

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-2400/2009 along with

C.P. No.D-1481/2002, 1659/2005, 128/2006, 206/2006, 109,
278, 917, 1271, 2094 of 2007, 594/2008, 1499/2008, 90, 227,
373, 1004, 1029, 1379, 1993 of 2009, 885, 1701, 1761 of 2010,
1541/2012, 1586/2012 and 03, 5772& 7018 of 2016

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

18.11.2020

Mr. Abdul Shakoor, advocate for the petitioner in CP
No.2400/2009
Mr. Aijaz Ahmed, advocate for the Telenor Pakistan (Pvt.) Ltd.
Mr. Bilal A. Khilji, Assistant Attorney General
Mr. Miran Muhammad Shah, A.A.G
Mr. Farmanullah Khan, advocate for the respondent
Mr. Ali Akbar Sehto, advocate for the PTA
Mr. Muhammad Ishaque Memon, advocate for the respondent
No.2.
Mr. Imdad Ali Sehto, advocate for the Zong/Mobilink
Mr. Dhani Buksh Lashari, advocate for respondent SBCA

Other than C.P. No.D-1659 of 2005 and C.P. No.D-03 of 2016, the captioned Petitions otherwise concern the installation of Base Trans-Receiver Stations ("BTSS") and their backup generators or other supporting infrastructure. As those two aforementioned Petitions relate to an entirely different subject, the Office is directed to detag them from this bunch and also to make note that C.P No.D-1659 of 2005 already stands disposed of in terms of the Order made in that matter as far back as 10.05.2006, and may be consigned accordingly.

Whilst the majority of the remaining Petitions have been filed by concerned persons or associations espousing their grievance as against the installation of BTSS at various sites, including atop residential buildings, it transpires that three Petitions, being C.P Nos. D-917 of 2007, D-1499 of 2008 and D-90 of 2009 have been filed by telecommunication companies assailing notice/orders made for removal of their existing infrastructure, and ought to proceed independently. As such, the office is directed to also separate those three Petitions, which may be then listed in Court together on a date to be fixed by the Office.

As for the remaining Petitions, learned counsel for the Petitioner in C.P No. D-2400 of 2009 and counsel appearing therein for the Respondent have drawn our attention to a Statement filed on 16.07.2019 by the Office of the Advocate General, Sindh, whereby a Revised Policy/Guide Lines for installation of BTS (Base Trans-Receiver Station) Tower for Mobile Telephone Networks dated 03.08.2015 (the "**Revised Policy**") has been placed on record, which *prima facie* has been formulated in pursuance of earlier orders made by this Court in said Petition. Certain provisions of the Revised Policy have been cited, whereby a committee has apparently been constituted for granting approval/permission for establishment of BTS Towers, gen-sets and radio equipment, and a complaint redressal mechanism has also been prescribed. In that regard, Clause-8(v and vi) of the Revised Policy read as follows:-

"v. Revise Policy will be applicable for BTS sites being established after issue date of the new policy. All existing BTSs will not be affected by the new policy, except the BTSs having complaint from Local Council (concerned)/residents.

vi. All complaints regarding BTS (Tower, Genset or Radio equipment) will be referred to SBCA approving Committee for resolution."

As such, the Revised Policy was said to be applicable in the cases of existing BTS sites predating its issuance, but where a complaint from a local council or residents was pending, which could be referred to the SBCA approving committee for resolution. Counsel for the SBCA has affirmed that such jurisdiction vests with the aforementioned committee and the pending Petition could be treated as pending complaints and could be attended to and resolved accordingly. Learned counsel for the Petitioner in C.P No.2400 of 2009 expressed satisfaction with that suggestion and sought disposal of the matter accordingly. Whilst representation on behalf of the Petitioners in the other connected petitions was found warranting, in view of the analogous nature of those matters, we are of the view that the same methodology may be followed in respect thereof for addressing the grievances raised. Under such circumstances, other than the specified Petitions detagged/separated herein above, the remaining Petitions all stand disposed of alongwith all the listed and pending applications with

the directions to SBCA to treat the Petitions as complaints for consideration and resolution by the SBCA approving Committee in accordance with the Revised Policy after affording proper opportunity of hearing to the Petitioners as well as concerned telecommunication companies/ operators whose BTSs are involved, and fulfilment of all codal formalities. Mr. Ejaz Ahmed counsel, representing one of the cellular operators, has submitted that certain objections have been raised as regards the Revised Policy. As such, it is observed that the disposal of the Petitions is without prejudice to the right of an aggrieved party to assail the Revised Policy and agitate such objections through another appropriate proceeding. Let a copy of this order be placed in all the listed Petitions.

JUDGE

JUDGE