

high court Of himachal pradesh

CWP No. 3123 of 2021 with CWP No. 1398 of 2018

Judgment Date:

22-12-2021

Ms. Vandana Misra

..Petitioner

The Chief Engineer, Pwd, Director Town

..Respondent

Bench:

**{ HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN HON'BLE MR. JUSTICE
CHANDER BHUSAN BAROWALIA }**

Citation:

LQ ;

1. The instant petition has been filed as Pro bono Publico by the petitioner highlighting therein the plight of the residents of the State, more particularly, the residents of the rural and backward areas of the State in the matters regarding internet services.

2. The Government of India had formulated a new telecom policy in the year 1994 aimed at giving highest priority to the development of telecom services in the Country in conformity and in furtherance of Government of India's Economic Policy. Thereafter, various guidelines for streamlining the provisions of right of way to telecom service licensees and also to the infrastructure providers were laid down. These mobile guidelines were formulated, keeping in view the object of creating a robust telecommunication infrastructure with adequate bandwidth at affordable rates and in order to promote Development and Proliferation of Information Technology, Electronic Governance, E-Commerce, convergence of information, Communication and Entertainment sectors so as to improve the state of economy, enhance the quality of life of the citizens and to ensure development of urban and rural areas with equity throughout the country.

3. This Court took cognizance of the matter and issued various directions and has also called for the suggestions for better internet connectivity within the state of H.P.

4. Before we proceed, we may take note of the letter addressed by the Hon'ble Chief Justice of India to Minister of Law, Justice, Communications, Electronics and IT, dated 8.6.2021, which reads as under:

"I am writing to bring to your kind attention certain issues that emerged during the course of my recent interaction with the Chief Justices of all the High Courts which need immediate intervention of the Union Government:

I. To strengthen the network and connectivity beyond major urban centres, particularly in rural and tribal areas, as the digital divide is adversely impacting the functioning of the Courts in the wake of COVID-19 pandemic;

- ii. To augment the provisioning of vaccines to immunize all the functionaries associated with the Courts and their families across the country to facilitate full-scale functioning;
- iii To recognize all the functionaries of the Courts, including the advocates, as front-line workers for the purpose of providing pandemic related relief; and
- iv To provide financial support to advocates, especially the junior advocates, who are struggling to make both ends meet due to loss of work for more than a year since the onset of pandemic.

It would be highly appreciated, if you could take up these issues with the concerned Ministries/Departments at the highest level.

Needless to mention that the judicial infrastructure needs to be augmented with latest information and communication technology tools to facilitate Access to Justice during the post pandemic time. Further, the judicial infrastructure needs to be streamlined and revamped to deal with the challenges of pendency. A blue print of the proposal to set up the National Judicial Infrastructure Corporation (NJIC) is in the final stages of preparation and will be shared with the Union Government shortly. I am of the firm belief that concerted efforts need to be put it, in order to materialize this concept, in view of the challenges put forth by the pandemic.

During the course of my interaction with the Chief Justices of all the High Courts, I have impressed on the need to expedite the process of sending recommendations through Collegium to fill up the vacancies in the respective High Courts. This was in furtherance to my communication addressed to the Chief Justices of all the High Courts soon after I had assumed the Office of the Chief Justice of India. I have been assured of positive and accelerated action by the Chief Justice.

Look forward to your active intervention in addressing the aforementioned concerns.”

5. We are of the considered view that the concern expressed by the Hon'ble Chief Justice of India should not be confined to the functioning of the Courts alone, but also be read in a wider context, more particularly, to redress the issue concerning the school going children, majority of whom are still having classes online.

6. At this stage, we appreciate the commendable work and efforts being put forth by the Deputy Director General (Rural) HP,LSA Department of Telecom Shimla, in rendering valuable assistance to this Court by giving valuable suggestions. We also appreciate and acknowledge the efforts of the petitioner and also the steps being taken by the State level Coordination Committee. Some of the suggestions which require immediate attention, have been handed over to the Court. We shall proceed to deal with them one by one.

(1) Replace Building Completion Certificate with Structure Suitability Certificate:

7. The Govt of Himachal Pradesh announced RoW policy in February, 2021 in line with Govt. of India RoW policy 2016 to pave the way for speedy development and uniform RoW rates for putting telecom infrastructure. The requirements of Building Completion Certificate in municipal areas of H.P. have not been addressed so far and is becoming road block for providing umbrella coverage in urban areas.

8. We have called for the presence of the Director, Town and Country Planning who suggested that he should be reflected and shown as one of the stake holders in the State level Coordination Committee. In addition thereto, there should be a joint meeting of the departments to call for permission for construction/approval etc. so as to resolve all the issues completely.

9. We find the suggestion to be meaningful.

10. Accordingly we direct the Chief Engineer, HPPWD to convene a meeting of the representatives of the Town and Country Planning, Information Technology, Rural Development, Urban Development and Municipal Corporation, Shimla, to look into the feasibility of replacing the condition of submission of Building Completion Certificate with Structure Suitability Certificate alone or in alternate, making a provision for granting the completion certificates floor wise for ensuring the structure suitability.

11. A three-member committee be appointed to check the structure stability and once the building is found to be fit, then grant No Objection Certificate(s) for installation of the towers.

(2) Construction of Common Duct:

12. We are informed that as of now Fiberization in H.P. is around 27% against national average of approximately 34%. With the introduction of 5G & Bharat Net Phase-II services, H.P. will require tremendous amount of fiber length to be laid across the length & breadth of the State in future. Due to hilly terrain cost of laying fiber, many a times as compared to plain areas, may prove to be detrimental to progress of fiber laid.

13. The Telecom Authority has been alive to this when it prepared consultation paper or road map to permit broad band connectivity and enhance broad band speed in India.

14. The questions as contained at page No. 525 of the paper book are relevant and extracted as under:

"Q. 14. How to ensure that while compensating the land-owning agencies optimally for RoW permissions, the duct implementing agency does not take advantage of the exclusivity? Justify your comments with reasoning.

IV. Cross-Sector Infrastructure Development Dig Once Policy

4.50 Another innovative idea for infrastructure creation is cross-section collaboration. Such collaboration could either be in the beginning of the infrastructure development itself or at later stage by leveraging the existing assets of other sectors. The NDCP-2018, for implementing a 'Fibre First Initiative', emphasizes on 'Leveraging existing assets of the broadcasting and power sector to improve connectivity, afford-ability, and sustainability'. In the broadcasting sector, the RoW permissions available with cable operators for establishing coaxial cable network could be used for laying aerial fiber network. Similarly, the transmission and distribution networks of power sector could be effectively utilized to roll-out wireless broadband networks.

4.51 For collaboration in the beginning of the infrastructure development itself, voluntary joint trenching of coordinated trenching looks feasible options. This is also referred to as 'Dig Once' policy.

4.52 Voluntary joint trenching requires that two public utility companies like electricity and telecome or water and telecom licensees formulate joint construction plans and receive approval to excavate in public rights of way simultaneously. One example of such voluntary joint trenching is Telangana's 'Mission Bhagiratha' project. Under this project, the establishment of Optical Fiber Network is integrated with ' Mission Bhagiratha', which is a project for safe drinking water for all village and city households in the state. The plan is to install ducts for optical fiber along with the extensive water pipeline network being laid under Mission Bhagiratha. This will save the state huge funds that would have been required to install a separate OFC network. Other examples of voluntary joint projects are optical fiber networks of GAILTEL and POWERGRID. Such voluntary agreements could happen between two unrelated entities also.

4.53. Coordinated trenching requires informing interested excavators, such as broadband providers, in advance when underground work or road construction is going to happen so that they can be prepared to install equipment in conjunction with scheduled excavations. In coordinated trenching, use of ICT can play an extremely important role. As per the Indian Telegraph Right of Way Rules, 2016, the appropriate authority shall develop an electronic application process (through online portal) for submission of applications for RoW permissions. These Rules also provide that the State Government may at its discretion establish a single electronic application process for all appropriate authorities under its control. The same online portal can be used by all other public utilities also to apply for RoW permissions. In such case, it (online portal) can be used to inform interested excavators, such as broadband provides, in advance when any other utility applies for permission to do underground work or road construction.

4.54 'Dig Once' policy minimize disruption in public rights of way. Public utilities like water and electricity have somewhat similar network architecture as traditional telecommunications network. Therefore, whenever anyone of such public utility agencies seeks RoW permission for laying underground pipes or cables, the TSPs and ISPs I can be informed through online portal automatically, so that, if required, the ducts for laying OFC can also be buried simultaneously .

4.55 The 'Dig Once' policy is used to minimize the number and scale of excavations when installing the telecom infrastructure. This policy has several advantages:

a) Cost Savings the cost savings in limiting the number of times a road must be opened to deploy broadband is

the greatest advantage of implementing dig once practices and policies. When fibre installations coordinated along with a road or utility project, it becomes much cheaper than adding the broadband infrastructure after the channel is built, and there are nearly 20% cost savings.

b) Economic Benefits Increase in penetration of broadband would foster growth in existing businesses in the area and would result in boosting the local economy.

c) Decrease in time need to deploy fiber. When the common duct is already in place at the time of fibre installation, the time and cost needed to deploy the fibre will be significantly lesser compared to in the absence of a common duct."

15. It is pointed out by the Engineer-in-Chief, HPPWD that on account of high cost of ducts, the State government is not in a position to take any decision in this regard. However, we have impressed upon him to work out the feasibility of incorporating the conditions of construction of own ducts in the tendered documents, which could be on the same line as that of BoT and the provision for having compensatory cost paid to the HPPWD, when any of the other stake holders, more particularly of the governmental sectors want to share or use the ducts in question.

16. Implementation/inclusion of clause for construction of common ducts in bids/tender documents should be mandatory while construction/widening of roads. The utilization of common ducts will enable faster roll out of telecom infra and at the same time inconvenience to general public towards digging of roads can be avoided.

(3) Review of RoW Charges:

17. Himachal Pradesh being a less populated state project viability here is a major issue and RoW charges are also one of the constituents to it. In view of future 5G technology and Bharat Net Phase-II, lot of fiber needs to be laid. HPPWD is charging Rs. 300/ meter (3 lac/KM) for even 'kutcha' roads where there is no metalling and tarring. In view of National Broadband Mission targets approximately 50,000 more KM fibre has to be laid to achieve 1.521 KM fibre H.P.

18. per Square KM of geographical area in Leaving aside metalled portion of roads if we consider only kutcha roads/kutcha shoulders, will require approximately 1500 Crore only towards RoW charges. Rs. 1500 Crore is a huge investment considering less populated state resulting into less revenue.

19. We called for the presence of the Chief Engineer, HPPWD and have had fruitful communication with him. We informed the Chief Engineer, HPPWD that the charges that are being levied by the HPPWD for RoW are probably the highest in the country and therefore, this issue needs to be redressed and rates need to be brought at par with the adjoining state(s) having the same kind of terrain and topography. We also apprised him that the major portions of the road in Himachal Pradesh are kutcha and the State Government does not even have to incur any cost on restoration of these roads as trenches dug are again refilled back by TSP/ISP. Therefore, there should be no RoW charges or the same should be at a far lesser rate than the one being currently charged. The Chief Engineer to the Govt of H. P. assured the Court that the proper exercise regarding the same would be undertaken and the compliance report shall be placed before this Court on the next date of hearing.

(4) National Building Code for in-building fibre:

20. It cannot be disputed that the ultimate internet experience can only be achieved through Fiber to Home. Fiber has unlimited bandwidth, whereas radio/mobile signals are limited in bandwidth. For ultimate delivery of machine-to-machine communication in future fiber to home is must. At present no code has been incorporated to accommodate fiber in modern housing complexes and societies which results in slowing down rolling of telecom infrastructure.

21. A suggestion has been put across that all the drawings/approvals for such urban development projects should include National Building Code for in building fiber for faster roll out of telecom infrastructure for faster service delivery.

22. Since the Court lacks expertise in this field, we direct the state to constitute a state level coordination committee to put forth suggestions in its report and the decision taken by it be placed before this Court on the

next date of hearing.

5. Penalty clause on fibre cut:

23. It has been noticed that there is a widespread fiber cutting by various agencies of PWD, Jal Shakti, Electricity & National Highways etc. , which results in inconvenience to public in general and loss of revenue. For maintaining the quality of service as per norms prescribed by TRAI, the cut needs to be minimized.

24. A suggestion has been put across that the penalty clause on fibre cut need to be included in all tendered documents/bids by various departments of the State to minimize and restore the service swiftly. This indeed is a valuable suggestion and the same needs to be considered by the State level coordination committee. Ordered accordingly.

(6) Offering State Govt Land and Buildings for Telecom Infra:

25. The state government has included a clause in RoW policy to offer govt. lands and building a maximum rent of Rs. 10,000/ per month. The central government appears to be committed to create I-Ways information Super highways. There can be no denying of the fact that communication is one of the three core infrastructures i.e., Transport, Communication & Energy. It is broadly estimated that 10% increase in broadband penetration could lead to 1 percent increase in GDP. Therefore, state government has to play an active role in creation of these I-Ways.

26. A suggestion has been put forth that offering of government land and building should be at token amount of rent for first 5-10 years and other promotions at par with the industry. The targets for offering state government land and buildings needs to be fixed to all districts for faster roll out of services. We again find this suggestion to be meaningful and therefore, we direct the same to be placed in the next meeting of the state level Coordination meeting.

(7) Dig-once and Call before you Dig Policy:

27. 'Dig once' and 'Call before you Dig policy should be encouraged as part of State's policy to avoid unnecessary breakdown of services. This issue has already been considered by us while dealing with point No. 2. Therefore, we need not to reiterate the same.

28. We also notice that the state level coordination committee meeting is held only quarterly, whereas we are of the considered view that this committee ought to meet regularly that too on monthly basis, so that recommendations and observations of the committee can be effectively implemented. Accordingly, the state level coordination committee shall consider desirability of holding monthly meetings.

29. Another disturbing factor, which has come to the notice of the Court is the manner in which some of the electricity connections are being un-necessarily delayed by the HPSEBL. One such glaring instance is at serial No. 60 of Abstract of Electricity Connection to Tower sites of TAIPA, which goes to reveal that even though application for providing electricity connection was submitted on 29.10.2014 and even 100% of the amount of Rs. 5,44,408/ was deposited by the HPCL, however the work till date has not been executed departmentally by the HPSEBL due to RoW issue.

30. Therefore, we direct the Executive Director, HPSEBL to personally look into the matter and report compliance on the next date of hearing.

31. Apart from above, it is brought to the notice of the Court that the service providers only cover the urban areas without taking any steps to ensure coverage of mobile network in shadow/rural areas. The service providers should shoulder the responsibility for covering the shadow areas.

32. The suggestion is meaningful and we accordingly direct all the service providers to response this suggestion with facts and figures and steps taken in this regard.

33. The concerned respondents are directed to comply with the aforesaid directions and report compliance on the next date of hearing. In addition thereto, they shall report compliance with regard to the decision(s) taken by the

17.11.2021 have not been complied with. The service providers are also at liberty to put forth their grievances and problems so that an endeavour to resolve the same can be made.

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