IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2022

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.11213 OF 2019
&
W.M.P.NO.11593 OF 2019

V.Vignesh

... Petitioner

Vs.

1. The Banking Ombudsman,
Reserve Bank of India Building (2nd Floor),
Fort Glacis, Post Box No.40,
16 Rajaji Salai, Chennai - 600 001.

2. M/s Ratnakar Bank Ltd
First Floor, Rashmi Towers No.1,
Valluvar Kottam High Road,
Nungambakkam, Chennai,
Tamil Nadu - 600 034.

3. Transunion Cibil Limited,
(Formerly Credit Information Bureau (India) Limited),
One Indiabulls Centre,
Tower 2A, 19th Floor, Senapathi Bapat
Marg, Elphinstone Road, Mumbai - 400 013.

(R3 impleaded as per order dated 18.09.2019
in W.M.P.No.27422 of 2019 in W.P.No.11213 of 2019)

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent leading to the order dated 22.03.2019 passed in BO (Che) / / 201819006005076 in complaint No.201819006005076 and quash the same and consequently direct the 1st respondent to provide an opportunity of personal hearing as mandated under Clause 12 of the Banking Ombudsman Scheme.

For Petitioner : Ms.Nila.M

For Respondents : No appearance - R1
M/s.T.Poornam - R2
Mr.S.Parthasarathy - R3

O R D E R

This Writ Petition raises some questions of importance as it touches upon the functioning of a critical player among financial institutions in the Country, being the Banking Ombudsman, arrayed as R1.

2. The petitioner has challenged an order passed by R1 on 22.03.2019 rejecting the complaint filed by him challenging an erroneous entry made in his Credit Information Bureau (India) Limited (Cibil) report. For this reason, it was thought that Cibil is also a necessary party and Transunion Cibil Limited, (Formerly Credit Information Bureau (India) Limited) has been impleaded as R3.

3. The error, according to the petitioner, is that the report proceeds on the basis that the petitioner had applied for a credit card with Ratnakar Bank Ltd/R2, when he strenuously objects to such assumption, stating that no such application has been made by him. Since the application was kept pending, the obvious inference is that his credit worthiness was not thought to be high, warranting acceptance of the request.

4. The Bank, by its e-mail dated 14.12.2018 states that the application had been made by the petitioner through one of its affiliate partners, by name, 'moneytap' and thus rejected the petitioner's request to delete the entry from his credit score. The petitioner thus approached R1 with a complaint reiterating his request for removal of the erroneous entry as the pendency of the application has adversely affected the credit score of the petitioner.

5. The sum and substance of the complaint revolved around the point of whether the petitioner had, in fact, made an application through moneytap for a credit card in R2 Bank.

6. The complaint filed by the petitioner before R1 was not posted for hearing despite several requests by the petitioner seeking a personal hearing. Instead, R1 merely rejects it citing its enquiry with R2 Bank, which had confirmed that the entry reflecting in the Cibil report related to a credit card application made by the petitioner through moneytap in August, 2018.

7. R2 had also stated that the entry stood validated by use by the petitioner of a One Time Password (OTP) sent to his mobile number. Apparently, the Bank had submitted details of the OTP log indicating the OTP sent to the petitioner's mobile number. Not content with that, R1 finds the explanation tendered by R2 Bank credible, concluding that there is no deficiency on the part of the Bank.

8. R1 thus proceeds to close the complaint invoking Clause 13(a) of the Banking Ombudsman Scheme 2006 (in short 'Scheme') that vests authority in it to reject a complaint at any stage, if it appears to R1 that the complaint had not been made upon the grounds set out in Clause 8 of the Scheme.

9. The complaint filed by the petitioner specifically refers to Clause 8(1)(u) of the Scheme that provides for 'non-adherence to the provisions of the Code of Bank's Commitments to Customers issued by Banking Codes and Standards Board of India and as adopted by the bank'. What would perhaps have been more apt in the present circumstances would have been Clause 8(m)(v) that addresses 'wrong reporting of credit information to Credit Information Bureau' which is precisely and in substance, the petitioner's grievance as against R2 and R3.

10. Be that as it may, while rejecting the complaint, R1 does not specifically refer to any specific ground under Clause 8. One assumes that since R1 is stated to be a serving officer of the Reserve Bank of India, he would be well aware of the various grounds of complaint that have been arrayed under Clause 8 and had applied his mind to each of the grounds including Clause 8(m)(v).

11. The Banking Ombudsman Scheme 2006 replaces the 1995 Scheme, and the purpose/object of the schemes is to enable resolution of complaints relating to certain services rendered by Banks and to facilitate settlement of complaints by banking consumers.

12. The Banking Ombudsman is not a Court. The procedure that he has to follow is summary and he can evidently, not address detailed, lengthy or cumbersome issues involving examination of evidence. The Scheme itself provides for a two pronged approach to the resolution of disputes.

13. The powers and jurisdiction are described in Clause 7 coming under Chapter III of the Scheme titled 'Jurisdiction, Powers and Duties of the Banking Ombudsman'. This clause, to the extent to which it is relevant to this Writ Petition, is extracted below:

'7. Powers and Jurisdiction

....

(2) The Banking Ombudsman shall receive and consider complaints relating to the deficiencies in banking or other services filed on the grounds mentioned in clause 8 irrespective of the pecuniary value of the deficiency in service complained and facilitate their satisfaction or settlement by agreement or through conciliation and mediation between the bank concerned and the aggrieved parties or by passing an Award as per the provisions of the Scheme.'

14. Thus, the first limb of resolution provides for alternate methods of dispute resolution, such as conciliation, mediation or settlement by way of agreement. The second limb of resolution involves the consideration of evidence submitted by the parties, though not of a voluminous nature normally dealt with by a Civil Court, hearing the parties, if R1 believes it so necessary, and passing of an award in terms of the Scheme.

15. I first deal with the question of natural justice, since that is one of the major planks of the petitioner's argument. My attention is drawn to Clause 12 of the Scheme, that provides for passing of an award by the Banking Ombudsman and reads as follows:

12. Award by the Banking Ombudsman

(1) If a complaint is not settled by agreement within a period of one month from the date of receipt of the complaint or such further period as the Banking Ombudsman may allow the parties, he may, after affording the parties a reasonable opportunity to present their case, pass an Award or reject the complaint.

(2) The Banking Ombudsman shall take into account the evidence placed before him by the parties, the principles of banking law and practice, directions, instructions and guidelines issued by the Reserve Bank from time to time and such other factors which in his opinion are relevant to the complaint.

(3) The award shall state briefly the reasons for passing the award.

(4) The Award passed under Sub-Clause (1) shall contain the direction/s, if any, to the bank for specific performance of its obligations and in addition to or otherwise, the amount, if any, to be paid by the bank to the complainant by way of compensation for any loss suffered by the

complainant, arising directly out of the act or omission of the bank.
(5) Notwithstanding anything contained in Sub-Clause (4), the Banking Ombudsman shall not have the power to pass an Award directing payment of an amount towards compensation which is more than the actual loss suffered by the complainant as a direct consequence of the act of omission or commission of the bank, or two million rupees whichever is lower. The compensation that can be awarded by the Banking Ombudsman shall be exclusive of the amount involved in the dispute.
(6) The Banking Ombudsman may also award compensation in addition to the above but not exceeding rupees 0.1 million to the complainant, taking into 4 Substituted by Notification Ref CEPD PRS No .6317 /13.01/01/2016-17 dated June 16, 2017 5 Substituted by Notification Ref CEPD PRS No. 6317 /13.01/01/2016-17 dated June 16, 2017 13 account the loss of the complainant's time, expenses incurred by the complainant, harassment and mental agony suffered by the complainant.
(7) A copy of the Award shall be sent to the complainant and the bank.
(8) An award shall lapse and be of no effect unless the complainant furnishes to the bank concerned within a period of 30 days from the date of receipt of copy of the Award, a letter of acceptance of the Award in full and final settlement of his claim. Provided that no such acceptance may be furnished by the complainant if he has filed an Appeal under Sub-Clause (1) of clause 14.
(9) The bank shall, unless it has preferred an appeal under Sub-Clause (1) of Clause 14, within one month from the date of receipt by it of the acceptance in writing of the Award by the complainant under Sub-Clause (8), comply with the Award and intimate compliance to the Banking Ombudsman.

16. Sub-section (1) states that R1 may either pass an award or reject the complaint after affording the parties a reasonable opportunity to present their case. The key phrase thus would be 'after affording the parties a reasonable opportunity to present their case', the ambit of which is either as wide or as narrow as the circumstances and context may dictate.

17. The Scheme provides for the Ombudsman to first exhaust the first limb of grievance redressal, by way of non-adversarial settlement. This is provided for under Clause 11, prior to which, Clause 10 vests substantial power upon the Ombudsman to call for such information as he may require the Bank against whom the complaint was made or any other Bank concerned to provide, including certified copies of documents to enable settlement/resolution of the dispute.

18. Clause 11 provides for the procedure by which the Ombudsman would endeavour to settle the complaint amicably and the proviso to Clause 11(2) states that where the Ombudsman is of the opinion that he cannot dispose the complaint on the basis of the documentary evidence furnished, he may call for a meeting of the bank or the concerned subsidiary and the complainant together to promote an amicable resolution.

19. Thus, where and when the Scheme envisages a personal hearing, there is sufficient indication provided within the Scheme to enable the Ombudsman to provide for such hearing. If a settlement is arrived at, one has no need to traverse further to Clause 12. If there is no amicable settlement, the Ombudsman has then to pass an award either accepting the complaint or rejecting the same.

20. In this context, the counter filed by R1 states that a large volume of matters are referred regularly to the Ombudsman for decision, running to lakhs. Though this argument is hardly reason to justify non-compliance with the principles of natural justice, there is, in my view, nothing untoward if the Ombudsman were to take a view in an appropriate case that there was no necessity to afford personal hearing to the parties.

21.However, this decision has to be taken after due application of mind to all relevant facts and circumstances before him and after ensuring that all materials necessary to dispose the case are in his possession. As a rule, it is incumbent upon an authority to ensure that materials that he proposes to apply/use in deciding a complaint are supplied to the complainant, especially if the conclusion is adverse.

22. Thus, while a mandatory personal hearing is not envisaged as part of the Scheme the phrase 'after affording the parties a reasonable opportunity to present their case' must be afforded full play. This argument of the petitioner is decided in the aforesaid terms and in light of the conclusion so arrived at, I see no requirement to refer to the following decisions cited by learned counsel for R1 in support of the plea of natural justice.

(i) Bar Council of India Vs. High Court of Kerala reported in [(2004) 6 SCC 311]

(ii) N.K.Prasad Vs.Government of India reported in [(2004) 6 SCC 299]

(iii) Union of India Vs. Tulsiram Patel reported in [(1985) 3 SCC 398]

(iv) Reserve Bank of India & Others Vs. Nahar Finance and Leasing Limited reported in [(2019) SCC Online Mad 38923]

(iv) Ganesh Santa Ram Sirur Vs. State Bank of India and another reported in [(2005) 1 SCC 13]

23. Now, coming to the impugned order, I find that the procedure followed by R1 is entirely contrary to the Scheme. While Clause 11 provides for a settlement in amicable terms, the Ombudsman is not seen to have even attempted such resolution, evidently for the reason that he unilaterally accepts the explanation tendered by R2. In fact, the explanation tendered by R2 contrasts sharply with the narration of facts by the petitioner and it was necessary for R1 to have ascertained the facts prior to deciding the matter as mere and mechanical acceptance of the version of R2, would hardly serve to alleviate the grievance of a consumer.

24. It was incumbent upon R1 to have furnished a copy of R2’s explanation along with annexures that he says the Bank had provided, to the petitioner for his response and rebuttal. However, the complaint has been closed unilaterally and without any opportunity afforded to the petitioner.

25. This is certainly a case where R1 ought to have heard the petitioner or at least presented R2's version to the petitioner for response. While there might be some discretion available to R1 as to the kind and manner of opportunity that may be provided to the parties, there is no doubt that effective opportunity has to provided. This has admittedly not been done in the present case and I am thus of the categoric view that there has been violation of the principles of natural justice.

26. That apart, and on merits, R1states that the premise of the complaint does not come within the grounds enumerated in Clause 8. In my considered view, this conclusion is also erroneous. As noticed in the preceding paragraphs, Clause 8 is wide in its coverage and addresses various causes or complaints.

Clause 8(m)(v) is specific to 'erroneous reporting of credit information' which is the petitioner's grievance, in specific.

27. The petitioner has specifically argued that 'moneytap' does not generate an OTP and has pressed into service the details of a dummy transaction carried out with moneytap, pending Writ Petition, to illustrate this position. The application has been processed in stages and the details of each stage are placed by way of a transaction summary (in additional typed set dated 18.09.2019) that do not reveal anywhere that an OTP confirmation is part of the process.

28. This militates against the conclusion of R1 to the effect that the transaction with moneytap has been sanctioned by R2 with acquiescence of the petitioner. That apart, there is substantial merit in the argument of the petitioner to the effect that the endorsement upon the Cibil report would reflect upon his credit worthiness.

29. The argument that the Ombudsman is a serving officer who has onerous administrative duties to perform and is extremely busy, does not justify the cursory manner in which the complaint of the petitioner has been disposed. The purpose of the Scheme is to alleviate grievances of the public relating to the banking sector.

30. While the nature of disputes may be frivolous in many cases, the remedy certainly is not non-application of mind and the passing of an arbitrary order. It is for the Reserve Bank of India to formulate a workable procedure and man the post with sufficient human resources and assistance to make the Scheme workable and effective in genuine and bonafide cases and not doing so would frustrate the object of the Scheme.

31. Learned counsel for R3 has circulated an unindexed and undated compilation comprising 28 pages, ostensibly to show that the entry in the credit report is made at the instance of R2 Bank. With this, they seek to wash their hands off the entire matter.

32. This compilation also throws very little light on the processes followed by Cibil. It continues to be a mystery as to when, and by whom the application for the credit card had been generated and other relevant details thereof. It thus becomes necessary for the rival claims of the petitioner and R2 to be addressed and resolved in a proper fashion.

33. For the aforesaid reasons, the impugned order of R1 is quashed, the complaint of the petitioner is restored to the file

of R1, who will hear the petitioner, look into the rival claims of the parties and come to a reasoned conclusion within a period of eight (8) weeks from date of uploading of this order upon the official website of this Court.

34. This Writ Petition is allowed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Banking Ombudsman,
   Reserve Bank of India Building (2nd Floor),
   Fort Glacis, Post Box No.40,
   16 Rajaji Salai, Chennai – 600 001.

2. M/s Ratnakar Bank Ltd
   First Floor, Rashmi Towers No.1,
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   Marg, Elphinstone Road, Mumbai – 400 013.

+1cc to M/s.T.Poornam, Advocate, S.R.No.20930

+1cc to M/s.M.Arunachalam, Advocate, S.R.No.20914

+1cc to M/s.S.V.Pravin Rathinam, Advocate, S.R.No.20859

W.P.No.11213 of 2019
&
W.M.P.No.11593 of 2019

SRA(CO)
RLP(21/04/2022)