AD-36
Ct No.09
24.07.2023
TN

WPA No. 16148 of 2023

Sri Santanu Ghosh
Vs.
State Bank of India and others

Mr. Saikat Roy Chowdhury,
Mr. Aritra Ghosh

.... for the petitioner

Mr. Debashis Saha

.... for the SBI

Mr. Amitesh Banerjee,
Mr. Tarak Karan

.... for the State

Learned counsel for the petitioner contends that the bank and the Ombudsman closed a complaint of the petitioner in a cursory manner, despite the petitioner having been defrauded by way of an online transaction.

It is contended that not only the bank but also the Ombudsman and the Appellate Authority made cryptic communications to the petitioner, without going into the issue raised by the petitioner.

The petitioner, it is argued, was defrauded on an online transaction on February 15, 2023. Subsequently on February 21, 2023, a shadow reversal was done by the bank in respect of the account of the petitioner. It is submitted that in view of the said shadow reversal, it cannot be said that the bank closed the complaint of the petitioner. That apart, the bank could not disown its liability in the issue, since the bank, even after the complaint of the petitioner on February 15, 2023, undertook the shadow reversal in the petitioner's account.

Learned counsel for the petitioner places reliance on the communication made by the bank, the Ombudsman and the Appellate Authority respectively and contends that such statements and communications were mere efforts to shirk the responsibility of the said authorities on the issue. Hence, the present writ petition has been preferred for seeking justice in the matter.

Learned counsel for the petitioner places reliance on a Circular issued by the Reserve Bank of India (RBI) on July 06, 2017 and submits that the relevant provisions thereof have not been complied with in the present case.

Learned counsel also places reliance on certain judgments in support of his contention.

The first judgment cited by learned counsel is a Division Bench judgment of the Allahabad High Court rendered in *Awadhesh Singh vs. Reserve Bank of India and Others,* reported at *2021 SCC OnLine ALL 301*, where it was observed that, so far as the closure of the complaint of the petitioner by the Banking Ombudsman is concerned, the same was closed merely on the ground that the ground of complaint does not fall within Clause 8 of the Banking Ombudsman Scheme, 2006. It was observed that perusal of Clause 8 of the said scheme shows that it does not cover the controversy as involved in the said writ petition. Therefore, it was held, the closure of the complaint by the Banking Ombudsman does not come in the way of the petitioner therein to get credit of the unauthorized transactions in terms of Clause 9 of the Reserve Bank of India Policy.

Learned counsel for the petitioner also places reliance on a judgment of a learned Single Judge of the Madras High Court, reported at *2023 SCC OnLine Mad 3165 (Dr. R. Pavithra vs. Commissioner of Police and Others)*. In the said judgment, it was observed by the court that as per Guideline no.16.4.8 of the RBI, the non bank Prepaid Payment Instrument issuers shall ensure that a complaint is resolved and the liability of the consumer is established within the stipulated period of time, not exceeding 90 days.

It is submitted that the bank did not, in the present case, conclude the proceedings within 90 days. It was the Ombudsman who ultimately passed the order within 90 days. However, nothing was communicated from the end of the bank to indicate that the complaint of the petitioner was duly closed within 90 days. Hence, the petitioner is also entitled to get compensation on such score.

Learned counsel appearing for the respondent-bank controverts the contentions of the petitioner and argues that the complaint was closed within 90 days.

Next placing reliance on the communications made to the petitioner, it is argued that it was an error on the part of the petitioner that the OTP (One-time Password), which was sent to the registered mobile number of the petitioner, was shared by the petitioner with a third party.

It is, thus, submitted that the said act on the part of the petitioner does not cast any liability on the bank or the respondent-authorities, to take any further steps in the matter. It is also contended that the respondent-bank has sufficiently enquired into the matter, which is also evident from the documents annexed to the writ petition.

Learned counsel for the bank cites a coordinate Bench unreported judgment of this court rendered in *WPA No. 14390 of 2021 (Mrs. Kiran Tewary vs. The Banking Ombudsman, Kolkata Center & Ors.)*, where it was observed that the petitioner was entitled to institute appropriate civil and/or other proceedings.

It is, thus, submitted that since the complaint of the petitioner has been dealt with by the bank, the Ombudsman and up to the Appellate Authority, no further remedy lies in the writ jurisdiction.

Upon hearing learned counsel for the parties, it transpires that the judgments cited by the bank are operative in a limited context. It has to be ascertained whether the present writ petition or the allegations made therein come within the limited window of interference in a writ petition.

However, no ratio was laid down conclusively in the coordinate Bench judgment of this court debarring the writ jurisdiction in such matters as the present one. Moreover, in the said case, apparently all channels of challenge had not been exhausted by the writ petitioner, for which the court observed that the petitioner's remedy lay elsewhere.

Considering the judgment cited by the petitioner, the first one of them, being the Division Bench judgment of the Allahabad High Court, deals with a similar issue.

In the said judgment, it was observed that the closure of the complaint of the petitioner by the Banking Ombudsman was merely on the ground that the ground of complaint did not fall within Clause 8 of the Banking Ombudsman Scheme, 2006.

However, the facts the present case are different, inasmuch as the respondent-authorities herein adverted to the complaint of the petitioner on merits and arrived at certain conclusive findings, one way or the other. The complaint was not rejected, as not maintainable, at the threshold.

The scrutiny in the present writ petition is whether the decision-making process was *de hors* the law and the Guidelines of the RBI. Thus, the ratio laid down in *Awadhesh Singh* (supra) by the Division Bench of the Allahabad High Court is not applicable in the present case.

Insofar as the coordinate Bench judgment of the Madras High Court is concerned, the same observed, in line with RBI Guideline no. 16.4.8, that a complaint of the customer is to be resolved within 90 days. The exact language used therein was that a complaint is to be ensured to be resolved and the liability of the customer established within the said time, not exceeding 90 days.

In the present case, it is seen that the complaint was lodged by the petitioner on February 15, 2023. Thereafter, the bank intimated the petitioner on March 8, 2023 that it had submitted all the documents to the respective departments at the local head office for resolution. However, at least till that date, the issue raised by the petitioner was not resolved.

Thereafter, the matter went up to the Banking Ombudsman who, by a communication dated March 30, 2023, intimated the petitioner that the Regulated Entity (RE), that is, the respondent bank had provided OTP SMS log, SMS delivery confirmation report (of Telecom Service Provider) and stated that the SMS OTPs were delivered on the registered mobile number of the complainant.

The RE had added further that the transactions were performed in a secure manner and that deficiency/contributory negligence on the part of the Regulated Entity was not evidenced.

As such, the Ombudsman held that the incident pertains to financial fraud done by some unknown third party, which requires detailed investigation by the appropriate law enforcement authority. OBO being a summary forum, it was observed, is not vested with such power of investigation. The complainant was accordingly advised to pursue the matter with appropriate law enforcement authority.

Although there was no formal communication by the bank with regard to closure of the complaint, it is evident from the communication by the Ombudsman, which was also approached in the matter, that the said communication dated March 30, 2023 conclusively closed the complaint of the petitioner. Hence, the closure was well within the outer limit of 90 days, as contemplated in the RBI Guidelines.

Hence, it cannot be said that the bank was deficient on such score, so as to entitle the petitioner to get compensation from the bank in terms of the RBI Guidelines.

Insofar as the RBI Guidelines dated July 06, 2017 relied on by the petitioner is concerned, the same cannot lend an edge to the petitioner's case. Guideline 6 of the said Guidelines stipulate that a customer's entitlement to zero liability shall arise where the unauthorized transaction occurs in the events as given thereunder.

The first instance of such event is contributory fraud/ negligence/ deficiency on the part of the bank (irrespective of whether or not the transaction is reported by the customer).

The second sub-clause under Clause 6 stipulates that third party breach, where the deficiency lies neither with the bank nor with the customer but lies elsewhere in the system, and the customer notifies the bank within three working days, also gives rise to zero liability on the part of the customer.

In the present case, however, there is nothing on record or produced before the respondent-authorities, to indicate that there was either any contributory fraud/negligence / deficiency on the part of the bank or elsewhere in the system, to entitle the customer/petitioner to zero liability.

Clause 10 (ii) of the Guidelines provides that the bank shall ensure that where it is unable to resolve the complaint or determine the customer liability, if any, within 90 days, the compensation as prescribed in paragraphs 6 to 9 thereof is paid to the customer.

As discussed earlier, however, there is no occasion to hold that the complaint was not resolved within the period of 90 days.

Clause 12 of the RBI Guidelines provides that the burden of proving customer liability in case of unauthorized electronic banking transactions shall lie on the bank.

In the present case, on the complaint of the customer, the bank as well as the Ombudsman and the Appellate Authority have adverted to the complaint and have come to the conclusion that there was no deficiency on the part of the bank.

Hence, the present matter has crossed the initial stage of burden of proof and has reached the realm of final conclusion of the complaint. Hence, the provision as to burden of proof, which is relevant at the initial stages of a proceeding, regarding customer liability is no longer of any relevance.

That apart, there is nothing in the communication dated March 30, 2023, which has been discussed above, issued by the banking Ombudsman, which calls for any interference on the ground of any deficient decision-making process. It is reflected therein that the bank provided all the logs and delivery confirmation report and other necessary materials for the Ombudsman to come to a comprehensive conclusion on the issue.

Upon going through such materials, the Ombudsman observed that there was no deficiency or contributory negligence on the part of the bank, since the OTP was apparently shared by the petitioner from his registered mobile number.

Insofar as the rejection by the Appellate Authority is concerned, the same reveals that the authority intimated the petitioner that the grievance levelled before the said authority was closed.

In view of the detailed observations of the Ombudsman, nothing further remained to consider in detail by the appellate authority. The description of the grievance, as revealed in the Action Status Details recorded by the Appellate Authority, sufficiently takes care of the issues.

In the communication dated May 22, 2023, it is seen that, with reference to the trail mail and CPGRAMS complaint made, the bank had rejected the claim of the petitioner after scrutinizing the same in detail. It was further mentioned therein that, as already informed, no transaction was possible without OTP or password.

Hence, the same also reiterated the findings of the Ombudsman on the issue.

Inasmuch as the communication dated June 05, 2023 to the petitioner by the Appellate Authority, annexed at page – 44 of the writ petition, is concerned, the same does not make any sense. However, the mere fact that the said communication does not have any germane bearing on the present complaint of the petitioner does not enhance the case of the petitioner in any manner whatsoever.

In view of the above discussions, the petitioner is not entitled to reopen the issue before any other forum, let alone the writ court, for the purpose of a re-scrutiny on the issue on merits of the petitioner's complaint.

Hence, in view of the above observations, there is no scope of interference in the present writ petition.

Accordingly, WPA No. 16148 of 2023 is dismissed on contest, without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)