

**CWP No. 10993 of 2014****1****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CWP No. 10993 of 2014****Date of decision: 06.01.2015**

Reliance Communication Limited

... Petitioner

versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.D.K. Singal, Advocate, for the petitioner.

Mr. Keshav Gupta, Assistant AG, Haryana.

Mr. Ashish Gupta, Advocate, for the respondents.

K.Kannan, J.

The petitioner challenges the decision of Municipal Council, Bahadurgarh, declining the desealing of three towers situated within the municipal limits. The order was issued on 31.01.2014. The case is rested on a plea that it is a licensee for 13 installations within Municipal Council limits out of which three towers were sealed on three different occasions between May 2013 to July 2013. The petitioner points out to the fact that the ultimate order refusing to desal is purported to be on the ground that violate bye-laws of the year 2013 inasmuch as two towers are situated in residential area and one tower within 50 meters from the residential sector.

The petitioner has four grounds to urge in support of the plea that order is not tenable. First plea is that the desealing had been done subsequent to three notices; two of which were issued on 16.09.2011 and one notice on 03.10.2011. The notices, copies of which are Annexures R3/1 to R3/3 alleged that the installations had been done without any permission from the Municipal Council, Bahadurgarh. The petitioner would point out that such an averment was not tenable since the installations had been done earlier and renewal applications had been given and renewal fees had already been paid and collected by the Municipal Council, Bahadurgarh.

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The payments made for renewal for the years 2011-2012 are proved through Annexures P5 to P10; all of which are referred to the payment of renewal fees for various locations including the three towers which are subject to the writ petition. The second plea is that before the sealing of the premises no notice had been issued to show cause against such sealing particularly in lieu of the fact that it was clearly wrong assumption that the installations were made without any permission. The payment of renewal fee would themselves to be proved against such an assumption. The third plea raised is that as per the advisory guidelines for State Council for issue of clearance for installation of mobile towers, the State Agencies/Local Bodies cautioned that telecom installations are lifeline installations and offered a critical infrastucture in mobile communication. There would be no disconnection without the consent of the respective TERMCELL devotee. The contention is that the Municipal Council itself has no power to carry out such sealing. The fourth contention is that even the 2013 bye-laws came into effect only in September 2013 and they could not have been used for existing installations where the the petitioner and several other telecom companies had their installations already and bye-laws could not be attracted to such installations. As a general argument it is also contended that the 2013 bye-laws themselves have been challenged in the writ petition and the Division Bench of this Court in CWP No. 2202 of 2014 directed that no coercive steps would be taken against the petitioner company in that case namely VIACOM Networks. The petitioner has also filed a similar writ petition later, CWP No. 15832 of 2014.

The counsel appearing on behalf of the Municipal Council state that the installations were in residential locations and are clearly impermissible. The counsel would not be in a position to either affirm or deny whether the sealing was done in May/July 2013 but would contend that continuance of the installations at the three places which are objectionable would violate law and cause serious prejudice to the public.

I am of the view that the action of the respondent is wholly untenable and cannot be supported. If it is seen that the original issue of notices had been demanding only renewal fees and there is also proof of the fact that renewal fees had been paid for the years 2011 and 2012, all that they could have done was only to set right their own records and claim the

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fees for the subsequent years. If the amounts have not been paid then it could have been possible for them to withdraw the permission and take appropriate action after serving notice before such a precipitate action was taken. Notice to show-cause a drastic action is a fundamental precept of natural justice which has to be read in a situation where civil rights are affected. As brought out in the guidelines the telecommunications were critical to communication and have broad public mode of discourse and any communication that could fetter the use of such facility could not be done without adequate show-cause-notice. Indeed the power to seal itself does not recite with the Municipal Council in the light of the directives issued by the Department of Telecommunications. The respondents ought to fail on all the limbs of arguments brought by the petitioner. The action of the respondents is indefensible and the decision declining to desal the premises is quashed. There shall be a mandate against the respondents to desal the three towers of the petitioner-Company forthwith. The petitioner shall pay all the renewal fees payable for the years 2012 and 2013 and for the subsequent periods. Counsel for the petitioner states that they were always prepared and willing to pay the renewal fees but respondents are not willing to accept the same. If such a tenderness is made, the respondents are directed to accept the same.

The writ petition is allowed with costs assessed as ₹ 10,000/- against Municipal Council.

Counsel for the respondents states that they should have the power and liberty to issue notice for any violation of bye-laws. This order does not prevent any future action in accordance with law.

06.01.2015
Kumud

(K.KANNAN)
JUDGE