



2023:DHC:9286-DE



IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment delivered on: 22nd December, 2023*

+ **LPA 721/2018 & CM APPL. 53526/2018**

**TELECOM REGULATORY AUTHORITY
OF INDIA**

..... Appellant

versus

KABIR SHANKAR BOSE & ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Aman Lekhi, Sr. Adv. with
Mr. Ankur Sood, Mr. Aniket &
Ms. Romila Mandal, Advs.

For the Respondent : Mr. Aditya Singh Deshwal & Mr. Abhijeet
Upadhyay, Advs.

**CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

AMIT MAHAJAN, J

1. The present appeal, under Clause 10 of the Letters Patent, is filed by the Telecom Regulatory Authority of India (hereafter 'TRAI'), being aggrieved by the judgment and order dated 20.11.2018, passed by the learned Single Judge of this Court in

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W.P.(C) 12388 of 2018 titled as *Telecom Regulatory Authority of India v. Kabir Shankar Bose* (hereafter '**impugned judgment**').

2. The aforementioned writ petition was filed by the TRAI challenging the order dated 12.09.2018, passed by the Central Information Commission (**CIC**). The learned CIC, by its order dated 12.09.2018, had directed TRAI to collect the information sought by Respondent no.1 under the Right to Information Act, 2005 (**RTI Act**).

BRIEF FACTS

3. Respondent no.1 filed an application under the RTI Act seeking the following information:

"1. Whether my Vodafone no. 9999822445 has been placed under surveillance or tracking or tapping by any agency

2. Under whose direction and by which agency my phone has been placed under surveillance or tracking or tapping

3. All the dates on which my phone no. 9999822445 was placed under surveillance or tracking or tapping"

3. The Central Public Information Officer (**CPIO**), TRAI informed Respondent no.1 that the information sought was not available with the TRAI. It was further stated that the RTI Act does not require the Public Information Officer (**PIO**) to collect the information from other entities, and since the information was not held by the TRAI, it was not in a position to provide the same.



4. Respondent no.1 filed an appeal against the decision of the CPIO before the Appellate Authority. The Appellate Authority upheld the view taken by the CPIO by its order dated 21.07.2017.

5. The second appeal filed by Respondent no.1 before the CIC was allowed by an order dated 12.09.2018, whereby the TRAI was directed to collect the information from the concerned telecom service provider and furnish the same to Respondent no.1.

6. The writ petition filed by the TRAI, impugning the order dated 12.09.2018 passed by the CIC, was dismissed by the learned Single Judge by the impugned judgment, which led to filing of the present appeal under the Letters Patent.

7. The learned Single Judge noted that the information sought by Respondent no.1 is undoubtedly available with the service provider, which is not a public authority under the RTI Act, however, since the TRAI is regulating telecom services, it is required to collect the information from the service provider and provide the same to Respondent no.1.

8. The learned Single Judge relied upon the judgment passed by this Court in the case of ***Poorna Prajna Public School v. Central Information Commission & Ors.: 2009:DHC:4086***, whereby it was held that if a public authority has a right and is entitled to access information from a private body, under any other law, it is “information” as defined in Section 2(f) of the RTI Act. It was further



held that the term “held by the or under the control of the public authority”, used in Section 2(j) of the RTI Act, includes information, which the public authority is entitled to access under any other law from the private body. It was held that a private body need not be a public authority, and that it was the obligation of the public authority to get the information from the private body and furnish the same to the applicant.

9. The learned Single Judge also relied upon Section 12 of the Telecom Regulatory Authority of India Act, 1997 (**TRAI Act**) and held that the TRAI has the power to call for any information, conduct investigations etc., whenever the authority considers it expedient to do so. It was, therefore, held that the TRAI had the power to call for information from Vodafone in terms of the provisions of the TRAI Act.

SUBMISSIONS

10. Mr. Aman Lekhi, learned senior counsel for the TRAI, submitted that the appellant neither holds the information sought for nor does it have any dominion over the same.

11. He further submitted that dominion over the information by a public authority, is a pre-condition for any application under the RTI Act.

12. He contended that the reliance placed on Section 12 of the TRAI Act, by the learned Single Judge, is misplaced. He stated that



in terms of Sections 12 and 13 of the TRAI Act, the authority can only call for information that relates to its functions under Section 11 of the TRAI Act.

13. He argued that the information in relation to surveillance is outside the jurisdiction of the TRAI. The functions of the TRAI under the TRAI Act are restricted to the functions cited in Section 11 of the TRAI Act, and the information in regard to the surveillance of phones has categorically been kept out of the purview of the same. The surveillance over the phone is done under the directions of the Central Government or the State Government, as the case may be, based on the request by the investigating agencies, and is governed by the various guidelines framed from time to time under the orders passed by the Hon'ble Apex Court.

14. He further contended that in terms of the Indian Telegraph Rules, 1951, the information regarding interception can only be shared with the designated officer. He also stated that the action for surveillance is based on the request initiated by investigating agencies and on directions issued by the Home Ministry of the Central Government or the Home Department of the State Government.

15. Mr. Aman Lekhi further submitted that any interception of the telephone in terms of Section 5(2) of the Indian Telegraph Act, 1885, would, even otherwise, be exempted under Section 8(a) of the RTI Act. Section 8(a) of the RTI Act exempts any information from the



ambit of the RTI Act, the disclosure of which would prejudicially affect the security, integrity, and strategic interest of the country.

16. He further relied upon Section 8(h) of the RTI Act, which exempts information that would impede the process of any investigation.

17. He submitted that the information sought by Respondent no.1 squarely falls in the exempted category and is outside the ambit of Section 6 of the RTI Act.

18. He relied upon the judgment passed by the Hon'ble Apex Court in *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal : (2020) 5 SCC 481*, in order to bolster his argument that the existence of dominion over the information by a public authority is a pre-condition for any application under the RTI Act.

19. He also relied upon the judgment passed by the Hon'ble Apex Court in *Central Board of Secondary Education and Another v. Aditya Bandopadhyay and Others : (2011) 8 SCC 497*, to contend that the RTI Act should not be allowed to be misused or abused, to become a tool to obstruct national development and integration, or to destroy peace, tranquillity or harmony among its citizens.

20. He further submitted that the reliance placed by the learned Single Judge on the judgment in the case of *Poorna Prajna Public School v. Central Information Commission & Ors. (supra)* is



misplaced. He submitted that the said case dealt with a different situation where the information sought, even though related to a private entity, was available with the public authority. In the present case, the information sought for is not available, and the TRAI is thus not obligated to collect the information, which is clearly outside the scope of its obligation under the TRAI Act.

21. He submitted that the judgment in the case of ***Poorna Prajna Public School v. Central Information Commission & Ors.*** (*supra*), even otherwise, is contrary to the law laid down by the Hon'ble Apex Court in ***Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*** (*supra*) and ***Central Board of Secondary Education and Another v. Aditya Bandopadhyay and Others*** (*supra*).

22. The learned counsel for Respondent no.1, on the other hand, submitted that the learned Single Judge rightly relied upon Section 12 of the TRAI Act to hold that the TRAI has the power to call for information from telecom service providers under the provisions of the TRAI Act. He also relied on the judgment passed by this Court in the case of ***Poorna Prajna Public School v. Central Information Commission & Ors.*** (*supra*).

23. He submitted that Section 2(f) of the RTI Act specifically provides that the information related to any private body, which can be accessed by a public authority under any other law for the time



being in force, falls within the definition of “information” on which the appellant has a right.

24. He submitted that Section 12(1)(a) of the TRAI Act, empowers the TRAI to call for any information from telecom service providers related to their affairs. He further submitted that Rule 419(A) of the Indian Telegraph Rules, 1951, provides for the cancellation of the licence of the telecom providers for non-observance of the rules during any interceptions. Thus, it is within the functions and powers of the TRAI to seek information from the telecom service providers in regard to the terms and conditions of the licence.

25. He further relied upon Regulation 16 of the Telecom Consumers Complaint Redressal Regulations, 2012 to contend that the TRAI has the power to refer complaints of the consumers to the telecom service providers. The TRAI, therefore, for the enforcement and administration of the RTI Act can seek information from the telecom service providers. He further submitted that in terms of Section 6(3) of the RTI Act, no public authority can decline the request of RTI on the ground that the information sought is held by another public authority. In such circumstances, the public authority is duty-bound to transfer the RTI request to the appropriate public authority.

26. He further submitted that the information sought relates to the life and liberty of Respondent No. 1, and in terms of Section 7(1) of the RTI Act, the same has to be provided within 48 hours.



ANALYSIS

27. Section 2(f) and Section 2(j) of the RTI Act define the meaning of “information” and the “right to information”. The same are set out below:

“2. Definitions.—In this Act, unless the context otherwise requires,—

xxxx

xxxx

xxxx

(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

xxxx

xxxx

xxxx”

Section 2(j)

“2. Definitions.—In this Act, unless the context otherwise requires,—

xxxx

xxxx

xxxx

(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—

(i) inspection of work, documents, records;

(ii) taking notes, extracts or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;



xxxx

xxxx

xxxx”

28. The definition of “information” under the RTI Act, thus, clearly includes any information relating to any private body, which can be assessed by a public authority under any other law for the time being in force. The information may not be presently available or held directly by the public authority, but may be accessed by the public authority from a private body under any other law. At the same time, the restrictions prescribed by any other law would apply and have to be satisfied before any information may be accessed from a private body. The issue in relation to the information that can be accessed from a private body has been the subject matter of debate before this Court as well as the Hon’ble Apex Court in a number of cases.

29. A Constitution Bench of the Hon’ble Supreme Court, in the case of ***Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*** (*supra*) held as under:

20. “Information” as per the definition clause is broad and wide, as it is defined to mean “material in any form” with amplifying words including records [a term again defined in widest terms vide clause (i) to Section 2 of the RTI Act], documents, emails, memos, advices, logbooks, contracts, reports, papers, samples, models, data, material held in electronic form, etc. The last portion of the definition clause which states that the term “information” would include “information relating to any private body which can be accessed by a public authority under any other law for the time being in force” has to be read as reference to “information” not presently available or held by the public authority but which can be accessed by the public authority from a private body under any



other law for the time being in force. The term — “private body” in the clause has been used to distinguish and is in contradistinction to the term — “public authority” as defined in Section 2(h) of the RTI Act. It follows that any requirement in the nature of precondition and restrictions prescribed by any other law would continue to apply and are to be satisfied before information can be accessed and asked to be furnished by a private body.

21. What is explicit as well as implicit from the definition of “information” in clause (f) to Section 2 follows and gets affirmation from the definition of “right to information” that the information should be accessible by the public authority and “held by or under the control of any public authority”. The word “hold” as defined in Wharton's Law Lexicon, 15th Edn., means to have the ownership or use of; keep as one's own, but in the context of the present legislation, we would prefer to adopt a broader definition of the word “hold” in Black's Law Dictionary, 6th Edn., as meaning; to keep, to retain, to maintain possession of or authority over. The words “under the control of any public authority” as per their natural meaning would mean the right and power of the public authority to get access to the information. It refers to dominion over the information or the right to any material, document, etc. The words “under the control of any public authority” would include within their ambit and scope information relating to a private body which can be accessed by a public authority under any other law for the time being in force subject to the pre-imposed conditions and restrictions as applicable to access the information.

22. When information is accessible by a public authority, that is, held or under its control, then the information must be furnished to the information seeker under the RTI Act even if there are conditions or prohibitions under another statute already in force or under the Official Secrets Act, 1923, that restricts or prohibits access to information by the public. In view of the non obstante clause in Section 22 [Section 22 of the RTI Act reads: “22. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of



any law other than this Act.”] of the RTI Act, any prohibition or condition which prevents a citizen from having access to information would not apply. Restriction on the right of citizens is erased. However, when access to information by a public authority itself is prohibited or is accessible subject to conditions, then the prohibition is not obliterated and the preconditions are not erased. Section 2(f) read with Section 22 of the RTI Act does not bring any modification or amendment in any other enactment, which bars or prohibits or imposes precondition for accessing information of the private bodies. Rather, clause (f) to Section 2 upholds and accepts the said position when it uses the expression — “which can be accessed”, that is, the public authority should be in a position and be entitled to ask for the said information. Section 22 of the RTI Act, an overriding provision, does not militate against the interpretation as there is no contradiction or conflict between the provisions of Section 2(f) of the RTI Act and other statutory enactments/law. Section 22 of the RTI Act is a key that unlocks prohibitions/limitations in any prior enactment on the right of a citizen to access information which is accessible by a public authority. It is not a key with the public authority that can be used to undo and erase prohibitions/limitations on the right of the public authority to access information. In other words, a private body will be entitled to the same protection as is available to them under the laws of this country.

23. The Full Bench of the Delhi High Court in its judgment dated 12-1-2010 in Supreme Court of India v. Subhash Chandra Agarwal [Supreme Court of India v. Subhash Chandra Agarwal, 2010 SCC OnLine Del 111 : ILR (2010) 2 Del 1] had rightly on the interpretation of the word “held”, referred to Philip Coppel's work Information Rights (2nd Edn., Thomson, Sweet & Maxwell 2007) [Also, see Philip Coppel, Information Rights (4th Edn., Hart Publishing 2014) pp. 361-62.] interpreting the provisions of the Freedom of Information Act, 2000 (United Kingdom) in which it has been observed : (Subhash Chandra case [Supreme Court of India v. Subhash Chandra Agarwal, 2010 SCC OnLine Del 111 : ILR (2010) 2 Del 1] , SCC OnLine Del para 58)



“When information is “held” by a public authority.—For the purposes of the Freedom of Information Act, 2000, information is “held” by a public authority if it is held by the authority otherwise than on behalf of another person, or if it is held by another person on behalf of the authority. The Act has avoided the technicalities associated with the law of disclosure, which has conventionally drawn a distinction between a document in the power, custody or possession of a person. Putting to one side the effects of Section 3(2) (see para.9-009 below), the word “held” suggests a relationship between a public authority and the information akin to that of ownership or bailment of goods.

Information.—

— that is, without request or arrangement, sent to or deposited with a public authority which does not hold itself out as willing to receive it and which does not subsequently use it;

— that is accidentally left with a public authority;

— that just passes through a public authority; or

— that “belongs” to an employee or officer of a public authority but which is brought by that employee or officer onto the public authority's premises,

— will, it is suggested, lack the requisite assumption by the public authority of responsibility for or dominion over the information that is necessary before it can be said that the public authority can be said to “hold” the information.”

24. Thereafter, the Full Bench had observed : (Subhash Chandra Agarwal case [Supreme Court of India v. Subhash Chandra Agarwal, 2010 SCC OnLine Del 111 : ILR (2010) 2 Del 1] , SCC OnLine Del para 59)

“59. Therefore, according to Coppel the word “held” suggests a relationship between a public authority and the information akin to that of an ownership or bailment of goods.



In the law of bailment, a slight assumption of control of the chattel so deposited will render the recipient a depository (see Newman v. Bourne & Hollingsworth [Newman v. Bourne & Hollingsworth, (1915) 31 TLR 209]). Where, therefore, information has been created, sought, used or consciously retained by a public authority will be information held within the meaning of the Act. However, if the information is sent to or deposited with the public authority which does not hold itself out as willing to receive it and which does not subsequently use it or where it is accidentally left with a public authority or just passes through a public authority or where it belongs to an employee or officer of a public authority but which is brought by that employee or officer unto the public authority's premises it will not be information held by the public authority for the lack of the requisite assumption by the public authority of responsibility for or dominion over the information that is necessary before the public authority can be said to hold the information.”

30. Earlier, a Single Judge of this Court in the case of **Poorna Prajna Public School v. Central Information Commission & Ors.** (*supra*), had held as under:

“13. Information available with the public authority falls within section 2(f) of the RTI Act. The last part of section 2(f) broadens the scope of the term ‘information’ to include information which is not available, but can be accessed by the public authority from a private authority. Such information relating to a private body should be accessible to the public authority under any other law. Therefore, section 2(f) of the RTI Act requires examination of the relevant statute or law, as broadly understood, under which a public authority can access information from a private body. If law or statute permits and allows the public authority to access the information relating to a private body, it will fall within the four corners of Section 2(f) of the RTI Act. If there are requirements in the nature of preconditions and restrictions to be satisfied by the public authority before information can be accessed and asked to be furnished from a private body, then such preconditions and restrictions have to be satisfied. A public



authority cannot act contrary to the law/statute and direct a private body to furnish information. Accordingly, if there is a bar, prohibition, restriction or precondition under any statute for directing a private body to furnish information, the said bar, prohibition, restriction or precondition will continue to apply and only when the conditions are satisfied, the public authority is obliged to get information. Entitlement of the public authority to ask for information from a private body is required to be satisfied.

17. Learned counsel for the petitioner School submitted that the Directorate of Education does not have an access to the minutes of the managing committee. Under Rule 180(i) of the DSE Rules, the private unaided schools are required to submit return and documents in accordance with Appendix 2 thereto and minutes of the managing committee are not included in Appendix 2. Rule 180(i) of the DSE Rules is not the only provision in the DSE Rules under which Directorate of Education are entitled to have access to the records of a private unaided school. Rule 50 of the DSE Rules, stipulates conditions for recognition of a private school and states that no private school shall be recognized or continue to be recognized unless the said school fulfills the conditions mentioned in the said Section. Clause (xviii) of Rule 50 of the DSE Rules reads as under:—

“50. Conditions for recognition.— No private school shall be recognized, or continue to be recognized, by the appropriate authority unless the school fulfills the following conditions, namely—

(i) - (xvii) x x x x x

(xviii) the school furnishes such reports and information as may be required by the Director from time to time and complies with such instructions of the appropriate authority or the Director as may be issued to secure the continue fulfillment of the condition of recognition or the removal of deficiencies in the working of the school;”

18. Under Rule 50(xviii) of the DSE Rules, the Directorate of Education can issue instructions and can call upon the school to furnish information required on conditions mentioned therein being satisfied. Rule 50 therefore authorizes the public authority to have access to information or records of a private body i.e. a



private unaided school. Validity of Rule 50(xviii) of the DSE Rules is not challenged before me. Under Section 5 of the DSE Act, each recognized school must have a management committee. The management committee must frame a scheme for management of the school in accordance with the Rules and with the previous approval of the appropriate authority. Rule 59(1)(b)(v) of the DSE Rules states that the Directorate of Education will nominate two members of the managing committee of whom one shall be an educationist and the other an officer of the Directorate of Education. Thus an officer of the Directorate of Education is to be nominated as a member of the management committee. Minutes of the management committee have to be circulated and sent to the officer of the Directorate of Education. Obviously, the minutes once circulated to the officer of the Directorate of Education have to be regarded as 'information' accessible to the Directorate of Education, GNCTD. In these circumstances, it cannot be said that information in the form of minutes of the meeting of the management committee are not covered under Section 2(f) of the RTI Act.

31. In the aforesaid case, Poorna Prajna Public School was aggrieved by the order passed by the CIC directing the Government of National Capital Territory of Delhi (GNCTD) to provide a copy of the minutes of the meeting of the school management committee to the Applicant. The learned Single Judge of this Court while interpreting Sections 2(f) and 2(j) of the RTI Act held that the Delhi Education School Rules, 1973, empowered GNCTD to issue instructions and call upon the school to furnish the information required.

32. Mr. Lekhi, learned senior counsel for the petitioner, has contended that in ***Poorna Prajna Public School v. Central***



Information Commission & Ors. (*supra*), the information in relation to the school was available with the GNCTD by virtue of the Delhi School Education Act, 1973. He submitted that GNCTD has dominion over the information in question.

33. He has further argued that the judgment of this Court in *Poorna Prajna Public School v. Central Information Commission & Ors.* (*supra*) was pronounced before the judgment passed by the Hon'ble Apex Court in *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal* (*supra*); *Central Board of Secondary Education and Another v. Aditya Bandopadhyay and Others* (*supra*); and *Central Board of Secondary Education and Another v. Aditya Bandopadhyay and Others* (*supra*), even otherwise is not a good law.

34. The Hon'ble Supreme Court while interpreting Sections 2(f) and 2(j) of the RTI Act in no uncertain terms held that the words "under the control of any public authority" referred to in Section 2(j) of the RTI Act would include within their ambit and scope information relating to a private body, which can be accessed by a public authority under any law for the time being in force. However, the same would be subject to any conditions and restrictions that may be applicable to the access of the information under any other acts or regulations in force at the material time. We, therefore, do not agree with the contention of Mr. Lekhi that the judgment in the case of *Poorna Prajna Public School v. Central Information Commission*



& Ors. (*supra*) is no longer good law. In fact, the said view has been accepted by the Constitution Bench of the Hon'ble Supreme Court.

35. As long as the public authority has the right and power to access information under any other law for the time being in force, the same would fall within the meaning of information under the control of any public authority accessible to an applicant in terms of Section 2(j) of the RTI Act.

36. The issue, however, to be considered in the present case is whether the TRAI has any right or power to access information from a private body under any other law for the time being in force. It is contended that in terms of Sections 11 and 12 of the TRAI Act, the TRAI has the power to call for any information in relation to its affairs. Sections 11 and 12 of the TRAI Act read as under:

“Section 11. Functions of Authority .

(1) Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the functions of the Authority shall be to--

(a) make recommendations, either suo motu or on a request from the licensor, on the following matters, namely:--

(i) need and timing for introduction of new service provider;

(ii) terms and conditions of licence to a service provider;

(iii) revocation of license for non-compliance of terms and conditions of licence;

(iv) measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

(v) technological improvements in the services provided by the service providers;



(vi) type of equipment to be used by the service providers after inspection of equipment used in the network;

(vii) measures for the development of telecommunication technology and any other matter relatable to telecommunication industry in general;

(viii) efficient management of available spectrum;

(b) discharge the following functions, namely:--

(i) ensure compliance of terms and conditions of licence;

(ii) notwithstanding anything contained in the terms and conditions of the licence granted before the commencement of the Telecom Regulatory Authority of India (Amendment) Act, 2000, fix the terms and conditions of inter-connectivity between the service providers;

(iii) ensure technical compatibility and effective inter-connection between different service providers;

(iv) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;

(v) lay-down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers of telecommunication service;

(vi) lay-down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;

(vii) maintain register of interconnect agreements and of all such other matters as may be provided in the regulations;

(viii) keep register maintained under clause (vii) open for inspection to any member of public on payment of such fee and compliance of such other requirement as may be provided in the regulations;

(ix) ensure effective compliance of universal service obligations;

(c) levy fees and other charges at such rates and in respect of such services as may be determined by regulations;



(d) perform such other functions including such administrative and financial functions as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act:

Provided that the recommendations of the Authority specified in clause (a) of this sub-section shall not be binding upon the Central Government:

Provided further that the Central Government shall seek the recommendations of the Authority in respect of matters specified in sub-clauses (i) and (ii) of clause (a) of this sub-section in respect of new licence to be issued to a service provider and the Authority shall forward its recommendations within a period of sixty days from the date on which that Government sought the recommendations:

Provided also that the Authority may request the Central Government to furnish such information or documents as may be necessary for the purpose of making recommendations under sub-clauses (i) and (ii) of clause (a) of this sub-section and that Government shall supply such information within a period of seven days from receipt of such request:

Provided also that the Central Government may issue a licence to a service provider if no recommendations are received from the Authority within the period specified in the second proviso or within such period as may be mutually agreed upon between the Central Government and the Authority:

Provided also that if the Central Government having considered that recommendation of the Authority, comes to a prima facie conclusion that such recommendation cannot be accepted or needs modifications, it shall, refer the recommendation back to the Authority for its reconsideration, and the Authority may, within fifteen days from the date of receipt of such reference, forward to the Central Government its recommendation after considering the reference made by that Government. After receipt of further recommendation if any, the Central Government shall take a final decision.

(2) Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the Authority may, from time to time, by order, notify in the Official Gazette the rates at which the



telecommunication services within India and outside India shall be provided under this Act including the rates at which messages shall be transmitted to any country outside India:

Provided that the Authority may notify different rates for different persons or class of persons for similar telecommunication services and where different rates are fixed as aforesaid the Authority shall record the reasons therefor.

(3) While discharging its functions under sub-section (1) or sub-section (2) the Authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(4) The Authority shall ensure transparency while exercising its powers and discharging its functions.

12. Powers of Authority to call for information, conduct investigations, etc.—

(1) Where the Authority considers it expedient so to do, it may, by order in writing,—

(a) call upon any service provider at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require; or

(b) appoint one or more persons to make an inquiry in relation to the affairs of any service provider; and

(c) direct any of its officers or employees to inspect the books of account or other documents of any service provider.

(2) Where any inquiry in relation to the affairs of a service provider has been undertaken under sub-section (1),—

(a) every officer of the Government Department, if such service provider is a department of the Government;

(b) every director, manager, secretary or other officer, if such service provider is a company; or

(c) every partner, manager, secretary or other officer, if such service provider is a firm; or



(d) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (b) and (c),

shall be bound to produce before the Authority making the inquiry, all such books of account or other documents in his custody or power relating to, or having a bearing on the subject-matter of such inquiry and also to furnish to the Authority with any such statement or information relating thereto, as the case may be, required of him, within such time as may be specified.

(3) Every service provider shall maintain such books of account or other documents as may be prescribed.

(4) The Authority shall have the power to issue such directions to service providers as it may consider necessary for proper functioning by service providers.”

37. It is relevant to note the objects and reasons for the enactment of the TRAI Act. The TRAI was established to regulate telecommunication services in the context of the National Telecom Policy, 1994, which amongst other things underscores the importance of achieving universal service and improving the quality of telecom services to world standard. The relevant extract of the statement of the objects and reasons of the TRAI Act reads as under:

“1. In the context of the National Telecom Policy, 1994, which amongst other things, stresses on achieving the universal service, bringing the quality of telecom services to world standards, provisions of wide range of services to meet the customers demand at reasonable price, and participation of the companies registered in India in the area of basic as well as value added telecom services as also making arrangements for protection and promotion of consumer interest and ensuring fair competition, there is a felt need to separate regulatory functions from service providing functions which will be in keeping with the general trend in the world. In the multi-operator situation arising out of opening of basic as well as value added services in



which private operator will be competing with Government operators, there is a pressing need for an independent telecom regulatory body for regulation of telecom services for orderly and healthy growth of telecommunication infrastructure apart from protection of consumer interest.

2. In view of above, it was proposed to set up an independent Telecom Regulatory Authority as a non-statutory body and for that purpose the Indian Telegraph (Amendment) Bill, 1995 was introduced and then passed by Lok Sabha on 6th August, 1995. At the time of consideration of the aforesaid Bill in Raja Sabha, having regard to the sentiments expressed by the Members of Rajya Sabha and of the views of the Standing Committee on Communication which expressed a hope that steps will be taken to set up a Statutory Authority, it is proposed to set up the Telecom Regulatory Authority of India as a statutory authority.

38. Section 11 of the TRAI Act states the functions of the authority. One of the functions which the authority has been assigned to discharge is to ensure compliance with the terms and conditions of the licence. Section 12 of the TRAI Act grants power to the authority where it considers it expedient to do so, to call upon any telecom service provider to furnish in writing such information or explanation relating to its affairs as the authority may require. The power and functions mentioned in Sections 11 and 12 of the TRAI Act are wide and at first blush appear to cover each and every affair of the telecom service providers. The same, however, has to be read keeping in mind the statement of the objects of the Act, and has to be given a meaning that accomplishes the specified objects.

39. Respondent no.1, in the present case, had asked for information as to whether his phone had been placed under



surveillance or tracking or tapping by any agency and if the same has been done, then under whose directions and by which agency. In our opinion, the information sought does not relate to the functions of the TRAI as enumerated in Section 11 of the TRAI Act. Any action for interception / surveillance is undertaken in terms of Section 5(2) of the Indian Telegraph Act, 1885 and Rule 419(A) of the Indian Telegraph Rules, 1951. Section 5(2) of the Indian Telegraph Act, 1885 empowers the concerned Government to direct such action in case the conditions, as specified, are satisfied. Section 5(2) of the Indian Telegraph Act, 1885 and Rule 419(A) of the Indian Telegraph Rules, 1951 are reproduced as under:

“Section 5(2)

“5. Power for Government to take possession of licensed telegraphs and to order interception of messages.—

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xxxx

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(2) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorised in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order:



Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section.”

Rule 419A(5)

“419A. (5) The directions shall specify the name and designation of the officer or the authority to whom the intercepted message or class of messages is to be disclosed and also specify that the use of intercepted message or class of messages shall be subject to the provisions of sub-section (2) of Section 5 of the said Act.”

40. Thus, it is clear that any such act of surveillance or tracking or tapping does not fall under the affairs of telecom service providers, but rather, is carried out under the directions of the concerned Government, in case the authorized officer is satisfied that it is necessary or expedient to do so in the interest of sovereignty and integrity of India, the security of the State, friendly relations with the foreign states or public order, or for preventing incitement to the commission of an offence. It is also relevant here to refer to Section 11(3) of the TRAI Act which specifically provides that while discharging its functions under Sub-Sections (1) and (2), the authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with the foreign states, public order, decency or morality.

41. Section 11 of the TRAI Act defines functions to be discharged by the TRAI. On a bare perusal of the functions, it is clear that the same are in terms of the objects sought to be achieved by the TRAI Act. Section 11(1)(b)(i) of the TRAI Act though mentions one of the



functions to be discharged is to ensure compliance of terms and conditions of the licence, the same in our opinion, cannot be read broadly so as to include each and every action taken by the telecom service providers. The same has to be given a meaning in conformity with the object sought to be achieved by the TRAI Act.

42. In terms of Section 12 of the TRAI Act, the authority can call for any information and conduct investigations relating to the affairs, if it considers it expedient to do so. The Hon'ble Apex Court in ***Hotel Sea Gull v. State of West Bengal And Others : (2002) 4 SCC 1*** interpreted the expression “expedient” and held that the word “expedient” would comprise whatever is suitable and appropriate for any reason for the accomplishment of the specified object.

43. To hold that asking for information in relation to interception or tracking or tapping of a phone would be within the power of TRAI under Section 12 of the TRAI Act, would not be in conformity with the functions specified in Section 11 of the TRAI Act. Any contrary view would give the authority unbridled power to call for information and interfere with the functions of telecom service providers, and also would not be in consonance with the objects sought to be achieved by the TRAI Act. As referred to above, the authority was established for the purpose of regulating telecom services to protect the interest of service providers and consumers in the telecom sector, and to promote and ensure orderly growth of the sector.



44. Another aspect as rightly pointed out by Mr. Lekhi, learned senior counsel, which cannot be lost sight of is that any information in relation to interception or tapping or tracking of a phone as ordered by the concerned Government under Section 5(2) of the Indian Telegraph Act, 1885, may attract the exemption under Section 8 of the RTI Act. Section 8(1)(a) and Section 8(1)(h) of the RTI Act read as under:

“Section 8. Exemption from disclosure of information.

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,--

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;”

45. Any order passed by the concerned Government in relation to interception or tapping or tracking of a phone is passed when the authorized officer is satisfied that it is necessary or expedient so to do in the interest of sovereignty and integrity of India, the security of the State, friendly relations with the foreign states or public order or for preventing incitement to the commission of an offence. Such order, therefore, by its very nature may have been passed in the process of investigation. In a given case, the disclosure of any such information, therefore, may impede the process of investigation, and may be construed to prejudicially affect the sovereignty and integrity of India, the security, the strategic, scientific, and economic interest of the State, relations with the foreign states or lead to incitement of an



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offence, and would therefore be exempted from disclosure under terms of Section 8 of the RTI Act.

46. In view of the above, the present appeal is allowed and the impugned judgment, passed by the learned Single Judge, in W.P.(C) 12388 of 2018 is set aside.

47. All pending applications stand disposed of.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

DECEMBER 22, 2023

KDK/SK/UG/SSH

Signature Not Verified

Digitally Signed
By: HARMINDER KAUR
Signing Date: 22.12.2023
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