IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.277 of 2013

Arising Out of PS.Case No. -39 Year- 2011 Thana -JAMHORE District-SAHARSA

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Balinder Singh, Son of Late Naujadik Singh, Resident of Village- Anjan, P.S.- Madanpur, District- Aurangabad

.... Petitioner

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna
2. The Director General of Police, Govt. of Bihar, Patna
3. The Senior Superintendent of Police, Gaya
4. The Superintendent of Police, GRP, Patna
5. The Superintendent of Police, Aurangabad
6. The Superintendent of Police, Jahanabad
7. The Officer-In-Charge of Jamhore Police Station, Aurangabad
8. The Investigation Officer, Jamhore Police Station, Aurangabad
9. Arjun Kumar Singh, Son of Jai Singh, Resident of Village- Mehiyan, P.S.- Tandwa, District- Aurangabad
10. Mukesh Kumar, Son of Govind Singh, Resident of Village- Mehiyan, P.S.- Tandwa, District- Aurangabad
11. Govind Singh, Son of Late Ramadhar Singh, Resident of Village- Mehiyan, P.S.- Tandwa, District- Aurangabad
12. Dipak Kumar Singh, Son of Jitendra Singh, Resident of Village- Mehiyan, P.S.- Tandwa, District- Aurangabad
13. Idea Cellular Limited through its Nodal Officer, Sumitra Sadan, Boring Road Crossing, Patna-800001
14. The Union of India through its Secretary, Department of Telecommunication, Sanchar Bhawan, 20, Ashoka Road, New Delhi-1
15. Bharat Sanchar Nigam Limited (BSNL) through its Chief General Manager/ Nodal Officer/CEO, Sanchar Sadan Sanchar Parisar, Budh Marg, Patna-800001
16. Reliance Communication Limited through its Circle Head/ Nodal Officer/CEO 3rd Floor, Maru Mansion, Kanke Road, Ranchi-834008 (Jharkhand)
17. Reliance Telecom Limited through its Circle Head/ Nodal Officer/CEO 2nd Floor, Maharaja Kameshwar Complex, Station road, Patna-800001
18. Reliance JIO Infocomm Limited through its Circle Head/ Nodal Officer/CEO, 5th Floor, Sai Corporate Park, Bailey Road, Patna
19. Bharti Airtel Limited through its Circle Head/ Nodal Officer/CEO, Plot No. 18, Patliputra Industrial Area, Patna-800013
20. Dishnet Wireless Limited (AIRCEL) through its Circle Head/ Nodal Officer/CEO, 6th Floor, Sai Corporate Park, Rishi Vatika, Rukanpur, Patna-800014
21. Vodafone Spacetel Limited through its Circle Head/ Nodal Officer/CEO, 3rd Floor Sai Corporate Park, Opposite SSB Office, Rukanpur, Patna-800014
22. Unitech Wireless (Tamil Nadu) Pvt. Limited (UNINOR) through its Circle Head/ Nodal Officer/CEO, 1st & 2nd Floor, Vaus Spring, Ashiana Digha Road, Ashiana More, Patna 800014
23. TATA Teleservices Limited through its Circle Head/ Nodal Officer/CEO, 2nd Floor, Maharaja Kameshwar Complex, Farzer Road, Patna-800001

24. Sistema Shyam Teleservices Limited (MTS) through its Circle Head/ Nodal Officer/CEO, 5th, 6th & 7th Floor, Abdul Hai Commercial Complex, Exhibition Road, Patna-800001

24(a) Vodeocone Tele Communications Limited through its Circle Head/ Nodal Officer/CEO, 2nd Floor, Shahi Bhawan, Exhibition Road, Patna-800001

25. Cellular Operators Association of India, a Society registered under the Indian Societies Act and having its office at 14, Bhai Vir Singh Marg, New Delhi-110001 through its Director General Rajan S. Mathew, son of Late Samuel Mathew, R/o 205, 2nd Floor, Golf Link, New Delhi

26. Association of Unified Telecom Service Providers of India, a Society registered under the Indian Societies Act and having its office at B-601, Gauri Sadan, 5, Hailey Road, New Delhi-110001 through its Secretary General, Ashok Sud, son of Mr. Rishi Raj Sud, R/o BB-14, Greater Kailash, Enclave II, New Delhi

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Prem Kumar Jha, Advocate
		Mr. Rajesh Kumar Jha, Advocate
		Mr. Mukesh Mishra, Advocate
		Mr. Nishant Kumar Jha, Advocate
For the Union	:	Mr. Sanjay Kumar, A.S.G.
For the COAI	:	Mr. Naveen Chawla, Advocate
		Mr. Rajesh Ranjan, Advocate
For the B.S.N.L.	:	Ms. Renuka Sharma, Advocate
For Respondent No.13	:	Mr. Rajesh Ranjan, Advocate
For Respondent No.18	:	Mr. Manoj Kumar Ambastha, Advocate
		Mr. Tripurari Nath Ambastha, Advocate
For Respondent No.20	:	Mr. Rajeev Kumar Singh, Advocate
For Respondent No.22	:	Mr. Amresh Sinha, Advocate
For the State	:	Mr. Ashok Kumar Keshri, AAG-XI
		Mr. Priyadershi Matri Sharan, AC to AAG-XI

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 22 -05-2015

Instant writ petition was filed on 18.03.2013 to command the Respondent 1st Party i.e. State of Bihar and its functionaries to recover Constable Vivek Kumar bearing No. 6500526 (A.S.H.) in 1(A.T.) Battalion, Bangalore and to produce him before the Court as he went missing and became traceless on 14.03.2011 while travelling from Bangalore to Aurangabad via Howrah Railway Station. Further prayer in the writ petition is to direct the authorities of the State to complete the police investigation of Jamhore P.S. Case No. 39/11 dated 02.05.2011 registered for the offences under Sections 363, 365, 34 of the Penal Code against Respondent Nos. 8 to 11 and to submit charge-sheet to enable the court below to expeditiously proceed with the trial of the offences found true during investigation.

2. Prosecution story, as set out in the written report of the informant, on the basis of which Jamhore P.S. Case No. 39/11 has been registered, is that Vivek Kumar, son of petitioner served as Constable bearing No. 6500526 (A.S.H.) in 1(A.T.) Battalion, Bangalore and was returning from Bangalore to Aurangabad via Howrah. He telephonically informed his family members on 14.03.2011 at 10.58 A.M. that he has reached Howrah. On 15.03.2011 Vivek Kumar again called his family members and informed them that he is calling from Patna and that he shall be reaching home by Budh Purnima Express. Vivek Kumar did not reach home whereafter written report dated 02.05.2011 was submitted to the Officer-in-Charge, Jamhore Police Station, Aurangabad, Respondent No. 7 informing him that Vivek Kumar has

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not reached home till date giving further information about his mobile IMEI No. 359355036397600 and SIM No.07357419804 through which Vivek Kumar contacted his family members on 14, 15.03.2011 from Howrah, Patna Railway Station(s). In the written report further information was given that the aforesaid mobile set and SIM was used by one Arjun Kumar Singh, son of Jai Singh and Mukesh Kumar, son of Govind Singh, both residents of Village Mehiyan Police Station Tandwa, District Aurangabad on 16.03.2011. In the written report suspicion raised that aforesaid Arjun Kumar Singh and Mukesh Kumar have abducted Vivek Kumar, who is unmarried, in collusion with Govind Singh, son of Late Ramadhar Singh, Dipak Kumar Singh, son of Jitendra Singh while Vivek Kumar was coming out from Anugrah Narayan Road Railway Station. In the writ petition it has further been averred that writ petitioner and the informant of the case contacted G.R.P., Varanasi and learnt that the belongings of Vivek Kumar were recovered from a train compartment at Varanasi and on that basis attempt was made to lodge First Information Report with G.R.P., Varanasi but the request not entertained. Petitioner and the informant thereafter represented before the Senior Superintendent of Police, Gaya, who instructed G.R.P. Gaya under Memo No. 1387/C dated 31.03.2013 to take the required action but G.R.P. Gaya also failed to

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lodge the First Information Report. Officer-in-Charge, G.R.P. Gaya, however, procured print out of the mobile set of the victim and found SIM No. 9661084147 used in the mobile set of the victim on 16.03.2011. In the light of the print out Officer-in-Charge, G.R.P. Gaya contacted the subscriber of SIM No. 9661084147 and learnt that the said SIM belongs to one Anurag Singh, who later deposited the said mobile set to Police Station, Sector-12, Bokaro. Petitioner also requested the Commanding Officer 1 TRG BTN ASC Centre (North) under his letters dated 22.03.2011, 24.03.2011 to trace out his missing son. Army Headquarters ASC Centre (North) also requested Superintendent of Police, Gaya to lodge First Information Report indicating that Vivek Kumar while travelling from Bangalore to Aurangabad went missing. Under letter dated 08.04.2011 Army Headquarters ASC Centre (North) requested the authorities to trace the person who withdrew the amount from the account of Vivek Kumar through ATM card on 16.03.2011 with the help of video clippings available in the camera at the ATM outlet. In Paragraph 10 of the writ petition petitioner further asserted that on 13.04.2011 he requested the Superintendent of Police (Rail), Patna to lodge the First Information Report. He also requested G.R.P. Varanasi, Gaya, Sasaram, Mhugalsarai, Sonenagar, Madanpur Police Station, Aurangabad to lodge the First Information Report but his request

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was not considered. Petitioner also revealed that on 20.03.2011 he received a call from SIM No. 8873697482 for payment of ransom amount of Rs. 10 lakhs to secure release of Vivek Kumar. He further revealed that on 16.03.2011 a sum of Rs. 700/- was withdrawn from the account of Vivek Kumar maintained by the Bank of India, Jehanabad bearing No. 20034382219 using his ATM card. Petitioner also requested Superintendent of Police, Aurangabad on 07, 28.04.2011 and Superintendent of Police, Jehanabad under his letter dated 09.04.2011 to trace out his son as also the person who withdrew Rs. 700/- from the account of his son on 16.03.2011 using his ATM card. He also appeared before Superintendent of Police, Aurangabad in Janta Darbar. Besides informing the police officials about his plight petitioner also wrote letters dated 18.04.2011, 02.05.2011 to Hon'ble the Chief Minister, Bihar explaining his plight and requested him to find a way out to end his agony. Ultimately, after lapse of about two months, in the light of his written report, Jamhore P.S. Case No. 39/11 was registered on 02.05.2011. In Paragraph 16 of the writ petition petitioner asserted that during investigation of the case police found that mobile set of Vivek Kumar bearing IMEI No. 359355036397600 was used between 27.03.2011-15.04.2011 with SIM No. 8409156373, which is mentioned in Paragraph 17 of the case diary of the said Jamhore

Police Station Case. On 16.04.2011 said mobile set was used with SIM No. 8271332269, on 20.04.2011 with SIM No. 8409156373. In Paragraph 17 of the writ petition petitioner asserted that in Paragraph 40 of the case diary Investigating Officer has found that aforesaid mobile set of Vivek Kumar was used on 16.03.2011 between 8.28-8.48 hours with SIM No. 9661084147 and that the said SIM belongs to one Kaushalya Devi, wife of Jai Singh, whose son Arjun Kumar Singh is an F.I.R. named accused in Jamhore P.S. Case No. 39/11. In the same paragraph of the case diary, it is also stated that Arjun Kumar Singh is well acquainted with other accused Mukesh Kumar. In Paragraph 18 of the writ petition petitioner asserted that charge-sheet against Mukesh Kumar, son of Govind Singh, one of the F.I.R. named accused was submitted on 07.01.2012 and the investigation kept pending against remaining accused persons named in the First Information Report as also one more accused Anurag Singh, who is not named in the First Information Report.

3. The writ petition was taken up for admission on 19.03.2013 when counsel for the State took four weeks' time to file counter affidavit and the case was directed to be listed after four weeks. On 22.04.2013 further one week time was allowed to the State counsel. On 30.04.2013 two counter affidavit(s) were filed on behalf of the State, one on behalf of Respondent No. 4

Superintendent of Police (Rail), Patna and another on behalf of Respondent No. 5 Superintendent of Police, Aurangabad. The High Court having considered the averments made in the counter affidavit filed on behalf of Respondent Nos. 4, 5 granted four weeks' further time to the learned counsel for the State to file another counter affidavit. On 17.06.2013 learned counsel for the State submitted that steps are being taken to find out the whereabouts of the victim and the High Court granted eight weeks' further time to trace the victim. Writ petition was again taken up on 13.08.2013 when further counter affidavit was filed on behalf of the State and this Court observed that investigation of the case so far has not yielded any tangible result, however, granted further four weeks' time to the official respondents to make serious endeavour for recovery of the victim. On 21.10.2013 the writ case was again taken up when two separate counter affidavit(s) were filed on behalf of the State respondents. The Court, however, observed that the result of the investigation to recover the victim has not made any progress and granted four weeks' further time with a hope that before the next date an affidavit duly sworn personally by the Superintendent of Police, Aurangabad would be filed indicating the steps taken for recovery of the victim. On 18.12.2013 High Court was informed by the State counsel that an application has been filed before the court below seeking permission

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to subject the accused to polygraph test and other steps to trace out the missing person is also being taken and request was made to further adjourn the matter by six weeks. The Court while adjourning the matter by six weeks directed the State counsel to place on record the efforts made by the Investigating Agency to recover the missing person by filing supplementary counter affidavit. On 10.02.2014 Superintendent of Police, Aurangabad appeared and informed the Court that two persons named in the First Information Report have been interrogated but their interrogation has only led to recovery of the mobile and arrest of two more persons not named in the First Information Report. The interrogation of the four persons, however, has not led to solving of the case as the victim has not been recovered so far. Counsel for the petitioner submitted that besides the mobile of the victim referred to in the written report there is yet another mobile No. 8873697482 referred to in the letter of the petitioner dated 13.04.2011, Annexure-9, addressed to the Superintendent of Police (Rail), Patna wherefrom ransom call was first received by the petitioner and the Investigating Agency should recover the said mobile as also trace the victim through the aforesaid mobile, for which Superintendent of Police, Aurangabad prayed for and was granted one month further time. The Court further directed the Superintendent of Police, Aurangabad to subject Mukesh Singh

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to polygraph test and to submit report about further investigation of the case. In the light of the order dated 10.02.2014 Superintendent of Police, Aurangabad filed 3rd supplementary counter affidavit, which was considered by the High Court on 13.03.2014 and the Court having considered the contents of the counter affidavit expressed its dissatisfaction about the progress made in the investigation, as in spite of direction given by the High Court to investigate the call details of mobile no. 8873697482 the Investigating Officer did not make any effort to investigate, examine the subscriber of SIM No. 8873697482 from which the first ransom call was received by the petitioner. The matter was adjourned to 14, 28.03.2014. On 28.03.2014 Superintendent of Police, Aurangabad informed the Court with reference to the statement made in 4th Supplementary counter affidavit that Special Investigating Team (SIT) has been constituted to trace the subscriber of SIM No. 8873697482 from which first ransom call was received by the petitioner and informed the Court that further report in the matter shall be submitted on 01.05.2014. In this connection, it is stated in Paragraph 8 of the 4th supplementary counter affidavit that Superintendent of Police, Rohtas has been requested under Memo No. 1221/ Confidential dated 19.03.2014 (i) To verify the name and address mentioned in Owner Detail (CAF) of Mobile No. 8873697482 (ii) To verify the

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identity card enclosed with the CAF from the concerned College (iii) To locate Nitish Kumar, the subscriber of the said mobile and inform Jamhore Police Station (Aurangabad) so that he may be interrogated.

4. In the light of the aforesaid instructions efforts were made by the Superintendent of Police and the Special Investigating Team (S.I.T.) to locate the subscriber of mobile No. 8873697482 as also to verify the contents of the Identity Card appended with C.A.F., on the basis of which SIM No. 8873697482 was issued, but neither the subscriber of the said mobile could be traced nor the person whose photograph was pasted with the Identity Card, appended with the C.A.F., could be verified as the same was found to be a forged, fabricated document. Aforesaid information was given to this Court on 02.05.2014 whereafter this Court under order dated 02.05.2014 asked the Head of the S.I.T. to serve notice on the service provider i.e. Aditya Birla Idea Cellular Ltd. to appear in this Court and explain as to why mobile SIM No. 8873697482 was given to the subscriber of the said SIM without physically verifying his identity and address. In response to the notice Idea Cellular Ltd. appeared through counsel on 07.05.2014 and informed this Court that in terms of the guidelines of the Department of Telecommunications, Government of India physical verification of identity and address of Pre-paid Mobile Consumer is not necessary,

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as in terms of the guidelines physical verification of the identity document is to be made with its original as produced by the consumer before obtaining connection. It was further stated that physical verification of identity and address is made only in case of post-paid subscriber. In support of the aforesaid contention instructions of the Department of Telecommunications, Government of India dated 22.11.2006 was produced. In the light of the aforesaid submission made on behalf of the counsel for Idea Cellular Ltd. this Court impleaded both Idea Cellular Ltd. through its Nodal Officer, Bihar and Union of India through Secretary, Department of Telecommunications, Government of India as Respondent Nos. 13, 14 in the writ petition and directed the counsel for the parties to serve copy of the entire pleadings on the counsel for the newly added Respondent Nos. 13, 14 to explain the contents of the term “physical verification” incorporated in Clause-3 of the guidelines dated 22.11.2006, as this Court was of the opinion that without physical verification of the identity and address proof of mobile pre-paid consumer grant of mobile connection to pre-paid consumer is threat to security of the people of India as any verification without physical verification is an exercise in futility. In Paragraph 3 of the said order Assistant General Manager and Alternate Nodal Officer, Idea Cellular Ltd. were also directed to file affidavit explaining the procedure by which any mobile connection is put on parallel listening and to further state that the procedure is strictly followed and never breached before putting any mobile connection on parallel listening. From perusal of order dated 14.05.2014 it appears that in the light of the request of the S.I.T., S.D.P.O., Sadar Aurangabad Nodal Officer, Idea Cellular Ltd. agreed to furnish Call Detail Report (C.D.R) of SIM No. 8873697482 for previous one year. By filing 9th supplementary counter affidavit Respondent No. 5 informed this Court on 04.08.2014 that the mobile details from Idea Cellular Ltd. has been received and analysed but nothing much could transpire from further investigation in the matter on the basis of outgoing calls made from the mobile in question. This Court, however, directed S.D.P.O., Sadar Aurangabad to ensure further investigation about the mobile SIM No. 9162066986. From order no. 23 dated 29.08.2014, passed by this Court in the present writ case, it appears that on 29.08.2014 Assistant Solicitor General prayed for and was granted two weeks' time to discuss the matter with the higher authorities of the Union Government in the light of the observations of this Court contained in Paragraph 2 of its order dated 07.05.2014 regarding physical verification of identity, address proof of pre-paid subscriber in the background of the facts of the present case that the son of the petitioner, who was an Army Jawan and was

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on transit from his training camp, Bangalore to the place of his duty, was abducted while moving in train from Patna to Aurangabad. A case was registered but investigation came to a dead end, as identity of the person, who made first ransom call from a particular mobile SIM No. 8873697482, could not be traced as his identity before activating the mobile number was not actually verified and the identity, address proof given with the Consumer Application Form (C.A.F.) was found fake and adjourned the matter to 11.09.2014. On 11.09.2014 Union of India, respondent no. 14 filed supplementary counter affidavit informing this Court that in the year 2010 a Public Interest Litigation bearing Writ Petition No. 285 of 2010 (Avishek Goenka v. Union of India & Anr.) was filed before the Supreme Court whereunder petitioner asserted that various service providers were ignoring the norms concerning verification of subscribers before activating their mobile connection. Supreme Court in its order dated 27.04.2012 vide Paragraphs 16, 17 observed :

> *"16……The abovementioned points of divergence between TRAI and DoT are matter which will have serious ramifications not only vis-à-vis the regulatory authorities and licensees but also on the subscribers and the entire country. These aspects demand serious deliberation at the hands of the technical experts. It will not be appropriate for this Court to examine the*

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technical aspects, as such matters are better left in the domain of the statutory or expert bodies created for that purpose. The concept of 'regulatory regime' has to be understood and applied by the courts, within the framework of law, but not by substituting their own views, for the views of the expert bodies like an appellate court. The regulatory regime is expected to fully regulate and control activities in all spheres to which the particular law relates."

17…We have clearly stated that it is not for this Court to examine the merit or otherwise of such policy and regulatory matters which have been determined by expert bodies having possessing requisite technical knowhow and are statutory in nature….."

and constituted a Joint Expert Committee to frame guidelines for effective verification of subscribers' identity and address proof. In the light of the aforesaid direction of the Supreme Court the Committee framed guidelines which was approved by the Department of Telecom and is dated 14.03.2011. Instruction dated 14.03.2011 was further considered by the Joint Expert Committee consisting of two experts from Telecom Regulatory Authority of India (TRAI) and two experts from the Department of Telecom (DoT) under the Chairmanship of Secretary, Ministry of Communication and Information Technology, Government of India

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with reference to the following questions framed by the Supreme Court :

(a) Whether re-verification should be undertaken by the service provider/licensee, the DoT itself or any other central body?

(b) Is there any need for enhancing the penalty for violating the instructions/ guidelines including sale of pre-activated SIM cards?

(c) Whether delivery of SIM cards may be made by post? Which is the best mode of delivery of SIM cards to provide due verification of identity and address of a subscriber?

(d) Which of the application forms, i.e., the existing one or the one now suggested by TRAI should be adopted as universal application form for purchase of a SIM card?

(e) In absence of Unique ID card, whether updating of subscriber details should be the burden of the licensee personally or could it be permitted to be carried out through an authorized representative of the licensee?

(f) In the interest of national security and the public interest, whether the database of all registered subscribers should be maintained by DoT or by the licensee and how soon the same may be made accessible to the security agencies in accordance with law?

As regards question 3(c) (supra) the Joint Expert Committee observed as follows :

> *“The Committee noted that mobile connection is a personal phone and in order to ensure bonafide use of the same by the owner, the SIM needs to be delivered in the hand of the owner.*
>
> *It is felt that it may not be possible for the postal department to handover the SIM to the owner, as it is probable that the concerned person may not be available in first attempt at his premises during the visit of postman. It is also noted that it may not be practically possible for the postman to visit the premises of the SIM owner again and again for the delivery of the SIM in the hand of owner therefore the Committee is of the view that delivery of the SIM through post may not be useful.*
>
> *The Committee further noted that existing practice of delivery of SIM by telecom service providers through their authorized franchisees in the hands of person whose identity and address proof have been provided appears to be one of the best mode of delivery of SIM.”*

5. In the light of the recommendations of the Joint Expert Committee instruction dated 14.03.2011 was modified under

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instruction dated 09.08.2012. Paragraph 3 of instruction dated 09.08.2012 provides for activation of new mobile connection. Close perusal of the said paragraph would indicate that a mobile connection is to be activated after receipt of the Customer Application Form (CAF) enclosing proof of identity and address of the subscriber by the person receiving the same and the subscriber details have been updated in the subscriber database of the licensee. Perusal of the said instruction does not indicate that identity and address proof furnished by the new subscriber along with CAF is required to be confirmed from the authority which has issued the identity, address proof of the new subscriber. In the instant case, had the proof of identity and address of first ransom caller through SIM No. 8873697482 been verified from the College, which issued the identity card, there would not have been any difficulty for the Investigating Officer to trace the caller and through him recover the son of the petitioner. Appreciating such fact, as per request of the counsel for the parties, matter was adjourned to 19.09.2014 with direction to the counsel for the Union to ensure appearance of other eight service providers including B.S.N.L. so as to assist this Court on the point noted under orders dated 07.05.2014, 29.08.2014 on the issue of verification of the identity, address proof furnished with the Consumer Application Form (CAF) as also the modalities adopted for putting any mobile connection on parallel listening. Counsel for the State was directed to furnish data of such cases in which investigation of serious crime has come to a naught because of the failure of the Investigating Agency to reach the subscriber of a mobile connection as identity, address proof furnished by him with the Consumer Application Form (CAF) has been found fake. Under order dated 14.10.2014 this Court directed the counsel for the petitioner to implead all the Service Provider Telecom Companies as Respondent Nos. 15 to 24 with direction to the newly added respondents to file affidavit sworn by local head stating the norms which the service providers follow before putting any subscriber on parallel listening and that in future respondent concerned will not act in violation of the guidelines. State counsel was again directed to furnish a list of cases on affidavit which failed because of lack of verification of the ransom caller as his identity, address proof furnished to the service provider has been found fake during investigation. On 07.11.2014 State counsel filed counter affidavit on behalf of Respondent No. 2 furnishing a list of as many as 110 cases contained in Letter No. 38/ Technical CID, Bihar, Patna dated 06.11.2014 in which investigation of serious crime has come to a naught because of the failure of the Investigating Agency to reach the subscriber of cell-phone because identity, address proof furnished with the Consumer Application Form (CAF) has been found fake. While filing the list of 110 cases it was submitted by the State Counsel on 07.11.2014 that the list of 110 cases does not include cases from Gopalganj, West Champaran (Bettiah), Sheohar, Rail Jamalpur, Rail Bhagalpur and Rail Kiul and the same shall be furnished within further two weeks. In the light of the aforesaid undertaking State counsel filed 1st supplementary counter affidavit on behalf of Respondent No. 2 on 21.11.2014 giving further list of 31 cases contained in Letter No. 41/Technical CID, Bihar, Patna dated 19.11.2014 in which the investigation failed because of the failure of the Investigating Agency to reach the subscriber of cell-phone as his identity, address proof furnished with the Consumer Application Form (CAF) was found fake. On 21.11.2014 this Court having considered the averments made in I.A. No. 2345 of 2014 filed by Cellular Operators Association of India, Association of Unified Telecom Service Providers of India directed that both the Associations be impleaded as Respondent Nos. 25, 26 in the writ petition and adjourned the matter to 12.12.2014 with further direction that the time in the meantime be utilized by the Union of India, Department of Telecom to interact with the Telecom Regulatory Authority of India and the newly added respondents for providing supplementary guidelines to supplement the guidelines

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already existing asking the service provider to confirm the genuineness of the identity, address proof of the subscriber from the authority which issued the proof appended with the Consumer Application Form (CAF). On 12.12.2014 Assistant Solicitor General of India informed the Court that the Government has initiated the process of consultation for ensuring genuineness of the identity, address proof of subscriber furnished to the service provider and requested that the matter be adjourned by three weeks, accordingly, case was directed to be put up on 09.01.2015. The matter was again taken up on 12.01.2015 when 2nd supplementary counter affidavit was filed on behalf of Respondent No. 14. In Paragraph 2 of the said counter affidavit it was stated on behalf of the Respondent No. 2 that the decision dated 06.01.2015 arrived after due consultation with Telecom Regulatory Authority of India (TRAI), Cellular Operators Association of India (COAI), Association of Unified Telecom Service Providers of India (AUSPI) and Telecom Operators is required to be brought on record. In the same paragraph it is further stated that the opinion formed after due consultation is that physical verification of each of the mobile subscribers will be a cumbersome and resource intensive process and therefore it is not feasible, implementable and practical. In support of the decision a communication bearing U.O. No. 800-09/2010-VAS III dated

06.01.2015 issued under the signature of ADET(AS-II) is annexed as Annexure-G to the said supplementary counter affidavit.

6. By filing 15th, 16th, 17th, 18th supplementary counter affidavit on 21.11.2014, 12.12.2014, 12.01.2015, 30.01.2015 respectively Respondent No. 5 confirmed that investigation in the present case about other mobiles also reached a dead end as the identity of the subscriber of SIM Nos. 9955487684, 8873083254, 8800145221 could not be verified as identity, address proof of subscriber is fake and incorrect information was furnished in the Consumer Application Form (CAF).

7. Newly added Respondent Nos. 13, 16, 17, 18, 20, 24 filed affidavit on 21.11.2014 stating therein that Department of Telecommunications has issued Standard Operating Procedure (SOP) wherein required guidelines have been laid down for Lawful Interception and Monitoring Process across all Telecom Service Providers to ensure systematic and tamper proof monitoring of target numbers. Clause (4) of Standard Operating Procedure provides guidelines for Regular Request Order which can only be issued by the Secretary to the Government of India in the Ministry of Home Affairs or by the Secretary to the State Government, Incharge of the Home Department. It is further provided that in unavoidable circumstances such order may be issued by an officer not below the

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rank of Joint Secretary to the Government of India and duly authorised by the Union Home Secretary or by Home Secretary of the State. After receipt of such request Circle Nodal Officer (C.N.O.) should validate the authenticity of the interception request in accordance with the guidelines provided in the Standard Operating Procedure. The Circle Nodal Officer is further required to accept only the original request letter. No interception can be done on a request sent by telephone, S.M.S. and Fax. In case of request letter being sent through e-mail, the Circle Nodal Officer is required to accept such e-mail only if the same is sent through official I.D. of the authorised person. The scanned copy of request letter should be attached to the e-mail and the physical copy of the same must reach the Circle Nodal Officer within 48 hours, failing which the interception shall be terminated. Standard Operating Procedure further provides for emergent request order for circumstances where obtaining prior approval from competent authority is not feasible. Clause 9 of the Standard Operating Procedure provides the list of the Central and the State Agencies to whom facilities for interception and monitoring can be extended. Newly added respondents categorically stated in their separate affidavit that all along the service provider has been following the Standard Operating Procedure issued by the Telecommunication Department in both letter and spirit.

8. Learned counsel for the petitioner taking note of the fact that Investigating Agency (Aurangabad District Police) failed to trace the first ransom caller who called through SIM No. 8873697482 and subsequent callers through SIM Nos. 9955487684, 8873083250, 8800145221 and thereby could not recover the victim Army Constable Vivek Kumar even after lapse of more than two years of his disappearance i.e. on 14.03.2011 while travelling from Bangalore to Aurangabad via Howrah, Patna Railway Station submitted that investigation of the case be handed over to the Central Bureau of Investigation (CBI) so that the victim Army Constable may be recovered from the captivity of those who abducted him and the abductors brought to justice.

9. Counsel for the State, on the other hand, submitted that he has no objection if this Court direct transfer of the investigation of the case from District Police, Aurangabad to the Central Bureau of investigation or any other Agency but such transfer alone may not serve the purpose as the present Investigating Officer/ Special Investigation Team after conducting investigation of the case concluded that the investigation in the case cannot proceed further as identity, address proof of the ransom callers have been found fake and the investigation has reached a dead end. Mere

change of the Investigating Agency will not enable the other Investigating Agency to trace the ransom caller and without him it will be impossible for the investigator to reach the victim through fake identity, address proof of the ransom caller.

10. Learned counsel for the Union (respondent no. 14), Service Providers (respondent nos. 15 to 24), Cellular Operators Association of India and Association of Unified Telecom Service Provider of India, respondent nos. 25, 26 submitted that as far the issue of parallel listening is concerned the Government of India has issued Standard Operating Procedure of lawful interception and monitoring of Telecom Service Providers dated 02.01.2014 which the service providers follow before putting any subscriber on parallel listening and affidavit stating such fact has already been filed by the service providers. In the said affidavit the service providers have also undertaken that in future the service provider will not act in violation of the guidelines.

11. Learned counsel for Respondent Union, Service Providers and the two Associations submitted that for subscriber verification the Government of India has issued various instructions from time to time. He also pointed out that the matter with respect to the subscriber verification and necessity of physical verification of a subscriber before activating his SIM came up for

consideration before the Supreme Court in Writ Petition(C) No. 285 of 2010 (Avishek Goenka v. Union of India and others) and the Court passed a detailed judgment dated 27.04.2012, which is at page 403 of the brief. Learned counsel having referred to the judgment took us to Paragraphs 8, 9, 16, 17, 18, 20 of the said judgment and submitted that in compliance of the above judgment and order passed by the Supreme Court Government of India issued instruction on verification of new mobile subscriber (pre-paid and post-paid) dated 09.08.2012 at page 445 of the brief, which is comprehensive in nature and have been issued after extensive consultation with all stakeholders including TRAI etc. Learned counsel with reference to Clause-3 of circular dated 09.08.2012 submitted that the said clause provides comprehensive and adequate safeguards for subscriber verification including identity, address proof of the subscriber. He further submitted that Clause-3(i) of circular dated 09.08.2012 prescribes that subscriber shall fill Customer Application Form (CAF) upon which his passport size photograph is pasted. Subscriber shall also append with the CAF document of his identity, address proof provided in circular dated 07.10.2009, 14.01.2011 and 16.10.2014. With reference to the aforesaid three circulars learned counsel for Respondent Union, Service Providers, two Associations submitted that a bare perusal of the document listed in the above circulars would indicate that a prospective/ would be subscriber is required to establish his identity, address proof with reference to the documents issued by the governmental agencies after due verification i.e. passport, voter identity card, driving licence etc. In this connection, learned counsel submitted that Clause-3(iii) requires the authorized person at the point of sale to record that he has seen the subscriber and matched his photograph attached with the CAF with the subscriber and verified the copies of identity, address proof document with its original. Clause-3(iv) of the circular provides that the mobile connection shall be activated only after requirement of filling up of CAF appended with the documentary proof of identity and address has been completed and subscriber detail updated in the subscriber database of the service provider. Clause-3(vi) of the circular provides that unless details furnished in the CAF is tele-verified by the service provider the subscriber will not be able to make any call, except to the operator. In tele-verification details are asked from the subscriber and verified from the details updated in the database from CAF. Learned counsel for the Union, Service Providers and the two Associations further submitted that to answer the concern of a forged document appended with the CAF to establish identity, address proof of the new subscriber the circular dated 09.08.2012 provides in Clause 10 for lodging of First

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Information Report with the police and filing of complaint in the Court. Having explained the different clauses of the circular learned counsel submitted that the circular dated 09.08.2012 adequately answers the concern with respect to verification of the identity, address proof of the new subscriber.

12. Learned counsel also submitted that in the light of the order of this Court dated 21.11.2014 Department of Telecommunications interacted with TRAI and the two Associations for providing supplementary guidelines to supplement the guidelines already existing for physical verification of the data entered in the CAF and the Department of Telecommunications filed its second supplementary counter affidavit stating therein that the said issue was duly deliberated and it was found that physical verification of each of the mobile subscriber will be a cumbersome and resource intensive process and therefore it is not feasible and practical to implement the same.

13. Learned counsel for the Union, Service Providers and the two Associations further submitted that this Court under order dated 12.01.2015 directed the Assistant Solicitor General of India to take instruction in the matter from the Union Home Secretary about the security concern expressed by this Court and in compliance of the said direction respondent Union of India

placed on record communication dated 23.01.2015 stating that the volume of mobile subscribers in the country reached 998 Million in the end of financial year 2013-14 and there is addition of approximate six million new customers per month. As regards policy issue of physical verification of subscribers before issue/ activation of SIM card the Nodal Ministry (DoT) submitted its position explaining practical difficulty in undertaking gigantic exercise to verify proof of identity and address. In this connection, it was categorically stated that the Ministry of Home Affairs also shares the views of DoT in view of the practical difficulty involved in prior physical verification of the subscriber.

14. Learned counsel for the Union, Service Providers and the two Associations next submitted that expert bodies, namely, DoT, Ministry of Home Affairs and TRAI have clearly opined that the existing guidelines dated 09.08.2012 is not only adequate but also answer the security concern expressed by this Court. Physical verification of identity, address proof of the subscriber before issue/ activation of SIM card would neither be feasible nor practical as held by the Supreme Court in the case of **Avishek Goenka** (supra), this Court may not substitute its views for that of the experts in the matter of security. Reference in this connection was also made by counsel for respondent nos. 25, 26 to

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the judgment of the Supreme Court in the case of ***Ex-Armymen's Protection Services Private Limited v. Union of India and others (2014) 5 Supreme Court Case 409***. In the reported case appellant was granted ground handling contract at different airports in the country. The handling contract is subject to security clearance from the Bureau of Civil Aviation Security. The appellant was granted security clearance for a period of five years with effect from 17.04.2007. In the light of the said security clearance appellant entered into a contract with Jet Airways for providing ground handling services at various airports including Patna Airport. On 27.11.2008 appellant was informed that security clearance allowed to the firm has been withdrawn in national interest, which the appellant challenged in High Court by filing writ petition. The writ petition was allowed by learned Single Judge and the impugned order was set aside on the ground that the allegations which persuaded the Bureau to withdraw the security clearance were not disclosed to the affected party giving opportunity to meet the same at the time of hearing. In intra-Court appeal the order of the Single Judge was set aside and withdrawal of the security clearance was upheld. Supreme Court after granting leave held that in situations of national security party cannot insist on strict observance of rules of natural justice. In such cases, it is the duty of the Court to read into

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and provide for statutory exclusion of principles of natural justice, if not expressly provided in rules governing the field. Once the State is of the view that the issue involves national security the Court shall not disclose reasons to the affected party.

15. Learned counsel for the two Associations also submitted that in compliance of the orders of this Court dated 11.09.2014 and 14.10.2014 State Government furnished a list of 141 criminal cases registered in the last five years, which could not be solved as the Investigating Agency failed to reach the subscriber for want of correct information in the CAF, and against the said fact learned counsel submitted that the service providers render other assistance in solving the serious crime by assisting the Investigating Agency providing Call Data Record, Subscriber Details Record, BTS Location update etc. and in recognition of such fact the Law Enforcement Agencies have issued various letters/ certificates of appreciation to the service providers acknowledging their help in solving various heinous/ serous crimes. Such certificates being voluminous in nature have not been appended with the counter affidavit, but if so directed can be produced before the Court.

16. Learned counsel with reference to the judgment of the Supreme Court in the case of **Avishek Goenka** (supra) submitted that a delicate balance has to be maintained

between the security concern, stated policy objective of the Government to improve tele-density, mobile penetration and interest of the service providers. He submitted that any condition imposed upon the service provider has to be commensurate and not disproportionate to the aforesaid shift in the Telecom Policy objective. In this regard he referred to the judgment of the Supreme Court in the case of ***Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Assn. and another (2007) 4 Supreme Court Cases 669***. In the reported case Supreme Court held that Indian Legal System has accepted the doctrine of proportionality to control possible abuse of discretionary power by the administrative authorities if action by authority is contrary to law, improper irrational or otherwise unreasonable a Court of law can interfere with such action by exercising power of judicial review. In the facts and circumstances of the reported case Supreme Court held that the High Court was not justified in invoking the doctrine of proportionality. It was held that normally the findings recorded in a disciplinary proceeding cannot be interfered with unless such finding is based on no evidence or is perverse or is such that no reasonable man in the circumstances of the case would have reached such finding. In the case of ***Chairman, All India Railway Recruitment Board and another v. K. Shyam***

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Kumar and others (2010) 6 Supreme Court Cases 614 Court judged the decision taken by the Board in case of mass-copying by the candidates appearing in recruitment test conducted by the Railway Recruitment Board and held that the conclusion of the High Court that there was no illegality in going ahead with recruitment process confining investigation to 62 candidates against whom there were serious allegations of impersonation could not be sustained applying the test of Wednesbury unreasonableness and the proportionality doctrine the decision taken by the Board to conduct re-test for those who obtained minimum qualifying marks in the first written test was held the best alternative.

17. Learned counsel for the two Associations finally submitted that the service providers have been granted licence under Section 4 of the Indian Telegraph Act, 1885 incorporating terms of their licence. The terms of licence has nexus with the service which is required to be provided by the licensee service provider to the subscriber. According to learned counsel the terms of licence cannot be expanded to impose upon the licensee conditions which are otherwise the duties of the State Police and other Law Enforcement Agencies. According to learned counsel any extraneous condition beyond the terms of the licence would in fact be liable to be set aside as being arbitrary and violative of Articles

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14, 19(1)(g) of the Constitution of India. In support of the aforesaid submission learned counsel for the two Associations placed reliance on the judgment of the Supreme Court in the case of ***Delhi Science Forum and others v. Union of India and another (1996) 2 Supreme Court Cases 405***. From perusal of the said judgment it would appear that in the reported case petitioners questioned the power of the Central Government to grant licence to different non-government companies to establish, maintain telecommunication system in the country and the validity of the procedure adopted by the Central Government for grant of licence to the non-government companies for providing telecom services to the people pursuant to new Telecom Policy announced by the Finance Minister of the Union in his budget speech delivered in February 1993 and placed before the Parliament on 13.05.1994. Supreme Court having considered the provisions of Telegraph Act, 1885 held that the new Telecom Policy is not only a commercial venture of the Central Government but the object of the policy is also to improve the telecom service so that the said service should reach the common man and should be within his reach. While granting licence to the non-government companies for providing telecom services to the people the Central Government has to exercise its discretion in a manner, which is lawful, reasonable and known in administrative law as Wednesbury Principle stated in ***Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. (1947) 2 All ER 680***. The different licensees, however, cannot be left to implement the Telecom Policy according to their perception. While implementing the Telecom Policy Central Government has to take into account the security concern of the people. In support of the aforesaid submission learned counsel for the two Associations also placed reliance on the judgments in the case of ***PYX Granite Co. Ltd. v. Ministry of Housing and Local Government and another (1958) 1 QB 554*** and ***Mixnam's Properties Ltd. v. Chertsey Urban District Council (1965) AC 735***.

18. In view of the issues highlighted during hearing of the writ petition by the counsel for the petitioner, State, Union, Service Providers (respondent nos. 15 to 24) and the two Associations (respondent nos. 25, 26) the members of the Bar through Sri Shambhu Sharan Singh, Advocate made their submission as also put their suggestion in writing indicating the broad category of persons entitled for purchase of Pre-paid SIM. According to Sri Singh (1) No Pre-paid SIM should be sold to a person below 18 years of age (2) Pre-paid SIM be sold to a purchaser who produces Aadhar Card/ Passport/ Identity Card issued by the Central/ State/ Semi-government/ High Court/ Civil Court and

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other governmental/ reputed organizations having serial number in support of his proof of identity and address. (3) Pre-paid SIM may be sold on the basis of Voter Identity Card as proof of identity and address but only after proper verification (4) Students may be sold Pre-paid SIM on the basis of Identity Card issued by the educational institution along with request letter of the head of the institution or the person authorised by him after proper verification from the institution concerned. (5) The service provider after having issued SIM should keep vigil on the use of the SIM and if it is found that a particular SIM is being used rarely or on long interval, that too for certain time, the service provider should keep the said SIM number on surveillance and if anything unnatural or illegal is noticed matter should be reported to the police by the service provider whereafter police should keep watch on the activities of the said SIM number and take appropriate action in the matter if necessary (6) Service provider selling SIM should see that the same is activated in local jurisdiction (7) Before activating the SIM the service provider should thoroughly verify the document furnished by the subscriber in support of his identity, address proof.

19. Having heard learned counsel for the parties and after perusal of the pleadings filed by them, it appears that Army Constable Vivek Kumar bearing No. 6500526 (A.S.H.) in 1(A.T.)

Battalion, Bangalore became traceless on 14.03.2011 while travelling from Bangalore to Aurangabad via Howrah, Patna Railway Station(s). After disappearance of Vivek Kumar Jamhore P.S. Case No. 39/11 dated 02.05.2011 was registered for the offences under Sections 363, 365, 34 of the Penal Code against respondent nos. 8 to 11. During investigation of the said case petitioner revealed that on 20.03.2011 he received a call from SIM No. 8873697482 for payment of ransom amount of Rs. 10 lakhs to secure release of Vivek Kumar. In the light of revelation made by the petitioner that he had received first ransom call on 20.03.2011 the Special Investigation Team constituted to investigate Jamhore P.S. Case No. 39/11 and to trace victim Vivek Kumar, proceeded to investigate the subscriber of SIM No. 8873697482, found subscriber of Pre-paid SIM No. 8873697482 traceless as his College Identity Card appended with the Consumer Application Form (CAF) has been found fake. Similarly, further investigation in the case also could not proceed as the subscribers of other SIM Nos. 9955487684, 8873083254, 8800145221 were also found traceless and the identity, address proof of those subscribers appended with the CAF is found fake. Ransom caller and other concerned having been found traceless the Special Investigation Team constituted for investigating the case could not proceed with the investigation any further and no fault

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could be attributed to the concerned service provider for activating the SIM from which ransom call and other calls were made without verifying the identity, address proof of those subscribers in view of the contents of instruction of DoT dated 14.03.2011, which inter alia provide that a passport size photograph of the subscriber should be pasted on the CAF and the documents as proof of identity, address of the subscriber should be attached with the CAF. CAF should be mechanically numbered before reaching the point of sale. The person at the point of sale shall get the CAF duly filled and signed (CAF, photo and documents attached) by the subscriber with date. In case of illiterate person, the CAF may be filled by a person at the point of sale but the thumb impression of the subscriber be taken on CAF, photo and documents attached. The authorised person at the point of sale shall record in the CAF that he has seen the subscriber and matched the photograph attached on the CAF with the subscriber and verified his copies of documents in proof of identity, address attached with the CAF with the original and shall put his signature on the CAF and all attached documents (along with full name and stamp containing address). The mobile connection shall be activated only after the requirement of filing up of CAF and copies of documentary proof as per requirement have been fulfilled by the customer and the subscriber details have been updated in the

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subscriber database of the licensee ; for this purpose, the licensee (the employee of licensee) shall verify and record on the CAF under his name, designation and signature that all the documentary requirement has been completed and subscriber details are updated in the database of licensee. Only after updating the database the SIM card can be activated. The date of sale of SIM and date of activation of SIM is required to be established from the entries in the CAF.

20. Aforesaid instruction was considered by the Supreme Court in the case of **Avishek Goenka** (supra) and the Supreme Court placing reliance on its earlier judgment passed in the case of **Delhi Science Forum** (supra) wherein taking note of the provisions of Telegraph Act, 1885 applying the Wednesbury Principle the Court held that Central Government is expected to put such conditions while granting licence to the service provider, which shall safeguard the public interest and the security interest of the people constituting the nation and under judgment dated 27.04.2012 constituted a Joint Expert Committee of DoT and TRAI to examine the contents of instruction dated 14.03.2011. Joint Expert Committee of DoT and TRAI submitted its report dated 27.07.2012 observing that existing practice of delivery of SIM by the service provider(s) to their authorised franchise in the hands of the subscriber whose identity, address proof has been provided in the CAF appear to be

one of the best mode of delivery of SIM. In the light of the recommendation of the Joint Expert Committee instruction dated 14.03.2011 has been modified under instruction dated 09.08.2012. Paragraph 3 of instruction dated 09.08.2012 provides for activation of new mobile connection. Close perusal of said paragraph indicate that passport size photograph of the subscriber should be pasted on the CAF and the documents as proof of identity, address of the subscriber be attached with the CAF as per the instructions applicable from time to time. The person at the point of sale shall get the CAF duly filled and signed (CAF, photo and documents attached) by the subscriber with date. In case of illiterate person, the CAF may be filled by a person at the point of sale but the thumb impression of the subscriber may be taken on CAF, photo and the documents attached. A unique number should be assigned to every CAF on receipt of the same in the warehouse before activation of SIM. The authorised person at the point of sale shall record in the CAF that he has seen the subscriber and matched his photograph attached on the CAF with the subscriber and verified his copies of documents of identity, address proof attached with the CAF with the original and shall put his signature on the CAF and all attached documents. A mobile connection shall be activated only after the requirement of filling up of CAF and copies of documentary proof as

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per requirement have been fulfilled by the customer and the subscriber details have been updated in the subscriber database of the licensee; for this purpose, the licensee (the employee of licensee) shall verify and record on the CAF under his name, designation and signature that all the documentary requirement has been completed and subscriber details are updated in the database of licensee, only after updating of the database the SIM can be activated. The date of sale of SIM and date of activation of SIM is to be established from the entries in the CAF. After the activation of SIM, the subscriber shall be at-least tele-verified. While making calls for tele-verification, details be asked from the subscriber and verified against the details provided in the database. It has to be ensured that unless tele-verified, the subscriber is not able to make any type of call, except to the operator. The incoming call will also remain barred before tele-verification.

21. From perusal of the contents of instructions dated 14.03.2011, 09.08.2012 it is evident that SIM card is activated after receipt of CAF pasted with the passport size photograph of the subscriber enclosing his identity, address proof after matching the photograph pasted on the CAF with the subscriber presenting the CAF at the point of sale by the employee of the licensee who also verifies the identity, address proof appended with the CAF with its

original. The representative of the licensee available at the point of sale receiving the CAF and matching the photograph with the subscriber presenting CAF though verifies the identity, address proof with its original, he does not verify the genuineness of the original of the identity, address proof of the subscriber. In the instant case, had the service provider verified the genuineness of the Identity Card of Nitish Kumar, the so called subscriber of SIM No. 8873697482 from which first ransom call for payment of Rs. 10 lakhs was received by the petitioner on 20.03.2011 appended with his CAF from the College concerned, which issued the Identity Card, there may not have been any difficulty in reaching the ransom caller. Similarly, had the service provider verified the identity, address proof of the subscriber of SIM Nos. 9955487684, 8873083254, 8800145221 there was every likelihood of the victim being traced and his abductors brought to justice. Supreme Court, while approving the new Telecom Policy of the Government of India to open up telecom sector to private players, as unfolded by Union Finance Minister in his budget speech in February, 1994 and policy document placed in Parliament on 13.05.1994, observed in the case of **Delhi Science Forum** (supra) taking into account the provisions of Telegraph Act, 1885 and the Wednesbury Principle that while granting licence to the private players for providing telecom services to the people the

Central Government has to exercise its discretion in a manner, which is lawful, reasonable. The different licensees, however, cannot be left to implement the Telecom Policy according to their perception. While implementing the Telecom Policy Central Government has to take into account the security concern of the people.

22. From perusal of instructions dated 14.03.2011, 09.08.2012 it does not appear that security concern of the people has been fully taken into account. The SIM Card is handed over to the subscriber after he presents his CAF pasted with his passport size photograph to the person available at the point of sale, who verifies the photograph pasted on the CAF with the person presenting the CAF and the identity, address proof appended with the CAF with its original. The genuineness of the identity, address proof (original) is never verified by the person receiving the CAF and verifying matching the photograph pasted over the same with the person presenting the CAF at the point of sale. Database of the subscriber is updated before activating the SIM on the basis of the information mentioned in the CAF by the presenter of the CAF at the point of sale but without verifying the information furnished in the CAF as the documents appended with CAF in support of information is only verified/ matched with its so called original which may be a fake document. Unless the genuineness of the identity, address proof

appended with the CAF is verified the security concern of the people, as was directed by the Supreme Court in its judgment approving the new Telecom Policy in the case of **Delhi Science Forum** (supra), in our opinion, is not taken into account. In this connection, we quote the following observations of the Supreme Court :

> *"As such Central Government is expected to put such conditions while granting licences, which shall safeguard the public interest and the interest of the nation. Such conditions should be commensurate with the obligations that flow while parting with the privilege which has been exclusively vested in the Central Government by the Act."*

In order to take care of the security concern of the people constituting the nation, person accepting the CAF at the point of sale on behalf of licensee has to be satisfied about the genuineness of the identity, address proof appended with the CAF, failing which the security, human right concern of the people stands compromised, which cannot be permitted. The term security concern of the people takes within its compass security concern of each individual constituting the nation. The Central Government while granting licence has to safeguard in public interest, the interest of the nation

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and its people. Security concern of the people necessarily takes into account the human right concern of each individual. In this connection, we may also notice the judgment of the Supreme Court in the case of ***Chairman, All India Railway Rec. Board and Anr. v. K. Shyam Kumar and Ors. (2010) 6 SCC 614*** whereunder Supreme Court considered the traditional test of Wednesbury principle in the light of the judgment of the Supreme Court in the case of ***State of U.P. v. Sheo Shanker Lal Srivastava and Ors. (2006) 3 SCC 276, Indian Airlines Ltd. v. Prabha D. Kanan (2006) 11 SCC 67, Jitendra Kumar and Ors. v. State of Haryana (2008) 2 SCC 161***, particularly the case of ***State of Madhya Pradesh and Ors. v. Hazarilal (2008) 3 SCC 273*** observed that in administrative law the Courts have moved from Wednesbury principle of unreasonableness to the doctrine of proportionality. Applying the doctrine of proportionality it is observed that Central Government while granting licence to the service provider make it compulsory for the licensee to ensure verification of identity, address proof of subscriber to meet out the security, human right concern of the people constituting the nation.

23. From the pleadings filed on behalf of Respondent-State, it is evident that investigation in serious crime reported in 141 First Information Reports during the period between

10.04.2005 to 15.10.2014 failed as investigator failed to reach the subscriber of SIM connection issued on the basis of fake identity, address proof. In the circumstances, we would like to direct the Department of Telecommunications to take into account the security concern of the people before activating the SIM. In our opinion, the security concern of the people can be met only after confirming the genuineness of the identity, address proof document appended with the CAF presented by the subscriber at the point of sale. Mere verifying/ matching the same with its so called original does not take into account the security concern of the people. Accordingly, we direct that the existing guidelines dated 14.03.2011 and 09.08.2012 be supplemented by instructing the service provider to confirm the genuineness of the identity, address proof appended with the CAF from the Authority which has issued the same, may be through the official E-mail of the Authority/ Organization, which has issued the identity, address proof to the subscriber. For example, in the case of passport, driving licence, Aadhar from the office which has issued the same. Until the identity, address proof of the new subscriber is verified from the authority/ organization concerned new SIM should not be activated. In our opinion, guidelines be supplemented, as early as possible, in any case, within three months from the date of receipt/ production of a copy of this judgment before the Secretary

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(Telecom). In this connection, we may observe that the Service Providers do not have absolute right to carry on their business in the manner in which they like. Right to carry on business is always subject to reasonable restrictions imposed in the interest of general public and national security which cannot be allowed to be compromised at any rate. The requirement to confirm the genuineness of the identity, address proof from the authority which has issued the same would come within reasonable restriction envisaged under sub-clause (6) of Article 19 of the Constitution as the same is required for ensuring the security, human right concern of the people to contain the menace of crime perpetrated through mobile phone by reaching the perpetrator of crime through his identity, address proof appended with the CAF and verified from the authority which has issued the same after the identity, address proof is presented at the point of sale.

24. So far request of the petitioner to hand over the investigation of Jamhore P.S. Case No. 39/11 to the Central Bureau of Investigation is concerned, we are of the view that mere handing over the investigation of the case to the Central Bureau of Investigation will not serve any useful purpose as the Special Investigation Team, which has investigated the case so far, has come to discover that the further investigation in the case has reached a

dead end for failure of the investigating team to reach the subscriber of SIM No. 8873697482 from which first ransom call was received by the petitioner and the subscriber of other SIM Nos. 9955487684, 8873083254, 8800145221, as such, transfer of the case to the Central Bureau of Investigation will not serve any purpose at all. Accordingly, we direct the Special Investigation Team investigating the said case to proceed with the investigation by trying to locate the accused by his photograph, conclude the same and submit final police report in the Court within a reasonable time not exceeding three months from the date of receipt of a copy of this judgment.

(V.N. Sinha, J.)

I agree.
Ahsanuddin Amanullah, J.

(Ahsanuddin Amanullah, J.)

Rajesh/N.A.F.R.

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