

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

Dated: 18/07/2019

CYBER APPEAL/2/2012

Petitioner Name: Rajendra Prasad Yadav

Versus

Respondent Name: Icici Bank Limited

BEFORE

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH ,CHAIRPERSON

HON'BLE MR. A.K. BHARGAVA ,MEMBER

For

**Applicants/Appellants/
Petitioners Advocate**

Mr.raman Yadav,
Advocate Ms.kritiya
Pandey

For Respondents Advocate

Mr. R.p. Agarwal, Advocate Mr.prateek Kushwaha, Advocate Mr.narendra Kumar

Amicus Curiae:

For Impleader(Pet.):

For Impleader(Res.):

ORDER

Heard learned counsel for appellant and learned counsel for the respondent.

This appeal is directed against an order dated 17.1.2012 passed by the Adjudicating Officer (AO) under the Information Technology Act, 2000(I.T Act) in complaint no. 015/2011 preferred by the appellant against the respondent bank and some others. At the relevant time Principal Secretary to Government, Department of Information

Technology, Government of Karnataka was the AO, who decided to reject the complaint as 'not maintainable' and held that section 43 of the IT Act is not applicable to a body corporate such as the respondent bank after IT amendment Act, 2008 came into force.

The impugned order is quite brief and short. After noticing the averments in the complaint, the AO has noted the main objection of the respondent bank questioning the maintainability of the complaint and jurisdiction of the AO to entertain the same. The contention of the bank was that the provisions of section 43 of the IT Act are not applicable to a body corporate, such as the respondent bank. To be fair to the bank, some other objections were also raised including the issue of onus.

The above contention relating to maintainability and jurisdiction alone has been dealt with summarily in a short paragraph at the very end of the order under appeal. The same reads thus :

“The contentions of both the respondent and complainant have been taken into consideration. The complaint is not maintainable, as made out by the respondent. Section 43 of IT Act is not applicable to a body corporate such as the respondent bank, after the IT amendment Act, 2008 came into force. The provisions of section 43 of IT Act are not applicable to the respondent bank. The contention of the respondent bank that the complaint is not maintainable is therefore upheld.”

Learned counsel for appellant submits that the findings given by Learned AO are without any discussion of the relevant provisions of the IT Act and are incorrect even on a plain reading of the relevant provisions in chapter 9, which deals with the penalties, compensation and adjudication.

According to submissions, Section 43 records various acts and misdeeds for which any person can be held liable to pay damages by way of compensation to the person so affected; there is no explicit provision exempting a juristic person such as a body corporate from the rigours of section 43 nor there is any good reason to infer an implied such an exemption. He further submitted that the complaint filed under this chapter before the AO requires the AO to exercise powers under section 46. The purpose of such adjudication or enquiry is clearly to find out whether any “person” has committed a contravention of any of the provision of the IT Act or any rule, regulation etc. which renders him liable to pay penalty or compensation.

Learned counsel for appellant referred to section 85 to show that a body corporate or a company can be liable even for offences under the Act in addition to persons who were in-charge of and responsible to company for the conduct of its business.

Of course, the person concerned can take permissible defence as indicated in the proviso. The explanation at the end of section 85 clarifies that the word company means any body corporate and even includes a firm or other association of individuals. It has also been shown to us that as a result of amendment Act 10 of 2009, section 43 A was inserted in the IT Act wef 27.10.2009 which is prior to date of occurrence in 2010 and this provision clearly stipulates that where a body corporate is negligent in implementing and maintaining reasonable security practices and procedures and having sensitive data or information in its computer resource, causes wrongful loss or wrongful gain to any person, then such body corporate shall be liable to pay damages by way of compensation to the person so affected. According to learned counsel, the AO failed to take note of relevant provisions of the IT Act including section 43 A, which is part and parcel of chapter 9 under which power to inquire/adjudicate has been given to the AO by virtue of section 46.

In reply, learned counsel for the respondent bank has referred to the proviso to section 85, proviso to section 66 and section 79. The submission is that the proviso to section 85(1) creates a defence and the person who was incharge and responsible to the company for the conduct of its business can take appropriate defence as permitted by the proviso and if he proves the same, he will not be liable to punishment. Section 79 grants exemption from liability to a intermediary in certain cases. Section 66 defines computer related offences.

Another submission advanced on behalf of the respondent is that the Ld. AO did not look at section 43 A because in a part of the complaint dealing with cause of action, the complainant has claimed that a financial loss has occurred to him because of many wrong deeds inside the bank's computer system and for that purpose reliance in various sub paras is only upon provisions of section 43 and not upon section 43A of the IT Act.

On going through the relevant provisions of the IT Act carefully, we find that the Ld. AO has committed error of law in holding the complaint to be not maintainable. The complaint in the very first line mentions that it has been filed for adjudication under section 46 of the IT Act. It is also clearly mentioned that several contraventions of section 43 as well as other sections of IT Act have occurred on different dates causing wrongful loss to the extent of Rs. 4,14,122/- of which Rs. 3,91,210/- remains unrecovered.

The jurisdiction to adjudicate and enquire vested under section 46 of the IT Act is wide enough to make the complaint maintainable. The power to enquire and adjudicate has been given to a senior and responsible officer so that misdeeds amounting to violation of provisions of the Act may be thoroughly examined and do not go unpunished. This jurisdiction can not get curtailed/ limited even if the complainant wrongly labels its complaint petition grievances. But fortunately, in this case, jurisdiction was clearly invoked under section 46. The complainant may not be aware of section 43A having already come in the statute book in October 2009, but it was the duty of AO to take that into consideration if the facts of the case so required. But this was not done possibly because at the outset, the AO held the complaint as not maintainable. It may be one thing to hold in the facts of a particular case that section 43 of the IT Act is not attracted against a particular body corporate but as a general principle of law it would be an error of law to say that the word “person” mentioned in section 43 cannot cover a body corporate and a bank.

We have gone through the provisions of section 85, section 79 and section 66 on which learned counsel for the respondent has placed reliance and find that those provisions do not lend any support to the views taken by the AO and are not relevant for deciding the question of law that has been decided by the Ld. AO but wrongly we find merit in submissions advanced on behalf of appellant. Hence, the impugned order is set aside by holding that the complaint cannot be dismissed as not maintainable and a body corporate such as the respondent bank can well be within the purview of the IT Act, as explained earlier.

It is unfortunate that the complainant has remained deprived of an appropriate order on his complaint for such long years. Hence, while remitting back to the Ld. AO, we direct that the complaint should be considered on merits expeditiously so as to take a final decision within three months from the date of production or communication of the copy of this order. The bank in our considered view, took a wrong and vexatious defence of jurisdiction and maintainability and that has led to this appeal.

Hence, while allowing the appeal, we also allow a cost of Rs. 75,000/- in favour of the complainant. That shall be paid by the bank to the complainant within one month.

**(S.K.SINGH)
CHAIRPERSON**

**(A.K. BHARGAVA)
MEMBER**