

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**W.P. No.3379/2019**

Habib Bank Limited & another

*versus*

President of Pakistan & 03 others

Petitioners by: Mr. Ahmed Bashir and Mr. Azir-ur-Rehman  
Farooqi, Advocates for petitioner (HBL).

Respondents By: Barrister Muhammad Mumtaz Ali, AAG.

Qaiser Masood and Sheikh Aamer Sohail  
Anjum, Additional Directors (Law), FIA.

Shahid Hassan, Additional Director, Salman  
Khan, Deputy Director and Jair Nasrani,  
Assistant Director, Cyber Crime, FIA.

Respondents No.4 in-person.

Date of Hearing: 03.03.2021.

**JUDGMENT**

**MOHSIN AKHTAR KAYANI, J:-** By way of this common judgment, I intend to decide the captioned writ petition along with W.P. No.3388/2019, W.P. No.3063/2020 and W.P. No.3064/2020 having same questions of law and facts.

2. Through these writ petitions, Habib Bank Limited / petitioner has assailed orders, dated 29.07.2019, 30.07.2019, 01.07.2020 and 06.07.2020, respectively, whereby the President's Secretariat (Public), Aiwan-e-Saddar, Islamabad, directed the petitioner Bank to pay the amounts claimed by Sajid ur Rehman, Dr. Ayesha Azam, Ghulam Mustafa and Muhammad Rafique (each respondent No.4 in aforesaid writ petitions) with applicable interest on account of commission of fraud with the petitioner Bank,

whereby unauthorized transactions were made in the said respondents' bank account.

3. In W.P. No.3379/2019, Sajid-ur-Rehman / Respondent No.4 filed complaint with the Banking Mohtasib that he received a call from (0347-9123531), whereby the said respondent was requested to provide his personal information for verification of bank account data for security purposes, but the said respondent denied. Thereafter, the said respondent received a call from 021-111-111-425, whereby the caller requested him to share his required information, as a result whereof, he shared his ATM PIN and OTP code, which culminated into unauthorized transaction of Rs.150,000/- from the said respondent bank account. Accordingly, the complainant filed complaint to petitioner Bank qua the fraud and also filed complaint with Banking Mohtasib, whereby the Banking Mohtasib dismissed the complaint vide order dated 31.12.2018. Feeling aggrieved thereof, the complainant filed a representation to the President's Secretariat (Public), Islamabad, which was allowed in favour of the complainant vide order dated 29.07.2019.

4. In W.P. No.3063/2019, Ghulam Mustafa filed a complaint to HBL being its customer that he received a call from unknown number seeking information to verify his bank account data for security purposes by the army representative, whereupon he shared his personal information and after that he also received a call from unknown number and from 111-111-425 for confirmation purposes. As per Mobile Application Channel Activity Report, an activity was created on 01.07.2018, and thereafter the complainant has been deprived of Rs.104,200/-. The complainant also approached the Banking Mohtasib, whereupon the Banking Mohtasib, vide

order dated 12.03.2020, has directed the petitioner Bank to make good the loss of the complainant by crediting his account with sum of Rs.104,200/-. The petitioner Bank feeling aggrieved with the order of the Banking Mohtasib filed representation to the President's Secretariat (Public), Islamabad, which has been dismissed vide the impugned order dated 06.07.2020.

5. In W.P. No.3388/2019, Dr. Ayesha Azam, customer of the petitioner Bank lodged a complaint to the Banking Mohtasib that a fraud transaction from her account was carried out through HBL helpline (021-111-111-425) on 09.09.2018 at about 9 p.m. and personal information has been shared, as a result whereof, an amount of Rs.288,000/- was transacted out from her account, whereafter she called the helpline and blocked her account. The Banking Mohtasib, after receiving the complaint, has closed the complaint and directed the complainant to approach the court of law, whereupon she filed representation to President's Secretariat (Public), Islamabad, which was allowed with the direction to the petitioner Bank to pay the said amount.

6. In W.P. No.3064/2019, Muhammad Rafique / respondent No.4, customer of petitioner Bank, has filed complaint with Banking Mohtasib that his ATM card was used for multiple online purchases / e-commerce for an amount of Rs.155,265/- and same were disputed at foreign bank's merchant terminal "Saddly RIYAD SAU" on 20.08.2018. Complainant received a phone call from 021-111-111-425, whereby particulars of his ATM have been obtained and caller kept him engaged for about 30-35 minutes and during the said period the fraud has been committed. The Banking Mohtasib advised the petitioner bank to credit the complainant's

account with the said amount, whereby petitioner bank filed representation to President's Secretariat (Public), Islamabad, which was dismissed vide the impugned order dated 01.07.2020.

7. Learned counsel for the petitioner Bank contended that mandatory procedure provided under the Banking Companies Ordinance, 1962 has not been complied with in the entire process by the Banking Mohtasib as there is nothing on oath in any complaint nor written intimidation to the bank has been filed by the complainant to express his intention for filing of complaint and, as such, the Banking Mohtasib is not allowed to entertain such complaint; that under Section 82-A(3) of Banking Companies Ordinance, 1962, jurisdiction of Banking Mohtasib and President of Pakistan (by virtue of Federal Ombudsmen Institutional Reforms Act, 2013) is limited to conduct an inquiry into the matter of alleged malpractice, perversity, arbitrariness, discrimination, violation of law, rules, regulations, guidelines, inordinate delay or inefficiency, corruption or nepotism or other forms of maladministration on the part of bank; that if the Banking Mohtasib comes to conclusion that complaint against the bank is justified, in such situation it is the obligation of the Banking Mohtasib to facilitate to amicable solution or settlement by playing the role of mediator, as a result whereof, direction may be issued for reconsideration of the matter or to pay reasonable compensation or to pass direction to take requisite step to improve functioning or efficiency of the bank but, in all four cases the respondents have not followed this mandatory course prescribed by Banking Companies Ordinance, 1962 nor any effort was made to settle the issue through process of mediation; that matter has also been reported to FIA authorities by the petitioner Bank through different

complaints, even the complainants have also filed their respective complaint to the FIA authorities but, till date, no action has been taken by the FIA authorities to eliminate such kind of fraudsters, who have caused loss to the customers as well as to the bank; that the fraud has been committed with the customers / account holders by cyber criminals, which exclusively falls within the purview of FIA for criminal prosecution and as such, when the complaints are pending the Banking Mohtasib or for that matter President's Secretariat (Public), Islamabad have no jurisdiction to pass any direction to make good the loss; that the orders passed by the President's Secretariat (Public), Islamabad on representations are contrary to law and, as such, the exclusive jurisdiction to settle such kind of affairs is available to the Banking Court; that the Banking Mohtasib has not appreciated the provision of Payment Systems and Electronic Fund Transfers Act, 2007 as the secret pin code was shared by the complainants themselves, therefore, petitioner bank could not made liable to make good the loss.

8. Conversely, learned AAG as well as complainants in-person contended that fraud has been committed with the petitioner Bank qua their customers i.e. present complainants / respondent No.4 in all four writ petitions, and as such, it is the statutory duty of the petitioner bank to provide due protection with respect to internet banking system; that the account holders / complainants had received the calls from the notified numbers of HBL Bank i.e. 111-111-425 and as such, the information was shared when the internet mobile banking number has been confirmed by the complainants and, as such, the petitioner bank is duty bound to protect its customers, per se, no illegality has been conducted by the President's

Secretariat (Public), Islamabad while dealing with the representations / complaints.

9. Arguments heard, record perused.

10. Perusal of record reveals that Sajid ur Rehman, Dr. Ayesha Azam, Ghulam Mustafa and Muhammad Rafique (each respondent No.4 in aforesaid writ petitions) are account holders / customers of petitioner HBL in different areas of Pakistan, who had received different calls at different intervals of time from the notified bank number (111-111-425), whereby personal information has been received from the said respondents, as a result whereof, they have been deprived of their hard earned money amounting to Rs.150,000/- (Sajid-ur-Rehman), Rs.104,200/- (Ghulam Mustafa), Rs.288,000/- (Dr. Ayesha Azam) and Rs.155,265/- (Muhammad Rafique). The complainants had approached the Banking Mohtasib, whereby complaints of two of the complainants have been closed, whereas in two complaints the Banking Mohtasib directed the petitioner Bank to make good the losses. The complainants whose complaints had been closed filed their respective representations before the President's Secretariat (Public), Islamabad, whereby the petitioner Bank has been directed to pay the amount to the complainants forthwith and also directed to pursue the matter with FIA to get the culprits punished in accordance with law. The petitioner Bank has argued its case on the strength of Payment Systems and Electronic Fund Transfers Act, 2007 mainly on the ground that it is the primary responsibility of the customer not to share personal information with anyone and in case such information is shared, the petitioner Bank cannot be held liable to make good their losses. In this regard, this Court has gone through Section 41 of the Payment Systems and

Electronic Fund Transfers Act, 2007, which places the burden of proof upon the financial institution to establish that conditions and liabilities set forth in the Act are met, and the disclosure to be required to be made to customer under this Act were made in accordance with the provisions thereof. Hence, the petitioner Bank cannot wriggle out from its legal obligation to provide due protection to its customers nor even the bank has demonstrated that loss occurred was the result of fraudulent withdrawals / transfer of funds by way of helpline of the petitioner bank, therefore, the petitioner bank should not be given a clean chit in this case, especially when the bank has not denied the fact that they contacted their customers through their helpline number (111-111-425).

11. This Court has also gone through the provision of Section 82-A(3) of the Banking Companies Ordinance, 1962, whereby the jurisdiction of Banking Mohtasib has been defined in relation to banking transaction to inquire into complaint of banking malpractices, as such, the entire case revolves around the unauthorized banking transaction on the basis of secret information obtained by some unknown persons through petitioner bank's helpline number from the complainants / respondent No.4, therefore, the Banking Mohtasib has lawful jurisdiction to deal with such kind of malpractices and the record appended with this petition reveals that Banking Mohtasib has tried to resolve the controversy. It is the case of the petitioner bank that fraud has been committed with customers by cyber criminals and even the bank has not denied this fact that they have also filed complaint with FIA qua alleged fraud and even the complainant also approached the FIA authorities in this regard.

12. In such kind of situation, when violation of regulations / guidelines issued by the State Bank of Pakistan and all forms of maladministration have been referred in any proposition, such kind of complaints fall within the jurisdiction of Banking Mohtasib, who is expressively empowered to entertain complaint relating to failure on the part of financial institution in accordance with policy directives or guidelines issued by the SBP. Learned counsel for petitioner Bank has raised the plea that Payment Systems and Electronic Fund Transfers Act, 2007 has overriding effect and Banking Mohtasib has no jurisdiction to deal with the complaints in terms of Section 82-A, whereby similar question has been settled by this Court in case reported as 2018 CLD 1152 Islamabad (Habib Bank Ltd. v. Federation of Pakistan.). While relying upon said judgment, it appears that in all these cases, the petitioner bank has failed to comply with the direction contained in different circular of State Bank of Pakistan as well as under the laws nor had it provided the information or caution to the customers regarding the exposure to risk, as such, the petitioner bank is in breach of its duty of care due to which the customers have been exposed to risk of unauthorized electronic transactions. The petitioner Bank owe a duty towards its customers and even the transactions were made through another bank account, which is traceable and can be reversed by the banks, especially when the petitioner Bank had received complaints from the customers but, immediate action has not been taken by the bank authorities. The petitioner bank could not wriggle out from its responsibility to take effective measure to protect its customers from any unauthorized transaction or to prevent misuse or abuse of processes. Apparently, the petitioner bank has failed to exercise the minimum



standards of care and caution, per se, no illegality has been observed in the powers exercised by the President's Secretariat (Public), Islamabad in terms of Federal Ombudsmen Institutional Reforms Act, 2013 and, as such, the impugned orders are within four corners of law, wherein no procedural illegality or irregularity has been observed, therefore, all these writ petitions are misconceived and same are hereby **DISMISSED**.

13. Before parting with the judgment, it is necessary to pass direction to the Director General, FIA to conclude the pending inquiries filed by the petitioner bank as well as by the customers / present complainants in these cases, especially when Additional Director (Law), FIA as well as Additional Director, Cyber Crime, FIA put appearance on 03.03.2021 and received the details from the petitioner bank as well as from the customers, hence it appears that it is a fraud committed with the petitioner bank which falls within the ambit of cyber crime and, as such, the complaints pending with the FIA (Sindh Zone), Karachi shall be concluded within the period of 30 days in accordance with law and necessary legal action shall be taken in the next 30 days, under intimation to this Court.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on: **11<sup>th</sup> March, 2021.**

JUDGE

Khalid Z.