

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 573 OF 2019

(Against the Order dated 11/01/2019 in Appeal No. 97/2018 of the State Commission
Uttaranchal)

1. SHYAM KUMAR

[REDACTED]

.....Petitioner(s)

Versus

1. BHARTI AIRTEL LTD & 2 ORS.

THROUGH NODAL OFFICER MANDAKINI TOWER IN
FRONT OF A.D.M. RESIDENCE

BAREILLY

UTTAR PRADESH

2. BHARTI AIRTEL LTD.

THROUGH NODAL OFFICER, AIRTEL CAMPUS PLOT NO.
18, PATLIPUTRA INDUSTRIAL AREA,

PATNA-800013

BIHAR

3. STATE BANK OF INDIA

THROUGH ITS BANK MANAGER, S.K. MEDICAL
COLLEGE AND HOSPITAL CAMPUS, P.O. UMA NAGAR,
DISTRICT-MUZAFFARPUR

BIHAR-842004

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER :

MR. PULKIT TARE, ADVOCATE

MR. ANUP JAIN, ADVOCATE

FOR THE RESPONDENT :

FOR THE RESPONDENTS-1 & 2 : MR. HARSH KAUSHIK,
ADVOCATE

MR. ARPIT SRIVASTAVA, ADVOCATE

FOR RESPONDENT-3 : NONE (PROCEEDED EX-PARTE)

Dated : 05 June 2024

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent(s) as detailed above, under section 21(b) of Consumer Protection Act 1986, against the order dated 11.01.2019 of the State Consumer Disputes Redressal Commission, Uttarakhand, Dehradun, (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 97/2018 in which order dated 02.06.2018 of District Consumer Disputes Redressal Forum, Almora (hereinafter

referred to as District Forum) in Consumer Complaint (CC) no 94/2017 was challenged, inter alia praying set aside the order passed by the State Commission.

2. While the Revision Petitioner (hereinafter also referred to as Complainant) was Respondent-1 before State Commission and Complainant before District Forum; Respondent-1 & 2 (hereinafter also referred to as OP-1 & 2) were Appellant-1 & 2 before State Commission and OP-1 & 2 before District Forum; Respondent-3 (hereinafter also referred to as OP-3) was Respondent-2 before State Commission and OP-3 before District Forum. None appears for the Respondent-3 despite service. Accordingly, Respondent-3 is proceeded ex-parte.

3. Notice was issued to the Respondent(s). Parties filed Written Arguments/Synopsis on 28.11.2022 (Petitioner/complainant) and 10.10.2023 (Respondent-1 & 2) respectively.

4. Brief facts of the case, as presented by the complainant and as emerged from other case records are that:-

The complainant has been a consumer of Bharti Airtel Limited for the past five years, using SIM card No. [REDACTED] and mobile No. [REDACTED] provided by the telecom company. In May 2017, while posted in the Gurez Sector, Jammu & Kashmir with the 13th Sikh Regiment of the Indian Army, the complainant experienced connectivity issues due to the absence of a mobile tower at his posting location. On 18.05.2017, an unknown person fraudulently obtained a duplicate SIM card for the complainant's mobile number and subsequently withdrew Rs. 2,87,630/- from the complainant's bank account No. [REDACTED] between 21.05.2017 and 27.05.2017 via online services such as Paytm, Airtel Money, Snapdeal, and M Paisa. The complainant continued to use the original SIM No. [REDACTED] at his posting location and still has the connection. The complainant applied to the OPs for a refund of the withdrawn amount, attributing the loss to the telecom company's issuance of the duplicate SIM based on a new address (Village Silt, Anchal Govindpur, District Navada, Bihar) without his consent, which led to the fraudulent withdrawals. When the amount was not refunded, the complainant filed a consumer complaint before the District Forum, Almora.

5. Vide Order dated 02.06.2018, in the CC no. 94/2017 the District Forum has allowed the complaint and directed OPs to pay Rs. 2,87,630/- with interest @ 4% p.a. from June 2017 till the date of payment; to pay Rs. 1,00,000/- as compensation and Rs. 15,000/- as litigation cost.

6. Aggrieved by the said Order dated 02.06.2018 of District Forum, Respondent-1 & 2/OP-1 & 2 appealed in State Commission and the State Commission vide order dated 11.01.2019 in FA No. 97/2018 has allowed the Appeal and dismissed the complaint as being not maintainable before the District Forum for want of territorial jurisdiction.

7. Petitioner has challenged the said Order dated 11.01.2019 of the State Commission mainly on following grounds:

- i. The State Commission has adopted an overly technical stance in its impugned order, overlooking several critical points. OPs, being national telecom providers, have offices nationwide, making it irrelevant where the SIM card was initially obtained. The complaint could logically be filed anywhere the service is provided. The complainant was the victim of fraud due to the issuance of a duplicate SIM card by the OPs, leading to subsequent fraudulent activities. This serious issue should have been considered substantively rather than technically. The State Commission erroneously dismissed the appeal on the grounds that no transaction occurred in Almora and thus lacked territorial jurisdiction. However, the complainant, being posted in Almora due to his service, has a legitimate right to file the complaint there.
- ii. Moreover, the State Commission failed to appreciate that the complainant, an Indian Army personnel, was serving the nation while fraud was committed behind his back via a duplicate SIM card. Jurisdiction should be recognized based on the complainant's service location when the OPs operate nationwide. In balancing substantial justice and technical considerations, substantial justice should prevail. The State Commission committed a clear error by favoring technicalities over the merits of the complainant's grievance. The State Commission has failed to consider that the complainant lost his hard-earned money, no discussion on the merits of the matter has been made by the State Commission.
- iii. Requiring the complainant to file a further complaint in the territorial jurisdiction where the SIM card was initially purchased would cause significant hardship to the complainant, who is serving in the Army, and would amount to a second round of addressing his existing grievance. State Commission, in passing the impugned order, has effectively dismissed the meritorious case of the complainant at the very threshold, causing gross miscarriage of justice to the complainant. It is pertinent to mention that the OPs have

offices nationwide, thus no prejudice would be caused to them if the case is decided on its merits.

iv. The State Commission has failed to appreciate the well-settled proposition of law that a complaint is maintainable if area offices are in place, even if the principal office is beyond the state limits. In this instance, the OPs do have area offices, therefore the complaint is maintainable. The complainant has suffered many hardships while pursuing the present case and has lost his hard-earned money while serving the nation, amounting to Rs.2,87,630/-. The fact remains that a duplicate SIM card was issued and some unknown person misused the SIM card while the complainant was serving in the 13th Sikh Regiment of the Indian Army. Therefore, the question of transaction does not arise as no transaction was conducted by the complainant. The State Commission completely ignored the fact that Army personnel are mostly on duty and hence it is nearly impossible for them to go and pursue a complaint where the SIM card was initially purchased. It is pertinent to mention that mobile SIM cards can be used throughout the country with no extra cost, thus negating the argument that the SIM card is restricted to the initial point of sale.

8. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below. Respondent-3 is proceeded ex-parte.

- i. The learned counsel for petitioner/complainant contends that the State Commission adopted an unduly strict interpretation in passing the impugned order dated 11.01.2019. The OPs, being a national telecom provider with offices across India, should not restrict the complaint filing to the location where the SIM card was initially obtained. The State Commission did not adequately consider that the complainant was defrauded due to the issuance of a duplicate SIM card by the OPs, which led to the subsequent fraud.
- ii. The State Commission erroneously allowed the OPs' appeal on the premise that no transaction took place in Almora, thus refuting the territorial jurisdiction. However, the complainant, being stationed in Almora, should have the right to address grievances at his workplace. The State Commission overlooked the jurisdiction of the District Forum. The complainant, an Indian Army personnel, was serving the nation when the fraud occurred via a duplicate SIM card issued by the OPs. The complainant's duty location should not refute the jurisdiction of his grievance when the OPs have offices nationwide.

- iii. The counsel further asserted that it is a well-settled legal principle that substantial justice should prevail over technicalities. The State Commission's decision disregarded this principle, thereby committing a gross error. The OPs' nationwide presence should allow for complaints to be filed in any location where the complainant is affected, not strictly where the SIM card was issued. The Vodafone Idea case serves as a pivotal precedent confirming the applicability of the Consumer Protection Act to service deficiencies by telecom providers. Furthermore, the procedural law under the Consumer Protection Act, 2019, which does not expressly bar the jurisdiction, should be applied retrospectively to favor the complainant's jurisdictional claim.

- iv. The Hon'ble Supreme Court, in the case of **Vodafone Idea Cellular Ltd. Vs Ajay Kumar Agarwal**, (2022) 6 SCC 496, affirmed that the Consumer Protection Act applies to disputes involving telecom providers' service deficiencies. The Supreme Court clarified that procedural law aspects are retrospective unless expressly barred by subsequent legislation. Therefore, the expanded jurisdictional provisions under the Consumer Protection Act, 2019, which clarify and extend the jurisdiction from the 1986 Act, should be considered applicable.

- v. The learned counsel for OP-1 & 2/Respondent-1 & 2 argued that the State Commission correctly determined that the District Forum lacked the territorial jurisdiction to entertain the complainant's complaint, as per Section 11 of the Consumer Protection Act, 1986. Section 11 provides that a complaint can be filed where the opposite party resides, carries on business, or where the cause of action arose. The complainant incorrectly asserted that his posting in Almora and possession of the swapped SIM card granted territorial jurisdiction to the Almora District Forum under Section 11(2)(c). However, the complainant failed to provide any evidence that the cause of action arose in Almora. The original SIM was issued in Muzaffarpur, Bihar; the SIM was swapped in Nawada, Bihar; and the complainant's bank account, from which funds were allegedly siphoned, was also located in Muzaffarpur, Bihar. Thus, no part of the cause of action occurred in Almora.

- vi. The complainant did not claim that the OPs resided or worked for gain in Almora. The complaint named the OPs' nodal officers in Bareilly and Patna, and the written statement by the OPs was issued from their Lucknow office. Additionally, the bank involved in the fraud was located in Muzaffarpur, Bihar. There was no branch office of the OP company in Almora, contradicting the complainant's assertion that a branch office existed there.

- vii. According to the Supreme Court's ruling in **Sonic Surgical v. National Insurance Company Ltd.** (2010) 1 SCC 135, the expression "branch office" in Section 17(2) of the CPA 1986 [similar to Section 11(2)] refers to the branch office where the cause of action arose. Since no part of the cause of action occurred in Almora, the presence or absence of a branch office in Almora is irrelevant. The District Forum Almora, therefore, had no jurisdiction to adjudicate the complaint.

- viii. The assertion made by the complainant regarding the applicability of the Consumer Protection Act, 2019 (CPA 2019) to the present case lacks legal merit. The proceedings in question had already undergone two rounds of litigation before the CPA 2019 came into effect. The substantive rights of the OPs were established by the impugned order under CPA 1986. Therefore, any claim of a change in procedure due to the enactment of CPA 2019 is unfounded.

- ix. Legal precedents, including **Hossein Kasam Dada (India) Limited v. State of M.P.** (1953) 1 SCC 299 and **Garikapati Veeraya v. N. Subbiah Choudhary** AIR 1957 SC 540, affirm that statutes affecting substantive rights are presumed to be prospective unless expressly made retrospective. Conversely, statutes impacting procedural aspects are presumed to be retrospective, unless textual impossibility dictates otherwise. The law concerning forums and limitations is considered procedural, while rights of action and appeal are substantive. Hence, any change in law affecting procedural aspects should generally apply prospectively.

- x. The principle established in **Hitendra Vishnu Thakur & Ors. v. State of Maharashtra & Ors.** (1994) 4 SCC 602 highlights that litigants possess vested rights in substantive law, while procedural law lacks such inherent rights. Therefore, the repeal of an enactment followed by new legislation does not alter substantive rights unless explicitly stated. Similarly, in **Shyam Sunder & Ors. v. Ram Kumar & Anr.** (2001) 8 SCC 24, the Supreme Court emphasized that a court of appeal must consider the law in force at the time of the suit or adjudication, preserving the parties' substantive rights under the applicable law.

- xi. The complainant's reliance on recent judicial precedent, such as **ECGC Limited vs. Mokul Shriram EPC JV** (2022) 6 SCC 704, underscores the preservation of rights accrued under CPA 1986 for complaints filed before the enactment of CPA 2019. Additionally, Section 6 of the General Clauses Act 1987 ensures that rights vested prior to the repeal of an enactment are safeguarded. The respondent's rights were crystallized

following the impugned order, further reinforcing the preservation of their rights under CPA 1986.

xii. The impugned order by the District Forum lacks merit as it erroneously concluded that the OP company operated from Almora without factual basis or pleadings from either party. Furthermore, the assertion that the OP company is responsible for refunding amounts allegedly withdrawn from the complainant's bank account due to mobile apps like Paytm and Airtel Money lacks evidentiary support and was not pleaded before the District Forum. The absence of detailed findings regarding the alleged withdrawal of funds through mobile apps undermines the credibility of the impugned order. Notably, consumer fora, operating under a summary procedure, are ill-equipped to adjudicate disputes involving complex factual issues or criminal acts like fraud. The burden of proving deficiency in service lies with the complainant, as established in **Chairman & Managing Director, City Union Bank Ltd. and Another v. R. Chandramohan** 2023 SCC OnLine SC 341.

9. We have carefully examined the orders of the State Commission, the District Forum, other relevant records, and the rival contentions of the parties involved. Regarding territorial jurisdiction, under Section 11(2) of the Consumer Protection Act, 1986, it is stipulated that the District Forum shall have jurisdiction to entertain complaints where the opposite party or each of the opposite parties, in cases involving more than one, resides or carries on business or has a branch office or personally works for gain at the time of the institution of the complaint. The cause of action, wholly or in part, arises within the jurisdiction of the District Forum. We have carefully considered the rival contentions of the parties on the issue of territorial jurisdiction in the light of various orders of Hon'ble Supreme Court and this Commission^[1] and orders of this commission in RP/929/2015 **Union of India through the General Manager, North East Railway vs. Virender Singh** decided on 05.06.2024 and are of the considered view that District Forum was having the territorial jurisdiction in this case and rightly considered the complaint. State Commission went wrong in allowing the appeal filed by the OPs Bharti Airtel on the grounds of lack of territorial jurisdiction. Hence, the order of State Commission cannot be sustained.

10. The OP-1, Bharti Airtel Limited, operates as a telecom service provider across India, with offices and branches nationwide. The complainant, an Indian Army personnel, was posted at the Gurez Sector, Jammu & Kashmir, and experienced a fraudulent withdrawal of funds due to the issuance of a duplicate SIM card while he was unable to use his mobile phone. Given that the complainant is serving in the Indian Army, pursuing the complaint in a different jurisdiction would cause significant hardship and potentially interfere with his duties. The principles of substantial justice favor allowing the complainant to file the complaint in a jurisdiction where he can practically and reasonably seek redress, particularly considering the telecom company's

nationwide presence. Courts have consistently interpreted Section 11(2) to provide a broad basis for determining jurisdiction, focusing on the presence of branch offices and the location where the cause of action arises. In cases where multiple jurisdictions can be invoked, the complainant's convenience is often given due consideration, especially in consumer protection matters aimed at providing accessible justice to consumers. In this context, the forum's decision to entertain the complaint within its jurisdiction aligns with the principles of substantial justice. The broad interpretation of jurisdiction under Section 11(2) supports the complainant's ability to seek redress in a forum that minimizes hardship and ensures that justice is both accessible and practical for the complainant, given the circumstances and the nationwide operations of the telecom company.

11. As regards the fraudulent withdrawal and duplicate SIM issue, the District Forum's investigation revealed significant discrepancies in the documentation used to issue the duplicate SIM. The complainant's original documents, including photographs and identification, were on file with the mobile company (column nos. 25a/1 & 25a/2). However, these were not adequately compared with the documents presented for the duplicate SIM issuance (column nos. 25a/5 & 25a/6), which featured different photographs and lacked the necessary verification.

12. The forum noted a clear discrepancy between the original documents and those provided for the duplicate SIM issuance. The OPs failed to perform due diligence in verifying the identity of the individual requesting the duplicate SIM. This lack of verification directly facilitated the fraudulent issuance. We are of the considered view that a reasonable standard of care was not maintained by the OPs. A prudent service provider should have matched the existing documents of the complainant with those submitted for the duplicate SIM request. The failure to ensure this verification led to the issuance of the duplicate SIM, which enabled subsequent fraudulent activities.

13. As a result of this negligence, the complainant suffered a financial loss of Rs. 2,87,630/-, withdrawn from his bank account via online services linked to the mobile number. The complainant promptly reported the fraud and attempted to rectify the situation through his department. However, the OP's response was inadequate. The OP-1 & 2's negligence in verifying the identity of the individual requesting the duplicate SIM constitutes a deficiency in service. This negligence directly resulted in the financial loss suffered by the complainant. The services provided by the OP-1 & 2 failed to meet the reasonable standards expected, particularly given the serious implications of issuing a duplicate SIM. Accordingly, the OP-1 & 2 are liable for the deficiency in service, and the complainant is entitled to relief for the financial loss incurred due to the OP-1 & 2's failure to perform due diligence in verifying the identity of the requester for the duplicate SIM. We do not find merit in the complaint against OP-3 (SBI).

Hence, the order of State Commission is set aside. Accordingly RP is Allowed, the order of District Forum is restored.

14. The pending IAs in the case, if any, also stand disposed off.

[1] Punjab State Power Corpn. Ltd. v. Emta Coal Ltd., (2022) 2 SCC 1

Union of India v. Hansoli Devi, (2001) 4 SCC 404

Shanti v. Ansal Housing & Construction Ltd., 2002 SCC OnLine NCDRC 18

Sonic Surgical v. National Insurance Co. Ltd., (2010) 1 SCC 135

Gati Ltd. v. Synergetic Automation Technologies, 2017 SCC OnLine NCDRC 51

Laxmi Devi v. State of Bihar, (2015) 10 SCC 241

K.S. Puttaswamy (Aadhaar-5J.) v. Union of India, (2019) 1 SCC 1

State of Gujarat v. Utility Users' Welfare Assn., (2018) 6 SCC 21

Malati Sardar v. National Insurance Co. Ltd., (2016) 3 SCC 43

K.P. Ranga Rao v. K.V. Venkatesham, (2015) 13 SCC 514

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DR. INDER JIT SINGH
PRESIDING MEMBER