter No. F. 33/RP Cell/SDMC/575/C&C dated 4-12-2019.

In the Standing Committee held on 22nd October, 2019, issue of existing unauthorized communications Cellular Towers on Wheels (COWs) hereinafter referred to as COWs was raised. During the course of discussion, it was noted that there is no policy on date governing setting up/establishment of COWs in the South DMC areas. The members expressed that the SDMC should frame a policy for setting up/establishment of COWs in South DMC areas and to generate revenue.

BACKGROUND AND FACTS

In number of meetings, the representatives of Cellular Mobile Operators pointed out that the number of complaints are being received regularly from the general public regarding poor signals/call drops while making the cellular phone calls. It was also pointed out that in many cases they face lot of resistance from the residents of the colony/area while installing of cellular towers on rooftop of a building resulted into poor signals.

To resolve this problem, suggestions were received from the representatives that Cellular on Wheels (COWs) may be provided in the area where such types of complaints of poor signals are being received. The COW is a temporary arrangement which can be installed at required location (Public places i.e. markets, parks, on road sides, parking areas and open spaces in Departments' premises, etc.).

Accordingly, the proposal was moved and the Addl. Cmr. (Engg.) observed that this proposal needs mention of the terms and conditions as well as revenue earning options in detail.

In this regard, the documents/policies/information have been collected from various departments/States where such type of COWs are being permitted i.e. New Delhi Municipal Council (NDMC), Haryana, Defence, Maharashtra, Uttarakhand, Orissa, etc.

OPINION OF LAW

The matter was studied and the opinion of Law Deptt. was also obtained on this issue. The opinion of Law Department is reproduced as under :—

1. The department has not placed on record a copy of notification dated 15-11-2016 issued by Ministry of Communications (Department of Communications) published in the Gazette of India on 16th Nov., 2016. This notification has been issued in exercise of powers conferred by Sub-section (1) of Clause (e) of Sub-section (2) of Section 7 read with Sections 10, 12 & 15 of the Indian Telegraph Act, 1885. A copy of the aforesaid notification having been downloaded from the official website is placed opposite for perusal and consideration of the Engineering Wing to bring its terms and conditions within the ambit of aforesaid notification.
2. The notification deals with the rules framed by the Central Govt. with respect to underground infrastructure and over-ground infrastructure (Mobile Towers). Therefore, while making any policy and terms and conditions governing the contemplated policy, the department should not frame any condition de hors the rules contained in the aforesaid notification.
3. A perusal of the notification shows that the SDMC being a local authority is covered under the definition of appropriate authority and it can exercise the powers with respect to framing of policies, terms and conditions within the rules framed by the Central Govt. and conditions governing the license U/s 430 of the DMC Act, 1957.

- (v) Copy of the type test certificate issued by Automotive Research Association of India (ARAI) to the manufactures of the Diesel Generator (D) Sets, if applicable, along with clearance of DPCC.
- (vi) Self-declaration of SACFA Clearance, to be obtained within six months.
- (vii) Indemnity Bond/Affidavit as per clauses mentioned at Sl. Nos. 13, 16, 25 & 26 above.
- (viii) The telecom company/service provider will submit an Indemnity Bond indemnifying the SDMC to keep harmless from all losses/damage/fire.
- (ix) Certification of the technical design by a Structural Engineer attesting to the structural safety of the overground telegraph infrastructure of COW.
- (x) The names and contact details of the employees of the telecom company/service provider for the purposes of communication in regard to the application made.

TIMELINES :

<i>S.No.</i>	<i>Action</i>	<i>Timeframe</i>
1.	Scrutiny of documents submitted by the telecom company/ service provider.	Within 7 days of receipt of application.
2.	Joint Inspection of site(s) by the following Members/Team : (i) EE(B) of the zone/area or his representative (ii) EE(M) of the zone/area or his representative (iii) AC/RP Cell or his representative (except in case of Park) (iv) Representative of Land & Estate Deptt. (v) Representative from Horticulture Deptt. (in case of Park) (vi) Representative of the telecom company/service provider	Within 7 days of scrutiny of documents and if the documents submitted are found in order.
3.	Issuance of Letter of Acceptance.	Within 7 days of joint inspection, if site found feasible.
4.	Deposition of Advance Monthly Rental Charges (equivalent to 3 months monthly rental charges) & security deposit (equivalent to 2 months monthly rental charges).	Within 15 days of issuance of letter of acceptance.
5.	Grant of permission.	Within 7 working days of completion of all formalities including deposition of advance monthly rental charges security deposit.

In view of all above, it is submitted that the proposal containing Policy for permission of setting up Communication Cellular Mobile Towers on Wheels (COWs), with the Fee Structure as mentioned in the Policy, in South Delhi Municipal Corporation areas, may be placed before the Corporation through Standing Committee for consideration and approval please.

(ii) Resolution No. 117 of the Standing Committee dated 18-12-2019.

Resolved that it be recommended to the Corporation that the proposal of the Commissioner as contained in his letter No. F. 33/RP Cell/SDMC/575/C&C dated 4-12-2019 regarding Policy for permission of setting up Communication Cellular Mobile Towers on Wheels (COWs) in South Delhi Municipal Corporation areas, as detailed in aforesaid letter, be approved.

- (C) For COWs existing before issue of this Policy, telecom company/service provider, at the time of regularization within 30 days of notification of Policy, will have to pay arrears from the date of their existence with penalty @ 25% over and above the monthly rental charges. If any COW is found installed without permission after 30 days of issue of this Policy then it shall be regularized after payment of penalty @ 50% over and above the monthly rental charges. The rental charges as well as the penalty will be charged on monthly basis. For date of existence of COW, the telecom company/service provider will have to submit an affidavit along with other requisite documents.
- (D) Applicable taxes.
- (E) After issuance of permission letter by the SDMC, the telecom company/service provider should submit three months advance fee and two months of fee as security deposit. Security deposit will be refunded after expiry of the allotted period. If security is deposited in the form of Bank Guarantee then the validity of Bank Guarantee will be period of permission plus three months. The Bank Guarantee should be drawn on any Nationalised Bank within the jurisdiction of Delhi only.
- (F) *Payment Terms* :—The advance amount equivalent to three months rental charges paid by the telecom company/service provider shall be adjusted towards the monthly rental charges for first three months in respective first three months.

Thereafter, the telecom company/service provider shall submit to the SDMC, the advance monthly rental charges per month for each site and other dues, if any, on or before 7th day of the month through online payments.

Non-payment of monthly rental charges and other dues within the prescribed date will constitute breach of the terms of permission and shall render the permission liable to be revoked. Besides, the telecom company/service provider shall pay an interest of 15% per annum on the amounts of permission and other dues payable remaining outstanding after the due date and falling in arrears. Interest shall continue to accrue till the monthly rental charges and other dues are finally squared up. Such interest shall be charged for the full month if the payment of monthly rental charges and other dues are not made by the due date with arrears, if any. In case, payment remain outstanding for a maximum period of 45 days, the permission shall stand terminated.

III.

S.O.P. FOR GRANT OF PERMISSION :

Application for grant of permission will be submitted by the telecom company/service provider having valid license from the Deptt. of Telecommunication, Ministry of Communications, Govt. of India

List of documents to be submitted along with application :—

- (i) Copy of relevant license issued by the Deptt. of Telecommunication, Govt. of India and copy of registration certificate of the company.
- (ii) The telecom company/service provider will submit the plan and location plan of the COW duly signed by the applicant and the Structural Engineer. The Plan should include the extent of land required for establishment of the overground telegraph infrastructure for COW.
- (iii) No Objection Certificate from Archaeological Survey of India (ASI) (wherever applicable).
- (iv) No Objection Certificate from Airports Authority of India (AAI) (only in case if the location is marked in 'Red' Zone in Colour Coded Zoning Map (CCZM) specified by AAI).

- 13/11/20
7
28. After expiry of the period of permission due to efflux of time or termination of the permission whichever is earlier, a 15 days period will be provided to the telecom company/service provider to remove its material from the sites and peacefully handover the vacant sites.

The telecom company/service provider shall vacate the sites by taking away all its articles and handover the vacant sites before such period otherwise the SDMC shall have the right to seize these material. Unauthorized occupancy charges (equivalent to twice the monthly rental charges) will be levied after expiry of such 15 days Grace Period.

29. *Transfer* :—The telecom company/service provider, during the tenure of permission shall not transfer, assign or part with the sites or any portion thereof permanently or temporarily to anybody else and shall not be allowed to take any person to share the towers, except in accordance with this permission, without the prior permission of the SDMC.
30. *Assignment and Sub-letting* :— Any form of assigning the right to the permission or sub-letting the whole or part thereof of the sites, will strictly not be allowed at any point during the period of permission and violation of the same, will lead to the revocation of the permission, with the SDMC reserving the right to forfeit all interest-free performance security and payments made.
31. *Duration of permission period* :— The permission shall be for a period of 3 (three) years from the date of issue of permission letter. Such permission would remain applicable subject to fulfilment of the terms and conditions, and such permission should expire with efflux of time. The monthly rental charges will be charged from the date of issue of permission letter.
32. *Compliance with applicable Laws* :—The telecom company/service provider shall bear all salaries, wages, bonuses, payroll taxes or accruals including gratuity, superannuating, pension and provident fund contributions, contributions to worker's compensations funds and employees state insurance and other taxes and charges and all fringe and employee benefits including statutory contributions in respect of such personnel as per law and it is agreed they shall at no point of time be or construed to be employees of the SDMC and the telecom company/service provider shall be solely responsible for compliance with all Labour Laws which shall include all liabilities of the Provident Fund Act, ESI Act, Workmen's Compensation Act, Minimum Wages Act and other Labour Welfare Act in respect of its personnel.
33. *Employees conduct* :—The telecom company/service provider shall ensure that all persons employed behave in an orderly and disciplined manner and that the said employees are prohibited from carrying on any unfair activities, demonstrations in the vicinity of the site.
34. For dispute of any kind, the jurisdiction of courts will be Delhi only.

II.

FEE STRUCTURE :

- (A) Administrative charges = Rs. 10,000/- (Rs. ten thousand) per COW (NON-REFUNDABLE).
- (B) Monthly rental charges for land allotted is Rs. 339/- (Rs. three hundred thirty nine only) per sq.ft./per month.

19. **Encroachment** :— The telecom company/service provider will strictly not encroach upon any area and shall restrict to allotted site only. In case, the telecom company/service provider encroaches upon the public land, the SDMC reserves the right to revoke the permission and forfeit the interest-free performance security.
20. **Security Arrangement** :— The telecom company/service provider will ensure safety and security of the equipments installed at the allotted sites and will be responsible for safety and security of the sites. The SDMC in any case will not take any responsibility of theft/loss.
21. **No Signage** :—The telecom company/service provider shall not be allowed to install any type of signage (commercial/non-commercial) for any purpose inside/or outside the sites. In case, the telecom company/service provider installs any type of signage (commercial/non-commercial) for any purpose inside/or outside the sites, a fine of Rs. 10,000/- (Rupees ten thousands) per day per site will be imposed upon the company/service for a maximum period of seven days, after which SDMC reserves the right to revoke the permission w.r.t. such site(s) without any notice/communication.
22. **Compliance with the Law** :— The sites and the fixtures and the appurtenances thereto conform to every applicable requirement of law or duly constituted authority or the requirements of the carriers of all insurance on or relating to the sites. The telecom company/service provider at its sole risk and expense, at all times during the term thereof promptly comply with all such requirements. The telecom company/service provider shall comply with all applicable statutes, rules and regulations of Central, State Governments, Municipal bodies, and all applicable rules and also regulations of the Delhi Fire Department. The telecom company/service provider shall comply with and abide by the judgements passed from time to time by Hon'ble Supreme Court/High Court or any other judicial/quasi-judicial body/authority. The same shall be the responsibility of telecom company/service provider.
23. The selection of site for installation of COWs and its operation shall be such that it should not disturb the free moments of the traffic/public and shall preferably be away from the school/hospital and places where heavy traffic and public movement is being done.
24. The COW may include the base of the Tower on Wheels subject to fulfilment of the safety measures and structural stability.
25. For providing generator set for COW, a copy of the type test certificate issued by Automotive Research Association of India (ARAI) to the manufactures of the Diesel Generator (D) Sets, as per guidelines issued by DOT will be submitted along with clearance of DPCC.
26. The telecom company/service provider shall ensure the safety guidelines issued by DOT in this regard. However, a Self-Declaration in this regard will be submitted by the applicant.
27. For COWs existing before issue of this Policy, telecom company/service provider, at the time of regularization within 30 days of notification of Policy, will have to pay arrears from the date of their existence with penalty @ 25% over and above the monthly rental charges. If any COW is found installed without permission after 30 days of issue of this Policy then it shall be regularized after payment of penalty @ 50% over and above the monthly rental charges. The rental charges as well as the penalty will be charged on monthly basis. For date of existence of COW, the telecom company/service provider will have to submit an affidavit along with other requisite documents.

12. The space upto the maximum of 50 sq.mtrs. will be considered including all these facilities and no excess space will be covered by the telecom company/service provider on any pretext. (It will be the absolute discretion of SDMC to determine and allow the space upto 50 sq.mtrs.)
13. The telecom company/service provider at its own cost shall take the necessary statutory permissions/certificates if required for the same from any other agency or deptt. as per law and will submit the following documents :—
- (a) The telecom company/service provider will indemnify the SDMC to keep harmless from all losses/damage/fire.
 - (b) No Objection Certificate from Archaeological Survey of India (ASI) (wherever applicable).
 - (c) No Objection Certificate from Airports Authority of India (AAI) (only in case if the location is marked in 'Red' Zone in Colour Coded Zoning Map (CCZM) specified by AAI).
 - (d) As per guidelines of Department of Telecommunications (DOT), a copy of application for Standing Advisory Committee on Frequency Allocation (SACFA) clearance acknowledged by WPC Wing of Department of Telecommunication, Govt. of India with registration number for the individual location will be submitted along with the application for new towers in the Corporation and the SACFA clearance, when obtained will be submitted within 6 months of granting permission. The self-declaration in this regard will be submitted by the applicant. In case of existing mobile towers the SACFA clearance, wherever available, will be submitted alongwith the application in the Corporation.
14. The telecom company/service provider shall install/operate the COW within the designated site and shall maintain the same in neat and sanitary conditions and comply with all applicable laws of the country.
15. The telecom company/service provider shall ensure high standard of hygienic and cleanliness so as to create a clean and healthy environment to enhance the image of SDMC. In case the telecom company/service provider fails to maintain the same, the fine as per applicable laws will be imposed on it. In this regard, the directions/guidelines of the Hon'ble Court or the departments/agencies shall be followed.
16. Any physical (or otherwise) damage or injury to the commuters/passersby due to lapse on the part of the telecom company/service provider will be the sole responsibility of the telecom company/service provider only and the SDMC will have no legal obligations or liabilities towards the injured. The telecom company/service provider will indemnify and can be indemnified the SDMC for any losses on this account.
17. The telecom company/service provider will ensure that fire detection, lightening and special measures are installed at the applicable site and are kept in good condition.
18. The telecom company/service provider agrees voluntarily and unequivocally to provide un-fettered access to the authorized representative of the SDMC for inspection at any time and agrees voluntarily and unequivocally to abide by and comply with all instructions as may be indicated by the SDMC. Non-compliance will be treated as breach and permission, so granted, will be revoked.

- The SDMC will provide bare space for placement and operational requirement for the COW for a maximum period of three years and minimum period of three months and the telecom company/service provider will follow all relevant guidelines of Department of Telecom, TRAI, etc. in this regard. If the telecom company/service provider need to operate the allotted land after completion of maximum period of three years then the telecom company/service provider can apply three months prior to expiry of three years period of the allotment and the request/application of the telecom company/service provider will be treated as AFRESH.
5. The location of the site will be finalized after conducting the joint survey with the SDMC staff as well as the representative from telecom company/service provider and the decision of the SDMC will prevail.

Since the COW is a temporary structure and can be installed at the following places :—

- (a) Public places
- (b) Markets,
- (c) Parks,
- (d) On Road sides,
- (e) Parking areas &
- (f) Open spaces within Departments' premises
- (g) Any other place, as deemed fit by SDMC

For joint survey and finalization of the location of the site, teams can be formed at Zonal Level comprising of officials from Building Department, Maintenance Department, R.P. Cell (for 'a', 'b', 'd', 'e' & 'g' above), Land & Estate Deptt. (for 'f' above), Horticulture Department (for 'c' above) and representative from the respective telecom company/service provider.

6. SDMC in its own capacity reserves the right to outrightly reject any application without assigning any reason.
7. The maximum height of any structural element installed with COW will be upto 30 mtr. above the ground level at any location.
8. The COW shall be installed for the enhancement of mobile signal and the SDMC will reserve the right to ensure that there is no violation of the same.
9. The telecom company/service provider shall take the site on "As is where is basis".
10. All the sites will be tentative and are subject to change of site by SDMC for which the telecom company/service provider will not seek any adjustment in the monthly rental charges or any claim, compensation, damages or any other consideration whatsoever. It will be the absolute discretion of the Corporation to direct re-location of the already allotted site in case of any need as may be deemed appropriate by the Corporation.
11. The infrastructure facilities such as electric connection shall be arranged by the telecom company/service provider and the cost of electric connection including cabling, penal, electric meter, electric charges and other ancillary charges, shall be borne by the company/service provider. The telecom company/service provider will ensure that all the electric wiring, gazettes are used and maintained properly and are in good conditions.

As enquired from M/s. INDUS TOWERS LTD., who has been allotted Group-B (52 sites) by NDMC, the size for one COW, in general is 5 mtr. x 5 mtr. or 269 sq.ft. So the amount of one COW of this size/area will be around Rs. 91,200/- with rate as Rs. 339/- per sq.ft. per month. However, the requirement of size/area from telecom company/service provider may vary and as draft policy the maximum area permitted for installation of COW is upto 50 sqm.

With reply to the afore-mentioned observations and as suggested by Law Deptt., the draft policy was revised and sent to Finance Deptt. as well as Law Deptt. for vetting.

Finance Department vide its note dated 25-11-2019 observed that "Since the policy of COWs has been drafted newly in the SDMC, the Finance is agree to the proposal of the department as it has been revenue earning potential for SDMC. However, the Finance suggestion are as under :—

1. Opinion of LAW Deptt. should be adhered to.

"Law Department vide its note dated 26-11-2019 observed that "Redrafted policy perused. This is legally in order. The facts are to be verified by the Deptt."

POLICY :

Government of India, Ministry of Communication (Deptt. of Telecommunication) has notified rules to regulate underground infrastructure (Optical Fiber) and over-ground infrastructure (Mobile Towers) Rules vide Notification dated 15th November, 2016, which was published in Gazette of India on 16th November, 2016.

A perusal of the notification by the Law Deptt. shows that the SDMC being a local authority is covered under the definition of appropriate authority and it can exercise the powers with respect to framing of policies, terms and conditions within the rules framed by the Central Govt. and conditions governing the license U/s 430 of the DMC Act, 1957.

As per the documents/information collected from the other departments/agencies and the legal opinion from the Law Deptt., South DMC, the powers conferred to South DMC being local body and discussions with higher officers and representative of Telecom Operators, the draft policy is prepared with following conditions :—

I.

1. The Cellular on Wheels (COWs) shall be set up in public places like parking lots, parks, markets, other vacant spaces and along road sides (wherever possible) etc.
2. The maximum area per COW shall be allotted upto 50 sq.mtrs. with maximum width upto 8 meters (including the space required for guy wires /anchor wires etc.).
3. The monthly rental charges for the land allotted for COW shall be @ Rs. 339/- (Rs. three hundred thirty nine only) per sq.ft./per month + applicable taxes (including co-sharing with other Telecom Service Providers). The monthly rental charges for the land allotment shall be enhanced after every three years @ 8% per annum, compounding on yearly basis. Besides, the revision of rates will be within the absolute discretion of the SDMC.

2. As per Clause 27 of the draft document, penalty of 25% can be imposed on regularization of COWs installed without permission. Finance is of the view that since no policy was in existence as on date, penalty of 25% of the requisite permission fee can be imposed after a cut off date as decided in the policy or from the date of installation. However, department can calculate and recover the arrears from the present operations, if any at the rate of Rs. 292/- per sq.ft./per month from the date of installation as one-time measure.
3. As per Clause 8 of the draft document, SDMC may also charge license fee with proper justification and approval of competent authority. Department is advised to incorporate the proposed rates accordingly.
4. May be vetted from Law Deptt.
5. If any civic body in Delhi has floated tender/ allotted this work, the same rates may also be explored as a benchmark.

Existing COWs on date of issue of this Policy will have to pay arrears from the date of their existence and if any COW installed without permission after the issue of this Policy then it shall be regularized after payment of penalty @ 25% over and above the monthly rental charges. The rental charges as well as the penalty will be charged on monthly basis.

The rates/charges will be fixed after approval of the competent authority.

The draft policy was also sent to the Law Deptt., certain corrections have been carried out by Law Deptt. and accordingly, as suggested by Law Deptt., draft policy has been revised.

New Delhi Municipal Council had floated tenders for 156 sites, with maximum space as 50 sqm. or 538 sq.ft. area for each site, for a period of three years.

The estimated cost for these 156 sites was Rs. 99.84 crores for 3 years.

The cost per site for 3 years comes to Rs. 64,00,000/- ($99,84,00,000/156 = 64,00,000/-$)

The cost per site per month comes to Rs. 1,77,777.77 ($64,00,000/36 = 1,77,777.77$).

The cost per sq.ft. per month comes to Rs. 330.44 ($1,77,777.77/50 \text{ sqm. or } 538 \text{ sq.ft.} = 330.44$)

The awarded cost for 52 sites = Rs. 94,69,444/-

The awarded cost per site per month for 50 sqm. = Rs. 1,82,104/-.

The awarded cost per site per month per sq.ft. = Rs. 338.48

($1,82,104/538 = 338.48$) (say Rs. 339/-)

- (iii) A specific condition for granting of permission for placing COW on the land of Corporation shall not create any right title of interest in favour of the applicant with absolute discretion of the Corporation to direct re-location of the same in case of any need as may be deemed appropriate by the Corporation.
- (iv) The Corporation should also keep liberty to review the charges periodically as and when the situation arises.

The department may draft its preamble for placing it before the competent authority keeping in view of the notification dated 15-11-2016 as well as the aforesaid legal opinion.

The draft policy containing above opinion of Law was again sent to Law Department for vetting. The Law Department vide its note dated 11-11-2019 observed that "The policy appears legally in order". Further, Law Department in its note dated 20-11-2019 stated that "There are certain corrections carried in the draft. Needs revision."

The proposal containing draft policy was also sent to Finance Department.

While agreeing with the proposal, the Finance Department in its note dated 21-11-2019, stated that the following may be incorporated in the draft policy and placed before the competent authorities :—

S. No.	Observation of Finance	Reply
1.	As per the Government of India, Ministry of Communications, monthly charges for the space provided to mobile service provider on the rooftops of Government building in Delhi for erecting mobile tower shall be enhanced after every three years @ 8% per annum, compounding on yearly basis. Since the above notified base rates has been adopted for COW as Rs. 292/- per sq.ft./per month, rates to be charged in the year 2019 be calculated accordingly.	<p>Ministry of Urban Development, Govt. of India, Office Memorandum issued vide No. 18016/2/2015-Pl.III dated 8th March, 2016, which deals with fixation of licence fee in respect of the Mobile Towers to be erected on the rooftops of the Govt. buildings in Delhi, states that :</p> <p>"The issue regarding the fixation of licence fee recoverable from the mobile service providers for erecting mobile towers on the rooftops of the Govt. buildings in Delhi are under consideration in this Directorate.</p> <p>It has now been decided to levy the licence fee @ Rs. 292/- sq.ft. per month for the space provided to Mobile Service Providers in the rooftops of Government buildings in Delhi for erecting mobile towers. During the period the allotment subsists, revision of licence fee, excluding taxes, will be done every three years, to be computed @ 8% per annum, compounding on yearly basis, as per OM No. 18015/1/92-Pol.III dated 16-3-1999."</p> <p>This O.M. talks about revision of licence fee, excluding taxes, in case the allotment subsists and there is no circular/order on this issue in the year 2019 by the Ministry of Urban Development, Govt. of India.</p>

20/11/20

4. As per mandate of the aforesaid rules, the SDMC is required to appoint a Nodal Officer for the purpose of the rules contained in the aforesaid notification to deal with the contemplated policy of the Corporation.
5. The SDMC is also required to develop an electronic application process if the same has not been established by the State Govt.
6. Chapter-3 of the aforesaid notification contains a detailed list of supporting documents to be provided by the licensee in support of his application, the department may take into consideration while finalizing its list of documents required for processing applications for granting approval for COW under the contemplated policy.
7. The aforesaid notification empowers the SDMC to fix one-time administrative charges for every application which shall not exceed ten thousand rupees. Therefore, the department is at liberty to fix the administrative charges which should not be over and above ten thousand rupees.
8. In addition to one time administrative expenses, the SDMC may also charge license fee as it may deemed fit with its proper justification and approval of the competent authority. It is significant to mention here that under Settlement Agreement arrived before Delhi High Court through mediation, the SDMC is entitled to recover Rs. 2 lacs for 5 years as license fee.

Therefore, the Engineering Department may take into consideration this aspect while giving its proposal to competent authority for enhancement of the license fee with proper justification.

9. The SDMC may also recover the charges for the ground on which COW will exist.
10. Rule 10 of the aforesaid rules inter alia provides the process of examination of application which shall be a part of any policy that may be contemplated by the department.
11. It may be noted that the Proviso of Rule 10 contains the deeming fiction of law providing that if the SDMC fails to either grant permission or reject the same in writing within the specified time, the permission is deemed to have been granted. Therefore, a strong mechanism has to put in place for examination of all the applications and disposal of the same within the specified time to avoid deeming fiction.
12. The Law Department is of the opinion that the contemplated policy of the department should be in conformity of the aforesaid notification containing the rules of over-ground infrastructure (Mobile Towers).

In addition to above, the department may also ensure that the following terms and conditions are appropriately incorporated/inserted in the contemplated policy :—

- (i) A complete mechanism to deal with the defaulters of payment of license fee of cell towers, charges of ground, along with absolute power to give direction for relocation of Towers in case of public inconvenience if any contingency arises to meet obligatory functions of the Corporation under which the Corporation.
- (ii) Appropriate condition for indemnification of Corporation in case of any accident arising out of instability of structure of any accidental event resulting to any loss of lives or property.

15. 10/10/20

Resolution No. 259

Resolved that as proposed by the commissioner in his letter No. F. 33/R.P. Cell/SDMC/575/C&C dated 4-12-2019 and recommended by the Standing Committee vide its Resolution No. 117 dated 18-12-2019, Policy for permission of setting up Communication Cellular Mobile Towers on Wheels (COWs) in South Delhi Municipal Corporation areas, as detailed in aforesaid letter, be approved.

The motion was carried.

[Signature]
Section Officer
Secretary Office
South Delhi Municipal Corporation



**SOUTH DELHI MUNICIPAL CORPORATION,
OFFICE OF THE ASSTT. COMMISSIONER,
REMUNRATIVE PROJECT CELL,
Dr. Shyama Prasad Mukherjee Civic Centre (25TH Floor),
Jawaharlal Nehru Marg, New Delhi-110002**

No.:- AC/RPC/SDMC/2021/D- 199

Dated:- 16/08/21

Permission Letter

M/s Indus Towers Ltd.,
Building No. 10, Tower-B,
4th Floor, DLF Cyber City,
Gurugram- 122002

Name of site: SDMC Park, F-Block, Hari Kunj, Opposite BSES, DDA Market, Hari Nagar, Ward No. 10/S (Longitude: 77.110966, Latitude: 28.620046)

With reference to your application received vide diary No. 80 dated 12.07.2021 and subsequent LOI (Letter of Intent) No. AC/RPC/SDMC/2021/D-149 dated 22.07.2021 issued by this office and after receipt of payment of three months of advance Monthly Rental Charges/Monthly Fee and Security Deposit equivalent to 2 months of Monthly Rental Charges/Monthly Fee in respect of setting up of Communication Cellular Mobile Tower (GBM) Ground Base Monopole at **SDMC Park, F-Block, Hari Kunj, Opposite BSES, DDA Market, Hari Nagar, Ward No. 10/S (Longitude: 77.110966, Latitude: 28.620046)**, the Competent Authority is pleased to allow you to operate the said site from the date of issue of this permission letter alongwith incubation period as mentioned in Para 30 below for a period of Five years on monthly rental charges. The monthly rent will be charged from the date of completion of incubation period, @ Rs. 50,000/- for an area of 10 Sq. Mtr./107.639 sq.ft., on the following terms & conditions:

- 1) The monthly rental charges/monthly fee for the site allotted for COW/MBTS/GBM shall be @ Rs.339/- (Rs. Three Hundred Thirty Nine only) per sq.ft./per month + applicable taxes (including co-sharing with other telecom company/telecom service provider/infrastructure provider-I(IP-I)). The monthly rental charges/monthly fee shall be enhanced after every three years @ 8% per annum, compounding on yearly basis. Besides. the revision of rates will be within the absolute discretion of the SDMC.
- 2) SDMC will provide bare space for placement and operational requirement for the COW/MBTS/GBM. The telecom company / service provider /infrastructure provider-I(IP-I) will follow all relevant guidelines of Department of Telecom, TRAI, etc.in this regard. If the telecom company / service provider / infrastructure provider-I (IP-I) need to operate the allotted land after completion of maximum period of three years then the

- the said notice period, the permission shall stand terminated/revoked and security deposit will be refunded accordingly.
- 4) The maximum height of any structural element installed with COW/MBTS/GBM will be upto 30 mtr. above the ground level at any location.
 - 5) The COW/MBTS/GBM shall be installed for the enhancement of mobile signal and the SDMC will reserve the right to ensure that there is no violation of the same.
 - 6) The telecom company / service provider /infrastructure provider-I(IP-I) shall take the site on "As is where is basis".
 - 7) All the sites will be tentative and are subject to change of site by SDMC for which the telecom company / service provider /infrastructure provider-I(IP-I) will not seek any adjustment in the monthly rental charges/monthly fee or any claim, compensation, damages or any other consideration whatsoever. It will be the absolute discretion of the SDMC to direct re-location of the already allotted site in case of any need as may be deemed appropriate by the SDMC.
 - 8) The infrastructure facilities such as electric connection shall be arranged by the telecom company / service provider / infrastructure provider-I (IP-I) and the cost of electric connection including cabling, penal, electric meter, electric charges and other ancillary charges, shall be borne by telecom company / service provider /infrastructure provider-I(IP-I). The telecom company / service provider /infrastructure provider-I(IP-I) will ensure that all the electric wiring, gazettes are used and maintained properly and are in good conditions.
 - 9) No excess space will be covered by the telecom company / service provider / infrastructure provider-I(IP-I) on any pretext. (It will be the absolute discretion of SDMC to determine and allow the space upto 50 sq.mtrs.).
 - 10) The telecom company / service provider /infrastructure provider-I(IP-I) at its own cost shall take the necessary statutory permissions/certificates if required for the same from any other agency or deptt. as per law:-
 - a) The telecom company / service provider /infrastructure provider-I(IP-I) will indemnify the SDMC to keep harmless from all losses / damage/ fire.
 - b) As per guidelines of Department of Telecommunications (DoT), a copy of application for Standing Advisory Committee on frequency Allocation (SACFA) clearance acknowledged by WPC Wing of Department of Telecommunication, Govt. of India with registration number for the individual location will be submitted along with the application for new towers in the SDMC and the SACFA clearance, when obtained will be submitted within 6 months of granting permission. The self-declaration in this regard will be submitted by the applicant. In case of existing mobile towers the SACFA clearance, wherever available, will be submitted alongwith the application in the SDMC.
 - 11) The telecom company / service provider /infrastructure provider-I(IP-I) shall install/operate the COW/MBTS within the designated site and shall maintain the same in neat and sanitary conditions and comply with all applicable laws of the country.
 - 12) The telecom company / service provider /infrastructure provider-I(IP-I) shall ensure high

I(IP-I) only and the SDMC will have no legal obligations or liabilities towards the injured. Telecom company / service provider /infrastructure provider-I(IP-I) will indemnify and can be indemnified by the SDMC for any losses on this account.

14. The telecom company / service provider /infrastructure provider-I(IP-I) will ensure that fire detection, lightning and special measures are installed at the applicable site and are kept in good condition.
15. The telecom company / service provider /infrastructure provider-I(IP-I) agrees voluntarily and unequivocally to provide un-fettered access to the authorized representative of the SDMC for inspection at any time and agrees voluntarily and unequivocally to abide by and comply with all instructions as may be indicated by the SDMC. Non compliance will be treated as breach and permission, so granted, will be revoked.
16. **Encroachment:** The telecom company / service provider /infrastructure provider-I(IP-I) will strictly not encroach upon any area and shall restrict to allotted site only. In case, the telecom company / service provider /infrastructure provider-I(IP-I) encroaches upon the public land, the SDMC reserves the right to revoke the permission and forfeit the interest free performance security.
17. **Security arrangement:** The telecom company / service provider /infrastructure provider-I(IP-I) will ensure safety and security of the equipments installed at the allotted sites and will be responsible for safety and security of the sites. The SDMC in any case will not take any responsibility of theft/ loss.
18. **No Signage:** The telecom company / service provider /infrastructure provider-I(IP-I) can install mandatory non-commercial signage only, as per provisions of Department of Telecommunication notification dated 15.11.2016, which was published in Gazette of India on 16.11.2016, since this Policy is based on the said Notification. In case, the telecom company / service provider /infrastructure provider-I(IP-I) installs any type of signage(s) other than mandatory non-commercial, for any purpose inside/or outside the sites, a fine of Rs.10,000/- (Rupee Ten Thousand) per day per site will be imposed upon telecom company / service provider /infrastructure provider-I(IP-I) for a maximum period of seven days, after which SDMC reserves the right to revoke the permission w.r.t. such site(s) without any notice/communication.
19. **Compliance with the Law:** The sites and the fixtures and the appurtenances thereto conform to every applicable requirement of law or duly constituted authority or the requirements of the carriers of all insurance on or relating to the sites. The telecom company / service provider /infrastructure provider-I(IP-I) at its sole risk and expense, at all times, during the term thereof promptly comply with all such requirements. The telecom company / service provider /infrastructure provider-I(IP-I) shall comply with all applicable statutes, rules and regulations of central, state governments, municipal bodies, and all applicable rules and also regulations of the Delhi Fire Department. **The telecom**

supc

21. The COW/MBTS/GBM may include the base of the tower on Wheels subject to fulfilment of the safety measures and structural stability.
22. The telecom company / service provider /infrastructure provider-I(IP-I) shall ensure the safety guidelines issued by DoT in letter & spirit.
23. After expiry of the period of permission due to efflux of time or termination of the permission whichever is earlier, a 15 days period will be provided to the telecom company / service provider /infrastructure provider-I(IP-I) to remove its material from the sites and peacefully handover the vacant sites.

The telecom company / service provider /infrastructure provider-I(IP-I) shall vacate the sites by taking away all its articles and hand over the vacant sites before such period otherwise the SDMC shall have the right to seize these material. Unauthorized occupancy charges (equivalent to twice the monthly rental charges/monthly fee) will be levied after expiry of such 15 days Grace Period.

24. Transfer: The telecom company / service provider /infrastructure provider-I(IP-I) during the tenure of permission shall not transfer, assign or part with the sites or any portion thereof permanently or temporarily to anybody else and shall not be allowed to take any person to share the towers, except in accordance with this permission, without the prior permission of the SDMC.
25. Assignment and Subletting: Any form of assigning the right to the permission or subletting the whole or part thereof of the sites, will strictly not be allowed at any point during the period of permission and violation of the same, will lead to the revocation of the permission, with the SDMC reserving the right to forfeit all interest free performance security and payments made.
26. Duration of permission period: - The permission would remain applicable subject to fulfilment of the terms and conditions, and such permission should expire with efflux of time. The monthly rental will be charged from the date of issue of permission letter.
27. Compliance with applicable Laws: The telecom company / service provider /infrastructure provider-I(IP-I) shall bear all salaries, wages, bonuses, payroll taxes or accruals including gratuity, superannuating, pension and provident fund contributions, contributions to worker's compensations funds and employees state insurance and other taxes and charges and all fringe and employee benefits including statutory contributions in respect of such personnel as per law and it is agreed they shall at no point of time be or construed to be employees of the SDMC and the telecom company / service provider /infrastructure provider-I(IP-I) shall be solely responsible for compliance with all Labour laws which shall include all liabilities of the Provident Fund Act, ESI Act, Workmen's Compensation Act, Minimum Wages Act and other Labour Welfare Act in respect of its

30. **Incubation Period:-** 30 days incubation period, excluding the day of issuance of permission letter, is allowed to you for carrying out works relating to installation of COW/MBTS/GBM. However, the monthly rental/monthly fee will be charges from 31st day excluding the day of issuance of permission letter or from the date of actual installation/operation of COW/MBTS/GBM whichever is earlier. In the case of regularization of existing COW/MBTS/GBM no incubation period will be allowed.

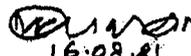
31. Payment Terms:

FEE STRUCTURE:-

The advance amount equivalent to three months rental charges/monthly fee paid by the telecom company / service provider /infrastructure provider-I(IP-I) shall be adjusted towards the monthly rental charges/monthly fee for first three months. Thereafter, the telecom company / service provider /infrastructure provider-I(IP-I) shall submit to the SDMC, the advance monthly rental charges/monthly fee per month for each site and other dues, if any, on or before 7th day of the month.

Non-payment of monthly rental charges/monthly fee and other dues within the prescribed date will constitute breach of the terms of permission and shall render the permission liable to be revoked. Besides, the telecom company / service provider /infrastructure provider-I(IP-I) shall pay an interest @ 15% per annum on the amounts of permission and other dues payable remaining outstanding after the due date and falling in arrears. Interest shall continue to accrue till the monthly rental charges/monthly fee and other dues are finally squared up. Such interest shall be charged for the full month if the payment of monthly rental charges/monthly fee and other dues are not made by the due date with arrears, if any. In case, payment remains outstanding for a maximum period of 45 days, the permission shall stand terminated.

This allotment will be governed by the policy of South Delhi Municipal Corporation on COW/GBM (Communication Cellular Mobile Towers on Wheels/Ground Base Monopole) and DOT (Department of Telecommunication) Notification dated 15th November, 2016, which was published in Gazette of India on 16th November, 2016.


16.08.21
**Assistant Commissioner
(R.P Cell)/SDMC**

Handed Over

Taken Over

Name & Signature of authorized person

Item No. 05

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No.232/2022
(I.A. No.73/2022)

Gautam Nagar Residents Association Regd.

Applicant

Versus

Commissioner, SDMC & Ors.

Respondent(s)

Date of hearing: 19.07.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Respondent(s): Mr. Anil Hooda, Advocate
Mr. Narender Pal Singh, Advocate for DPCC

ORDER

1. Grievance in this application is that M/s Indus Tower Ltd. has been allowed to construct a mobile tower in Sadbhawna Park, Opposite Gulmohar Enclave Gate No. 4, Gautam Nagar, Ward No. 62/S, New Delhi.
2. Vide order dated 08.04.2022, the Tribunal sought a factual report from a joint Committee comprising of Delhi Pollution Control Committee (DPCC) and District Magistrate, South Delhi and also sought response from project proponent (PP)- R-4.
3. Accordingly, report has been filed by DPCC on behalf of the joint Committee as follows:-

remedial action in the matter to ensure that the park is not used for any non-conforming purposes. If necessary, the said Authorities may take Police help for execution of this order.

7. The Commissioner, Municipal Corporation, Delhi and DPCC may file their action taken reports in the matter within one month by email at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF with the Registrar General of this Tribunal within one month. If found necessary, the same may be placed before the Bench.

Subject to above, the Application is disposed of. I.A. No.73/2022 will also stand disposed of.

A copy of this order be forwarded to the DPCC and the Commissioner, Municipal Corporation, Delhi by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

July 19, 2022
Original Application No.232/2022
(I.A. No.73/2022)
AB

Item No. 05

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Review Application No. 27/2022
IN
Original Application No.232/2022
WITH
M.A. No. 62/2022
IN
Original Application No.232/2022
WITH
M.A. No. 64/2022 & M.A. No. 65/2022
IN
Original Application No.232/2022

Gautam Nagar Residents Association Regd

Applicant

Versus

Commissioner, SDMC & Ors.

Respondent(s)

M/s. Indus Towers Ltd.:

Review Applicant

Vasant Vihar Welfare Association:

Applicant in M.A. Nos.
64/2022 & 65/2022

Date of hearing: 20.09.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Ms. Ekta Mehta and Ms. Arya Suresh Nair, Advocate for Applicant
(Vasant Vihar Welfare Association) in M.As 64-65/2022

Respondent(s): Mr. Narender Pal Singh, Advocate for DPCC

ORDER

1. This Application seeks review of order of this Tribunal dated 19.07.2022 passed in O.A No. 232 of 2022. By the said order, the Tribunal

considered the grievance against construction of a mobile tower in Sadbhawna Park, Opposite Gulmohar Enclave Gate No. 4, Gautam Nagar, Ward No. 62/S, New Delhi. The Tribunal sought a factual report from a joint Committee comprising of Delhi Pollution Control Committee (DPCC) and District Magistrate, South Delhi and considering the report filed by the DPCC that the matter was referred to SDMC for further action, the Tribunal required the Commissioner, Municipal Corporation and DPCC to file to file action taken report. Report filed by the MCD is that the review applicant has been directed not to use the park for mobile tower.

2. The review applicant has submitted that the issue of radiation is not in the jurisdiction of this Tribunal. As per policy of the SDMC, mobile towers can be set up on public lands owned by the SDMC, including parks.

3. Though as per Rules, review applicant is to be considered by circulation unless directed otherwise, the matter was directed to be listed in open court with intimation to the counsel. Yesterday i.e. on 19.09.2022, the matter was argued on behalf of the review applicant by Ms. Kanika Agnihotri, Advocate. After arguments, on counsel's oral request, hearing was directed to continue today. However, instead of Ms Agnihotri continuing, Shri Gopal Jain, Senior Advocate wanted to argue afresh which is not permissible. Once the matter has been substantially heard, another counsel cannot be allowed to enter appearance to argue the matter afresh.

4. We are unable to accept the contention that this Tribunal has no jurisdiction to consider issue of park being allowed to be used for a commercial purpose in violation of law laid down inter alia in *M.C. Mehta v. Union of India*, (2009) 17 SCC 683 and orders of Delhi High Court dated 03.08.2018 in *W.P.(C) 7266/2017 in Rishu Kant Sharma Vs. Union of India And Ors* and order dated 02.09.2009 in *W.P.(C) 501/2006 Patanjali*

Shiksha Sansthan Delhi (Regd.) Vs. Lt. Governor and ors. It cannot be said that no environmental issue is involved. Reference may be made only to Aam Admi Manch (2021) 11 SCC 566, Mantri Techzone, (2019) 18 SCC 494 to the effect that this Tribunal can be pass preventive and remedial orders for protection of environment.

5. As regards permissibility of installing mobile towers in parks, it has been categorically held that doing so is non conforming use. The parks can be used only for recreational purpose as per master plan. Relevant extracts from the order of the Hon'ble Supreme Court in *M.C. Mehta v. Union of India* (supra) is as follows:-

“4. *The second point raised by Mr Mehta is that a large number of parks in the city are being used for construction of marriage pandals and for hosting other functions, etc. According to Mr Mehta, the frequent use of parks for such purposes, is bound to degrade the environment and the utility of the parks as a recreation for the public.*

xxx

xxx

xxx

6. *We agree with Mr Mehta that the recreational and other aesthetic uses of the parks cannot be curtailed. Mr Mehta is also correct that the permitted use of the parks being recreation under the master plan, it cannot be permitted for any other use*”

6. Relevant extract from the order of the Delhi High Court in *Rishu Kant Sharma (Supra)* is as follows:-

“...recreational and aesthetic uses of district parks ought not to be curtailed, by permitting them to be used for social, cultural, commercial or other functions etc., for the reason that the same has the effect of degrading the environment and undermining the utility of such parks as a source of recreation for the general public; the DDA is restrained from permitting activities such as social, cultural, commercial, marriage or other functions etc. in the subject district park, till further orders.”

7. Further, in *Patanjali Shiksha Sansthan Delhi (Regd.) (supra)*, it was held:-

*“Delhi Development Authority has filed an affidavit in which it has stated that it has presently about 3000 parks under its jurisdiction and out of the said parks, DDA is using only 24 parks for marriage and social functions. In the said affidavit, it has been further stated that as on date, DDA has constructed 60 community halls and it is in the process of constructing another 41 additional community halls out of which 17 are under construction and 24 are under different stages of planning. Keeping in view the aforesaid facts, we direct that **beyond 31st December, 2014 the said 24 parks under DDA's jurisdiction shall not be used for social, cultural and marriage functions.**”*

8. In *Bangalore Medical Trust v. B.S. Muddappa*, (1991) 4 SCC 54, it was observed:

“Public park as a place reserved for beauty and recreation was developed in 19th and 20th century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a, ‘gift from people to themselves’. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. ...Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may give rise to health hazard”

9. Again, in *Lal Bahadur vs. UP*, (2018) 15 SCC 407, same view was taken referring to public trust doctrine and precautionary principles of environment law.

10. In view of above, we do not find any merit in the review application which is dismissed.

11. M.A. No. 64/2022 & M.A. No. 65/2022 have been filed by the Vasant Vihar Welfare Association after disposal of the present matter in respect of mobile tower at a different location which is not the subject matter of the

present matter. The same being not maintainable is dismissed as withdrawn on prayer of learned Counsel for the applicant in the said MAs.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

September 20; 2022
Review Application No. 27/2022
IN Original Application No.232/2022
WITH M.A. No. 62/2022
IN Original Application No.232/2022
WITH M.A. No. 64/2022 & M.A. No. 65/2022
IN Original Application No.232/2022
AB

Annexure E

29

§-47.

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 1380/2022

M/S INDUS TOWERS LTD.

..... Petitioner

Through: Mr. V. Lakshmikumaran, Ms. Kanika
Agnihotri, Ms. Snehal K., Mr.
Yogendra Aldak and Ms. Bhavya
Shukla, Advocates

versus

GAUTAM NAGAR RESIDENTS ASSOCIATION

REGD. & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

09.12.2022

%

[The proceeding has been conducted through Hybrid mode]CM No.53434/2022 (Exemption)

1. Allowed subject to all just exceptions.

CM(M) 1380/2022 and CM No.53433/2022 (stay)

2. Petitioner impugns order dated 19.07.2022 and order dated 20.09.2022 passed by National Green Tribunal (hereinafter in short, referred to as the 'Tribunal') in O.A. 232/2022 and Review Application No.27/2022 respectively.

3. By way of the impugned order dated 19.07.2022, the Tribunal has directed the Commissioner, Municipal Corporation of Delhi and the DPCC to take action in accordance with directions passed in the

Signature Not Verified

Digitally Signed
By: VINOD KUMAR
Signing Date: 13.12.2022
13:01:01

CM(M) 1380/2022

1

impugned order and directed removal of the cell tower of the Petitioner, which is installed at Sadbhawna Park, Opp. Gulmohar Enclave Gate No.4, Gautam Nagar, Ward No.62/S, New Delhi.

4. Mr. Lakshmikumaran submits that the Tribunal while passing the impugned order overlooked the fact that it did not have jurisdiction at all to entertain the *lis*. Learned counsel also submits that the Petitioner had relied upon the judgment rendered by four-Member Bench of the NGT in the case of *Dr. Arvind Gupta v. Union of India and Ors.* and other batch matters, pronounced on 10.12.2015 in O.A. 61/2012, which had concluded that the Tribunal would not have any jurisdiction in respect of any activity which do not fall within Section 14 of the NGT Act.

5. This judgment was also brought to the notice of the Tribunal.

6. Learned counsel submits that the learned Tribunal overlooked the binding decision rendered by a larger Bench of the Tribunal in the case of *Dr. Arvind Gupta (supra)*. Learned counsel referred to a judgment rendered by this Court in *Indus Towers Ltd. Vs. North Delhi Municipal Corporation, 2022 SCC Online Del 568* in support of his submissions.

7. Learned counsel also refers to the judgment rendered by the Division Bench of the Allahabad High Court in the case of *Residents Welfare Associates vs. Union of India and Ors.*, WP(C) No.16888/2022, rendered on 11.11.2022 whereby in a similar case pertaining to the Petitioner herein, the Division Bench had considered the case of *Smt. Asha Mishra vs. Union of India and Ors., 2016 (4) AWC 3427* wherein the allegation regarding the ill effects of the

radiation on human health arising out of installation of mobile cell towers was found to be without merits. Relying on the said judgment, the Division Bench upheld the view that there is no evidence that the installation of cell tower would cause any ill effects on the human health.

8. Learned counsel also relies upon judgment rendered by Division Bench of this Court in *Kapil Chaudhary and Anr. Vs. Union of India and Ors.*, (2016) SCC Online Del. 2558 and draws the attention to para 12 to submit that the Tribunal not only exceeded its jurisdiction but also overlooked the judgments rendered by a Division Bench of the Allahabad High Court as well as that of this Court apart from the judgment rendered in the case of *Dr. Arvind Gupta (supra)* and has committed material irregularity in passing the impugned orders.

9. There is no representation on behalf of the Respondents. Mr. Lakshmikumaran submits that they have been served copies in advance.

10. Be that as it may, for the purpose of preliminary hearing, this Court has to consider whether *prima facie* there is any substance in the arguments put forth by learned counsel for the Petitioners.

11. The foremost aspect which comes to the mind of this Court is that when a larger Bench judgment is rendered by either a Court or any Tribunal, it would be in line with judicial discipline and propriety to follow the same unless there are factors, relevant to the issue, on the basis whereof the same can be distinguished.

12. This Court has considered the judgment rendered in the case of

Dr. Arvind Gupta (supra) and relevant paragraph to the issue involved is extracted hereunder :-

"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.."

Para 33 of the said judgment is also relevant to the issue in dispute which is extracted hereunder :-

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

13. From the above paragraphs, it is clear that four-Member Bench of the Tribunal had categorically concluded after a detailed discussion on various aspects that the emission of electromagnetic waves from the towers constructed by Institutions/Companies like the Petitioner and other similarly situated companies do not fall within the ambit, scope and jurisdiction vested in the Tribunal under the provisions of the NGT. This was rendered with reference to the Environment (Protection) Act, 1986.

14. Coming next to the case rendered by a Coordinate Bench of this Court in the matter of *Indus Power Ltd. (supra)*, the Co-ordinate

Bench had in fact reiterated the finding rendered by a Division Bench of this Court in *Kapil Choudhary (supra)* and held as under :-

“10. Further, it may be noticed that the objection raised by the residents that the tower is likely to cause harm to children, old people and pregnant women is no longer res integra as by judgment dated 26.04.2016 a Division Bench of this Court in W.P. (C) No. 5550/2015 titled Kapil Chaudhary & Anr. Vs. Union of India & Ors. has categorically held that there is no scientific data available to show that installation of mobile phone tower and emission of waves by the said tower is in anyway harmful for the health or hazardous to the health of citizens. There is no conclusive data to the said effect.

11. The Division Bench in Kapil Chaudhary (supra) was considering a public interest petition seeking removal of the mobile towers installed in residential area. The ground raised in the petition inter alia was that the presence of the towers will cause diseases on account of radiation that is emitted. The Union of India had filed a Counter Affidavit therein stating that “many studies have been conducted on the health hazard of radiations of mobile phone towers/networks. These studies have been conducted under the aegis of WHO. The studies have concluded that there is no conclusive scientific evidence of adverse health effects due to low level of RF emission from mobile phone towers.”

12. The Division Bench after considering several Judgments of various High Courts wherein similar pleas had been rejected held as under:

“12. In view of the above, it is clear that there is no scientific data available to show that installation of mobile phone towers and the emission of the waves by the said towers is in any

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way harmful for the health or hazardous to the health of citizens. There is no conclusive data to the said effect. The petitioner has not been able to produce any data whatsoever showing any such harmful effects on the health of human beings. The petitioner has also not been able to show violation of any norms by the respondent."

13. In view of the above, the work stop notice issued by the respondent Corporation, solely on the ground of the above referred complaints received from residents, is not sustainable. Accordingly, the work stop notice dated 27.08.2021 is quashed."

15. It appears that in pursuance of the directions issued by the Tribunal, the Municipal Corporation of Delhi by letter dated 22.08.2022 informed the Tribunal as well as the present Petitioner that the subject site park is not to be used for any non-conforming purpose and thereby directing the Petitioner to remove the mobile tower from the subject site.

16. Mr. Lakshmikumaran referred to page 269 to submit that based on the impugned order, a deluge of applications are now being filed before the Tribunal against the present Petitioner seeking removal of the Cell towers from different locations in Delhi.

17. Be that as it may, that is not the subject matter of the present petition and therefore, no orders are expected to be passed thereon.

18. After having heard Mr. Lakshmikumaran and considering all the judgments, it appears, *prima facie*, that the learned Tribunal has overlooked the law on the said subject and mis-directed itself while passing the impugned orders. The issue with respect to the installation

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of the cell towers, the apprehension of ill-effects on the health of human lives as well as the larger issue as to whether the Tribunal had any jurisdiction to pass any such order, as the impugned one, needs consideration.

19. Issue notice to the Respondents of the CM(M) 1380/2022 as well as CM APPL.53433/2022, by all prescribed modes, additionally through counsel appearing before the Tribunal, returnable on 11.07.2023.

20. Reply be filed within four weeks. Rejoinder thereto, if any, be filed within four weeks thereafter.

21. In the meantime, impugned order dated 19.07.2022 passed in O.A. No.232/2022 and order dated 20.09.2022 passed in Review Application No.27/2022, case titled as *Gautam Nagar Residents Association Regd. Vs. Commissioner, SDMC and Ors.*, passed by the Tribunal are stayed and consequently, the order date 18.08.2022 issued by Municipal Corporation of Delhi annexed at page 121 of the paper book is also kept in abeyance till further orders.

TUSHAR RAO GEDELA, J.

DECEMBER 9, 2022/yg

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