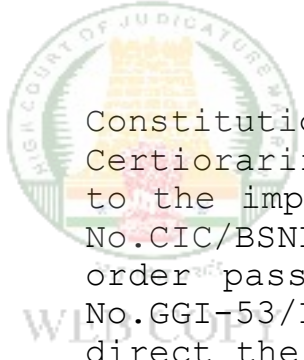




Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 1st respondent made in Appeal No.CIC/BSNLD/A/2017/126065, dated 31.08.2017 and the impugned order passed by the of 3rd respondent dated 17.08.2016 made in No.GGI-53/LC/RTIA/15-16/3 and to quash the same and consequently direct the 3rd respondent herein to furnish the tower locations as detailed in the RTI Application of the Petitioner dated 28.07.2016.

For Appellants : Mr.K.Govindarajan

For Respondent : Mr.A.Saravanan

JUDGMENT

[Judgment of the Court was delivered by **K.RAVICHANDRABAABU, J.**]

This writ appeal is directed against the order of the learned single Judge dated 09.10.2017 wherein and whereby the writ Court by setting aside the order refusing to furnish certain information sought for by the petitioner, directed the respondents 2 and 3 to furnish such details to the petitioner in pursuant to the RTI application, dated 28.07.2016 filed by him.

2.The writ petitioner through an application dated 28.07.2016, sought for certain details regarding tower location in respect of mobile numbers referred to in his application. The said request was rejected by the third respondent through proceedings dated 17.08.2016 by contending that it is a third party information and discloser of the same is exempted under Section 8(i)(j) of the Right to Information Act, 2005. Aggrieved against the same, an appeal preferred before the second appellant also got dismissed. Hence, the writ petition was filed before this Court with the relief as stated supra. The learned single Judge, after considering the facts and circumstances, disposed the writ petition by setting aside the order of the respondents 2 and 3 and with a further direction to furnish those informations to the petitioner.

3.In this writ appeal, the only point raised by the appellants is that the information which is directed to be furnished to the writ petitioner, in fact is not available with the appellants as on date, in view of the clause in the agreement entered between the appellants and licensees for the purpose of running mobile Telecommunication services. It is further contended that the licensee shall maintain all commercial records with regard to the communication exchanged on the network and such records shall be archived for at least one year for scrutiny by the licensor for <https://hseervices.ecourt.gov.in/hseervices> and destroyed thereafter unless directed otherwise by the licensor. It is further contended by the appellants that there is no direction by the licensor in this case

to retain the records for more than one year and as such the communication system will automatically delete the details and consequently direction given by the learned single Judge cannot be complied with for the above technical reasons.

4. The learned counsel for the appellants reiterated the above contentions and submitted that even assuming that the writ petitioner is entitled to get the information, in view of the lapse of time, those informations are not available with the appellants and therefore, the order passed by the learned single Judge cannot be worked out at all.

5. The third respondent has filed an affidavit dated 09.06.2018 by specifically stating as follows:-

"3. I respectfully submit that the information sought out by the petitioners is relates to the period 09.10.2015 to 11.10.2015. The RTI application was made only on 28.07.2016. It is submitted that the details of tower locations of the mobile numbers are stored in software system and the same is available only for the period of one year and by automatic the tower location data's are erased. In view of the same the BSNL is not in a position to comply with the order of the Hon'ble Court. Moreover, as per the license agreement with TRAI, as per clause 44.16 of the agreement entered by this applicant.

"The Licensee shall maintain all commercial records with regarding to communication exchanged on the network. Such records shall be archived for at least one year for scrutiny by the Licensor for security reasons and may be destroyed thereafter unless directed otherwise by the Licensor."

From the above factual position, the BSNL is not a position to provide the details as per the orders of the Learned Single Judge."

6. Thus, it is the clear case of the appellants that the informations sought for by the writ petitioner as such are not available with them.

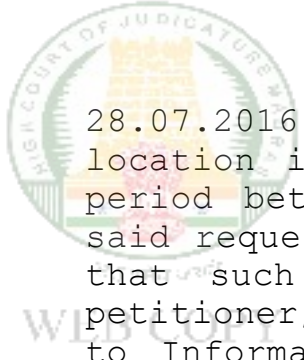
7. The learned counsel for the respondent/writ petitioner however contended that the above stand of the appellants was not the reason stated at the time of passing the original impugned order on 17.08.2016, as the request of the petitioner was rejected only on the reason that it is third party information which cannot be provided. Therefore, he contended that the appellants cannot improve their case now by stating some other reason before this Court.

8. The learned counsel for both sides.

9. There is no dispute to the fact that the writ petitioner made an application under the Right to Information Act on



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28.07.2016 seeking certain informations with regard to the tower location in respect of certain mobile numbers pertaining to the period between 09.10.2015 and 11.10.2015. It is true that the said request was rejected by the appellants 2 and 3 on the reason that such third party information cannot be provided to the petitioner, as it is exempted under Section 8(i)(j) of the Right to Information Act, 2005. Needless to say that when the said order was passed on 17.08.2016, the one year period for retaining the information was not lapsed and therefore, the learned counsel for the respondent herein is not justified in contending that the present stand of the appellants was not the reason stated for rejecting his request. Now, the question before this Court is as to whether the informations as sought for by the writ petitioner could be furnished, even assuming that the appellants fail in this writ appeal. There is no dispute to the fact that no order from any authority was passed at any point of time directing the respondents 2 and 3 to retain the subject matter informations during the pendency of the proceedings before any authority. Thus, it is apparent that due to the lapse of time such information sought for by the writ petitioner got deleted automatically as stated by the appellants. The learned counsel for the appellants sought rely on license agreement for provision of Cellular Mobile Telephone Service, more particularly, clause 44.16, which is extracted hereunder:-

"44.16 The Licensee shall maintain all commercial records with regard to the communications exchanged on the network. Such records shall be archived for at least one year for scrutiny by the licensor for security reasons and may be destroyed thereafter unless directed otherwise by the licensor."

10. Thus, from the perusal of the said clause, it is evident that the information sought by the writ petitioner right now is not available with the appellants and got deleted automatically by passage of one year period. What is not available as on date due to such technical reasons, cannot be directed to be furnished. It is simply an impossibility of performance not due to deliberate human conduct, but due to technical non-feasibility. Therefore, we find that the relief as directed by the learned single Judge, cannot be granted to the writ petitioner since such informations are not available with the appellants as on today. Therefore, without expressing any view on the other merits and contentions, this writ appeal is disposed of, by recording the above said state of affairs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)



1. The Chief Information Commissioner,
Central Information Commission,
(Second Appellate Authority)
August Kranti Bhawan,
Bhikaji Cama Place,
New Delhi - 110 066.

2. The General Manager/HR/
Bharat Sanchar Nigam Ltd.,
No.2, Rathinasamy Road,
Bibikulam,
Madurai - 625 002.

3. The Deputy General Manager/HR,
Central Public Information Officer, (CPIO)
O/o the General Manager,
Bharat Sanchar Nigam Ltd.,
No.2, Rathinasamy Road,
Bibikula,
Madurai - 625 002.

+ 1 cc TO Mr.K.Govindarajan , Advocate in SR No. 67918

+ 1 cc TO Mr.T.C.S.Rajachockalingam , Advocate in SR No. 67804

skn

AE/SV MMS/SAR4/29.06.2018/5P/6C

W.A. (MD) No.1411 of 2017
and
C.M.P (MD) No.10315 of 2017
11.06.2018