
(2023) 02 DEL CK 0034

In the Delhi High Court

Case No : Civil Writ Petition No. 3519 Of 2021, Civil Miscellaneous Application
No. 10655 Of 2021

Shivtel Communications Private Limited

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 01-02-2023

Acts Referred:

Citation : (2023) 02 DEL CK 0034

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Ripu Daman Bhardwaj, Aakriti Roy, Arjun Natarajan, Kamana Pradhan, Gopal Jain, Abhimanyu Chopra, Abhisar Vidyarthi

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.
2. None appears for the Petitioner. The present petition has been filed by the Petitioner seeking directions in respect of the implementation of the Telecom Commercial Communications Customer Preference Regulations, 2018 (hereinafter, "TCCCPR").
3. The grievance of the Petitioner is that this particular regulation was introduced on 19th July, 2018 by the Telecom Regulatory Authority of India (TRAI). The said regulations were the subject matter of WP(C) 3330/2020 titled 'One97 Communications Limited and Anr. v. Union of India', in which the Id. Division Bench, vide judgment dated 3rd February 2021, had directed that TRAI to ensure compliance and strict implementation of the provisions of the said regulations to curb unsolicited commercial communication sent over the respective networks of the telecom service providers. The relevant portion of the said judgement reads as:

5. In view of the above and in view of the limited submission made by learned Senior Counsel appearing for the petitioners, we hereby direct respondent No.2 to ensure compliance and strict implementation of the provisions of the Telecom Commercial Communications Customer Preference Regulations, 2018 and other related Regulations, issued from time to time, to curb unsolicited commercial communication sent over the respective networks of the telecom service providers.

6. We expect that in case of any violation, respondent No.2 shall take action against the violators in accordance with law, especially, the Regulations, 2018. We have also taken note of the fact that respondent Nos. 3 to 9/Access Providers are compliant with the provisions of the Regulations, 2018 and we expect that they shall continue to strictly comply with the provisions of the Regulations, 2018.

4. In the process of implementation of TCCCPR, the TRAI issued a press release bearing number 13/2021, dated 12th March, 2021 through which, certain further compliances were required to be completed by the Telecom Service Providers and Principal Entities. The same are contained in paragraph 2 of the said press release. The said press release reads as:

New Delhi, 09.03.2021- Unsolicited Commercial Communication (UCC) is a major source of inconvenience to public and also impinges on the privacy of individuals. To curb the menace of UCC, TRAI has issued the Telecom Commercial Communications Customer Preference Regulations, 2018 (TCCCPR, 2018") on 19th July, 2018, which put in place a framework for controlling UCC. The regulations entirely came into force w.e.f. 28.02.2019. The regulation provides for registration of senders, telemarketers, headers, content templates, consent templates, registration of fine-grained subscriber preference etc.

Thereafter, a direction under TCCCPR, 2018 was issued to all Telecom Service Providers (TSPs) on 20.01.2020 to take due measures for onboarding of senders of messages i.e. Principal Entities (PEs). TSPs published the requirements of a new regulatory framework in leading newspapers, from time to time, to inform all PEs to get onboarded. TSPs also notified telemarketers and principal entities regarding the implementation of content template scrubbing and other provisions of TCCCPR, 2018, from time to time.

It has been observed that some of the principal entities have not fulfilled the requirements as envisaged in Telecom Commercial Communications Customer Preference Regulations, 2018 (TCCCPR, 2018). As a result, their SMS were getting dropped after implementation of the scrubbing of SMS by Telecom Service Providers. In order to protect the interest of consumers, it has been decided that scrubbing of SMS by TSPs shall be suspended temporarily for seven days to enable the principal entities to register the template of SMS so that no inconvenience is faced by the customers.

TSPs are being requested to inform their principal entities to take immediate necessary action in this regard and facilitate their registration including SMS

template in a time-bound manner.

In case of any clarification, Shri Asit Kadayan, Advisor (Quality of Services) may be contacted at 011-23230404 or email

5. The first phase of the implementation of the regulations was rolled out on 1st August, 2020 and the second phase of the implementation was rolled out on 8th March, 2021. However, due to various technical glitches which were faced on the said date, on 9th March, 2021, the implementation of scrubbing of SMS by TSPs was suspended for a period of 7 days.

6. The apprehension of the Petitioner was that once the direction for implementing TCCPR is finalised, the Petitioner and other similarly placed parties would suffer enormously, inasmuch as in terms of the press release dated 12th March 2021, various compliances would have to be made which would result in technical glitches and disruptions in the services.

7. It was therefore, prayed in this petition that the suspension ordered, as per the press release dated 9th March 2021, may be further extended in order to ensure that the system is fully tested before it is implemented.

8. This matter was listed for hearing on 17th March, 2021 on which date the stand of TRAI was recorded that there would be a review of the system which is termed as scrubbing of messages. The relevant paragraphs of the said order reads as under:

"8. On behalf of Respondent No. 3 Mr. Gopal Jain, Id. counsel, submits that the crux of the Id. Division Bench order is that the Regulations ought to be implemented both in letter and spirit. He, thus, submits that the present writ petition would itself not be maintainable, especially in respect of the prayer of compensation.

9. Id. counsel for TRAI has entered appearance and has placed before this Court, the letter dated 16th March, 2021, issued by TRAI. As per the said letter, certain further changes have been made to what is termed as the "scrubbing" of messages. As per the new letter issued on 16th March, 2021, the TSPs would resume the scrubbing w.e.f. 17th March, 2021, however in case of failure of delivery due to mismatch of any of the content templates, or any other mismatches, the message would still be allowed to go through, after recording the reasons. Thus, as per the letter dated 16th March, 2021, each message would undergo a process of scrubbing, recording of reasons and delivery of message. This system would continue till 23rd March, 2021 after which there would be a review of the same.

10. In view of the fact that the TRAI is itself reviewing the technical glitches and taking remedial measures in respect thereof, at this stage, there is no cause for interference by this Court. Accordingly, the scrubbing mechanism, as prescribed in letter dated 16th March, 2021, be implemented w.e.f 17th March, 2021, and a status report in respect thereof be placed by TRAI by the next date of hearing.

Further, the issue of maintainability shall be considered if the need so arises at a later stage.”

Considering the submissions made on the said date, a status report was called from the TRAI.

9. The TRAI has since then filed a status report. As per the said status report, post the issuance of the press release dated 23rd March, 2021, the data has been further analysed by TRAI. After the said analysis, it is concluded in the status report as under:

“18. That as sufficient opportunity has already been given to the Principal Entities/ telemarketers to comply with the regulatory requirements and that the consumers cannot be deprived of the benefits of the regulatory provisions any further.

19. That therefore, it has been decided that from 01.04.2021, any message failing in the scrubbing process due to non-compliance of regulatory requirements will be rejected by the DLT system. A letter in this regard was sent to the PEs on 25th March, 2021 (through respective TSPs) to fulfil the regulatory requirements before 31st March, 2021 to avoid any disruption in the communication with the customers from 1st April, 2021. Copy of letter dated 25.03.2021 is Annexure C.

20. TRAI has also communicated to various central Ministries and organisations, States/UTs, industry bodies reiterating the benefits of the regulations to the public and the sender and requesting them to advise the organisations under their jurisdictions to fulfil the regulatory requirements to avoid any disruption in communication to consumers. TRAI has also requested the industry associations like CII, FICCI, ASSOCHAM etc. to advise their members to fulfil the regulatory requirements to communication to consumers. avoid any disruption in Copy of letters sent to central Ministries and organisations, States/UTs, industry bodies and industry associations are Annexure D (Colly).”

10. In view of the status report filed by TRAI, the Court is of the opinion that no further orders would be called for in this matter.

11. The petition, along with all pending applications, is accordingly disposed of.