(2026) 03 TDSAT CK 1489

In the Telecom Disputes Settlement And Appellate Tribunal

Case No : Cyber Appeal No. 18 of 2018

Bharti Airtel Limited APPELLANT

Vs

R.S. Chouhan & Ors. RESPONDENT

Date of Decision : 19-03-2026

Acts Referred:

Indian Penal Code, 1860 — Section 34, 420, 468
Information Technology Act 2000 — Section 43, 43A, 43(g), 46, 57, 57(1), 66C, 66D, 79

Citation : (2026) 03 TDSAT CK 1489

Hon'ble Judges : Ram Krishana Gautam, Member

Bench : Single Bench

Advocate : Meet Malhotra, Harsh Kaushik, Arpit Srivastava, Vibhav Srivastava, Aashi Arora, R S Chauhan, Rishabh Singh, Inder Kumar, Vipin Jai, Thoppani Sanjeev Rao, Jainika Mohan

Final Decision : Dismissed

Judgement

Ram Krishna Gautam, Member

1. This Appeal, under Section 57 of Information Technology Act 2000, has been filed by Bharti Airtel Limited, through its authorised representative, Shri Sameer Chugh, against Respondent, Shri R.S Chauhan, Complainant - Respondent No.1, Bank of Baroda - Respondent No. 2, IndusInd Bank-Respondent No. 3, Punjab National Bank - Respondent No.4, against impugned Judgment, dated 08.10.2018, passed by Learned Adjudicating Officer/ Chief Secretary, M.P. Government, Science and Commerce Department, Bhopal, Madhya Pradesh, in Petition No. 7 of 2013, titled as Shri R.S. Chauhan vs. Bank of Baroda & Ors., with a prayer to set aside and quash the Impugned Judgment, dated 08.10.2018.

2. In brief, the memo of Appeal contends, that vide the Impugned Judgment, Learned Adjudicating Officer has erroneously held the Appellant and Respondent No.2, Bank, liable under Section 43(g) and 43A of the Information Technology Act, 2000 (IT Act), for an alleged fraudulent transfer on 04.04.2013 for an

amount of Rs. 49.99 lakhs from the Bank account held by Complainant-Respondent No.1, in the Respondent No. 2-Bank, to two (2) third party bank accounts, held in the Bank of Respondent Nos. 3 and 4 respectively. Wherein, Appellant had been held to be liable to pay, under Section 43(g) and 43A of IT Act, as it had negligently provided a duplicate SIM card to the perpetrators of aforesaid alleged fraudulently transfer, which was ultimately utilized for receiving the one time password and award of a total compensation of Rs. 51,21,727/- to the Respondent No.1-Complainant, was in the ratio of 2/3rd i.e., Rs.34,14,515/- upon present Appellant-Telecom Service Provider (TSP) and the balance 1/3rd i.e., Rs. 17,07,257/- to the Bank of Complainant i.e., Respondent No.2, with an additional imposed penalty of Rs. 25,000/- each, to be payable by the Appellant, and the Respondent No. 2.

3. Under Section 57 of the IT Act, this Appeal has been filed before this Tribunal, under the valid jurisdiction, prescribed in the Section 57(1) of the Act.

4. The date of the Impugned Order was of 08.10.2018 and this appeal is well within the statutory period of limitation.

5. Complainant-Respondent No. 1, Shri R.S Chauhan, claiming himself as a Managing Director of M/s Narbada Forest Industries Pvt. Ltd., and his sons, Sanjay Chauhan and Vijay Chauhan, being the Directors thereof, had filed a claim / Petition No. 7 of 2013, before Learned Adjudicating Officer, with this contention that it had an account, opened in Respondent No. 2 Bank in its Habibganj Branch, Bhopal, bearing Account No. 18600500000035, in order to conduct the business activities of Respondent No.1's Company, which was being operated by Respondent No.1, as well as his two sons i.e., Managing Director and Directors of the Company. Respondent No. 1 had approached Appellant-Telecom Service Provider on 23.02.2013, for acquisition of six connections, to be utilized for his family members and employees of the Respondent No.1's Company and six SIM Cards/ Connections in the name of Respondent No.1'sCompany was obtained by him. While issuing those connections, the mandate of the Subscriber Verification Guidelines, issued by Department of Telecommunications, was complied by Appellant and prior to activation of aforesaid six connections, customer acquisition form, duly filled in, with all requisite details, along with other formalities were obtained. One connection, out of the six, i.e., Mobile No. 9303118571, which is said to be impugned connection, alongwith other five, were got activated by the Appellant on 13.03.2013, and this impugned connection was being utilized for the purpose of receiving OTPs and SMS alerts, in respect of Respondent No. 1 Company's account, which is in Respondent No.2 Bank.

6. On 02.04.2013, one Vipin Verma, hereinafter referred to be alleged perpetrator, visited a point of sale/ retailer of the Appellant (hereinafter said to be Appellant's former PoS), with a request for issuing of a duplicate SIM Card in respect of the above Impugned Connection, upon the letter head of above Respondent No.1's Company, with a contention of loss of the SIM Card. Hence,

as for issuing a duplicate SIM card, no requirements under the Subscriber Verification Guidelines for this, was needed, as was required for the first time issuance of SIM Card. Hence, pursuant to the processing of the aforesaid request, the new SIM Card was got issued and activated by the Appellant-Telecom Service Provider, on 03.04.2013 at around 17.49 hrs. This was the only grievance vis-à-vis Appellant-Telecom Service Provider.

7. On 04.04.2013, an amount of Rs. 49.99 Lakhs was allegedly transferred from the account of Respondent No.1's Company, without the authorization of Respondent No.1. Out of which Rs. 29.99 Lakhs was transferred to one Moon Star Textile's account of Respondent No.3's branch, Jaipur and an amount of Rs. 20 Lakhs was transferred to the Pramod Yadav's account in Respondent No.4'sbranch in Saidpur-Ghaizpur.

8. This matter was reported, wherein concerned Law Enforcement Agencies, has filed a chargesheet in respect of the alleged illegal transfer with alleged Statement therein, that the aforesaid Bank accounts of Moon Star Textile and Pramod Yadav were opened on the basis of forged documentation and against the standard procedure in those Respondent Banks. The OTPs were sent by Respondent No.2, which was supposedly utilized by the alleged perpetrator, having duplicate SIM Card with them.

9. On 04.04.2013, Mr Vijay Chauhan, Director, visited Appellant's former PoS, to report that the SIM Card associated with the Impugned Connection was not working in proper manner, and it came to light that duplicate SIM Card was obtained on the basis of forged documentation by some perpetrator, resulting blocking of the above connection by the Appellant-Telecom Service Provider.

10. On 04.04.2013, Respondent No.1 lodged a complaint with the Cyber & Hi-Tech Crime Police Station, Bhopal as FIR No. 117/2013, under Section 420, 468, 34 of the Indian Penal Code, with Section 66C, 66D of the IT Act, against the miscreants. Respondent No. 1 sought release of the amount seized and were found lying in the account of Moon Star Textile, Siraz Khan, Sania Parveen and Pramod Kumar held in Respondent Nos. 3 and 4 banks respectively. As per Order dated 16.08.2013, passed in Criminal Revision No. 418 of 2013, by the Learned Additional Sessions Judge, Bhopal, an amount of Rs. 16,21,119/- has been returned back to Respondent No.1's account, pursuant to the said order towards Rs. 49.99 Lakhs pilferage.

11. On 19.11.2013, Respondent No.1 filed the underlying Application, under Section 46 of the IT Act, as a Petition before Learned Adjudicating Officer, against the Appellant and other Respondents, with the contention that the computer resource, from where the alleged fraudulent transfer has taken place, is wholly owned and managed by Respondent No.1's Bank and the OTP was generated by the Bank.

12. The contention against appellant was with sole premise of failure and violation of the Subscriber Verification Guidelines. This petition was contested by

all respondents that there was no violation of the Subscriber Verification Guidelines by Telecom Service Provider(TSP)- appellant. It was never liable for any violation of IT Act, under section 79, because IT Act does not apply over TSP.

13. After hearing both side, impugned judgment, dated 8.10.2018, was passed by Learned Adjudicating Officer with award of compensation and ratio in which amount was to be paid by present appellant as well as by respondent bank, written as above, against which this appeal.

14. The person aggrieved under section 43 (g) of the IT Act can either be the owner of the computer, computer system or computer network or the person in-charge of the system. Whereas, complainant/respondent no. 1 is neither the owner nor the person in-charge of the computer, computer system or the computer network, which was used for the alleged transfer. Hence, complainant-respondent no. 1 was with no locus to file the proceeding under section 43 of the IT Act. There was not even an iota of reasoning or finding in the impugned order for holding the appellant liable under section 43 A of the IT Act. Hence, the impugned order is ex-facie unreasoned.

15. The condition precedent i.e. ingredients under section 43(g) required to be satisfied is imminently lacking in the present dispute. The failure or violation of Subscriber Verification Guidelines falls entirely within the jurisdiction of Department of Telecommunications, and cannot be adjudicated upon by the learned Adjudicating Officer under the provisions of IT Act.

16. Section 79 of the IT Act is with no liability upon the appellant which is only an intermediary. Section 43 A of the IT Act is also not applicable in the present context because of no sensitive personal data being dealt by TSP. Subscriber Verification Guidelines was complied with by appellant at the time of first issuance of SIM Card and it was never required while reissuing of duplicate SIM Card. The apportionment made is against the principle of proportionate compensation. The appellant has been imposed with 2/3rd share and the bank has been held liable for 1/3rd part, which is with no reasoning and logic. Hence, the damages held in a mechanical manner in tune of Rs. 25,000/- by appellant without any reason is also not legal. Hence, this appeal with above prayer.

17. This was replied by complainant - respondent no. 1 with this contention that impugned order, dated 8.10.2018, passed by learned Adjudicating Officer, is with reasons and evidence on record. Appellant-TSP failed to conduct basic due diligence before providing a duplicate SIM card, which was issued to a corporate entity and it was got issued to the perpetrator without verifying the credibility of forged letter head, having no mention of correct address of respondent no. 1 company with forged signature over it. Even the address proof of perpetrator, who made the request for issuing a duplicate SIM Card, was not taken and compared with the previous documents, filed at the time of allotment of those SIM cards. Rather, appellant itself had admitted that the duplicate sim card was got issued by the appellant-TSP without following the due process because it was

not needed at the time of issuing a duplicate SIM Card. Rather, was required at the time of first issuance of SIM Card. Appellant, because of its negligence, put the respondent no.1'ssafety at the risk and by issuing a duplicate Sim Card, without ensuring the genuineness of the person making request and documents submitted by it, had issued a duplicate sim Card, which resulted this cyber crime and pilferage of such a huge amount of complainant, respondent no. 1 and appellant has been the biggest contributor to this crime. Had it not been there, it would not have been competence of perpetrator to make access in the internet banking of respondent no. 1, which caused such a huge loss of Rs. 49.99 Lakhs. Hence, the apportionment made by Learned Adjudicating Officer is well with the reason. Appellant is intermediary and this Tribunal, as well as Hon'ble Courts, had previously held him liable under IT Act. Hence, a prayer to get appeal dismissed.

18. This has been again rejoindered by Appellant with the same, reiteration and contention of appeal.

19. Reply on behalf of Respondent No. 3, IndusInd Bank, and rejoinder over it, is there. But, as there no order against this Respondent, hence, no appeal against this Respondent is there.

20. The appeal was by this Telecom Service Provider and another Cyber Appeal by Respondent No.2, which was being tried together. But, owing to non-appearance of Respondent No.2, and non-prosecuting its above appeal, the same had been dismissed for default. Only present appeal has been listed for adjudication, because Appellant as well as Learned Counsel for Respondent No. 1 -Complainant, had contested this Appeal.

21. Heard Learned Counsels for Appellant as well as Learned Counsel for claimant/ Respondent No.1 and gone through the impugned Judgment.

22. At the very outset, it is being mentioned that Learned Sr. Counsel, Mr. Meet Malhotra, assisted by Mr Kaushik Moitra, Mr. Harsh Kaushik, Mr. Arpit Srivastava, Ms Subhalaxmi Sen, Ms Rumi Kumari, Mr Ravi S.S. Chauhan, Ms Pallak Singh, had mentioned that the legal plea with regard to Intermediary status of Telecom Service Provider, the mandate to comply with subscribers verification form and its failure, not amounting to be under provisions of Information Technology Act, Section 43A, 43(g) - the legal dispute with regard to owning a Computer, computer System, computer usages, by Complainant victim, a condition precedent for being victim, under Section 43 of IT Act etc. etc., were raised as a ground of Appeal in this very Appeal, as well as many Cyber Appeals, filed previously, by Telecom Service Providers, in many other such alike cases, which had been heard by this Tribunal, at different times and Tribunal had given its judgment, accepting the disputes with regard to it, with a finding of liability of Telecom Service Provider, particularly, with regard to verification and diligence, at the time of issuing of duplicate SIM card, by the agency and instrumentality of Telecom Service Provider, alike to the diligence mandated in subscribers

verification form, at the time of issuing a SIM Card, under the guidelines issued by Department of Telecommunications, and its instrumentalities at different level, under different notifications and those Judgments, either are under Appeal before Hon'ble Court, or had not been Appealed. Hence, all these legal questions written in this memo of present appeal, has been previously settled as a Principle of Law, by this Tribunal. Hence, those are not being reiterated or raised for any further interpretation by this Tribunal, except the one issue, that the apportionment made by Learned Adjudicating Officer, whereby, 2/3rd liability had been imposed over Appellant - Telecom Service Provider and 1/3 on the Bank of Respondent No.1 Company i.e., Respondent No.2, is with no reason and logic. Whereas, the Complainant itself, in its complaint, filed before Learned Adjudicating Officer, had made allegations against the Bank-Respondent No. 2, specifying the use of user password, transaction password, security password, by Bank employees without ensuring at the time those pilferaging transfer in the favour of beneficiaries i.e., Respondent No. 3 and 4 Bank's account.

23. The sole contention against the present Appellant was non-compliance of the subscriber verification form guidelines at the time of issuing a duplicate SIM Card by the Telecom Service Provider, present Appellant to perpetrator. Hence, this apportionment could have been less than the imposed 2/3 share. Hence, under above settled legal proposition and the judgment of this Tribunal given in many cyber appeals, such as Cyber Appeal No. 6 of 2014, Vodafone India Ltd Vs. Prashant Mahadeorao Buradkar and Ors, Cyber Appeal No. 7 of 2014, State Bank of India Vs. Prashant Mahadeorao Buradkar and Anr, the legal principles are not being reopened. Rather, the ground of apportionment vis-à-vis dis-proportionate imposition is being discussed.

24. The account, being run by complainant, as a Managing Director and his two sons, as directors of a company, opened in his bank - respondent no. 2 branch, for which six Sim cards were got issued by applying, for use of them by directors and employees of above company, was undisputed fact. Six Sim cards were got issued and one of them, which is impugned Sim Card, was being used by one of the directors, for the purpose of internet banking and this Sim card was got issued with required document of company, address proof, signature of authorised signatory, etc. etc., after due verification by TSP, under Customer Verification guidelines, issued by DoT. Once a request for issue of a duplicate sim card was made, it was not got verified and apparently, it was with manipulation. Even without verifying, the original sim was got blocked and a duplicate sim was got issued. This followed by subsequent transaction, resulting such a pilferage of huge amount in the account of two perpetrators, who had opened their account in respondent nos. 3 and 4 banks. Respondent no. 2 had proved that OTP and security layers were got complied with, but these exercises became infructuous, because it was the perpetrator, who received the same, upon the internet banking mobile connection, got activated on the basis of duplicate sim card, and the real director was with no opportunity to have those informations. Hence, Learned Adjudicating Officer has very well reasoned and discussed the appellant

as the point of initiation, which resulted such a vibrant range of crime. Hence, reason of apportionment is very well there and the same is with logic and reason.

25. For making a change by Appellate court, while exercising the jurisdiction of appeal, the judgment and finding of the trial court, which had taken the evidence, which had made the trial, which had opined and given the judgment, is required to be very cautiously seen as to whether the conclusion made by trial court, is with reason, logic and evidence, led before it, or there are some likelihood of interpretation, otherwise than the conclusion taken by trial court and the appeal court is to substitute its logic in the impugned judgment. It is not the correct perspective of law. Rather, in the present context, the reason and logic of learned Adjudicating officer is with the fact and law laid before it. The same is with no reason of failure of justice or with no occasion for this Appellate court to make interfere in the impugned judgment of learned Adjudicating Officer.

26. This appeal merits dismissal.

27. Appeal is being dismissed as such.

