

CASE NO.:
Appeal (civil) 1389 of 2007

PETITIONER:
M/S DURGA HOTEL COMPLEX

RESPONDENT:
RESERVE BANK OF INDIA & ORS

DATE OF JUDGMENT: 15/03/2007

BENCH:
H.K. SEMA & P.K. BALASUBRAMANYAN

JUDGMENT:
JUDGMENT
(Arising out of SLP(C) No. 10075-10076 of 2005)

P.K. BALASUBRAMANYAN, J.

Leave granted.

1. The appellant, a partnership firm, sought a loan from the third respondent \026 Bank for putting up a hotel. In April 1997, a loan of Rs. 15 lakhs was sanctioned by the Bank. The Bank disbursed a sum of Rs. 11,58,750/-. The appellant sought an additional advance. The proposal in that behalf was not accepted by the Bank. The Bank recalled the loan after crediting Rs. 3,41,250/- out of the original loan sanctioned.

2. The appellant made a complaint before the Banking Ombudsman for the State of Bihar at Patna under clause 16 of the Banking Ombudsman Scheme, 1995. Clause 16 enabled any person, who had a grievance against the Bank, to make a complaint in writing to the Banking Ombudsman. The complaint had to be in writing and it had to be accompanied by supporting documents, if any, relied on by the complainant. It had also to set out 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 of the conditions referred to in that clause. The appellant made the complaint about what it called the unauthorised or fraudulent withdrawal from the account of the appellant and the non credit of proceeds to the account of the appellant. It was contended that the crediting of Rs. 3,41,250/- or withdrawal thereof from the account of the appellant was unauthorised, and that the appellant had suffered considerable loss because of the delay on the part of the respondent \026 Bank in advancing the loan and in not permitting the higher credit facility recommended in the Technical Cell Report binding on the Bank. By way of relief it was claimed that the Bank should further credit the remaining sanctioned loan to the account of the appellant. The total interest for the period should be exempted and there should be a direction to pay towards loss of the appellant a sum of Rs. 16.9 lakhs. The respondent \026 Bank opposed the complaint. The respondent \026 Bank questioned the jurisdiction of the Banking Ombudsman to entertain such a complaint. It contended that the jurisdiction of the Banking Ombudsman was confined to certain matters specified in that behalf and the claims of the appellant were not within the purview of the Banking Ombudsman.

3. On 1.11.2000, the respondent \026 Bank approached the Debts Recovery Tribunal constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, "the Recovery of Debts Act") for recovery of amounts alleged to be due from the appellant. The complaint of the Bank was numbered as O.A. No. 157 of 2000 and was being dealt with by the Tribunal.

4. Before the Banking Ombudsman, the Bank, inter alia, contended that the complaint of the appellant before him had ceased to be maintainable in view of the pendency of the proceedings before the Debts Recovery Tribunal and that, even otherwise, the claims raised by the appellant did not come within the purview of the Banking Ombudsman under the Banking Ombudsman Scheme, 1995. It was contended that the jurisdiction of the Banking Ombudsman was a limited one and the claims of the appellant were not those that could be entertained by him. The Banking Ombudsman brushed aside these contentions. He found that his jurisdiction was invoked by the appellant before the respondent \026 Bank approached the Debts Recovery Tribunal with its claim and hence he was not precluded from adjudicating on the complaint of the appellant before him. He also brushed aside the objection of the respondent regarding his jurisdiction to entertain the complaint made by the appellant. The Banking Ombudsman is seen to have made some suggestions or recommendations to settle the dispute between the parties. They were not acceptable to the Bank. The Banking Ombudsman thereupon proceeded to pass an award directing disbursal of the sum of Rs. 3,41,250/- to the complainant and directing the Bank to make further advances in terms of the recommendations of the concerned Cell of the State Bank of India maintaining financing ratio of 75:25 between the Bank and the complainant. The Banking Ombudsman further directed that the period of repayment should be fixed as seven years exclusive of one year of moratorium and in view of non-disbursement of the loan, the period of moratorium had to be enhanced according to the Rules and the interest be charged strictly in accordance with the guidelines of the Reserve Bank of India. This award was passed on 30.3.2002.

5. The respondent \026 Bank sought the permission of the Reserve Bank of India to challenge the award passed by the Banking Ombudsman in a court of law. Meanwhile, the appellant found that the respondent \026 Bank was not complying with the directions in the award of the Banking Ombudsman. The appellant therefore filed C.W.J.C. No. 10756 of 2002 before the High Court of Patna under Article 226 of the Constitution of India praying for the issue of a writ of mandamus directing the respondent \026 Bank to implement the award of the Banking Ombudsman. The respondent \026 Bank, in its turn, filed C.W.J.C. 1882 of 2003 challenging the award of the Banking Ombudsman essentially on the ground that it was one without jurisdiction, both on the basis that the matter was pending before the Debts Recovery Tribunal when he rendered his award and on the further ground that the subject matter of adjudication by him in the present case was beyond his ken under the Banking Ombudsman Scheme, 1995. The learned single judge of the High Court upheld the contentions of the respondent \026 Bank and held that on the claim being filed by the respondent \026 Bank before the Debts Recovery Tribunal as O.A. No. 157 of 2000, the jurisdiction of the Banking Ombudsman to deal with the complaint of the appellant had come to an end and on the further ground that the Banking Ombudsman had exceeded his jurisdiction in rendering the award since the disputes raised were beyond his

purview. As a consequence, the learned single judge allowed the Writ Petition filed by the respondent \026 Bank and quashed the award passed by the Banking Ombudsman leaving the appellant to raise all his claims before the Debts Recovery Tribunal, by way of a counter-claim. Resultantly, the High Court also dismissed the Writ Petition of the appellant seeking enforcement of the award of the Banking Ombudsman. Being aggrieved by the decision of the learned single judge, the appellant filed two Letters Patent Appeals in the High Court as L.P.A. Nos. 309 and 313 of 2004. The Division Bench of the High Court agreed with the conclusions of the learned single judge and dismissed the appeals filed by the appellant.

Feeling aggrieved thereby, the appellant filed these Petitions for Special Leave to Appeal before this Court. On 10.5.2005, this Court while not entertaining the Petition of the appellant on the merits of its claim, issued notice confined to the questions of law arising in the case, clarifying at the same time that the proceedings before the Debts Recovery Tribunal could proceed. Thus, what is involved in this appeal is only the question of the jurisdiction of the Banking Ombudsman and not the merits of the claims of the appellant in the case on hand. Learned counsel also argued the appeal before us consistent with the notice issued by this Court earlier.

6. Therefore, the two questions that arise are, whether the subsequent filing of the claim by the Bank before the Debts Recovery Tribunal would oust the jurisdiction of the Banking Ombudsman in a complaint earlier instituted before him and whether the claims put forward before the Banking Ombudsman in its complaint by the appellant fell within the jurisdiction of the Ombudsman under the Scheme and consequently whether the directions issued by him were within his province under the Scheme.

7. Before we proceed to deal with the arguments, we will notice the relevant provisions. Under Section 35A of the Banking Regulation Act, 1949, the Reserve Bank of India has the power to issue directions to banking companies generally or to any banking company in particular, as it deems fit, and the banking companies shall be bound to comply with such directions. The Reserve Bank of India could, on its own motion or on representation made to it also modify or cancel any direction it had earlier issued. In consonance with this power, on 14.6.1995, the Reserve Bank of India notified the Banking Ombudsman Scheme, 1995. We think it profitable to extract the relevant Notification herein:

"
NOTIFICATION
Ref. RCPC No. 1070/BOS-94-95

14th June, 1995

In exercise of the powers conferred by Section 35A of the Banking Regulation Act, 1949 (10 of 1949), 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 hereby directs that all commercial banks should comply with the Banking Ombudsman Scheme, 1995 annexed hereto.

Sd/-
(R.V. Gupta)

Deputy Governor"

By a notification dated 15.6.1995, the Scheme was also extended to Scheduled Primary Cooperative Banks. Admittedly, the Scheme so notified, was in force at the relevant time. As per clause 2, the object of the Scheme was to enable resolution of complaints relating to provision of banking services and to facilitate the satisfaction, or settlement of such complaints. Under clause 4 of Chapter II, the Reserve Bank of India could appoint a Banking Ombudsman to carry out the functions entrusted to him by or under the Scheme. The Banking Ombudsman was to hold office during the pleasure of the Governor of the Reserve Bank of India. Chapter III dealt with the jurisdiction, powers and duties of the Banking Ombudsman. Clause 12 provided that the Banking Ombudsman had the power and duty to receive complaints relating to the provision of banking services and to consider such complaints and facilitate their satisfaction, or settlement by agreement, by making a recommendation, or Award in accordance with the Scheme. Clause 13 specified that as regards banking services, the authority of the Banking Ombudsman would include all complaints concerning deficiency in service such as, non-payment/inordinate delay in the payment or collection of cheques, drafts/bills etc. The other deficiencies that could be looked into on a complaint are enumerated in clauses (ii) to (ix) to sub-clause (a) of Clause 13. We are not concerned with them in the present case. Since we are concerned with a complaint regarding loan and advances, we may extract the Clause with particular reference to clause 13(b), which has relevance thereto:

"13. SPECIFIC AMBIT OF AUTHORITY

As regards banking services, the Banking
Ombudsman's authority will include:-
(a) \005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005
(b) Complaints concerning loans and
advances only insofar 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."

Under clause 14, the Banking Ombudsman had general superintendence and control over his office and he had power to incur expenditure on behalf of his office. Chapter IV dealt with the procedure for redressal of grievance. Clause 16 provided for making a complaint. Since what is involved is an interpretation of the scope of the power of the Ombudsman on a complaint, we think it proper to extract Clause 16 hereunder:

"16. COMPLAINT

(1) Any person who has a grievance against a 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.

(2) 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 officer 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 of the conditions referred to in sub-clause (3) of this clause.

(3) No complaint to the Banking Ombudsman shall lie unless,-

(a) 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;

(b) 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;

(c) The complaint is not in respect 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;

(d) The complaint is not the same subject matter, for which any proceedings 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;

(e) The complaint is not frivolous or vexatious in nature."

8. As regards the first aspect as to whether the Banking Ombudsman had lost his jurisdiction in view of the approach made by the respondent \026 Bank to the Debts Recovery Tribunal, what is relevant is clause 16(3)(d) quoted above and as regards the question whether the Banking Ombudsman had jurisdiction to entertain the claims made by the appellant, what is involved is the understanding of the scope of clause 13(b), quoted above.

9. It is clear that when the appellant invoked the jurisdiction of the Banking Ombudsman, the respondent \026 Bank had not approached the Debts Recovery Tribunal with its application for recovery of the amounts due under the loan transaction. Therefore, this was a case where on the day the complaint was filed, no proceeding before any Tribunal on the subject matter was pending or in which a final order had been passed or decision rendered. At the stage of initiation, there was no impediment in the way of the Ombudsman in entertaining the complaint or in proceeding with it. The impediment, if any, was caused by the Bank's subsequent filing of O.A. No. 157 of 2000 before the Debts Recovery Tribunal. The High Court has taken the view that since by the time the Ombudsman rendered his award, the Bank had already approached the Debts Recovery Tribunal with its claim under the Recovery of Debts Act, the Banking Ombudsman did not have jurisdiction to render the award, or has lost his jurisdiction to render the award. Clause 16 of the Scheme in sub-clause (1) speaks of a person making a complaint in writing to the Banking Ombudsman. Clause (3) read in conjunction with sub-clause (d) indicates that no complaint to the Banking Ombudsman shall lie if on the subject matter that is put forward before the Ombudsman, there is a proceeding pending before a Court, Arbitrator, Tribunal or forum or a decree or final adjudication had earlier been made by any one of them. This would suggest that the bar is attracted only when on the date of the filing of the complaint before the Ombudsman, a claim on the subject matter is pending before, say, the Debts Recovery Tribunal. Here admittedly, on the day the jurisdiction of the Banking Ombudsman was invoked, no such claim was pending before any Court, Arbitrator, the Debts Recovery Tribunal or any other forum. To that extent, *prima facie*, there is merit in the contention that Clause 16(3) may not be attracted to the case on hand.

10. Clause 16(3) of the Scheme says, "No complaint to the Banking Ombudsman shall lie". According to Black's Law Dictionary "lie" means, "to have foundation in the law; to be legally supportable, sustainable or proper". In the context of the power conferred on the Ombudsman by the Scheme read in the light of Section 35A of the Banking Regulation Act, it would be appropriate to understand the expression as having a foundation in law in the sense that the claim must have a foundation in law. A Banking Ombudsman, though might have initially jurisdiction to entertain a complaint on the basis that it has a legal foundation, here in terms of the Scheme, he may be divested of that jurisdiction or the foundation in law

might be lost on either of the parties approaching the Court, the Arbitrator or the Debts Recovery Tribunal in respect of the same subject matter. Dealing with the expression 'entertain' this Court held in LAKSHMI RATTAN ENGINEERING WORKS LTD. VS. ASSTT. COMM.R. SALES TAXN KANPUR & ANR. [(1968) 1 S.C.R. 505] that it means to deal with or admit to consideration. The Court approved the views expressed by some of the High Courts that the word 'entertain' meant not 'receive' or 'accept' but 'proceed to consider on merits' or adjudicate upon. The Court also accepted the Dictionary meaning of the word as 'admit to consider'. This was also the view that was subsequently taken by this Court in Hindustan Commercial Bank Ltd. Vs. Punnu Sahu (Dead) Through Legal Representatives [(1971) 3 S.C.C. 124]. It was held therein that the expression "entertain" in Order XXI Rule 90 of the Code meant, to 'adjudicate upon' or to 'proceed to consider on merits' and not 'initiation of proceeding' alone. Drawing an analogy, it is possible to say that the complaint must continue to have a foundation in law at the time the Ombudsman takes up the claim for his consideration and renders his decision or award. The foundation would be lost when a Court, Arbitrator, Tribunal or any other competent forum is moved on the same subject matter. When the subject matter of the complaint is taken to any other competent forum, the complaint loses its foundation in law. In other words, the subject matter of the complaint should not be pending in any other Tribunal, or Court or before an Arbitrator not merely when it is filed but also when it is taken up for consideration and disposal.

11. There is a more fundamental aspect. The Ombudsman, at best, is an Authority or Tribunal of limited jurisdiction constituted under the Scheme. It is a jurisdiction conferred by the Scheme. The exercise of jurisdiction or power by the Ombudsman would depend on his having jurisdiction not only to entertain a claim but also to bring it to an end. The continued exercise of power by him would depend on his continuing to have jurisdiction. Once he is deprived of his jurisdiction or gets deprived of his jurisdiction over the subject matter, he could no more proceed with a complaint which was earlier filed. In other words, to render an Award valid in terms of the Scheme, the Ombudsman must continue to retain jurisdiction over the subject matter of the concerned complaint. A complaint goes out of his purview when the subject matter of it is taken to a Court, Arbitrator, Tribunal or forum. The relief that can be granted by the Ombudsman are limited and confined to the matters coming within clause 13 of the Scheme. The intention behind incorporating clause 16(3)(d) appears to be to ensure that the relief an Ombudsman may give, may not conflict with a more comprehensive adjudication by a Court, Arbitrator, Tribunal or forum with wider powers. When there is conferment of a power on an authority or Tribunal with limited jurisdiction, that conferred power must continue to exist, when the decision is rendered by that authority or Tribunal. Once the conferred authority or power is taken away or impeded, the Authority or Tribunal can no more exercise it. This will be the position when one of the parties in a complaint before the Ombudsman takes the subject matter to a Court, Arbitrator, Tribunal or forum. In other words, when ultimately he is about to pronounce his Award, the Ombudsman finds that the subject matter of the dispute has been taken to the Debts Recovery Tribunal or a Civil Court or an Arbitrator or to any other competent forum, he gets divested of his jurisdiction, on a harmonious reading of clause 16(1) with clause 16(3)(d) of the Scheme. It is not, as if,

a bar of jurisdiction can occur only at the stage of initially entertaining a claim. It could also occur at a subsequent stage either in view of the jurisdiction being taken away or in view of any other impediment created by the very Legislation, Rule or Scheme that conferred the initial jurisdiction. Thus, having lost his jurisdiction over the complaint in view of clause 16(3)(d) of the Scheme, the Ombudsman will have to decline jurisdiction to pass any order or award on the complaint. This, we think would be the proper way of understanding the bar created by clause 16(3)(d) of the Scheme.

12. Conceptually, an Ombudsman is only a non-adversarial adjudicator of disputes. An Ombudsman by definition is only an official appointed to receive, investigate, and report on private citizen's complaints about the government; a similar appointee in a non-governmental organisation (such as a company or university). (See Black's Law Dictionary). He serves as an alternative to the adversary system for resolving disputes, especially between citizens and government agencies. He is an independent and non-partisan officer who deals with specific complaints from the public against the administrative injustice and mal-administration. (See 4 American Jurisprudence 2d). Therefore, by its very nature, an Ombudsman is an alternative to an adversary system for resolution of disputes. When the subject matter of a complaint before the Ombudsman under the Scheme is taken to a Court, Tribunal, Arbitrator or other competent forum, the subject matter is taken away from the purview of the Ombudsman to an adjudicatory forum under an adversarial system. It is therefore logical to understand clause 16 of the Scheme with particular reference to sub-clause 3(d) thereof, that on one of the parties approaching an adjudicatory forum on an adversarial system, the non-adversarial adjudicator, the Ombudsman must lose his power or authority to bring about a resolution of the complaint by way of a non adversarial adjudication. An Ombudsman is not defined in the Banking Regulation Act, 1949 or in the Banking Ombudsman Scheme 1995 constituting him as adversarial adjudicator. Clause 12 of the Scheme constitutes him a facilitator to bring about a satisfaction of the complaint, in one of the modes referred to therein. An adversarial adjudication necessarily stands on a higher plane than a settlement of a complaint at the instance of an Ombudsman. When such a forum for adversarial adjudication of disputes takes seisin of the subject matter of a complaint, it will be logical to postulate, on an interpretation of clause 16 of the Scheme, that the Ombudsman loses his jurisdiction over the subject matter of the complaint and consequently the complaint itself.

13. Thus we are of the view that the High Court was justified in interfering with the Award of the Banking Ombudsman on the ground that he could not have passed the Award in view of the divestiture of his jurisdiction.

14. After all, a complainant before the Ombudsman like the appellant will not be prejudiced by this interpretation. It has now been clarified in United Bank of India, Calcutta Vs. Abhijit Tea Co. Pvt. Ltd. & ors. [(2000) Supp 3 S.C.R 153] that the expression 'counter-claim' in sub-Sections (8) to (11) of Section 19 of the Recovery of Debts Act will take in even a claim for damages based on the same transaction and would include even an independent claim the respondent before the Debts Recovery Tribunal may have against the claimant \026 Financial Institution. It has thus been held that a counter-claim in a wide sense will lie before the Debts Recovery Tribunal and the respondent will be entitled to raise a

comprehensive counter-claim. This ratio has also been accepted subsequently in State Bank of India Vs. Ranjan Chemicals Ltd. & Anr. [(2007) 1 S.C.C. 97]. It is therefore obvious that the appellant can make all his claims before the Debts Recovery Tribunal while defending the claim of the Bank, including the ones he has put forward before the Banking Ombudsman.

15. Then the question is whether the subject matter of the complaint came within the purview of the Banking Ombudsman. Clause 13(b) of the Scheme indicates the jurisdiction of the Ombudsman. Clause (b) provides that he could entertain complaints concerning loans and advances only insofar as they relate to non-observance of the directives of the Reserve Bank of India on interest rates, delays in sanction/non-observance of prescribed time schedule for disposal of loan applications and non-observance of any other directions or instructions of the Reserve Bank of India, as may be specified for the purpose of the Scheme from time to time. It is seen, as found by the High Court, that there was no claim that the respondent \026 Bank was guilty of non-observance of any directive of the Reserve Bank of India on interest rates. There is also no case that any other direction or instruction of the Reserve Bank of India made for the purpose of the Scheme had not been observed by the respondent \026 Bank. At best, the appellant can claim that it was complaining of delay in sanction/non-observance of prescribed time schedule for disposal of its loan application for additional finance. Even here, the case of the respondent \026 Bank is that there was no time schedule prescribed for enhancing the limit of the loan or for granting additional loan to a hotel industry like the one for which the appellant was claiming a loan from the Bank and hence there was no question of any of the complaints of the appellant coming within the purview of the Banking Ombudsman. A reading of the Award of the Banking Ombudsman shows that the directions issued by him regarding the advancing of the balance amount of Rs. 3,41,250/- out of the original loan of Rs. 15 lakhs sanctioned, his direction to the Bank to make available additional finances merely on the basis of the recommendation of the Committee in that behalf and his directing the maintaining the financing ratio of 75:25 and his fixing a repayment schedule as seven years exclusive of one year of moratorium and the enhancement of the period of moratorium consequent on non-disbursement of the loan amount by the respondent \026 Bank, are all outside Clause 13(b) of the Scheme and consequently outside the jurisdiction of the Banking Ombudsman. The Banking Ombudsman has no authority to compel the Bank to make further advances which as a prudent banker it might not find feasible. Nor can the Banking Ombudsman interfere with the agreement regarding the repayment schedule fixed by the parties or the financing ratio that may be maintained between the Bank and the borrower. Nor can the Ombudsman direct the increase of the period of moratorium or fix a schedule of repayment of the loan. As we have indicated, there is no case that any of the directives of the Reserve Bank of India in respect of any of these matters had been violated by the respondent \026 Bank. The High Court, in our view, was correct in finding that the Banking Ombudsman had exceeded his jurisdiction in passing the Award that he has passed. None of the directions come within the purview of Clause 13(b) of the Scheme. The jurisdiction of the Banking Ombudsman under the Scheme is circled, confined and cabined by clause 13 of the Scheme. Therefore, in any event, the directions issued by the Banking

Ombudsman are outside his jurisdiction. In this context, we do not think it necessary to consider whether there can be a specific performance of an agreement to lend or the issuance of a direction to lend more money than the Bank was willing to lend considering the creditworthiness of the borrower and his prior conduct in respect of the repayment of the loan which the Bank had already granted.

16. We thus find that the High Court was justified in interfering with the award of the Banking Ombudsman. We therefore answer both the questions raised on behalf of the appellant against the appellant and in favour of the respondent \026 Bank. The questions of law thus stand answered.

17. We dismiss the appeal.

