

“Banking Ombudsman Scheme – A Critical Analysis”

B. Gopalakrishnan

President & Head (Law)

Axis Bank Ltd.

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Banking Ombudsman (BO) Scheme, 2006 being the revised scheme was introduced with the idea of granting quick and effective remedy to the customers of the banks. However, by this article, I would like to have a critical analysis of the Scheme for the simple reason that with the rising complexity of the banking transactions, I am of the opinion that the Banking Ombudsman Scheme, as it stands today, needs a complete overhauling.

Before I venture into the above submissions, I would like to give in brief the salient features of the present Scheme.

About the Scheme:

Banking Ombudsman (BO) is a quasi judicial authority functioning under India's Banking Ombudsman Scheme 2006, and the authority was created pursuant to the a decision by the Government of India to enable resolution of complaints of customers of banks relating to certain services rendered by the banks. The Banking Ombudsman Scheme is introduced under Section 35 A of the Banking Regulation Act, 1949 by RBI with effect from 1995 and was revised in 2002. The current scheme became operative from 1st January 2006, and replaced and superseded the banking Ombudsman Scheme 2002. From 2002 until 2006, around 36,000 complaints have been dealt by the Banking Ombudsmen.

Banking Ombudsman:

The Banking Ombudsman is a senior official appointed by the Reserve Bank of India to redress customer complaints against deficiency in certain banking services.

Banks covered:

All Scheduled Commercial Banks, Regional Rural Banks and Scheduled Primary Co-operative Banks are covered under the Scheme.

Grounds of complaints:

The Banking Ombudsman can receive and consider any complaint relating to the following deficiency in banking services (including internet banking):

- non-payment or inordinate delay in the payment or collection of cheques, drafts, bills etc.;
- non-acceptance, without sufficient cause, of small denomination notes tendered for any purpose, and for charging of commission in respect thereof;
- non-acceptance, without sufficient cause, of coins tendered and for charging of commission in respect thereof;
- non-payment or delay in payment of inward remittances ;
- failure to issue or delay in issue of drafts, pay orders or bankers' cheques;
- non-adherence to prescribed working hours ;
- failure to provide or delay in providing a banking facility (other than loans and advances) promised in writing by a bank or its direct selling agents;
- 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 in any savings,current or other account maintained with a bank ;

- complaints from Non-Resident Indians having accounts in India in relation to their remittances from abroad, deposits and other bank-related matters;
- refusal to open deposit accounts without any valid reason for refusal;
- levying of charges without adequate prior notice to the customer;
- non-adherence by the bank or its subsidiaries to the instructions of Reserve Bank on ATM/Debit card operations or credit card operations;
- non-disbursement or delay in disbursement of pension (to the extent the grievance can be attributed to the action on the part of the bank concerned, but not with regard to its employees);
- refusal to accept or delay in accepting payment towards taxes, as required by Reserve Bank/Government;
- refusal to issue or delay in issuing, or failure to service or delay in servicing or redemption of Government securities;
- forced closure of deposit accounts without due notice or without sufficient reason;
- refusal to close or delay in closing the accounts;
- non-adherence to the fair practices code as adopted by the bank or non-adherence to the provisions of the Code of Bank s Commitments to Customers issued by Banking Codes and Standards Board of India and as adopted by the bank ;
- non-observance of Reserve Bank guidelines on engagement of recovery agents by banks; and
- any other matter relating to the violation of the directives issued by the Reserve Bank in relation to banking or other services.

A customer can also lodge a complaint on the following grounds of deficiency in service with respect to loans and advances as prescribed under the said scheme.

Complaints Excluded:

Complaints arising out of frauds and forgery and subjudice cases (Supreme Court's observation that it would not be appropriate for BOs to give a finding on forgery or to form an opinion on cases already referred to courts).

Complaint not considered by the Ombudsman:

One s complaint will not be considered if:

- a. One has not approached his bank for redressal of his grievance first.
- b. One has not made the complaint within one year from the date one has received the reply of the bank or if no reply is received if it is more than one year and one month from the date of representation to the bank.
- c. The subject matter of the complaint is pending for disposal / has already been dealt with at any other forum like court of law, consumer court etc.
- d. Frivolous or vexatious.
- e. The institution complained against is not covered under the scheme.
- f. The subject matter of the complaint is not within the ambit of the Banking Ombudsman.

g. If the complaint is for the same subject matter that was settled through the office of the Banking Ombudsman in any previous proceedings.

Filing of Complaint:

The complainant can be filed by one s authorized representative (other than an advocate).

Prescribed Limit on the amount of compensation:

The amount, if any, to be paid by the bank to the complainant by way of compensation for any loss suffered by the complainant is limited to the amount arising directly out of the act or omission of the bank or Rs 10 lakhs, whichever is lower.

Compensation be claimed for mental agony and harassment:

The Banking Ombudsman may award compensation not exceeding Rs 1 lakh to the complainant only in the case of complaints relating to credit card operations for mental agony and harassment. The Banking Ombudsman will take into account the loss of the complainant s time, expenses incurred by the complainant, harassment and mental anguish suffered by the complainant while passing such award.

Limit for filing an appeal before Appellate Authority:

If one is aggrieved by the decision, one may, within 30 days of the date of receipt of the award, appeal against the award before the appellate authority. The appellate authority may, if he/ she is satisfied that the applicant had sufficient cause for not making an application for appeal within time, also allow a further period not exceeding 30 days.

Role of Appellate Authority:

The appellate authority may

- i. dismiss the appeal; or
- ii. allow the appeal and set aside the award; or
- iii. send the matter to the Banking Ombudsman for fresh disposal in accordance with such directions as the appellate authority may consider necessary or proper; or
- iv. Modify and pass such directions as may be necessary to give effect to the modified award;or
- v. pass any other order as it may deem fit.

From the above salient features, it is clear that the Scheme is introduced for considering certain deficiency in banking service including internet banking which are mentioned in the Scheme. In my opinion, I would go to the extent of stating that the term 'customer' or 'complainant' includes existing customer as well as potential customer who approaches the bank for a one-time transaction or a customer who approaches the Bank for creating or establishing a relationship.

It is also clear that BO cannot and should not take into consideration complaints arising out of frauds, forgery and sub-judice cases because the Scheme is intended for solving deficiencies which are particularly described and elaborated in the Scheme as mentioned above. The BO Scheme itself envisages the fact that it does not have

enough expertise or the manpower to deal with cases of fraud and forgery. Besides, it is also to be noted that cases alleging forgery or fraud requires an in-depth examination of evidence in detail under oath as also cross-examination of witnesses and examination of the documents by forensic experts. In short, it has to be done by proper court or an authority, which is bestowed upon with these powers under a statute. without such statutory powers, even if it is called a quasi judicial authority, ventures into the powers of the Court, will prove that the whole process will lack credibility and may not end up in giving fair justice. Dealing of such issues by such authorities, who have no powers or authority to enforce the Awards, strikes at the very root of the system.

Having said so, it has been noticed that contrary to what is intended by the BO Scheme and the purpose for which the Scheme is drawn up, BO has now started expanding their area and functions even to cases arising out of fraud and forgery and even in cases where police complaints have been filed. They have become all-rounder.

To cite an example is the common complaint of many of the customers of the Bank with respect to the fact that their account may have been a victim of phishing attack. Under the Scheme, in such phishing attack cases, BO cannot pass or sit in judgement over such cases and treat them as a deficiency in service and it does not include internet banking as envisaged under the Scheme. This is for the reason that phishing attack normally happens when the gullible customer parts with his vital internet details to a third party and based on those details, the outsider, who is in possession of these vital details, attempts or tries to hack into the account of the customer. It is to be noted that in all such successful cases of phishing attack, at no stretch of imagination can the Bank be penalized because as far as the fundamental principles of internet banking is concerned, when a customer or his authorized person logs into the system and executes a transaction by giving the correct password and PIN nos. which are only known to the customer and not even to the Bank, the Bank cannot be held to be liable to compensate the customer. In many of the cases, the BO normally takes a view that the system operated by the Bank may not be a secured system and therefore, this may have facilitated the phishing attack and therefore, banks have to compensate.

With due respect to BO Scheme, it is to be noted that BO by passing such Orders is forgetting a larger picture and is in fact acting as a catalyst in spurring such and many more phishing attacks by not allowing cyber crime police or the respective authorities established under the law to probe into such phishing attacks and to prevent them. In fact, BO is forgetting the fact that many such cases may have arisen from a country outside their territorial jurisdiction and money which may have been transferred to other accounts may have been used for activities which are against the nation. We are not forgetting the facts that in such cases, the fraudster also uses account of another gullible customer of any Bank to park his ill-gotten money which he has phished from the account of a gullible customer before finally transferring it to the destination.

In short, by passing such Orders to compensate the gullible customers, BO is nipping in the bud the action, which ought to have been taken by a qualified and empowered agency. It is also to be noted that even to come to such a conclusion, BO does not have enough experts on board nor are they qualified to deal with a phishing attack case.

They do not take the external experts opinion on this issue. It is always the customer v/s. the Bank and the Bank is always penalized on this spree.

BO has also in many gone a step further by awarding compensation to a non-customer as envisaged under the Scheme. In a typical case where a credit card recovery agent calls up 'A' and 'A' incidentally happens to be a non-customer or a credit cardholder, however, 'A' does not disclose this fact and plays along with the Recovery Agent. Thereafter, 'A' complains to the Ombudsman stating that 'A' was harassed by the recovery agents of the Bank and Ombudsman finds that systems and procedures of the Bank is not in conformity with the laid down guidelines and therefore, the compensation has to be paid to the complainant.

It is to be noted that the above argument of Ombudsman is highly illogical because assuming if the systems and procedures of the Bank are bad or is not in conformity with the stipulations, it is not the Ombudsman which can penalize the Bank because Ombudsman does not have the power to penalize the Banks for such issues. It has to refer the matter to the concerned Regulatory desk of the Regulator. It has only the power to compensate the customer for deficiency in the service. The non-customer who was harassed by the Bank should have approached a legal court or should have filed a police complaint and Ombudsman should not have entertained such a complaint.

There are so many such cases where Ombudsman, in its eagerness to settle the complaints, have gone overboard and has exceeded the jurisdiction and has forgotten the larger picture. The scheme is very clear as to what exactly are the types of complaints which it has to deal with. The usurping of the power of the court by Ombudsman may prove in the long run as a platform for certain elements who even after committing fraud may approach the Ombudsman, plead innocence and get compensation awarded against the Bank. In many cases the Ombudsman being an extension of the Regulatory Authority and since it is manned by serving officers always have an upper hand to force the Banks to come for a settlement without discussing or going deep into the Legal aspects of the case.

By the above submissions, it should not be construed that the author is totally against the concept of BO. What is intended is that BO should define its territories, roles and regulations and stick to the same and should not exceed its jurisdiction under the guise of solving the problems of the customers. It is an accepted fact that the Appellate system given under the Ombudsman does not provide any comfort for the simple reason that no personal hearings are given and there is hardly any Order passed by an Appellate Authority overturning or modifying the orders of Ombudsman. It is just another procedure confirming the Orders passed by the Ombudsman. The lack of the credibility of the Appellate Authority has dampened the right of either the customer or the Bank to approach the Appellate Authority with vital points.

The only alternate to make BO more transparent and real quasi judicial authority is to revamp the Ombudsman Scheme and make it an independent body as it was by disassociating it with the serving employees of RBI and also making it as a multimember body by appointing people with adequate knowledge in law, banking, accounting and

IT related areas and the Appellate Authority may also be disassociated by appointing an independent body and de-linking it from the serving employees of RBI. This will provide much more transparency, impartiality and legality to the orders passed by Ombudsman as well as the Appellate Authority.

Till such time, BO Scheme will be considered to be an extension of an Executive function and over the years it will give rise to clashes between the established law and practices and the exercise of the jurisdiction which are not extended with the Ombudsman, which is not a statutory authority, and will only provide ample Forum for fraudsters to thrive. Ombudsman should stick to simple and clear-cut violation of deficiency of service between the customer and a banker within the parameters defined therein. It is to be noted that for the survival of any institution, credibility and impartiality and transparency is most essential. This information to be adhered to at all times. If not, both banks and customers will loose faith in the system.

The justice system be it exercised by a quasi-judicial authority or a Court has to follow fair and equitable rules. The founding fathers of our constitution have therefore derived that Executive, Legislative and Judicial functions should be independent of each other. This is to ensure impartial dispensation of Justice. Justice as they say has not only be said to be done but has to be seen to have been done.

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