

BEFORE THE ADJUDICATING OFFICER

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

Complaint No. 15 of 2014 dated 10th March 2014

IN THE MATTER OF

1. Sh. Motiram Lavaji Tekam

..... Complainant

Versus

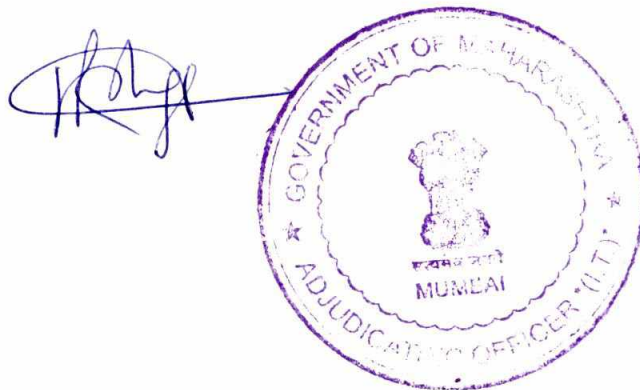
1. State Bank of India (Lakhani Branch, Bhandara)
2. State Bank of India (Corporate Centre, Mumbai)

..... Respondents

Advocates

1. For Complainant – Adv. Mahendra Limaye
2. For Respondent No 1 – Adv. Anilkumar

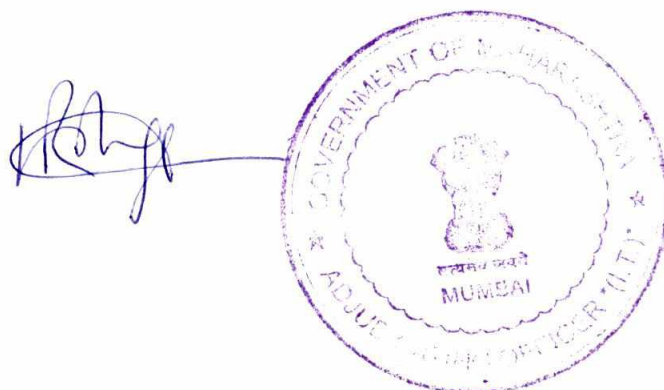
This is proceedings of a complaint filed by the Complainant for Adjudication under section 46 of the Information Technology Act, 2000. In keeping with the basic principles of natural justice and reasonable opportunity, detailed hearings were held in which both parties i.e. the Complainant and the Respondents 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. The Complainant is a senior citizen and holding saving bank pension account bearing no XXXXXX 0371 with Respondent No 1 since 2011.
- II. The complainant was provided with ATM Card bearing number XXXX XXXX XXXX XXX 1124. The Complainant was using this card mostly for cash withdrawal from ATM located at Respondent No 1
- III. On 17th December 2013 at 7.30 am, Complainant visited ATM located at Respondent No 1 for withdrawal of money. During transaction ATM machine accepted PIN number and other details like Saving Account, amount etc but cash was not disbursed.
- IV. Same incident was repeated again on same day at 10.00 am when complainant revisited the ATM. This type of error was regular at this ATM and the same was brought to the notice of bank officials. But they failed to rectify this error permanently.
- V. During second visit, one unknown person entered the ATM and offered help to the complainant. The complainant handed over ATM card to him, but entered the PIN on his own. The transaction was not successful at this time as well. That unknown person handed over another ATM card back to complainant and kept the genuine card with him. This was not noticed by the complainant at that time.
- VI. On 18th December 2013 bank was closed due to strike. On 19th December 2013, when complainant approached respondent bank, he came to know that his account balance is only Rupees 111. Complainant narrated all the sequence of incidence to the bank officials. Bank officials informed him that few ATM withdrawals and online transfers were made by using complainant's card and money amounting Rupees 3,77,700 had been debited to the account of complainant.
- VII. On same day, Complainant filed police complaint with Lakhani Police Station, Bhandara vide FIR no 0085876.



- VIII. Complainant's mobile number was not registered with bank account for providing alerts on banking transactions.
- IX. CCTV cameras were not installed at the ATM Center located at Respondent No. 1 and no security guard was posted at ATM Center.
- X. Complainant is claiming damages Rupees 5,00,000 which includes additional amount Rupees 1,22,300 towards legal charges, travelling cost, & monetary damages etc. Complainant has paid application fee Rupees 13,050 through demand draft.

2. Documents Submitted by Parties:

By Complainant:

- I. Complaint copy dated 10th March 2014 with necessary annexures like FIR and Statement of transactions etc.
- II. Response dated 10th September 2014
- III. Final argument submission dated 13th September 2014

By Respondent No. 1:

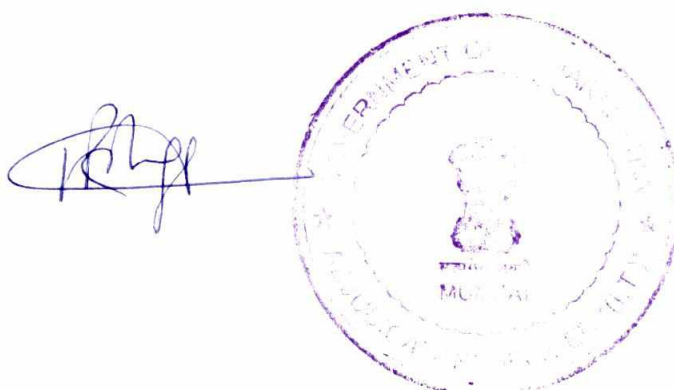
- I. Reply dated 14th July 2014 with necessary annexures
- II. Copy of Short notes of argument received by mail on 12th September 2014

By Police:

- I. Police Investigation Report dated 20th August 2014 and 12th September 2014

3. In their written and oral arguments, Respondents have made following points:

- I. Respondent claims that, the complainant approached bank on 19th December 2013 and gave a written complaint that his ATM Card has been stolen. Respondent took immediate action on this complaint and blocked the card.

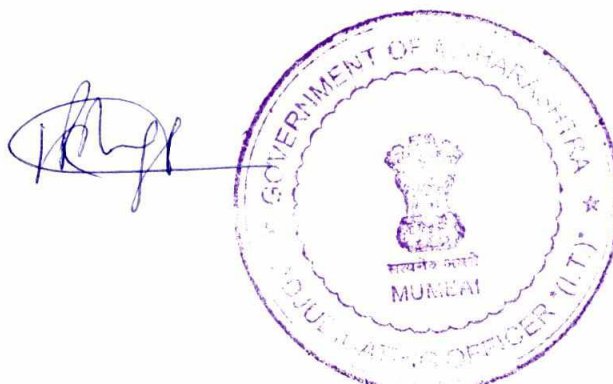


There is no withdrawal after blocking of card.

- II. Respondent claims that, the complainant filed contradictory complaint with the Police station, wherein he deposed that he was unable to access the ATM card and as such he took the assistance from the unknown person and disclosed password to him. That unknown person after changing the password, handed over some other card to the complainant. This unknown person has committed fraud with complainant.
- III. Respondent states that, ATM impugned is located within the premises of the bank, which is situated on the highway. There was a common security guard who takes care of the bank as well as the ATM which are abutting to each other. Instead of seeking help from help from the bank officials, The complainant sought assistance from the unknown person.
- IV. Respondent claims that, as on date there exists no guidelines for installation of Web-cams in the ATM, however only with the intention to safeguard the ATM, webcam are installed at remote and isolated ATMs which is optional. Respondent submits that, ATM impugned is located on busy highway and is within the premises of the bank, no camera whatsoever was installed.
- V. Respondent claims that, ATM machine was in working condition on 17th December 2013 and there was no technical error or fault with the machine and ATM card of the complainant.

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

- I. On 17th December 2013, when complainant could not make cash withdrawal transaction on ATM machine, one unknown person came forward to help him and took ATM card and PIN number from the complainant. Unknown person handed over another card of Gorelal Sen to the Complainant, which the Complainant could not notice.
- II. CCTV footage of the cameras available to Respondent No 1 was not clear.
- III. From the details of fraudulent transactions, it was observed that there were



withdrawals from ATM of SBI, Sakoli branch. CCTV footage were collected from that branch. It was found that unknown person who changed the ATM card of complainant and the person who made fraudulent withdrawals by using complainant ATM was the same.

- IV. Further detailed information about that unknown person was not available and hence he is not traceable.
- V. While scrutinizing the ATM transactions of Respondent Branch, for the period 15th December 2013 to 19th December 2013, it was found that the last successful transaction took place on 16th December 2013 at 8.43 pm.
- VI. CCTV was not functional at the time of incident and security guard was also not available at the ATM.

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

- I. The Bank has not given any meaningful report from its Fraud Investigation Unit, mandated by RBI guidelines. Neither have I received any detailed report on various Security Mechanism's installed by the Bank in order to secure their systems. They are also silent on any efforts made by them in order to resolve the dispute.
- II. I have gone through the Internet websites indicating protection offered by various banks abroad to their customers who use electronic channels to conduct transactions. Most of the banks in USA and in other developed nations INSURE their customers against online/ATM frauds etc., beyond a liability of 50 dollars. Section 909 of the "Electronic Fund Transfer Act" of USA dealing with Consumer Liability is really loaded in favour of the consumer. On similar lines, recently in January 2014, Banking Codes and Standard Board of India (BCSBI) unit has issued "Code of Bank's Commitment" where in customers of such fraud will only be liable to the extent of Rupees 10,000 only and the bank has to make good the rest of the amount, but acceptance of this code by banks is not visible.



- III. As individual customers/citizens do not have the wherewithal to fight the cyber criminals operating in total anonymity and across national boundaries, more proactive and consumer friendly policies are needed on behalf of the Banks, to safeguards the interests of their customers.
- IV. Police report clearly indicates that between 15th & 19th December 2013, the ATM was functional only till 16th December 2013 8.43 pm. This clearly shows that machine was faulty. Presence of unknown person inside the ATM booth aggravated the position, putting the customer at risk.

6. In view of the above,

- I. Customer himself must partially bear the loss because he took help of an unknown person inside the ATM booth.
- II. I hold the **Respondent (State Bank Of India)** in violation of Section 43A of the IT Act, and order them to a compensation of **Rupees 3,00,000 (Rupees Three Lakhs)** to the Complainant to cover his loss and legal costs, within a month of this order, failing which compound interest of 12 percent compounded monthly will also be chargeable.


10.1.2015

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

