

Dated 13<sup>th</sup> August 2011

To

**The Deputy Governor**  
Reserve Bank of India, Central Office  
1st Floor, Amar Building  
Sir P.M.Road  
Mumbai – 400 001

**Sub: Appeal Against the decision of the Banking Ombudsman, Bangalore**

Dear Sir,

I am the power of attorney holder for Mr S.Nagaraja, customer of Bank of India, Chandapur branch, Bangalore a/c no SB 848210110000933 and submit this appeal on his behalf against the decision of the Banking ombudsman, Bangalore in respect of the following complaint.

- A. Name of the Appellant:** Mr S.Nagaraja by Power of Attorney Holder, Na.Vijayashankar
- B. Name of the Complainant:** Mr S. Nagaraja, by Power of Attorney Holder, Na.Vijayashankar
- C. Name of the Bank:** Bank of India for self and on behalf of its agent Canara Bank
- D. Date of Complaint:** April 30, 2011
- E. BO Acknowledgement:** 12<sup>th</sup> May 2011: No: 201011002003052
- F. BO disposal:** Dated 25<sup>th</sup> July 2011

A copy of the original complaint with annexures as well as the copy of the BO reply is enclosed for more information.

**G. Grounds of Appeal:**

1. We contest the ruling of the BO as biased, incorrect and designed to unfairly favour the Bank and unfairly disfavor the customer.

The BO has exercised the privilege of rejecting the complaint choosing clause 13(c) and further indicated that the complaint is not eligible for appeal so as to shut us off from seeking the benefits under the Banking Ombudsman Scheme 2006. We consider that the decision is arbitrary and blatantly flawed.

The BO has deliberately shut his eyes off whatever simple evidence was available to him and states that he needs elaborate evidence and therefore is unable to consider the complaint.

If we are not provided the option to appeal and the decision is not reviewed, it would mean that any BO can take an arbitrary decision and declare it as a decision under clause 13(c), collude with the Banker and defeat the very objective of the Banking Ombudsman Scheme 2006. (BOS)

2. The BO has failed to follow due process as recommended in the BOS-2006 in arriving at his decision. Lack of due process is also an indication of the biased nature of the decision.

### **Substantiation:**

### **3. Facilitation of Mediation is the essence of BOS**

3.1 : According to Rule 7(2) of the Banking Ombudsman Scheme 2006 (BOS) the Banking Ombudsman (BO), “*..shall facilitate their (ed: disputes) satisfaction or settlement by agreement or through conciliation and mediation between the Bank concerned and the aggrieved parties..*”

3.2: Again according to rule 11 (1) the BO ought to have endeavored to “*promote a settlement of the complaint by agreement between the complainant and the Bank through conciliation or mediation*”, following “*Such procedure as he may consider just and proper*”

3.3: It is evident from the study of the Banking Ombudsman Scheme (BOS) that the scheme is envisaged as a facilitation of a “Mediation Process” where the Banking Ombudsman being a respected officer of the regulator brings the disputing customer and the Bank to a negotiating table to discuss the dispute and find a resolution.

3.4: However, despite our specific and repeated request, the BO failed to organize a mediation meeting and proceeded to arrive at his decision solely based on a written response received by him from the Bank which was inadequate and misleading.

3.5: The BOS does not envisage the BO to simply accept a statement given by the Bank as the truth and only the truth and reject even an opportunity for the complainant to present his case.

3.6: : By not giving an opportunity for the complainant to represent his case both before the Ombudsman himself and in a joint settlement meeting, the complainant has been denied an option to discuss the matter with the senior officials of the Bank and providing the necessary clarifications.

3.7: This is completely against the spirit of the BOS which is meant to improve the customer satisfaction. Instead of assisting the customer in resolving the dispute by appropriately mediating in the dispute resolution, the Banking Ombudsman has come to a judgment in total disregard to the duty cast upon him to facilitate the resolution of the dispute.

#### **4. Unreliable Information Considered by BO:**

4.1: According to the copy of the BO order, he has considered the following three documents to arrive at his conclusion.

- a) 9 pages of what appear to be a listing of some transaction details
- b) A print out of an e-mail sent from Bank of India to BO on 25<sup>th</sup> June 2011
- c) No Excess Cash found report in ATM 08880058 from Canara Bank

The information considered is unauthenticated and lacks credibility for reasons stated further.

4.2: The email of June 25, 2011 has been apparently sent from [Karnataka.cpd@bankofindia.co.in](mailto:Karnataka.cpd@bankofindia.co.in) to the BO.

It may be observed that

- i) The email is not digitally signed nor it contains the name of the officer who has sent it.
- ii) The body of the email states that
  - a) “Canara Bank has inform (Sic) that in the particular ATM CCTV facility is not available”
  - b) We have attach herewith cash balance report for that day
  - c) We have already provided you (1) JPT of all Txns (2) Switch log report
- iii) The e-mail however indicates that 5 attachments have been sent under the names 1.jpg (55kb), 2.jpg (253kb),3.jpg (205 kb),4.jpg(208kb), 5.jpg (200kb),6.jpg (210kb).

4.3: The way the e-mail has been constructed with basic mistakes in grammar indicates that it has not been sent by any officer of the Bank. Since it has neither been signed digitally nor it has even indicated the name of the official, the BO ought to have rejected the mail and insisted on an official correspondence from the Bank.

4.4: It may be observed that Bank of India had received the customer’s complaint on 21<sup>st</sup> March 2011 (letter to Zonal Manager) and the Banking Ombudsman has communicated the complaint to Bank of India around 12<sup>th</sup> May 2011. From 12<sup>th</sup> May 2011 to June 25, 2011, there was plenty of time for Bank of India to respond through an official letter in its letter head if it had no capability of sending digitally signed e-mails.

4.5: The fact that Bank of India failed to respond to the BO for such a long time itself should have been a matter on which the Bank ought to have been censured. The BO was however very kind to the Bank and accepted the unauthenticated three line report probably written by some low level

representative of the bank and proceeded to judge the fate of Rs 40,600/- lost by a customer of the Bank.

4.6: This approach of the BO indicated that he has no regard for the sanctity of the process of dispute resolution through the BOS.

4.7: The email indicates that six attachments have been sent along with the email. Read with the body of the message these six documents are something other than the JPT of all Txns and Switch log report.

4.8: It is not clear of JPT and Switch log report refer to the 9 page unsigned sheets of paper referred to in para 4.1 above. Even assuming that these 9 pages could be referring to JPT and Switch log report, why the BO has not considered it necessary to copy to the complainant the attachments 1.jpg to 6.jpg referred to in the e-mail remains unexplained.

4.9: The e-mail indicates that Cash Balance Report of “that day” is enclosed. It is not clear what is meant by “that day”. The report refers to not finding excess cash on 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> of December 2010 and 2<sup>nd</sup> January 2011 in ATM 08880058 of Canara Bank.

4.10: The BO has failed to recognize that there is no relation between “Not finding excess cash” and the present complaint. The complaint has actually arisen only because somebody drew cash from the ATM of Canara Bank and the ATM accounted it for Bank of India and to the particular account of the complainant on the basis of what can be said to be a wrong electronic reading of the card information. The responses of Canara Bank as well as Bank of India were therefore unrelated and the BO was naïve enough to simply accept it and proceed.

4.11: The BO had also failed to recognize an open admission of Canara Bank which was the agent of Bank of India in respect of this complaint that there was no CCTV in the particular ATM which is a gross violation of the RBI guidelines on the security of transactions through ATM.

4.12: Information Security Guidelines issued by RBI dated 11<sup>th</sup> March 2002 has stated “Additional precautions should be taken to reduce robbery and vandalism to the machines (ed: ATMs) e.g. through installation of CCTV etc.”

4.13. It is noted that the Banking Codes and Standards Board of India through the standard “Code of Commitment to Customers,”- August 2009 version (page 29) has indicated that CCTV will be installed for close surveillance as part of ATM security.

4.14: Canara Bank has also adopted this code as per the document available in its website and committed that “ ..we will install CCTV for close surveillance as part of security arrangements”.

4.15: The admission of Canara Bank that there was no CCTV was therefore a direct contravention of the Canara Bank’s own commitment to public.

4.16: The BO did not need any evidence beyond this point of self-admission by Canara Bank.

4.17: Though our complaint has been on Bank of India since the customer maintained his account with Bank of India, Canara Bank has in this case acted as an authorized agent of Bank of India and made certain payments attributing the same to the complainant. Its actions are binding on Bank of India.

4.18: Bank of India has not obtained any specific consent from the complainant that his card can be used on ATMs where there is lack of security vigilance as recommended by RBI and committed by the Bank also.

4.19: The instant case refers to the complaint where the customer has not lost his card and is very much in custody of the card. It is the Bank of India which is contending that the card has been used in the Canara Bank ATM and is therefore obliged to provide evidence for the same. It is highly improper that a customer of Bank of India keeping his ATM card in close custody should be exposed to some body from somewhere withdrawing money in his name.

4.20: The Banking Ombudsman therefore failed to see the obvious evidence and his contention that “Elaborate Evidence” would be required is an untenable excuse to unfairly disfavor the complainant.

## **5. Unsubstantiated Allegation from Bank.**

5.1: The bank contends that the disputed transactions carry the same identity as that of the Customer. However there is no evidence to substantiate the same.

5.2: The customer has produced the evidence that he is in possession of the Card and it is not stolen. Beyond this he is sitting at home and cannot produce any evidence of who could have withdrawn the money and how.

5.3: The records made available by the Bank are inadequate to link it to the customer in the absence of the CCTV footage. There is no hardware ID associated with the authentication of the transactions. The transaction log records could have been generated by any card with the copy of the electronic data on the original card.

5.4: There is therefore a possibility that a third party fraudster could have cloned an ATM card similar to that of the complainant by using known card skimming techniques at any of the ATMs used by the customer earlier.

5.5: There is also a possibility that the Bank could have issued a duplicate card with the same information that was carried on the original card with or without any fraudulent intentions and assistance from any member of the Bank.

5.6: It is not the customer’s case that the Banking Ombudsman should have investigated these aspects. It is our contention that he should have recognized

these possibilities and taken a decision which was not biased against the customer.

5.7: The BO based on the evidence on hand ought to have decided the case in favour of the customer and could have been advised to approach other forums with the requisite evidence to prove that it was the customer and customer alone who had withdrawn the money.

5.8: By its conduct the Bank has indirectly alleged that the Customer was telling a lie and has committed a fraud by himself withdrawing the amount and complaining to the Bank.

5.9: The Customer has on his part denied that he has drawn the amount himself and proceeded to file a complaint with the Police.

5.10: It is the responsibility of the Police to conduct further investigations and identify the role of the employees of Bank of India or Canara Bank or an outside person in the commission of the fraud.

5.11: At this point the statement of the Customer that he has not withdrawn the amount is as credible as that of the Bank that there was no other person who had drawn the money. The views of the Bank cannot be given more weightage than that of the Bank

5.12: The Banking Ombudsman is not a protector of the Bank to give the benefit of doubt to the Bank. He is actually the protector of the Bank Customer's rights and if there was any benefit of doubt to be considered in this case it ought to have been given to the Customer.

## **6: The Damodar Committee Report:**

6.1: The Damodar Committee on Customer Services commissioned by RBI recently gave its recommendations which provide some insights to how the BO could have considered this complaint.

6.2: Under its recommendations in Chapter 3 of the report (Page 72) the Damodar Committee stated

*” There should be a secure total protection policy / zero liability against loss for any customer induced transaction utilizing technology through ATMs/ PoS/Online banking etc. A customer should not be made to be out of funds when any loss is suffered on account of Net/ATM banking transactions.”*

6.3: The report also states

*“Banks in their systems should have facility of customer behavior/purchase pattern etc. analysis and any attempt from an unknown address / suspicious outlier debit transaction should be first blocked and then informed over SMS to the customer. The transaction should be allowed only after the customer authorizes the transaction.”*

6.4: Further report states:

*“The international best practices regarding cash not delivered at ATMs, withdrawal through cloned cards, credit card debits not authorized by customers, internet banking frauds etc., should be followed and the customer should be afforded a temporary credit immediately after taking a suitable undertaking.”*

6.5: The Damodar Committee was constituted by RBI in June 2010 and though the final report was released only in August 2011, the Committee was in extensive discussion within RBI and the BO ought to have recognized the overwhelming opinion in the community that determined the liabilities of the Bank vis-a- vis the responsibilities of the customers in electronic banking scenario.

6.6: The complainant himself had brought to the attention of the BO not only cases of Adjudication and Consumer Courts but also earlier decisions of Banking Ombudsmen in different places under similar complaints, some of which were reported in the Compendium of cases handled by the Ombudsmen published by RBI.

6.7: The complainant had also brought to the attention of the BO the case of Mr N.Vidyashankar Vs Bank of India in Bangalore where the Bank refunded Rs 29000/- to the customer on a Phishing fraud with the intervention of the then BO in Bangalore.

6.8: By taking a contrarian view without any justification, the BO has demonstrated his bias that “Bank is always right” whereas the Indian Banking system respects the saying “Customer is always right”.

## **7. Other Omissions by the BO:**

7.1: The BO has not considered it necessary to ask a question on why the Bank’s ATM guard or the Bank’s staff involved in the access to the ATM either for servicing the ATM or the Bank staff in the branch could not have meddled with the system to provide an unauthorized access to the ATM.

7.2: The BO has not considered it necessary to ask questions on whether the ATM is at all guarded, whether it is possible for anybody to walk into the ATM booth and tamper with the machine.

7.3: The BO has shown no inclination to try and understand the problem posed by the customer and blindly given his verdict with utter disregard to the customer’s version of the incident.

7.4: The BO failed to consider if the contention of the Bank that no CCTV footage is available could be a cover-up indicating a gross negligence and possible complicity of the Bank or Banks involved in committing the fraud.

7.5: The BO failed to recognize the possibility that t Bank of India and its agent namely Canara Bank had not adhered to instructions of Reserve bank of India on the SB account operations of the complainant and the ATM operations. [coming under the purview of para 8(l), 8(r), 8(s) and 8(u) of BOS-2006]

#### **8. Obligations of the Bank for Forgery:**

8.1: It is an undisputed fact that the Banking service does not envisage that Bank would allow forged transactions in the account of the customer.

8.2: Bank has to take unlimited precautions while authorizing payments whether by cheque or through Internet or through ATM.

8.3: In the instant case, Bank of India has failed to fulfill this obligation to the customer and the BO has failed to recognize the failure of this fundamental obligation.

#### **9. Bank of India admission:**

9.1: Bank of India has admitted that the transactions disputed by the customer are of fraudulent nature and has even reversed one disputed transaction of 4/12/2010.

9.2: The BO has failed to recognize the fact that there is an admission of guilt by the Bank in this reversal and there is no “elaborate” evidence required to recognize the guilt of the Bank.

#### **10. Adverse Consequence of BO’s decision:**

10.1: In the event customers are held liable for fraudulent transactions on the ATM even when they hold the ATM card safely then no common man would be willing to use ATM cards with confidence.

10.2: If Banks deny their absolute liability in such cases it is necessary for Banks to properly notify all the ATM card holders that customers will be held prima facie guilty of an “attempt to cheat the Bank” in case of all complaints against fraudulent withdrawals through ATM.

10.3: Since Bank of India has taken such a stand in this case, it is necessary for the Bank to send a notice through registered post to all their ATM card holders that

*“The Bank will not be liable for any transactions on any ATM machine in India or abroad where the unique number of the ATM card assigned to the customer is recorded by the system as the user. In the event any customer claims that there has been a fraudulent withdrawal from his account using his card number, the Bank reserves the right to file appropriate legal action against the customer under the applicable law for attempting to cheat the Bank. Reserve Bank of India under its*

*Banking Ombudsman Scheme does not have jurisdiction to take any complaint in this regard”.*

10.4: The Bank should further publish this statement on their website.

10.5: In any future inspection of the Bank RBI should check if such a notice has been sent and appropriate consent/acknowledgement has been held by the Bank.

10.6: Finally in the annual report of the Bank the Bank should publish this statement and its estimated impact on the Bank’s business in terms of number of customer accounts lost on account of this practice etc.

In view of the above, we request you to kindly over rule the BO’s order and direct Bank of India to immediately make good the amount lost along with a reasonable compensation for the loss of interest as well as the unjustified harassment to which the customer has been subjected to.

While making this appeal we would like to state that this is still a mediation effort being invoked under the BOS and in the event the BO’s unfair order is upheld by the appellate authority, we reserve our right to move appropriate judicial forums to raise the incident as a Cyber Crime committed by unknown persons with the assistance and negligence of Bank officials, a deficient technical system of ATMs, failure of Banking supervision by the regulatory body and seek appropriate civil and criminal liabilities to be pressed against the Banks.

Thanking you

Yours sincerely

Na.Vijayashankar  
For and On Behalf of S.Nagaraja