

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

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Rep.No.84/BM/2022  
Date of Decision:31.01.2023

*Allied Bank Ltd VS Shahid Anjum Rana*

**Subject: REPRESENTATION FILED BY ALLIED BANK LTD AGAINST THE ORDER OF THE LEARNED BANKING MOHTASIB DATED 25.03.2022 IN COMPLAINT NO. 2021-4106**

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

This representation has been filed by Allied Bank Ltd (ABL) dated 12.04.2022 against the order of the learned Banking Mohtasib dated 25.03.2022, whereby it has been held that:

*“In view of above, under the powers vested in me vide Section 82D of BCO 1962 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 PKR. 445,000/- forthwith.”*

2. Mr. Shahid Anjum Rana (the complainant) has been maintaining his account with the Bank's Gulshan-e-Ravi Branch, Lahore. He alleged that an amount aggregating PKR. 445,000/- was fraudulently transferred from his pension account through IB/EFT transactions on 20-01-2021. He got blocked his ATM Card on the same day and he did not share his ATM PIN Code with anyone. Further, he had neither requested for the IB/EFT facility nor he had ever used it. Although, he lodged formal complaint with the Bank for refunding of his defrauding amount but without any result. Thus, he escalated his complaint with the learned Banking Mohtasib for retrieval of his lost funds.

3. The Bank submitted its Inquiry Report before the learned Banking Mohtasib as follows:

- The complainant had disputed IBFT transactions aggregating PKR. 445,000/- conducted from his account on 20-01-2021 through Internet Banking Transactions.
- He had received fake phone calls and shared his personal / financial information with unknown persons and subsequently funds were debited from his Account.
- As per customer, he had received phone call from an unknown number on 20-01-2021 and the caller pretended himself to be a Bank official who asked him to provide his account related personal / financial information for verification purposes.

The customer had shared his personal / financial information including One Time Password with the unknown caller and subsequently funds were debited from his account.

- On reviewing the transactional history, it was noted that a sum aggregating PKR. 445,000/- was transferred from his account on January 20, 2021.
- PKR. 245,000/- were transferred from his account to ABL's beneficiary's account titled "Zubair Saqib", maintained at ABL's Chen One Road Branch, Opposite Al-Fateh Ground, Faisalabad.
- Matter was escalated to concerned Branch to investigate from their beneficiary customer regarding unauthorized transactions and to block / refund the disputed amount. Account was marked blocked but funds had already been withdrawn subsequently on the same day.
- An aggregated amount of PKR. 100,000/- was transferred from his account through mode as VISA POS Purchase transactions. Matter was referred to concerned department for their findings and necessary proceedings. As per response, no Charge Back Rights were available as the transactions were fully secured OTP initiated.
- The customer's Internet Banking ID was created on 20-01-2021 at 08:32:25 hours. As per logs, login and transaction were allowed by the System after validating the password and financial PINs generated and delivered to the complainant on his own provided / registered cell phone number. Hence, no lapse was observed at ABL's end.
- The Report concluded that:
  - i. The case was customer's liability as he had shared his personal financial credentials to an unknown person, which caused loss of funds via disputed funds transfer transactions.
  - ii. The case had also been reported to the FIA Cybercrime Cell (FIA NR3C) for registration of FIR regarding this fraudulent activity.
  - iii. Fake Caller's number along with call timings also reported to the PTA for blockage of the number and further necessary action at their end.

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 17.01.2023. Mr. Usman Khan, Associate Manager FRMU has represented the ABL, whereas, the complainant has not appeared despite notice. Needless to mention that Section 15 of the Federal Ombudsmen 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 8 to 12 of the order as follows:-

*“8. The complainant is a pensioner and has no knowledge of present day's banking products (alternate banking channels - ADCs) based on technology. As per documents submitted by Bank and Complainant, the Complainant has neither requested/solicited any facilities under Banks technology-based products - ADCs nor had ever conducted any ADCs transaction (IB/EFT/e-Commerce) in the past.*

*9. BP's directive contained in PSD circular No 5 dated <sup>10th</sup> June 2016 Section 4.2.3 (b) is very clear that customer's consent has to be obtained regarding its utilization. Said regulation reads as under:*

**Para 4.2.3 (b)**

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

*10. Bank also could not produce any evidence with regard to full disclosures and divulging the terms of fund transfer in clear manner and as stipulated in Section 30 of PS& EFT Act, 2007. In fact, Bank has admittedly opened IB/EFT channels by default/unilaterally (termed as un-solicited facilities) and that too without informing the complainant that said channels — ADCs are activated with the activation of his payment card.*

*11. The Bank's stance that utilization of OTP (sent on registered mobile of complainant) for authentication of transaction and applied is considered as 'customer's consent' is preposterous. The Bank is mixing two separate steps with each other. The first step is obtaining "Consent / Request" of customer for availing "Fund Transfer facility and the second step is customer's authentication / registration for security and control purposes to authenticate / identify the card-holder before conducting banking transaction (Refer para 4.2 (b) of SBP PSD Circular No. 5 dated <sup>10th</sup> June 2016. Where "Consent / Request" from customer is not obtained / received then extending / opening of fund transfer facility unilaterally or by default by Bank with the activation of account holder's payment card shall be considered as "unsolicited facility". If primary step / condition is not complied with by the Bank, all subsequent activities are 'void". Registration / Authentication cannot be made / done if fund transfer channel is not active. In other words, registration / authentication is only possible when customer fund transfer channel is active.*

*12. Based on the information and documents submitted and arguments put forward by both the parties that Bank was non-compliant of SBP Circular 5 /2016 and Section 30 of the Payment System and Electronic Fund Transfer Act, 2007. The Bank was provided fair opportunity to prove legitimacy of the disputed Transactions as per Section 41 of the Act 2007 but Bank failed to provide any substantial evidence to rebut the claim of the Complainant. It has*

*been established that fund transfer channel of Complainant was opened by the Bank by default (with the activation of payment card (ATM Card) and that too without consent and knowledge of the customer. The facility (opening of ADC) provided by the Bank was unsolicited and any loss arising out of such activity was to be made good by the Bank.”*

These are conclusions arrived at on due consideration of the record and there is no cavil with such approach to the matter.

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.

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

The President/Chief Executive,  
Allied Bank Limited,  
Central Office, Khayaban-e-Iqbal, Main Clifton Road,  
Bath Island, Karachi

Mr. Shahid Anjum Rana,  
S/o Muhammad Afzal Rana R/o House # 283,  
Block-A Gulshan-e- Ravi, Near WASA Colony,  
**Lahore.**

Copy for information to:

- (1) Ms. Samreen Tanveer, PSO to Banking Mohtasib Pakistan, Banking Mohtasib Pakistan Secretariat, 5<sup>th</sup> Floor Shaheen Complex, M.R. Kiyani Road, Karachi.
- (2) Agha Muhammad Usman Khan, Assistant Manager, FRMU, ABL North Region, 2<sup>nd</sup> floor, Chandani Chowke Rawalpindi (Mobile No.03335507758, 0311.5473468)
- (3) Master file.

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