(1999) 11 KL CK 0075

In the High Court Of Kerala

Case No : W.A. No. 2216 of 1999 (B)

T.N. Parameswaran Pillai APPELLANT

Vs

Banking Ombudsman and Others RESPONDENT

Date of Decision : 10-11-1999

Acts Referred:
Banking Regulation Act, 1949 — Section 35A

Citation : (2000) 100 CompCas 624

Hon'ble Judges : S. Sankarasubban, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : Jacob Varhgese, Amicus Curiae, Philip Mathew, for the Appellant; B. Radhakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

AR. Lakshmanan, J.—The petitioner in the original petition is the appellant in this appeal. This appeal is directed against the judgment dated September 9, 1999, in the original petition. The appellant made an application for enhancement of loan to rupees ten lakhs on May 21, 1997, before the State Bank of Travancore, Ambalamughal Branch, Ambalamughal, on the strength of a property belonging to him. It is the case of the appellant that the earlier loan sanctioned was only Rs. 75,000 and there was no default whatsoever in the repayment of the said loan. According to the appellant, he submitted all documents necessary for scrutiny of the loan application including the original title deed, tax receipts, possession certificate, no encumbrance certificate, non-attachment certificate, etc., and the bank had not taken any steps for sanction of the loan for certain extraneous reasons. Hence the appellant made a complaint about this matter to the second respondent--the General Manager, Zonal Office, State Bank of Travancore, Thiruvananthapuram. The appellant was asked to approach the Assistant General Manager, zonal office, Ernakulam, on February 16, 1998, which was followed by a letter dated July 3, 1998, by the second respondent stating that the enhancement of C. C. limit is not based on the value of collateral security, but purely on the merits of the proposal. The appellant again made a complaint on November 30, 1998, before the Banking Ombudsman, Thiruvananthapuram, as per the provisions of the Banking Ombudsman Scheme, 1995. The said complaint was rejected by exhibit P-6 proceedings by the Banking Ombudsman without following the principles of natural justice, including a personal hearing. This action on the part of the Banking Ombudsman was challenged in the writ petition.

2. In the writ petition, the appellant after narrating the details about the loan application, etc., has alleged that the Banking Ombudsman has failed to observe the principles of natural justice and fair play in action while disposing of exhibit P-5 complaint and that there is complete non-application of mind with regard to the merits of the appellant''s case and the powers vested in the Banking Ombudsman under the Banking Ombudsman Scheme. It is further alleged that the first respondent should have found that Clauses 13(a) and 13(b) under the Scheme clothe the Ombudsman with vast and comprehensive powers to deal with any deficiency or misconduct in the banking services rendered by the State Bank of Travancore.

3. Along with the original petition, the appellant filed exhibits P-l to P-6. Exhibit P-l is the representation submitted by the appellant before the State Bank of Travancore on April 6, 1998. Exhibits P-2, P-3 and P-4 are the reply letters sent by the bank. Exhibit P-5 is the complaint before the Banking Ombudsman for the State of Kerala and Union Territory of Lakshadweep under the Banking Ombudsman Scheme, 1995, and exhibit P-6 is the order impugned in the writ petition.

4. The State Bank of Travancore filed a counter-affidavit in the original petition and in C. M. P. No. 2515 of 1999. According to them, the bank has a subsisting cause of action against the appellant, who is a defaulter, for recovery of money and that the complaint now made is merely an attempt of the appellant to wriggle out of his liabilities to the bank. It is also stated that the complaint is not sustainable within the framework of the Banking Ombudsman Scheme and, therefore, it has been rightly rejected by the Banking Ombudsman. They also say that the Scheme does not envisage any hearing before a decision, in the nature of the complaint in exhibit P-5, that contained in exhibit P-6.

5. The appellant filed a reply, denying the allegations. According to the appellant, respondents Nos. 2 and 3 have no subsisting cause of action against the appellant and on account of the deficiency in the service of the bank, the appellant has suffered heavy loss and, therefore, the bank is liable to compensate for the loss sustained by him and that the appellant has issued reply to the notice sent by the bank threatening recovery proceedings.

6. J.B. Koshy J. by the judgment impugned in this appeal, held that the loan application was rejected in time and there was no dispute regarding non-observance of Reserve Bank of India directives on interest rates, etc., and,

therefore, the Banking Ombudsman is right and correct in issuing exhibit P-6. Relying on the decision of the Supreme Court in M.C. Mehta v. Union of India [1999] 5 JT 114, the learned judge held that if on the admitted facts no relief can be. given and no other conclusion is possible, the administrative order need not be set aside for want or violation of natural justice. Aggrieved by the said judgment, the appellant has filed the present appeal reiterating the contentions raised in the original petition.

7. We hearo Philip Mathew for the appellant and Thottathil B. Radhakrishnan for respondents Nos. 2 and 3. P. Jacob Varghese has also assisted the court by placing the Banking Ombudsman Scheme, 1995, and also addressing arguments on the merits of the case.

8. Mr. Philip Mathew submitted that exhibit P-5 complaint is perfectly maintainable as per the provisions of the Banking Ombudsman Scheme and that the Banking Ombudsman being a quasi-judicial authority is bound to pass orders on the complaints received by him after following the principles of natural justice by granting an opportunity to the parties to represent their case through personal hearing. He also submitted that the learned single judge ought to have granted the relief sought for by the appellant as no prejudice will be caused to any parties.

9. In C. M. P. No. 5666 of 1999 in the writ appeal, the State Bank of Travancore has filed a counter-affidavit and also produced annexure R2(a), which is the reply sent by the appellant to the legal notice sent by N, Balakrishna Pillai, advocate, at the instance of his client State Bank of Travancore.

10. We have carefully considered the entire pleadings and the Banking Ombudsman Scheme, 1995. The Banking Ombudsman Scheme was passed in exercise of the powers conferred by Section 35A of the Banking Regulation Act, 1949. In the notification it is stated that the Reserve Bank 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 and other specified matters, directed commercial banks and scheduled primary co-operative banks to comply with the Banking Ombudsman Scheme. The Scheme is called "the Banking Ombudsman Scheme, 1995". The object of the Scheme is stated thus :

"The object of the Scheme is to enable resolution of complaints relating'' to provision of banking services and to facilitate the satisfaction, or settlement of such complaints."

11. Chapter III deals with jurisdiction, powers, and duties of the Banking Ombudsman. Clauses 12 and 13 of the Scheme read thus :

"12. General.--The Banking Ombudsman''s powers and duties will be :

(a) to receive complaints relating to the provision of banking services ;

(b) to consider such complaints and facilitate their satisfaction, or settlement by agreement, by making a recommendation, or award in accordance with this Scheme.

13. Specific ambit of authority.-As regards banking services, the Banking Ombudsman''s authority will include :

(a) all complaints concerning deficiency in service such as :

(i) non-payment/inordinate delay in the payment or collection of cheques, drafts/ bills, etc. ;

(ii) non-acceptance, without sufficient cause, of small denomination notes tendered for any purpose, and for charging of commission in respect thereof;

(iii) non-issue of drafts to customers and others ;

(iv) non-adherence to prescribed working hours by branches ;

(v) failure to honour guarantee/letter of credit commitments by banks;

(vi) claims in respect of unauthorised or fraudulent withdrawals from deposit accounts, etc. ;

(vii) complaints pertaining to the operations in any savings, current or any other account maintained with a bank, such as delays, non-credit of proceeds to parties'' accounts, non-payment of deposit or non-observance of the Reserve Bank directives, if any, applicable to rate of interest on deposits ;

(viii) complaints from exporters in India such as delays in receipt of export proceeds, handling of export bills, collection of bills, etc., provided the said complaints pertain to the bank''s operations in India, and ;

(ix) complaints from non-resident Indians having accounts in India in relation to their remittances from abroad, deposits and other bank-related matters.

(b) Complaints concerning loans and advances only in so far as they relate to :

(i) non-observance of Reserve Bank directives on interest rates ;

(ii) delays in sanction/non-observance of prescribed time schedule for disposal of loan applications and ;

(iii) non-observance of any other directions or instructions of the Reserve Bank, as may be specified for this purpose, from time to time.

(c) Such other matters as may be specified by the Reserve Bank from time to time in this behalf."

12. Clause 16 of Chapter IV of the Scheme provides for the procedure for redressal of grievance. Clause 16 provides that any person who has a grievance against the bank may himself or through an authorised representative make a complaint in writing to the Banking Ombudsman within whose jurisdiction the

branch or office of the bank complained against is located. The complaint shall be in writing duly signed by the complainant or his authorised representative and shall state clearly the name and address of the complainant, the name and address of the branch or office of the bank against which the complaint is made, the facts giving rise to the complaint supported by documents, if any, relied on by the complainant, the nature and extent of the loss caused to the complainant and the relief sought from the Banking Ombudsman and a statement about the compliance with the conditions referred to in Sub-clause (3) of clause 16. Sub-clause (3) of clause 16 clearly states that no complaint to the Banking Ombudsman shall lie unless the complainant had before making a complaint to the Banking Ombudsman made a written representation to the bank named in the complaint and either the bank had rejected the complaint or the complainant had not received any reply within a period of two months after the bank concerned received his representation or the complainant is not satisfied with the reply given to him by the bank. No complaint shall lie to the Banking Ombudsman unless the complaint is made not later than one year after the bank had rejected the representation or sent its final reply on the representation of the complainant and that the complaint should not be of the same subject-matter which was settled through the office of the Banking Ombudsman in any previous proceedings whether received from the same complainant or any one or more of the parties concerned with the subject-matter. No complaint to the Banking Ombudsman is also maintainable if the complaint is the same subject-matter for which any proceeding before any court, tribunal or arbitrator or any other forum is pending or a decree or award or order of dismissal has already been passed by any such court, tribunal, arbitrator or forum. Clause (e) of Sub-clause (3) of Clause 16 states that the complaint should not be frivolous or vexatious in nature. Clause 21 of Chapter IV deals with rejection of the complaint. The said clause runs as follows :

"21. Rejection of the complaint--The Banking Ombudsman may reject the complaint at any stage if it appears to him that the complaint is made without any sufficient cause or that it is not pursued by the complainant with reasonable diligence or that prima facie, there is no loss or damage or inconvenience suffered by the complainant."

13. Clause 22 of Chapter V deals with removal of difficulties.

14. In the light of the Banking Ombudsman Scheme, we have now to see as to whether the complaint made by the appellant is maintainable before the Banking Ombudsman as per the provisions of the Banking Ombudsman Scheme. Before considering the said issue, we shall now consider the exhibits marked and the complaints made in those proceedings. As already noticed, the appellant applied for a loan on May 21, 1997. The bank''s zonal office has advised the appellant in this context vide their letter No. AGM. I/E/279, dated December 5, 1997. The appellant sent representations on December 22, 1997, and on January 20, 1998, to which the bank has sent exhibit P-3 on January 31, 1998. The bank, while

acknowledging the receipt of the letter dated January 20, 1998, requesting the bank that he may be heard of the grievances during enquiry, has replied that the enhancement of credit facility is not based on the vale of collateral security alone, but depending on various other parameters. However, the General Manager (Operations) has advised the appellant to call on the Assistant General Manager, Zonal Office, Ernakulam, on February 16, 1998, to represent his grievance in person. Thereafter the appellant sent the representation under exhibit P-1. Exhibit P-2 reply dated June 11, 1998, was sent in response to the letter dated May 30, 1998, of the appellant. The appellant was informed that he had already been advised about the bank''s norms for consideration of loan facilities and also suggested to call on the Assistant General Manager, Zonal Office, Ernakulam, to represent his grievance in person vide their letter dated January 31, 1998, under exhibit P-3. Regarding the letter sent by one P. C. Thomas, M. P., it is stated that the bank had already replied to him apprising of the position. The appellant again sent a letter dated June 25, 1998, regarding enhancement of C.C. limit. A reply was sent to that letter on July 3, 1998, under exhibit P-4 advising the appellant that the enhancement of C. C. limit is not based on the value of collateral security, but purely on the merits of the proposal. The appellant thereafter preferred the complaint before the Banking Ombudsman on November 30, 1998, in the form prescribed under the Scheme. It is useful to notice the subject-matter of the complaint, the facts of the case as stated in the complaint, the list of documents enclosed along with the complaint, the nature/extent of monetary loss, if any, suffered as a direct consequence of the commission/omission of the bank and the relief claimed :

"1. Subject-matter of the complaint (Refer to clause 13 of the scheme-- see notes on page 1)

:

Clause 13(b)(ii) delay in sanction and non-sanction/non-observance of the prescribed time schedule for disposal of loan applications.

2. Facts of the case (Give brief account of the facts giving rise to the claim. Additional sheets may be used, if required by way of annexure)

:

The complainant had applied for enhancement of the cash credit limit from Rs. 75,000 to Rs. 10 lakhs based on the property of the complainant as security. The property is worth more than Rs. 20 lakhs and free from all encumbrances.

3. List of documents enclosed (Enclose xerox/attested copies of documents if any in support of your claim. Originals should not be sent)

:

(1) Application dated April 6, 1998, made to the General Manager, SBT, TVM.

(2) Letter dated December 5, 1997, from the bank in reply to the representation

dated November 29, 1997,

(3) Application of the complainant dated June 25, 1998.

(4) Letter from the bank dated June 11, 1998.

(5) Letter from the bank dated January 31, 1998.

(6) Letter dated July 3, 1998, from the bank.

(7) Letters (2) dated October 9, 1998, and November 6, 1998, from the bank to Mr. P. C. Thomas, M. P.

4, Nature/extent of monetary loss if any, suffered as a direct consequence of the commission/omission of the bank.

:

Loss of Rs. 5 lakhs in business as a result of inaction and omission of the bank.

5. Relief claimed : A direction to the State Bank of Travancore, Ambalamughal branch to scrutinise the papers of the complainant and sanction the required loan of Rs. 10 lakhs."

15. The appellant was informed under exhibit P-6 impugned order dated December 15, 1998, by the Banking Ombudsman expressing their inability to admit the complaint on the ground that the sanction/enhancement of credit limits are subject to the credit decision of the commercial banks concerned and the Banking Ombudsman will not intervene in such matters. It is useful to reproduce exhibit P-6 :

"BANKING OMBUDSMAN (Kerala and the Union Territory of Lakshadweep)

RESERVE BANK OF INDIA BUILDING, THIRUVANANTHAPURAM-695 033.

Date : 15th December, 1998

Ref : OBO/948/98-99 Mr. T. N. Parameswaran Pillai, General Secretary, Pradeshika Karshaka Sangham of India, Thekkineth Kuzhikkad, Ambalamedu P. O.-682 303, (Ernakulam District).

Dear Sir,

Sub, : Your complaint dated 30-11-98 against State Bank of Travancore, Ambalamughal.

Sanction/enhancement of credit limits are subject to the credit decision of the commercial banks concerned and this office will not intervene in such matters.

As per clause 13(b) of the Banking Ombudsman Scheme, Banking Ombudsman''s authority concerning complaints on loans and advances will include only complaints regarding non-observance of RBI directives on interest rates, delay in sanction/non-observance of time schedule for disposal of loan application, non-observance of directions/instructions of Reserve Bank of India, etc., as specified from time to time.

Under the circumstances, we regret our inability to admit your complaint.

Yours faithfully,

(Sd.) .... Deputy Secretary."

16. It is clearly stated in paragraph 2 of exhibit P-6 that the complaint cannot be admitted since the complaints entertainable will include only those regarding non-observance of RBI directives on interest rates, delay in sanction/non-observance of time schedule for disposal of loan application, non-observance of directions/ instructions of the Reserve Bank of India, etc., as specified from time to time.

17. The appellant has referred to clause 13(b)(ii) of the Scheme and the letter sent by him to the bank''s reply. The relief claimed by the appellant in his complaint is very important. The appellant sought a direction by the Banking Ombudsman to the State Bank of Travancore to scrutinise the papers of the complainant and sanction the required loan of rupees ten lakhs. As already noticed, under clause 13(b) of the Scheme, as regards banking services, the Banking Ombudsman''s authority will include complaints concerning loans and advances only in so far as they relate to (i) non-observance of Reserve Bank Directives on interest rates ; (ii) delays in sanction/non-observance of the prescribed time schedule for disposal of loan applications, and (iii) non-observance of any other directions or instructions of the Reserve Bank, as may be specified for the above purpose, from time to time. It is not the case of the appellant that the bank has not observed the directives of the Reserve Bank of India on interest rates or there is delay in sanction/non-observance of the prescribed time schedule for disposal of the loan application. We have already referred to the letters sent by the State Bank of Travancore dated January 31, 1998 (exhibit P-3), June 11, 1998 (exhibit P-2), and July 3, 1998 (exhibit P-4), wherein the appellant had already been advised by the bank of the norms for considering the loan facilities, that the enhancement of credit facility is not based on the value of collateral security alone, but depending on various other parameters and that the enhancement of C. C. limit is not based on the value of collateral security, but purely on the merits of the proposal. It is also seen from the above exhibits that the appellant was advised to call on the Assistant General Manager, Zonal Office, Ernakulam, to redress his grievance in person by their letter dated January 31, 1998. Again he was advised to meet the Assistant General Manager, Zonal Office and the zonal office has also advised him in this matter vide their letter dated December 5, 1997. A reading of these letters would show that the bank has categorically stated their inability to consider the enhancement of loan and that the bank had given him ample opportunity to meet their superior officers from time to time for personal discussions and to represent his grievances in person.

18. As rightly pointed out by learned counsel appearing for the bank, the reasons

given in exhibit P-6 are not at all impeached in the original petition and since the complaint under exhibit P-5 is not entertainable or admissible for any further discussion or deliberation or argument, the Banking Ombudsman has rejected the same on the question of admissibility of the complaint. As rightly pointed out in paragraph 1 of exhibit P-6, sanction/enhancement of credit limits are subject to the credit decision of the commercial banks concerned and the Banking Ombudsman will not intervene in this matter. As already said, the complaint--exhibit P-5--does not relate to non-observance of RBI directives on interest rates, delay in action/non-observance of the prescribed time schedule for disposal of loan applications and non-observance of any other directions or instructions of the Reserve Bank as specified from time to time. Clause 16 clearly stipulates the procedure for redressal of grievance. As per the said clause 16, a complaint in the nature of exhibit P-5 shall not lie before the Banking Ombudsman. In the instant case, the complainant made several written representations named in the complaint and the bank had also sent reply explaining their inability to grant the enhancement of loan. This apart, it is seen from annexure R2(a) that there is a subsisting cause of action against the appellant by the third respondent-bank and that the appellant is a defaulter for recovery of money. In our opinion, the complaint stated to have been made by the appellant before the Banking Ombudsman is merely an attempt of the appellant to wriggle out of his liabilities to the bank and as pointed out by the Banking Ombudsman in its decision contained in exhibit P-6 the alleged complaint of the appellant is not sustainable and has, therefore, been rightly rejected. The Banking Ombudsman Scheme does not also envisage any hearing before a decision in the nature of that contained in exhibit P-6. This apart, the case of the appellant, as disclosed in annexure R2(a) as well as the complaint before the Banking Ombudsman, do not relate to any matter falling within the jurisdiction of the Banking Ombudsman. The grounds stated in the original petition and in the writ appeal are, in our opinion, not sustainable and the appeal is only to be dismissed.

19. The writ appeal is, therefore, dismissed. No costs.

