

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 39 OF 2006

AMAR SINGH

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for intervention and directions and office report )

Date: 20/03/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE AR. LAKSHMANAN

HON'BLE MR. JUSTICE C.K. THAKKER

For Petitioner(s)

Mr. P.H. Parekh, Adv.

Mr. Pradeep Rai, Adv.

for M/S P.H. Parekh & Co., Adv.

For Respondent(s) Mr. G.E. Vahanvati, S.G.

Nos.1-2:

Mr. Devadatt Kamat, Adv.

Mr. R.M. Sharma, Adv.

Mr. V.K. Verma, Adv.

Ms. Sushma Suri, Adv.

Nos.3-6:

Mr. Gopal Subramaniam, A.S.G.

Ms. Mukta Gupta, Adv.

Mr. Nikhil Nayyar ,Adv

Mr. Ankit Singhal, Adv.

For Intervenor: Mr. Ghan Shyam Vasisht, Adv.

Mr. Om Prakash Mishra, Adv.

R.No.8: Mr. Soli J. Sorabjee, Sr.Adv.

Ms. Manali Singhal, Adv.

Mr. Abhijat P. Medh, Adv.

Mr. Mustafa Alam, Adv.

Ms. Bhavna Gupta, Adv.

R.Nos.9 & 11: Mr. Manjul Bajpai, Adv.

Ms. Sandhya Singh, Adv.

Ms. Bina Gupta, Adv.

Ms. Inkle Barooah, Adv.

Ms. Rakhi Ray, Adv.

R.No.10: Mr. Ramji Srinivasan, Adv.

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Mr. Priyabrat Tripathy, Adv.

Mr. Mohd. Akram, Adv.

Mr. Rajiv Mehta, Adv.

R.No.12: Mr. Navin Chawla, Adv.

Mr. Rishi Kant, Adv.

R.No.14: Mrs. Madhu Sikri, Adv.

Mr. V.K. Rao, Adv.

Mr. Arijit Majumdar, Adv.

Mr. Mahesh Agrawala, Adv.

Mr. Anil Wani, Adv.

Mr. E.C. Agrawala, Adv.

Mr. Rishi Agrawal, Adv.

Mr. Manu Krishnan, Adv.

UPON hearing counsel the Court made the following

O R D E R

An affidavit dated 7th February, 2006 was filed on behalf of the Government of

India in which after setting out the directions made by this Court in its judgment dated

18th December, 1996 in the case of PUCL Vs. U.O.I. & Ors., the changed scenario

including the changes in the communication technology, changed security scenario,

technological measures to avoid unauthorized interception and the steps taken in the

form of guidelines dated 7th February, 2006 were briefly mentioned. The Government of

India on 7th February, 2006 issued instructions to all the service providers setting out

further steps for ensuring privacy of communication. The said instructions are as

follows:

"Sub: Instructions for ensuring privacy of communications.

and at the same time providing interception facilities to the security agencies, I am

directed to state that the service licensees who have been granted licences

under section 4 of the Indian Telegraph Act, 1885, shall take the following

steps immediately:-

(i) In order to account for all the intimations sent by the security and law

enforcement agencies to the service providers, the service providers will

make 24 x 7 arrangements and arrange to issue acknowledgment letters within two hours for each of the intimations to the concerned security and law enforcement agency, in a sealed cover, on receipt of such intimations for interception.

(ii) The system of designated nodal officers for communicating and receiving the requisitions for interception would also be followed in emergent cases where prior approval of the relevant competent authority has not been obtained.

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(iii) The designated nodal officers of the service providers will forward a list of interception authorizations received by them during the preceding fortnight to the nodal officers of the security and law enforcement agencies and seek their confirmation regarding their authenticity every 15 days.

(iv) The service providers should provide interception facilities for a roamer subscriber to the State Police of home network.

(v) The service providers shall provide CDR requisitioned as per the procedure of Criminal Procedure Code.

(vi) The access service providers can use encryption Algorithm such as A 5/2 for GSM network.

(vii) The names of nodal officers/alternate nodal officers should be communicated to all security agencies along with the details of office and residential telephone numbers, addresses etc. every quarter. In case of any change, it should be communicated as and when such change takes place. Further, the names of the officers authorised by the security agencies to authenticate the proforma for intimation of interception order to the service providers shall be provided by the security agencies.

(viii) Requisition with cutting or overwriting without authentication should

not be entertained.

(ix) Interception facility to the State Police for a non-roamer subscriber outside the territorial boundaries of the State shall be provided with the approval of the Union Home Secretary or with the approval of Home Secretary of the concerned State.

(x) Every fortnight, there should be a meeting of designated nodal officers with the designated officers of Service Providers in order to cross-check the requisitions received by the Service Provider during the previous fortnight.

(xi) Wherever interceptions are issued in emergent cases to carry out the interception in the remote areas or for operational reasons, post confirmation from the competent authority is to be provided within three days of their issue. Such orders are to be issued within the prior approval of the Head or second senior most officer of the agency not below the rank of Inspector General of Police. Further, officer in the rank of Superintendent of Police or equivalent instead of DIG or equivalent, are authorised to authenticate orders issued by the Home Secretary.

2. It is reiterated that:-

(a) The service providers are responsible for actions of their employees.

(b) Service providers will maintain extreme secrecy on their part and take utmost care, including prevention of any leakage in dealing with such correspondence/communications from the authorised agencies. Such communications should be handled by fairly senior level officers, preferably GM/Deputy GM level rank at least in the big cities, specially designated by the service providers as the nodal officers for this purpose.

(c) Service providers will put in place adequate and effective internal checks within their organizations to ensure that - (i) unauthorized interception of communication does not take place and (ii) extreme secrecy and confidentiality of intimation of interception authorization is maintained.

(d) The service providers will ensure proper and adequate verification of the subscribers of the mobile cell phones/SIM cards so as to guard against their possible misuse for terrorist and anti-national activities."

The affidavit further states that in the long terms, the Central Government has also

decided to examine the provisions of the Indian Telegraph Act, 1885 in view of the

changes in technology over time and the increasing role of a large body of service

providers including in the private sector and carry out the necessary amendments to this law.

On considering the matter and hearing counsel for the parties, in terms of

order dated 27th February, 2006, notice was directed to be issued to all service providers and three companies were also added as parties. The Governments were further directed to file affidavits.

Pursuant to the order dated 27th February, 2006, affidavit dated 17th March,

2006 has been filed on behalf of the Ministry of Home Affairs, Government of India,

giving facts and figures as required under the said order. The affidavit, inter alia, states

that out of 439 cases during the period from 01.09.2005 to 28.02.2006 (six months) where

confirmation/ approval was to be obtained from the competent authority within 15 days,

the same was received within the stipulated period of 15 days in 419 cases. Out of the

remaining 20 cases: (a) in 5 cases, confirmation/approval was received two days late, (b)

in respect of the remaining 15 cases, the confirmation/approval was not obtained within

15 days as continuation of such interception was not found necessary. An affidavit on the lines aforesaid has also been filed on behalf of the Delhi Government. The details

received from the eight service providers have been handed over to Court in a sealed

cover and after perusal, the same has been returned to learned Additional Solicitor

General Mr.Gopal Subramaniam.

Our attention has also been drawn to an order dated 20th January, 2006 issued

by the Commissioner of Police which sets out further procedure to be followed in

connection with lawful interception of telephones. The aforesaid deals with the

authorized interception of telephones.

Response, if any, to the suggestions made by Government of India and Delhi

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Government may be filed within three weeks. The service providers and others,

impleaded in terms of order dated 27th February, 2006, may also file their suggestions in

the form of an affidavit within the same time frame.

Broadly, the question under consideration is the strict procedure to be followed

on interception of telephones under the authority of law and further guidelines or

changes in law, rules or regulations that may be required having regard to the changed

scenario of technology and the security angles. The second question sought to be raised

and required to be addressed is the illegal interception, if any, being indulged by the

telephone companies or their officer/officials with or without their knowledge and steps taken to prevent the said malice as was sought to be raised on behalf of the petitioner. The affidavits directed to be filed shall address this issue as well and incorporate suggestions accordingly.

The petitioner may also file his response within two weeks to the affidavits filed by the Delhi Government and the Central Government.

The application for intervention is dismissed.

The writ petition is adjourned for four weeks.

(N. Annapurna)  
Court Master

(V.P. Tyagi)  
Court Master