

# Telecom Regulatory Authority Of India vs Kabir Shankar Bose & Ors on 9 August, 2021

**Author: Jyoti Singh**

**Bench: Chief Justice, Jyoti Singh**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA 721/2018

TELECOM REGULATORY AUTHORITY OF INDIA..... Appellant

Through: Ms. Maneesha Dhir, Mr. Abhishek Kumar & Mr. Saransh Gupta, Advocates

versus

KABIR SHANKAR BOSE & ORS

..... Respon

Through: Ms. Kanika Singh, Advocate for R-  
Mr. Abhay Prakash Sahay, Central Government  
Standing Counsel with Ms. Mannu Singh,  
Mr. Kunal Dhawan & Mr. Vivek Singh,  
Advocates for R-2 & R-3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% 09.08.2021 Proceedings have been conducted through video conferencing. CM APPL.11872/2021 (Stay) in LPA 721/2018 Present application has been filed on behalf of the Appellant seeking stay of the impugned judgement dated 20.11.2018 passed by the learned Single Judge in W.P.(C) 12388/2018 (Annexure A-1 to the memo of this Appeal).

Learned counsel for the Appellant/Applicant contends that the learned Single Judge has erroneously upheld the order dated 12.09.2018 passed by the Central Information Commissioner (CIC). The order passed by the CIC is contrary to the provisions of law inasmuch as the Law Enforcement Agencies are authorised to intercept the phones and any disclosure of the said information cannot be insisted upon by the CIC. Any direction for interception of a message is given as per Section 5 of the Indian Telegraph Act, 1885 read with Rules 419 and 419A of the Indian Telegraph Rules, 1951 and the direction cannot be issued except by an order made by the Secretary to the Government of India in the Ministry of Home Affairs in case of Central Government and by Secretary to the State Government in the Home Department in case of the State Government. Therefore, any data pertaining to phone tapping is neither available nor can be collected by Telecom Regulatory Authority of India (TRAI) as a public Authority and furnished to the Respondent.

It is further contended that such information falls under Section 8 of the Right to Information Act, 2005 (RTI Act) and is also exempted from disclosure, as the same would prejudicially affect the sovereignty and the integration of the Nation. Learned counsel submits that subsequent to the impugned judgement, TRAI is receiving numerous applications seeking disclosure of information relating to phone call tapping/interception, and placing reliance on the said judgement, CIC is passing directions to TRAI to furnish the information. The contention is that TRAI is not a repository of any such information and nor can it call upon the service providers to furnish the information, as Section 12(1) of Telecom Regulatory Authority of India Act, 1997 (TRAI Act) empowers the TRAI to call upon a service provider to furnish only such information as is considered necessary for discharge of the functions assigned to it. In these circumstances, it is prayed that the operation of the impugned judgement be stayed during the pendency of the present Appeal where the impugned judgement of the learned Single Judge is under challenge.

Learned counsel for Respondent No. 1 opposes the grant of stay against the impugned judgement and defending the judgement, submits that the information sought is required to be provided by the Appellant under the provisions of the RTI Act and the CIC has rightly issued directions to the Appellant to collect information from the concerned service provider and furnish the same to the Appellant.

We have heard learned counsels for the Appellant and looked at the provisions of the TRAI Act as well as the RTI Act.

It is pertinent at this stage to refer to the information sought by Respondent No. 1 under the RTI Act, 2005, which is as follows:-

- "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."

In response to the aforesaid information sought by Respondent No. 1, the Central Public Information Officer (CPIO) had given a reply dated 06.07.2017 (Annexure A-3 to the memo of this Appeal), conveying to the Respondent herein (original applicant) that the information sought by the Applicant therein was not available with TRAI and may be available with the service provider. It was also informed that the RTI Act does not require the Public Information Officer to collect information from other entities and is only required to supply information as held by the said Public Authority.

Being aggrieved and feeling dissatisfied with the aforesaid reply of the CPIO, First Appeal was preferred under Section 19(1) of the RTI Act. First Appeal was disposed of by the Appellate Authority vide order dated 21.07.2017 (Annexure A-5 to the memo of this Appeal) reiterating that

the information sought was not maintained by TRAI and could not be provided. Second Appeal preferred by Respondent No. 1 under Section 19(3) of the RTI Act before the CIC was allowed vide order dated 12.09.2018 (Annexure A-9 to the memo of this Appeal) and the following directions were passed:-

"....

8. The Commission is of the view that the respondent no.1 should collect information from the concerned service provider (as sought by the appellant in his RTI application) and the same should be furnished to the appellant. Decision:

9. The respondent no.1 is directed to comply with para no. 8 above, within 5 days from the date of receipt of this order.

10. The show cause issued against respondent nos. 2 and 3 are dropped.

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The order of CIC was challenged by the Appellant before the learned Single Judge in writ petition being W.P.(C) 12388/2018, which was dismissed by the learned Single Judge vide judgement and order dated 20.11.2018 (Annexure A-1 to the memo of this Appeal).

The response of the Appellant to the RTI Application filed by Respondent No. 1 indicates that the information sought by Respondent No.1 is not available with the Appellant and may be available with the service provider. If information is not available with TRAI, it is obvious that the same cannot be furnished by the Appellant. There is prima facie merit in the contention that under the TRAI Act, the powers of the Appellant to call upon the service providers to furnish information is limited and circumscribed by the provisions of Sections 11 and 12 of the said Act. The contention of the Appellant, that providing of information with regard to phone call tapping/interception is regulated by the provisions of the Telegraphic Act and can only be provided by the Competent Authorities under the said Act, also has prima facie merit.

In view of the aforesaid, we are of the view that the Appellant has made out a prima facie case in its favour for grant of interim relief. Balance of convenience is also in favour of the Appellant and if stay of the impugned judgement is not granted, irreparable loss shall be caused to the Appellant. We accordingly direct that there shall be a stay of the operation, implementation and execution of the order dated 20.11.2018 passed by the learned Single Judge in W.P.(C) 12388/2018 (Annexure A-1 to the memo of this Appeal) during the pendency of this Appeal.

The application stands disposed of.

List this appeal under the heading 'For Final Hearing' on 13.12.2021.

CHIEF JUSTICE JYOTI SINGH, 9 AUGUST 2021 ns