

\$~49

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8661/2015

**RESIDENTS WELFARE ASSOCIATION**

..... Petitioner

Through: Mr. Praneet Singh, Ms. Ritagya Riti Singh, Mr. Honekesh Chaudhary, Mr. Ashish Gupta and Mr. Shashank Sharma, Advs.

Versus

**UNION OF INDIA & ORS.**

..... Respondents

Through: Ms. Suparna Srivastava, Mr. Neelmani Pant and Mr. Rishabh Wadhwa, Advs. for R-1/UOI. Mr. Dhanesh Relan, Adv. for R-2/DDA.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

%

**09.09.2015**

**CM No.18952/2015 (for exemption)**

1. Allowed, subject to just exception.
2. The application is disposed of.

**W.P.(C) 8661/2015**

3. The petitioner, claiming to be an Association of the Residents of Houses of Sector-C, Pocket-4, Vasant Kunj, New Delhi, has filed this petition impugning the Circular dated 28<sup>th</sup> October, 2014 of the respondent No.1 Ministry of Communications & Information Technology, Government

*W.P.(C) 8661/2015*

*Page 1 of 5*

of India directing the Chief Secretaries of all the States and Union Territories to constitute State Level Telecom Committee and District Level Telecom Committee to effectively address public grievances relating to installation of telecom towers. The petition also seeks a mandamus to the respondent No.1 Union of India (UOI) to make proper amendments and issue new advisory guidelines incorporating the Recommendation No.13 of the Inter-Ministerial Committee (IMC) report of the year 2010-2011, of imposing restrictions on installation of mobile phone towers near high density residential areas, schools, playgrounds and hospitals. Axiomatically, a direction is also sought to the respondent No.2 Delhi Development Authority (DDA) to cancel the allotment made to the respondent No.3 M/s Indus Towers Ltd. of a site between the boundary wall of Sector-C, Pocket-4 of the Colony of Vasant Kunj, New Delhi and Delhi Public School, Vasant Kunj, for installation of a telecom tower.

4. The entire case of the petitioner, as aforesaid, is based on the report of the IMC of the year 2010-2011. It is however not as if, while framing the advisory guidelines and in pursuance where to the communication dated 28<sup>th</sup> October, 2014 for constitution of State Level Telecom Committee and District Level Telecom Committee was issued, the authorities concerned were not conscious of the said report of the IMC. Rather, it is the case of the petitioner itself in ground (G) that the Standing Committee on Information Technology, which made the said guidelines, did not accept the recommendation aforesaid of the IMC. The petitioner finds fault in, the Standing Committee accepting some of the recommendations contained in

the report of the IMC and not accepting others. It is also not as if the Standing Committee on Information Technology, without any reason did not accept the recommendation in the IMC report, on which the petitioner relies upon. The Standing Committee has observed that the said recommendation is for unfounded reasons which are not based on scientific study or facts.

5. I am of the opinion that the said matters fall in the domain of policy making and the Courts, neither have the jurisdiction to nor where-with-all to take a call thereon. The appropriate authority has made the policy and while framing such policy, the report of the IMC has been duly considered. It is not for the Court to enter into the arena of finding out, whether the policy made by the expert body constituted, for going into the said question, is correct or not and that too on the basis of an opinion of some persons in the process of such decision making. It is the settled position in law (see *Surgical Electronics Vs. Union of India* 60 (1995) DLT 359 (DB) and *Rajinder Kumar Khatri Vs. Delhi Development Authority* MANU/DE/4005/2011) that such comments / opinions during the decision making process cannot form the basis of the challenge to the ultimate decision, even if contrary to the opinion at one level in the decision making process. Supreme Court also, in *Sethi Auto Service Station Vs. Delhi Development Authority* (2009) 1 SCC 180 and in *Jasbir Singh Chhabra Vs. State of Punjab* (2010) 4 SCC 192 has reiterated that favourable notings during the decision making process cannot form the basis of a claim when the ultimate decision making authority has decided against the claimants. The Interministerial Committee and its recommendations are but a stage in the making of the policy aforesaid.

6. The counsel for the respondent No.1 UOI appearing on advance notice has stated that a similar petition is pending before the Division Bench being W.P.(C) No.5550/2015 titled *Kapil Choudhary Vs. Union of India* and has drawn attention to the order dated 27<sup>th</sup> May, 2015 in the said petition which takes notice of several judgments of the Kerala High Court vis. *M/s. Essar Telecom Infrastructure (P) Ltd. Vs. C.I. of Police, Angamali Police Station* MANU/KE/2780/2010 (FB), *Indus Towers Ltd. Vs. The Sub Inspector of Police* MANU/KE/1308/2014 (DB) and *Sudevan Vs. Mundur Grama Panchayat* MANU/KE/0839/2013, holding that mobile phone towers do not pose any health hazard, as well as the judgment of the Rajasthan High Court in *Justice I.S. Israni (Retd.) Vs. Union of India* MANU/RH/1496/2012 in the context of mobile phone towers on hospitals, school buildings and playgrounds.

7. I may also notice that a learned Single Judge of this Court also vide order dated 31<sup>st</sup> May, 2010 in W.P.(C) No.3267/2010 titled *Cellular Operators Association of India Vs. Municipal Corporation of Delhi* had directed a Committee to be constituted to submit a report on effect if any of mobile phone towers on public health and safety and regulating the installation of cellular towers and antennas but which order was set aside by the Division Bench in appeals, vide order dated 4<sup>th</sup> June, 2010 / 8<sup>th</sup> July, 2010 and the final judgment in the said writ petition reported in 179 (2011) DLT 381 also did not issue any directions in this regard.

8. This Court cannot, upon being approached by residents or by association of residents, interfere with the works undertaken in accordance

with the prevalent policy. In fact, I have asked the counsel for the petitioner that why not all the residents of Sector-C, Pocket-4, Vasant Kunj give up the use of cellular phones, to obviate any threat perception from the use thereof or from the telecom towers essential to enable the use thereof. The counsel for the petitioner has chosen not to give any reply. Citizens not wanting to give up use of cell phones cannot approach the Court to push the towers and antennas essential for use thereof, from their own door steps to another person's door step; if at all they feel that the technology is harmful for them, all they have to do to give up the use of the same and in which case there would also be no need for towers and antennas required to be installed for enabling use thereof.

9. There is thus no merit in the petition. Dismissed.

No costs.

**RAJIV SAHAI ENDLAW, J.**

**SEPTEMBER 09, 2015**

bs..