IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WP(C).No. 33153 of 2011 (T)

PETITIONER(S) :

NOORDIN MATHER.K.M,
NOOR MAHAL, ERNAKULAM NORTH,
ERNAKULAM DISTRICT, PIN- 682 018.

BY ADV. SRI.MOHAMMED RAFIQ

RESPONDENT(S) :
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1. **THE BANKING OMBUDSMAN,**
   (KERALA & UNION TERRITORY OF LAKSHADWEEP),
   RESERVE BANK OF INDIA,
   THIRUVANANTHAPURAM, PIN- 695 033.

2. **THE STANDARD CHARTERED BANK,**
   CREDIT CARD DIVISION, NO.19, RAJAJISALAI,
   CHENNAI, PIN- 600 001, REPRESENTED BY ITS MANAGER,
   CUSTOMER SERVICE.

R2 BY ADV. SMT.SREEKALA KRISHNADAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 33153 of 2011 (T)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: **TRUE COPY OF THE LETTER DATED 14/04/2010 SENT BY THE PETITIONER TO THE SECOND RESPONDENT**

EXHIBIT P2: **TRUE COPY OF THE REPLY DATED 27/04/2010 SENT BY THE SECOND RESPONDENT TO THE PETITIONER.**

EXHIBIT P3: **TRUE COPY OF THE REPLY DATED 28/04/2010 SENT BY THE SECOND RESPONDENT TO THE PETITIONER.**

EXHIBIT P4: **TRUE COPY OF THE COMPLAINT DATED 09/03/2011 FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT UNDER CLAUSE 9 OF THE BANKING OMBUDSMAN SCHEME ,2006.**

EXHIBIT P5: **TRUE COPY OF THE ORDER DATED 08/07/2011 PASSED BY THE FIRST RESPONDENT UNDER CLAUSE 13(A) OF THE BANKING OMBUDSMAN SCHEME, 2006.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J.

W.P.C. No.33153 of 2011

Dated this the 29th day of June, 2015.

JUDGMENT

The petitioner was aggrieved with the negative 'CIBIL' rating of the petitioner, which prejudiced the creditworthiness of the petitioner. The said negative rating was at the instance of the 2nd respondent, who initiated such a report on the ground that the petitioner's credit card payments were not regular. The petitioner, however raised a specific contention that he had been regularly paying the debits made using the credit card. But however the default was only on account of the Bank raising charges for upgradation, which was unsolicited and not sought for by the petitioner, nor the upgradation made after obtaining consent of the petitioner. The petitioner also relies on a Reserve Bank Circular, which prohibits such negative rating for defaulted payments with respect to the unsolicited services charged to the account of a credit card holder. The petitioner challenges Ext.P5 order of the Banking Ombudsman on the short ground that no consideration is evident and that the same is vitiated by total non-application of mind. The petitioner was also not heard before such order was passed.

2. The learned counsel appearing for the respondent Bank submits that the default is not with respect to upgradation charges and is with respect to credit card payments itself.

3. On the ground of violation of principles of natural justice and for total non-application of mind, Ext.P5 would stands set aside. The Banking Ombudsman is not expected to dispose of a complaint on the basis of the communication received from the Bank against which the complaint is made, especially when such communication has not been served on the petitioner. An adjudication necessarily has to be after serving the version of the respective parties involved in the *lis* on each other and after consideration of the conflicting contentions. Ext.P5 hence would stand set aside and both the petitioner and the respondent shall appear before the Office of the Ombudsman on 10.07.2015 and the petitioner and the respondents shall be served with a notice

of date of hearing, on which date, the matter shall be heard after the contentions placed on record are given to either parties. The matter shall decided in accordance with law, within a period of three months from that date of hearing. It is made clear that this Court has not expressed anything on the merits of the case and has merely noticed the contentions of either parties, with respect to the negative rating.

The writ petition is disposed of.

Sd/-
K. VINOD CHANDRAN,
JUDGE

sp