IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.01.2020

Pronounced on : 20.02.2020

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.14785 of 2019
and
W.M.P.No.14765 of 2019

Santhosh Kumar N, .. Petitioner

..Vs..

1.The Branch Manager,
Axis Bank Ltd.,
Arcot Road, Kodambakkam,
Chennai - 600 024.

2.The Manager,
Axis Bank Ltd., (Credit Card Division),
No.82, Aalim Centre, 1st Floor,
Dr.Radha Krishnan Salai,
(Opposite Nilgiris Supermarket),
Mylapore, Chennai - 600 004.

3.Credit Information and Bureau of India Limited (CIBIL),
HOCHST House, 6th Floor,
193, Backbay Reclamation,
Nariman Point,
Mumbai - 400 021.

4.The Regional Director,
Reserve Bank of India,
Fort Glacis, Chennai - 600 001.
.. Respondents

(Cause title amended as per order dated 21.10.2019 made in WMP.No.29832 of 2019 in W.P.No.14785 of 2019 by PDAJ)

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st and 2nd respondents Banks to issue "No Objection Certificates" and give complete quietus of their claims in respect of the Petitioner Credit Card bearing No.4514560004800300.

For Petitioner	:Ms.K.Subhashini, for Chennai Law Associates
For R1 and R2	:Mr.N.Muthukumaran
For R3	:Mr.S.Parthasarathy
For R4	:Mr.C.Mohan, for M/s.King & Patridge

ORDER

This Writ Petition has been filed in the nature of Writ of Mandamus, directing the 1st and 2nd respondents namely, the Branch Manager and Manager, Axis Bank Ltd., Chennai, to issue No Objection Certificates and give a quietus of their claims in respect of the Credit Card bearing No.4514560004800300.

2. In the affidavit filed in support of the writ petition, the petitioner stated that he had been to Paris, France on business trip. On 01.10.2018, he lost his wallet containing credit cards of Citi Bank, Standard Chartered Bank, HDFC Bank and also Axis Bank. The petitioner had given a complaint to the France Police at Paris. He then provided a copy of the complaint to the 1st and 2nd respondents on 30.10.2018. He also provided copies of his passport and the endorsements reflecting his travel and also the entire itinerary. He further stated that Citi Bank, Standard Chartered Bank and HDFC Bank had settled the entire issues in an amicable manner. The petitioner had addressed the 1st and 2nd respondents on several occasion by they indulged in gross negligence in handling the grievance of the petitioner and started counter-harassing of the petitioner from November 2018 onwards till 02.04.2019 by issuing frivolous emails, sending harassing messages and voice calls over his mobile phone. The Recovery Agents of the 1st and 2nd respondents also made visits to the petitioner.

3. The petitioner, on 30.10.2018 filled up a 'Card Holder Dispute Form' along with annexures and tried to upload the same in the 1st and 2nd respondents' Bank website. He was not able to upload for want of technical specifications. He then submitted all the papers by visiting the bank on 30.10.2018 to the Bank Manager. It is stated that there was a communication from the Credit Card Officer of the 1st and 2nd respondents recognizing the entire issue as a fraud and a dispute related to the Credit

Card. Thereafter, they issued a notice on 02.05.2019, claiming a sum of Rs.1,80,796/-. The petitioner stated that there was a RBI Notification, dated 06.07.2017, regarding the Customer Protection and Limiting Liability of Customers in Unauthorized Electronic Banking Transactions, and when a customer informs the bank about theft of credit card within 3 working days then, the customer is protected with zero liability. The petitioner had made a representation to the 4th respondent namely, the Regional Director, RBI, Chennai. It is also stated that the 3rd respondent had included the name of the petitioner in the defaulters list in their website. It is under these circumstances, that the petitioner had filed the present writ petition seeking a Mandamus in the nature of the direction as stated above.

4. A counter affidavit has been filed on behalf of the 1st and 2nd respondents stating that the petitioner had contacted the Credit Card team via phone banking on 01.10.2018 and reported loss of credit card and unauthorized transactions. It is claimed that the petitioner had failed to upload the supporting documents through online on or before 20.10.2018 to substantiate / prove his claim. It is also stated that, if the said documents are not uploaded on time, then the grievance of the petitioner can never be solved. The allegation that they have indulged in callousness and gross negligence in handling the customer grievance had been denied. The allegations on issues like frivolous emails, harassing messages, voice calls over mobile phone to the petitioner were also denied. It was stated that the petitioner was lethargic and therefore, his credit card was lost. It was stated that the RBI Circular cannot be read in isolation and it is not applicable to the facts of the case. It is also stated that whoever commits default, would be reflected in CIBIL and there would be an adverse effect like losing eligibility from getting loans from financial institutions. It was also stated that the Writ Petition should be dismissed.

5. A counter affidavit had been filed by the 3rd respondent, in which, it was stated that the petitioner first approached the 3rd respondent by a legal notice dated 07.05.2019 and on verification, it was found that the credit card of the petitioner had a current balance of Rs.1,80,976/- and over due amount was Rs.23,540/-. The 3rd respondent therefore, raised a dispute with the 1st respondent. It was stated that the petitioner's grievance has been resolved with respect to any negative reporting of the disputed account in the petitioner's Credit Information Report (CIR). It was stated that the Writ Petition should be dismissed.

6. Heard arguments advanced by Ms.K.Subhashini, for Chennai Law Association, learned counsel for the petitioner, Mr.N.Muthukumaran learned counsel for R1 and R2,

Mr.S.Parthasarathy learned counsel for R3 and Mr.C. Mohan, for M/s.King and Partridge learned counsel for R4.

7. During the course of hearing, a memo had been filed by Mr.C.Mohan on behalf of the 4th respondent namely, the Regional Director, RBI, Chennai. It was stated that the petitioner had filed an application with the Grievance Redressal Mechanism of RBI to the Consumer Education and Protection Cell (CEPC), which was forwarded by the Counsel on 06.11.2019. The complaint of the petitioner was received and registered as Complaint No.201920309001179. By following standard operating procedure, notice was issued to the 1st and 2nd respondents. Acting upon information provided by the 1st and 2nd respondents and on analyzing the same, it was stated that the complaint of the petitioner was disposed of on 28.01.2020. The said order had also been enclosed along with the memo. In the said order, it had been stated that on perusal of the loan application, it was clear that the petitioner had been issued a Platinum Visa Card which has 'Zero Loss Liability' of Rs.3,00,000/-. It was stated that the 1st and 2nd respondents could not explain why the petitioner was not extended for such benefit. It is clear that the 1st and 2nd respondents had been deliberately harassing the petitioner.

8. The petitioner had gone to France. In Paris he lost his wallet on 01.10.2018. Along with the wallet, he also lost the credit cards of Citibank, Standard Chartered Bank, Axis Bank and HDFC Bank. The petitioner had informed about the loss to the respective banks including the 1st and 2nd respondents' Bank namely, the Axis Bank Limited, Chennai. The documents filed by the petitioner shows that Citi Bank had reimbursed the entire amount swiped using the credit card which was stolen.

9. The internal rules of the 1st and 2nd respondents Bank with respect to unauthorized transactions in credit card are that the unauthorized transactions should be reported within three days. If it is reported within three days then there will be zero liability for all third party breaches. The documents can be sent by e-mail or by visiting the branch. The documents which had to be sent are, the letter relating to the unauthorized transactions, a copy of First Information Report if the value is more than Rs.20,000/- and if it happened outside the country, a copy of the passport showing travel outside the country. This document should be uploaded within a period of 30 days. The prescribed time frame for appropriate resolution is 90 days.

10. The petitioner who lost his wallet including the credit card of the 1st and 2nd respondents had given a complaint

in Paris, France. He uploaded all required documents on 20.10.2018, within a period of 30 days. This is admitted as a fact in the counter affidavit of the 1st and 2nd respondents. However, in the counter affidavit, they have stated that the petitioner had delayed in submitting the documents. I am not able to understand that stand. The time line given in the rules of the 1st and 2nd respondents is 30 days. The petitioner had complied with the requisite formalities by 20 days. By any stretch of mathematical imagination, 20 days is less than 30 days. It is unfortunate that the petitioner, who lost his wallet in Paris, has also lost his mind handling the indifferent Personnel of the 1st and 2nd respondents. They indulged in retrograde bureaucracy. The petitioner had approached the Bank on several occasions. He also personally went to the Bank on 30.10.2018. He also forwarded all the necessary documents. However, he had to keep writing again and again. The record shows that he had been exchanging correspondence even till 04.03.2019.

11. A Nodal Officer by e-mail dated 25.03.2019 had stated to the petitioner that a sum of Rs.1,67,387.7/- (9 International transactions) had been done on the credit card of the petitioner, after the card was lost. It was also stated that they were all international transactions. The said Nodal Officer stated that the card had been blocked and thereafter no transactions were permitted. It was also stated that the customer in this case, i.e., the petitioner, is solely responsible for the security of the card and that the Axis Bank Limited is not liable for loss or damage arising from the failure of the customer.

12. It was therefore stated that the 1st and 2nd respondents would be unable to further investigate the case or refund the disputed amount, due to customer negligence. Similar correspondences in this manner continued. As is seen from the terms and conditions, if the loss had been reported within 3 working days, then the petitioner who had been issued with the Platinum Visa Card was entitled for zero loss liability upto Rs.3,00,000/-. Even, the 4th respondent namely, the Regional Director, RBI had stated that they just do not know, why the 1st and 2nd respondents have not given the benefit to the petitioner. The statements made in the counter affidavit of the 1st and 2nd respondents have to be rejected.

13. The one saving grace in the entire issue is the efforts taken by Mr.C.Mohan for M/s.King and Patridge, learned counsel for the 4th respondent namely, the Regional Director, RBI. The efforts taken by the learned counsel in resolving the entire issue has to be appreciated. This Court places its deep appreciation for such efforts taken. Owing to his efforts, a

memo had been filed, in which, the 1st and 2nd respondents had been advised to reverse the dispute transactions in the complainant's credit card. This is necessary because, the 3rd respondent who is the Regulatory Authority had shown the petitioner as a defaulter. This had deeply affected the petitioner's reputation, which was a direct result of the callus attitude of the 1st and 2nd respondents.

14. In view of all these facts, I have no hesitation in allowing the Writ Petition. A mandamus is therefore issued as prayed for. The Writ Petition is allowed with costs of Rs.10,000/- payable by the 1st and 2nd respondents. To realize the grievance caused, they may pay the costs of Rs.10,000/- to the Dean, Stanley Medical College and Hospital, Chennai, to treat poor patients. It is hoped that atleast now they would realize that they survive only on confidence and trust placed by the customers and not on the regrettable attitude of their staff / officers. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

smv

To

1.Credit Information and Bureau of India Limited (CIBIL),
HOCHST House, 6th Floor,
193, Backbay Reclamation,
Nariman Point,
Mumbai - 400 021.

2.The Regional Director,
Reserve Bank of India,
Fort Glacis, Chennai - 600 001.

+1cc to M/s.King & Patridge, Advocate SR.No.14792

W.P.No.14785 of 2019

PP(CO)
GMY(21/02/2020)