

COVID-19 data collection Kerala High Court restrains Spinklr from breaching data confidentiality

In April 2020, a division bench of the Hon'ble Kerala High Court comprising of Justice Devan Ramachandran and Justice T R Ravi, issued direction to Spinklr, a US based data analysis company to ensure that it does not misuse sensitive COVID-19 data. The entity entered into a contract with the Government of Kerala to process and analyse data with regard to patients and those susceptible to COVID-19.

The Petitioner alleged that contracts between the Kerala Government and Spinklr did not have adequate safeguard against commercial exploitation of data by Spinklr. It was further alleged that by vesting exclusive jurisdiction with the courts in New York, USA, Kerala Government would have no legal recourse in India in case of a breach by Spinklr. The Petitioners further raised allegations of corruption with regard to the contracts and sought investigation by high powered agencies.

The Kerala Government ensured the Hon'ble Court that adequate safeguards were in place (protectional systems on Amazon Cloud Service) making it impossible for Spinklr or anyone else to breach confidentiality. It was further submitted that Spinklr was not in possession of any data as the same had been re-transmitted to it. Exclusive jurisdiction with courts of New York was justified on the basis of "standard form contract" and urgency.

The Government of India, in its statement submitted to the Hon'ble Court stated that exclusive jurisdiction with courts of New York were unacceptable to it and the Kerala Government, ought to have ensured that its citizens had legal recourse before courts in Kerala. The Central Government further stated that Kerala Government could have approached the Central Government for support and there was no need for it to approach foreign entities.

The Hon'ble Court, after hearing the parties at length, observed that the various allegations made by the Petitioners required comprehensive assessment of all factors, which could only be done after giving the Respondents opportunity to complete their pleadings. The Hon'ble Court, noting the urgent requirement and importance of the software provided by Spinklr in the fight against COVID-19 refrained from passing any order that would in its opinion create a hinderance in fighting against the pandemic.

The Hon'ble Court, confining its focus on ensuring safety of data collected and "*impelled by the singular intent to ensure that there is no "data epidemic" after the COVID-19 epidemic is controlled*" issued the following directions:

1. Government to inform persons that their data is likely to be shared/is shared with Spinklr or a third party for analysis.
2. Consent must be obtained for collecting data.
3. Data collected must be anonymised by the state before allowing Spinklr access. (Anonymisation refers to the an irreversible process applied to data so that the individual to whom such data pertains to cannot be identified)

The Hon'ble Court further injuncted Spinklr from indirectly or directly breaching data confidentiality, disclosing/parting with the data to any third party entity, dealing with the data in conflict with

confidentiality clauses/caveats, advertising or representing to any third party that they have access to such data, not to use or exploit any such data for commercial benefit and directed it to deal with such data in full confidence to the citizens of Kerala. Based on Kerala Governments submission that Sprinklr did not have any data as of now, the Hon'ble Court directed Sprinklr to return any residual or secondary data to the Kerala Government that it may presently have.

In view of the above, we would like to emphasize that, although interim in nature, the order, nevertheless, demonstrates the resolve of the Indian legal system to maintain sanctity of, and to protect, data privacy rights from being compromised in any form and manner. The matter is now listed on 18.05.2020 for further consideration.

Read the order here

– http://highcourtofkerala.nic.in/covid_files/WTPTMP84132148163202024042020.pdf