

GAHC010021872021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/875/2021

PARESH CHANDRA DEKA

VERSUS

THE STATE OF ASSAM AND 10 ORS
THROUGH THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
HOME AND POLITICAL AFFAIRS DEPT., DISPUR, GUWAHATI 6

2:THE DIRECTOR GENERAL OF POLICE

ASSAM
ULUBARI
GUWAHATI 781007

3:THE SUPERINTENDENT OF POLICE

KAMRUP
AMINGAON
GUWAHATI 781031

4:THE OFFICER IN CHARGE

RANGIA POLICE STATION
P.O. AND P.S. RANGIA
DIST. KAMRUP
ASSAM
PIN 781354

5:THE RESERVE BANK OF INDIA

REPRESENTED BY ITS REGIONAL DIRECTOR
STATION ROAD
GUWAHATI 781001
ASSAM.

6:THE STATE BANK OF INDIA

REPRESENTED BY ITS CHAIRMAN
BANK BHAWAN
MADAM CAMA ROAD
MUMBAI 400021

7:THE REGIONAL MANAGER NORTH EAST REGION

STATE BANK OF INDIA
DISPUR
GUWAHATI 781006

8:THE ASSTT. GENERAL MANAGER (CCC)

STATE BANK OF INDIA
LOCAL HEAD OFFICE
DISPUR
GUWAHATI 781006

9:THE BRANCH MANAGER

STATE BANK OF INDIA
RANGIA BRANCH
P.O. AND P.S. RANGIA
DIST. KAMRUP
ASSAM
PIN 781354

10:THE BHARATI AIRTEL

REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER
GURGAON CITY (DELHI AND NCR) UNITECH WORLD CYBER PARK
SECTOR 39
TOWER A
4TH FLOOR
GURGAON 122001
HARAYANA
(DELHI AND NCR)

11:THE BHARATI AIRTEL

NE CORPORATE OFFICE

BHARTI HOUSE
G.S. ROAD
SIX MILE
KHANAPARA
JAYA NAGAR
GUWAHATI 781022
ASSAM

Advocate for the Petitioner : MR R DHAR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

12.03.2024

The instant writ petition has been filed by the petitioner, who is a pensioner, being aggrieved by the fraudulent withdrawal of an amount of Rs.8,95,040/- from his savings bank account bearing A/C No. . maintained in the State Bank of India, (for short, the SBI) Rangiya Branch. From investigation, which was carried out pursuant to an FIR filed by the petitioner, it reveals that the police had arrested five persons and had forwarded them to the judicial custody.

2. It is apparent from a perusal of the affidavit-in-opposition filed by the respondent Nos.6, 7, 8 and 9 that on 03.10.2020 and 04.10.2020 various transactions were carried out in the petitioner's bank account, resulting in the available balance being Rs.69.61.P, whereas, on 02.10.2020, the balance in the account of the petitioner was Rs.9,13,506.54/-. It was mentioned by the SBI in

the affidavit that 9 internet banking transactions amounting to Rs.7,70,024/- were made between 03.10.2020 and 04.10.2020 and there were three UPI transactions of an amount of Rs,5000/-, Rs.50,000/- and Rs.50,000/- between 02.10.2020 and 03.10.2020. It was further mentioned that these 9 internet banking transactions were carried out with the help of secured OTP (one-time password) which was successfully delivered to the registered mobile number of the petitioner being _____ Further to that, it was mentioned that all frauds were merchant based transactions where the funds were remitted to a merchant "quick silver solutions", a third party transaction and there were three unauthorized UPI transactions amounting to Rs.5000/-, Rs.50,000/- and Rs.50,000/- on and between 02.10.2020 and 03.10.2020. It was mentioned that the petitioner had compromised his secret UPI PIN to the fraudsters. Further to that, OTP is not required in the UPI transactions, but only the secret PIN is required to log in to the UPI transactions.

3. This Court has also taken note of Annexure-A to the said affidavit filed by the SBI authorities which is the statement of the bank account of the petitioner. The record further reveals that an additional affidavit was filed by the SBI authorities pursuant to directions passed by this Court on 20.10.2023 stating, *inter alia*, as to how internet banking registration can be activated without branch visit as per its e-Circular No.NBG-INB/1/2015-16 dated 28.04.2015. A perusal of the said affidavit, more particularly, paragraphs 3 and 4 would show that in terms with the said e-circular dated 28.04.2015, internet banking registration could be activated without branch visit.

4. This Court also finds it very pertinent to observe herein that the petitioner

account prior to this incident had never been used for internet banking. Further it was categorically stated that the petitioner never applied for internet banking. It is also very pertinent to take note of that the mobile number which was used by the petitioner for his banking transactions with the SBI was in the name of his daughter one Tulika Deka. For the period from 02.10.2020 to 04.10.2020, as the SIM card used in respect of the mobile number, in question was not working, the daughter of the petitioner had lodged a complaint with the Airtel authorities (respondent No.10) on 04.10.2020. This aspect of the matter is evident from the affidavit-in-opposition filed by the respondent Nos.10 and 11. The enclosures to the said Affidavit includes the Airtel Prepaid Enrolment Form of the said Ms. Tulika Deka and the document used for the purpose of her identity; the application filed by the fraudster impersonating herself to be Ms. Tulika Deka, dated 01.10.2020 seeking sim swapping and the electoral voters' identity card of the said person impersonating the daughter of the petitioner.

5. At this stage, this Court finds it very pertinent to take note of that in the enrolment application filed, the address of the said Ms. Tulika Deka was mentioned as village-Murara, Rangiya with the date of birth as 11.04.1990. However, in the application filed by the person impersonating the daughter of the petitioner, her address was mentioned as village-Hiragota, Rangiya and in the application the date of birth was mentioned as 01.01.1985. Apparently, both the identifying documents did not match with the date of birth as well as the address of the daughter of the petitioner.

6. It is also relevant to take note of that on 04.10.2020 when the daughter of the petitioner went to lodge the complaint, she was asked to submit an

application for SIM swap on 04.10.2020. The daughter of the petitioner submitted her electoral identity card, where the address was categorically mentioned as village- Murara, P.S. Rangiya and the date of birth was mentioned as 04.10.1998. It is very pertinent to mention also that these details which have been inserted in the application enclosed as Annexure-A to the affidavit filed by the Airtel authorities (respondent No.10) had been done by the Airtel authorities (respondent No.10) as they had the control to insert those details.

7. This Court has further taken note of the circular issued by the Government of India, Ministry of Communications, Department of Telecommunications dated 01.08.2016 which was an instruction issued by the Government of India for issuing new SIM card in case of swapping/replacement/up-gradation of SIM cards. Clause (ii) and (iii) of the said instructions being relevant is reproduced hereunder:

“ii. The person at PoS shall match the copy of PoI document submitted by the subscriber with its original and also record a declaration on it, along with his/her name, signature, date, Pos code and Pos stamp containing address, that he has seen the subscriber and matched the copy of PoI document with its originals. Only after this activity, new SIM card may be issued to the subscriber.”

iii. Before activating of new SIM card, the employee of the Licensee who is activating the new SIM card shall verify that the details of PoI document submitted by the subscriber are matching with the records available with the Licensee and also record a declaration to this effect on the copy of PoI document under his/her name, designation and signature with date.”

8. From the above quoted instructions, it reveals that the person at the point of sale, meaning thereby, the Airtel authorities herein (respondent No.10) had to match the copy of the proof of identity documents submitted by the subscriber with its original and also record a declaration along with his/her name, signature, date, point of sale code and point of sale stamp containing the address to the effect that the person at the point of sale had seen the subscriber and match the copy of proof of identity document with its original. Only after the said exercise, a SIM card may be issued to the subscriber. There is a further additional check, which is required to be carried out and the same has been mentioned in Clause (iii) of the Instruction dated 01.08.2016, which mandates that before activating a new SIM Card, the employee of the licensee, meaning thereby an employee of the Airtel (respondent No.10), who would be activating the new SIM card shall verify that the details of the proof of identity documents submitted by the subscriber are matching with the records available with the licensee and also record a declaration to this effect on the copy of the proof of identity document under his/her name, designation, signature with the date. This Court, however, fails to understand that when the address and the date of birth details mentioned in the identity document which was in the records of the Airtel (respondent No.10) did not match with the details submitted in the application filed on 01.10.2020 and the Identity Document, how could the employee of the Airtel (respondent No.10) could have recorded the satisfaction that he had matched with the record and give a declaration. At the cost of repetition, it reiterated that the document which was submitted for SIM swapping on 01.10.2020 categorically mentioned the village as Hiragata, P.S- Rangiya and the date of birth in the application was 01.01.1985.

9. This Court has duly taken note of that in the instant case, the petitioner is seeking recovery of the amount which had been fraudulently withdrawn from his account and taking into account the circular of the Reserve Bank of India dated 06.07.2017, this Court, *prima facie*, is of the opinion that Clause 7(ii) along with Clause 8 of the said circular may be applicable to the facts of the instant case. This Court had also taken note of that the petitioner herein has alleged infraction to the circular of the Department of Telecommunication, Government of India dated 01.08.2016 by the respondent Nos.10 and 11. Therefore, for the purpose of a proper and effective adjudication of the instant writ petition, and also taking into account that this SIM swapping has become a menace resulting in various bank frauds, this Court is of the view that the Union of India, represented by the Secretary to the Government of India, Department of Telecommunications, Ministry of Communications, 12th Floor, Sanchar Bhawan, 20 Ashoka Road, New Delhi- 110001 is required to be made a party respondent in the instant proceedings. Accordingly, the Union of India, represented by the Secretary to the Government of India, Department of Telecommunications, Ministry of Communications, 12th Floor, Sanchar Bhawan, 20 Ashoka Road, New Delhi- 110001 is arrayed as the respondent No.12 to the instant writ petition. The petitioner herein is directed to file an amended Memo of parties before the Registry of this Court by 15.03.2024 and on the basis of the said amended Memo of parties along with the instant order, the Registry shall make necessary corrections in the cause-title of the writ petition and also update the same in the CIS.

10. Mr. CKS Baruah, the learned CGC who was present in the Court had

accepted notice on behalf of the newly impleaded respondent No.12. This Court directs the petitioner to serve a copy of the entire pleadings to Mr. CKS Baruah, the learned CGC by 14.03.2024. The respondent No.12 is directed to apprise this Court on the basis of the materials on record as to whether there has been a violation by the respondent Nos.10 and 11 to its Instruction dated 01.08.2016 in respect to the present case on the next date through an affidavit.

11. List the matter again on 02.04.2024 for further consideration.

JUDGE

Comparing Assistant