

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Jay Sengupta

W.P.A. 24861 of 2023

ATC Telecom Infrastructure Private Limited & Another
Vs.
The State of West Bengal & Others

For the Petitioners : Mr. Sabir Ahmed
Mr. Navanil De
Mr. Sayak Ranjan Ganguly
Ms. Srijani Ghosh

For the Respondent No. 3 : Mr. Shyamal Chakraborty
Mr. Palash Goswami
Mr. Jayanta Kr. Dhar

For the Respondent No. 11 : Mr. Somopriyo Chowdhury, (through V.C. Mode)
Mr. Arnab Saha
Mr. Amartya Basu
Mr. Arghya Banerjee

Heard on : 17th October 2023

Judgment on : 17th October 2023

The Court:

Affidavit of service filed by the petitioners is taken on record.

None appears on behalf of the State despite service although the private respondent nos. 3 and 11 are represented.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is in the business of installation, management, operation of telecommunication towers and infrastructure for diverse telecom services providers in India. The petitioner engaged vendors who, in turn, employed security, maintenance and surveillance staff. It is apprehended that such employees would be creating disturbances in the functioning of the towers. In fact, they had been doing so for sometime and an F.I.R. had to be lodged in this regard. In view of the same necessary orders may be passed in tune with Section 3 of the Essential Service Maintenance Act, 1981. Reliance is placed on a similar order passed by this Court on 12.11.2020 in W.P.A. No. 9314 of 2020.

Learned counsel appearing on behalf of the respondent no. 3 submits as follows. There is no question of applying the Essential Service Maintenance Act, 1981 as no order under such order has been promulgated in this regard. The rights of the respondent no. 3 under the Industrial Law cannot be taken away. However, they are not going to commit any illegal disruption in the working of towers in question.

Section 3 of the Essential Service Maintenance Act, 1981 provides as follows:-

“Power to prohibit strikes in certain employments.-

(1) If the Central Government is satisfied that in the public interest it is necessary or expedient so to do, it may by general or special order, prohibit strikes in any essential service specified in the Order.

(2) An Order made under sub-section (1) shall be published in such manner as the Central Government considers best calculated to bring it to the notice of the persons affected by the Order.

(3) An Order made under sub-section (1) shall be in force six months only, but the Central Government may by a like Order, extend it for any period not exceeding six months if it is satisfied that in the public interest it is necessary or expedient so to do.

(4) Upon the issue of an Order under sub-section(1), -

(a) no employer in relation to an establishment to which the order applies shall commence any lock-out;

(b) any lock-out declared or commenced whether before or after the issue of the order by any employer in relation to an establishment to which the order applies shall be illegal.”

For invoking such provision, a general or a special order has to be promulgated by the Central Government. However, that is not the case here.

Therefore, seeking invocation of such provision before this Court in the absence of such order is absolutely misconceived.

The rights of the private respondents under respective Industrial Law is protected. However, they have also submitted they are not going to cause any illegal disruption in the service.

Therefore, no further order need be passed in this regard.

However, in the event any illegal disruption is caused and the petitioner is constrained to file a complaint before police authority, the said authority shall take appropriate steps in accordance with law.

With these observations, the writ petition is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(JAY SENGUPTA,J)

SB
Item No. 21