

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 9TH DAY OF NOVEMBER 2021 / 18TH KARTHIKA, 1943

WP (C) NO. 13436 OF 2021

PETITIONER:

MALAYIL SAMAD,
AGED 42 YEARS
S/O MAMMATH, HASHIYANO,
THAZHATH KOYILOTH THAZHA (H),
PUTHUPPANAM P.O,
VATAKARA TALUK,
KOZHIKODE DISTRICT (SUB INSPECTOR OF POLICE COASTAL
POLICE STATION, THALASSERY, TEMPLE GATE P.O. TEMPLE GATE
KANNUR DISTRICT-670 102)

BY ADVS.
ZUBAIR PULIKKOOL
K. SEENA

RESPONDENTS:

- 1 GENERAL MANAGER,
BHARATI AIRTEL LTD, SL AVENUE,
NH BYPASS, KUNDANNOOR JN,
MARADU P.O. COCHIN-682 304.
- 2 NODAL OFFICER,
BHARATI AIRTEL LTD,
SL AVENUE, NH BYPASS,
KUNDANNOOR JN,
MARADU P.O. COCHIN-682 304.
- 3 TELECOM REGULATORY AUTHORITY OF INDIA,
REP. BY SECRETARY,
MAHANAGAR DOORSANCHAR BHAWAN,
JAWAHARLAL NEHRU MARG,
NEW DELHI-110 002.

BY ADVS.
SANTHOSH MATHEW
SRI. JAISHANKAR V. NAIR, CGC
ARUN THOMAS
JENNIS STEPHEN
VIJAY V. PAUL
VEENA RAVEENDRAN

ANIL SEBASTIAN PULICKEL, R1 & R2
DIVYA SARA GEORGE
JAISY ELZA JOE
ABI BENNY AREECKAL
LEAH RACHEL NINAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 09.11.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

W.P. (C) No.13436 of 2021

Dated this the 09th day of November 2021

JUDGMENT

The above writ petition is filed with following prayers:

"i) To issue writ of mandamus or such other writ or direction to the 3rd respondent to direct the 1st and 2nd respondents to issue incoming and outgoing calls details of the petitioner's mobile number 7510757957 for the period from 05/08/2020 to 25/08/2020 including date, time and duration of the call time.

ii) To grant such other reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case."

2. The petitioner is working as Sub Inspector of Police. While the petitioner was working at Coastal Police Station, Thalassery, in connection with an injury sustained to the petitioner, he was under treatment. It is the

case of the petitioner that, on 19.08.2020 his immediate superior officer informed him to go for duty which he refused because of his ailments. It is the case of the petitioner that the said telephonic conversation led unhappy situation. It is the further case of the petitioner that, based on the complaint of the said superior officer, a disciplinary proceedings is initiated against the petitioner. The recorded mobile audio clip of the petitioner has been produced as evidence against the petitioner. According to the petitioner, it is an edited version. Since the duration of the call is not tallying with the produced clip, the petitioner applied for the call records from the respondent company to substantiate his contention in the disciplinary proceedings. The respondent company refused to supply the details. Hence, this writ petition is filed.

3. Heard the learned counsel for the

petitioner and the learned counsel for respondents 1 and 2.

4. The contention of the petitioner is that he wants to get the incoming and outgoing call record details of the petitioner's mobile phone for the period from 05.08.2020 to 25.08.2020. The respondents filed a counter affidavit in which it is specifically stated that there are some legal embargo in furnishing such details to the petitioner. It will be better to extract paragraph No.7 of the counter affidavit filed on behalf of respondents 1 and 2.

7. *It is submitted that the present Writ Petition is also liable to be dismissed for the reason that it has failed to show how the action it wants the 3rd respondent TRAI to perform is within powers of TRAI in the first place. For a writ of mandamus to be issued, the petitioner must establish that there has been a failure to perform a public duty. An entity cannot be said to have a public duty to perform an action if that action is not within its powers in the first place. It is submitted that the Hon'ble High Court of Delhi in **Telecom Regulatory Authority of India v. Yash Pal***

reported in **2013 SCC OnLine 4271** considered the question of whether TRAI has the power to issue directions to a telecom service provider to provide the call details of subscribers. The said case arose as a challenge by TRAI against an order of the Central Information Commissioner as per which it had been asked to seek certain call details from a telecom service provider. TRAI contended that its powers under the Telecom Regulatory Authority of India Act, 1997 did not extend to calling for such call details. Agreeing with TRAI's contention, the Hon'ble High Court of Delhi held as follows:

"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" (emphasis supplied)

5. According to 1st and 2nd respondents, the licence issued to them will not permit them to furnish these details. In such circumstances, this Court is not in a position to issue any direction to 1st and 2nd respondents to furnish the call details to the petitioner.

6. The grievance of the petitioner is that, in the disciplinary proceedings, an edited version of the telephonic conversation is produced. The petitioner is free to approach the disciplinary authority and submit that it is an edited version and substantiate the same by adducing appropriate evidence and by filing petitions before the disciplinary authorities for appropriate relief. In such situation, this Court need not issue any

direction to 1st and 2nd respondents to furnish the call details.

With liberty to the petitioner to approach the disciplinary authority with proper prayer, this writ petition is closed.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

DM

APPENDIX OF WP(C) 13436/2021

PETITIONER EXHIBITS

EXHIBIT P1 TRUE COPY OF THE REPRESENTATION
DATED 20/08/2020 SUBMITTED BEFORE
DYSP, KANNUR.

EXHIBIT P2 THE TRUE COPY OF THE PROCEEDINGS OF
THE DEPUTY INSPECTOR GENERAL OF
POLICE DATED 15/02/2021.

EXHIBIT P3 THE TRUE COPY COMPUTER GENERATED
REQUEST COPY SUBMITTED BEFORE SECOND
RESPONDENT FOR PROVIDING CALL
DETAILS OF THE PETITIONER IN HIS
MOBILE NUMBER 7510757957 FROM THE
SERVICE PROVIDER OF THE RESPONDENT
DATED 22/04/2021.

RESPONDENTS EXHIBITS :

EXHIBIT R1(A) TRUE COPY OF THE DECISION NUMBERED
AS DOTERL/R/2019/80718 OF THE RTI
APPELLATE AUTHORITY OF THE
DEPARTMENT OF TELECOMMUNICATIONS.

//TRUE COPY// PA TO JUDGE