

BEFORE THE ADJUDICATING OFFICER

**SH. RAJESH AGGARWAL,
PRINCIPAL SECRETARY, INFORMATION TECHNOLOGY,
GOVERNMENT OF MAHARASHTRA**

Complaint No. 16 of 2013 dated 28th June 2013

IN THE MATTER OF

Sh. Rohit Maheshwari

..... **Complainant**

Versus

1. Vodafone India Pvt. Ltd
2. Unknown Persons (Later added: Sh. Sunil Tanawade, and Rachna Maheshwari etc.)

..... **Respondents**

Advocates

1. *For Complainant* – Adv. Prashant Mali
2. *For Respondent No. 1* – Adv. Robin Fernandes
3. *For Respondent No. 2* – Adv. Charanjeet Chanderpal & Adv. Milind Borkar

This is proceedings of a complaint filed by the complainant for Adjudication under section 46 of the Information Technology Act, 2000. In keeping with the basic principles of natural justice and reasonable opportunity, detailed hearings were held in which both parties i.e. the Complainant and the Respondents were presented with equal and adequate opportunities to present and defend their case. Following the completion of hearing and response of both the parties, conclusion has been arrived at and the judgment is being delivered herein.



ORDER

1. Brief Facts of the Case as per Complainant are as follows:

- I. Complainant is a loyal and genuine customer of Vodafone and has been using a Vodafone mobile number (9820152680) from last two decades. Complainant also states that he has used Vodafone website account for accessing/altering his personal details including viewing of bills and payment.
- II. Complainant states that, to promote the 'Go Green' initiative started by Vodafone he had requested to dispatch his mobile bills on the Complainant's authorized Email Id: rohit.maheshwari@bi-group.in from last two years and since Vodafone has been sending the bills on this email ID.
- III. Complainant states that, from February 2013 he stopped receiving bills via email and started getting payment due calls from Vodafone. In the first week of March 2013 the Complainant visited Vodafone gallery, Thane, and found out that his account details were altered without his knowledge. Email Id was changed from rohit.maheshwari@bi-group.in to abtr.mumbai@gmail.com.
- IV. Complainant states that, after contacting the higher authorities of Vodafone and registering several complaints with Vodafone, the Complainant received the information that, as per Vodafone's internal records, Vodafone received a call from landline number: 43450000 and requested detailed duplicate copies of the Complainant. According to the Complainant, this information was received by the Complainant from Vodafone verbally.
- V. Complainant visited the Vodafone gallery on 22nd June 2013 and he was shown the records of duplicate bills.



- VI. Complainant states that unknown person on 6th March 2013 by using the mobile number 9820038071 requested various copies of the Complainant's phone bills with detailed information.
- VII. Complainant states that, Vodafone without verification dispatched detailed phone bills of the Complainant to the unknown person and therefore has contravened 43A and 43(g) of Information Technology Act, 2000.
- VIII. Complainant has also registered a Complaint on 28th June 2013 with Cyber Crime Cell, Thane.
- IX. Cases mentioned by the Complainant:
- a. **Kharak Singh v. State of Uttar Pradesh (1964) SCR (1) 332:** The very first case to lay down the contours of the right to privacy in India. Two of the judges of the seven judge bench saw the right to privacy as a part of Article 21, marking an early recognition of privacy as a fundamental right. Justice Subba Rao held "It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty."
- b. **Govind v. State of Madhya Pradesh (AIR 1975 SC 1378):** The petitioner in this case had challenged, as unconstitutional, certain police regulations on the grounds that the regulations violated his fundamental right to privacy. Although the issues were similar to the Kharak Singh case, the 3 judges hearing this particular case were more inclined to grant the right to privacy the status of a fundamental right. Justice Mathew stated: "Rights and freedoms of citizens are set forth in the Constitution in order to guarantee that the individual, his personality and those things stamped with his personality shall be free from official interference except where a reasonable basis for intrusion exists. 'Liberty against government' a phrase coined by Professor Corwin expresses this idea forcefully. In this sense, many of the fundamental rights of citizens can be described as contributing to the right to privacy."



2. Documents Submitted by Parties:

By Complainant:

- I. Copy of the Privacy Policy statement of Vodafone India, along with all documentation and correspondence with Vodafone

By Respondent No. 1:

- I. Copy of the email sent from rohit.maheshwari@bi-group.in to vodafonecare.mum@vodafone.com on 27th April 2013 at 23:25
- II. Copy of the email sent from rohit.maheshwari@bi-group.in to appellate.mum@vodafone.com with CC to jacqueline.mundkur@vodafone.com, mallika.ghosh@vodafone.com and rohit.maheshwari@bi-group.in on 23rd May 2013 at 09:38
- III. Copy of the email sent from rohit.maheshwari@bi-group.in to mallika.ghosh@vodafone.com with CC to jacqueline.mundkur@vodafone.com on 31st May 2013 at 14:40
- IV. Copy of the email sent from rohit.maheshwari@bi-group.in to mallika.ghosh@vodafone.com with CC to jacqueline.mundkur@vodafone.com on 22nd June 2013 at 11:37
- V. Copy of the first Cellular service application form.
- VI. Copy of the re-verified Customer Agreement Form.
- VII. Copy of the NOC letter from the employer.
- VIII. Copy of the Information Technology (Reasonable Security Practices and Procedures and sensitive personal data or Information) Rules, 2011
- IX. Copy of the Privacy Policy.
- X. Copy of the Telecom Charter
- XI. Copy of the internal procedure followed by Respondent No.1.
- XII. Copy of a letter from M/s Abhay Trading.
- XIII. Copy of the email dated 21.05.13.
- XIV. Copy of the online directory search report.



- XV. Copy of the Form 32 of M/s Abhay Trading Pvt. Ltd. with the ROC.
- XVI. Copy of the requisition for change in billing address.
- XVII. Copy of the Terms & Conditions on the Customer Agreement Form.
- XVIII. Copy of the Privacy Policy Statement of Vodafone India

By Respondent No. 2:

- I. Copy of the Police Complaint against Sh. Rohit Maheshwari filed at Kalsewadi Police Station.
- II. Kalyan Court order under section 156(3).
- III. Criminal Writ Petition filed in Bombay High Court
- IV. NC filed against Sh. Rohit Maheshwari by Bi-Chem staff at Manpada Police Station.
- V. Resignation letter and form 32 of Sh. Rohit Maheshwari.
- VI. Vodafone contact and bill payment records.

By Police:

- I. Police Investigation Report with statement of Sh. Rohit Maheshwari
- II. Statement of Sh. Sunil Tanawade.

3. In their written arguments and oral arguments, Respondent No. 1 has made following points:

- I. The Complainant is a subscriber of the Respondent No. 1.
- II. The Complainant has been a 'user' under the organization subscription which was availed by M/s Pine Trading Pvt. Ltd with Respondent No.1 since 27.12.1997, when the business of the Respondent No.1 was being conducted in the name and style of 'Max Touch Cellular Phone Service.
- III. According to Respondent No. 1, subscriber re-verification is conducted by the Respondent No. 1 at regular intervals. A fresh CAF was filed and signed by the Complainant in 2010 with Vodafone Essar Limited in 2010.



The said re-verified CAF (Customer Application Form) was accompanied by a no objection letter dated 19.11.2010 executed by one Sh. Vipul Maheshwari, stating no objection to receive bills at the office address and also referred to Complainant as the Director of M/s Abhay Trading Pvt. Ltd.

- IV. The Complainant had opted to receive his bills via email and had updated the email id to which bills were to be issued, as rohit.maheshwari@bi-group.in. The address for delivery of the physical bills remained the same.
- V. On 04.03.2013, 05.03.2013 and 06.03.2013, calls were made to the customer care helpline of the Respondent No. 1, requesting to send hard copies of bills by courier to the registered billing address for bill cycle of August 2012, December 2012 to February 2013 and June 2012 to October 2012.
- VI. On 06.03.2013, a call was made to the answering respondent as received by the Vodafone Relationship Manager ("VRM") desk requesting for a change in the e-billing address from rohit.maheshwari@bi-group.in to abtr.mumbai@gmail.com and after standard security checks applicable to such a request, the said request was processed. The address for delivery of the physical bills remained the same.
- VII. Also for every subsequent duplicate bill request, the standard security procedure was followed.
- VIII. Complainant then visited the Vodafone Store, Thane on 27.04.2013 and raised a dispute for the first time that his email ID registered with Respondent No. 1 had been altered/modified without his consent. Respondent No. 1 have fully Co-operated with the Complainant and also gave the information regarding duplicate bill requests.
- IX. The Complainant in his present complaint has alleged repetitive breaches of Section 43A, 43(b), 43(g), and 43(i) of the Information Technology Act, 2000. Respondent No. 1 is an intermediary as defined in Section 2(1)(w) of the IT Act, further Section 79 of the IT Act exempts intermediaries from the liability. The Respondent No. 1 has observed due diligence in the matter while discharging its duties and it has acted in good faith.



- X. The relationship between the Complainant and the Respondent is that of a Service Provider and subscriber therefore it is governed by the terms and conditions as mentioned in the CAF. The acts as alleged in the complaint do not constitute any violation under the provisions of the IT Act. The Complaint should therefore be dismissed summarily for want of jurisdiction.
- XI. That the Complainant has alleged a breach of Section 43 and 43A of the IT Act. Section 43 clearly states that 'If any person without the permission of the owner or any other person who is in charge of a computer, computer system or computer network'. In this case Respondent No. 1 owns the computer, computer system and computer network. Therefore any changes made to such system by its owner under any circumstances cannot be considered as a violation under section 43 of the IT Act. In this case there's only a request to change the Email ID for receiving the bills and it not the case where Complainant's mobile phone's access was given to someone else. Therefore, no case has been made out against the Respondent No. 1 by the Complainant under Section 43.
- XII. Under the terms of the UASL, Respondent No. 1 merely facilitates connections for subscribers; as a licensee, it cannot impart absolute ownership of connections to subscribers when the absolute owner of such connections is the DoT/Government of India. Hence no rights of ownership vests in the subscriber therefore the basic requirement of 'ownership' or 'in charge of the computer, computer network or computer system' to seek any relief U/s 43 of the IT Act 2000 is not fulfilled in the instant case.
- XIII. As far as Section 43A of the IT Act goes, the Complainant has misconstrued the law on the subject and arrived at wholly unsustainable conclusions. The Complainant has alleged unauthorized email id or by sending physical copies of the bills to his registered billing address, under both these circumstances no case under Section 43A can be made out against the Respondent No. 1.
- XIV. The Complainant's telephone bills cannot be construed to be 'Sensitive Personal Data or Information' as carved out in The Information

Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (the "Reasonable Security Practices Rules"). On the contrary, the Respondent No. 1 is in full compliance of the other applicable rules as provided in the Reasonable Security Practices Rules such as Rule 4 and Rule 8 and has a detailed privacy policy and has laid down reasonable security policy and procedures to protect the privacy of all subscriber.

- XV. Respondent No. 1 that telephone bills are merely an invoice to substantiate the usage of customers and corresponding charges for such usage are then payable by the subscribers and therefore sending bill to an unauthorized Email ID cannot be construed as any violation under the IT Act. Additionally, sending physical bills to the registered address of a user cannot amount to breach of any sensitive personal information or data and therefore the Complainant has failed to make out prima facie case.
- XVI. The jurisdiction of the Adjudicating Officer is limited by the provisions of Section 46 of the IT Act read with the IT Rules 2003, in terms of which the powers of enquiry of the Adjudicating Officer are limited to the complaint/report which has been filed before him. The powers of a civil court under Section 46(5), as such, the powers of the Adjudicating Officer are limited to the issue in consideration before the Adjudicating Officer. The jurisdiction of this Adjudicating Officer is limited to ascertaining whether indeed there has been any contravention of Section 43A of the IT Act by the Respondent No. 1, and cannot stretch to jurisdiction generally over the systems and processes adopted by Respondent No. 1.
- XVII. There is a dispute between the Complainant and Respondent No. 2 (who has since sought to appear in the matter, and who evidently is known to the Complainant who still chose to name him as an 'unknown' respondent).
- XVIII. Respondent No. 1 states that it has acted in good faith and in a diligent manner as regards handling subscriber information, and it strictly follows the procedures laid down by the DoT and Telecom Regulatory Authority of India.
- XIX. The Complainant in his Complaint has acknowledged the receipt of SMS



proactively informing him about his account regarding the issue of duplicate bill; however no response or complaint was received from the Complainant regarding the duplicate bills. In an event where the activation/deactivation of the same is disputed, the Respondent No. 1 can then make amends so as to protect the privacy of the subscriber's accounts. It is for this reason alone that the complaint / report deserves to be dismissed in toto.

- XX. The Complainant has not approached the forum with clean hands. He has intentionally concealed certain material facts, for reasons best known to him. The initial cellular service application form dated 27.12.1997 mentions the name of the Complainant in the 'User' category and mentions one Sh. Vipul Maheshwari as the authorized signatory and the name of the organization as M/s Pine Trading Pvt. Ltd, where the Complainant purported to be the Director, located at the billing address as 5L AVSAR, 77/81 Kazi Sayed Street, Masjid Bunder (W), Mumbai 400 003. The Complainant has not only blatantly denied any knowledge of the email id: abtr.mumbai@gmail.com, he has further concealed/ suppressed the identity of the user of the mobile number 9820038071 whereas the Complainant was well aware that the 'unknown person' is Respondent No. 2.
- XXI. The Complainant has knowingly with mala fide intentions, made false statement on oath as there is a clear nexus between the Complainant and Sh. Vipul Maheshwari and hence mobile number and Email ID was known to the Complainant. Therefore the Complaint deserves to be dismissed.
- XXII. The Complainant has filed a police complaint on 28.06.2013, approximately two months after the alleged offence was first brought to his notice. It would be pertinent to note that during the said period the Respondent No. 1 had provided all the critical information in connection with the alleged offence to the Complainant, yet he has filed a complaint against 'Unknown person' despite knowing fully well who the telephone number belongs to and which email ID the bills were sent to.
- XXIII. The Complaint has been filed as there is some dispute between the Complainant and Respondent No. 2, whereas the Respondent No. 1, an



innocent bystander, being dragged into such dispute due to the Complainant's whims.

- XXIV. The Complainant has failed to show the amount of alleged gain of unfair advantage caused on account of such a purported default, nor has the Complainant established any loss caused to him on account of the same, if any, in accordance with section 47 of the IT Act.
- XXV. That it is a fit case for issuing an order under Rule 10 of the IT Rules, 2003 for imposing maximum cost and penalty on the Complainant for initiating such frivolous litigation and making a mockery of the system.
- XXVI. That in conclusion of all the foregoing submissions the Complaint/report filed by the Complainant is bad in law and no cause of action is made out prima facie or otherwise. The Adjudicating Officer may exercise his power under Sub rule 12 (g) of Rule 4 of the IT Rules, 2003, and kindly dismiss the report of the matter.
- XXVII. Cases relied upon by Respondent No. 1:
- a. **Raghunath Rai Bareja & Anr vs Punjab National Bank (2007) 2 SCC 230:** Jurisdiction- Interpretation - Meaning of literal construction- Held, ordinarily the court should not depart from literal rule as that would really be amending the law in the garb of interpretation, which is not permissible- Presumption is that the legislature intended to say what it said-Contention that purposive construction should be given to it, is not sustainable.
 - b. **Amit Patwardhan vs Rud India Chains Pvt. Ltd & anr.(unreported):** [Case no. 1/2013 before Adjudicating officer, Government of Maharashtra] Equity- the complainant had not approached the forum with clean hands hence no relief was granted.
 - c. **Reshma Kumari & Anr Vs. Madan Mohan & anr:** Compensation- The compensation which is required to be determined must be just- the same should not be a windfall - Unjust enrichment should not be encouraged



4. In their written arguments and oral arguments, Respondent No. 2 have made following points:

- I. Wrongful gain to Respondent No. 2 stating that he procured the bills for making payment is false and frivolous in nature, as the bills were always paid by the Respondent No. 2 which were always delivered on his personal email ID.
- II. The Complainant had been informed via email by Vodafone i.e. Respondent No. 1 on 21.05.2013 that the call to modify the email id was received on 6.05.2013 from the mobile number 9820038071. The mentioned mobile number was within the knowledge of the Complainant, but still he addressed it as unknown in the Complaint. The Complainant very well knew that the number 9820038071 from which the call was made was of Sh. Sunil Tanawade as the Complainant had worked for many years as Director of M/s Abhay Trading Pvt. Ltd. This clearly shows that the Complainant's claims and statement are baseless and with mala fide intentions.
- III. The Complainant has been a 'user' under the organization subscription which was availed by M/s Pine Trading Pvt Ltd with Responded no. 1 since 27.12.1997, when the business of the Respondent no.1 was being conducted in the name and style of "Max Touch Cellular Phone Service".
- IV. Bills raised by (Service Provider) Respondent No. 1 since 27.12.1997 were paid by Respondent No. 2. The Respondent No. 2 has also reimbursed the bills paid by Credit Card after they were submitted by the Complainant.
- V. The Respondent No. 2 since 27.12.1997 has been receiving the bills and making the payment, however never ever before did the Complainant raise any question of Sensitive data and Privacy. The Complainant also never ever raised a question when the duplicate bills were called in the past by Respondent No. 2. Respondent No. 2 has always acted in the good faith and made all payments to the (Service Provider) Respondent No. 1.
- VI. The Respondent No. 2 was shocked to find out that the subscriber name has been changed from M/s Pine Trading Pvt Ltd to Sh. Rohit Maheshwari (Complainant). The NOC executed by one Sh. Vipul Maheshwari on 19 November 2010 was only with the intent of change of address request



i.e. 5L Avsar, 77/81 Kazi Sayed Street, Masjid Bunder (W), Mumbai 400 003. The said letter referred to the Complainant as the Director of M/s Abhay Trading Pvt Ltd, however the said Sh. Vipul Maheshwari never gave the authority to change the subscriber name from M/s Pine Trading Pvt Ltd to Sh. Rohit Maheshwari (Complainant). Respondent no. 1 did not act lawfully and also did not follow its own procedure while changing the name of the subscriber.

- VII. The Respondent No. 2 did nothing wrong while changing the Email ID as Respondent No. 2 was not aware of the erroneous change in Subscriber made by Respondent No. 1, moreover the Complainant has acted with mala fide intention.
- VIII. The Respondent No. 2 has been paying the bills till January 2013 and since the bills for subsequent months were not paid, the accounts department of the Respondent No. 2 followed up with Respondent No. 1 for the bills so that necessary payments could have been made. The Respondent No. 2 till date has not misused any such data to harm anyone and the Complainant's claim that Respondent No. 2 could misuse this data is completely false as Respondent No. 2 has not done any such act in the last 15 years and neither will they ever do so.
- IX. The Complainant has in fact caused tremendous mental torture and maligned the prestige of Respondent No. 2's name for his own gain.
- X. If the Complainant was so concerned about data confidentiality and privacy, he should have proactively or after resigning from the Respondent No. 2's office changed the billing address of his mobile number, the Complainant intentionally to build a false case did not do so.
- XI. The Respondent No. 2 has made payments till January 2013 for the mobile bill issued by the Respondent No. 1, therefore the Respondent No. 2 has complete right to obtain the mobile bill record, and the same is even confirmed by Respondent No. 1's privacy policy.
- XII. The Complainant did not raise any objection when he received the SMS regarding the duplicate bill being issued. The Complainant chose to remain quite for 2 months and thereafter filed a police complaint against Respondent No. 1. Furthermore the Complainant requested for change of address only on 29th April 2013. He should have approached



either of the Respondents if he wanted to get the bills on different address.

5. The police has made investigations into the case and submitted the following report:

- I. According to the Police, someone had sent a request to Respondent No. 1 to get duplicate copies of the bills of Complainant's mobile number 9820152680. The Complainant was receiving the bill on rohit.maheshwari@bi-group.in. Someone changed the above mentioned Email ID to abtr.mumbai@gmail.com by contacting Vodafone, hence the Complaint was filed in this regard at Cyber Cell, Thane.
- II. During the course of investigation, Police found out that the duplicate bills request was received by Vodafone from landline 022-43450000.
- III. The Complainant had enquired with Respondent No. 1 about the person who had requested the duplicate bills and also to change the Email Id. Respondent No. 1's representative Smt. Trupti Shetty informed the Complainant that by sending an email from appellate.mum@vodafone.com e-billing address was changed from rohit.maheshwari@bi-group.in to abtr.mumbai@gmail.com and to do the same, request was received from mobile 9820038071 on 06/03/2013.
- IV. The duplicate bill request was received by Respondent No. 1 from the landline number 022-43450000; Police enquired about the same and have received information from Airtel. The Email ID change request was received by Respondent No. 1 from 9820038071, Police also sought information regarding the number from Vodafone and the same is awaited.
- V. Police have sought information from Google Inc. regarding the Email address abtr.mumbai@gmail.com, but no information has been received from Google Inc. till date.
- VI. The mobile number (9820038071) used for calling Respondent No. 1 for changing the Email ID belongs to Mr. Sunil Tanawade. Police have recorded the statement of Mr. Tanawade.



6. My analysis of the documents before me, and the arguments made by various parties before me, is as follows:

I. It is abundantly clear that the Complainant has not approached this Court with clean hands. This is evident from the following:

- a) He has totally suppressed the fact that there are criminal cases against him filed by the Respondents.
- b) He very much knew about the abtr.mumbai Gmail address as he was long associated with Abhay Trading Company, and also about the Phone number belonging to Sunil Tanawade. Still, before the police and before this court, he filed the case against "unknown persons".
- c) Even while filing complaint in this case against Vodafone and "unknown persons", the Advocate for Complainant sent a legal notice to Respondents, with copy of the complaint filed in this Adjudicating Court.
- d) The Complainant is a "user" since 1997 of the mobile services provided by Respondent No. 1 but the subscriber was Respondent No. 2. Respondent No. 2 had availed several mobile connections from Respondent No. 1 under corporate scheme and the Complainant was one of the users among several mobile connections. It should be noted that the Complainant is user and not the subscriber. However, during SIM verification drive by Vodafone, he managed to put his name as the subscriber/customer.
- e) He did not return the SIM card, which was property of the company, when he resigned from the company.

II. The Respondents also have been economical about truth:

- a) The justification for asking old bills, some as old as 8-9 months, is not given.
- b) Not only was duplicate bill copy asked for, but email address for e-billing was also changed. This fact has been suppressed in their written and oral arguments before me.
- c) Sh. Sunil Tanawade's statement before the Police mentions that he



was “surprised” to receive full Call detail records (Itemized billing) along with the duplicate bill, while usually he was getting only duplicate bills of various employees from Vodafone. This very grave fact has been totally suppressed by the respondents, which causes grave doubts about their intentions in getting such details from Vodafone.

- III. It is also clear that there are multiple disputes between the Complainant and the Respondents. The complainant has dragged Vodafone into their fight. He has definitely managed to catch Vodafone on a wrong foot.
- IV. Respondent No. 1, i.e., Vodafone has tied itself in knots during its written and oral arguments, and also has been economical with truth. It has totally suppressed the fact that it gave full Itemized billing, which practically means most of the details of CDR, rather than just the summary invoice of how much payment was due. It has also suppressed the fact that its internal investigations showed that they had committed mistake, and that they have taken necessary disciplinary action against their executive, and reinstated the correct email ID in the account. This is borne out by the email sent from Appellate.mum@vodafone.com to Complainant on 21st May 2013. Thus the Affidavit filed by Aditi Chauhan on behalf of Vodafone is partially false. She is insisting in her affidavit that they followed full procedures while changing the e-billing email address and giving out duplicate bills, but is silent why have they taken action against their executive.
- V. It is clear that after directives by DoT, the Respondent No. 1, i.e., Vodafone took a wide SIM verification drive. It seems that this drive was done without any systematic supervision, and many more faulty details crept in. Respondent 2 has pointed out that in this drive, Rohit Maheshwari managed to get his name as Subscriber in place of M/s Pine Trading, without any documentation given for this purpose by Pine Trading.

- VI. I find Vodafone’s Privacy Policy really loaded against the customer. It says



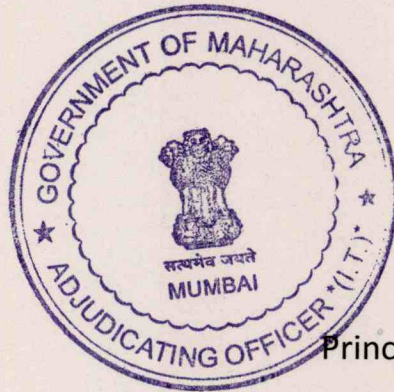
that the information collected by Vodafone “may include, amongst other things, your name, address, telephone numbers, information on how you use our products and services (such as the type, date, time, location and duration of calls or messages, the numbers you call and how much you spend, and information on your browsing activity when visiting one of our group companies’ websites), the location of your mobile phone from time to time, lifestyle information and any other information collected in relation to your use of our products and services”. The policy states in section 3.2 that the information may be shared by them “those who provide to us or our group companies products or services that support the services that we provide, such as our dealers and suppliers”. Section 3.3 says they may share information with “credit reference agencies ... who may share your information with other organizations and who may keep a record of the searches we make against your name”. Section 3.4 says that they may share information with “those providing telephone and similar directories or directory enquiry services”, and so on.

- VII. Vodafone has also argued that Sensitive Personal Data does not include the item wise billing of mobile phone they shared with Respondents 2. I have seen in case after case of net banking frauds, that duplicate SIM card is the key to crimes. These days, Mobile phone or SIM card acts as “MASTER KEY or MASTER PASSWORD” to a citizen’s digital repository. Gmail, Facebook, many banking sites send passwords on a citizen’s mobile, if they login and click on “Forgot Password” link. In most of the ecommerce transactions, OTP (One Time Password) is sent to the mobile to complete the transaction. The CDR (Call Detail Record) or even the item-wise billing details can reveal many sensitive personal information. Call logs to banks, financial institutions, insurance companies, luxury stores etc. can reveal financial information. Call records to doctors can reveal medical conditions such as pregnancy, cancer, AIDS etc. And, so on. Thus, the item-wise phone call details, in my view, is definitely a sure shot door to personal sensitive data, and hence is to be treated as Personal Sensitive Data under IT Act.



7. In view of the above, in my considered view:

- I. The Complainant has not come to this court with clean hands. Hence he deserves no compensation.
- II. Respondents also have been economical with truth, suppressing the fact that they got full item wise billing details from Vodafone.
- III. Vodafone has violated its own procedures, during SIM verification drive, and in giving full item wise call details and changing e-billing email address without following proper procedures.
- IV. Telecom Companies are trustees of Customers' data, and have to be judged on tough standards. A strong signal must be sent to them that they need to protect the privacy of their customers. Hence I hold the Respondent 1, i.e., Vodafone, guilty of breach of various sections of IT Act, and order them to pay a **token fine of ₹ 10,000 (Rupees Ten thousand) to the State Treasury** within a month of this order.



Rajesh Aggarwal

Principal Secretary (Information Technology),
Government of Maharashtra,
Mantralaya, Mumbai- 32