

PEGASUS CASE

The Supreme Court recently issued pre-admission notice to the Central government on petitions seeking an independent inquiry into the allegations that the government used Israeli-based Pegasus spyware to snoop on citizens. The court made it clear to the government that “none of us want to compromise the defence of the nation... but there are citizens, some of them persons of eminence, who have complained of hacking of their phones”.

After issuing notice, a Bench of Chief Justice of India (CJI) N.V. Ramana, Justices Surya Kant and Aniruddha Bose said it would consider the further course of action, including the formation of a committee to inquire into the allegations, in due time.

The notice was issued after the Solicitor General Tushar Mehta, backed government’s limited affidavit denying all of the allegations. Mr. Mehta said any revelation about any software allegedly used by government to counter terrorism would compromise national security. And the government can never compromise the national security. He made his arguments clear that government won’t divulge any name as such by saying that no government will say which software is used because if we divulge, advantage takers (enemies,terrorists) may take advantage. He clarified that the government was not refusing to reveal anything to anybody at all. He further made it clear that a committee can be set up and that will get the reports regarding the software ,which will further submit its report to the court. Solicitor General of India Tushar Mehta, appearing for the Centre, said that the issue involved aspects of national security and was not simple enough to be addressed through affidavits. He asked if the petitioners will withdraw the petitions if the Government denies using Pegasus.

Mr. Sibal rebutted the affidavit on five points. One, he said it was filed by the Ministry of Electronics and Information Technology and not the Ministry of Home Affairs which authorised surveillance under the law. Secondly, the affidavit skipped the part on whether the government or its agencies used Pegasus at all. Thirdly, he stated that if the government did not get the time to study the petitions and reply to them, then the court should give them the time. Fourthly, he countered that the affidavit did not even say whether the “facts and contentions” in the petitions were right or wrong.

“Finally, and most importantly, we do not want a government who might have used Pegasus to form a committee of experts to inquire into the issue. As far as I am concerned, the issue is simple. If the government says they have used the Pegasus, there is no need for a committee. If the government says they have not used the Pegasus, then too, there is no need for a committee,” Mr. Sibal had reasoned.

The petitioner’s side led by Mr. Sibal repeatedly highlighted that the Union Government has evaded answering the question if it or any of its agencies have ever used the Pegasus spyware. Mr.Sibal on behalf of petitioners side urged the Court to direct the Union to come clean on this spyware issue.