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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 12682/2023 and CM APPL.49977-49979/2023**

Date of Decision: **12.10.2023**

IN THE MATTER OF:

MB POWER (MADHYA PRADESH) LTD.

239, OKHLA INDUSTRIAL ESTATE, PHASE III,
NEW DELHI - 110020

THROUGH ITS AUTHORISED SIGNATORY,
RAJINDER SINGH

..... PETITIONER

Through: Mr.Saurabh Kirpal, Sr. Advocate with
Mr. Dushyant Manocha, Ms. Darika
Sikka and Ms. Chitra Vats,
Advocates.

versus

OMBUDSMAN, RESERVE BANK OF INDIA

RESERVE BANK OF INDIA

6, SANSAD MARG, NEW DELHI

..... RESPONDENT NO. 1

ICICI BANK LIMITED

NBCC TOWER,

BISHAM PITAMAH MARG,

PRAGITI VIHAR, LODHI ROAD

NEW DELHI- 110003

... RESPONDENT NO. 2

Through: None for R-1.
*Counsel for R-2(Appearance not
given)*

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner has filed the instant writ petition under Article 226 of the Constitution of India praying for the following reliefs:

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By: PURUSHAINDRA
KUMAR KAURAV



“(a) Issue a Writ of Certiorari or any other appropriate writ, order, or direction in the nature thereof, quashing the Orders dated 30.12.2022 bearing No. RBI/CMS/N20223023281653/2022-23; 20.04.2023 bearing No. RBI/CMS/N202324023025074/2023-24 and 09.05.2023 bearing No. RBI/CMS/N202324023024323/2023-24 issued by Respondent No. 1;

(b) Consequently, declare that Respondent No. 2 was deficient in providing banking services to the Petitioner;

(c) Further consequently, direct Respondent No. 2 to honour its commitments under the Letter of Credit dated 10.09.2021 bearing No.0548ILC00004123 and release an amount of Rs. 11,57,61,156/- alongwith late payment surcharge of Rs. 1,83,55,607/- computed at a rate of 15%, along with future interest (on a monthly compounding basis) till the receipt of such amount, to the Petitioner”

2. The facts of the case exhibit that the petitioner is a power generation company, on whose behalf PTC India Limited (*hereinafter as ‘PTC’*), an inter-state trading licensee, submitted its bid in a tender for purchase of short-term power issued by Torrent Power Limited (*hereinafter as ‘Torrent’*), a distribution licensee and thereby, PTC was declared a successful bidder. Torrent issued a letter of award in favour of PTC and the parties subsequently entered into a power purchase agreement (*hereinafter as ‘PPA’*). Thereafter, the petitioner and PTC also entered into various PPAs.

3. As per the terms of the PPA between the petitioner and PTC, which was entered into in the backdrop of PTC entering into a back-to-back agreement with Torrent, PTC issued a revolving letter of credit (LoC) through respondent no.2-ICICI Bank in favour of the petitioner. The petitioner supplied power to Torrent but when the Torrent failed to make the payments, the petitioner invoked the LoC. However, respondent no.2-ICICI Bank refused to make payments to the petitioner by raising certain discrepancies. The petitioner, thereafter, lodged a formal complaint dated



07.11.2022 with the principle nodal officer of respondent no.2-ICICI Bank with a copy of the said complaint sent to the Ombudsman under the Reserve Bank- Integrated Ombudsman Scheme, 2021 (*hereinafter as ‘Ombudsman Scheme’*).

4. The Ombudsman, while taking cognizance of the aforementioned representation filed by the petitioner dated 07.11.2022, sent a pre-emptive rejection to the petitioner on 30.12.2022. On 15.04.2023, the petitioner preferred a formal complaint before the Ombudsman to ventilate its grievance. Pursuant to the said complaint, the petitioner received an unreasoned order of rejection dated 20.04.2023, reiterating the earlier rejection. It appears that because of multiple modes of complaints, another rejection order dated 09.05.2023 was also sent to the petitioner by the Ombudsman.

5. Learned senior counsel appearing on behalf of the petitioner, at the outset, submits that the essential grievance of the petitioner is against the manner in which the Ombudsman has rejected the complaint of the petitioner. According to him, the impugned decision passed by the Ombudsman is without any reason and, therefore, the same is violative of the principles of natural justice.

6. When the submission was made by learned senior counsel appearing on behalf of the petitioner, this court directed for issuance of the notice to the respondents. It is seen that on 04.10.2023, notice on respondent no.1 has been duly served. Since no one appears on behalf of respondent no.1, this court is left with no other option except to proceed *ex-parte* against the said respondent.



7. The learned counsel appearing on behalf of respondent no.2-ICICI Bank, however, opposes the petition and he submits that the nature of relief sought for in the instant petition may not be amenable for adjudication under Article 226 of the Constitution of India, inasmuch, as the relief relates to a private contract and, therefore, public law remedy should not be invoked.

8. Learned senior counsel appearing on behalf of the petitioner then contends that, at this stage, the petitioner is not calling upon this court to adjudicate the controversy on the merits of the case. He submits that when there is a statutory scheme for resolving customer grievances in relation to services provided by entities regulated by Reserve Bank of India (RBI) in an expeditious and cost-effective manner, the Ombudsman is required to adjudicate the complaint only after adhering to the principles of natural justice.

9. Learned senior counsel appearing on behalf of the petitioner then takes this court through the Ombudsman Scheme to indicate various clauses of the said scheme. He then contends that if Clauses 13 to 16 of the Ombudsman Scheme are examined, the same would indicate that the nature of function being discharged by the Ombudsman is of a *quasi-judicial* nature and therefore, the principles of natural justice must be adhered to.

10. Since this limited submission has been made by the learned senior counsel appearing on behalf of the petitioner pertaining to the decision-making process, therefore, no counter-affidavit on behalf of respondent no.2 is necessary.

11. Learned senior counsel appearing on behalf of the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the case of



*Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India*¹, the decision of Madras High Court in *Fidelity Finance Ltd. v. Banking Ombudsman*², the decision of the High Court of Calcutta in *Rossell India Ltd. v. Banking Ombudsman for West Bengal*³ and the decision of High Court of Kerala in *M.M. Kunjumon v. RBI*⁴.

12. I have heard the submissions made by learned senior counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of respondent no.2-ICICI Bank and perused the record.

13. It is significant to forthrightly advert to the provisions of the Ombudsman Scheme to analyse the powers and functions of the Ombudsman vis-à-vis the grievance redressal mechanism as envisaged under the said scheme. Clause 8 of the Ombudsman Scheme deals with the powers and functions of the Ombudsman, which reads as under:

“8. Powers and Functions

(1) The Ombudsman/Deputy Ombudsman shall consider the complaints of customers of Regulated Entities relating to deficiency in service.

(2) There is no limit on the amount in a dispute that can be brought before the Ombudsman for which the Ombudsman can pass an Award. However, for any consequential loss suffered by the complainant, the Ombudsman shall have the power to provide a compensation up to Rupees 20 lakh, in addition to, up to Rupees One lakh for the loss of the complainant's time, expenses incurred and for harassment/mental anguish suffered by the complainant.

(3) While the Ombudsman shall have the power to address and close all complaints, the Deputy Ombudsman shall have the power to close those complaints falling under clause 10 of the Scheme and complaints settled through facilitation as stated under clause 14 of the Scheme.

(4) The Ombudsman shall send to the Deputy Governor, Reserve Bank of India, a report, as on March 31st every year, containing a general review of the activities of the office during the preceding financial year, and shall furnish such other information as the Reserve Bank may direct.

¹(1976) 2 SCC 981

²2002 SCC OnLine Mad 864

³2014 SCC OnLine Cal 2885

⁴2023 SCC OnLine Ker 7608



(5) The Reserve Bank may, if it considers necessary in the public interest to do so, publish the report and the information received from the Ombudsman in such consolidated form or otherwise, as it may deem fit.”

14. A perusal of Clause 8(1) of the Ombudsman Scheme would show that the Ombudsman is required to consider the complaint of customers of regulated entities relating to deficiencies in services. The terms ‘regulated entity’ and ‘deficiency in service’ for the said purpose are defined under Clauses 3(1)(j) and 3(1)(g) of the Ombudsman Scheme, respectively, which are culled out as under:

“3. Definitions

(1) In the Scheme, unless the context otherwise requires:

(g) “Deficiency in service” means a shortcoming or an inadequacy in any financial service or such other services related thereto, which the Regulated Entity is required to provide statutorily or otherwise, which may or may not result in financial loss or damage to the customer;

(j) “Regulated Entity” means a bank or a Non-Banking Financial Company, or a System Participant or a Credit Information Company as defined in the Scheme, or any other entity as may be specified by the Reserve Bank from time to time; to the extent not excluded under the Scheme.”

15. Admittedly, respondent no.2-ICICI Bank by virtue of being a bank, falls under the definition of regulated entity under Clause 3(1)(j) of the Ombudsman Scheme and hence, undoubtedly, the Ombudsman has the requisite mandate to consider the complaint of the petitioner.

16. Further, Chapter IV of the Ombudsman Scheme deals with the procedure for redressal of grievance under the scheme. It is appropriate to allude to Clauses 10 and 11 of the said chapter which encapsulate certain grounds for non-maintainability of a complaint and procedure for filing a complaint. For the sake of clarity, the said clauses are extracted hereunder as:



“10. Grounds for non-maintainability of a Complaint

(1) No complaint for deficiency in service shall lie under the Scheme in matters involving:

- (a) commercial judgment/decision of a Regulated Entity;*
- (b) a dispute between a vendor and a Regulated Entity relating to an outsourcing contract;*
- (c) a grievance not addressed to the Ombudsman directly;*
- (d) general grievances against Management or Executives of a Regulated Entity;*
- (e) a dispute in which action is initiated by a Regulated Entity in compliance with the orders of a statutory or law enforcing authority;*
- (f) a service not within the regulatory purview of the Reserve Bank;*
- (g) a dispute between Regulated Entities;*
- (h) a dispute involving the employee-employer relationship of a Regulated Entity;*
- (i) a dispute for which a remedy has been provided in Section 18 of the Credit Information Companies (Regulation) Act, 2005; and*
- (j) a dispute pertaining to customers of Regulated Entity not included under the Scheme.*

(2) A complaint under the Scheme shall not lie unless:

- (a) the complainant had, before making a complaint under the Scheme, made a written complaint to the Regulated Entity concerned and-*
 - (i) the complaint was rejected wholly or partly by the Regulated Entity, and the complainant is not satisfied with the reply; or the complainant had not received any reply within 30 days after the Regulated Entity received the complaint; and*
 - (ii) the complaint is made to the Ombudsman within one year after the complainant has received the reply from the Regulated Entity to the complaint or, where no reply is received, within one year and 30 days from the date of the complaint.*
- (b) the complaint is not in respect of the same cause of action which is already-*
 - (i) 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;*
 - (ii) pending before any Court, Tribunal or Arbitrator or any other Forum or Authority; or, settled or dealt with on merits, by any Court, Tribunal or Arbitrator or any other Forum or Authority, whether or not received from the same complainant or along with one or more of the complainants/parties concerned;*
- (c) the complaint is not abusive or frivolous or vexatious in nature;*
- (d) the complaint to the Regulated Entity was made before the expiry*



of the period of limitation prescribed under the Limitation Act, 1963, for such claims;

(e) the complainant provides complete information as specified in clause 11 of the Scheme;

(f) the complaint is lodged by the complainant personally or through an authorised representative other than an advocate unless the advocate is the aggrieved person.

Explanation 1: For the purposes of sub-clause (2)(a), 'written complaint' shall include complaints made through other modes where proof of having made a complaint can be produced by the complainant.

Explanation 2: For the purposes of sub-clause (2)(b)(ii), a complaint in respect of the same cause of action does not include criminal proceedings pending or decided before a Court or Tribunal or any police investigation initiated in a criminal offence.

11. Procedure for Filing a Complaint

(1) The complaint may be lodged online through the portal designed for the purpose (<https://cms.rbi.org.in>).

(2) The complaint may also be submitted through electronic or physical mode to the Centralised Receipt and Processing Centre as notified by the Reserve Bank. The complaint, if submitted in physical form, shall be duly signed by the complainant or by the authorised representative. The complaint shall be submitted in electronic or physical mode in such format and containing such information as may be specified by Reserve Bank."

17. A perusal of the aforesaid clauses suggests that the complaint to the Ombudsman can be filed only as per the mandate of Clause 11 of the Ombudsman Scheme upon fulfilment of the conditions mentioned in Clause 10 of the said scheme. Clause 11 explicitly prescribes a two-fold mechanism for submitting the complaint i.e., firstly, it can be carried out online by lodging the complaint through the portal designed for the said purpose or secondly, it can be done via submission of complaint through electronic or physical mode at the Centralised Receipt and Processing Centre as notified by the Reserve Bank.

18. The petitioner has set up a specific case that it was only the complaint made to the regulated entity in terms of Clause 10(2) of the Ombudsman



Scheme, which was forwarded to the Ombudsman and there was no formal complaint made to the Ombudsman as required under Clause 11 of the Ombudsman Scheme. It is seen that the complaint was made to the regulated entity in terms of Clause 10(2) of the Ombudsman Scheme, however, the Ombudsman appears to have treated the same to be the one under Clause 11 of the said scheme. Assuming that the said complaint was treated to be the one under Clause 11 of the Ombudsman Scheme, the same ought to have been decided in accordance with the mandate of the scheme. Unfortunately, the said complaint was rejected *vide* order dated 30.12.2022 without assigning any reason, much less a good reason. For the sake of clarity, the order dated 30.12.2022 reads as under:

“ भारतीय रिज़र्व बैंक
Reserve Bank of India
केंद्रीय प्राप्ति और प्रसंस्करण केंद्र
Centralised Receipt and Processing Centre (CRPC)

आरबीआई/सीएमएस/N202223023281653/2022-23 दिनांक: 30-12-2022

RBI/CMS/N202223023281653/ 2022-23

Date: 30-12-2022

श्री/सुश्री MB Power Ltd

Shri Ms MB Power Ltd

महोदया/महोदय

Madam/Dear Sir

ICICI BANK LIMITED के विरुद्ध शिकायत N202223023281653 को बंद करने की सूचना

Closure Intimation for Complaint N202223023281653 against ICICI BANK LIMITED कृपया सीएमएस पोर्टल/ ईमेल/ पत्र के द्वारा ICICI BANK LIMITED के विरुद्ध लोकपाल के पास दर्ज की गई अपनी शिकायत देखें।

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Please refer to your complaint against ICICI BANK LIMITED filed through the CMS portal/email/letter with the Ombudsman,

2. Please find attached bank's reply dt. November 28, 2022.

- *The bank has replied to you, stating the reasons for non-payment in respect of the letter of credit. The bank has denied the claims that there has been discrepancy in service, error in the rejection of the presentations or any delay in communicating the discrepancies on bank's part.*
- *The bank's reply has been vetted by the Internal Ombudsman of the Bank.*

3. तदनुसार, आपकी शिकायत को अस्वीकार्य वर्गीकृत किया गया है और रिजर्व बैंक एकीकृत लोकपाल योजना, 2021 के खंड 16(2)(a), जिसे निम्न प्रकार पढ़ा जाए, के तहत बंद किया जाता है

"Complaint is rejected under Clause 16(2)(a) of the Reserve Bank - Integrated Ombudsman Scheme, 2021:

"In the opinion of the Ombudsman, there is no deficiency in service"

3 Accordingly the complaint has been closed under clause 15(2) (a) of the Reserve Bank - Integrated Ombudsman Scheme, 2021, which reads as under:

"Complaint is rejected under Clause 16(2)(a) of the Reserve Bank Integrated Ombudsman Scheme, 2021:

In the opinion of the Ombudsman, there is no deficiency in service"

4. कृपया यह नोट करें कि उक्त खंड के तहत बंद की गई शिकायत गैर-अपीलीय है। अगर आप लोकपाल के निर्णय से संतुष्ट नहीं हैं तो आपको यह विकल्प प्राप्त है कि आपकी शिकायत के निवारण हेतु विधि द्वारा स्थापित कोई अन्य मंच/न्यायालय/विधि प्राधिकरण से संपर्क करें।

4. Please note that the complaints closed under the above cause are non-appealable. In case you are not satisfied with the decision of the Ombudsman, have an option to approach any other Forum/Court/Legal authority in accordance with the law for redressal of your grievance

5. यह लोकपाल के अनुमोदन से जारी किया जा रहा है।

5. This is issued with the approval of Ombudsman.

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KUMAR KAURAV



6. आपसे अनुरोध है कि उक्त निवारण से संबंधित अपनी फीडबैक <https://cms.rbi.org.in> पर दें।

6. You are requested to provide feedback for the above resolution on <https://cms.rbi.org.in>

7. लोकपाल योजना के विवरण <https://ams.rbi.org.in> पर उपलब्ध है। इसके संबंध में कोई सूचना/ स्पष्टीकरण हेतु आप Toll Free Number: 14448 (Between 9:30AM – 5:15PM) पर संपर्क कर सकते हैं।

7. The details of the Scheme are available at <https://ams.rbi.org.in> For any information/clarification, you may approach us on Toll Free Number: 14448 (Between 9:30AM 5:15PM).

सादर

Regards

आर बी आई सी आर पी सी

RBI CRPC”

19. It is apparently evident that the Ombudsman has not dealt with any of the submissions made on behalf of the petitioner/complainant in its complaint. The order dated 30.12.2022 is seemingly an empty formality bereft of any reasoning. The case of the petitioner is that not only the order dated 30.12.2022 is unsustainable in the eyes of law, rather, even a subsequent comprehensive complaint filed by the petitioner in terms of Clause 11 of the Ombudsman Scheme came to be dismissed without dealing with the averments made in the complaint.

20. The detailed complaint dated 15.04.2023, which was made to the Ombudsman in terms of Clause 11 of the Ombudsman Scheme was required to be dealt with on merits. However, the same was rejected by the order dated 20.04.2023, which is again conspicuously devoid of any explicative reasoning. The order dated 20.04.2023 only reiterates that since



the earlier complaint of the petitioner was rejected, therefore, there was no reason to entertain the second complaint.

21. It is to be noted that initially, no formal complaint was made to the Ombudsman as per the mandate of the Ombudsman Scheme, rather only a copy of the complaint made to the regulated entity was sent to the Ombudsman. Therefore, firstly, in the absence of there being a formal complaint made by the petitioner to the Ombudsman, the same ought not to have been dealt with by passing an order without assigning any reasons therein. Secondly, when the detailed complaint was filed by the petitioner before the Ombudsman, the Ombudsman was required to decide the same, giving a fair consideration to the principles of natural justice. It is also seen that without seeking any response from the respondent no.2-ICICI Bank, the formal complaint of the petitioner was also unilaterally rejected by an unreasoned order.

22. The subject matter of denial by a bank to honour the LoC is a serious issue and must be given a serious consideration. The Hon'ble Supreme Court has time and again held that an LoC must be honoured by the bank except where there is a fraud or irretrievable injury, as it has been encapsulated in the case of *I.T.C. Limited v. Debts Recovery Appellate Tribunal*⁵. It is not necessary to evaluate the decision on the aforesaid legal proposition at this stage. The order passed by the Ombudsman in the present case does not reflect a consideration, much less a serious one.

23. If the exposition of Clause 14 of the Ombudsman Scheme is profoundly observed, it encompasses a two-pronged approach for resolution of complaints preferred by the complainants against the

⁵ (1998) 2 SCC 70



regulated entities. Firstly, it envisages to facilitate an amicable settlement of the complaint between the rival parties and secondly, upon failure of the amicable resolution, it endeavours that an award be passed by the Ombudsman. The relevant clause is reproduced hereunder as:

“14. Resolution of Complaints

(1) The Ombudsman/Deputy Ombudsman shall endeavour to promote settlement of a complaint by agreement between the complainant and the Regulated Entity through facilitation or conciliation or mediation.

(2) The proceedings before the Ombudsman shall be summary in nature and shall not be bound by any rules of evidence. The Ombudsman may examine either party to the complaint and record their statement.

(3) The Regulated Entity shall, on receipt of the complaint, file its written version in reply to the averments in the complaint enclosing therewith copies of the documents relied upon, within 15 days before the Ombudsman for resolution.

Provided that the Ombudsman may, at the request of the Regulated Entity in writing to the satisfaction of the Ombudsman, grant such further time as may be deemed fit to file its written version and documents.

(4) In case the Regulated Entity omits or fails to file its written version and documents within the time as provided in terms of sub-clause (3), the Ombudsman may proceed ex-parte based on the evidence available on record and pass appropriate Order or issue an Award. There shall be no right of appeal to the Regulated Entity in respect of the Award issued on account of non-response or non-furnishing of information sought within the stipulated time.

(5) The Ombudsman/Deputy Ombudsman shall ensure that the written version or reply or documents filed by one party, to the extent relevant and pertaining to the complaint, are furnished to other party and follow such procedure and provide additional time as may be considered appropriate.

(6) 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 Regulated Entity, for resolution of the complaint by conciliation or mediation may be initiated.

(7) The parties to the complaint shall cooperate in good faith with the Ombudsman/Deputy Ombudsman, as the case may be, in resolution of the dispute and comply with the direction for production of any evidence and other related documents within the stipulated time.

(8) If any amicable settlement of the complaint is arrived at between the parties, the same shall be recorded and signed by both the parties and thereafter, the fact of settlement may be recorded, annexing thereto the



terms of settlement, directing the parties to comply with the terms within the stipulated time.

(9) The complaint would be deemed to be resolved when:

(a) it has been settled by the Regulated Entity with the complainant upon the intervention of the Ombudsman; or

(b) the complainant has agreed in writing or otherwise (which may be recorded) that the manner and the extent of resolution of the grievance is satisfactory; or

(c) the complainant has withdrawn the complaint voluntarily.

24. Also, the requirement of a reasoned order is succinctly captured in Clause 15(2) of the Ombudsman Scheme which sets out that the Ombudsman shall also take into account the principles of banking law and practice, directions, instructions and guidelines issued by the Reserve Bank from time to time and such other factors as may be relevant, before passing a reasoned award. The relevant clause is reproduced hereunder as:

“15. Award by the Ombudsman

(1) Unless the complaint is rejected under clause 16, the Ombudsman shall pass an Award in the event of:

(a) non-furnishing of documents/information as enumerated in clause 14(4); or

(b) the matter not getting resolved under clause 14(9) based on records placed, and after affording a reasonable opportunity of being heard to both the parties.

(2) The Ombudsman shall also take into account, in addition, the principles of banking law and practice, directions, instructions and guidelines issued by the Reserve Bank from time to time and such other factors as may be relevant, before passing a reasoned Award.

(3) The Award shall contain, inter alia, the direction, if any, to the Regulated Entity for specific performance of its obligations and in addition to or otherwise, the amount, if any, to be paid by the Regulated Entity to the complainant by way of compensation for any loss suffered by the complainant.

(4) Notwithstanding anything contained in sub-clause (3), the Ombudsman shall not have the power to pass an Award directing payment by way of compensation, an amount which is more than the consequential loss suffered by the complainant or Rupees 20 lakh whichever is lower. The compensation that can be awarded by the Ombudsman shall be exclusive of the amount involved in the dispute.

(5) The Ombudsman may also award a compensation not exceeding



Rupees one lakh to the complainant, taking into account the loss of the complainant's time, expenses incurred, harassment and mental anguish suffered by the complainant.

(6) A copy of the Award shall be sent to the complainant and the Regulated Entity.

(7) The Award passed under sub-clause (1) shall lapse and be of no effect unless the complainant furnishes a letter of acceptance of the Award in full and final settlement of the claim to the Regulated Entity concerned, within a period of 30 days from the date of receipt of the copy of the Award.

Provided that no such acceptance may be furnished by the complainant if he has filed an appeal under sub-clause (3) of clause 17.

(8) The Regulated Entity shall comply with the Award and intimate compliance to the Ombudsman within 30 days from the date of receipt of the letter of acceptance from the complainant, unless it has preferred an appeal under sub-clause (2) of clause 17."

25. Additionally, the statutory scheme as per Section 35A of the Banking Regulation Act, 1949 (10 of 1949), Section 45L of the Reserve Bank of India Act, 1934 (2 of 1934), Section 18 of the Payment and Settlement Systems Act, 2007 (51 of 2007) and Section 11 of the Credit Information Companies (Regulation) Act, 2005 (30 of 2005), already provides a regulatory framework for resolving grievances of the customer pertaining to the services provided by entities regulated by RBI.

26. The origin of the concept of Ombudsman can be traced back to the early 1800s of Sweden, whereby, such an authority was appointed for the first time primarily to protect the interests of the public by safeguarding them against the misuse of powers by the administrative authorities. With the paradigm shift in the functioning of the regulated entities vis-à-vis the growing needs of people across the world, such independent authorities were bestowed with the mandate to act as facilitators or intermediaries between the people and the concerned regulated entity. This was done with an aim of enhancing fairness, transparency and accountability in the decision-making



processes, which would ultimately benefit people and save their time, money and efforts as against the traditional litigation in courts.

27. In the context of the banking industry, the designation of an Ombudsman under the aegis of the RBI, is especially useful. The RBI Ombudsman, appointed by the RBI, is a person who understands the business of banking, the practices involved therein, the duties of the bank and the possible infirmities in the system. It is, therefore, observed that the Ombudsman is entrusted to carry out *quasi-judicial* functions with utmost diligence in accordance with the extant regulations.

28. It is, however, appalling to see a high-handed approach of the Ombudsman in facilitating resolution of complaints pertaining to services rendered by the bank in the instant case. If such an authority passes an order without assigning any reasons, defying the statutory mandate and principles of natural justice, it would only erode public trust in its functioning and consequently, undermine the democratic values. Therefore, any attempt of the Ombudsman to wield power in an arbitrary manner is an inexpedient exercise of powers, which deserves to be rebuked.

29. A bare perusal of the aforementioned order of rejection dated 30.12.2022 suggests that the complaint of the petitioner, which was otherwise made to the regulated entity i.e., respondent no.2-ICICI Bank, was rejected only with a comment that there was no deficiency of services. Since no explanation or grounds have been provided by the Ombudsman *qua* the rejection, it only amounts to a mechanical acceptance of the stand taken by the respondent no.2-ICICI Bank. Even if Clause 16(2)(a) of the Ombudsman Scheme provides a mechanism to reject the case of the complainant, it should not be construed to be done without taking recourse to natural justice,



which would have otherwise required a detailed order or personal hearings afforded to the petitioner.

30. It is also noted that the subsequent orders passed by the Ombudsman dated 20.04.2023 and 09.05.2023 on the basis of the complaint dated 15.04.2023, preferred by the petitioner, are only a reiteration of the earlier stand taken by the Ombudsman. These orders are also wretchedly inadequate, inasmuch, as they do not record into writing the reasons of rejection, assailing the tenets of natural justice principles on the face of it. It is apposite to extract the relevant paragraphs of the order dated 20.04.2023, which reads as under:

“2. Based on the information provided in your complaint, it was observed that the complaint in respect of the same cause of action was already pending with/ had been dealt with on merits by the Ombudsman.

3. Accordingly, it was classified as Non-Maintainable and closed under clause 10(2)(b)(i) of the Reserve Bank - Integrated Ombudsman Scheme, 2021 which reads as under:

“Complaint is non-maintainable under Clause 10 (2) (b) (i) of the Reserve Bank - Integrated Ombudsman Scheme, 2021: the complaint is ‘Pending before / Dealt with / Settled by an Ombudsman’”.

31. This court also considers it appropriate to traverse through the judicial pronouncements concerning the issue at hand. The Hon’ble Supreme Court in the case of **Siemens Engg. (supra)** while dealing with the functions of the *quasi-judicial* authority, has held that every *quasi-judicial* order must be supported by reasons. The relevant paragraph of the said decision reads as under:-

“6. Before we part with this appeal, we must express our regret at the manner in which the Assistant Collector, the Collector and the Government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi-judicial proceedings and so also were the proceedings in revision



before the Collector and the Government of India. Indeed, this was not disputed by the learned Counsel appearing on behalf of the respondents. It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N.M. Desai v. Testeels Ltd. [C. A. No. 245 of 1970, decided on December 17, 1975]. But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated December 8, 1961 which were repeated in the subsequent representation dated June 4, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a Court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The Government of India also failed to give any reasons in support of its order rejecting the revision application. But we may presume that in rejecting the revision application, it adopted the same reason which prevailed with the Collector. The reason given by the Collector was, as already pointed out, hardly satisfactory and it would, therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. We hope and



trust that in future the customs authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned orders, so that those who are affected by such orders are assured that their case has received proper consideration at the hands of the Customs Authorities and the validity of the adjudication made by the Customs Authorities can also be satisfactorily tested in a superior tribunal or court. In fact, it would be desirable that in cases arising under customs and excise laws an independent quasi-judicial tribunal, like the Income Tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind.”

[Emphasis supplied]

32. The Madras High Court in ***Fidelity Finance (supra)***, held that the Ombudsman is a *quasi-judicial* authority which has the duty to act judicially and assign reasons in support of its contention. The relevant paragraph of the said decision is reproduced hereunder as:

“12. Learned counsel for the respondent contended that the Ombudsman is not exercising quasi-judicial function or statutory power, but it is only an administrative function. This is a misconception. The Ombudsman exercises the power in terms of the Scheme which has been framed in exercise of statutory power and has to act as per the Scheme and it is a quasi-judicial exercise. This court holds that the Ombudsman is a quasi-judicial authority. Since it has a legal authority, it has to determine questions affecting the rights of the parties, it has the duty to act judicially and assign reasons in support of its conclusion. On the basis of the Scheme, it is dear that the Ombudsman has to act quasi-judicially in respect of the complaints presented before it and act in terms of the Scheme.”

[Emphasis supplied]

33. A similar view was taken by the Calcutta High Court in ***Rossell India (supra)***, wherein it was held as under:

“It is settled law that while deciding a lis in discharge of quasi-judicial functions, the authority concerned is required to consider the grievance of the aggrieved and the defence there-against, appreciate the evidence that is produced by the parties, give opportunity of hearing to the party



to be affected by its order and to support its ultimate order with reasons, thereby showing application of mind.

However, the manner in which the complaint of the petitioner was disposed of leaves a lot to be desired. It is impermissible for a quasi-judicial authority to have someone else express his view on the claims and counter-claims and to pass an order based on such view. The decision that has to be given on the complaint must be that of the authority concerned, without being influenced by any view of a third party. The complaint has been disposed of by taking recourse to a procedure that is unheard of. Being absolutely improper, I have no hesitation to set aside the order. It is ordered accordingly.”

[Emphasis supplied]

34. The High Court of Kerala while dealing with the Ombudsman Scheme in the case of ***M.M. Kunjumon (supra)***, has held as under:

*“4. As per the Reserve Bank - Integrated Ombudsman Scheme, 2021 the complaint could not be resolved by way of facilitation or conciliation or mediation, then as per Clause 15 of the said Scheme the Ombudsman has to pass an award on merits. Ext.P13 is a one-line order, by which the Ombudsman has rejected the complaint of the petitioners only stating that in the opinion of the Ombudsman there is no deficiency in service. A perusal of Ext.P13 would clearly reveal that there is total non-application of mind by Banking Ombudsman while issuing the impugned order especially for the reason that in Ext.P11 **the Ombudsman himself has opined that it is not clear whether the complainant was informed of the changes made in the terms and conditions of the agreement. The Banking Ombudsman ought to have adjudicated the issues raised by the petitioners and should have given valid reasons while deciding on the complaint raised by the petitioner**, which is totally absent in Ext.P13 order. Therefore, Ext.P13 order is set aside with a direction to the Banking Ombudsman to reconsider the complaint filed by the petitioners. Both the parties are free to produce any document in support of their contentions and to adduce evidence, oral/documentary. After considering the rival contentions of the parties the Ombudsman shall pass a reasoned order touching upon the various contentions raised by both sides. The Banking Ombudsman shall also specifically consider the nature of the loan and also the contention of the petitioners that it is not a business loan going by Ext.P4 and that it is a taken over loan wherein the earlier bank has not considered the same as a business loan. Fresh orders shall be passed by the Banking Ombudsman within an outer limit of 45 days from the date of receipt of a copy of this judgment. Petitioners shall produce a copy of this judgment before the Banking Ombudsman for due compliance of the directions in the judgment.”*



[Emphasis supplied]

35. In light of the foregoing discussion, this court is of the considered opinion that a *quasi-judicial* body, such as Ombudsman, is reasonably expected to pass a well-reasoned order and any empty formality thereto, deserves to be weeded out. The adherence to the principles of natural justice is the cornerstone of a just and fair legal system as it also proves to be a quintessential safeguard against any adjudicatory arbitrariness in judicial or administrative proceedings. Therefore, undeniably, the Ombudsman is duty bound to pass a reasoned order which would eventually foster a greater transparency in the decision-making process and also inspire the confidence of the common man in efficient dispute resolution through such bodies.

36. The Ombudsman Scheme, which seeks to achieve an earnest, cost-effective and speedy resolution of the complaints of consumers against the regulated entities, cannot be reduced to a tantalizing promise as it bridges the gap between the regulated entities and countless individuals meandering for justice. While deciding upon the complaint, the Ombudsman must fathom out appropriate reasons of rejection to uphold the integrity of its office and prevent it from becoming a mare's nest.

37. Under the facts of the present case, this court finds that the Ombudsman was required to pass a detailed order after dealing with the submissions made by the complainant in its detailed complaint and also after providing sufficient opportunity of hearing to the respective parties. Since the same has not been done, therefore, the impugned orders dated 30.12.2022, 20.04.2023 and 09.05.2023 are hereby set aside.

38. The matter is remitted back to the Ombudsman for fresh consideration in accordance with law.

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By: PURUSHAINDR
KUMAR KAURAV



39. The petitioner is directed to appear before the Ombudsman along with a copy of the order passed today within 15 days from the date of receipt of the certified copy of the order. On production of the copy of the order, let the Ombudsman fix the date of hearing.

40. After hearing the parties, the Ombudsman is directed to pass a reasoned order.

41. Needless to state that this court has not dealt with the controversy on the merits and all rights and contentions are left open.

42. In view of the aforesaid, the petition stands allowed to the extent indicated above. All pending applications also stand disposed of.

PURUSHAINDRA KUMAR KAURAV, J

OCTOBER 12, 2023

p/shs