

PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR

Rep.No.111/BM/2022
Date of Decision: 12.01.2023

Bank of Punjab VS Mrs. Bushra Kanwal

Subject: **REPRESENTATION FILED BY BANK OF PUNJAB AGAINST THE ORDER OF THE LEARNED BANKING MOHTASIB DATED 26.04.2022 IN COMPLAINT NO. 2021-1921**

Kindly refer to your representation on the above subject addressed to the President in the background mentioned below:-

This representation has been filed by Bank of Punjab (BOP) on 16.05.2022 against the order of the learned Banking Mohtasib dated 26.04.2022, whereby it has been held that:

“In view of above, I, under the powers vested in me vide Section 82D of BCO read with Section 9 of Federal Ombudsman Institutional Reform Act 2013 allow the complaint and direct the Bank to credit the complainant's account with a sum of Rs. 49,500/- along with Bank's charges levied / recovered by Bank on the said transactions, if any, forthwith and report compliance within 30 days from the date of issue of this order to BMP Secretariat.”

2. Mrs. Bushra Kanwal (the complainant) has been maintaining an account with the BOP's Govt College University Branch Faisalabad. Reportedly, she received a call and the caller pretended to be a Bank official who asked for her personal information. The fraudster threatened that if information was not provided her account should be closed. Thus, she shared her personal /confidential credentials. Later on, an amount of PKR 49,500/- were transferred from her account on 25.01.2021 without her knowledge and consent. Further, she had neither requested for Internet Bank Facility nor she had ever used it. Although, she requested the Bank for refund of his lost amount but without any result. Thus, she escalated her complaint with the learned Banking Mohtasib for redressal of her grievance.

3. The Bank's stance before the learned Banking Mohtasib was that the complainant received a call from an unknown number on 25.01.2021. The caller pretended himself to be a representative of the Bank who required her account details for verification purposes. So, she shared all her personal information including ATM PIN/OTP with the caller and thereafter an amount of PKR 49,500/- was transferred from her account to the Moblink Microfinance Bank Ltd (MMBL) account. Further, SMSs were also delivered at her mobile number. She had shared her financial data with imposter who got her amount transferred through Mobile App to an account maintained with the MMBL and thereafter withdrawn from that account by the beneficiary.

4. Considering the respective stances, the learned Banking Mohtasib proceeded to pass the above mentioned order, which is assailed by the Bank.

5. The hearing of the case was fixed for 03.01.2023. Mr. Haroon Rashid, Manager DFMU and Ms. Mudessara Aziz, Manager Legal have represented the Bank, whereas, the complainant has not appeared despite notice. Needless to mention that Section 15 of the Federal Ombudsman Institutional Reforms Act, 2013 empowers the decision of a representation on the basis of available record without personal hearing of the parties.

6. The learned Banking Mohtasib thrashed the matter vide paras 9 to 15 of the order as follows:-

“9. Although the Complainant is an educated person but as per record produced by Bank, she had neither requested / solicited any facility under Bank's Technology Based Products - ADCs nor had ever conducted any ADCs Transaction (IB/EFT/e-Commerce) in the past. Bank has also admitted the same.

10. No evidence was produced by the Bank that they have obtained customer's consent in terms of SBP's directive contained in PSD Circular No 5 dated 10th June 2016 Section 4.2.3 (b) which is very clear that customer's consent has to be obtained regarding its utilization. Said regulation reads as under:

Section 4.2.3 (b)

CSPs shall take consumer consent regarding the utilization of Payment Cards on various ADCs or their cross border usage while maintaining the record of consent as per SBP record retention policy.

11. In terms of SBP-PSD Circular No. 9 dated 28th November, 2018, Bank is found non-compliant on account of activating Internet Banking (para iv) without obtaining bio-matric (refer para No.8 above) which read as under:

para No. iv: Henceforth, Banks/MFBs shall activate/reactivate online banking services including internet/mobile banking for their customers after biometric verification at any branch of their Bank. At the time of activation of online services, Banks'/MFBs' relevant staff shall educate customers about various types of online banking frauds as well as the corresponding preventive measures. Banks/MFBs shall be solely responsible for ensuring customer authentication for activation of any ADC and any loss of customer funds due to false activation of any ADCs shall be compensated by the respective Bank/MFB.

12. Bank could not provide any material, which can substantiate that they have guided or educated the accountholder as per provisions of the Payment Systems & Fund Transfer Act, 2007 which read as under:

Section No. 30: "the terms and conditions of Electronic Fund Transfers involving a Consumer's Account shall be disclosed by a Financial Institution, Operator or other Authorized Party in English and in a manner clearly understood by the consumer, at the time the Consumer contracts for an Electronic Fund Transfer Service in accordance with the instructions of the State Bank."

13. Bank is also non-complaint with regard to Compliance of SBP-PSD Circular No.3 dated 21st October, 2015 para No. 3 "customer awareness".

14. No evidence of provision of PSD Circular No.3/2018 dated May 9, 2018, para 10(1) a reads as under:

"Before activating EFT on any channel/instrument, AFIs shall disclose in writing to its consumers in English and Urdu languages; a) EFT limits on payment instruments as well as on ADCs".

15. Bank (BOP) has failed to establish the legitimacy of disputed transaction in terms of section No. 41 of the Payment System and Electronic Fund Transfer Act, 2007. Therefore based on the information and documents submitted and arguments put forward by the parties and keeping in view the provisions of the Payment System and Electronic Fund Transfer Act, 2007 & SBP directives."

These are findings arrived at on due consideration of the record and no cavil could be found with such an approach to the mater.

7. The contention of the petitioner Bank is that the learned Banking Mohtasib is precluded from exercising judicial powers in such like matters on the strength of the judgment in UBL vs Federation of Pakistan 2018 CLD 1152. Suffice it to observe that this matter is already subjudice before the Honourable Supreme Court of Pakistan in view of conflict of opinions about this issue, inter se, the various High Courts of the country and whatever will be the decision by the Apex Court, the same will hold the field. Be that as it may there is no restraining order of the Honourable Supreme Court of Pakistan for non-entertaining the complaints by the learned Banking Mohtasib who is thus dealing with such matters in accordance with the law.

8. Moreover in a recent judgment of the Hon'ble Supreme Court dated 14.10.2022 in CP.No.1464-1512/2021 it has been observed:

"The learned counsel for the petitioner stated that in the facts and circumstances of the case the Banking Mohtasib did not have jurisdiction to entertain the complaints. Therefore, we asked him to refer to the reply/objection filed before the Banking Mohtasib to ascertain whether this objection was taken, but it transpires that it was not. On the contrary, the petitioner submitted to the jurisdiction of the Banking Mohtasib and contested the complaints on merits. The learned counsel next contended that the complainants had themselves provided information which facilitated the said amounts to be withdrawn from their bank accounts. However, the Banking Mohtasib had noted that the complainants had specifically stated that they had not applied nor requested the Bank for the facility of Mobile Banking or Inter-net Banking, therefore, we enquired whether the petitioner was given such authority by the complainant, but the learned counsel could not refer to any document availing of the said facility. Under the circumstances, it cannot be stated that the Banking Mohtasib's findings are contrary to the facts. Therefore, leave to appeal is declined and, consequently, these petitions are dismissed."

Thus, this objection stands repelled.

9. The ambit and extent of jurisdiction of Banking Mohtasib is spelt out under Section 82A(3)(a)(e), Section 82B (4)(5) and Section 82F of the Banking Companies Ordinance, 1962. The cumulative reading and perusal of these provisions of law undoubtedly leads to the conclusion that the Banking Mohtasib is to inquire into the complaints about banking malpractices, maladministration, wrong doings, the fraudulent transactions, the corrupt and malafide practices by the Bank officials and pass appropriate orders on conclusion of inquiry. These powers of the Banking Mohtasib when considered in context with Sections 18 and 24 of the Federal Ombudsmen Institutional Reforms Act, 2013 further show that in matters falling within the jurisdiction of the Banking Mohtasib, the jurisdiction of other courts or authorities is excluded; and the provisions of Act 2013 have the prevalence.

10. The Bank was given ample opportunity to controvert the claim of the complainant and the findings of the learned Banking Mohtasib, the Bank, however, failed to discharge the burden and statutory liability cast upon it under the law. Hence, no justification has been made to interfere with the order of the learned Banking Mohtasib. The Representation of the Bank is devoid of any merit and deserves to be rejected.

11. Accordingly, the Hon'ble President, as per his decision above, has been pleased to reject the representation of the Bank.

-Sd-
(Anwar-ul-Haq)
Director General (Legal)

The President/Chief Executive,
The Bank of Punjab,
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Copy for information to:

1. Ms. Samreen Tanveer, PSO to Banking Mohtasib Pakistan, Banking Mohtasib Pakistan Secretariat, 5th Floor Shaheen Complex, M.R. Kiyani Road, Karachi.
2. Master file.

-Sd-
(Anwar-ul-Haq)
Director General (Legal)