

**Banks Imposing Ceiling Limit In Non-Base Branches To Prevent Frauds Does Not Violate Banking Regulations Act Or NI Act: Madras High Court**

**2022 LiveLaw (Mad) 480**

**THE HIGH COURT OF JUDICATURE AT MADRAS**

**N. SATHISH KUMAR; J.**

**W.P.No.18656 of 2008; 16.11.2022**

**G. Deepa versus General Manager, ICICI Bank Ltd.**

**Prayer:** Writ Petition filed under Section 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for all the records on the file of the 5<sup>th</sup> Respondent in DBOD.No.Com.Bc.28/C.408(A)-81 as illegal and unconstitutional opposed to the Negotiable Instruments Act, 1881, set aside the same and consequently direct the 1<sup>st</sup> Respondent to pay compensation to the petitioner amounting to Rs.1,00,000/- for failing to honour the value of the cheques without any justifiable reason.

*For Petitioner : Mr. Sunny Sheen for Mr. V. Raghavachari*

*For Respondents : Mr. A.K. Sriram for M/s. A.S. Kailasam Associates, [for R1, R3 and R4] Mr.T. Poornam [for R2 & R5]*

**ORDER**

This Writ Petition has been filed to set aside the circular in DBOD.No.Com.Bc.28/C.408(A)-81 on the file of the 5<sup>th</sup> Respondent in DBOD.No.Com.Bc.28/C.408(A)-81 as illegal and unconstitutional opposed to the Negotiable Instruments Act, 1881, and direct the 1<sup>st</sup> Respondent to pay compensation to the petitioner amounting to Rs.1,00,000/- for failing to honour the value of the cheques without any justifiable reason.

**2.** The 2<sup>nd</sup> Petitioner was impleaded on 30.09.2022.

3.a. It is the case of the Writ Petitioner that the 2<sup>nd</sup> Petitioner is an account holder with 3<sup>rd</sup> Respondent in Account No.00201005546 and issued a cheque for Rs.48,000/- dated 28.07.2007 in favour of the 1st Petitioner to withdraw the amount on his behalf. The amount was required for the purpose of paying the fees and expenses for the 2<sup>nd</sup> Petitioner's son's admission. Since the 2<sup>nd</sup> Petitioner was in Bangalore and could not come down to Chennai personally on that date, he nominated the 1<sup>st</sup> Petitioner as his agent to withdraw the amount for making payment to the college. The cheque was drawn in 1<sup>st</sup> Petitioner's name. When the cheque was deposited with the 1<sup>st</sup> Respondent for withdrawing the money, he was not given the amount. It is informed that the amount below Rs.15,000/- alone would be honoured. Therefore, it is the contention of the 1<sup>st</sup> Petitioner that even the account holder cannot withdraw money for his emergency needs, if the amount is over Rs.50,000/-. Thereafter, cheque was returned stating that the third party cash withdrawal limit exceeds Rs.15,000/- at non-base branch. According to the Petitioner the money is not that of the bank but of the customer. The bank is bound to return the sum as and when demanded, if available in the account. When there is no rule stipulating the upper limit for deposit of a sum, equally there could not be a ceiling for withdrawal. Not honouring the cheque despite having sufficient sum is against the performance object of the Negotiable Instruments Act as well as the Banking Regulation Act. The complaint made to the RBI also not taken seriously. The RBI cannot frame arbitrary rules to deny withdrawals of amounts fixing a ceiling limit. At best it can only satisfy itself as to the person who is seeking for withdrawal of the amounts and nothing more.

**3.b.** When the 1<sup>st</sup> Petitioner came to know that the Circular No.DBOD No.com.BC.28/c.408(A)-81 dated 23.02.1981 wherein RBI instructed that the Bank may

consider fixing the suitable ceiling beyond which no cash withdrawal should ordinarily be allowed unless the account holder himself is personally present to withdraw the money. It is also stated that as far as the cash withdrawal ceiling limit for self withdrawal it was represented that they have not issued any guidelines. According to the Petitioner, 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondent fixing ceiling limit for self withdrawal cannot be permissible as no regulations were issued by the Reserve Bank of India. Therefore the policy of the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents is contrary to the guidelines issued by the Reserve Bank of India. The Reserve Bank of India's guidelines fixing the cash withdrawal limits unless the account holder himself is personally present is also contrary to the Banking Regulation Act, the Negotiable Instrument Act and against the public policy. Therefore, the writ petitioner is challenging the circular issued by the RBI. The artificial restrictions imposed by the 4<sup>th</sup> Respondent is contrary to the Banking Regulation Act and is unmindful of the value of money which is affected by constantly by inflation. Hence, the Writ Petition seeking to set aside the circular and also claim compensation of Rs.1,00,000/- for failing to honour the value of cheque without any justifiable reason and render justice.

**4.a.** The 1<sup>st</sup> Respondent filed a counter stating that due to the changes in regulatory and supervisory practices of the banking industry and the financial market in general, many regulatory prescriptions have been issued by the RBI, some of them are issued in the form of directions in exercise of the powers contained in section 35A of the Banking Regulation Act, 1949, while several others are issued as 'prudential norms'. These prescriptions have a regulatory flavour and are meant to be followed by all banks, and as such, are in the nature of directives/guidelines. As per Section 45JA in the RBI Act, the banks have Power to determine policy and issue directions.

**4.b.** A Circular No.DBOD.No.Com.BC.109/C 408(A)-77 BC dated October 1,1977 in which, the major fraud prone areas as also the safeguards and administrative measures which are considered essential for prevention of frauds were briefly indicated. It was observed that frauds are generally perpetrated due to non-observance of the prescribed safeguards by the Bank Officials. The main areas in which frauds have taken place are by way of fraudulent withdrawal of funds from deposit accounts. With a view to reduce the incidence of fraud in the above areas, Reserve Bank of India issued a subsequent Circular No.DBOD.No.Com.BC 28/C.408 (A) 81 dated February 23,1981 directing Banks to fix suitable ceilings beyond which no cash withdrawal should ordinarily be allowed, unless the account holder himself is personally present to withdraw the money.

**4.c.** It is also stated that the Bank introduced a concept of "Any Where Banking" by which the Customers or the third parties are facilitated to withdraw cash in non-base branch (where the account of the Customer was not originally opened). Keeping in mind the spirit and purpose behind the above RBI Circulars and in compliance thereof, this Respondent fixed limits for withdrawal of cash in non-base branches by the Customer or by the third parties viz. bearer of the cheque. Accordingly this Respondent issued a Circular No.RCLG170/Feb.25,2004 under Circular No.653 wherein the maximum limit for cash withdrawal by a third party through non-base branch is fixed at Rs. 15,000/- and by the Customer through non-base branch is fixed at Rs.50,000/-. However this Respondent did not fix any ceiling limit for cash withdrawal by the third party or by the Customer from the base branch where the account was opened by the Customer. This is because the base branch has all the KYC details of the Customer and hence the base branch can easily verify the credentials of the Customer/Bearer if the cheque is presented by the Customer or by a third party.

**4.d.** By virtue of the powers vested in it by the RBI and through its various guidelines and directives this Respondent has evolved a policy in various matters and these issues are made known to the constituents when they open accounts. There is an express consent, on the part of the constituent to abide by the terms and conditions of the bank and the same cannot be questioned by a 3<sup>rd</sup> party.

**4.e.** The cheque in question is only a bearer cheque. It is not a self cheque and when the same was presented by the Petitioner exceeded the limit of Rs.15,000/-fixed for non-base branch by a third party, this Respondent was constrained to return the Cheque on July 28, 2007 on the ground "Third party cash drawing limit exceeds Rs. 15,000/-in non base branch" and it was also explained to the petitioner about the policies of the Reserve Bank of India by which this Respondent is constrained to restrict the payment of cash to a third party in a non base branch beyond a particular amount viz. Rs. 15,000/-. The said directive policy of Reserve Bank of India and the policies framed by this Respondent is neither violative of Negotiable Instruments Act, 1881 nor contrary to terms of the Banking Regulation Act, 1949.

**4.f.** The Petitioner is not a Holder in Due Course. He only to help the account holder to withdraw the amount for making payment of education fees for the Customer's son. Hence the Petitioner being not a Holder in Due Course has no *locus standi* before this Court to challenge the validity of the directives of the Reserve Bank of India or the policies of this Respondent. No compensation or damages can be awarded to a 3<sup>rd</sup> party in the event of the bank following its own guidelines and the 3<sup>rd</sup> party can only look to the constituent for ventilating their grievance. The petitioner has no privity of contract with the Bank and therefore, cannot seek any remedy as against the Bank.

**4.g.** It is also stated that the Writ Petition is not maintainable against the Respondent which is a Public Limited Company registered under the provisions of the Companies Act 1956. Respondent being a Private Sector Bank is not a State or instrumentality of a State within the meaning of Article 12 of the Constitution of India and hence the petitioner cannot invoke the jurisdiction of this Court.

Hence prayed for dismissal of the writ petition.

**5.a.** Respondent 2 & 5 filed a counter stating that the dispute relates to cash withdrawal by a third party through cheque. It is an issue between the ICICI Bank and its customer. The opening of an account and its operation is governed by the contract entered into between the parties and the law on the subject. The writ petition is not appropriate remedy in such disputes. The writ petitioner has no locus standi to question the validity of the circular DBOD No Com.BC 28/C408(A)-81 dated February 23, 1981 issued by the RBI. The ICICI Bank, vide its letter dated November 19, 2007, addressed to the RBI and in its reply to its account holder inter-alia, stated that they have their own framed policy on anywhere payments prescribing a limit of Rs.15,000/- on third party withdrawal The ICICI Bank has not relied upon the Circular DBOD No Com. BC 28/C 408(A)-81 dated February 23, 1981 of the RBI in respect of its action.

**5.b.** The circular was issued in the context of incidence of frauds in banks. The writ petitioner cannot question the circular in which several safeguards are prescribed in the interest of banking policy of the country and the depositors on the ground that she is aggrieved by the action of the ICICI Bank for not allowing her to withdraw cash beyond the limit of Rs 15,000/- from the SB Account of her Brother-in-Law in terms of their internal policy. Circular has been issued by RBI analysing the causes for frauds in banks and the steps to be taken to prevent their recurrence. With a view to reduce the incidence of frauds

in banks, the RBI suggested certain safeguards which may be beneficially adopted by the banks. The safeguards were suggested by the RBI in the interest of banking policy and the depositors. The circular dated 23 February, 1981 issued by the RBI itself explains the circumstances under which and considerations based on which the safeguards stated therein were suggested. As regards the operations of savings bank accounts, the RBI has after observing the modus operandi largely used for fraudulent withdrawals, reiterated the precautions which have been circulated by the Indian Banks Association (IBA), vide their letter No. S0/52 30-B-1/2005 dated April 3, 1970 to its member banks. Referring to the precautions issued by the IBA which were being followed by most of the banks, the RBI reiterated the precautions issued by IBA that the banks may consider fixing suitable ceilings beyond which no cash withdrawal should ordinarily be allowed, unless the account holder himself is personally present to withdraw the money. The safeguards suggested by the RBI are merely guidelines with liberty to the banks to frame their own policy on the subject. Further, the safeguards suggested by the RBI in the case of operations of savings bank accounts are not new and has been in vogue among banks as a practice aimed from a precautionary angle to avoid frauds and forming part of their internal policies/instructions.

**5.c.** It is further contented that language of the circular that they are only recommendatory in nature and are not mandatory. The circular is aimed at protecting the interest of the customers and is not intended to cause any inconvenience to the customers of the bank. The RBI has not prescribed any ceiling in the circular and only suggested to the banks that they may consider fixing suitable ceiling beyond which cash withdrawal should not be allowed unless the account holder himself is present to withdraw the money. The guidelines issued by the RBI are in the interest of the public and banking system of the country. They are not contrary to the provisions of the Banking Regulations Act, 1949 or the Negotiable Instruments Act, 1881, and they are issued in furtherance of banking policy of the country and in the interest of the depositors.

**6.a.** Learned counsel appearing for the Petitioner would submit that the 2<sup>nd</sup> Petitioner issued a cheque in favour of the 1<sup>st</sup> Petitioner for the purpose of withdrawing the amount to pay the fees of his son. When the same was presented with the 1<sup>st</sup> Respondent Bank, the same was dishonoured despite there are sufficient funds in his account. It is his contention that later he came to know that the limit has been fixed by the bank on the basis of the circular issued by RBI. According to him such restrictions for withdrawal violates the constitutional rights of the petitioner to withdraw the amount. According to him it is the money belongs to the customer and the bank is bound to honour the cheque once issued. Hence submitted that the very circular issued by RBI has been questioned in the Writ Petition. The Writ Petition is very well maintainable.

**6.b.** It is his further contention that recommendation and circular were issued by RBI in the year 1981. Now, KYC is done online and every branch, whether the bank is base or non-base bank can verify through online. Therefore, continuing the limit based on the above circular violates the rights of the customer. It is also contended by the learned counsel for the petitioner that fixing a limit for withdrawal for the customer through his own cheque will amount to depriving his money. Therefore, he submitted that such circular is violative of the Article 300-A of Constitution, the same has to be set aside. In support of his contention he relied upon the following judgments:

1. *Pearson Drums & Barrels Pvt.Ltd., vs. The General Manager, Consumer Education & Protection Cell of Reserve Bank of India and Ors.* [MANU/WB/0194/2021]

2. *Bombay Dyeing & Manufacturing Co. Ltd., vs. The State of Bombay and Ors. [AIR 1958 SC 328]*

7. Learned counsel appearing for the 1<sup>st</sup> Respondent submitted that the Petitioner submission is different from his stand taken in the writ petition. According to him, the Writ Petition itself was originally filed by the bearer of the cheque. Whereas the 2<sup>nd</sup> Petitioner was impleaded only in the year 2022. Therefore claiming compensation is not maintainable. Further, RBI guidelines, circular have been issued only in order to prevent the fraud. The bank has framed its own policy for withdrawal of money in a non-base bank. When the account holder is aware of above fact now cannot complain that the cheque has not been honoured. Hence submitted that the writ petition is not maintainable. Hence prayed for dismissal.

8. The learned counsel appearing for the RBI submitted that the Circular has been issued taking note of various frauds committed in the bank. It is only recommendatory. It is suggested to the bank to frame its own policy. Accordingly, it is not violative of the Banking Regulation Act as well as Negotiable Instruments Act and submitted that the Writ Petition is not maintainable. In support of his contention he relied upon the judgment of the Hon'ble Supreme Court in *Federal Bank Ltd., vs. Sagar Thomas and Ors. [AIR 2003 SC 4325]*

9. The writ petition originally filed by the 1<sup>st</sup> Petitioner who said to be the sister-in-law of the 2<sup>nd</sup> Petitioner. 2<sup>nd</sup> Petitioner was impleaded only on 30.09.2022. The Writ Petitioner challenges the circular issued by the RBI No. DBOD.No.Com.Bc.28/C.408(A)-81 and also claiming compensation of Rs.1,00,000/-. It is the grievance of the 1<sup>st</sup> Petitioner is that when he presented a cheque for Rs.48000/- issued by the 2<sup>nd</sup> Petitioner, the same was not honoured by the non-base bank of the 1<sup>st</sup> Respondent on the ground that it exceeds Rs.15000/- limit. Therefore, according to the writ petitioner such a restriction is violative of Article 300-A of the Constitution.

10. It is relevant to note that in Circular No.BC.28/C.408(A)-81 dated 23.02.1981 the Reserve Bank of India issued various guidelines. One such guideline in Clause 2(II)(iii)(B) reads as follows:

**“2(II)(iii)(B) Operation of savings bank accounts**

*It is observed that the modus operandi largely used in fraudulent withdrawals involves obtaining by the culprits of a new cheque book on false grounds through a forged requisition and withdrawal of money by issuing forged cheques from such cheque books. Ways and means have, therefore, to be devised to thwart such attempts. With this end in view, we recommend the following precautions, which have already been circulated by the Indian Banks' Association, vide their letter No. SO/52-30B-1/2005 dated the 3rd April, 1979:*

i) *The bank may consider fixing suitable ceilings beyond which no cash withdrawal should ordinarily be allowed, unless the account holder himself is personally present to withdraw the money. We are aware that some of the banks are having such safeguards built into their systems. In such cases, we shall be glad if steps are taken to strictly enforce such restrictions.*

ii) *Whenever a request for fresh cheque book is received from a savings bank account-holder on a requisition slip, which does not belong to the cheque book issued to him earlier, a new cheque book should not be handed over at the counter but should be sent by 'Registered Post' to the customer, at the address as recorded in the books of the bank, unless the account-holder personally presents*

iii) *Similarly, when there is a request for change of address to be noted by the bank, the communication confirming that this has been noted should be sent both to the old address and new address by 'Registered Post'."*

11. On perusal of the above circular clearly shows that it is only recommendatory nature wherein it is suggested that the bank may consider fixing suitable ceilings beyond which no cash withdrawal should ordinarily be allowed, unless the account holder himself is personally present to withdraw the money. The entire guidelines have been issued taking note of the various fraudulent withdrawals of deposits in the banks all over the country. The guidelines in fact, is only recommendatory nature. It is suggested to the bank concerned to fix suitable ceiling. It is the contention of the 1<sup>st</sup> Respondent that for the safety and security of the customer accounts they framed their own policy on anywhere payment. According to them, for self withdrawal limit is Rs.50,000/- and 3<sup>rd</sup> party withdrawal is Rs.15,000/-.

12. Section 45-JA of the RBI Act reads as follows:

**45-JA. Power of Bank to determine policy and issue directions.—**

(1) *If the Bank is satisfied that, in the public interest or to regulate the financial system of the country to its advantage or to prevent the affairs of any nonbanking financial company being conducted in manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the non-banking financial company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any of the non-banking financial companies relating to income recognition, accounting standards, making of proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets and credit conversion factors for off balance-sheet items and also relating to deployment of funds by a non-banking financial company or a class of non-banking financial companies or non-banking financial companies generally, as the case may be, and such non-banking financial companies shall be bound to follow the policy so determined and the direction so issued.*

(2) *Without prejudice to the generality of the powers vested under sub-section (1), the Bank may give directions to non-banking financial companies generally or to a class of non banking financial companies or to any non-banking financial company in particular as to—*

(a) *the purpose for which advances or other fund based or non-fund based accommodation may not be made; and*

(b) *the maximum amount of advances of other financial accommodation or investment in shares and other securities which, having regard to the paid-up capital, reserves and deposits of the non-banking financial company and other relevant considerations, may be made by that non-banking financial company to any person or a company or to a group of companies.]”*

Therefore, the Power of the RBI to issue directions though it is recommendatory or mandatory is well within the statute as per Section 45-JA of the RBI Act.

13. As per Section 5 (c) (a) of the Banking Regulation Act, the meaning of “Banking Policy” is that any policy which is specified from time to time by the Reserve Bank in the interest of the banking system or in the interest of monetary stability or sound economic growth, having due regard to the interests of the depositors, the volume of deposits and other resources of the bank and the need for equitable allocation and the efficient use of these deposits and resources. Therefore, any guidelines or policies taken by the Reserve Bank in the interest of banking system, the same has to be followed. The Circular of the Reserve Bank includes various guidelines and recommended the banks to frame their own policy for restricting the ceiling limit in non-base branches. In such a view of the matter the same cannot be found to be violative of the Banking Regulation Act.

14. Therefore, merely because the circular has been issued which is in the recommendatory nature, suggesting such a ways and means to fix the ceiling limit in order to prevent the frauds by third parties in non-base branches, such circular cannot be violative of the Act. It is also relevant to note that it is the specific stand of the 1<sup>st</sup> Respondent that they issued Circular No.RCLG-170/Feb.25,2004 under Circular No.653 wherein the maximum limit for cash withdrawal by a third party through non-base branch is fixed at Rs. 15,000/- and by the Customer through non-base branch is fixed at Rs.50,000/-. The Circular of the RBI also makes it very clear that the limit has already done by some of the banks for having such safeguards built into their systems and requested other banks to enforce such system strictly by putting restrictions. Therefore, this Court is of the view that when the account holder open an account is aware of the restrictions for withdrawal in non-base bank they cannot complain about such restrictions. The Restrictions have been made as per the policy of the bank to prevent the fraud. Therefore, it cannot be construed to mean that it violates the Banking Regulation Act as well as the Negotiable instruments Act. If the cheque was presented in the base branch where account was maintained then it is dishonoured despite there is sufficient fund in the account, then it can be said that the drawee must compensate the drawer for any loss or damage caused such default as per Section 31 of the Negotiable Instruments Act. Admittedly, the account is maintained in the base branch of the 1<sup>st</sup> Respondent, whereas the cheque was presented in the non-base branch, where the account is not maintained, in such a view of the matter the petitioner now cannot take aid of Section 31 of the N.I. Act.

15. In the Internet era, withdrawals also available in all other branches other than the base-branch, the control and safeguard of the accounts of the customers is the primary concern of the banks. Therefore, while adopting certain policy for non-base bank for withdrawal same cannot be faulted with.

16. In a judgment of this Court in **S. Ramachandran vs. Union of India and others [W.P.No.4061 of 2012 dated 20.09.2022 Madrs High Court]** wherein this court has referred **R.K.Garg vs. Union of India and others [(1981) 4 SCC 675]** wherein it is held as follows:

*"Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved."*

17. Though the counsel appearing for the Petitioner placed reliance on the judgment of the Calcutta High Court in **Pearson Drums & Barrels Pvt.Ltd., vs. The General Manager, Consumer Education & Protection Cell of Reserve Bank of India and Ors. [MANU/WB/0194/2021]** wherein it is held that since the Reserver Bank of India is an instrumentality of the State, it comes squarely within the meaning of State. There is no dispute in that regard. The fact remains that the Petitioner is not only sought for quashment of the circular but also a compensation from the 1<sup>st</sup> Respondent/Private Bank. It is to be noted that in **Federal Bank Ltd., vs. Sagar Thomas and Ors. [MANU/SC/0769/2003]** the Apex Court has held that a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory

or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution.

**18.** Considering the above judgement and further fact that the 1<sup>st</sup> petitioner is only a bearer of the cheque and the 2<sup>nd</sup> Petitioner is a drawer. He has not filed the writ petition for any such relief. He has been impleaded only during the hearing of the case on 30.09.2022 after 14 years of the writ petition. That itself indicated that he has been impleaded only to support the case of the 1<sup>st</sup> petitioner. Even assuming that for claiming compensation same ought to have made only within a period of limitation.

**19.** Be that as it may. When the bank has made their own policy only for the purpose of putting up restrictions in the non-base bank. When the account holder consciously opened the account with all the restrictions in honouring the cheques in non-base branch cannot complain that the same is violative of the property right. When the Reserve Bank have power under statute to frame necessary guidelines and the banks also framed their own policy to prevent the fraud, it cannot be said that such restrictions in fact, violate the property right of the writ petitioners.

**20.** Accordingly I do not find any merits in the writ petition and the Writ Petition is dismissed. However, it is for the Reserve Bank and banks to modify the restrictions taking note of the online facilities available and the entire system is on Internet, to enhance the ceiling limit to balance the rights of the parties and banks.

**21.** With the above observation, the Writ Petition is dismissed. No costs.

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