

ITEM NO.2 COURT NO.7 SECTION PIL

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 35 OF 2005

HARSH PATHAK Petitioner(s)

VERSUS

U.O.I. & ORS. Respondent(s)

(With appln(s) for intervention and intervention and directions
and permission to place addl. documents on record)(For Final Disposal)

WITH P. (C) No. 275/2008 (For Prel. Hearing)

(With Office Report)

T.P.(C)No. 278/2008 (For Prel. Hearing)

Date: 31/07/2008 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Petitioner(s) Mr. Vivek K. Tankha, Sr. Adv.
Mr. Anurag Sharma, Adv.
Ms. Ratna Kaul, Adv.
Mr. Prashant Kumar, Adv.

For Respondent(s) Mr. Manu Nair, Adv.
Mr. Mark D'Souza, Adv.
for M/S Suresh A. Shroff & Co., Adv.

For RR-8 Mr. T.R. Andhyarujina, Sr. Adv.
Mr. Amit Dhingra, Adv.
Mr. Aman Leekha, Adv.
Mr. Rahul Prasanna Dave, Adv.

For RR-1 & 2 Mr. Gopal Subramaniam, ASG
Mr. Sanjeev K. Bhardwaj, Adv.
Mr. Satya Kam, Adv.
Mrs. Anil Katiyar, Adv.

For RR-3 Ms. Indu Malhotra, Sr. Adv.
Mrs. Shashi M. Kapila, Adv.
Mr. Kunal Tandon, Adv.
Ms. Monisha Handa, Adv.
Mr. Vikas Mehta, Adv.

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Mr. N. Ganpathy, Adv.

For SCB Mr. Sanjay Gupta, Adv.
Mr. Ajay Monga, Adv.
Ms. Varsha Kirplani, Adv.
Mr. Ateer Mathur, Adv.
Mr. Rajeev Sharma, Adv.

Mr. E.C. Agrawala, Adv.
Mr. Mahesh Agarwal, Adv.

Mr. Rishi Agrawala, Adv.
Ms. Neha Aggarwal, Adv.

Mr. Irshad Ahmad, Adv.

Mr. C.S.Vaidyanathan, Sr. adv.
Mr. Manjul Bajpai, Adv.
Mr. Ankur Saigal, Adv.
Mr. Gaurav Singh, Adv.
Ms. Inkle Barooah, Adv.
Ms. Bina Gupta, Adv.

UPON hearing counsel the Court made the following
ORDER

Heard learned counsel for the parties.

Our attention has been invited to Chapter IV-Obligations of the Access Providers and Telemarketers (containing Regulations 12 to 17) of the Telecom Unsolicited Commercial Communications Regulations, 2007 wherein under Regulation 13 it is provided that every telemarketer is required to be registered within three months of issue of the guidelines for telemarketers by Department of Telecommunications, Ministry of Communication and Information Technology. The said guidelines were issued in June, 2007 and have been amended in March, 2008. Therefore, now, every telemarketer is under an obligation to get itself registered with the Department of

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Telecommunications and in case it fails to do so, then there is a punishment provided in Regulations 14 and 15.

In view of Regulations 12 to 17 of the 2007 Regulations, we direct that if any telemarketer does not get itself registered with the Department of Telecommunications then the said telemarketer should not be permitted to operate the telemarketing services. The Union of India/the access providers would ensure that the said unregistered telemarketers are restraint from making unsolicited calls.

Mr. Vivek Tankha, learned senior counsel for the petitioner submitted that the present system of 'Do Not Call Registry' introduced by the Department of Telecommunication has not been very fruitful and public at large is still being put to great inconvenience by the telemarketers. Therefore, he submitted that a list should be provided to the telemarketers of the persons who are interested in receiving

the commercial calls on their mobile phones and as such the Department of Telecommunications should maintain a 'Call Receiver Register'. The persons under the 'Call Receiver Register' shall give a positive option to the Department/access provider that he/she is interested in receiving the commercial calls from the telemarketers. Mr. Tankha further submitted that 'Do Not Call Registry' system has not been a happy experience.

Therefore, we direct that the Union of India should reconsider the matter afresh and examine the possibilities that only those consumers should receive commercial calls who have given written requests for receiving the calls and no other person shall get

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the unsolicited commercial calls from the telemarketers.

Mr. Rajesh Aggarwal, learned counsel for the petitioner in the transfer petitions, submitted that the service/access providers should also be provided a distinct and distinguishable number to the telemarketers so that the public at large is able to identify the said number.

We request the Union of India also to consider the suggestion of Mr. Rajesh Aggarwal for providing distinct and distinguishable numbers to the telemarketers.

Mr. Gopal Subramaniam, learned Addl. Solicitor General appearing for the Union of India submitted that he will seek instructions from the government and request the government to consider these aspects of the matter and after examining the issue from all angles, a proper decision will be taken by the government and the government may suitably amend the regulations, if necessary.

Put up after six weeks.

(Ajay Kr. Jain)
Court Master

(Vijay Dhawan)
Court Master