IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2024

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN

W.P.No.9017 of 2022

N.A.Srinivasan .. Petitioner

Vs.

1. The Deputy Governor
Reserve Bank of India
19th Floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai – 400 001.

2. The Regional Director
Reserve Bank of India
Fort Glacis, No.16, Rajaji Salai
Chennai – 600 001.

3. The Secretary
Bar Council of India
21, Rouse Avenue Institutional Area
Near Bal Bhawan, New Delhi – 110 002.

4. The Chairman
The Bar Council of Tamil Nadu and Pondicherry
High Court, Gate Number 4
NSC Bose Road, George Town
Chennai – 600 104. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking a writ of declaration to declare Section 3(1)(c) and 10(2)(f) of the Reserve Bank Integrated Ombudsman Scheme, 2021 to the extent debarring the advocates from representing before Ombudsman as void, defective, discriminatory, unconstitutional and ultra vires to the Articles 14 and 19(1)(g) of the Constitution of India and Section 30 of the Advocates' Act, 1961.

| | | |
|---|---|---|
| For the Petitioner | : | Mr.T.V.Suresh Kumar |
| For the Respondents | : | Mr.Vijay Narayan<br>Senior Counsel<br>for Mr.T.Poornam for R1 and R2<br><br>Mr.S.R.Raghunathan for R3<br><br>Mr.M.R.Jothimanian for R4 |

ORDER

(Delivered by the Hon'ble Mr. Justice S.M.SUBRAMANIAM)

The writ of declaration has been instituted to declare Sections 3(1)(c) and 10(2)(f) of the Reserve Bank – Integrated Ombudsman Scheme, 2021, [for brevity, hereinafter referred to as “the Scheme of 2021”] to the extent of baring the Advocates from representing before the Ombudsman as void, defective, discriminatory, unconstitutional and *ultra vires* the Articles 14 and 19(1)(g) of the Constitution of India and Section 30 of the Advocates Act, 1961 [in short, “the Act of 1961”].

2.1. Learned counsel for the petitioner, *Mr.T.V.Suresh Kumar,* would submit that the petitioner is a practicing Lawyer, chosen to file the writ petition challenging the prohibition imposed under the Scheme of 2021. The Scheme expressly provides bar for the Advocates to appear and conduct cases on behalf of the complainants. Such prohibition is unconstitutional and is causing discrimination amongst the Lawyers and other professionals who are all permitted under the Scheme of 2021.

2.2. It is contended that Charted Accountants and other professionals are permitted to assist the Ombudsman under the impugned Scheme, however, Advocates alone are prohibited, which amounts to discrimination and thus, the provision, to the extent of prohibiting the Advocates, has to be declared as void.

2.3. In support of his contentions, the learned counsel for the petitioner would urge that Clause 3(1)(c) of the Scheme of 2021 defines "*Authorized Representative*" as "*a person other than an advocate, duly appointed and authorised in writing to represent the* *complainant in the proceedings before the Ombudsman*". The very definition would indicate that all other professionals, other than the Advocates, are eligible to represent the complainant in the proceedings before the Ombudsman. Such a specific bar imposed expressly would offend the Right to Practice, conferred upon the Lawyers, under Section 30 of the Act of 1961.

2.4. *Mr.T.V.Suresh Kumar,* learned counsel, would rely upon Clause 10(2)(f) of the Scheme of 2021, which stipulates that "*the complaint is lodged by the complainant personally or through an authorised representative other than an advocate unless the advocate is the aggrieved person*". Throughout the Scheme, Advocates alone are prohibited to appear on behalf of the complainants and therefore, the very Scheme is running counter to Section 30 of the Act of 1961 and therefore, deserves to be declared as null and void.

3.1. Learned Senior Counsel *Mr.Vijay Narayan*, appearing on behalf of *Mr.T.Poornam*, learned counsel for the Reserve Bank of India, would oppose by stating that the Scheme of 2021 is formulated under Section 35A of the Banking Regulations Act, 1949, for resolving customer grievances in relation to the services provided by the entities regulated by the Reserve Bank of India in an expeditious and cost effective manner. Therefore, the adjudicatory process cannot be construed as judicial adjudication nor the Ombudsman can be a judicial institution. Therefore, the question of permitting the Advocates to represent the complainants would not arise in this case, since it involves a non-advisory adjudicatory procedure.

3.2. In support of the contentions, the learned Senior Counsel would rely on the judgment of the Supreme Court of India in the case of ***State Bank of India vs. Jah Developers Private Limited***[1], wherein, the Supreme Court of India answered the question whether when a person is declared to be a willful defaulter under the circular of the Reserve Bank of India, such person is entitled to be represented by a Lawyer of his choice before such declaration is made. The question is answered in paragraph 14 of the said judgment, which reads hereunder:

> *"14. Applying the aforesaid tests to the facts of the present case, it cannot be possibly said that either In-House Committee appointed under the Revised*

1 *(2019) 6 SCC 787*

*Circular dated 01.07.2015 is vested with the judicial power of the State. The impugned judgment's conclusion that such circulars have statutory force, as a result of which the State's judicial power has been vested in the two committees, is wholly incorrect. First and foremost, the State's judicial power, as understood by several judgments of this Court, is the power to decide a lis between the parties after gathering evidence and applying the law, as a result of which, a binding decision is then reached. This is far from the present case as the In-House Committees are not vested with any judicial power at all, their powers being administrative powers given to In-House Committees to gather facts and then arrive at a result. Secondly, it cannot be said that the circulars in any manner vests the State's judicial power in such In-House Committees. On this ground, therefore, the view of the Delhi High Court is not correct, and no lawyer has any right under Section 30 of the Advocates Act to appear before the In-House Committees so mentioned. Further, the said committees are also not persons legally authorized to take evidence by statute or subordinate legislation, and on this score also, no lawyer would have any right under Section 30 of the Advocates Act to appear before the same."*

3.3. In the case of ***Durga Hotel Complex vs. Reserve Bank of India and Ors.***[2], the principles are carved out in paragraphs 14 and 15, which are extracted hereunder:

*14. There is a more fundamental aspect. The Ombudsman, at best, is an Authority or Tribunal of limited jurisdiction constituted under the Scheme. It*

2 *(2007) 5 SCC 120*

*is a jurisdiction conferred by the Scheme. The exercise of jurisdiction or power by the Ombudsman would depend on his having jurisdiction not only to entertain a claim but also to bring it to an end. The continued exercise of power by him would depend on his continuing to have jurisdiction. Once he is deprived of his jurisdiction or gets deprived of his jurisdiction over the subject matter, he could no more proceed with a complaint which was earlier filed. In other words, to render an Award valid in terms of the Scheme, the Ombudsman must continue to retain jurisdiction over the subject matter of the concerned complaint. A complaint goes out of his purview when the subject matter of it is taken to a Court, Arbitrator, Tribunal or forum. The relief that can be granted by the Ombudsman are limited and confined to the matters coming within clause 13 of the Scheme. The intention behind incorporating clause 16(3)(d) appears to be to ensure that the relief an Ombudsman may give, may not conflict with a more comprehensive adjudication by a Court, Arbitrator, Tribunal or forum with wider powers. When there is conferment of a power on an authority or Tribunal with limited jurisdiction, that conferred power must continue to exist, when the decision is rendered by that authority or Tribunal. Once the conferred authority or power is taken away or impeded, the Authority or Tribunal can no more exercise it. This will be the position when one of the parties in a complaint before the Ombudsman takes the subject matter to a Court, Arbitrator, Tribunal or forum. In other words, when ultimately he is about to pronounce his Award, the Ombudsman finds that the subject matter of the dispute has been taken to the Debts Recovery Tribunal or a Civil Court or an Arbitrator or to any other competent forum, he gets divested of his jurisdiction, on a harmonious reading of clause 16(1) with clause 16(3)(d) of the Scheme. It is not,* *as if, a bar of jurisdiction can occur only at the stage of initially entertaining a claim. It could also occur at a subsequent stage either in view of the jurisdiction being taken away or in view of any other impediment created by the very Legislation, Rule or Scheme that conferred the initial jurisdiction. Thus, having lost his jurisdiction over the complaint in view of clause 16(3)(d) of the Scheme, the Ombudsman will have to decline jurisdiction to pass any order or award on the complaint. This, we think would be the proper way of understanding the bar created by clause 16(3)(d) of the Scheme.*

*15. Conceptually, an Ombudsman is only a non-adversarial adjudicator of disputes. An Ombudsman by definition is only an official appointed to receive, investigate, and report on private citizen's complaints about the government; a similar appointee in a non-governmental organisation (such as a company or university). (See Black's Law Dictionary). He serves as an alternative to the adversary system for resolving disputes, especially between citizens and government agencies. He is an independent and non-partisan officer who deals with specific complaints from the public against the administrative injustice and mal-administration. (See 4 American Jurisprudence 2d). Therefore, by its very nature, an Ombudsman is an alternative to an adversary system for resolution of disputes. When the subject matter of a complaint before the Ombudsman under the Scheme is taken to a Court, Tribunal, Arbitrator or other competent forum, the subject matter is taken away from the purview of the Ombudsman to an adjudicatory forum under an adversarial system. It is therefore logical to understand clause 16 of the Scheme with particular reference to sub-clause 3(d) thereof, that on one of the parties approaching an adjudicatory forum on an adversarial system, the non-adversarial adjudicator,* *the Ombudsman must lose his power or authority to bring about a resolution of the complaint by way of a non adversarial adjudication. An Ombudsman is not defined in the Banking Regulation Act, 1949 or in the Banking Ombudsman Scheme 1995 constituting him as adversarial adjudicator. Clause 12 of the Scheme constitutes him a facilitator to bring about a satisfaction of the complaint, in one of the modes referred to therein. An adversarial adjudication necessarily stands on a higher plane than a settlement of a complaint at the instance of an Ombudsman. When such a forum for adversarial adjudication of disputes takes seisin of the subject matter of a complaint, it will be logical to postulate, on an interpretation of clause 16 of the Scheme, that the Ombudsman loses his jurisdiction over the subject matter of the complaint and consequently the complaint itself."*

4. We have considered the arguments advanced by the learned counsel for the petitioner and learned Senior Counsel appearing on behalf of the respondents 1 and 2.

5.1. Section 30 of the Act of 1961 reads as under:

*"30. Right of advocates to practice. - Subject to the provisions of this Act, every advocate whose name is entered in the [State roll] shall be entitled as of right to practice throughout the territories to which this Act extends,-*

*(i) in all courts including the Supreme Court;*

*(ii) before any tribunal or person legally authorised to take evidence; and*

*(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice."*

5.2. Section 29 of the Act of 1961 denotes Advocates to be the only recognized class of persons entitled to practice law. Section 29 of the Act of 1961 stipulates that "*subject to the provisions of this Act and any Rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practice the profession of law, namely, advocates*".

5.3. The Right to Practice, conferred under Section 30 of the Act of 1961, is not an absolute Right, but subject to reasonable restrictions. No one can claim the Right to Practice as an Advocate inherent, since it cannot be considered to be a natural Right or normal avocation recognized to be available to every citizens. The Right to plead for others in a Court of Law or before any such Forum or Authority depends upon the permission to be granted by such Courts, subject to the Rules made in respect thereof by the High Court as stipulated under Section 34 of the Act of 1961 and also depends upon the enrollment of the person concerned by the State

Bar Council in the State Roll. Sections 29, 30 and 33 of the Act of 1961 also would go to show that Right to Practice as an Advocate is clearly a Statutory Right and not a Fundamental Right. The said position has been reiterated in the case of ***N.Ram Reddy vs. Bar Council of the State of A.P., Hyd.***[3].

5.4. Section 30(iii) unambiguously clarifies that "*before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice*". Therefore, the Right to Practice is clarified and reasonable restriction to practice as an Advocate is provided under the scheme of the Act of 1961. If any Enactment or Rule or Scheme prohibits the Advocates to appear, then, the Advocates are not entitled to represent the case before such Forum or Quasi Judicial Authority.

5.5. Sub Clause (ii) to Section 30 again stipulates that "*before any Tribunal or person legally authorized to take evidence*". In the present case, the impugned Scheme does not contemplate taking of

3 *AIR 2002 Andhra Pradesh 484*

evidence before the Ombudsman. Admittedly, it is a Quasi Judicial Authority and only a non-advisorial adjudicator of disputes and an Official, appointed to receive complaints, investigate and report on private citizens' complaints about the Government or otherwise. The nature of the functioning of the Ombudsman is Quasi Judicial in nature and therefore, cannot be construed as judicial adjudication by a Judicial Forum.

6. That being the nature of the scheme under the Reserve Bank – Integrated Ombudsman Scheme, 2021, we do not find any unconstitutionality in providing express bar for the Advocates to represent the complainants before the Ombudsman. The express bar provided in the impugned scheme for Advocates will have certain purpose and object and considering the nature of the proceedings involved before the Ombudsman, which is Quasi Judicial in nature.

7. Thus, we do not find any reason to interfere with the prohibition imposed, which cannot be said to be violative of Section 30 of the Act of 1961. *Contrarily*, it is to be construed as a reasonable restriction imposed within the scope of Section 30 of the Act of 1961.

8. Consequently, the writ petition stands dismissed. There shall be no order as to costs. Consequently, W.M.P.No.8821 of 2022 is closed.

(S.M.S., J.) (C.K., J.)
09.07.2024

Index : Yes/No
Neutral Citation : Yes/No

drm

To:

1. The Deputy Governor
Reserve Bank of India
19th Floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai – 400 001.

2. The Regional Director
Reserve Bank of India
Fort Glacis, No.16, Rajaji Salai
Chennai – 600 001.

3. The Secretary
Bar Council of India
21, Rouse Avenue Institutional Area
Near Bal Bhawan, New Delhi – 110 002.

4. The Chairman
The Bar Council of Tamil Nadu and Pondicherry
High Court, Gate Number 4

NSC Bose Road, George Town
Chennai – 600 104.

S.M.SUBRAMANIAM, J.
AND
C.KUMARAPPAN, J.

(drm)

W.P.No.9017 of 2022

09.07.2024