

(2025) 12 DEL CK 0012

Delhi HC

Case No: Writ Petition (C) No. 10621 Of 2020, Civil Miscellaneous Application No. 72474 Of 2025

Telecom Watchdog Through Its
Secretary Mr. Vikram Mittal

APPELLANT

Vs

Union Of India Through Its
Secretary Department Of
Telecommunications & Ors.

RESPONDENT

Date of Decision: Dec. 5, 2025

Acts Referred:

- Constitution of India, 1950- Article 32, 226
- Code of Civil Procedure, 1908- Section 152
- Bharatiya Nagarik Suraksha Sanhita, 2023- Section 35(3), 193, 528
- Code of Criminal Procedure, 1973- Section 41A, 173, 482
- Indian Penal Code, 1860- Section 380, 411
- Contempt of Courts Act, 1971- Section 2(c), 15, 15(1)(c)

Hon'ble Judges: Devendra Kumar Upadhyaya, CJ; Tushar Rao Gedela, J

Bench: Division Bench

Advocate: Prashant Bhushan, Pranav Sachdeva, Sanyam Jain, P. Rohit Ram, Khushboo Singhal, Pratima N. Lakra, Shailendra Kumar Mishra, Sanjay Lao, Sanjeev Bhandari, N.K. Jha, Aryan Sachdeva, Vikas Kumar, Ayush Kapur

Final Decision: Dismissed

Judgement

Devendra Kumar Upadhyaya, CJ

CM APPL. 72474/2025

1. This miscellaneous application has been moved by the petitioner in W.P.(C) 10621/2020, which was disposed of by a Co-ordinate Bench of this Court by means of the order dated 09.08.2024. The writ petition, in fact, was disposed of with the liberty to the petitioner to file a fresh petition if any new cause of action arises. The order passed on 09.08.2024 in W.P.(C) 10621/2020 is extracted hereinbelow:-

- "1. Learned counsel for the petitioner, on instructions, wishes to withdraw the present writ petition along with the CM APPL. 29426/2021 with liberty to file a fresh petition if a new cause of action arises.*
- 2. With the aforesaid liberty, the present writ petition and the application are disposed of.*
- 3. This Court clarifies that it has not commented on the merits of the controversy."*

2. The petitioner by moving the instant application has prayed that all proceedings pursuant to FIR No.35/2021 registered at Police Station Parliament Street, New Delhi qua the petitioner and its office bearers be set aside. The petitioner has also prayed that the judicial process from abuse and interference be protected and suo moto contempt proceedings be initiated against the respondents and police officers.

3. The W.P.(C) 10621/2020 was filed in the month of June, 2020 as a public interest litigation petition challenging award of contracts by the respondent no.1 - Department of Telecommunications, Government of India to private parties through the respondent no.4 - CSC e-Governance Service India Ltd. (CSC SPV) without resorting to the process of tender. Notice was issued in the said writ petition on 18.12.2020. During the pendency of the said writ petition an FIR bearing no.35/2021 was registered at Police Station Parliament Street, New Delhi under Sections 380 (Theft), 411 (Dishonestly receiving stolen property) and 120B (Criminal conspiracy) of Indian Penal Code, 1860 (IPC). The said FIR was lodged by one Mr. Ashi Kapoor, Deputy Administrator (T-II), Universal Service Obligation Fund, Department of Telecommunications, Ministry of Communications, Government of India with the allegation that Telecom Watchdog (petitioner herein) which is a society registered under the Societies Registration Act had filed W.P.(C) 10621/2020 before this Court in which the petitioner had tendered an additional affidavit attaching therewith certain documents, namely (i) copy of Digital Communications Commission note dated 18.09.2020 for Bihar, (ii) copy of note-sheet for the advance payment to CSC India dated 23.11.2020, (iii) copy of note sheet of draft DCC memo for provision of 5 lakhs FTTH connections of 09.11.2020, (iv) copy of note sheet of approval of DCC for FTTH connections in 4,802 Gram Panchayats in Punjab dated 14.12.2020 and (v) copy of note sheet dated 28.10.2020 on the amendment of Indian Telegraph Rules, 1951.

4. It was alleged in the FIR that the said documents were internal file notings not otherwise available in public domain and that neither telecom watchdog nor any other person had filed any application under Right to Information Act, 2005 for obtaining the copies of these documents. It was also stated in the FIR that no authorisation or consent of the Department of Telecommunication was granted for using copies of the said documents, either to telecom watchdog (petitioner) or any other person not authorised to have access to those documents and, therefore, these documents were removed from the possession of the Department of Telecommunication without consent with a dishonest intention, which has caused wrongful loss to the Department of Telecommunication. It was also alleged in the FIR that these facts constitute a conspiracy to obtain and transmit copies of the said documents through unlawful means in tandem with the persons, who had means to gain physical access to the documents and that the said incident requires thorough investigation by the police, which shall reveal the clandestine fashion in which these documents were transmitted to persons, who were not otherwise entitled to access them.

5. On 18.08.2021, Mr.Vikram Mittal, the Secretary of the petitioner organisation was served with a notice under Section 41A of the Code of Criminal Procedure (CrPC) requiring him to appear at the Police Station in relation to FIR no.35/2021. On issuance of the said notice under Section 41A CrPC a Civil Miscellaneous application being C.M. APPL.29426/2021 was filed by the petitioner seeking direction to initiate suo moto contempt on the ground that lodging of FIR and summoning of the Secretary of the petitioner organisation by issuing notice under Section 41A CrPC amounts to direct and unwarranted interference in the Court process, which is criminal contempt as defined under Section 2(c) of the Contempt of Courts Act, 1971. On the said application notice was issued by this Court vide order dated 02.09.2021. However, by means of an order dated 09.08.2024, the writ petition was disposed of along with pending applications by this Court on the prayer made on behalf of the petitioner to withdraw the petition seeking liberty to file a fresh petition if any new cause of action arises.

6. It has been stated by learned counsel representing the petitioner that once notice in C.M. APPL.29426/2021 for initiating suo moto contempt proceedings was issued by this

Court on 02.09.2021, nothing happened in the investigation of the First Information Report, however on 27.10.2025 the Secretary of the petitioner organisation was served with a notice under Section 35(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) in relation to the aforesaid FIR no. 35/2021 whereby he was required to appear before the Investigating Authority to ascertain facts and circumstances as mentioned in the FIR. The Secretary of the petitioner organisation appears to have submitted a reply to the said notice issued under Section 35(3) of BNSS on 04.11.2025 stating therein that it was his duty to place relevant documents before the Court to protect public interest and that he cannot be threatened or pressurised by the police for doing so. It has also been stated in the said reply by the Secretary of the petitioner organisation that summoning him to disclose the documents already filed in the judicial proceedings [W.P.(C) 10621/2020] amounts to interference with the administration of justice and constitutes criminal contempt.

7. Again on 08.11.2025 a notice was sent to the Secretary of the petitioner organisation under Section 35(3) BNSS in relation to the said FIR requiring him to appear before the Investigating Authority on 10.11.2025 for investigation purposes.

8. It is in the background of the fact that notices to the Secretary of the petitioner organisation have been issued on 27.10.2025 and 08.11.2025 by the Investigating Authority under Section 35(3) of the BNSS that the proceedings of the instant application have been instituted.

9. It has been argued on behalf of the petitioner that on issuance of the notices on C.M. APPL.29426/2021 filed by the petitioner for initiating suo moto contempt, no action against the Secretary of the petitioner organisation or any of its other office bearers was taken by the Investigating Authority in pursuance of the FIR no.35/2021, however once the writ petition was disposed of by means of the order dated 09.08.2024, now taking advantage of the disposal of the said writ petition the Investigating Authority has issued the notices under Section 35(3) of the BNSS, which amounts to extending threat and exert pressure on the petitioner organisation and its office bearers, which in fact amounts to interference in the judicial proceedings and as per Section 2(c) of the Contempt of Courts Act, 1971 such an action on the part of the Police Authorities is tantamount to criminal contempt for the reason that the impugned action interferes with the administration of justice and in fact it obstructs the same. In this background a prayer has been made by the petitioner to quash the proceedings pursuant to the FIR no.35/2021 qua the petitioner and its office bearers. A further prayer has been made to initiate suo moto contempt against the respondents and police officers.

10. Learned counsel for the petitioner in support of the submission that action on the part of the Investigating Authority which has issued the notices under Section 35(3) of BNSS to the Secretary of the petitioner organisation amounts to criminal contempt, relies on the judgment of the Hon'ble Supreme Court in *Common Cause & Ors. v. Union of India & Ors.* [(2015) 6 SCC 332]. Much emphasis has been laid on the observations made by Hon'ble the Supreme Court in para 41 of *Common Cause* (supra) where the Apex Court has observed that if somebody accesses documents that ought to be carefully maintained by CBI, it is difficult to find fault with such a whistleblower particularly when his or her action is in public interest. The petitioner also relies upon *Arnab Ranjan Goswami v. Maharashtra State Legislative Assembly & Ors.* [2020 SCC Online SC 1100] to emphasise that if a citizen of India is deterred from approaching Hon'ble Supreme Court in exercise of his right under Article 32 of the Constitution of India, the same would amount to a serious and direct interference in the administration of justice. It has thus been argued that by issuing the notice under Section 35(3) of the BNSS to the Secretary of the petitioner/organisation in relation to FIR no.35/2021, the police authorities have attempted to pressurise the petitioner only for the reason that it had filed W.P.(C) 10621/2020 in public interest highlighting certain irregularities in award of contract by the Government agencies and, therefore, the action of the police amounts to interference in the administration of justice and hence suo moto contempt proceedings be initiated.

11. The petitioner also places reliance on another Supreme Court judgment in the case of *Indirect Tax Practitioners' Association v. R.K. Jain* (2010) 8 SCC 281.

12. Opposing the application, learned counsel representing the respondent nos.1 and 3 has submitted that once W.P.(C) 10621/2020 itself was disposed of by this Court by means of the order dated 09.08.2024, any miscellaneous application is not maintainable. It has also been argued that the prayer made in this application is in fact in relation to

quashing of the proceedings arising out of the FIR no.35/2021 for which appropriate remedy is available to the petitioner by instituting proceedings under Article 226 of the Constitution of India or under Section 482 of the CrPC - Section 528 of the BNSS seeking quashing of the FIR and the proceedings emanating therefrom.

13. It is also the contention of learned counsel representing the respondent nos.1 and 3 that any miscellaneous application in a writ petition which stands finally disposed of, cannot be maintained for the reason that the liberty granted by this Court by means of the order dated 09.08.2024 was to institute a fresh writ petition, if any new cause of action arises. In this regard, it has been stated that issuance of notice under Section 35(3) of the BNSS to the Secretary of the petitioner organisation may give rise to a fresh cause of action to challenge the proceedings arising out of FIR no.35/2021 and, therefore, the prayer in this respect cannot be entertained by this Court by entertaining the instant miscellaneous application.

14. We have considered the respective submissions made by the learned counsel for the parties and have also perused the records available on this miscellaneous application, however we are unable to agree with the submissions made by the learned counsel for the petitioner regarding maintainability of the instant miscellaneous application for the following reasons:-

A. Once this Court disposed of W.P.(C) 10621/2020 by passing the order dated 09.08.2024, the Court became functus officio and as such as laid down by the Hon'ble Supreme Court in *Ajay Kumar Jain v. State of Uttar Pradesh & Anr.* [2024 SCC Online SC 3677], *Jaipur Vidyut Vitran Nigam Ltd & Ors. v. Adani Power Rajasthan Ltd. & Anr.* [2024 SCC Online SC 313] and *State Bank of India & Ors. v. S.N.Goyal* [(2008) 8 SCC 92], the instant application cannot be legally permitted to be proceeded with.

In *Ajay Kumar Jain* (supra) the law laid down by Hon'ble Supreme Court in *Jaipur Vidyut Vitran Nigam Ltd* (supra) has been quoted with approval and it has clearly been held that a miscellaneous application filed in a disposed of proceedings would be maintainable only for the purpose of correcting any clerical or arithmetical error and that a post disposal application for modification or clarification of order would lie only in rare cases where the order passed by the Court is executory in nature and the directions of the Court may have become impossible to be implemented because of subsequent events. The Apex Court had very clearly held that the Court has no jurisdiction to entertain such an application as no proceedings could be said to be pending before the Court once the proceedings stand terminated by final disposal of the writ petition, be it under Article 32 or Article 226 of the Constitution of India. The Hon'ble Supreme Court has, thus, observed that in such a situation, it is not open to the Court to reopen the proceedings by means of miscellaneous application in respect of a matter which provides a fresh cause of action. The Hon'ble Supreme Court has gone even to the extent of observing that if this principle is not followed there would be confusion and chaos and the finality of the proceedings would cease to have any meaning. The observations made by Hon'ble Supreme Court in *Ajay Kumar Jain* (supra) in paragraphs 11 to 17 are quoted hereunder:-

11. This Miscellaneous Application on the face of it is not maintainable in law.

12. It is high time that this Court says something on the practice of the litigants filing miscellaneous applications in disposed of proceedings and that too after a period of 5 years, 7 years, 10 years.

13. These miscellaneous applications which are being filed on daily basis have something to do with fresh cause of action that might have arisen with a very remote connection with the main proceedings.

14. No miscellaneous application is maintainable in a writ petition to revive proceedings in respect of subsequent events.

15. In fact, the Court has no jurisdiction to entertain such application as no proceedings could be said to be pending before it. When proceedings stand terminated by final disposal of the writ petition be it under Article 32 of the Constitution or Article 226 of the Constitution before the High Court, it is not open to the Court to re-open the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not followed, there would be confusion and chaos and the finality of the proceedings would cease to have any meaning.

16. In the recent past, a co-ordinate bench of this Court observed the following in "*Jaipur Vidyut Vitran Nigam Ltd. v. Adani Power Rajasthan Ltd.*, 2024 SCC OnLine SC 313":-

"We felt it necessary to examine the question about maintainability of the present application as we are of the view that it was necessary to spell out the position of law as to when such post-disposal miscellaneous applications can be entertained after a matter is disposed of. This Court has become functus officio and does not retain jurisdiction to entertain an application after the appeal was disposed of by the judgment of a

three-Judge Bench of this Court on 31.08.2020 through a course beyond that specified in the statute. This is not an application for correcting any clerical or arithmetical error. Neither it is an application for extension of time. A post disposal application for modification and clarification of the order of disposal shall lie only in rare cases, where the order passed by this Court is executory in nature and the directions of the Court may become impossible to be implemented because of subsequent events or developments. The factual background of this Application does not fit into that description."

(Emphasis supplied)

17. Thus, this Court made it abundantly clear that a miscellaneous application filed in a disposed of proceedings would be maintainable only for the purpose of correcting any clerical or arithmetical error. The Court further clarified that a post disposal application for modification or clarification of the order would lie only in rare cases where the order passed by this Court is executory in nature and the directions of the Court may have become impossible to be implemented because of subsequent events or developments."

Enunciating the doctrine of functus officio the Hon'ble Supreme Court in *S.N.Goyal* (supra) has held in respect of Civil Courts that a Judge becomes functus officio when he pronounces, signs and dates the judgment and such judgment are subject only to Section 152 of the Code of Civil Procedure, 1908 (CPC) and provision for review. It will be apposite to note here that Section 152 CPC only permits clerical or arithmetical mistakes in judgment/decrees/orders or errors arising therein from any omission, to be made by the Court either on its own motion or on an application by the parties to the proceedings.

B. What impelled the petitioner to institute the proceedings of instant Miscellaneous application are two notices dated 27.10.2025 and 08.11.2025 issued by the Investigating Authority under Section 35(3) of BNSS requiring the Secretary of the petitioner organisation to present himself for investigation purposes. Such notices have been issued after W.P.(C) 10621/2020 was disposed of by this Court on 09.08.2024 and in terms of the liberty granted by the Court that, if any new cause of action arises the petitioner would be at liberty to institute a fresh petition instead of instituting the proceedings of this miscellaneous application.

C. It is also to be noticed that the substantive prayer made in this miscellaneous application is for quashing the proceedings qua the petitioner emanating from FIR no.35/2021. As a matter of fact, the relief being sought by moving the instant miscellaneous application is for quashing the FIR itself for which appropriate recourse available to the petitioner is to invoke the jurisdiction of this Court under Article 226 of the Constitution of India or under Section 482 of the CrPC/528 of the BNSS. Instead of instituting fresh proceedings, the instant miscellaneous application has been moved in a writ petition, which stood disposed of way back on 09.08.2024 and, therefore, keeping in view the law pertaining to the doctrine of functus officio as discussed above, we have no hesitation to hold that the instant miscellaneous application is not maintainable.

D. We may also note that if any First Information Report has been lodged with the Police, it becomes the statutory duty of the Investigating Authority to conduct the investigation and file a final police report on its completion in terms of Section 173 of the CrPC - Section 193 of the BNSS, either by submitting a charge-sheet or a closure report depending upon the outcome of the investigation. Accordingly, unless and until the FIR or the proceedings arising out of the same are quashed in appropriate proceedings, it is legally impermissible to grant the relief as has been prayed by the petitioner in the instant miscellaneous application.

E. As far as the prayer made by the petitioner for initiation of the suo moto contempt proceedings is concerned, we may note that the prayer clause of this miscellaneous application does not contain the said prayer however while narrating the facts in para 50 of the application it has been prayed that the judicial process be protected from abuse and interference and suo moto contempt may be initiated.

F. Section 15 of the Contempt of Courts Act 1971, provides that this Court may take action on its own motion or a motion made by Advocate General or any other person with the consent in writing of the Advocate General, taking cognizance of the criminal contempt. As per Section 15 (1)(c), in relation to this Court the consent is to be sought from such Law Officer as the Central Government may, by notification published in the official gazette, specify. In terms of Section 15(1)(c), the Central Government by means of a notification dated 18.05.1973 has specified that the Standing Counsel (Criminal) to the Delhi Administration will be the Law Officer for the said purposes and, accordingly, the petitioner for initiating any criminal contempt proceedings ought to have approached the

Standing Counsel (Criminal) to the Delhi Government seeking its consent for initiating the criminal contempt proceedings under Section 15 of the Contempt of Courts Act, 1971. It is not a case where initiation of suo moto contempt proceedings is being sought in any pending proceedings as the proceedings of W.P.(C) 10621/2020 stood terminated on 09.08.2024, when the said writ petition was disposed of with the liberty to the petitioner to file a fresh petition if any new cause of action arises.

15. For the aforesaid reasons, we are of the opinion that the instant miscellaneous application is not maintainable, which is hereby dismissed. We may however make it clear that since the instant miscellaneous application is being dismissed on the ground of maintainability alone, any observations made by us in this order shall have no bearing if any other proceedings are instituted by the petitioner before any competent authority/Court of law.