

IN THE HIGH COURT OF SINDH KARACHI

Before:

**Justice Muhammad Saleem Jessar
Justice Nisar Ahmed Bhanbhro**

CP No.D-6832 of 2020

(United Bank Limited v. Federation of Pakistan and 2 others)

Petitioner: Through Mr. Shahan Karimi, Advocate
Respondent No 3: Through Mr Ali Hassan Abro, Advocate
Respondents No 1 & 2 Through Ms. Zaharah Sahar Vayani,
Assistant Attorney General

Date of hearing and order: 11.02.2026
Date of Reasons: 27.02.2026

ORDER

NISAR AHMED BHANBHRO, J. Through this petition, the petitioner has challenged the concurrent findings of the two fora, whereby the order dated 27.11.2019 passed by learned Banking Mohtasib Pakistan in Complaint No. 2018-1542 filed by Respondent No 3 was maintained vide order dated 24.09.2020 passed by the Director (Legal-II), President's Secretariat (Public) / Respondent No.1 in representation filed by the Petitioner / United Bank Limited.

2. Learned counsel for the petitioner contended that Respondent No. 3 maintained a savings account with the petitioner bank and had duly activated internet banking through his ATM card, PIN and OTP sent to his registered mobile number. It is submitted that Respondent No. 3 admittedly shared his confidential banking credentials with an unknown person impersonating as a public official, where after certain IBFT transactions amounting to Rs.741,000/- were effected. Upon complaint, the matter was investigated by the petitioner's Anti-Fraud Division, which confirmed that the transactions were authenticated through valid credentials and OTP, and that the bank had complied with the minimum security standards prescribed by the State Bank of Pakistan. He contended that the efforts to recover the transferred amount from the beneficiary banks proved futile as the funds had already been withdrawn. Learned counsel submitted that Respondent No 3 filed complaint with Bank Mohtasib which was initially declined, holding that the petitioner could not be fastened with liability. However, in

review, the said finding was reversed without lawful justification, and the complaint was allowed by imposing financial burden upon the bank. He contended that the representation preferred before Respondent No. 1 was dismissed in a mechanical manner. According to him, the impugned orders suffer from misreading of record and failure to appreciate that the loss occurred due to the voluntary disclosure of confidential information by Respondent No. 3, and not on account of any lapse on the part of the petitioner bank. He placed reliance on the cases of **United Bank Limited v. President of the Islamic Republic of Pakistan and others (2025 CLD 834)** and **Barclays Bank UK PLC v. Philipp (2023 SCMR 1457)** and prayed for allowing instant petition.

3. Learned counsel for Respondent No. 3 submits that Respondents No. 1 and 2 have recorded concurrent findings vide orders dated 27.11.2019 and 24.09.2020, which call for no interference. He contends that the petitioner bank, being custodian of the account of Respondent No. 3, was under a legal obligation to ensure its safety. Despite immediate intimation by Respondent No.3 on 26.09.2018, within a short span of the alleged fraudulent transactions, no effective preventive steps were taken by the petitioner to block or secure the funds amounting to Rs.741,000/-. It is submitted that the complainant promptly contacted the helpline and also approached the concerned branch, yet the matter was not addressed with due diligence. Learned counsel further submitted that although the complaint was initially declined, the review petition filed by Respondent No.3 was rightly allowed by the Ombudsman after considering the material, including the FIA report, and the petitioner bank was directed to refund the disputed amount. The representation/appeal preferred by the petitioner before the President of Pakistan was also dismissed, thereby affirming the direction for refund. According to him, the impugned orders are well-reasoned and based on proper appreciation of facts and law, thus petition warrants dismissal.

4. Heard arguments of the parties and perused the material made available before us on record.

5. From scanning of the record it transpires that the Respondent No.3 lost a considerable amount lying in his account through online fraud viz. he disclosed secret information relating to his account maintained in the Petitioner Bank viz. United Bank Limited (UBL) on a call purportedly received from a person claiming to be a member of Armed Forces . The Respondent No.3 filed a complaint with the Bank that was forwarded to the

concerned quarters. On failure to receive any response, the Respondent No.3 filed a complaint with Banking Mohtasib Pakistan. It transpires from the record that the Banking Mohtasib Pakistan initiated hearing in the complaint and on proper inquiry dismissed the same vide order dated 31.12.2018. For the sake of convenience the findings of the Banking Mohtasib, Pakistan in the said order are reproduced below:-

“Since the monies have been withdrawn by the fraudsters through malicious activity, while the Bank remains compliant to the existing regime of controls and firewalls prescribed by the regulator, to hold the Bank responsible for any maladministration will not be correct. Since the fraudulent acts and activities are involved, you may initiate the matter with FIA, Cyber Crime and pursue your inquiry with the Agency or the competent court of law, if you are so advised.

We are also advising both the issuer and beneficiary banks. i.e. United Bank Limited, Allied bank Limited and Standard Chartered Bank (Pakistan) Limited, to file a complaint with the FIA and the Pakistan Telecommunication Authority (PTA) wherein the salient facts of complaint should be referred to them for investigation and appropriate action, in pursuance of the terms of extraordinary meeting held at SBP Payment System Department on May 28, 2009.

In the view of foregoing facts, the Hon'ble Banking Mohtasib Pakistan under Section 82D (5) of the BCO, 1962 had closed your Complaint as 'Declined'.

Please note that under Section 13 and 14 of the Act XIV of Federal Ombudsmen Institutional Reform Act, 2013 any person aggrieved by the findings / recommendations of the Banking Mohtasib Pakistan may file a review with this Office or Representation with the President of Islamic Republic of Pakistan within 30 days from the date of these findings.”

6. From the findings rendered by the Banking Mohtasib in its order dated 31.12.2018 it was held that the deduction of the amount from the account of the Respondent No 3 was result of fraud and such fraudulent actions are subject matter of FIA Cyber Crime therefore the parties were advised to pursue their respective claims by lodging the complaint with FIA.

7. It appears that a review application was filed by Respondent No.3 before the Banking Mohtasib, which was disposed of vide order dated 27.11.2019, wherein it was held that the Bank had been unable to protect the interest of the account holder, no matter the customer divulged his personal information to an unknown caller, therefore, the Petitioner /UBL being the banker of the complainant was required to make good of the loss by crediting the Respondent No 3/Complainant's account with the sum of

Rs.741,000/-. For the sake of convenience, findings in the order dated 27.11.2019 are reproduced below:-

“18. It is apparent from the above discussion that the banks have not been able to protect the interest of account holder. No matter the customer has divulged his personal information to an un-known caller, which he should not have done, but primary question remains that had this facility not become functional by default automatically without knowledge of account holder in violation of prescribed Rules & Regulations and that too without disclosures of terms & conditions of transfer, the account holder would have been saved from the loss. I, therefore, under the powers vested vide Section 82D of BCO 1962 read with Section 9 of the Federal Ombudsmen institutional Reforms Act No. XIV of 2013, advise as under;

- a. UBL, being the Banker of the Complainant, to make good the loss by crediting the Petitioner/Complainant's account with a sum of Rs. 741,000/- in pursuance of above findings. UBL may claim the funds from the beneficiary banks for the amounts withdrawn post its intimation for blocking the funds, if so advised.
- b. From the case facts discussed above, the representatives of SCB and ABL who attended, the hearing do not appear to be well versed with the regulatory provisions stipulated by SBP. The lack of timely action by these banks in this case has resulted in financial loss to the Complainant. The management of SCB and ABL may consider proper training of all concerned staff and gearing their infrastructure to comply with the regulatory provisions in this regard.

8. Petitioner being aggrieved, filed representation in the President Secretariat against the orders passed by the Banking Mohtasib, Pakistan, which was heard however dismissed vide order dated 24.09.2020 besides maintaining the order, the Petitioner Bank was directed to pay the cost of expenses to the Respondent No.3.

9. From the careful examination of the first order of the Banking Mohtasib it can be safely held that the Respondent No 3 & Petitioner Bank were directed for initiating a criminal case against the fraudsters, who defrauded the Respondent No.3 and transferred the amount in their own accounts. From the perusal of the complaint filed by the Respondent No.3, it can be deduced that it was a crime committed by the persons, who made a phone call to Respondent No.3 and disclosed themselves to be the personal of law enforcement agencies. All the Banks at the time of issuance of Automated Teller Machine (ATM) cards provides end user customer policy to the client, which contains clear instructions that in no eventuality the pin code of the card shall be shared with any other person. In case a person is

trapped and discloses his personal information to any other person, in the said eventuality the Bank cannot be held responsible and for this very reason the Banking Mohtasib through its order dated 31.12.2018 had dismissed the complaint of Respondent No.3.

10. Section 82E of the Banking Companies Ordinance, 1962, mandates the Banking Mohtasib to deal with the complaints in the manner envisaged thereunder. Before proceeding further it would be appropriate to reproduce below the provisions of Section 82 E for the ease of reference:

“82E. Recommendations for implementation. – (1) In the event the Banking Mohtasib comes to the conclusion that the complaint is justified, in part or in whole, he shall try and facilitate an amicable resolution or settlement by resort to mediation and failing that communicate his findings to the concerned bank with the direction –

- (a) to reconsider the matter;*
- (b) to modify or cancel the earlier decision, action or failure to take the appropriate action;*
- (c) to pay reasonable compensation to the complainant as fixed by the Banking Mohtasib;*
- (d) to take the requisite steps to improve the functioning or efficiency of the bank; and*
- (e) to take such other remedial steps or actions as may be specified by the Banking Mohtasib.*

(2) The Banking Mohtasib may, in any case, he deems fit or proper, forward a report to the State Bank recommending –

- (a) an inquiry, or the taking of the requisite steps or legal proceedings against a bank which has acted in violation of banking laws, procedure, regulations or directives of the State Bank; and*
- (b) in the case of a bank in the public sector in cases of banking malpractices or corruption, nepotism or gross and flagrant dereliction by bank officers of their duties and responsibilities, the initiation of such action including a criminal prosecution or disciplinary proceedings as the State Bank may deem fit, either by itself, or through filing a report with the Government of Pakistan.*

(3) In no case whatsoever shall be Banking Mohtasib have the power to direct that loans, advances or finances be given to a complainant.

(4) *Any bank, or official of a bank, or a complainant aggrieved by any order passed by the Banking Mohtasib may, within thirty days of the order, prefer an appeal to the Governor State Bank, who shall decide the appeal within sixty days.*

(5) *The findings of Banking Mohtasib shall be implemented by the concerned bank or financial institution within forty days and compliance thereof shall be submitted accordingly. In case an appeal against the decision of the Banking Mohtasib is preferred to the Governor State Bank the aforesaid period of forty days shall be reckoned from the date of decision of appeal.*

(6) *Any order passed by the Banking Mohtasib which has not been appealed against within a period of thirty days from the date of order, or any order passed by the State Bank in appeal, as the case may be, shall become final and operative and if not implemented shall render the bank concerned to such action including the imposition of a fine or penalty as the State bank may deem fit, and in relation to a bank officer, to the appropriate disciplinary or other proceedings.*

(7) *Nothing contained herein shall prevent a complainant from filing a suit against a bank in the event his complaint is rejected."*

11. From perusal of above provision of law it is crystal clear that Banking Mohtasib if finds that the the complaint is justified, in part or in whole, he shall try and facilitate an amicable resolution or settlement by resort to mediation and failing that communicate his findings to the concerned bank with the direction to reconsider the matter; to modify or cancel the earlier decision, action or failure to take the appropriate action; to pay reasonable compensation to the complainant as fixed by the Banking Mohtasib; to take the requisite steps to improve the functioning or efficiency of the bank; and to take such other remedial steps or actions as may be specified by the Banking Mohtasib. In the matters of criminal nature the Banking Mohtasib may, in any case, he deems fit or proper, forward a report to the State Bank recommending an inquiry, or the taking of the requisite steps or legal proceedings against a bank which has acted in violation of banking laws, procedure, regulations or directives of the State Bank; and in cases of banking malpractices or corruption, nepotism or gross and flagrant dereliction by bank officers of their duties and

responsibilities, the initiation of such action including a criminal prosecution or disciplinary proceedings as the State Bank may deem fit, either by itself, or through filing a report with the Government of Pakistan.

12. It further transpired from the scheme of law embodied in section 82E that order passed by the Banking Mohtasib was appealable within a period of 30 days. It reflects from the record that the order dated 31.12.2018 passed by the Banking Mohtasib was not assailed in an appeal by the Respondent No.3 and by virtue of the operation of law it became final. The review petition, which was filed by the Respondent No.3 in the month of May, 2019, four months after the issuance of the earlier order, as such was not maintainable, as there existed no provision of law empowering Banking Mohtasib to re-open a case once closed. Therefore, reopening of the case by the Banking Mohtasib was not tenable under the law.

13. It is pertinent to notice that complaint filed by the Respondent No 3 pertained to a fraud for which the recourse available with the complainant was to lodge a complaint with FIA. In any manner Respondent No 3 failed to demonstrate that the Bank was responsible for the said fraud. On the contrary Respondent No 3 himself became prey to such fraud, knowing well that the pin code for ATM was auto generated and was kept secret. Petitioner was required to ensure that such pin code did not leak, he failed to show the connivance of bank for such fraud. However it was for the FIA to probe and unearth the involvement of bank in the online fraud. It was then, if during the course of inquiry if the FIA found that the loss so occurred to the Respondent No 3 was a result of an act of omission or negligence on the part of Petitioner Bank, he could have claimed refund from the bank. It is further a matter of record that the Bank on receiving the complaint from Respondent No 3 referred the same to FIA Cyber Crime Cell clearly mentioning names of the persons and their accounts numbers wherein the amounts after debit from the accounts of Respondent No 3 were parked, as such the FIA Cyber Crime Cell should have caught hold of the fraudsters without delay. The Banking Mohtasib in the given circumstances had no jurisdiction as articulated under section 82 B of the Banking Companies Ordinance to entertain the complaint filed by the Respondent No 3. Rather the assumption of jurisdiction by Banking Mohtasib divested the FIA from

proceeding with the inquiry. Since the matter is sub-judice before the agency responsible to prosecute fraudsters of Cyber crime, FIA are expected to conclude the said inquiry within shortest possible time and to ensure that the culprits are brought before the court(s) of law and justice is done to the Respondent No.3.

14. The case laws relied upon by the Learned Counsel for the parties with due reverence are distinguishable being on different footings.

15. For the aforementioned reasons, this petition is *accepted*; the orders dated 27.11.2019 passed by the Banking Mohtasib, Pakistan and dated 24.09.2020 of the Director (Legal-II) of the President's Secretariat are *set aside*. The parties to bear their own costs.

16. These are the reasons of our short order dated 11.02.2026, whereby this petition was allowed.

JUDGE

**JUDGE
HEAD OF CONST. BENCHES**

Nadir/B-K Soomro

Approved for reporting