JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 3464 of 2022

United Bank Limited
Vs.
The President of the Islamic Republic of Pakistan, etc.

Petitioners by : Malik Muhammad Siddique Awan Advocate for the Petitioners in W.P. Nos. 3464/22, 3465/22, 3466/22, 1844/23, 1843/23, 1844/23, 1927/23, 2883/23, 3374/23, 368/24, and 369/24.

M/s Ahmed Bashir and Aziz-ur-Rehman Farooqi Advocates for the Petitioners in W.P. No. 2062/21, 4636/21, 4637/21, 1192/22, 1239/22, and 1239/24. M/s Wasim Abid and Muhammad Ahmad, Advocates for the Petitioner in W.P. No. 4279/2023.

Barrister Abdul Wahab Khan for the Petitioner in W.P. No. 3556 of 2024.

Respondents by : Mr. Imran Farooq, Assistant Attorney General.

Mr. Sajjad Hameed, Advocate for the Respondent No. 3 in W.P. No. 3464/2022.

Syed Mumtaz Mazhar Naqvi, Advocate for the Respondent No.4 in W.P. No.4637/2021.

Ch. Muhammad Atif, Advocate for the Respondent No. 3 in W.P. No. 3466/2022.

Mr. Asad Ladha, Advocate for the Respondent No. 3 in W.P. No. 369/2024.

Barrister Malik Talha Ahmed Rahim for the Respondent No. 3 in W.P. No. 2883/2023.

Mr. Muhammad Gul Aftab Abbasi, Advocate for the Respondent No. 3 in W.P. No. 4279/2023.

Mr. Shahzad Hameed, Advocate for the Respondent

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No. 3 in W.P. No. 368/2024.

Mr. M. Jalal Haider, Advocate for the Respondent No. 4 in W.P. No. 1239 of 2022.

Mr. Sher Hamad Khan, Advocate for the Respondent No. 3 in W.P. No. 1844 of 2023.

Mr. Hawad Jgyrsgud, Advocate for the Respondent No. 3 in W.P. No. 3374 of 2023.

Complainants Ali Ghulam, Hidayat Ullah and Waqar Ahmed in W.P. No. 4636/2021, 1927/2023 and 1192/2022, respectively, in person. None is in attendance on behalf of the Respondents in W.P. No.2696 of 2023.

Date of Hearing : **08-1-2026.**

SAMAN RAFAT IMTIAZ, J.-

1. The instant Petition is being decided along with the Petitions listed in the Annexure hereto by way of this consolidated judgment as common questions of facts and law are involved.

2. The Petitioners are 'banking companies' as per the meaning ascribed to the term in the Banking Companies Ordinance, 1962 **("Banking Companies Ordinance")** whereas the Respondents No. 2/3/4 as impleaded in the petitions (hereinafter referred to as the **"Complainants"**) are account holders/customers/consumers who moved complaints before the Banking *Mohtasib,* Pakistan **("Banking Mohtasib")** against their respective Petitioners/Banks disowning certain transactions made from their accounts alleging them to be fraudulent or unauthorized.

3. In W.P. Nos. 2062 of 2021, 4636 of 2021, 4637 of 2021, 1192 of 2022, 1239 of 2022, 3464 of 2022, 3465 of 2022, 3466 of 2022, 1843 of 2023, 1844 of 2023, 1927 of 2023, 2696 of 2023, 2883 of 2023, 4279 of 2023, 3556 of 2024 the Banking *Mohtasib* allowed the Complaints of the

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respective Complainants vide Orders (the dates of which are given in the Annexure and which collectively are hereinafter referred to as the **"Impugned Orders I"**) advising the respective Petitioners/Banks to make good the loss of the Complainants by crediting their accounts with the relevant amounts. The Petitioners/Banks filed Representations against the Impugned Orders I before the President of the Islamic Republic of Pakistan **("President")** which have been dismissed vide the President's Orders (the dates of which are given in the Annexure and which collectively are hereinafter referred to as the **"Impugned Orders II"**). The Petitioners/Banks have assailed both the Impugned Orders I and II in the aforementioned writ petitions.

4. In W.P. Nos. 3374 of 2023; 368 of 2024; 369 of 2024; and 1239 of 2024 the Banking *Mohtasib* closed the Complaints of the Complainants either wholly or partially vide Orders (the dates of which are given in the Annexure and which collectively are hereinafter referred to as **"Orders III"**). The Complainants filed Representations against such Orders III before the President which have been allowed vide the President's Orders (the dates of which are given in the Annexure and which collectively are hereinafter referred to as the **"Impugned Orders IV"**) with a direction to the Banks to make good the loss and pay the relevant amounts to the Complainants. The Petitioners/Banks have challenged the said Impugned Orders IV in the aforementioned writ petitions.

5. The Respondent No. 5/Federal Investigation Agency **("FIA")** in W.P. Nos. 4636 of 2021, 1192 of 2022, and 1239 of 2022 did not appear despite service therefore, the matter proceeded against them ex-parte.

Nature of Complaints

6. The Complainants in W.P. Nos. 4636 of 2021;1239 of 2022; 3464 of 2022; 3466 of 2022; 1843 of 2023; 1844 of 2023; 2696 of 2023; 3374 of 2023; and 369 of 2024 filed Complaints before the Banking *Mohtasib*

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alleging that transactions were made fraudulently from their bank accounts following disclosure of personal credentials admittedly made by such Complainants to unknown callers who extended threats while personating to be bank officials/army officers and in some cases had called from the concerned bank's official number resulting in loss/damage of amounts.

7. The Complainants in W.P. Nos. 2883 of 2023 and 1239 of 2024 made similar allegations about receiving calls from unknown numbers demanding personal information but expressly denied disclosing personal credentials to the unknown callers. The Complainants in W.P. Nos. 2062 of 2021; 1192 of 2022; and 3465 of 2022 also made the same allegations but without making any specific statement as to whether personal credentials were disclosed by them or not to the unknown callers.

8. The Complainants in W.P. Nos. 4637 of 2021; 1927 of 2023; 4279 of 2023, 368 of 2024; and 3556 of 2024 simply alleged unauthorized Electronic Fund Transfers that were discovered in various circumstances without making any allegations regarding unknown callers.

Maintainability

9. At the very outset, the learned counsel for the Complainant [Muhammad Yousaf] in W.P. No. 3464 of 2022 objected to the maintainability of the instant Petition on account of laches by highlighting that the Impugned Order II passed in this case is dated 10-3-2022 whereas the petition has been filed on 20-9-2022. The learned counsel for the Complainant argued that the Supreme Court in *Settlement Authority through the Chief Settlement Commissioner Vs. Mst. Akhtar Sultana*, PLD 1976 SC 410 has held the reasonable time for filing of Constitutional petitions to be 90 days. Therefore, he argued that the petition is liable to be dismissed as not maintainable.

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10. In his counter arguments, the learned counsel for the Petitioner/United Bank Limited **("UBL")** in W.P. No. 3464 of 2022 argued that there is no laches as the Petition was filed on 05-7-2022 but remained pending in the office.

11. Similarly, the learned counsel for the Complainant in W.P. No. 3466 of 2022 [Raja Khalil-ur-Rehman] submitted that the Petitioner/UBL has not explained laches of eight months.

Arguments on the point of Jurisdiction

W.P. Nos. 3464 of 2022, 3465 of 2022, 3466 of 2022, 1843 of 2023, 1844 of 2023, 1927 of 2023, 2883 of 2023, 3374 of 2023, 368 of 2024, 369 of 2024:

12. Mr. Malik Muhammad Siddique Awan, the learned counsel for the Petitioner/UBL pointed out that admittedly the Complainants [M/s Muhammad Youssef; Raja Khalil-ur-Rehman; Muhammad Saud; Gulzar Hussain; Malik Salimullah Khan Awan; and Ms. Farida Bashir] in some of the above-captioned Petitions shared their personal identification details with unknown callers which led to the disputed payments through Interbank Fund Transfers **("IBFT")**. The learned counsel argued that under Section 40 of the Payment Systems and Electronic Fund Transfers Act, 2007 **("PSEFT Act")** it is the consumer who is liable for any unauthorized Electronic Fund Transfers. In this regard, he also relied upon the Indemnity and Undertaking given by customers as part of their account opening form whereby the account-holder/customer/consumer is liable to keep his/her/its Personal Identification Number confidential and for any misuse of the same and indemnifies the bank against consequences of such misuse and accepts full responsibility for all transactions made by the use of cards, cheque books, net banking facility, etc., whether or not made with the account-holder/customer/consumer's knowledge or authority. The learned counsel submitted that in any event under Section 55 of the PSEFT Act jurisdiction for any civil action under the said Act lies with a Civil

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Court of competent jurisdiction and as such argued that the Banking *Mohtasib* had no jurisdiction to entertain the Complaints.

13. He further argued that the Complaints had not been filed to complain about the bank's failure to conduct biometric yet the Petitioner/UBL has been held liable to compensate the Complainants by the Impugned Orders I and II due to such failure at the time of installation/reinstallation of the mobile banking application as required under Clause (iv) of the State Bank of Pakistan's **("SBP")** PSD Circular No.09 of 2018.

14. On the other hand, the learned counsel for the Complainant [Muhammad Yousaf] in W.P. No. 3464 of 2022 denied that any credentials were shared by the Complainant in this case. He submitted that the Banking *Mohtasib* has jurisdiction to deal with complaints regarding 'maladministration' on the part of banks under the Banking Companies Ordinance. He contended that since the Petitioner/UBL failed to conduct the biometric of the Complainant at the time of installation/reinstallation of the mobile banking application the Complainant was not informed/educated about unauthorized transactions and various types of fraud which are prevalent these days. He argued that had the Complainant been educated by the Petitioner/UBL in the manner as prescribed under the aforementioned SBP Circular the Complainant would not have shared his personal details with an unknown caller. As such he contended that this matter pertains to 'maladministration' which squarely falls within the jurisdiction of the learned Banking *Mohtasib* and not under the PSEFT Act. He relied on *Habib Bank Ltd vs. Federation of Pakistan* 2018 CLD 1152, whereby this Court upheld the decision of the Banking *Mohtasib* where the bank failed to implement the directions of the SBP. The learned counsel for the Complainant further argued that the contents of the Complaint to the Banking *Mohtasib* clearly show that the implication was violation of the SBP Circular and that for the said purpose the pith and substance of the complaint must be taken into consideration. In this regard, he relied upon

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Haji Abdul Malik and 10 others vs. Muhammad Anwar Khan, 2003 SCMR 990.

15. He also relied upon *Muslim Commercial Bank Ltd vs. Federation of Pakistan*, 2020 CLD 829,whereby it was held that Section 50 and 55 of the PSEFT Act and Section 82A of the Banking Companies Ordinance are not inconsistent with each other and one does not exclude the other. He contended that Section 40 of the said PSEFT Act cannot be read in isolation and the liability on the part of the customer does not arise till such time that the bank has discharged its burden under Section 30 and 41 of the said Act which was not done in the instant case. Lastly, he submitted that under Section 82-B the Banking *Mohtasib* has the power to receive evidence by way of affidavit.

16. In rebuttal, the learned counsel for the Petitioner/UBL argued that the cases of alleged fraudulent transactions where the customers have admittedly disclosed his/her personal details to unknown callers are not cases of mal-administration of the Bank and that none of these cases involve any failure on the part of the Petitioner/UBL. Insofar as denial on behalf of the customers is concerned about disclosure no evidence was recorded by the Banking *Mohtasib* to give findings as to whether or not the customer had disclosed his/her details to any third party or not. He pointed out that no *mala fide* has been attributed to the Banks by any of the Complainants.

W.P No. 2883 of 2023:

17. The learned counsel for the Complainant [Muhammad Rafiq] in 2883 of 2023 drew the Court's attention to Section 82-B(5)(iii), whereby the Banking Mohtasib is empowered to entertain complaints regarding fraudulent or unauthorized withdrawals or debit entries in accounts. He also stressed that the customers in all the instant Petitions are either illiterate or have limited education.

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W.P. No. 4279 of 2023:

18. Mr. Mohammad Ahmed Advocate, the learned counsel for the Petitioner/UBL in W.P. No. 4279 of 2023 highlighted that the Complainant [Khalid Mehmood] in his Complaint to the Banking *Mohtasib* alleged misappropriation by the bank staff or someone in connivance with them. In view thereof, he submitted that the Complainant's Complaint falls within the ambit of the Offences in respect of Banks (Special Courts) Ordinance, 1984 **("the Offences in respect of Banks (Special Courts) Ordinance")** where under Special Courts have been established to try scheduled offences, including the offences under Sections 403, 409, and 420, PPC. He also submitted that the Special Court is empowered under Section 6 of the Offences in respect of Banks (Special Courts) Ordinance to pass a sentence or fine which shall not be less than twice the specified amount in respect of which the offence has been committed. The learned counsel for the Petitioner/UBL withdrew the prayer challenging the vires of various provisions of the Banking Companies Ordinance as well as of the Federal Ombudsman Institutional Reforms Act, 2013.

19. In reply, the learned counsel for the Complainant argued that the Banking *Mohtasib* has jurisdiction in the matter in view of Sections 82-A and 82-B which are still on the statute books and have not been repealed notwithstanding any other law. He pointed out that under Section 82-B(4)(c) and (d) the Banking *Mohtasib* has powers to receive evidence on Affidavit and to issue commission for the examination of witnesses.

20. In rebuttal, the learned counsel for the Petitioner/UBL relied upon *United Bank Limited vs. Federation of Pakistan*, PLD 2018 Lahore 322 in which the Lahore High Court held that the Banking *Mohtasib* cannot give binding decisions on complaints involving disputed questions of facts by resorting to the provisions contained in Sections 82-B and 82-E as the Banking *Mohtasib* is not a Court. He submitted that the said decision was

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followed in *Habib Bank Limited vs. Federation of Pakistan*, 2022 CLD 769 and by this Court in *Saleem Ahmed Jan vs. Deputy Commissioner, Islamabad and other* 2024 CLC 953. He contended that the said decisions are in consonance with *Shafaatullah Qureshi vs. Federation of Pakistan* PLD 2001 Supreme Court 142, whereby the Supreme Court of Pakistan held that the office of *Wafaqi Mohtasib* is not a Court. Lastly, he relied upon *MD/CEO United Insurance Company of Pakistan Limited, Lahore vs. The President of the Islamic Republic of Pakistan,* 2024 CLD 931 in which this Court on similar arguments decided that since the controversy involved disputed questions of facts, requiring recording of evidence the Insurance Ombudsman had no jurisdiction.

W.P. No. 3556 of 2024:

21. The learned counsel for the Petitioner/Bank Alfalah Limited **("BAHL")** submitted that PSEFT Act is a special law and therefore shall prevail.

Arguments on merits

W.P. Nos. 2062 of 2021, 4636 of 201, 4637 of 2021, 1192 of 2022, 1239 of 2022, 1239 of 2024:

22. The learned counsel for the Petitioner/Habib Bank Limited **("HBL")** in the above-captioned Petitions submitted that the Banks are in compliance with the applicable laws as well as SBP's directions and circulars which is evident from the fact that the SBP being the regulator has not objected regarding non-compliance and in such circumstances the Banking *Mohtasib* does not have authority to give a finding of mal-administration. He referred to Section 77 of the Banking Companies Ordinance and relied upon Section 82-(E) *viz-a-viz* that the Banking *Mohtasib* should have referred the matter to the SBP.

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W.P. Nos. 3464 of 2022, 3465 of 2022, 3466 of 2022, 1843 of 2023, 1844 of 2023, 2883 of 2023, 3374 of 2023, 368 of 2024, 369 of 2024:

23. Mr. Malik Muhammad Siddique Awan, Advocate, who is the learned counsel for the Petitioner/UBL submitted that the customers never approached FIA. Had the FIA been contacted by the Complainant in W.P. No. 3464 of 2022 [Muhammad Yousaf], FIA could have identified the person whose utility bills were paid as the alleged fraudulent transactions in this case were conducted to make payment towards utility bills. He also submitted that a call log of the mobile number of the Complainant shows that text messages were sent by the Petitioner/UBL to the customer repeatedly informing him of the transactions conducted by the Complainant despite which the Complainant did not timely inform the Petitioner/UBL that some of those transactions were allegedly unauthorized/ fraudulent.

24. The learned counsel for the Complainant in W.P. No. 3466 of 2022 [Raja Khalil-ur-Rehman] submitted that although the amount transferred without authorization has been identified in an account of an individual held with Faysal Bank Limited but no effort has been made to recover Rs. 350,000/- out of the total amount transferred.

25. The learned counsel for the Complainant [Muhammad Rafiq] in W.P. No. 2883 of 2023 highlighted that in this case the Complainant did not share information with any one. He referred to the Account Opening Form to submit that it is in fact a photo account. The Complainant never asked for an ATM Card without which the mobile banking application was activated without request/consent of the Complainant. He pointed out that the Complainant is an illiterate and elderly man and that twenty transactions were made on the same date but no effort was made by the Bank to take action on account of suspicious activity.

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W.P. No. 1927 of 2023:

26. The Complainant [Mr. Hidayaullah] in W.P. No. 1927 of 2023 appeared in person and highlighted that an official number was used to call the Complainant.

27. In rebuttal, Mr. Ahmed Bashir Advocate for the Petitioner/UBL in W.P. No. 1927 of 2023 submitted that the official number was not used but number similar to the official number was used and that the Bank regularly informs its customer that even official number is not used to obtain personal information of the customers.

W.P. No. 4279 of 2023:

28. Mr. Mohammad Ahmed Advocate, the learned counsel for the Petitioner/UBL in W.P. No. 4279 of 2023 argued that the Banking *Mohtasib* travelled outside the scope of the Complaint filed by the Complainant [Mr. Khalid Mahmood]. He submitted that the Complaint contained an assertion that the disputed transactions were carried out by using an ATM card which was never issued to him. On the other hand the Impugned Order I passed by the Banking *Mohtasib* in this case is on the basis that the Complainant's stance is that he is not a digital banking user. The learned counsel clarified that although the SBP had through PSD Circular No.09 of 2018 dated 28-11-2018 directed all banks to conduct biometric of the customers desirous of using internet banking however the said requirement was relaxed in view of Covid-19 by way of PSD Circular No. 02 of 2020 dated 18-03-2020 nevertheless customer authentication and verification was required using appropriate measures. He submitted that authentication and verification was conducted on the phone which was duly recorded. According to him although the Petitioner/UBL had provided the call record by way of an e-mail attachment as evident from the e-mail exchange between the Petitioner/UBL and the office of the Ombudsman from 16-9-2022 to 26-9-2022 such call recording has not been considered

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by the Banking *Mohtasib* at all as is evident from the Impugned Order I. Thus, the findings of the learned Banking *Mohtasib* by way of the Impugned Order I passed in this case finding that the IBFT channels were activated without obtaining the Complainant's consent is against the record.

29. He argued that the Impugned Order I has been passed in violation of Sections 82-B(5)(c) and 82-D(4) of the Banking Companies Ordinance as the Complainant after filing the Complaint before the learned Banking *Mohtasib* also instituted proceedings before the learned Consumer Court which were decided by way of Order dated 02-09-2022 which was prior to the Impugned Order I passed by the learned Banking *Mohtasib* and as such operated as *res judicata*. He has further pointed out that the Complaint filed by the Complainant before the Consumer Court contained a misrepresentation that the Banking *Mohtasib* could not do much despite the fact that the Complaint was pending before the learned Banking *Mohtasib*. Similarly, he has pointed out that the Certificate given in the Complaint form before the Banking *Mohtasib* that there are no legal proceedings decided by any other forum was incorrect as the learned Banking *Mohtasib* was not informed when proceedings before the Consumer Court were instituted subsequently. The learned counsel argued that the fact that the impugned transactions were conducted using internet banking and not through an ATM was established through the account statement of the Complainant which reflects that the impugned transactions conducted between 01-07-2020 and 02-7-2020 were made through IBFT fund transfers. He submitted that the said accounts statements were also provided by e-mail dated 26-9-2022 in response to the e-mail received from the Banking *Mohtasib*'s Office dated 16-9-2022 asking for such material but have been disregarded.

30. In his counter arguments, the learned counsel for the Complainant pointed out that multiple transactions were made on the same date of the

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same amount and yet the Bank intimated the customer on the next date with a considerable delay.

W.P. No. 3556 of 2024:

31. The learned counsel for the Petitioner/Bank Alfalah Limited **("BAHL")** highlighted that in the instant case the Complainant [Ms. Hira Amjad] admitted that she is an educated person and yet the Banking *Mohtasib* has decided the matter against the Petitioner/BAHL despite the fact that it stands established that the Petitioner/BAHL has done its due diligence in educating the customers despite which if the customers chose to disclose his/her details to an unauthorized person the Bank cannot be held responsible. He submitted that the Banking *Mohtasib* clearly exceeded his jurisdiction as he has also given a finding with regard to a loan obtained by the Complainant in respect of which only the Banking Court under the Financial Institutions (Recovery of Finances) Ordinance, 2001 has jurisdiction.

32. Since the questions raised in the instant matters require interpretation of the Constitution and the laws, notice under Order XXVII-A, CPC was issued to the Attorney General for Pakistan in response to which he has filed written arguments on 21-1-2026 through the Assistant Attorney General expounding on the difference between judicial and quasi-judicial powers and the evolution of quasi-judicial forums.

33. I have heard the learned counsel for the contesting parties and have also perused the record.

Jurisdiction of the Banking *Mohtasib* under the Banking Companies Ordinance particularly in view of the PSEFT Act

Banking Companies Ordinance, 1962:

34. The object of the Banking Companies Ordinance is to provide general details and guidelines of how banking companies should conduct

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business[1]. The State Bank of Pakistan is the regulatory body for all the banks operating in Pakistan[2]. Every banking company is bound to comply with the directions given by the SBP under Section 41 of the Banking Companies Ordinance where under the SBP may issue such directions, as it deems fit, to banking companies as stipulated.

35. Sections 82-A to 82-G were inserted in the Banking Companies Ordinance by way of the Banking Companies (Amendment) Act, 1997 to create the office of the Banking *Mohtasib* and to provide for its working. By Finance Act, 2007, a number of provisions of the Banking Companies Ordinance were again amended, including certain provisions relating to the Banking *Mohtasib*[3]. Resultantly, the Banking *Mohtasib*, who pursuant to Section 82-A of the Banking Companies Ordinance is appointed by the President in consultation with the Governor of the SBP, has jurisdiction in relation to banking transactions, *inter alia*, under Section 82-A(3)(a),(c), and (e) to enquire into complaints of banking mal-practices; violations of banking laws, rules, regulations or guidelines; and corruption nepotism or other forms of mal-administration, respectively. Under Section 82-B(5)(a)(iii) the Banking *Mohtasib* shall exercise his powers and authority to entertain complaints of the nature of fraudulent or unauthorized withdrawals or debit entries in accounts.

36. Prior to making a complaint, the complainant is required by Section 82-D(2) to intimate the concerned bank, in writing, of his intention to file a complaint and in case the bank fails to respond or makes an unsatisfactory response within 45 days, the complainant may make a complaint to the Banking *Mohtasib* thereafter within a further period of 45 days. The Banking *Mohtasib* may reject a complaint summarily pursuant to Section 82-D(4). It is also important to note that the Banking *Mohtasib* is

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[1] *M.D.Tahir, Advocate vs. Director, State Bank of Pakistan, Lahore and 3 others*, 2004 CLD 1680.
[2] *Abdul Wahab and others vs. HBL and others*, 2013 SCMR 1383.
[3] *Muslim Commercial Bank Ltd vs. Federation of Pakistan*, 2020 CLD 829.

empowered to receive evidence on affidavit and to issue commission for the examination of witnesses under Section 82-B(4)(c) and (d).

Payment Systems and Electronic Fund Transfers Act, 2007:

37. On the other hand, the PSEFT Act was enacted in 2007 especially to supervise and regulate, *inter alia*, Electronic Fund Transfers and to provide standards for the protection of the consumer and to determine the respective rights and liabilities of, *inter alia*, the Financial Institutions, their consumers and participants. The term 'Electronic Fund Transfers' is defined under Section 2(t) of the PSEFT Act as *any* transfer of funds other than a transaction originated by cheque, draft or similar paper instruments, which is initiated through, *inter alia*, an Electronic Terminal, debit card, ATM, or any other electronic device so as to order, instruct, or authorize a Financial Institution to debit or credit an Account whereas the term 'Financial Institution' by the definition contained in Section 2(x) includes banking companies and the term 'consumer' as per Section 2(n) means any person who or which avails the facility of Electronic Fund Transfer.

38. Under Section 3 of the PSEFT Act the SBP is empowered to issue such rules, guidelines, circulars, bye-laws, standards or directions as it may consider appropriate, in respect of the PSEFT Act generally or in respect of any particular provision thereof, or generally in respect of 'payment systems' (which by the definition provided in Section 2(zd) includes systems relating to transfer) and in respect of the conduct of 'Service Providers' (which term pursuant to Section 2(zi) includes an Electronic Fund Transfer Service Provider). Thus the SBP can issue guidelines, circulars, bye-laws, standards or directions under the PSEFT Act in relation to Electronic Fund Transfer systems and the conduct of the Petitioners being Financial Institutions providing Electronic Fund Transfer facilities.

39. Pursuant to Section 74 of the PSEFT Act a Financial Institution or Service Provider who willfully fails to comply with any provision of the

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PSEFT Act or rules, circulars, directions, orders or bye-laws issued thereunder or any provision thereof is liable to pay fine to the SBP and failure to pay the same can result in suspension or revocation of the license of the Financial Institution or the Service Provider, as the case may be, and the amount of the unpaid fine may be recovered as arrears of land revenue. The penal consequences stipulated under Section 74 of the PSEFT Act make compliance with the SBP rules, guidelines, circulars, bye-laws, standards or directions issued under Section 3 and 15 mandatory.

40. In addition, Section 15 of the PSEFT Act provides that the Financial Institutions providing Electronic Fund Transfer facilities shall ensure that secure means are used for transfer, compliant with current international standards and as may be prescribed by the SBP.

41. It is not out of place to mention that the Payment Systems Department **("PSD")** of the SBP issued PSD Circular No. 9 of 2018 dated 28-11-2018 to safeguard banks and their customers from potential losses due to cyber-crimes and online banking frauds, which, *inter alia,* required banks to activate/reactivate online banking services including internet/mobile banking for their customers after biometric verification at any branch of their bank, at which time the relevant staff would educate the customers about various types of online banking frauds as well as corresponding preventive measures and held banks solely liable for ensuring customer authentication and for compensating any loss of customer funds due to false activation of any alternate delivery channels. Subsequently, however, PSD Circular No. 2 of 2020 dated 18-03-2020 was issued by the SBP in the wake of COVID-19 where under the requirement of biometric verification for customers to activate internet and mobile banking as per PSD Circular No. 9 of 2018 dated 28-11-2018 was suspended till further instructions. Nevertheless, PSD Circular No. 2 of 2020 required banks to ensure customer authentication and verification

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using appropriate measures and safety and security of customer transactions.

42. Section 30 of the PSEFT Act requires that at the time the consumer contracts for an Electronic Fund Transfer service, the Financial Institution shall disclose to the consumer, in accordance with the instructions of the SBP, the terms and conditions of Electronic Fund Transfers. The disclosure required to be made under Section 30 of the PSEFT Act may include the consumer's liability for unauthorized Electronic Fund Transfers. The consumer's liability is stipulated in Section 40 which provides that subject to the stipulated conditions the consumer shall be liable for any unauthorized Electronic Fund Transfer involving the consumer's Account which term is defined under Section 2(c) as a current, deposit, saving deposit, or any other account maintained by the consumer in a Financial Institution in which credits and debits may be affected by virtue of Electronic Fund Transfers.

43. However, in any action which involves a consumer's liability for an unauthorized Electronic Fund Transfer the burden of proof pursuant to Section 41 is upon the Financial Institution to show that the transaction was authorized or if the Electronic Fund Transfer was authorized then the burden of proof is upon the Financial Institution to establish that the conditions of liability set forth in the PSEFT Act were met and the disclosures required to be made thereunder were in fact made in accordance with the provisions thereof.

44. Section 50 of the PSEFT Act provides that a person who fails to comply with any of the provisions of the said Act in respect of any other person shall be liable to such person for payment of an amount equal to the sum of any damage sustained by that person as a result of such failure upon an action brought before a court. Under Section 55 *ibid* the jurisdiction for

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any civil action with regard to the amount in controversy under the said Act lies before a Court of competent jurisdiction.

45. Pursuant to Section 67 the PSEFT Act shall have effect notwithstanding anything to the contrary provided in any other law for the time being in force or any agreement, contract, memorandum or articles of association.

46. In sum, the above analysis reveals that the Banking *Mohtasib* under the Banking Companies Act, 1962 has jurisdiction to enquire into complaints of, *inter alia*, banking mal-practices; violations of banking laws, rules, regulations, and guidelines; and corruption nepotism or other forms of mal-administration and can exercise his powers and authority by entertaining complaints of the nature of fraudulent or unauthorized withdrawals or debit entries in accounts while under the PSEFT Act any civil action which involves the consumer's liability for an Electronic Fund Transfer may be brought before any Court of competent jurisdiction with regard to the amount in controversy. To this end, the non-compliance, if any, of the concerned Financial Institution with any SBP rules, guidelines circulars, bye-laws, standards or directions issued pursuant to Section 3 and/or 15 of the PSEFT Act and/or disclosure requirements under Section 30 thereof is a relevant factor to be considered.

47. Under the Banking Companies Act, if the Banking *Mohtasib* finds the complaint justified he can direct the concerned bank to pay reasonable compensation to the complainant while the civil court under the PSEFT Act can hold the person, who fails to comply with the provisions of the PSEFT Act (including failure to comply with the SBP rules, guidelines, circulars, bye-laws, standards or directions pursuant to Section 3 and 15 of the PSEFT Act and/or disclosure as required by SBP instructions pursuant to Section 30 of the PSEFT Act) with respect to any other person, liable to pay an

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amount equal to the sum of any actual damage sustained by that person as a result of such failure.

48. The PSEFT Act is later in time and also specifically deals with Electronic Fund Transfers and by virtue of Section 67 its provisions have an overriding effect notwithstanding any other law in force at the time of its promulgation. Having said that by virtue of Section 25, except as expressly provided, the PSEFT Act shall not operate to limit, restrict or otherwise affect any investigation, legal proceedings or remedy in respect of any right, title, interest, privilege, obligation or liability of a person resulting from any transaction in respect of transfer order which has been entered into a Designated Payment System. Section 71 provides that a consumer not satisfied with the outcome of a complaint made to the Financial Institution in relation to any Electronic Fund Transfer or disclosure made by the Financial Institution to a third party may, without prejudice to any right to seek any other remedy under the law, make a complaint to the SBP who after hearing the parties may pass such order as it deems fit.

49. The scheme of law that emerges is that the consumer/customer may file a complaint in relation to any Electronic Fund Transfer with the concerned bank pursuant to the PSEFT Act. In case he/she is not satisfied with the outcome of the complaint, it may make a complaint to the SBP without prejudice to any right to seek any other remedy available at law. The question that arises is whether the remedy under the Banking Companies Ordinance before the Banking *Mohtasib* to make a complaint within 45 days of the bank's failure to respond or to respond satisfactorily within 45 days of the complaint to the bank is available to the complainant (subject to prior intimation to the bank as required under the Banking Companies Ordinance) concurrently with the remedy available under Sections 50 and 55 of the PSEFT Act or whether the latter excludes the former.

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Past precedent

50. This Court in *Habib Bank Limited vs. Federation of Pakistan and 2 others*, 2018 CLD 1152 acknowledged that the PSEFT Act is a comprehensive and special law regarding payment systems and Electronic Fund Transfers but held that it does not expressly bar the jurisdiction of the Banking *Mohtasib* nor impliedly repeals the provisions of the Banking Companies Ordinance relating to the powers and jurisdiction thereof to the extent of electronic transactions. The overriding effect of Section 67 was found not attracted as the provisions of the PSEFT Act were held not to be in conflict with the jurisdiction and powers vested with the Banking *Mohtasib* under the Banking Companies Ordinance, 1962.

51. In the said case, much like some of the cases before this Court, allegedly fraudulently Electronic Fund Transfers were conducted due to misuse of authenticated IDs and passwords. The Banking *Mohtasib* directed the bank to refund the amounts to the customers and the President dismissed the representations filed against such directions. The concurrent findings were assailed on jurisdictional grounds before this Court by invoking the Constitutional jurisdiction of this Court. It appears that there was no factual dispute raised by the bank. Admittedly the bank had not complied with the SBP PSD Circular No. 3 of 2015 under Section 15 of the PSEFT Act calling for implementation of a two factor authentication by 1-4-2016 nor had the bank notified its customers of its inability to comply with the same in accordance with Section 53 *ibid*. This Court held that the bank had committed maladministration by failing to comply with the SBP directions and as such declared that the Banking *Mohtasib* was vested with jurisdiction in respect of the complaints and dismissed the Constitutional petitions with costs.

52. It is noteworthy that the judgment clarifies that the PSEFT Act would have been relevant had the bank complied with the SBP directions.

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In other words, according to *Habib Bank Limited (Supra)* the Banking *Mohtasib* can entertain complaints of non-compliance of SBP directions by virtue of its jurisdiction to enquire into complaints of banking mal-practices and maladministration and allow compensation for resultant fraudulent or unauthorized withdrawals or debit entries in accounts but unauthorized/ fraudulent Electronic Funds Transfers not resulting from any non-compliance of SBP directives would fall under the PSEFT Act.

53. In *Muslim Commercial Bank Ltd (Supra)*, of all the cases before the Sindh High Court, only one involved an Electronic Fund Transfer and in such case the Bank not only admitted acting with delay on the customer's complaint but also its failure to comply with the SBP PSD Circular No. 3 of 2015. In this case too it appears that there was no factual dispute involved. The question brought before the Court was whether the jurisdiction of the Banking *Mohtasib* was ousted in view of Sections 50, 55, and 67 of the PSEFT Act. The Sindh High Court held that there is no inconsistency between the remedy of a suit for damages provided under Section 50 and 55 of the PSEFT Act and the remedy against banking mal-practices, violations of banking laws, regulations, other maladministration etc., and both operate in their respective fields and remain available to the aggrieved person thereunder without excluding the other thus holding that the jurisdiction of the Banking *Mohtasib* under the Banking Companies Ordinance is not ousted by the PSEFT Act. It was specifically noted that the determination before the Banking *Mohtasib* is one of maladministration etc., in which compensation if awarded is to address the maladministration whereas, in a suit under the PSEFT Act the determination is whether there has been a failure to comply with the provisions of the PSEFT Act and for resulting damages, if so proved. The judgment further holds that the forum deciding the matter may well take into account compensation or damages awarded in the other proceedings.

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54. In my humble view, non-compliance of SBP circulars may very well constitute mal-practice and/or maladministration however whether the Financial Institution is liable to the account-holder/customer/consumer for damages on account of an allegedly unauthorized/fraudulent Electronic Fund Transfer is a broader question. In a case of an allegedly unauthorized/fraudulent Electronic Fund Transfer, the primary question involved is whether the Electronic Fund Transfer was authorized or was conducted by committing fraud, which is a factual dispute. Compliance by the Financial Institution with SBP directives is relevant to determine whether it is the customer/account-holder/consumer or the Financial Institution who is liable for an Electronic Fund Transfer which is established to be unauthorized/fraudulent due to misuse of personal credentials. However, it cannot be assumed that non-compliance of SBP instructions issued under PSEFT Act renders all ensuing Electronic Fund Transfers unauthorized/fraudulent. In other words, a finding of non-compliance on the part of the Financial Institution does not *ipso facto* establish that the disputed transactions were authorized due to misuse of personal credentials.

55. Essentially such controversy requires adjudication of disputes between private parties involving property rights of citizens and persons guaranteed under Articles 23 and 24 of the Constitution, which are to be dealt with in accordance with a procedure that is in consonance with the guarantees provided under Article 10-A of the Constitution[4]. The question before this Court is whether the jurisdiction conferred upon the Banking *Mohtasib* under the Banking Companies Ordinance includes trial of unauthorized Electronic Fund Transfers.

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History of the office of the *Mohtasib*/Ombudsman

56. The history of the office of the *Mohtasib*/Ombudsman was traced by this Court in *Saleem Ahmed Jan vs. Deputy Commissioner, Islamabad and 6 others*, 2024 CLC 953. It was observed that the concept has been borrowed from Scandinavia where it has been used effectively by the executive to curtail maladministration. The judgment expounds that conceptually the office of the Ombudsman is part of the executive and is vested with authority by the executive to review the exercise of authority by executive functionaries and to determine whether such exercise amounts to maladministration. Where an act or omission does amount to maladministration, the Ombudsman makes a recommendation to the relevant executive authority and as a matter of propriety, policy, and practice the recommendation is given effect. However, it has been observed with concern that in Pakistan, over time, the design of the remedy has evolved and the office of the Ombudsman has emerged as an alternative to the judicial process allowing various Ombudsmen to pass binding decisions with regard to civil rights and obligations of citizens as well as to impose penalties in matters that constitute disputes between citizens and not merely complaints by citizens against executive functionaries of the State. The result is that the Ombudsman is now exercising judicial powers and discharging judicial functions.

Judicial power

57. It is historically accepted that 'judicial power' is a salient feature of a Court[5]. *Shafqatullah Qureshi vs. Federation of Pakistan,* PLD 2001 SC 142 defined the phrase 'judicial power' to mean the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether rights relate to life, liberty or property. It has been described in *Iftikhar Ahmad vs. the Muslim*

[5] *Shafqatullah Qureshi vs. Federation of Pakistan*, PLD 2001 SC 142; *Sheikh Riaz-ul-Haq and another vs. Federation of Pakistan and others*, 2013 PLC (C.S) 1308 .

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Commercial Bank Limited and another, PLD 1984 Lahore 69 to be the legal right, ability, and authority to hear and decide, objectively and after allowing opportunity to produce evidence, a justifiable issue, dispute or controversy, concerning the existing legal rights, duties or interests of a person or property, arising out of relations and dealings, between two or more parties who bring the same for an authoritative decision binding on them and may include the authority to execute or get executed its decision and protect rights, prevent and redress wrongs and punish offences through legal process. According to *United Bank Limited Vs. Federation of Pakistan,* 2018 CLD 587 'judicial power' refers to all consequent things which a Court may do after assuming jurisdiction and is thus the totality of powers the Court exercises when it adjudicates upon a case.

Quasi-judicial power

58. According to *Government of the Punjab and others vs. Abdur Rehman and others,* 2022 SCMR 25, the term "quasi-judicial" has been employed to expound and spell out the persons, governmental officers, boards and agencies though not part of the judiciary but under the bounds of given powers, exercising the functions and tasks of judicial nature. It has been held to apply to action, discretion, etc., of public administrative officers required to investigate or ascertain existence of facts and draw conclusions therefrom as basis for official action and to exercise judicial discretion. The Supreme Court in *Abdur Rehman (Supra)* referred to the case of *Dr. Zahid Javed. Vs. Dr. Tahir Riaz Chaudhary and others,* PLD 2016 SC 637 in which it was held that the word "Quasi" is defined 'as if', as though, as it were, in a manner, in a certain sense or degree, seeming, seemingly, analogous to and it may mean resemblance. The Supreme Court further explained that a quasi-judicial power is not necessarily judicial, but one in the discharge of which there is an element of judgment and discretion; more specifically, a power conferred or imposed on an officer or an authority involving the exercise of discretion, and as

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incidental to the administration of matters assigned or entrusted to such officer or authority.

59. The Supreme Court in *Shafaatullah Qureshi vs. Federation of Pakistan*, PLD 2001 SC 142 explained that the *Wafaqi Mohtasib* performs quasi-judicial functions and that the office of the *Wafaqi Mohtasib* has been created for the redress of the grievances of the citizens and his findings are basically recommendatory in nature and not a judgment/decision. It was clarified that performance of quasi-judicial powers does not make the tribunal or authority a Court. Thus it was held that the office of the *Wafaqi Mohtasib* is neither a Court nor a Tribunal within the scope of Article 175 of the Constitution.

60. Similarly, it is settled that the *Banking Mohtasib* is not a Court but is a quasi-judicial forum[6].

61. The question that arises is whether the judicial power of passing binding decisions with regard to civil rights and obligations of parties and to affix liability in respect of allegedly unauthorized/fraudulent Electronic Fund Transfers can be vested in a quasi-judicial forum?

Separation of powers

62. The Supreme Court recognized the principle of separation of powers in the case of *National Commission of Status of Women and others vs. Government of Pakistan and others*, PLD 2019 SC 218 as a vital feature of our Constitution.

63. The Lahore High Court in the case of *Imran vs. Presiding Officer, Punjab Special Court No. VI, Multan and 2 others*, PLD 1996 Lahore 542 observed that the Constitution is based on the principle of trichotomy of powers in which the Executive, Legislature and Judiciary have their own

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[6] *United Bank Limited vs. President of the Islamic Republic of Pakistan and others*, 2025 CLD 834; *Messrs Muslim Commercial Bank Limited vs. Federation of Pakistan and 2 others*, 2020 CLD 829; *United Bank Limited*, PLD 2018 Lahore 322.

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functions independent of each other. It was held that separation of the judiciary is a cornerstone of the independency of judiciary and unless judiciary is independent the fundamental right of access to justice cannot be guaranteed.

64. Similarly, the Sindh High Court in *Sharaf Faridi and 3 others vs. The Federation of Islamic Republic of Pakistan and another,* PLD 1989 Sindh 404 observed that the right of access to justice to all is a well-recognized inviolable right enshrined in Article 9 of the Constitution which includes the right to be treated according to law, the right of fair and proper trial and right to have impartial courts or tribunal. Therefore, it was held that justice can only be done if there is an independent judiciary which should be separate from the executive and not at its mercy or dependent upon it.

65. In *Mehram Ali v. Federation of Pakistan,* PLD 1988 SC 1445 various provisions of the Anti-Terrorism Act, 1997, were found *ultra* vires Article 175 read with Article 203 of the Constitution by holding that the Constitution does not envisage conferring judicial power on a tribunal that does not fall within the supervisory control of the High Court.

66. Similarly, the judgment rendered in *Imran (Supra)* observes that one of the modes for blocking the road of free access to justice is to appoint or hand over the adjudication of rights and trial of offences in the hands of the executive officers. It was explained that this is merely a semblance of establishing the courts which are authorized to decide the cases and adjudicate the rights but in fact such courts are manned and run by executive authorities without being under the control and supervision of the judiciary which can hardly meet the demands of the Constitution. Thus the Court held that any Tribunal created under the control and superintendence of the executive for adjudication of civil or criminal cases will be in complete conflict with Articles 179, 9 and 25 of the Constitution.

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67. In *Ziaullah vs. Najeebullah and others,* PLD 2003 SC 656 the Supreme Court of Pakistan while taking cognizance of the question as to whether an Executive Authority is empowered to determine the question of an age of a convict or such exercise should be done by a judicial forum held that any Court of Tribunal which is not found on any Article of the Constitution cannot lawfully share judicial powers with the courts referred to in Articles 175 and 203 of the Constitution.

68. The Supreme Court in *Government of Balochistan vs. Azizullah Memon*, PLD 1993 SC 341 while examining the vires of the Criminal Law (Special Provisions) Ordinance, 1968 whereby a special procedure was provided for speedy trial for scheduled offences of which cognizance would exclusively be taken by the Deputy Commissioner or the *Tehsildar* or *Naib Tahsildar* to constitute a Tribunal held that to impose executive officers to carry out judicial work by ignoring the Courts, by itself, creates discrimination and negates the very concept of justice and violates fundamental rights. It holds that the right to a fair trial as enshrined in Article 9 of the Constitution cannot be achieved without the establishment of an independent and impartial judiciary which is separate from the executive.

69. Similarly, the Lahore High Court while hearing a challenge to the vires of Sections 3 and 4 of the Suppression of Terrorist Activities (Special Courts) Act, 1965 in *Imran Vs. Presiding Officer, Punjab Special Court No.VI, Multan*, PLD 1996 Lahore 542 held that civil courts, trying suits by banks and creditors and debtors relationship, which are directly under the control and superintendence of the High Court, have been deprived of their jurisdiction and the jurisdiction conferred on a Tribunal which is against the theme of the Constitution and independence of judiciary. It was observed that when the existing jurisdiction of a civil court is taken away and conferred upon a tribunal having only the trappings of the court it affects the independence of the judiciary. The Court held that it cannot

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visualize a situation where a court is deprived of its ordinary jurisdiction and the same is conferred on the tribunal under the control of the executive.

70. The Lahore High Court in *Iftikhar Ahmad (Supra)* held that no executive authority can be empowered to exercise judicial power under Article 175 of the Constitution and any attempt to vest any part of the judicial power in anybody other than a court is entirely ineffective. In *Messrs Summit Bank Limited vs. Messrs Qasim and Co. and another*, 2015 CLD 1377 the Supreme Court of Pakistan held that the bank cannot be conferred with the judicial powers for determination of the amount due against its customers/borrowers and that the right/power to setoff would be available only where the amount claimed was due and if certain and determined by a judicial forum. The Lahore High Court in *United Bank Limited (Supra)* (PLD 2018 Lahore 322) held that any court or tribunal, however named or described, and even created through a legislative instrument, which exercises juridical powers and is not under the supervisory control of the High Court cannot perform judicial functions.

71. While discussing the jurisdiction of the Banking *Mohtasib* under the relevant provisions of the Banking Companies Ordinance the Lahore High Court in *United Bank Limited (Supra) (*2018 CLD 587) observes that the Banking *Mohtasib* has been granted freedom to adopt any procedure for investigating a complaint without the aid of CPC or Qanun-e-Shahdat and that too without the supervision or control of the Supreme Court or a High Court. The judgment comprehensively discusses the concept of separation of powers; key features of judicial power; attributes of a Court, etc., and holds that administrative bodies cannot, in the performance of their functions, exercise any part of the judicial power to be exercised by Article 175 Courts. It has been explained that the idea behind protecting the role of an independent judiciary is to safeguard the rights of litigants to have their claims adjudicated by Courts free from potential influence and domination by the other branches of the Governments. It has therefore

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been held that the jurisdiction of the Banking *Mohtasib* under Section 82-A of the Banking Companies Ordinance is limited to entertaining complaints relating to banking malpractices and violation of banking laws, rules, and guidelines but it has been declared that the Banking *Mohtasib* cannot give any binding decision on complaints brought before it involving disputed questions of facts by resorting to provisions contained in Section 82-B and 82-E of the Banking Companies Ordinance.

72. Similarly, in *Habib Bank Limited vs. Federation of Pakistan and others,* 2022 CLD 769 the Lahore High Court has held that the power under Article 175 of the Constitution and the powers of the Banking *Mohtasib* under Section 82-B of the Banking Companies Ordinance are altogether different and the power under Article 175 of the Constitution cannot be conferred upon an administrative body. The matter to decide rights or penalizing the parties is specific prerogative of the courts.

73. The Lahore High Court in *United Bank Limited Vs. President of the Islamic Republic of Pakistan,* 2025 CLD 834 resigned itself to the fact that the institution of the *Mohtasib* is here to stay and that it is a vital tool for accountability in a diverse governance system notwithstanding the challenges it has faced on the touchstone of Article 175 of the Constitution and observed that the purpose of the office of the Banking *Mohtasib* is to enable cost-free mechanism/forum for citizens for redress of grievance without resorting to courts - an alternative to judicial remedies, to protect customers from the consequences/effects of maladministration, to act as quasi-judicial forum to keep oversight over the banks, to check abuse of authority and arbitrary influence/practices of banks, and safeguard rights of the customers by recommending compensation. Although the judgment reiterates the significance of the institution of the Banking *Mohtasib* it acknowledges that the Ombudsman does not conventionally, *inter alia*, decide intricate and complex questions of law and facts and therefore holds that the Banking *Mohtasib* must determine whether to exercise jurisdiction

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or to refrain from adjudication and suggest invocation of the remedy under Section 50 of the PSEFT Act or other concurrent remedies with particular reference to the effect and consequences of 'contributory negligence' in the form of sharing of confidential information resulting in loss of funds. In the cases before the Lahore High Court the *Mohtasib* had failed to segregate cases in which jurisdiction was justified and where it was not and as such the orders were set aside and the matters were remanded to the Banking *Mohtasib*.

Opinion

74. What emerges from the above discussion is that where the complaint to the Banking *Mohtasib* is of non-compliance with SBP rules, guidelines, circulars, bye-laws, standards or directions whether issued under the PSEFT Act or otherwise, the Banking *Mohtasib* may exercise jurisdiction in accordance with the law.

75. However, the Banking *Mohtasib* under the Banking Companies Ordinance being part of the Executive and not under the supervision and control of the judiciary cannot perform judicial functions nor can he exercise judicial power. Cases which entail disputed questions of fact pertaining to unauthorized/fraudulent Electronic Fund Transfers involve determination of rights and obligations of parties and affixation of liability which are to be established through a fair trial that can only be guaranteed if conducted by a Court in exercise of judicial power. Therefore, in such circumstances only a civil action for damages would lie to a Court of competent jurisdiction under the PSEFT Act.

76. Insofar as the argument submitted by the learned counsel for the Complainant in W.P. No. 4279 of 2023 regarding jurisdiction under the Offences in respect of Banks (Special Courts) Ordinance is concerned the matter was raised and has ably been dealt with in *Soneri Bank Limited and another vs. Messrs Pak Land Corporation (Pvt.) Limited and 4 others*,

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2013 CLD 1756 wherein it was held that the matter that falls within the jurisdiction of the Banking *Mohtasib* is civil in nature but the same fact-situation can give rise to criminal liability. Thus the Banking *Mohtasib* is not precluded from exercising its jurisdiction in accordance with law only because the complaint also contains allegations regarding criminal liability. To the extent of the allegations of criminal liability the matter can proceed before the relevant court simultaneously.

Impugned Orders I and II

77. Examination of the Impugned Orders I passed in W.P. Nos. 2062 of 2021, 4636 of 2021, 4637 of 2021, 1192 of 2022, 1239 of 2022, 3465 of 2022, and 3466 of 2022 shows that the Complainants denied that they had solicited mobile banking application facility whereas the Petitioners/Banks submitted that the mobile banking application had been registered by entering not only personal credentials (which some of the Complainants had admittedly divulged to unknown callers) but also one-time password (OTP) delivered to the Complainant's registered mobile number.

78. The Banking *Mohtasib* rendered findings of fact that the mobile banking application was not solicited by the concerned Complainant but was opened by default by the concerned Petitioner/Bank without consent or intimation to the Complainant. The Banking *Mohtasib's* reliance upon clause 4.2.3.(b) of the Regulations for Payment Cards Security is misconceived as the said provision relates to consent regarding utilization of Payment Cards (including ATM Card, etc.) on various Alternate Delivery Channels whereas the issue involved in the subject cases was whether the mobile banking application was created by the concerned Complainant or not. Thus, the controversy involved disputed questions of fact which could only be determined by a Court of law after recording evidence.

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79. In fact in W.P. No. 3556 of 2024 it was admitted that the Complainant visited the Bank for installation of mobile banking application but the allegation made by the Complainant was that her account was fraudulently accessed for withdrawal of amounts through online transactions and to draw personal loan while disclosure of personal credentials to unknown caller was admitted. The Bank's report showed that all disputed transactions were conducted after the two-factor authentication. The Complainant claimed that she did not notice the SMS alert regarding the transactions and although the transactions took place on 7-6-2022 according to the Complainant she approached the Bank for the first time on 13-6-2022 whereas, according to the Bank's record she approached the Bank on 14-7-2022. Yet the Banking *Mohtasib* found that because the bank staff helped her with the installation *prima facie,* the data was compromised by them, which was a factual finding that the Banking *Mohtasib* does not have the power to render that too without recording evidence. In fact the Banking *Mohtasib* has even given a finding that a personal loan was obtained by a fraudster and as such directed the bank to reverse the loan describing as unsolicited.

80. Therefore, perusal of the record in W.P. Nos. 2062 of 2021, 4636 of 2021, 4637 of 2021, 1192 of 2022, 1239 of 2022, 3465 of 2022, 3466 of 2022 and 3556 of 2024 makes it abundantly clear that the question before the Banking *Mohtasib* was not of mal-practice or maladministration on account of non-compliance with SBP rules, guidelines, circulars, bye-laws, standards or directions. The matters were purely civil disputes requiring trial. Therefore, the Banking *Mohtasib* lacked the requisite power to pass the Impugned Orders I and the President erred in upholding such orders vide Impugned Orders II.

81. On the other hand, while the Complainants in W.P. Nos. 3464 of 2022; 1843 of 2023; 1927 of 2023 also denied soliciting the mobile banking applications through which the disputed transactions were made

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and admitted disclosure of personal credentials to unknown callers but in these cases the mobile application was created after issuance of SBP PSD Circular No. 9 of 2018 dated 28-11-2018 at which time the banks were required to activate online banking services for their customers after biometric verification at a branch. Had the Petitioner/UBL complied with the SBP PSD Circular No. 9 of 2018 dated 28-11-2018 there would be no question of fraudulent creation of mobile banking applications. These were clearly cases of maladministration and no factual dispute arose as such the Banking *Mohtasib* was justified in exercising jurisdiction.

82. In W.P. Nos. 1844 of 2023; 2696 of 2023; 2883 of 2023, and 4279 of 2023, however, the Banking *Mohtasib* failed to consider the effect of PSD Circular No. 2 of 2020 dated 18-3-2020 whereby biometric verification for customers to activate internet and mobile banking was suspended due to COVID-19. Nevertheless, banks were required, pursuant to the latter circular, to activate internet and mobile banking after customer authentication and verification by using appropriate measures and safety/security of customer transactions. The Banking *Mohtasib* was liable to ascertain whether the banks were in compliance of PSD Circular No. 2 of 2020 dated 18-3-2020 in such cases. In case disputed questions of fact arise while doing so the Banking *Mohtasib* should decline to exercise jurisdiction.

Orders III and Impugned Orders IV

83. The Complaints of the Complainants in W.P. Nos. 3374 of 2023; 368 of 2024; 369 of 2024; and 1239 of 2024 were closed by the Banking *Mohtasib* either wholly or partially vide Orders III by finding that admittedly the said Complainants were users of internet banking facility and as such were aware of the implications of security features despite which personal credentials were admittedly shared in violation of the respective Petitioners/Banks's rules. Therefore, the said Complainants were held not

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entitled to the relief prayed for and/or that the case involved disputed questions of fact which needed detailed inquiry for fair adjudication.

84. It is noteworthy that the Petitioners/Banks were not found to be non-compliant with any SBP rules, guidelines, circulars, bye-laws, standards or directions in these cases. Yet the Respondent No. 1/President allowed the Representations filed by such Complainants simply by concluding that it has been established that the Complainants have been subjected to internet fraud and that in such circumstances the President has upheld many recommendations and/or findings of the Banking *Mohtasib* in other cases holding the Petitioners/Banks responsible. The Respondent No. 1/President erred in allowing such Representations as the Banking *Mohtasib* had correctly declined jurisdiction.

Laches

85. The question of delay in filing of Constitutional petition is not always fatal as it is an extraordinary and discretionary relief[7] but depends on facts and circumstances of the case[8]. Where justice demands laches of several years can be overlooked or laches of few months might be fatal[9]. No Court can dismiss a *lis* on the ground of laches if it would defeat the cause of justice[10]. Laches cannot be pleaded against an illegal and unlawful order[11]. The High Court can overlook the delay of the petitioner in approaching the Court in case of an order wholly without jurisdiction[12].

86. The question brought before this Court in the instant matters is of the jurisdiction and exercise of judicial power by the Banking *Mohtasib*. I have already concluded herein above that the Banking *Mohtasib* could not have exercised judicial powers which are only vested in a Court. Moreover, the

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[7] *Hafiz Muhammad Shafaq-ud-Din vs. District Judge Khushab and others*, 2015 MLD 1081.
[8] *Iqbal Ahmad and others vs. Government of Sindh and others*,PLD 2007 Karachi 353.
[9] *Salman Mujahid vs. Federation of Pakistan and 5 others*,2013 MLD 287.
[10] *Muhammad Saleem Shaikh and others vs. Province of Sindh and others*,2020 PLC (C.S) 1156.
[11] *LESCO and others vs. Malik Muhammad Munir and 2 others*,2016 YLR 1916.
[12] *Park View Enclave (Pvt.) Ltd. vs. Capital Development Authority and 2 others*,2018 CLC 947; *Mirpurkhas Sugar Mills Ltd. and 22 others vs. Federation of Pakistan and others*, 2013 MLD 433.

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same question has been raised in connected matters. Therefore, I do not find it justifiable to dismiss W.P. 3466 of 2022 on account of delay in approaching this Court and the same is held maintainable.

87. In view of the foregoing, W.P. Nos. 3464 of 2022; 1843 of 2023; and 1927 of 2023 are **dismissed** whereas the remaining Petitions are hereby **allowed** with the result that:

(a) the Impugned Orders I and II passed by the Banking *Mohtasib* and the President are set aside and the Complaints of the Complainants in W.P. Nos. 2062 of 2021, 4636 of 2021, 4637 of 2021, 1192 of 2022, 1239 of 2022, 3465 of 2022, 3466 of 2022, 3556 of 2024 are **dismissed** while the Complaints of the Complainants in W.P. Nos. 1844 of 2023; 2696 of 2023; 2883 of 2023, and 4279 of 2023 are remanded to the Banking *Mohtasib* for decision afresh after hearing the parties in light of observations made herein above; and

(b) the Impugned Orders IV passed by the President in W.P. Nos. 3374 of 2023; 368 of 2024; 369 of 2024; and 1239 of 2024 are set aside while the Orders III passed by the Banking *Mohtasib* are restored.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on 30th day of January, 2026.

JUDGE

Approved for Reporting

Tanveer Ahmed/*

Islamabad High Court, Islamabad

ANNEXURE

Sr	W.P. No.	Title of the case.	Date of Impugned Order I	Date of Impugned Order II	Date of Order III	Date of Impugned Order IV
1.	2062 of 2021	Habib Bank Limited vs. The President of the Islamic Republic of Pakistan, etc.	14-4-2020	13-1-2021	-	-
2.	4636 of 2021	Habib Bank Limited vs. The President of the Islamic Republic of Pakistan, etc.	22-6-2020	15-7-2021	-	-
3.	4637 of 2021	Habib Bank Limited vs. The President of the Islamic Republic of Pakistan, etc.	11-6-2020	15-7-2021	-	-
4.	1192 of 2022	Habib Bank Limited vs. The President of the Islamic Republic of Pakistan, etc.	19-5-2021	10-11-2021	-	-
5.	1239 of 2022	Habib Bank Limited vs. The President of the Islamic Republic of Pakistan, etc.	24-3-2021	8-12-2021	-	-
6.	3464 of 2022 **(MAIN CASE)**	United Bank Limited vs. The President of the Islamic Republic of Pakistan, etc.	31-8-2021	10-3-2022	-	-
7.	3465 of 2022	United Bank Limited vs. The President of the Islamic Republic of Pakistan, etc.	30-6-2021	17-2-2022	-	-
8.	3466 of 2022	United Bank Limited vs. The President of the Islamic Republic of Pakistan, etc.	17-5-2021	27-1-2022	-	-
9.	1843 of 2023	United Bank Limited vs. The President of the Islamic Republic of Pakistan, etc.	29-7-2022	14-4-2023	-	-
10.	1844 of 2023	United Bank Limited vs. The President of the Islamic Republic of Pakistan, etc.	28-6-2022	14-4-2023	-	-
11.	1927 of 2023	United Bank Limited vs. The President of the Islamic Republic of Pakistan, etc.	29-6-2022	12-5-2023	-	-
12.	2696 of 2023	United Bank Limited vs. Federation of Pakistan and 2 others.	17-11-2022	05-7-2023	-	-
13.	2883 of 2023	United Bank Limited vs. The President of the Islamic Republic of Pakistan, etc.	3-10-2022	9-8-2023	-	-
14.	4279 of 2023	United Bank Limited vs. The President of the Islamic Republic of Pakistan, etc.	9-1-2023	1-11-2023	-	-
15.	3556 of 2024	Bank Alfalah Limited vs. The President of the Islamic Republic of Pakistan, etc.	14-12-2023	12-8-2024	-	-
16.	3374 of 2023	Meezan Bank Limited vs. The President of the Islamic Republic of Pakistan, etc.	-	-	11-10-2022	9-8-2023
17.	368 of 2024	Meezan Bank Limited vs. The President of the Islamic Republic of Pakistan, etc.	-	-	13-9-2023	24-11-2023
18.	369 of 2024	Meezan Bank Limited vs. The President of the Islamic Republic of Pakistan, etc.	-	-	14-7-2023	8-11-2023
19	1239 of 2024	Habib Bank Limited vs. The President of the Islamic Republic of Pakistan, etc.	-	-	8-2-2023	16-11-2023

Islamabad High Court, Islamabad