

(1946) 01 BOM CK 0015
In the Bombay High Court
Case No : O.C.J. Appeal No. 2 of 1946

J.M. D"souza

APPELLANT

Vs

The Reserve Bank of India

RESPONDENT

Date of Decision : 25-01-1946

Acts Referred:

Specific Relief Act, 1877 — Section 45

Citation : AIR 1946 Bom 510 : (1946) 48 BOMLR 365

Hon'ble Judges : Lokur, J;Leonard Stone, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Leonard Stone, Kt., C.J.—This is an appeal from the judgment of Mr. Justice Kania dated January 22, 1946. The appeal has been taken up at this early date because it involves a question of considerable importance and because unless it is determined by 1 o'clock to-morrow afternoon the time for presenting certain high denominational bank notes pursuant to Ordinance III of 1946, which provides for their demonetisation, will have passed. The petitioner, the appellant in this Court, is a person who since the coming into operation of the Ordinance presented a bank note for Rs. 1,000 to the Reserve Bank of India with a demand for payment, which demand was refused by the bank. Accordingly he filed a petition to the Court u/s 45 of the Specific Relief Act, praying for a mandatory order on the bank to discharge and satisfy the unconditional promise to pay to the petitioner the sum of Rs. 1,000 contained in the particular bank note without imposing any condition on the petitioner. Section 45 of the Specific Relief Act provides:

Any of the High Courts of Judicature at Calcutta, Madras and Bombay may make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature.

And then there follow a number of provisos, proviso (&) being as follows:

that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character.

2. There is no doubt that the Reserve Bank is a corporation which comes within the purview of the section, but the principal questions which have been raised are:

(1) Whether these proceedings for a mandatory order can be maintained u/s 45 of the Specific Relief Act ?

(2) Whether Section 9 of the Ordinance bars these proceedings being taken at all? and

(3) Whether the Ordinance on its true construction does take away or affect the petitioner's right as a holder of the bank note to receive payment on demand?

3. If any of these questions is answered adversely to the petitioner, he can obtain no relief and his petition must be dismissed.

4. In the Court below it was question (3) which was determined, and although questions (1) and (2) are in the nature of preliminary points, it will, in the circumstances and in deference to the elaborate argument addressed to us by Mr. Munshi, be proper to direct attention in the first instance to the larger question.

5. The validity of the Ordinance is not, and in view of the decided cases, could not be challenged. But Mr. Munshi on behalf of the petitioner puts his submissions in this way. First of all he points out that a bank note has two qualities: it is legal tender and it is a promise to pay on demand. Next he submits that there is not in the Reserve Bank Act of 1934, which sets up the Reserve Bank and empowers it to issue bank notes, any express statutory obligation to honour and pay for a note on demand but that the law will imply from the statutory power to issue notes a statutory obligation to honour and pay them when issued, and that if that be the true position, Ordinance III of 1946, whilst it has destroyed the quality of the notes as legal tender, has not abrogated or affected in any way this implied obligation of the Bank to pay which, it is said, arises from the statutory power.

6. The Reserve Bank of India Act, 1934, as its preamble shows constitutes the Bank as a Reserve Bank for India to regulate the issue of bank notes and the keeping of reserves with a view to securing monetary stability in British India and generally to operate the currency and credit system of the country to its advantage. By Section 1 the Act extends to the whole of British India and the section is to come into force at once. Section 2 is a definition section, and Section 3 is as follows:

3. (I), A bank to be called the Reserve Bank of India shall be constituted for the

purposes of taking over the management of the currency from the Central Government and of carrying on the business of banking in accordance with the provisions of this Act,

(2) The Bank shall be a body corporate by the name of the Reserve Bank of India, having perpetual succession and a common seal, and shall by the said name sue and be sued.

The rest of the chapter, which is headed by Section 3, deals with the share capital and the management and the banking business. But Section 17 in that chapter must be observed. It is as follows:

The Bank shall be authorised to carry on and transact the several kinds of business hereinafter specified, namely.

and then are set out a number of sub-paragraphs, sub-paragraph (15) being in these terms:

the making and issue of bank notes subject to the provisions of this Act and the making and issue of Burma notes in accordance with the law of Burma.

Sub-paragraph (16):

generally, the doing of all such matters and things as may be incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act and the law of Burma.

7. Chapter III commences with Section 20 and is headed " Central Banking Functions " and Section 22 gives the bank the sole right to issue bank notes in British India. Section 23 deals with the Issue Department of the Bank and provides:

The issue of Bank notes shall be conducted by the Bank in an Issue Department which shall be separated and kept wholly distinct from the Banking Department, and the assets of the Issue Department shall not be subject to any liability other than the liabilities of the Issue Department as hereinafter defined in Section 34.

Sub-section (2) is as follows:

The Issue Department shall not issue bank notes to the Banking Department or to any other person except in exchange for other bank notes or for such coin; bullion or securities as are permitted by this Act to form part of the Reserve.

8. It is Section 26 which provides for the notes being legal tender:

Subject to the provisions of Sub-section (2), every bank note shall be legal tender at any place in British India in payment or on account for the amount expressed therein, and shall be guaranteed by the Central Government.

Sub-section (2) provides:

On recommendation of the Central Board the Central Government may, by

notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender save at an office or agency of the Bank.

And Sub-section (5) deals with Burma. Section 27 prevents the Bank from re-issuing bank notes which are torn, defaced or excessively soiled. Section 28 provides:

Notwithstanding anything contained in any enactment or rule of law to the contrary, no person shall of right be entitled to recover from the Central Government or the Bank, the value of any lost, stolen, mutilated or imperfect currency note, of the Government of India, or bank note.

9. Section 34 provides for the liabilities of the Issue Department:

The liabilities of the Issue Department shall be an amount equal to the total of the amount of the currency notes of the Government of India and bank notes for the time being in circulation.

Sub-section (2):

For the purposes of this section, any currency note of the Government of India or bank note which has not been presented for payment within forty years from the 1st day of April following the date of its issue shall be deemed not to be in circulation, and the value thereof shall, notwithstanding anything contained in Sub-section (2) of Section 23, be paid by the Issue Department to the Central Government or the Banking Department, as the case may be; but any such note, if subsequently presented for payment, shall be paid by the Banking Department, and any such payment in the case of a currency note of the Government of India shall be debited to the Central Government.

The next relevant section is Section 39 around which much debate has ranged in this case. It is in these terms:

39. (1) The Bank shall issue rupee coin on demand in exchange for bank notes and currency notes of the Government of India, and shall issue currency notes or bank notes on demand in exchange for coin which is legal tender under the Indian Coinage Act, 1906.

" (2) The Bank shall, in exchange for currency notes or bank notes of five rupees or upwards, supply currency notes or bank notes of lower value or other coins which are legal tender under the Indian Coinage Act, 1906, in such quantities as may, in the opinion of the Bank, be required for circulation; and the Central Government shall supply such coins to the Bank on demand. If the Central Government at any time fails to supply such coins, the Bank shall be released from its obligations to supply them to the public.

10. It will be convenient at this stage to notice some of the provisions of Ordinance III of 1946, which is made under the powers conferred by Section 72

of the Government of India Act. Section 6, which is headed, " Exchange of high denomination bank notes held by other persons," (the previous section dealing with those held by banks), is as follows:-

(1) Notwithstanding anything to the contrary contained in the Reserve Bank of India Act, 1934, (II of 1934), any high denomination bank note held by a person other than a bank or Government treasury shall after the 12th day of January 1946 be exchanged only on tender of the note for exchange by the owner thereof in the manner provided in this section.

11. Then follow nine further sub-sections dealing with the manner of exchange and referring to the schedule which the holder of the note is required to fill up. The only other section which I need refer is Section 9 headed "Bar of legal proceedings":

No suit, prosecution or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Ordinance.

12. The argument that there is not by virtue of the Reserve Bank Act any statutory obligation to pay, proceeds by attempting to show that there is a distinction between the word " exchange " and the word " pay ". Mr. Munshi relies on the use of the words " in payment" in Section 26 " to recover.. .the value " in Section 28 and " payment" and " shall be paid " in Section 34 and he also contrasts the language and the scheme of the English Bank Acts of 1833i and 1844 and submits that the statutory obligation contained in Section 39 of the Reserve Bank Act to issue rupee coin on demand in exchange for bank notes and currency notes is only for maintaining equilibrium between different forms of currency. Mr. Munshi also relies upon the marginal note to that section which is: " Obligation to supply different forms of currency." But it has been laid down by the Privy Council in *Thakurain Balraj Kunwar v. Rae Jagatpd Singh* (1904) L.R. 31 IndAp 132 :

it is well settled that marginal notes to the section of. an Act of Parliament, cannot be referred to for the purpose of construing the Act. The contrary opinion originated in a mistake, and it has been exploded long ago. There seems to be not reason for giving marginal notes in an Indian statute any greater authority than the marginal notes in an English Act of Parliament.

13. In his judgment the learned Judge in the Court below said this (p. 367 ante):

The word " exchange" means " surrender of one thing and" the receipt of another thing against the first." The holder of the note has to surrender it, and against that receive currency notes or coins of the equivalent amount mentioned in the note. The nature of the transaction being such, it is bound to be described as an exchange and not an obligation met by payment.

And a little further on (p. 367 ante):

I do not agree with the contention of the petitioner that Section 39 is limited to

notes which are legal tender. It covers the case of bank notes which are brought to the bank and against which the holder asks for payment. It covers the case of a note which is legal tender u/s 26 generally or limited within the meaning of Section 26(2), as also the case of a note of which circulation in general has been stopped but which the bank is bound to receive, accept and exchange for currency notes or coins. The word "exchange" used in Section 39 in my opinion covers the obligation of the Bank to give against notes which are legal tender other notes or coins, and also obligation to deliver currency notes and coins against bank notes which have ceased to be legal tender. I do not propose to go into the larger question which was partially discussed in respect of the implied obligation of the Bank outside the Act to make payment and whether there exists such implied obligation. In my opinion Section 39 imposes an unqualified obligation on the Bank to pay for the notes, as provided therein, irrespective of the fact whether they are legal tender or not. The question of implied obligation" under the circumstances does not arise.

14. No peculiar significance or special meaning attaches to the word "exchange": see *Baynes & Co. v. Lloyd & Sons* [1895] 1 Q.B. 820 ; and I respectfully agree with the learned Judge in the Court below that Section 39 does impose on the Bank an express obligation to honour its notes in coin whether they are legal tender or not and in the case of bank notes of Rs. 5 and upwards to supply coin or notes of lower denomination"to the note tendered. The only discretion which the bank is given is as to the quantities of coin and notes respectively which it will give in exchange, but it must give one or the other or both. In my opinion the word "exchange" is a word of wider import than the word "pay," Actually on tender of the note with a demand for payment the bank does effect an exchange, since it retains the tendered note against the coin or the notes of lower denominations. I think the words in Clause 6 of the Ordinance "be exchanged only on tender of the note for exchange" are relevant. They raise the question, exchange for what ? The words must mean "to be exchanged in satisfaction of the promise to pay." If there be an express statutory obligation, there is no room for any implied obligation arising by virtue of the statutory powers and duties of the Bank. But even if this case could be grounded on implied obligation, there is in my judgment a fatal objection to the petitioner's case, since in my opinion an implied obligation arising by virtue of a statute cannot be divorced from the statute itself and treated as something standing dehors the Act. It is part and parcel of the statute itself. So that in this case Clause 6 of the Ordinance abrogates such an implied obligation in the same way as it abrogates an express one. The words of the Ordinance are "notwithstanding anything to the contrary contained in the Reserve Bank of India Act" and an implied obligation to pay arising by virtue of the Act is in my opinion something contained in the Act. To hold otherwise would be to give a too narrow construction to the words used. But in my judgment there is another fatal objection to the petitioner's case since it cannot be said that in the circumstances it is "clearly incumbent" on the bank to make unconditional

payment of this note. So that a writ of mandamus cannot be granted u/s 45 of the Specific Relief Act. The circumstances of this case are wholly different from the case of *In re Tarabai* (1905) 7 Bom. L.R. 161 on which Mr. Munshi relies and which was a case in which the Commissioner of Police issued a notice which was held to be beyond his powers. Apart from any of the other reasons to which I have already referred, this appeal must in my opinion be dismissed on the preliminary ground that it does not lie for the petitioner to seek a writ of mandamus u/s 45 of the Specific Relief Act. I do not in the circumstances propose to say anything about Clause 9 of the Ordinance, since having regard to the construction placed on the Reserve Bank Act and the Ordinance, the case is not one in which a writ of mandamus can issue.

15. In my opinion this appeal must be dismissed with costs.

Lokur, J.

16. I concur. The only question in this appeal is whether the Reserve Bank is absolved by Ordinance No. III of 1946 from its obligation to fulfil its " promise to pay " contained in high denomination bank-notes, unless they are presented along with the declaration required by Section 6 of the Ordinance. The primary object of the Ordinance is to demonetise such bank-notes, that is to say, bank-notes of the denominational value of Rs. 500, Rs. 1,000 and Rs. 10,000 and to collect detailed information regarding their acquisition and possession. Section 3 of the Ordinance provides:-

On the expiry of the 12th day of January 1946, all high denomination bank-notes shall, notwithstanding anything contained in Section 26 of the Reserve Bank of India Act, 1934 (Act II of 1934), cease to be legal tender in payment or on account at any place in British India.

Section 4 says:-

Save as provided by or under this Ordinance, no person shall after the 12th day of January ,1946 transfer to the possession of another person or receive into his possession from another person any high denomination banknote.

17. Section 5 deals with the exchange of high denomination bank notes held by banks and Government treasuries, and Section 6 deals with the exchange of high denomination bank notes held by other persons. It is with the effect of this section 6 that we are concerned in this appeal.

18. Section 6 provides:-

(1) Notwithstanding anything to the contrary contained in the Reserve Bank of India Act, 1954 (II of 1934), any high denomination bank note held by a person other than a bank or Government treasury shall after the 12th day of January 1946 be exchanged only on tender of the note for exchange by the owner thereof in the manner provided in this section.

Then Sub-sections (2), (6), (7) and (8) provide for the manner in which high

denomination bank notes can be exchanged in the Reserve Bank. These sub-sections require a declaration in a certain form regarding the mode of acquisition etc. before such high denomination bank notes can be accepted and exchanged by the Reserve Bank. What the Reserve Bank is empowered to do by these sub-sections is to refuse to accept and exchange high denomination bank notes, unless they are accompanied by such declaration. Mr. Munshi for the appellant contends that these sections deal only with the exchange of notes for rupee coin or notes of other denominations u/s 39 of the Reserve Bank of India Act, 1934, and do not affect the bank's obligation to carry out " the promise to pay " made in such bank notes when they were issued. The issue of bank notes and the rights and liabilities arising from it are governed by the provisions of the Reserve Bank of India Act, 1934. Section 22, Sub-section (1), of that Act confers upon the Reserve Bank the sole right to issue bank notes in British India and u/s 23, Sub-section (1), the issue of bank notes is to be conducted by the bank in an Issue Department which is separated and kept wholly distinct from the Banking Department. u/s 33, Sub-section (1), the Issue Department must maintain its assets consisting of gold coin, gold bullion, sterling securities, rupee coin and rupee securities, to such aggregate amount as is not less than the total of the liabilities of the Issue Department. By Section 26, Sub-section (1), every bank note is declared to be legal tender at any place in British India in payment or on account for the amount expressed therein, and is guaranteed by the Central Government, and Section 26, Sub-section (2), empowers the Central Government to declare that any series of bank notes of any denomination shall cease to be legal tender. The rights of the owner or holder of a bank note as against the bank are laid down expressly in Section 39, which runs as follows:-

39. (1) The bank shall issue rupee coin on demand in exchange for bank notes and currency notes of the Government of India, and shall issue currency notes or bank note on demand in exchange for coin which is legal tender under the Indian Coinage Act, 1906.

(2) The bank shall, in exchange for currency notes or bank notes of five rupees or upwards, supply currency notes or bank notes of lower value or other coins which are legal tender under the Indian Coinage Act, 1906, in such quantities as may, in the opinion of the bank, be required for circulation; and the Central Government shall supply such coins to the Bank on demand. If the Central Government at any time fails to supply such coins, the Bank shall be released from its obligation to supply them to the public.

19. Mr. Munshi contends that this section deals only with the exchange of bank notes for coins or notes of other denomination but not with the " liability to pay " undertaken at the time of the issue of the notes. There is no provision in the Act regarding the discharge of that liability and, therefore, Mr. Munshi says that there is an implied obligation to discharge it. The payment promised in a bank note must be made by means of some legal tender, which may be coin or bank notes of other denominations. Mr. Munshi contends that the liability may be discharged

also by some other means such as crediting the amount to some account in the bank. But that is not the undertaking given in the bank note. What is promised is payment of so many rupees and that means some legal tender. Hence this giving of coin or bank notes for a bank note of equivalent value is described in Section 39 as the "exchange" of the former for the latter. This is the only mode of satisfaction of the bank's liability under the bank note which is recognised by the Act. It is obvious that unless a bank note is not only tendered, but surrendered and handed over to the bank, the bank is under no obligation to give its equivalent. Hence the word "exchange" is rightly and purposely used in Section 39. Mr. Munshi referred to the definition of the word "exchange" in Section 118 of the Transfer of Property Act, which is as follows:-

When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an "exchange".

20. From this he argues that one form of money may be exchanged for another form of money, but after a bank note has ceased to be legal tender payment of money for it would be either a sale or a satisfaction of the obligation, to pay, but not an exchange. It is pointed out by Mr. Coltman, the learned Counsel for the Reserve Bank, that although by its demonetisation a high denomination bank note may have ceased to be legal tender in payment or on account, Sub-section (2) of Section 26 empowers the Central Government to declare that any series of bank notes of any denomination shall be ceased to be legal tender "save at any office or agency of the bank." From this last expression he argues that even though such bank notes may have been declared by the Ordinance to have ceased to be legal tender among the public, yet the bank must accept such notes when tendered or surrendered. But Section 3 of the Ordinance expressly declares that such bank notes shall cease to be legal tender in payment or on account at any place in British India notwithstanding Section 26 of the Reserve Bank of India Act, 1934. Assuming that such bank notes have altogether ceased to be legal tender by reason of this declaration, yet the bank is under an obligation to accept them and pay their equivalent either in coin or notes of smaller denominations. Whatever name may be given to this transaction, the word "exchange" is used for it in Section 39 of the Act, in its ordinary meaning of "giving and taking of one thing for another," and the Ordinance debars the owner or holder of high denomination bank notes from claiming such an exchange from the bank without giving the required declaration.

21. It must be remembered that the obligation does not arise out of a contract, but out of statutory provisions. As soon as a bank note is issued, it becomes a legal tender and must be accepted by the public as such. There is no offer and acceptance, which are the foundation of a contract. The only obligation on the bank is to exchange it for rupee coin or bank notes of other denomination, and there can be no other implied obligation to pay as contended by Mr. Munshi. Had it been so, in the case of loss of a bank note, the owner could have proved the

contract by independent evidence and recovered the amount of the note from the bank. But Section 28 of the Act expressly provides that no person shall of right be entitled, to recover from the Central Government or the bank the value of any lost, stolen, mutilated or imperfect currency note of the Government of India or bank note.

22. Section 39 is intended both to impose an obligation on the Reserve Bank and also to guard it against a demand for an excessive quantity of rupee coin or bank notes of any particular denomination. Thus it completely provides for the claim which the owner or holder of a bank note can make against the bank, and the manner in which the bank can discharge its liability under the note.

23. Mr. Munshi has also drawn our attention to the use of the expression "presented for payment" and "shall be paid," used in Section 34, Sub-section (2), of the Act, and contends that the Act itself has thus made a distinction between "payment" and "exchange." After providing that a bank note not presented for payment for forty years should be deemed not to be in circulation, that sub-section goes on to say:-

But any such note, if subsequently presented for payment, shall be paid by the Banking Department, and any such payment in the case of a currency note of the Government of India shall be debited to the Central Government.

24. Even in this sub-section payment necessarily means payment in rupee coin or bank notes of other denomination, which is described by the word "exchange" in Section 39, there being no other mode of payment recognised by the Act. When the mode of satisfying the obligation under the bank notes is thus expressly provided for, there is no reason to assume any other implied obligation. This statutory method of discharging the obligation has now been modified by Ordinance No. III of 1946 and no owner or holder of a high denomination bank note can claim its discharge from the bank without making the required declaration.

25. Even if it be assumed that there is such an implied obligation to pay apart from the provisions of Section 39, then that obligation arises out of the contents of the bank note itself and cannot be enforced by mandamus u/s 45 of the Specific Relief Act. The proper remedy to enforce it is a suit against the bank. It is not necessary to express any opinion as to whether such a suit can be successfully maintained. Mr. Munshi argues that as the right to issue bank notes with a promise to pay is given by Section 22 of the Reserve Bank of India Act, the implied obligation to fulfil that promise also flows from that very section and is, therefore, a statutory liability. But the Act having provided for the mode of discharging the liability, any other implied liability, if any, cannot be said to be arising out of the statute itself. Under proviso (b) to Section 45 of the Specific Relief Act no writ of mandamus can be issued against the bank requiring, it to do any act, unless that Act is, under any law for the time being, clearly incumbent upon it to do. The expression "clearly incumbent" is very significant. If one

mode of doing a thing is provided by law, then any other mode of doing it cannot be regarded as " clearly incumbent." The facts in *In re Tarabai* (1905) 7 Bom. L.R. 161 on which reliance was placed were different. In that case the Commissioner of Police at Bombay, acting u/s 28 of the Bombay City Police Act, 1902, issued a notice upon the applicants requiring them to vacate the premises occupied by them, and intimating that failure to comply with the notice would render them liable to punishment u/s 129 of the Act. The applicants applied to the High Court u/s 45 of the Specific Relief Act, for a rule against the Commissioner of Police to show cause why the notice should not be cancelled and why he should not be restrained from carrying the same into effect. It was there held that if the Police Commissioner had to give notice in the manner laid down in the Act and if he failed to do so, it was open to the Court to direct him to cancel that notice by a writ of mandamus u/s 45 of the Specific Relief Act. It must be remembered that the authority of the Commissioner to issue the notice u/s 129 of the Bombay City Police Act was not challenged in that case and that authority is given by the statute itself and has not to be implied, That case has no application where an implied contractual liability as distinct from statutory liability is sought to be enforced. Hence this is not a fit case for the issue of a writ of mandamus, and I agree that the appeal should be dismissed with costs.