(2015) 01 CAL CK 0078

In the Calcutta High Court

Case No : Writ Petition Nos. 26085 (W) of 2013 and 2926 (W) of 2014

India''s Smile and Others APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:
Penal Code, 1860 (IPC) — Section 233, 234
Reserve Bank of India Act, 1934 — Section 38, 39

Citation : (2015) 2 CHN 292

Hon'ble Judges : Manjula Chellur, C.J;Joymalya Bagchi, J

Bench : Division Bench

Advocate : Ajay Ray, for the Appellant; Kausik Chanda, D. Bharadwaj and Sumitra Das, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Re: W.P. 2926(W) of 2014

1. This writ petition came to be filed seeking following reliefs against the respondents herein:-

"a) A writ of or in the nature of Mandamus commanding the respondent authorities, its associates, servants and sub-ordinates, particularly the Reserve Bank of India, Calcutta, to forthwith issue small coins directly to the petitioners as also to the members of the petitioner Nos. 3-Association at least Rs. 1500/- per day for each vehicle.

b) A writ of or in the nature of Mandamus commanding the respondent authorities, its associates, servants and sub-ordinates not to compel the petitioners to purchase the coins from the touts by giving commission for such purchase.

c) A writ of or in the nature of Certiorari commanding the respondent authorities, its associates, servants and sub-ordinates to produce or cause to be produced all the records of the case and to certify the same, so that conscionable justice may be done by commanding the respondent authorities, its associates, servants, sub-ordinates and agents not to give effect to any such decision, if any, for not distributing such coins to the petitioners and other operators of Route No. 223 directly in any manner whatsoever.

d) A writ of or in the nature of Prohibition prohibiting the respondent authorities, its associates, servants and sub-ordinates from withholding the issuance of small coins to the petitioners as also other operators of Rout No. 223 directly in any manner whatsoever.

e) Rule Nisi in terms of prayers (a), (b), (c) and (d) as above.

f) An ad-interim order directing the respondent authorities, each one of them, their men, agents, associates, particularly the Reserve Bank of India, Calcutta to issue small coins to the petitioners and the operators of Route No. 223 directly at least Rs. 1500/- each per day till the disposal of this application.

g) Pass such other or further order or orders and/or direction or directions as to Your Lordship may seem fit and proper.

h) Costs and incidentals thereto."

Petitioner Nos. 1 and 2, the operators of Route No. 223 and petitioner No. 3, an association representing other operators about 35 in number run on the Route No. 223, are before us.

2. According to them, they carry on their transport business and they are doing their business after borrowing money from financial institutions. According to them, small coins of different denominations needed per day would be about 300 rupees for each vehicle to run the transport business. In order to secure such small coins, they have to pay huge commission to the tune of 20% to 25% to third parties who collected small coins from Reserve Bank of India, Calcutta Branch. When they addressed a letter to General Manager, Coin Issue Department, Reserve Bank of India dated April 8, 2013, they received a letter intimating that the parties have to approach State Bank of India, Calcutta Main Branch for issuance of such small coins. When they approached the State Bank of India, State Bank of India, Calcutta Main Branch issued small coins directly to the denomination of 1 and 2 amounting to Rs. 10,000/- which is inadequate. Thereafter, they were not able to get any small coins in spite of guidelines and the procedure which contemplates issuance of small coins to individual like bus operators syndicate apart from other public bodies. Therefore, they have approached the Court seeking direction to the respondent authorities to directly issue small coins to the operators as per their requirement whenever they approach the authorities. As a matter of fact, this matter was filed before the learned Single Judge and the same was referred to this Court as another petition being W.P. No. 26085(W) of 2013 was pending in a public interest litigation.

Re: W.P. 26085(W) of 2013

3. This writ petition came to be filed seeking following reliefs against the respondents herein:-

"a) Admission of this writ petition as Public Interest Litigation.

b) A writ in the nature of Mandamus commanding the respondent authorities concerned to suitably regulate the circulation of currency notes and coins and to stop diversion, destruction and smuggling of coins, and circulation of coupon, due slip, token, plastic coin etc. in lieu of coins for the convenience and interest of the public and the nation.

c) A writ in the nature of Mandamus commanding the respondent authorities not to withdraw any coin of any denomination from circulation and to reintroduce coins of all denomination into circulation.

d) A writ in the nature of Mandamus commanding the respondent authorities to take effective steps to curb inflation and devaluation of rupee and for economic development of India and its people.

e) A writ in the nature of certiorari commanding the respondents to forthwith certify and transmit all records and proceeding relating to the demonetizations and/or withdrawal from circulation small currency notes and coins and the impugned circulation of coupon, due slip, plastic coins, token etc. in lieu of coins and the inaction on the part of the respondent authorities to curve such illegal circulation so that conscionable justice may therein be administered by quashing the same.

f) Any other appropriate writ or writs.

g) Rule in terms of prayers above.

h) Interim order of injunction restraining the respondent authorities from allowing any circulation or introduction of coupon, due slip, token, plastic coin etc. in lieu of coins.

i) An interim order of injunction directing the respondent authorities concerned to take necessary effective action against the offender of law in the diversion, destruction and smuggling out of coins and in the introduction and circulation of coupon, due slip, token and plastic coin in lieu of coins.

j) An order directing the respondent authorities concerned to submit a report before this Hon''ble Court about the problem and the steps taken to curb diversion, destruction and smuggling out of coins, and illegal circulation of coupon, due slip, token, plastic coin etc. in lieu of coin.

k) An order directing the respondent authorities concerned to widely publicize by notification banning the introduction and circulation of coupon, token, due slip, plastic coin etc. in lieu of coin and about the penal action to be taken against the offenders.

l) An appropriate order appointing a renowned economist as Special Officer to investigate and report with suggestion to curve inflation, devaluation of rupee and to improve the economic development and standard of living of the people.

m) Costs of and incidental to this application.

n) Such further or other order or orders, direction or directions as to this Hon''ble Court may seem fit and proper."

4. According to the petitioner, there is systematic organised illegal trading and operations so far as smuggling of small coins which is causing inconvenience and financial loss to the general public. According to them, an artificial crisis of coins and small currency notes is caused on account of improper distribution of the small currency and small coins and on account of high demand of these, it is leading to large scale corruption, ultimately resulted in issuance of unauthorised and illegal circulation of coupons, slips, plastic coin in lieu of small coins and sometimes mere confectionery items like chocolate and peppermint instead of small coins, therefore, there has to be proper direction to the respondent authorities to look into the matter and take coercive and strict steps to curb the menace of the abovestated illegal methods adopted by interested persons and this could be achieved only if there is proper distribution of small currency and small coins.

5. In both the matters the Reserve Bank of India has placed on record its affidavit-in-opposition. So far as the stand of the Reserve Bank of India in the public interest litigation, they have filed a detailed report along with annexures indicating method of distribution of coins per year including the quantity and denomination. According to them, sections 38 and 39 of the Reserve Bank of India Act clearly specify the functions to be performed by the authorities concerned under the said Act. Sections 38 and 39 are relevant so far as the different forms of currency and the obligation of the bank. They also indicate what is the procedure of distribution of the coins which is at paragraph 2(c) at page 11 of the Affidavit-in-opposition which read as under:-

"2(c) To discharge the above obligations, RBI observes the following procedure;-

The Department of Currency Management of the Central Office of RBI assesses annually the requirement of coins throughout India for the forth coming year, from April to March. The quantity assessed is then indicated for from the Mints of the Government of India. The input is sometimes not filled completely. The quantity received is allocated between the Regional Offices of RBI according to their assessed requirements and subject to availability of coins from the Central Government. A chart showing the different denominations of Coins allocated to West Bengal in the years 2010/11, 2011/12 and 2012/13 is Annexure "R-1" hereto. West Bengal falls within the Eastern Region. Upon receipt of the coins, The Regional Offices circulates them through "Currency Chests" or "Small Coin Depots", which are maintained at branches of specified commercial banks. A list of such banks in West Bengal is Annexure "R-2" hereto. These commercial banks then distribute the coins from the currency chest to their other branches, from where they are available to the public. Apart from this, RBI has 13 coin vending machines at its Regional Office in Kolkata from which members of the public can obtain coins. RBI also provides coins directly to "bulk consumers", such as the Calcutta State Transport Corporation, the West Bengal Surface Transport Corporation Limited and the Calcutta Tramways Corporation. Other bulk consumers such as private bus syndicates, toll plazas and big shops apply to the RBI for their requirements of coins. If these applications are for genuine requirements, the applicants are directed to Currency Chests of their choice, the operators whereof are advised by RBI to meet such requirements. A chart showing the monthly issue to bulk consumers in West Bengal is Annexure "R-3" hereto. RBI has taken steps to ensure that the commercial banks operating treasury chests perform their transactions. Such will appear from Annexure P-8 to the petition. In view of the above procedure, there should be no shortage of coins and no difficulty for members of the public from obtaining their requirements of coins."

6. Paragraph 4 to 8 refers to their reply to the various allegations made in the writ petition which read as under:-

"4. With reference to the allegations contained in paragraphs 3 to 5 of the said petition, there is now no great shortage of coins in West Bengal, and it is possible for a member of the public to get coins from the vending machines at the premises of RBI without waiting. I call upon the petitioner to provide the dates of the coupons, photographs and advertisements mentioned in the said paragraphs 4 and 5.

5. With reference to the allegations contained in paragraphs 6, 7, 9, 20 and 23, it appears therefrom that the case of the petitioner is that the alleged shortage of coins is "totally artificial" and has been created by the illegal misuse of coins after their issue. RBI has no power or authority to prevent such misuse, but has, as stated in paragraph 23 of the said petition complained to the police about it. Relevant correspondence in this regard is hereto annexed and marked "R-4" in a bundle.

6. With reference to the allegations contained in paragraph 12 of the said petition, I deny that RBI has become careless or irresponsible or has forgotten any principle regarding the circulation of money. The contentions in the said petition are self contradictory in as much as on the one hand the petitioner complains of the shortage of coins and on the other alludes to the damages of an exclusive supply of currency, and complains of such excess.

7. Save as appears from the relevant Master Circular, I deny each and all the allegations or contentions contained in paragraphs 14 and 15 of the said petition. The subject of the numbers and denominations of bank notes in circulation is a highly technical one, and also relates to policy, which the High Court in its constitutional writ jurisdiction does not deal with. I deny that the number of notes of high denomination in circulation is excessive, or that the number now in

circulation, or the withdrawal of small coins has called inflation or suffering as alleged.

8. With reference to the allegations contained in paragraphs 26 and 29 of the said petition, RBI is doing all that it can do under the Reserve Bank of India Act, 1934 to regulate the circulation of money for the benefit of the country. This Honourable Court in its constitutional writ jurisdiction does not interfere in technical matters or those relating to policy which the petitioner by the said paragraphs and the first portion of prayer f of the petition is inviting it to do."

7. This procedure clearly indicates the functions which have to be performed by the authorities concerned so far as the issue of currency including small currency and supply of small coins. They clearly indicated how the ''currency Chests'' and ''small coin depots'' cater to the needs of the general public to whom the relevant branch of the RBI, Department of Currency Management, would supply the coins. We also have the affidavit-in-opposition on behalf of the first respondent, Deputy Manager, working in the office of India Government Mint, Kolkata who clearly answers the allegations made so far as sections 233 and 234 of Indian Penal Code. The relevant paragraphs are 4(a), (b) and (c) which read as under:-

4.(a) Under section 233 of the Indian Penal Code (IPC) it is stated that whosoever makes or mends or performs any part of the process of making or mending or buys, sells or disposes of, any die or instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be sued, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(b) Under section 234 of the IPC, it is stated that whoever makes or mends, or performs any part of the process of making or mending or buys, sells or disposes of, any die or instrument, for the purpose of being used or knowing or having reason to believe that it is intended to be sued, for that purpose of counterfeiting Indian coins shall be punished with imprisonment of either description or a term which may extent to seven years, and shall also be liable to fine.

(c) The ''Police'' and the ''Public Order'' are State subjects under the Seventh Schedule to the Constitution of India and, therefore, the State Governments are primarily responsible for prevention, detection, registration and investigation of crime. The concerned State Government may take effective action against the offender of law in the diversion, destruction and smuggling out of coins and in the introduction and circulation of coupon, due slip, token and plastic coin in lieu of coins based on their local/special laws."

8. So far as other averments, according to them, the State Government is primarily responsible for prevention, detection, registration and investigation of crime. Therefore, the State Government have to be directed to look into the matter and see that there is no diversion, destruction and smuggling of coins which results in circulation of coupon, due slip, etc.

9. Affidavit-in-opposition of the sixth respondent, under Secretary in the office of the Central Economic Intelligence Bureau, New Delhi has also answered the averments in the writ petition. The relevant paragraph Nos. 4, 6 and 10 which reads as under:-

"4. That before dealing with the said allegations made in the said Writ Petition I respectfully state and submit that Central Economic Intelligence Bureau is a Central Government Organization under the Department of Revenue, Ministry of Finance situated at Delhi. The said Bureau acts as a nodal agency for economic intelligence to facilitate and ensuring of effective interaction and co-ordination amongst the intelligence/enforcement and regulatory agencies in the areas of economic offences. The Bureau is a repository of information pertaining to economic offences received from various sources. In terms of its mandate, CEIB forwards any information/complaint which reflects/suggests violation of any economic laws to the appropriate agency which administers/implements the law allegedly violated for further necessary action.

6. With reference to the allegations made in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 & 18 of the said Writ Petition I respectfully state and submit that since the allegations are not pertaining to the answering Respondent No. 6 I refrain to make any comment and I further state and submit that save what are matters of record I deny all allegations which are contrary thereto and/or inconsistent therewith.

10. With reference to the allegations made in paragraph 26 of the said writ petition, save what are matters of record I deny all allegations which are contrary thereto and/or inconsistent therewith. It is stated that Central Economic Intelligence Bureau is primarily an economic intelligence organisation and as and when a complaint/information is received the same is examined and forwarded to concerned agencies for appropriate action. In the instant case the petitioner has posted its complaint dated 30.06.2013 and 03.08.2013 as is evident from facsimile of receipt and the said complaint was received in the Bureau on 06.08.2013. After receiving the complaint the same was examined and forwarded to Reserve Bank of India, Mumbai and Commissioner of Police Kolkata vide letter dated 19.09.2013 for appropriate action and feedback. Feedback has not yet been received by this Bureau from the above agencies. The action taken on the complaint received from India''s Smile was duly intimated to Shri Rajib Sarkar, Secretary Trustee, India''s Smile vide CEIB''s letter dated 27.09.2013."

A copy of the said letter dated 19.09.2013 addressed to Reserve Bank of India, Mumbai and the Commissioner of Police, Kolkata and also a copy of the letter dated 27.09.2013 addressed to Shri Rajib Sarkar, Secretary Trustee, India''s Smile are annexed hereto and marked as Annexure : R-1, R-2 and R-3 respectively."

10. Coming to the controversy raised in the writ petition, it is the stand of the RBI that there is no shortage of issuance of small currency and small coins. If the

end result of such a statement has to be taken into consideration, there should not be a complaint from the general public. The fact remains that at some sections of the society are finding it extremely difficult to secure the small currency and small coins. This may not be directly attributable to the procedure adopted by the RBI. It could be due to middlemen who are taking good chunk of the small currency and small coins creating second line of distribution in the society resulting in the problems faced by the general public including some of the transport operators. Though there is a procedure and guidelines how small currency and small coins are distributed to the Small Coins Depots, the common man is not able to secure such currency specially the people who are in some commercial activity and who regularly need small currency and small coins. The procedure contemplates definitely how one can approach directly at Small Coin Depots and obtain small coins but the fact remains enough coins are not available for distribution and as some of them have access to these coins which probably is distributed to Coin Vending Machines. The Coin Vending Machines are maintained at respective branches of the commercial banks and it is for those banks to see that there is proper distribution of coins through the Coin Vending Machine. If a particular branch, if consistently and persistently, are not able to secure small currency and small coins, it speaks for itself that something is wrong in a particular branch but no such particular instances are mentioned in the writ petition. There is generalisation and general complaint that there is no proper distribution of small currency and small coins. In all probability at the Coin Vending Machines how the distribution of coins is made seems to be monopolised by certain persons regularly coming and taking the coins. It may also be possible that they are trading in coins which is not permissible but to what extent it could check and how to have it running and have a control, there is a limit as well. If they are not directly distributing small currency and coins, it is not attributable either to the commercial branches or the RBI. If Coin Vending Machine is installed which takes care of distribution, it depends upon the person "first come and first serve basis".

11. As already stated above, to find fault with the procedure adopted by the RBI or the commercial bank while operating the Coin Vending Machine, we are unable to pass any particular direction. If any complaint is made with regard to a particular branch or a commercial bank, then the same can be looked into by the authorities concerned and do the needful. If any instance of middleman trading in the coins is reported to the State mechanism, it has to definitely take care of the situation and do the needful. Any NGO like the present petitioner is at liberty to bring to the notice of the police if the petitioner is aware who are middleman and who are creating this problem. In the absence of any specific allegation against any particular organisation or individuals, it would be like searching in the air to take action. There cannot be any positive direction on those lines. Therefore, we conclude this matter by opining that the petitioner has to bring to the notice of the concerned authorities of the RBI or the head office or regional office of the commercial banks if any malpractice or illegal activity is noticed by

them so that the authorities concerned can take suitable action. Similarly, the petitioner or any other responsible person is entitled to approach the police with all the details they have, if any, regarding middleman dealing with the trading in currency which is totally prohibited under the Statute.

12. With these observations, the public interest litigation is disposed of.

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13. The State Bank of India and also RBI have placed their affidavit-in-opposition explaining how the small currency and small coins depots are working. The affidavit filed by the General Manager (Issue Department) of RBI at paragraphs 2(c)(i) to (ix) indicates the procedure adopted by them so far as the supply and distribution of small currency and small coins which read as under:-

"i) The Department of Currency Management of the Central Office of RBI annually assesses the requirement of coins throughout India for the forth coming year, from April to March. The assessment is done on the basis of factors, inter alia, currency in circulation, the state of demand and supply of currency and feedback secured by the RBI from the banks in their respective Issue Circle. Such feedback complimented with established statistical models are useful in finalising the consolidated requirement of currency. The Issue Circle-wise requirement is furnished to the Central Office of the RBI.

ii) The quantity assessed is then indicated for from the Mints of the Government of India. It is pertinent to mention that the input is sometimes not filled completely.

iii) The quantity received is allocated between the Regional Offices of RBI according to their assessed requirements and subject to availability of coins from the Central Government. A table indicating indent and supply of coins by the mints to RBI during the last three years and the indent for the year 2013-14 is annexed hereto and marked "R-1".

iv) Distribution of the coins, made available by the Government of India, is done by the Issue Offices of RBI. The coins are distributed to the Currency Chests in their respective Issue Circle after ascertaining the demand and stock position for further distribution. A chart showing the different denomination of coins allocated to West Bengal in the years 2010-11, 2011-12 and 2012-13 is annexed hereto and marked "R-2". West Bengal falls within eastern region.

v) There are 214 "Currency Chest" branches and 150 "Small Coin Depots" in West Bengal. Upon receipt of the coins, the Regional Offices circulate them through the "Currency Chests" and "Small Coin Depots", which are maintained at branches of specified commercial banks. Large quantity of coins have been remitted to the said Currency Chests in West Bengal and the same is self evident from the table, tabulating the details of such remittances of coins, annexed hereto and marked "R-3". Also, a list of such banks in West Bengal maintaining "Currency Chests" or "Small Coin Depots" is annexed hereto and marked "R-4".

vi) The commercial banks then distribute the coins from the Currency Chest to their other branches, from where they are available to the public. A "linkage scheme" is developed by RBI to facilitate easy securing of coins by shopkeepers or traders on a regular basis. Under the scheme, the shopkeepers or trading establishments are linked to a nearby Currency Chest branch of the commercial banks of their choice so that they can secure coins on a regular basis sans the trouble of covering distances for the same. A table indicating the position of such issuance of coins from the year 2012 onwards is annexed hereto and marked "R-5".

vii) Commercial Banks across West Bengal have installed Coin Vending Machines on being so advised by the RBI. These machines are installed to cater to the needs of the public. Apart from this, RBI has 13 Coin Vending Machines at its Regional Office in Kolkata from which the members of the public can obtain coins. A separate cell was created in the Issue Department of RBI to specifically monitor the position of coins at the Currency Chest branches feeding the Coin Vending Machines. A table indicating number of Coin Vending Machines installed from June 30, 2012 is annexed hereto and marked "R-6".

viii) RBI also provides coins directly to "bulk consumers", such as the Calcutta State Transport Corporation, the West Bengal Surface Transport Corporation Limited and the Calcutta Tramways Corporation. Other bulk consumers such as private bus syndicates, toll plazas and big shops apply to the RBI for their requirements of coins. If these applications are for genuine requirements, the applicants are directed to Currency Chest of their choice, the operators whereof are advised by RBI to meet such requirements. A chart showing the monthly issue to bulk consumers in West Bengal and a table indicating issuance of coins to Government bus depots, private bus syndicates/operators and highway toll plazas by RBI and commercial banks during the last two years are annexed hereto and collectively marked "R-7".

ix) RBI has taken steps to ensure that the commercial banks operating treasury chests perform their transactions. RBI has issued a Master Circular to ensure the same. In view of the above procedure, there should be no shortage of coins and no difficulty for members of the public from obtaining their requirement of coins."

14. The affidavit clearly answers the other allegations made in the writ petition and paragraph 8 and 2(c) clearly indicate there is direct supply of small currency and small coins to bulk consumers like Calcutta State Transport Corporation, etc. The writ petitioners herein do not claim to be part of any syndicate. According to them, they belong to Rout No. 223. Some of its operators being part of bus owners'' association. The affidavit-in-opposition filed by State Bank of India clearly indicates except for one occasion, the petitioners have never approached the bank for issuance of coins. It is needless to say, from the averments indicated even the individual operator indicated in the affidavit-in-opposition or an individual bus operator is entitled to stand in the queue at the commercial branches of several banks and operate the Coin Vending Machine. The bus

owners'' association must find a way out to redress their problem. If they directly approach the State Bank of India, there is possibility of issuance of coins directly to them which has been done on earlier occasion. We do not find from the records that they have approached the State Bank of India more than on one occasion. If the petitioners are encouraging the middleman by paying commission to them, they have to blame themselves and they cannot find fault with the procedure or the guidelines evolved by the RBI. None of the guidelines referred to are challenged in this writ petition. On the other hand, the guidelines and the procedure adopted clearly indicate there is a regulated process and distribution of small currency and small coins.

15. In that view of the matter, as already referred to in the other public interest litigation, it is open to the writ petitioners to bring to the notice of the concerned authorities to take action against the middleman who are trading in small coins and approach the State Bank of India for supply of small currency and small coins. If there is procedural lapses or illegal method adopted by such banks, it is open to the petitioner to approach the higher ups seeking proper redressal for their remedy.

16. It is needless to say this Court cannot sit as an expert and decide how much quantity of coins could be brought into circulation. It is entirely the duty and the function of the Reserve Bank of India to perform. If such functions are performed deviating the procedure, then alone the Court can stop in and correct the system. With this observation, the writ petition is disposed of.