

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 25th September 2024

Cyber Appeal No. 7 of 2019

Vodafone Idea Ltd.
(Formerly Idea Cellular Ltd)

...Petitioner(s)

Vs.

Mrs Harshada Bindu Dholepatil & Ors

...Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

For Petitioner : Mr. Meet Malhotra, Sr. Adv Alongwith Mr Kaushik Moitra, Ms Subhalaxmi Sen, Ms Romi Kumari, Mr Ravi S S Chauhan, Ms Pallak Singh For Vodaphone Idea Ltd.

For Respondents : Mr. Rajat Kapoor For R-1
Ms Arti Singh, AOR Alongwith Ms Kavita Singh, Mr Basant Pal, Mr Aakashdeep Singh Rada & Ms Pooja Singh For SBI

JUDGMENT

1. This Appeal, under Section 57 (1) of Information Technology Act, 2000, (hereinafter said to be "IT Act") has been filed by Vodafone Idea Limited, Formally Idea Cellular Ltd, Appellant against Mrs. Harshada Bindu Dholepatil, complainant, State Bank of India, Corporate Office, as well as Murshidabad Branch, West Bengal, and Bank of Maharashtra, through its Manager, Sangamwadi Branch, Pune, against impugned Judgment, dated 18.01.2019, passed by Adjudicating Officers/Principal Secretary, Information Technology, Government of Maharashtra, in complaint no. 5 of 2014, Mrs. Harshada Bindu Dholepatil V/s Idea Cellular Ltd, whereby Appellant was directed to compensate the complainant with Rs.3,00,000/- (Rupees Three Lakhs Only), within one month of above order, along with 12% Compound Interest, to be compounded monthly.
2. In Brief, the memo contends that complainant, Mrs. Harshada Bindu Dholepatil, presently Respondent No. 1, was a pre-paid subscriber of Formally Idea Cellular Ltd., presently Vodafone Idea Ltd, a public Ltd Company, duly incorporated under the Company's Act 2013, having its Registered Office at Suman Tower, Plot no.18, Sector 11, Gandhinagar, Gujarat at Metropolitan, F.P No.27, S.No.21, Old Mumbai-Pune Highway, Wakdewadi, Shivajinagar, Pune. It is an ISO 9001:2008 certified, cellular network service provider, with a license, under Unified Access Service License, duly licensed by Department of Telecommunications, Government of India, to provide mobile telephony services. Complainant had originally been the customer of

Idea Cellular Limited, and the complaint was filed against it. A complaint, bearing No. 5 of 2014, dated 17.01.2014, was filed before the Adjudicating Officer, with contention, written in it, and upon receipt of notice, it was duly replied on 23.08.2014, but the fact placed before Learned Adjudicating Officer, were not taken into consideration, and impugned order, dated 18.01.2019, for making payment of Rs 3,00,000/- (Rupees Three Lakhs Only), as compensation to complainant, was got passed by Learned Adjudicating Officer, Principal Secretary, Information Technology, Government of Maharashtra, and it was awarded with the compound Interest of 12%, to be compounded monthly, in case of failure to make payment thereafter. Respondent No. 1 complainant had been a pre-paid subscriber of the Appellant since 06.08.2009 with Consumer Application Form and documents submitted by it, at the time subscription, which are **Annexure A-6 (Colly)** to memo of Appeal. Kingston Travels, which is a partnership firm, of which complainant, present Respondent No. 1, is one of the partners, held a current account with Bank of Maharashtra, Dhole Patil Road, Pune, Respondent No. 4. There was service of online banking facility, granted by Respondent No. 4 to Respondent No. 1. Complainant's mobile Phone number was linked with above bank account maintained by Respondent No. 4.

3. Appellant had never been informed about this relationship of complainant and Respondent No. 4, nor it was a party in above transactions. On 15.1.2014, Respondent No. 1 came to know about the unauthorized two NEFT transactions, amounting to Rs. 1,50,000/-

(Rupees One Lakhs Fifty Thousand) each, to Respondent No. 2 and Respondent No. 3, respectively, in the name of Mr. Alam Shaikh and Mr. Sanjay K. Ghosh. In fact, on 13.01.2014, a person, claiming herself Mrs. Harshada Bindu Dholepatil, visited the Idea store, namely, Everest Enterprises, Pune, which is a franchisee store of the Appellant, with the grievance, that she had lost her original SIM Card and made a request for issuance of duplicate SIM Card. Upon Receipt of SIM replacement request, in the prescribed form, along with the PAN Card, as proof of Identity, the Appellant verified the documents, as per the existing norms, under regulations, then after duplicate SIM Card was got issued, in good faith, as a measure of speedy consumer grievance redressal. The copy of SIM replacement form, dated 13.01.2014, along with supporting documents viz, Pan Card, are annexed **Annexure A-7 (Colly)** to memo of appeal.

4. On 13.01.2014 itself, the Appellant sent a message from IZ-IDEA, intimating about the SIM exchange request, which admittedly, was received by the Respondent No. 1. The same was noted below :

“Dear Customer your request for SIM exchange has been registered and would be actioned by 13.01.2014 SR No. I-41358897712. To know the status of this SR. Kindly SMS ST I-41358897712 to 12345. Thank you”

5. Complainant Respondent No. 1, knowing fully well that no request for SIM exchange had been made by her, choose to discard the SMS, despite being cognizant to it. The purpose was sending SMS to subscriber was to give information about SIM exchange request, and

get it verified and authenticated by the subscriber. But, in present case, complainant failed to make response, and the failure, on the part of Respondent No. 1, establishes her negligence, along with lackadaisical conduct, resulting above fraudulent transactions from her account. On 15.01.2014 Complainant lodged a complaint, bearing No. 14/14 at Sr. No.377 with the Cyber Crime Branch, of Commissioner Office, Pune.

6. Thereafter, an undated legal notice was sent by Respondent no.1, which was received by Appellant on 14.03.2015, wherein, she admitted that alleged fraudulent transaction took place on account of hacking of cash credit account of Respondent No. 1, maintained with Respondent No. 4. Hence, the very saying of the complainant that appellant had failed to protect the secret information of Respondent No. 1, is baseless and misguided on several accounts. Appellant is not a privy to any "secret information" of Respondent No. 1. The inspection conducted by the Appellant could not establish the alleged contention of complainant, for want of appropriate document, supporting purported claim. This legal notice was replied by Appellant. Appellant had extended all its cooperation in all the investigation, made by Cyber Police. Even then, this complaint was got lodged by a complainant, before the Ld. AO under Section 46 of the IT Act. There exists no nexus or any contractual relationship, between Respondent No. 4 and the Appellant, nor complaint was maintainable, under Section 46 of the IT Act. There was no violation of the condition given under Section 43A of IT Act, by the Appellant, which does not possess, handle or deal with any "sensitive personal data or information".

Jurisdiction of Adjudicating Officer, under Section 43A, read with Section 46, of the IT Act, was restricted to claims involving :

- (i) body corporate, possessing, handling and dealing in sensitive personal data or information in a computer resource, which it owns, controls or operates and
- (ii) 'negligence by such body corporate in implementing and maintaining reasonable security practices and procedures, as prescribed by Section 43A of the IT Act, read with Rule 8 of the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, in respect of such computer resource, which it owns, controls or operates.

7. Therefore, in the present matter, the Appellant does not fall under this category, as Appellant has not possessed, handled or dealt with any sensitive personal data or information of Respondent No. 1, nor it failed to maintain reasonable security practices and procedure required under this.

8. The Cellular services, provided by the Appellant, involve carriage of voice and data of its subscribers, from one end to other, within or outside its network. For this purpose, the service provider is required to establish a cellular mobile network. But, this content is not under the access of cellular service provider. Rather Appellant company is a licensee, Department of Telecom of the Government of India, in the State of Maharashtra and Goa, for more than 2 decades, with a

function to be governed by the provisions of Indian Telegraph Act, 1885, Indian Wireless Telegraphy Act, 1933, and Telecommunication Regulatory Authority of India Act, 1997.

9. Appellant's relationship with Respondent No. 1, complainant is limited to extent of providing Telecommunication services. Subscriber verification is not a subject matter of IT Act, and in fact, it falls under the jurisdiction and domain of DoT, Telegraph Act, and the rules made there-under. Failure to make compliance, with regard to subscriber's verification, falls within the jurisdiction of the DoT, and not under Section 43A of IT Act. With regard to scope of reasonable security and procedure under Section 43A of IT Act, the failure to make subscriber's verification does not fall in it. The alleged fraudulent transactions had been committed with the bank account of Kingston Travels and not of complainant. Hence, complainant has no cause of action to file the complaint. Hence, this Appeal, with a prayer for setting aside the impugned order.

10. Heard Learned Counsels for both side and gone through material placed on record.

11. From the very perusal of material placed on record, it is apparent that the complaint No. 5 of 2014, dated 17.01.2014, was got filed before the Adjudicating Officer, Principal Secretary Information Technology, Government of Maharashtra by Mrs. Harshada Bindu Dholepatil against Idea Cellular Limited, Respondent No. 1, State Bank of India,

Corporate Office, Mumbai. Respondent No. 2, State Bank of India, Murshidabad, West Bengal Respondent No. 3, Bank of Maharashtra, through its Manager Branch Pune, Respondent No. 4, under Section 46 of Information and Technology Act, 2000, with this contention that on January 15, 2014 at around 10:23 AM, when complainant logged into her bank account, being maintained with Respondent No. 4, she noticed that two NEFT transactions were done, for Rs.1.5 Lakhs each to SBI accounts in the name of Mr. Alam Shaikh and Mr. Sanjay K Ghosh, from the bank account of complainant. She lost total of Rs. 3,00,000/- (Rupees Three Lakhs Only), on account of duplicate SIM Card given to a person, who allegedly was not the real owner of the Mobile SIM card. Rather, her mobile number was misused for this fraud. On January 13, 2014 evening, she had received a message from Idea Cellular on her mobile number, stating that "Dear Customer, your request for SIM exchange has been registered and would be actioned by 01/13/14, 03:14:21 PM". Post this message, her SIM Card was blocked, but she was able to receive calls, which made the complainant believe that the SIM card is not blocked, and by using this duplicate SIM Card, this fraudulent transaction was carried on. A police Complaint was got lodged in this respect on January 15, 2014 at the Commissioner of Police, Cyber Crime, Pune vide SR. No. 377 Registered No. 14/14. The matter was got investigated by the Bandgarden Police station. Report stated that one of the accused, Mr. Sanjay Ghosh was caught and was remanded in judicial custody of Magistrate, but Mr. Alam Shaikh was untraceable.

12. Idea Cellular Limited vide its reply, dated 23.08.2014, stated that only a Criminal Court of competent jurisdiction can entertain this complaint. The cellular company, merely act as an intermediary, as defined under Section 2(w) of Information Technology Act, 2000. It had implemented all security practices/layers mandated by the DoT and TRAI guidelines. The alleged fraudulent transactions were committed from the Bank Account of Kingston Travels and the complainant was defrauded by the fraudsters. It was by hacking online bank facility. The information with regard to SIM exchange, sent through SMS, was received on January 13, 2014 by Complainant itself, but no response over it was by subscriber complainant. It shows the negligence of the complainant. It had fallen prey to phishing fraud, which had provided the personal and confidential information, which was misused by the fraudsters. Bank of Maharashtra, Respondent no.4, vide its reply dated November 24, 2015, stated that the internet banking system of this Respondent bank, generated necessary transaction alert message on the registered mobile number of the complainant. As SIM card of the complainant became dead on 13.01.2014 and duplicate SIM card was got issued, hence, the messages, generated, went to the unauthorized user. For two days, complainant kept silence. The negligence was of complainant. KYC norms were followed by Bank of Maharashtra, as per RBI Guidelines.

13. The Telecommunication service provider was negligent, because duplicate SIM card was issued based on fake documents. The learned Adjudicating Officer, after hearing both sides, held that there was a direct connection between blocking of SIM Card of the complainant,

issuance and use of duplicate SIM Card by fraudster and unauthorized transaction from the account of the complainant, which occurred because of duplicate SIM card, procured by the fraudster. Failure of Telecom Service Provider to follow proper guidelines, laid down by TRAI. There by order for making payment of above for loss of Rs.3,00,000/- (Rupees Three Lakhs Only) to complainant, was made by the learned Adjudicating Officer, against which this appeal.

14. This Tribunal in Cyber Appeal No. 3 of 2018, Bank of India Vs Shri Sandeep & Anr. And Cyber Appeal No. 5 of 2018, Vodafone Idea Ltd Versus Shri Sandeep Singhal & Anr., as well as in Cyber Appeal No. 6 of 2014, Vodafone India Limited vs Prashant Mahadeorao Buradkar and Ors, C.A. No. 7 of 2014, State Bank of India Versus Mr. Prashant Mahadeorao Buradkar and Anr, had decided the legal points with regard to jurisdiction, intermediary, Section 43(A) of Information Technology Act, and 46 of IT Act, repeatedly, and it was held that information received at the time of issuing of a SIM Card, by way of having Customer Application Form are sensitive, personal information, taken by Cellular Service Provider and any misuse of SIM resulting the fraudulent transaction in any bank account, wherein registered mobile number has been given by subscriber for its entire transaction, with other daily routine technical uses of mobile number, is sensitive personal information and failure to maintain its secret, resulting misuse of it, entitled cellular company for making payment of damages and for adjudication, jurisdiction of Adjudicating Officer, under Section of 46 of IT Act, very well there. These all objections, raised in present appeal, with regard to legal arguments, have been

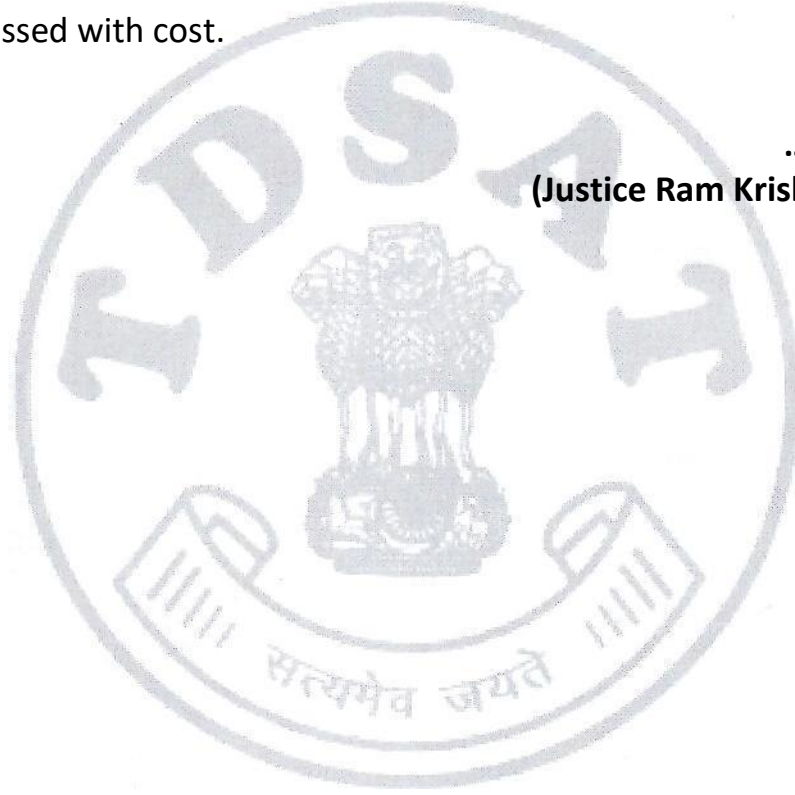
settled by this Tribunal. Hence, without reiterating and reproducing the same, and on the basis of judgment made by this Tribunal in Cyber Appeal No. 6 of 2014, Vodafone India Limited versus Mr. Prashant Mahadeorao Buradkar, and Cyber Appeal No. 7 of 2014, State Bank of India versus Mr. Prashant Mahadeorao Buradkar, the entire contention of the Appellant is being negated.

15. On the factual aspect, the admission of CAF filed by complainant at the time of getting cell number and an application by a fraudster for issue of duplicate SIM, along with proof of identity PAN Card, has been annexed with memo of appeal. On the very first perusal, it is apparent and both is not of one and same person. The initial CAF is of Mrs. Harshadha Bindu Dholepatil, which is at **Annexure A/6 (Colly)** and on this CAF, SIM Card was got issued, whereas, the person who applied for issuance of duplicate SIM, was with name Harshada Dholepatil. The PAN Card attached as proof of identity was of Harshada Birju Dholepatil with father's name Birju Raja Ram Dholepatil. It itself reveals that both are not one and same person. Both PAN cards were not of one and same person. Apparently, no verification was got made what to say, strict adherence with the TRAI Guidelines. In above previously decided appeals, the directions of TRAI, regarding issuance of SIM Card, again a duplicate SIM card and the verification required, in view of national security and the degree of precaution to be taken, has been discussed thoroughly.

16. Hence, in present appeal, the factual aspect is also of proved negligence and direct nexus between change of SIM, lock of SIM and the fraudulent transaction from banks. Hence, Learned Adjudicating Officer has rightly passed Impugned Order on the basis of facts and law placed before it. Hence, no ground for any interference by this Appellate Tribunal.

Accordingly, this Appeal merits its dismissal with cost. Hence, dismissed with cost.

25.09.2024
/NC/



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(Justice Ram Krishna Gautam)
Member