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

Date of decision: 20th November, 2018

+ **W.P.(C) 12388/2018 & CAV 1056/2018 & CM APPLs. 48059-48060/2018**

TELECOM REGULATORY AUTHORITY OF INDIA Petitioner

Through: Ms. Maneesha Dhir, Mr. Abhishek Kumar and Mr. Sarahsh Gupta, Advocates.

versus

KABIR SHANKAR BOSE Respondent

Through: Ms. Geeta Luthra, Sr. Advocate with Ms. Kanika Singhal, Ms. Asmita Narula and Mr. Vinay Prakash Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

CM APPL. 48060/2018 (Exemption)

Allowed, subject to all just exceptions.

The application is, accordingly, disposed of.

CAV 1056/2018

1. Since counsel for respondent enters appearance.

2. Caveat stands discharged.

W.P.(C) 12388/2018

3. Vide the present petition, the petitioner seeks direction thereby setting aside the impugned order dated 12.09.2018 passed by Central Information Commission.

4. Learned counsel appearing on behalf of the petitioner submits that the commission has failed to appreciate the fact that the information sought by the respondent is not a part of record of the petitioner. Accordingly, the said information is not required to be furnished under any law or the rules or regulations of the petitioner. The RTI Act does not cast an obligation upon the TRAI to collect or collate such non-available information and then furnish it to an applicant. In the instant case, as per the direction of the commission the TRAI would be required to collect and collate information from the service providers and then furnish it to the respondent.

5. Counsel further submits that if the information is not with the petitioner, they are not obliged to supply the same to the applicants. Learned counsel has relied upon the case of ***Central Board of Secondary Education and Another Vs. Aditya Bandopadhyay and ors. (2011) 8 SCC 497*** whereby the Hon'ble Supreme Court has held as under:-

“63. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the

definitions of 'information' and 'right to information' under clauses(f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non- available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.”

“67. Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and

harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising 'information furnishing', at the cost of their normal and regular duties.

6. Learned counsel submits that for the redressal of the information sought by the respondent, the respondent ought to have approached the authority provided under Telecom Consumer Complaint Redressal Regulations, 2012 and the petitioner does not have the information sought by the respondents. Thus, the impugned order is liable to be set aside.

7. The respondent is Barrister in the Supreme Court of India and he sought information as under:-

- (i) Whether my Vodafone No. 9999822445 has been placed under surveillance or tracking or tapping by any agency
- (ii) Under whose direction and by which agency my phone has been placed under surveillance or tracking or trapping.

For the said information, the respondent simultaneously, sent a separate request to Vodafone India, however, they replied in negative by stating that they are not a "Public Authority" under the RTI Act, 2005.

8. The question for consideration before this Court is that if the service provider declined to furnish the information sought on the ground that the

service provider is not a public authority and does not come under RTI Act, 2005, then, whether the TRAI, who is regulating services, is appropriate authority?

9. The arrangement made by the Telecom Consumer Complaint Redressal Regulations, 2012 is that if the consumers have any complaint towards the service provider, they can make the complaint. If the complaint is not redressed by the said Authority, then he may file the appeal.

10. The case before this Court is that he sought information which is undoubtedly with the Vodafone which is not a public authority under the RTI Act, then the respondent approached CIC stating that the information sought by the respondent be collected from the service provider and the same be furnished to the respondent.

11. Since the respondent does not have mechanism to get the redressal of the information sought, in my considered view, the respondent has rightly approached the CIC and by impugned order dated 12.09.2018, the said commission directed the petitioner herein to get the information from services provider and furnish the same to the respondent.

12. This issue came before this Court whether the information which is not available with the public authority can be provided as per the Act and as per the settled law if the information is not with the Public Authority, the said authority is not obliged to provide the information.

13. In case of ***Poorna Prajna Public School Vs. Central Information Commission & Ors. in WP(C). No. 7265/2018 decided on 25.09.2018,*** whereby this Court has held as under:-

“8. Information as defined in Section 2(f) means details or material available with the public authority. The later portion of Section 2(f) expands the definition to include details or material which can be accessed under any other law from others. The two definitions have to be read harmoniously. The term “held by or under the control of any public authority” in Section 2(j) of the RTI Act has to be read in a manner that it effectuates and is in harmony with the definition of the term “information” as defined in Section 2(f). The said expression used in Section 2(j) of the RTI Act should not be read in a manner that it negates or nullifies definition of the term “information” in Section 2(f) of the RTI Act. It is well settled that an interpretation which renders another provision or part thereof redundant or superfluous should be avoided. Information as defined in Section 2(f) of the RTI Act includes in its ambit, the information relating to any private body which can be accessed by public authority under any law for the time being in force. Therefore, 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. The term “held by the or under the control of the public authority” used in Section 2(j) of the RTI Act will include information which the public authority is entitled to access under any other law from a private body. A private body need not be a public authority and the said term “private body” has been used to distinguish and in contradistinction to the term “public authority” as defined in Section 2(h) of the RTI Act. Thus, information which a public authority is entitled to access,

under any law, from private body, is information as defined under Section 2(f) of the RTI Act and has to be furnished.”

14. Thus, it is settled that an interpretation which renders another provision or part thereof redundant or superfluous should be avoided. Information as defined in Section 2 (f) of the RTI Act includes in its ambit, the information relating to any private body which can be assessed by public authority under any law for the time being in force. Therefore, 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. Thus, it is obligation on the public authority to get the information from the private body and furnish the same to the applicant.

15. Under Section 12 of the TRI Act, 1997, the petitioner has power to call for any information, conduct investigations, etc., where, the authority considers it expedient so to do, it may by order in writing. It cannot be said that the petitioner has no power to call information from the private body i.e. Vodafone India. Admittedly, the petitioner authority is regulating the services in India.

16. It is not in dispute that the petitioner has sought information from the Vodafone Authority which was denied on the ground that it is a private body and it does not come under the purview of RTI Act, 2005, thus, the respondent/applicant cannot be left remediless in view of the powers of the petitioner.

17. Since the service provider i.e. Vodafone has not furnished the information sought by the respondent, then the said respondent approached the

TRAI for the said purpose. Though, it is the case of the petitioner that the information sought by the respondent in his RTI application is not available in their record, therefore the respondent can seek the information from the service provider under Regulations, 2012 and the same may be furnished to the respondent, but I find no substance in the submissions of the petitioner.

18. In view of the above discussion and legal position, I found no illegality in order dated 12.09.2018 passed by Central Information commission.

19. There is no merit in the present petition.

20. Accordingly, the same is dismissed.

CM APPLN. 48059/2018

21. In view of the order passed in the writ petition today, this application has been rendered infructuous and the same is disposed of, as such.

SURESH KUMAR KAIT, J

NOVEMBER 20, 2018

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