

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 23.10.2013
Judgment pronounced on : 25.10.2013

+ W.P.(C) 2794/2012
TELECOM REGULATORY AUTHORITY OF INDIA
..... Petitioner
Through: Mr Saket Singh, Adv.

versus

YASH PAL Respondent
Through: Respondent in person.

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

The respondent Yashpal applied to the CPIO of the petitioner-
Telecom Regulatory Authority of India (TRAI), seeking the following
information:-

“1. Certified copy of the call details of the following numbers. Call details should include incoming as well as outgoing details. Registration details of the following numbers (name, address, date of activation, etc).

- a) 9210023535 (From April 2006- till date).
- b) 9716682799 (From April 2009- till date).
- c) 011-26215249 (From April 2005- till date)

2. Certified copy of the SMS details (send and

received) of the following numbers:-

- a) 9210023535 (From April 2006- till date).
- b) 9716682799 (From April 2009- till date).”

The CPIO having refused to provided the information on the ground that he was seeking a third party information, the respondent preferred an appeal which came to be dismissed by the First Appellate Authority. Being aggrieved, the respondent preferred the Second Appeal before the Central information Commissioner (hereinafter referred to as ‘the Commission’). Vide impugned order dated 29.12.2011, the Commission directed the petitioner to write to the Service Provider concerned in exercise of its power under Section 12(1) of the TRAI Act, 1997, call for the requisite information subject to its availability with the Service Provider and pass on the same to the respondent. Being aggrieved from the aforesaid direction, the petitioner is before this Court by way of this writ petition.

2. Two issues primarily arise for consideration in this petition; the first being as to whether the information sought by the respondent, if available with the Service Provider can be accessed by the petitioner in exercise of the powers conferred upon it by Section 12(1) of TRAI Act

and secondly whether the information sought by the respondent is exempt from disclosure under Section 8(1)(j) of the Right to Information Act.

3. Section 2(f) of the Right to Information Act defines ‘Information’ to mean, inter alia, any information relating to any private body which can be accessed by Public Authority under any law for the time being in force. Section 12(1) of the TRAI Act, 1997 empowers the said Authority, if considered expedient by it to do so, inter alia, to call upon any Service Provider to furnish in writing such information or explanation relating to its affairs as the Authority may require. The functions of the Authority are prescribed in Section 11 of the aforesaid Act. I find merit in the contention of the learned counsel for the petitioner that the power to call for information or explanation from the Service Provider can be exercised by the Authority only if such information or explanation is required for discharge of the functions assigned to it. The aforesaid power, in my view, cannot be exercised for the purposes which are alien to the functions of the Authority specified in Section 11 of the Act. Taking a contrary view will lead to the Authority assuming unbridled power to call for information from a Service Provider irrespective of whether such information is necessary for an efficient discharge of the functions

assigned to the Authority or not. To provide information in respect of the subscribers of mobile telephones such as their names and addresses, their call details and copies of the SMSs sent by them certainly are not amongst the functions assigned to the Authority under Section 11 of the Act. The Authority was established primarily for the purpose of regulating the telecommunication services, adjudicating disputes, protecting the interests of service providers and consumers of telecom sectors and to promote and ensure orderly growth of the said sector. Providing information of the above-referred nature is not one of the purposes for which Authority was constituted. Moreover, the information under Section 12(1) can be sought only in relation to the affairs of the Service Provider and not the affairs of a subscriber to telecom services. The call details of the subscriber and the SMSs sent by him is an information relating to the affairs of the subscriber and to the affairs of the Authority. If I take the view that an information of this nature can be requisitioned by TRAI, that would result in a situation where the Authority is able to violate with impunity the fundamental right of a citizen to his privacy by knowing with whom he has been communicating as well as the contents of the messages sent by him.

Therefore, in my view, the information which the respondent had sought from the CPIO of the petitioner cannot be accessed by the petitioner in exercise of the powers conferred upon it by Section 12(1) of the TRAI Act, 1997.

4. Even if I proceed on the assumption that the information which the respondent had sought from the petitioner can be obtained by TRAI from the Service Provider in exercise of the power conferred upon it by Section 12(1) of the Act, being personal information of the subscriber, who is a third party, and its disclosure having no relationship to any public activity or interest of the subscriber and also because its disclosure would cause unwarranted invasion of the privacy of the subscriber, it is exempt from disclosure under Section 8(1)(j) of the Right to Information Act.

5. The question as to what constitutes ‘personal information’ under Section 8(1) (j) and to what extent it is protected, if it relates to a third party came up for consideration before this Court in *W.P.(C) No. 3444/2012, Union of India vs. Hardev Singh* decided on 23.8.2013 and the following view was taken:-

“It would thus be seen that if the information sought by the applicant is a personal information relating to a third party, it cannot be disclosed, unless the information relates to any public activity

of a third party who has provided the said information or it is in public interest to disclose the information desired by the applicant. It further shows that a personal information cannot at all be disclosed if its disclosure would cause unwarranted invasion of the privacy of the third party which has provided the said information, unless the larger public interest justifies such disclosure.

In UPSC versus R.K. Jain [W.P(C) No.1243/2011] decided on 13.7.2012 the following view was taken by this Court:

“19. Therefore, “personal information” under the Act, would be information, as set forth above, that pertains to a person. As such it takes into its fold possibly every kind of information relating to the person. Now, such personal information of the person may, or may not, have relation to any public activity, or to public interest. At the same time, such personal information may, or may not, be private to the person.

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24. “Public activity” qua a person are those activities which are performed by the person in discharge of a public duty, i.e. in the public domain. There is an inherent public interest involved in the discharge of such activities, as all public duties are expected to be discharged in public interest. Consequently, information of a person which is related to, or has a bearing on his public activities, is not exempt from disclosure under the scheme and provisions of the Act, whose primary object is to ensure an informed citizenry and transparency of information and also to contain corruption. For example, take the case of a surgeon employed in a Government Hospital who performs surgeries on his patients who are coming to the government hospital. His personal information, relating to discharge of his public duty, i.e. his public activity, is not exempt from disclosure under the Act.

27.... whenever the querist applicant wishes to seek information, the disclosure of which can be made only

upon existence of certain special circumstances, for example- the existence of public interest, the querist should in the application (moved under Section 6 of the Act) disclose/ plead the special circumstance, so that the PIO concerned can apply his mind to it, and, in case he decides to issue notice to the concerned third party under Section 11 of the Act, the third party is able to effectively deal with the same. Only then the PIO/appellate authority/CIC would be able to come to an informed decision whether, or not, the special circumstances exist in a given case.

28. I may also observe that public interest does not mean that which is interesting as gratifying curiosity or love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their rights or liabilities are affected...

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34. It follows that the „privacy“ of a person, or in other words his “private information”, encompasses the personal intimacies of the home, the family, marriage, motherhood, procreation, child rearing and of the like nature. “Personal information”, on the other hand, as aforesaid, would be information, in any form, that pertains to an individual. Therefore, „private information“ is a part of “personal information”. All that is private is personal, but all that is personal may not be private.”

6. With whom a subscriber communicates and what messages he sends or receives are the personal affairs of a subscriber, disclosure of which is bound to impinge on his privacy. The information sought by the respondent, therefore, was personal information of a third party, exempt from disclosure under Section 8 (1) (j) of the RTI Act.

7. During the course of hearing the respondent, who appeared in person, expressed a grievance that he is being harassed by his daughter-in-law and the information sought by him was required in connection

with various cases instituted by her against him. If that be so, the appropriate remedy available to the respondent would be either to approach the concerned investigating agency, which is looking into the complaint made against him or to apply to the concerned Court at an appropriate stage, for summoning the record of the Service Provider. The respondent expressed an apprehension that by the time his matter reaches the Court, the information required by him may no more be available with the Service Provider since such information is preserved for a limited period. If that be so, the respondent can avail such remedy as is open to him in law for a suitable direction to the Service Provider in this regard, but, seeking such an information under the provisions of Right to Information Act is certainly not an appropriate relief.

8. For the reasons stated hereinabove, the impugned order dated 29.12.2011 passed by the Commission cannot be sustained and the same is hereby set aside. The writ petition stands disposed of. No order as to costs.

V.K.JAIN, J

OCTOBER 25, 2013
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