In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side

The Hon'ble Justice Sabyasachi Bhattacharyya

<u>WPO No. 2429 of 2022</u>

M/S WPIL LIMITED
Vs.
State Bank of India and Others

For the petitioner	:	Mr. Krishnendu Bhattacharya, Adv. Ms. Somali Mukhopadhya, Adv. Mr. Priyankar Ganguly, Adv. Ms. Neelanjana Ghorui, Adv.
For the respondent no.1	:	Mr. Soumya Roy, Adv. Mr. Santosh Mahato, Adv. Mr. Benazir Kazi, Adv.
For the RBI	:	Mr. Debdatta Sen, Adv. Ms. Suchismita Ghosh Chatterjee, Adv. Mrs. Ledia Dasgupta, Adv.
For the Yes Bank	:	Mr. Siddhartha Chatterjee, Adv.
Hearing concluded on	:	01.09.2023
Judgment on	:	08.09.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner-Company is an account holder with respondent no.1, the State Bank of India (SBI) Commercial Branch, Park Street, Kolkata, and has another account with Yes Bank Limited, having office at Kanak Tower at Russell Street, Kolkata.

2. By a request letter dated March 17, 2022, the petitioner requested the Chief Manager of the respondent no.1 to transfer fund using RTGS facility to the tune of Rs.50 Lakh by debiting the petitioner's cash credit account no.31116315535 maintained with the respondent no.1 to the Yes Bank Limited, Kanak Tower at Russell Street Branch in favour of the beneficiary account no.001784100001052.

3. The said sum was duly debited from the petitioner's cash account on March 17, 2022, but was never credited to the beneficiary account at the Yes Bank, Russell Street Branch. Being alarmed, the petitioner allegedly drew attention of the Chief Manager of Respondent no.1 that is the State Bank of India (SBI), Commercial Branch on March 21, 2022 which did not yield any result. On enquiry, the petitioner learnt that there was another (allegedly manufactured and fabricated) letter dated March 17, 2022 itself wherein the petitioner's money was requested to be transferred by RTGS to the Yes Bank, Dalhousie Branch, and not Russell Street Branch.

4. Correspondence ensued between the petitioner and the SBI. Ultimately, the petitioner lodged a written complaint on March 23, 2022 with the Officer-in-Charge of the Shakespeare Sarani Police Station. Subsequently, on a application under Section 156(3) of the Criminal Procedure Code, the Chief Metropolitan Magistrate at Calcutta, vide order dated April 28, 2022, observed that it would require specialised technique of investigation for collection of evidence and for production of the same before the court for enabling the court to adjudicate the same effectively. The Officer-in-Charge of the Shakespeare Sarani Police Station was directed to start investigation, fixing May 27, 2022 for filing of a report.

5. That apart, the petitioner made a comprehensive representation dated July 12, 2022 to the Reserve Bank of India (RBI) that is respondent no.3 requesting the latter to take necessary action. The RBI, through

Ombudsman, replied that the petitioner's complaint could not be entertained as the same involved detailed appreciation of evidence.

6. Learned counsel for the petitioner argues that the RBI has failed to exercise power under Section 35A of the Banking Regulation Act, 1949 (for short, "the 1949 Act") and also seeks directions against the State Bank of India and the Yes Bank. Learned counsel for the petitioner submits that it transpires that in the meantime a substantial amount out of the account in the Yes Bank, Dalhousie Branch, where the money was wrongly deposited, has been siphoned off.

7. By an interim order passed by a coordinate Bench of this Court in the present writ petition, an amount of Rs.19 Lakhs, still lying in the said account, remains frozen. Learned counsel for the petitioner argues that SBI (respondent no.1) has admitted in its opposition that there were two letters allegedly presented on behalf of the petitioner on the relevant date. However, the original of the letter dated March 17, 2022, which is alleged by the petitioner to be manufactured, has never been produced by the respondent no.1 before any authority.

8. The respondent no.1 has also not produced any relevant document, relied on in its affidavit-in-opposition. It is argued that the respondent no.1 be directed to refund the entire amount of Rs.50 Lakh to the petitioner and to compensate the petitioner for the harassment suffered by it.

9. Learned counsel for the respondent no.1/SBI places reliance on the supplementary affidavit of the petitioner. It is submitted that Clause 4 of the RBI Guidelines dated October 14, 2010 annexed to the supplementary affidavit provides that the transactions being essentially "credit push" in nature, responsibility for accurate input and successful credit lies with the remitting customer and the originating banks.

10. It is argued that as per Clause 5(v) of the same Circular, the destination banks (here, the Yes Bank) may afford credit to the beneficiary's account based on the Account Number as furnished by remitter/originating bank in the message/data file. The beneficiary's name details may be used for verification based on risk perception, value of transfer, nature of transaction, post-credit checking, etc.

11. It is, thus, argued that the destination bank could not avoid liability for having failed to match the Account Number, tallied with the name of the Account Holder in the present case.

12. It is argued that the SBI has no role to play in the issue since the petitioner's representative himself produced two letters, one of which was acted upon and as the destination bank failed to comply with its duties by matching the name and the number of the destination account.

13. Learned counsel for the RBI submits that the Ombudsman is empowered only to resolve non-adversarial issues. In support of such proposition, learned counsel relies on *Durga Hotel Complex Vs. RBI and Others,* reported at *(2007) 5 SCC 120.*

14. Learned counsel places reliance on two orders of the Ombudsman, where the Ombudsman was approached by the petitioner but successively rejected the applications, first, on the ground that detailed evidence was required to be taken and secondly, since a decision had already been taken previously.

15. It is argued that the Magistrate's order to investigate is a proceeding which is "referred to a higher court", which denudes the Ombudsman of further jurisdiction, in terms of the cited report.

16. Learned counsel for the Yes Bank places reliance on the Master Circular on Customer Services-UCBs dated July 1, 2014 issued by the RBI. Clause 22.7.1 thereof provides that in the CBS (Core Banking System) Environment, customers of a Bank can be uniquely identified by their Account Nos. across branches. It is provided that banks are generally expected to match the name and Account No. information of the beneficiary before affording credit to the account.

17. In the Indian context, however, given the many different ways in which beneficiary names can be written, it becomes extremely challenging for the banks to perfectly match the name field contained in the electronic transfer instruction with the name on record in the books of the destination bank, which leads to manual intervention. As such, it is further stipulated in the said Clause that, being essentially credit-push in nature, responsibility for accurate input and successful credit lies with the remitting customers and the originating banks. The role of destination banks is limited to affording credit to the beneficiary's account based on details furnished by the remitter/originating banks.

18. Thus, the Yes Bank was not at fault.

19. In fact, as a measure of its *bona fides*, the Yes Bank froze the destination account as and when the petitioner informed the Yes Bank about the alleged fraud.

20. Subsequently, by an order of a court, the Yes Bank was constrained to disburse a quantum of amount from the said account in favour of the account holder, one Arindam Mitra. However, the rest of the account was frozen and subsequently, the quantum of Rs.19 Lakh has been retained in the said account as per the direction of the Coordinate Bench.

21. Thus, it is argued that the Yes Bank cannot be made liable in any manner.

22. The petitioner cites judgments, in particular *M/s. Hyderabad Commercials Vs. Indian Bank and others*, reported at *AIR 1991 SC 241*, for the proposition that if the basic facts regarding the unauthorised transfer of the disputed amount from the appellant's account as well as the bank's liability was admitted, there was no justification for the High Court to direct the appellant to file a suit on the ground of disputed questions of fact.

23. Learned counsel for the petitioner also cites *West Bengal State Co-Operative Bank Ltd and Anr. Vs. Punjab National Bank and Ors.*, reported at *2022 LawSuit (Cal) 522*, where a learned Single Judge of this Court held that in certain cases even money claims can be decided by the writ court if there was arbitrary withholding of money.

24. Learned counsel also cites *Tony Enterprises, Ernakulam Vs. Reserve Bank of India,* reported at *2019 LawSuit (Ker) 805,* a judgment rendered by learned Single Judge of the Kerala High Court, observing that while considering the matter under public law remedy, the court must confine its enquiry to the action of the Bank on the basis of public law parameters and not in a manner as done in civil adjudication. The court is to tread a cautious path while considering a matter under Article 226 of the Constitution. Thus, it is argued that the test is whether there is a public law element. Since the banks deal with public money and the present challenge refers to the functioning of the banking system at large, it is argued that an element of public interest is involved.

25. Heard learned counsel for the parties.

26. The issue in dispute in a nutshell concerns a request by the petitioner dated March 17, 2022 whereby the petitioner sought a transfer by RTGS mode of an amount of Rs.50 Lakh from the SBI Commercial Branch, Kolkata, to the Yes Bank, Russell Street Branch. However, the said amount was credited to an account having similar number but in the Dalhousie Branch of the Yes Bank, which belongs to a third party, namely one Arindam Mitra.

27. All the parties have contended that the said account of Arindam Mitra is involved in other similar allegations as well, relating to different banks and different customers. In fact, the said account holder was also arrested for some days. However, nothing in the materials indicates that the said account holder was ever convicted of any offence. Needless to say, until and unless any conviction occurs, the account holder remains only an accused, irrespective of the number of criminal cases against him, and it cannot be conclusively said that he had a direct role to play in the fraud alleged by the petitioner.

28. Starting with the role of RBI, learned counsel for the RBI has placed the Reserve Bank of India - Integrated Ombudsman Scheme, 2021.

29. The role of the Ombudsman as set out in the said Scheme is primarily non-adversarial, as rightly indicated by the RBI.

30. In fact, Clause 14 of the Ombudsman Scheme of 2021 cited by the RBI provides that the Ombudsman shall endeavour to promote settlement of a complaint by agreement between the complainant and the Regulated Entity through facilitation or conciliation or mediation. Sub-clause (6) of Clause 14 provides that in case the complaint is not resolved through facilitation, such action as may be considered appropriate, including a meeting of the complainant with the officials of the Regulated Entity for resolution of the complaint by conciliation or mediation may be initiated. Clause 10(2)(b)(ii) provides that a complaint under the Scheme shall not lie unless the complaint is not in respect of the same cause of action which is already pending before any court, Tribunal or arbitrator or any other forum or authority.

31. The Scheme categorically indicates that in the event a similar enquiry is pending before any competent court of law, the Ombudsman shall not proceed with the resolution. In the present case, the Ombudsman rejected the application of the petitioner twice, first under Clause 16(2)(e) which provides that the Ombudsman may reject a complaint at any stage if it requires consideration of elaborate documentary and oral evidence and the proceedings before the Ombudsman are not appropriate for adjudication of such complaint.

32. On the second instance, the Ombudsman observed that it would not entertain the complaint under Clause 10(2)(b)(i) which provides that the complaint will not be entertained if pending before an Ombudsman or settled or dealt with on merits by an Ombudsman, whether or not received from the same complainant or along with one or more complainants or one or more of the parties concerned.

33. The RBI has rightly contended that it does not have the mechanism of a full-fledged investigating authority and exercises such powers through the Ombudsman primarily on a premise of arbitration, conciliation and/or mediation. Adversarial proceedings cannot be decided by the Ombudsman, as also held in *Durga Hotel Complex (supra)*, cited by the petitioner. The Supreme Court, in the said case, clearly observed that the Ombudsman, at best, is an authority or Tribunal of limited jurisdiction constituted under the Scheme and could not proceed with a complaint once deprived of its jurisdiction. A complaint goes out of his purview when the subject-matter is taken to a court, arbitrator, tribunal or forum. Conceptually, the Supreme Court held, an Ombudsman is only a non-adversarial adjudicator of disputes. Borrowing the same principle in the present case, the RBI cannot have any role to play and the petitioner's prayer for an involvement and steps by the RBI cannot be entertained.

34. Insofar as the role of the Yes Bank is concerned, the opposition filed by the Yes Bank clearly indicates the role of destination banks vis-a-vis the originating banks.

35. The Master Circular on Customer Service-UCBs published by the RBI on July 1, 2014, annexed to the affidavit-in-opposition of the Yes Bank, in Clause 22.7.1 provides for processing inward transactions based solely on account number information. In the Core Banking System Environment, it is stipulated therein, customers of a bank can be uniquely identified by their account numbers across branches and banks are generally expected to match the name and account number of the beneficiary before affording credit to the account.

36. However, it is clearly elaborated thereafter in the same Clause that in the Indian context, given the many different ways in which beneficiary names can be written, it becomes extremely challenging for the banks to perfectly match the name field contained in the electronic transfer instructions with the name on record in the books of the destination banks, which leads to manual intervention, hindering the Straight Through Processing (STP) Environment, causing delay. The manual intervention also provides scope for error and fraudulent intent. The said Clause goes on to provide that *being essentially credit-push in nature, responsibility for accurate input and successful credit lies with the remitting customer and the originating banks. The role of destination banks is limited to affording credit to beneficiary's account based on details furnished by the remitter/originating banks* (Emphasis supplied).

37. Thus, a comprehensive perusal of Clause 22.7.1 clearly shows that the liability with regard to affording credit to beneficiary's account lies solely with the remitting customer and the originating banks in the Indian context.

38. The Master Circulars of the RBI have the force of law, at least insofar as the banking system in India is concerned. The Master Circular referred to above is dated July 1, 2014 and mentions that it consolidates and updates all the instructions/guidelines on the subject issued up to June 30, 2014 and mentioned in its Appendix.

39. Although the October 14, 2010 Circular is specifically not mentioned in the Appendix, the same falls within the broad ambit of the same subject-matter. Clause 14 of the 2010 Circular also stipulates that being essentially credit-push in nature, responsibility for accurate input and successful credit lies with the remitting customer and the originating banks. The role of destination banks is limited to affording credit to the beneficiary's account based on details furnished by the remitter/originating banks.

40. Hence, there is no deviation in the 2014 Circular from the 2010 Circular on such score. Clause 5(v) of the 2010 Circular provides that destination banks may afford credit to the beneficiary's account based on the Account Number as furnished by remitter/originating bank in the message/data file.

41. Thus, it is clear that the responsibility lies on the remitter/originating bank in its push message, regarding the crediting of the accounts. Hence, no liability or responsibility can be cast in the present case on the Yes Bank, which is the destination bank.

42. It is an admitted position that the respondent no.1/SBI was the originating bank and had originated the push message. It was not the remitter/customer/petitioner who had sent the push message but the

SBI, that is, the originating bank.

43. Hence, the entire question boils down to the respective liabilities of the respondent no.1/originating bank and the petitioner/the remitting customer.

44. At first blush, it is absurd that the petitioner, to the detriment of its own interest, would sent two different letters to the SBI, with regard to the same transaction. It is more absurd that the petitioner, upon doing so, would itself initiate criminal proceedings and file application under Section 156 of the Criminal Procedure Code, which prompted an investigation being directed by the concerned Magistrate. In the circumstances as disclosed in the present case, it is the SBI on which the liability can be prima facie fixed.

45. However, the respondent no.1 has a point in arguing that the investigation is ongoing regarding the allegations and counter-allegations and it would be premature at this juncture to arrive at any conclusive findings in that regard. There is sound logic in the said argument, since the writ court, with its limitations of taking evidence, is not the appropriate authority to decide conclusively on the allegations and counter-allegations of fraud, which is required to be decided on conclusive evidence. Since the matter is sub judice before the criminal forum and an investigation is ongoing in that regard, it would be rather premature at this juncture to fix liability conclusively on the respondent no.1, despite the first impressions created, as discussed above.

46. However, the petitioner is undoubtedly entitled to refund of the remaining balance of Rs.19 Lakh which is lying at present in the destination account, since the owner of the said account cannot be permitted to be unjustly enriched, it being an admitted position that Rs.50 Lakh was wrongly credited to the said account, contrary to the instructions and intention of the petitioner.

47. Thus, WPO No.2429 of 2022 is disposed of by directing the respondent no.5 to refund the amount of Rs.19 Lakh, lying in the destination account of the Dalhousie Branch of the Yes Bank at Kolkata, bearing Account No.019051100005067, to the petitioner within three weeks from date.

48. Liberty is granted to the petitioner to take appropriate steps against the respondent no.1-Bank by way of a civil suit and/or other competent forum as well as before the criminal court, for addressing the grievances of the petitioner with regard to alleged fraud as well as for recovery of the balance amount transferred erroneously by the SBI to the destination account at Yes Bank, Dalhousie Branch.

49. There will be no order as to costs.

50. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)