
(2002) 02 KL CK 0037
In the High Court Of Kerala
Case No : O.P. No. 5896 of 2000

Thomas Wilfred

APPELLANT

Vs

Reserve Bank of India

RESPONDENT

Date of Decision : 22-02-2002

Acts Referred:

Banking Regulation Act, 1949 — Section 35A

Citation : (2002) 02 KL CK 0037

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : Meijo Kurian Puvathingal, for the Appellant; P. Jacob Varghese and A.V. Thomas, for the Respondent

Final Decision : Allowed

Judgement

M. Ramachandran, J.—The petitioner is the proprietor of a commercial establishment and has filed this Original Petition praying for a Writ of mandamus for enforcement of an award passed by the Banking Ombudsman, second respondent herein as against the 4th respondent - Union Bank of India. It is stated that the petitioner was having an account in the Bank from 1992 onwards. He is a Non Resident Indian and his accounts were being operated by an authorised signatory at Kochi. On the facts that have been pleaded and the question to be decided, it may not however be necessary for me to go into the intricate details of the transactions.

2. The petitioner complains that irregular and unethical procedure practised by interest charged on money lent. The allegation is that it is in violation of the norms prescribed by the Reserve Bank in respect of Foreign Currency Non Resident Loan Account (FCNR) maintained by him. It is averred that without complying with the preliminary obligation of an intimation to the petitioner, the 4th respondent had unilaterally closed the deposits in its convenience and the entire outstanding balance in all the accounts which included the overdraft accounts secured by deposit of title deeds were liquidated. There was no

response to the notice that had been issued showing the arbitrariness in the matter and the petitioner was constrained to approach the Banking Ombudsman, Trivandrum. The records show that in the course of enquiry made by the Banking Ombudsman, so as to arrive at an amicable resolution in the case, he had presented his recommendation on 4.9.1999, as envisaged under clause 19 of the Banking Ombudsman Scheme. But, in the meanwhile, though the petitioner had communicated his willingness and acceptance of the recommendation, negotiations had been held at the instance of the bank, but contrary to expectations the matter was not finally settled. As a matter of fact, it is pointed out that during the negotiations, the bank had offered to pay a sum of Rs. 48,52,213/- towards the excess interest charged on the secured over draft (FCNR) Account. Though he had agreed to the figure as projected, nevertheless maintained that the amount should carry interest at NRI rates, as well. It is stated that despite this stand, payment by draft of an amount of Rs. 48,52,213/- had been issued. But shortly thereafter, it was called back since the Bank wanted a full and final settlement.

3. Finding that there was no response to the recommendation from the side of the Bank, the Banking Ombudsman has passed its award on 26.10.1999. The petitioner had accepted the award and communicated his willingness to the Banking Ombudsman as well as the Bank. This normally would have been an end of the dispute, going by the terms of the Scheme. But as no payments were forthcoming within the stipulated period, the petitioner had taken up the matter further with the Reserve Bank of India. Petitioner's application is kept in hibernation, it is alleged. This Original Petition had been filed praying for a writ of mandamus directing the first respondent to force the Bank to comply with the award and for consequential reliefs. But due to intervening incidents, he submits that not much head-way has been possible to be made.

4. It appears that during the pendency of the Original Petition, an interlocutory order had been passed by this Court directing the officer of the Union Bank of India to file a personal affidavit as to point out the reason for non payment of the admitted amount. An appeal had been filed against the said direction by way of W.A. No. 2247 of 2000. Holding that there was no reason to interfere with the order which only directed the officer of the Bank to file a personal affidavit, the appeal had been dismissed. The Bank had apparently taken a stand that only in case the petitioner accepted the amount offered by them in full settlement the payment could have been permitted to be materialised. But since the petitioner had insisted for substantial interest in addition, it could not have been treated as an offer of "admitted amount". It was a package deal, in other words, and no deal, if not accepted as offered. After the Writ Appeal, the Bank had taken up the matter further by way of appeal to the Supreme Court and it is seen that the award of the Ombudsman was challenged.

5. By an ex parte order dated 24.11.2001, the orders of the High Court stand stayed. The Supreme Court had also granted the request of the Bank for

permission to amend the SLP by challenging the orders of the learned Single Judge as also the order of the Division Bench, as according to the learned Judges, the Bank had challenged only the award of the Ombudsman dated 26.10.1999, but not the orders of the High Court. It is submitted at the bar that the amendments had been carried out and the further order of the Supreme Court dated 4.4.2001 confirmed the above. The order is to the following effect:

"Application for amendment of the petitioner is allowed. Leave granted.

The interim order passed on 24th November, 2000 shall operate, pending the disposal of the appeal, but this shall not prevent the single Judge from hearing and disposing of the Writ Petition and the Division Bench from hearing any appeal therefrom, if preferred."

6. The parties are in agreement that whatever be the orders that may be passed in this Original Petition, any such decision will be subjected to orders that may be passed by the Supreme Court in the pending Civil Appeal. No other position is also available to them. In this background, we may examine the justifiability or otherwise of the reliefs that have been prayed for by the petitioner.

7. Section 35A of the Banking Regulations Act confers power on the Reserve Bank to give direction in public interest, or in the interest of the banking policy and to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interest of the banking company. The counsel submits that earlier in view of Section 21A of the said Act, it may not have been possible for a depositor to challenge the transaction with a banking company in a court on the ground that the rate of interest charged in respect of the transaction is excessive. In other words, a suit of the above character is practically barred. By notification dated 14.6.1995, in exercise of the powers conferred by Section 35A of the Banking Regulations Act, "Reserve Bank of India being satisfied that it is necessary in public interest and in the interest of banking policy to provide for a system of Banking Ombudsman for redressal of grievances against deficiency in banking services, concerning loans and advances", directed all commercial banks to comply with the Banking Ombudsman Scheme. The Reserve Bank was to appoint one or more person to be known as Banking Ombudsman to carry out the functions entrusted to him by or under the scheme. He was to hold office during the pleasure of the Governor of the Reserve Bank. Clause 13 of the Scheme refers to the specific ambit of authority and Sub-clause (ix) provides complaints from non-resident Indians having accounts in India in relation to their remittances from abroad, deposits and other bank related matters as one coming under such authority.

8. The petitioner had resorted to the said remedy, as being an NRI, he felt aggrieved that his fortunes entrusted with the Bank stood completely wiped out, and in a manner not recognised in Banking practice. It has to be held, in the first instance, that the complaint was maintainable, as one envisaged under the

Scheme, and the merits thereof into by the notified authority, in the manner prescribed. On a perusal of the Scheme, it is seen that in the case at hand a recommendation for settlement had been given by the Ombudsman after the examination as envisaged. This is Ext. P2. It had been directed that the Bank should pay to the complainant the loss suffered by him on account of the difference of interest charged on the Secured Overdraft account against FCNR deposit. Further direction was that the Bank should pay interest at NRNR FD rate as applicable as on 31.3.1997 for the amount arrived at as above till the date of payment of the above amount. The entire payment was to be completed before 30.9.1999.

9. The recommendation was accepted by the petitioner, by Ext. P3 letter. In the meanwhile, parties had negotiated. The Bank had taken up a stand that interest may not be payable. It was in that context that the amount paid by demand draft had been withdrawn. The Banking Ombudsman had passed an award on 26.10.1999, a copy of which was produced as Ext. P6. The award is to the following effect:

"1. Union Bank of India shall pay to the complainant the loss suffered by him on account of the difference of interest charged on the Secured Overdraft account against FCNR deposit ie., interest actually recovered minus interest chargeable at 2% above the interest paid on FCNR account plus interest tax during the relevant period for the above account.

2. Union Bank of India also shall pay interest at NRNR FD rate as applicable as on 31.3.1997 for the amount arrived at as above till the date of payment of the above amount.

3. The amount of Rs. 48,52,213/- paid by Union Bank of India on 7.10.1999 will be treated as a part of the payment under this Award.

This award shall be binding on the bank unless the complainant Mr. Thomas Wilfred or his authorised representative Shri. Meijo Kurian furnishes to the Bank within a period of one month from the date of receipt of this award, a letter of acceptance of the award in full and final settlement of his claim in the matter. Within 15 days from the date of receipt by it of the acceptance in writing of the award by the complainant or his authorised representative, the Bank shall comply with the award and intimate the compliance to the Banking Ombudsman, Thiruvananthapuram."

As stipulated, the petitioner had furnished to the Bank a letter of acceptance of the award in full and final settlement of his claim in the matter. Within fifteen days from the date of receipt by it of the acceptance in writing of the award, the Bank was obliged to comply with the award and intimate the compliance to the Banking Ombudsman. But, this has not been done and the cause of action for the petition for enforcement of the award had arisen in the aforesaid context and he had approached this Court for exercise of powers under Article 226 of the Constitution of India.

10. In Halsbury's Laws of England, Volume I (paragraph 89), the nature of writ of mandamus is stated as following:

"The order of mandamus is an order of a most extensive remedial nature and is, in form, a command issuing from the High Court of Justice, directed to any person, Corporation, or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to supply defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

Not that I am uncertain about the maintainability of the prayers, but before proceeding further, it has to be held that the Original Petition is maintainable and contentions to the contrary raised by the Bank are overruled.

11. Sri. Meijo Kurian, counsel appearing for the petitioner, referred to the harassment his client had been subjected to undergo and the loss that had been sustained by them and the disrepute in which they presently stand. Even though a public sector enterprise, he points out, the Union Bank of India, had acted in most arbitrary manner and notwithstanding that the Bank had ultimately come to understand the harshness with which they had dealt with a friendly customer, for extraneous reasons they had been harping on untenable contentions and grounds for denying the due benefits that are admissible to one their substantial clients. It is therefore submitted that appropriate directions as might be necessary for advancing the cause of justice are to be issued. As observed by the Supreme Court in National Textile Corpn. Ltd. Vs. Sitaram Mills Ltd. and Others,), Court should adopt a construction which would subserve and carry out the purpose and object of the Act rather than defeat it. The system of Ombudsman is not to be permitted to become vulnerable to winds, as an unstable ship with great deal of sail but only a shallow keel.

12. On behalf of the Union Bank Sri. A.V. Thomas entered appearance. He had referred to the contentions in the counter affidavit. The submission was that it was a case where the petitioner was putting up imaginary contentions without any supporting factual or legal justification. The Bank had went out of way to safeguard his interest, but the petitioner was acting in such a manner that it was impossible to help him, in any reasonable manner. As attitude whereunder the Bank was to suffer a loss in a transaction could not have been encouraged. It is submitted that the Banking Ombudsman had passed the orders wholly without considering the factual situation and the law on the subject. The grave situation which so got developed had been represented to the Reserve Bank appropriately and as a matter of fact as there was miscarriage of justice, the Reserve Bank, by order dated 26.7.2000, had given them a letter of no objection authorising them to contest the award before the appropriate judicial forum. It has also been submitted by him that a Civil Appeal had already been filed in the Supreme Court

challenging the award of the Banking Ombudsman. It is also disclosed that a civil suit has been filed in the Munsiff's Court, Kochi challenging the award of the Ombudsman and hence the reliefs prayed for by the petitioner might not be sustainable and the Original Petition deserves to be dismissed.

13. A counter has been filed by the Reserve Bank of India as well. Sri. Jacob Varghese, referring to the averments in the affidavit, submitted that this is a unique case, but nevertheless the petitioner had no cause of action to resort to such proceedings. According to him, his client, the Reserve Bank felt that as complicated issues of question of fact and law were involved, the issue was worthy of being examined by a civil court. Oral and documentary evidence were required or an adjudication, like the nature of the firm, whether it was a partnership firm eligible for concessional rate of interest and whether FCNR deposit was made by the firm or a third party. Extensive reference has also been made to the claims that had been urged by the petitioner before the Banking Ombudsman and the counsel concluded by submitting that the award requires an examination by judicial authority and it was appropriate that the Union Bank of India may be permitted to agitate the matter before such forum. This is in effect the approach of the Reserve Bank and the attempt was to repudiate the award passed by the Banking Ombudsman. The disinclination for enforcing the award has been explicitly incorporated in the affidavit. But no reference had been made about the bar spoken to by Section 35A of the Banking Regulation Act.

14. On the facts of the case, as has been presented, and in the light of the Act, I do not think that the stand of the respondents are capable of being appreciated. It is to be noticed that there has not been so far any challenge about the provisions of the Scheme at all. Evidently, at every stage of the adjudication, what has been expected, has been meticulously carried out and ultimately the award has been passed and it has been duly accepted. The stand of the Union Bank is to say the least, astounding. An enforceable award has forthcome and the objections of the Reserve Bank that a civil adjudicator has to go into the matter and till such time the award passed by the Banking Ombudsman has to kept in cold storage cannot be countenanced. A suit for injunction by the Bank as against a decision of Ombudsman cannot be one conceived by the Scheme. It is not difference of perception that is seen, but an adventure, if not misadventure. It might be a policy decision for the Union Bank to repudiate the claims as agitated by the petitioner and the Scheme gives sufficient opportunity for them to place their view point before the Ombudsman. But as soon as an award is passed by such authority, the decision is to be honoured. As I find the law, it may not be possible for them to contend that the award is incompetent or that an adjudication by a civil authority was the real remedy that was available.

15. It is also clear that the petitioner might not have been able to enforce his claims though a civil suit, because of the bar that is there in respect of such suits. It would not have been possible for him to highlight his grievances at all if the Bank had kept silent. Only in the wake of the proceedings that have been

initiated before the Banking Ombudsman that the Bank had a rethinking on the procedure adopted by them and to put it on mild terms, it is unethical on their part to disown the award. The reason for appointment of Ombudsman is "in public interest, and for providing a system against deficiency in Banking services". Principle of justice is an inbuilt requirement of justice delivery system.

16. Sri. Thomas had referred to certain passages from Wade on administrative Law (1988 Edition page 322) dealing with problems of invalidity in collateral proceedings. The argument is that it would have been permissible for the Reserve Bank not to permit enforcement of the award in specified circumstances. Obviously, the reference was to R v. Lambeth BC (1987, the Times June). It was held that a local authority may plead the invalidity of its own repairs in resisting tenants' applications to meet the cost of compliance. But the facts appear to be extreme. Here a statutory functionary had parted with the jurisdiction it originally enjoyed and authorised a nominee to decide the issue. I do not think that the decision or the legal principles enunciated by the counsel can have any application to the factual circumstances that have been available here. I am also of the view that the Reserve Bank is functioning through the Banking Ombudsman and the Ombudsman is exercising the powers that are exercisable by the Reserve Bank because of the powers vested on it u/s 35A of the Act. Therefore, the Reserve Bank also would not be in a position to disown the award that has been passed as per the scheme.

17. In this view of the matter, the petitioner is entitled to the reliefs as prayed for. There will be a direction to the first respondent to enforce Ext. P6 expeditiously, but subject to further orders that are to be obtained from the Supreme Court in the pending Civil Appeal. The Original Petition is allowed. The petitioner will be entitled to costs which is quantified at Rs. 10,000/- and payable by the 4th respondent. The petitioner will have the liberty to direct the respondent concerned to hand over the amount of costs awarded, in favour of the Kerala High Court Legal Services Authority.