

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI**

Dated 6 May, 2015

**Petition No. 31 of 2014**

Cellular Operators Association of  
India & Ors.

...Petitioners

Versus

Union of India, New Delhi

...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON  
HON'BLE MR. KULDIP SINGH, MEMBER**

For Petitioners : Mr. Navin Chawla, Advocate

For Respondent : Mr. S.S. Shamsbery, Advocate  
Ms. Aparajita Sharma, Advocate

**ORDER**

Cellular Operators' Association of India (COAI) and Association of Unified Access Service Providers of India (AUSPI), the two representative bodies that between them represent all the telecom service providers in the country are petitioners 1 and 2. Joining them in the petition are 16 other telecom service provider companies (petitioners 3 to 18).

Together they challenge certain provisions of the circular dated 9 August 2012 issued by the Department of

Telecommunications (DoT) containing instructions on verification of New Mobile Subscribers. The circular is issued, taking into consideration the recommendations of a joint expert committee, constituted by the DoT in pursuance of the directions of the Supreme Court, vide its judgment and order dated 27.04.2012 in WP(C) No.285/2010. It supercedes a number of earlier instructions (mentioned therein) and mandates the service providers to strictly follow the instructions contained therein.

The petitioners are first aggrieved by the direction to provide to the authorities the *coloured* photograph of the subscribers.

The relevant provision in this regard is contained in subparagraph (i) of paragraph 11 of the circular under the marginal heading "Providing of subscriber database, BTS Location, CDR and CAF". Para 11(i) is as under:

- "(i) The subscriber database submitted to the Licensor and Designated security agencies should contain all the fields mentioned in the **Annexure-II.**"

Annexure-II enumerates the parameters required to be included in the subscriber database furnished by the telecom service provider and at serial no. 30 provides as under:

"Scanned photograph (coloured) of the Subscriber"

It is stated on behalf of the petitioners that it was pointed out to the authorities that a coloured photograph in digitized mode would consume very large space and as a result, the number of CDs required for submission of the subscribers' database would be so large as to become unwieldy and unmanageable both for service providers and the authorities. It was also pointed out that there was no reason for insisting on a coloured photograph and a picture of the subscriber in black & white should equally serve the purpose.

The DoT has accepted the point raised on behalf of the service providers and in paragraph 13 and 14 of the reply filed on its behalf, it is stated as under:

"13. The grievances and the representations of the petitioners on the aforesaid issue were considered and the respondent vide its letter/circular dated 03.03.2014 have made amendment in the entry No.30 of Annexure II to the circular/instructions dated 09.08.2012. As per the letter dated 3.3.2014 the entry No.30 in Annexure II of instruction dated 09.08.2012 may be read as "*Scanned photograph (grayscale/black & white) of the Subscriber*". Further, subscriber data base as required under para 11(i) of instructions dated 09.08.2012 may be submitted by telecom service providers in two separate sets of CDs/DVDs/Hard Disk(s), one containing scanned black & white grayscale photographs and another number of subscriber for mapping. The data may be spread over multiple CDs/DVDs/Hard Disks depending on the volume. The copy of the circular/letter dated 03.03.2014 is annexed hereto and marked as **Annexure A.**

14. Thus, in view of the aforesaid letter dated 3.3.2014 issued by the respondent the petitioners' grievance qua clause 11(i) ready with entry No.30 to Annexure II has been addressed and the same are now infructuous."

Mr. Navin Chawla, counsel appearing for the petitioners, however, submitted that the above statement made by the DoT is silent in regard to the penalty demands that might have been raised before the issuance of the letter dated 3 March 2014 and expressed the apprehension that the DoT may try to realise those penalty demands from the service providers.

Mr. S.S. Shamsbery, counsel appearing for the Union of India allayed the fears of Mr. Chawla and fairly made a categorical statement that any penalty demands raised by the concerned authorities for non-submission of the subscriber's photograph *in colour* shall not be pressed and the authority shall not try to realise those demands from the service providers.

The second bone of contention is in regard to the places where the subscriber's signatures must be accompanied with dates underneath it. According to the petitioners, the service providers understood the relevant provisions in the circular to mean that on the customer application form, the subscriber must put the date under his signature and it was sufficient that the

documents, namely, the proof of identification (PoI) and the proof of address (PoA) should bear the signature of the customer without putting the date under the signature. According to the petitioners, the PoIs and the PoAs, enclosed with the customer application forms, were thus accepted at the point of sale with the customers' signatures thereon but no dates under the signatures; the customer application forms, it is clarified, of course bore the signatures of the customers with dates duly put under the signatures. It is the case of the petitioners that the TERM Cells in every part of the country accepted the customer applications forms as validly submitted as long as the subscribers' signatures on the forms were accompanied with dates under the signatures, even though the customers' signatures on the PoIs and the PoAs might not be accompanied with dates under it. But the TERM Cell in Rajasthan Circle objected. And in a large number of cases in which the subscribers had omitted to put dates under their signatures on the PoIs and the PoAs, the CAFs, even though having dates under the signatures of the subscribers, were treated as non-compliant with the instructions and led to demands of penalty which cumulatively runs into very large figures. It is further the case of the petitioners that when the TERM Cell of Rajasthan Circle took an inflexible stand on the

issue, the service providers started to ensure that the subscribers' signatures on the PoI and the PoA were also accompanied with dates under the signatures. But in the few months during which the controversy cropped up and the service providers took steps to meet with the rigid requirements of the Rajasthan TERM Cell, the penalty against the service providers had already run into the large figures which the TERM Cell Rajasthan insists upon realising.

The relevant provision in this regard is contained in subparagraph (i) of paragraph 3 of the circular under the marginal heading "Activation of New Mobile Connection". Paragraph 3(i) reads as under:

"A passport size photograph of the subscriber should be pasted on the Customer Acquisition Form (CAF) and the documents as proof of identity (PoI) and proof of address (PoA) of the subscriber shall be attached with the CAF, as per the instructions applicable from time to time. The person at the Point of Sale (PoS) shall get the CAF duly filled **and signed (CAF, Photo & documents attached) by the subscriber with date**. In case of illiterate person, the CAF may be filled by a person at the point of sale but the thumb impression of the subscriber may be taken on CAF, Photo & document attached. A unique number should be assigned to every CAF on receipt of the same in the warehouse and in case before activation of SIM."

Mr. Chawla invited our attention also to paragraph 3(v) which is as under:

"The date of sale of SIM and date of Activation of SIM is required to be established from the entries in the CAF.

For this purpose, entry of Date is to be made with the Signature of Subscriber (at the time of filling CAF), Signature of PoS (at the time of verifying the subscriber and documents) and Signature of Licensee (at the time of verification before activation) in the CAF.”

Mr. Chawla also invited out attention to paragraph 3(x) which is as under:

“The sample copy of a typical CAF to be used showing the mandatory fields in \*(asterisk) is enclosed as **Annexure-I.**”

Annexure I contains the format of the application form for new mobile connection. At the bottom of the form, there is the space indicated for “signature of customer” and below it for “date”. Both, “signature of customer” and “date” are marked with asterisks which denotes “mandatory field”. Below the part of the form which is to be filled up by the customer, is the part to be filled up by the service provider and at the bottom of it, there is the provision for “Signature, name and stamp of PoS along with the declaration as per para 3(iii) of instructions” and below this is the provision for “date”, both constituting mandatory field. The last portion of the form, to be filled up by the service provider *before* SIM activation, once again provides at the bottom for “Signature of Employee of Licensee who is activating the SIM” and below it for “date”, once again both constituting mandatory field.

Mr. Chawla submitted that the reading the aforementioned provisions to gather makes it clear that the two crucial dates are the date of sale of SIM and the date of its activation so as to ensure that SIM was activated only after all relevant details concerning the customer, including his PoI and PoA had come in possession of the service provider so as to be made available, if so required, to the security agencies and other concerned authorities. He further submitted that this purpose was fully served by the three dates required to be filled in in the customer application form; one put in by the customer in the first part of the application, the second by the person at the place of sale in the second part of the application and the third by the employee of the service provider, before the activation of the SIM, as provided for in the third part of the application form.

Mr. Chawla submitted that first, the service providers' obligation to ensure that the customer puts dates below his signatures on the PoI and the PoA is not borne out from the provisions of the circular. Secondly, even if there was such a requirement, it must be held to be directory. The obligation of which compliance was mandatory, was the putting of date under the signature on the application form. He further submitted, the omission to comply with a requirement that is at best directory

must not be allowed to visit the service providers with huge penalties. In support of the submission he relied upon a decision of the Supreme Court in *Pratap Singh v. Shri Krishna Gupta and Ors*<sup>1</sup>. In paragraph 3 of the judgment the Court held and observed as under:

“(3) We do not think that is right and we deprecate this tendency towards technicality; it is the substance that counts and must take precedence over mere form. Some rules are vital and go to the root of the matter; they cannot be broken; other are only directory and a bread of them can be overlooked provided there is substantial compliance with the rules read as whole and provided no prejudice ensues; and when the legislature does not itself state which is which judges must determine the matter and, exercising a nice discrimination, sort out one class from the other along broad based, commonsense lines. This principle was enunciated by Viscount Maugham in – ‘Punjab Co-operative Bank Ltd., Amritsar v. Income-tax Officer, Lahore, AIR 1940 PC 230 at p 233(B) and was quoted by the learned High Court Judges:

“It is a well settled general rule that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially”.

This point Mr. Shamsbery did not yield to the petitioners. He stoutly defended the imposition of penalty on CAFs that were accompanied with PoIs and PoAs on which there were no dates under the customers’ signatures. He submitted that the dates on the PoI and PoA were essential to prevent theft of identity. Quite honestly, we are unable to follow the submission. Theft of identity

---

<sup>1</sup>AIR 1956 SC 140

is indeed a serious issue but first, we do not see how it falls within the purview of DoT. Secondly and more importantly, we are unable to see how mentioning or not mentioning the date under the signatures on PoI and PoA would be relevant in connection with theft of identity. If anything, stating the purpose for which the PoI and PoA were submitted may perhaps be of some help in checking identity theft. But we fail to see the relevance of the date to the issue. Mr. Shamsbery tried to elaborate but he was unable to make the matter any clearer.

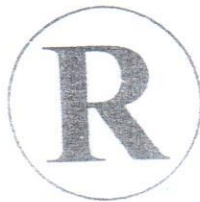
Learned counsel next submitted that the instruction was related to the integrity, security and safety of the country and not following the instructions strictly may lead to bad consequences. It is true that the demand for the personal details of customer, including the proofs of his/her identity and address finds sanction from the considerations of security, integrity, and safety of the country but Mr. Shamsbery failed to satisfy us in regard to any nexus between the mentioning of dates on the PoI and PoA and the national security, safety, and integrity. We are in agreement with the submissions made by Mr. Chawla that the object and purpose of the instructions are fully served by the stating the dates at the three places in the application form as per the sanctioned pro-forma.

We are also of the view that the language of paragraph 3(i) does not make it very clear that the person at the point of sale should ensure that the customer also puts the date below his/her signatures on the PoI and the PoA, besides putting the date under his signature on the application form. It is well settled that no penalty can be imposed on the basis of an ambiguous provision and the benefit of ambiguity would always go in favour of the one who stands in the position to face adverse consequences for failure to carry out the direction.

Further, Mr. Shamsbery correctly said that the issue is related to national security and safety. Hence, any tendency, as it appears from the facts of the case, to turn the instructions made in the circular into a source for revenue generation and to impose heavy fines even on non-existent or hyper technical grounds deserves to be deprecated. Furthermore, on the interpretation issued by the DoT, there must be consistency among all the TERM cells operating under the DoT. It appears quite anomalous that all the TERM cells should read the provision in one way and a single TERM cell in Rajasthan read it differently and as a result the service providers in Rajasthan alone are made to pay huge fines. The DoT should appear to be working in a much better, coherent and consistent manner.

In light of the discussions made above we are clearly of the view that the penalty imposed on the service providers in the Rajasthan circle, holding the CAFs as non-compliant with the instructions for the reason that on the PoIs and PoAs attached therewith the signatures of the customers were un-dated is quite unreasonable, unfair and invalid. The respondent is accordingly restrained from realising the penalty from the petitioners, holding the CAFs non-compliant with the instructions for the above reason.

In the result the petition is allowed but with no order as to costs.



**(Aftab Alam)**  
**Chairperson**

.....  
**(Kuldip Singh)**  
**Member**