(2016) 11 MAD CK 0078

In the Madras High Court

Case No : W.P.(MD).No.21634 of 2016 and W.M.P.(MD)Nos. 15454 to 15456 of 2016

M. Seeni Ahamed APPELLANT

Vs

The Union of India RESPONDENT

Date of Decision : 10-11-2016

Acts Referred:
Constitution of India, 1950 — Article 226
Reserve Bank of India Act, 1934 — Section 24

Citation : (2017) 1 BC 612 : (2017) 1 CTC 486 : (2017) 1 DRTC 840 : (2017) 1 MLJ 1

Hon'ble Judges : Mr. S. Nagamuthu And Mr. M.V. Muralidaran, JJ.

Bench : Division Bench

Advocate : Mr. G.R. Swaminathan, Assistant Solicitor General of India, For Mr. D. Saravanan, Advocates, for the Respondent No. 1 and 2; Mr. K.R. Laxman, Advocate, for the Respondent No. 3 and 4; Mr. S.M.A. Jinna, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

S. Nagamuthu, J. - The Hon''ble Prime Minister of India, while addressing the Nation on the night of 08.11.2016, announced the decision of the Government of India, to demonetize the existing Rupees 500 and 1000 currency notes, which are in circulation in the Country. The Hon''ble Prime Minister also highlighted that the said measure is an attempt to tackle black money in the economy, to lower the cash circulation, which is directly related to corruption in our Country, to eliminate fake currency and dodgy funds, which have been used by terror groups to fund terrorism in India. The Hon''ble Prime Minister further clarified that it is a move estimated to scoop out more than Rs.5 Lakhs Crore black money from the economy. The Hon''ble Prime Minister further assured the Nation that the said action taken would not in any manner affect the common man and the people who have earned money, by honest means.

2.1. On the same day, as announced by the Hon''ble Prime Minister of India, the

Government of India, Ministry of Finance, Department of Economic Affairs, issued a Notification in S.O.3407(E), which reads as follows:

"Whereas, the Central Board of Directors of the Reserve Bank of India (hereinafter referred to as the Board) has recommended that bank notes of denominations of the existing series of the value of five hundred rupees and one thousand rupees (hereinafter referred to as specified bank notes) shall be ceased to be legal tender;

And whereas, it has been found that fake currency notes of the specified bank notes have been largely in circulation and it has been found to be difficult to easily identify genuine bank notes from the fake ones and that the use of fake currency notes is causing adverse effect to the economy of the country;

And whereas, it has been found that high denomination bank notes are used for storage of unaccounted wealth as has been evident from the large cash recoveries made by law enforcement agencies;

And whereas, it has also been found that fake currency is being used for financing subversive activities such as drug trafficking and terrorism, causing damage to the economy and security of the country and the Central Government after due consideration has decided to implement the recommendations of the Board;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 26 of the Reserve Bank of India Act, 1934 (2 of 1934) (hereinafter referred to as the said Act), the Central Government hereby declares that the specified bank notes shall cease to be legal tender with effect from the 9th November, 2016 to the extent specified below, namely:-

1.(1) Every banking company defined under the Banking Regulation Act, 1949 (10 of 1949) and every Government Treasury shall complete and forward a return showing the details of specified bank notes held by it at the close of business as on the 8th November, 2016, not later than 13:00 hours on the 10th November, 2016 to the designated Regional Office of the Reserve Bank of India (hereinafter referred to as the Reserve Bank) in the format specified by it.

(2) Immediately after forwarding the return referred to in sub-paragraph (1), the specified bank notes shall be remitted to the linked or nearest currency chest, or the branch or office of the Reserve Bank, for credit to their accounts.

2. The specified bank notes held by a person other than a banking company referred to in sub-paragraph (1) of paragraph 1 or Government Treasury may be exchanged at any Issue Office of the Reserve Bank or any branch of public sector banks, private sector banks, foreign banks, Regional Rural Banks, Urban Cooperative Banks and State Cooperative Banks for a period upto and including the 30th December, 2016, subject to the following conditions, namely:-

(i) the specified bank notes of aggregate value of Rs.4,000/- or below may be exchanged for any denomination of bank notes having legal tender character, with a requisition slip in the format specified by the Reserve Bank and proof of identity;

(ii) the limit of Rs.4,000/- for exchanging specified bank notes shall be reviewed after fifteen days from the date of commencement of this notification and appropriate orders may be issued, where necessary;

(iii) there shall not be any limit on the quantity or value of the specified bank notes to be credited to the account maintained with the bank by a person, where the specified bank notes are tendered; however, where compliance with extant Know Your Customer (KYC) norms is not complete in an account, the maximum value of specified bank notes as may be deposited shall be Rs.50,000/-;

(iv) the equivalent value of specified bank notes tendered may be credited to an account maintained by the tenderer at any bank in accordance with standard banking procedure and on production of valid proof of identity;

(v) the equivalent value of specified bank notes tendered may be credited to a third party account, provided specific authorisation therefor accorded by the third party is presented to the bank, following standard banking procedure and on production of valid proof of identity of the person actually tendering;

(vi) cash withdrawal from a bank account over the counter shall be restricted to Rs.10,000/- per day subject to an overall limit of Rs.20,000/-a week from the date of commencement of this notification until the end of business hours on 24th November, 2016, after which these limits shall be reviewed;

(vii) there shall be no restriction on the use of any non-cash method of operating the account of a person including cheques, demand drafts, credit or debit cards, mobile wallets and electronic fund transfer mechanisms or the like;

(viii) withdrawal from Automatic Teller Machines (hereinafter referred to as ATMs) shall be restricted to Rs.2,000/- per day per card upto 18th November, 2016 and the limit shall be raised to Rs.4,000/- per day per card from 19th November, 2016;

(ix) any person who is unable to exchange or deposit the specified bank notes in their bank accounts on or before the 30th December, 2016, shall be given an opportunity to do so at specified offices of the Reserve Bank or such other facility until a later date as may be specified by it.

3. (1) Every banking company and every Government Treasury referred to in sub-paragraph (1) of paragraph 1 shall be closed for the transaction of all business on 9th November, 2016, except the preparation for implementing this scheme and remittance of the specified bank notes to nearby currency chests or the branches or offices of the Reserve Bank and receipt of bank notes having legal tender character.

(2) All ATMs, Cash Deposit Machines, Cash Recyclers and any other machine

used for receipt and payment of cash shall be shut on 9th and 10th November, 2016.

(3) Every bank referred to in sub-paragraph (1) of paragraph 1 shall recall the specified bank notes from ATMs and replace them with bank notes having legal tender character prior to reactivation of the machines on 11th November, 2016.

(4) The sponsor banks of White Label ATMs shall be responsible to recall the specified bank notes from the White Label ATMs and replacing the same with bank notes having legal tender character prior to reactivation of the machines on 11th November, 2016.

(5) All banks referred to in sub-paragraph (1) of paragraph 1 shall ensure that their ATMs and White Label ATMs shall dispense bank notes of denomination of Rs.100 or Rs.50, until further instructions from the Reserve Bank.

(6) The banking company referred to in sub-paragraph (1) of paragraph 1 and Government Treasuries shall resume their normal transactions from 10th November, 2016.

4. Every banking company referred to sub-paragraph (1) of paragraph 1, shall at the close of business of each day starting from 10th November, 2016, submit to the Reserve Bank, a statement showing the details of specified bank notes exchanged by it in such format as may be specified by the Reserve Bank."

2.2. The Government of India, Ministry of Finance, Department of Economic Affairs, issued yet another Notification in S.O.3408(E), which reads as follows:

"Whereas, by the notification of the Government of India in the Ministry of Finance, vide F. No. 10/3/2016-Cy.I dated 8th November, 2016 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 8th November, 2016, the Central Government declared that the bank notes of existing series of denomination of the value of five hundred rupees and one thousand rupees (hereinafter referred to as the specified bank notes), shall cease to be legal tender on and from the 9th November, 2016;

And whereas, it has become necessary to notify certain exemptions for the convenience of the members of public in carrying out certain emergent and urgent transactions using the specified bank notes;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 26 of the Reserve Bank of India Act, 1934 (2 of 1934), the Central Government hereby declares that the specified bank notes shall not be ceased to be legal tender, with effect from the 9th November, 2016 until the 11th November, 2016, to the extent of transactions specified below, namely:?

(a) for making payments in Government hospitals for medical treatment and pharmacies in Government hospitals for buying medicines with doctor''s prescription;

(b) at railway ticketing counters, ticket counters of Government or Public Sector Undertakings buses and airline ticketing counters at airports for purchase of tickets;

(c) for purchases at consumer cooperative stores operated under authorisation of Central or State Governments;

(d) for purchase at milk booths operating under authorisation of the Central or State Governments;

(e) for purchase of petrol, diesel and gas at the stations operating under the authorisation of Public Sector Oil Marketing Companies;

(f) for payments at crematoria and burial grounds;

(g) at international airports, for arriving and departing passengers, who possess specified bank notes, the value of which does not exceed five thousand rupees to exchange them for notes having legal tender character;

(h) for foreign tourists to exchange foreign currency or specified bank notes, the value of which does not exceed five thousand rupees to exchange them for notes having legal tender character.

2. All establishments referred to in paragraph 1, shall maintain complete account of record of stock and sale of transactions made with the specified bank notes during the period between 9th November, 2016 and 11th November, 2016."

2.3. The third Notification issued by the Government of India, Ministry of Finance, Department of Economic Affairs, in S.O.3409(E), reads as follows:

"In exercise of the powers conferred by sub-section (2) of section 24 of the Reserve Bank of India Act, 1934 (2 of 1934) and on the recommendations of the Central Board of Directors of the Reserve Bank of India, the Central Government hereby specifies the denomination of bank notes of the value of two thousand rupees."

2.4. The fourth Notification issued by the Government of India, Ministry of Finance, Department of Economic Affairs, in S.O.3416(E), reads as follows:

"S.O. 3416(E).?In exercise of the powers conferred by sub-section (2) of section 26 of the Reserve Bank of India Act, 1934 (2 of 1934), the Central Government hereby amends the notification of the Government of India, Ministry of Finance, Department of Economic Affairs number S.O. 3408(E) dated the 8th November, 2016 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) dated the 8th November, 2016, namely:-

1. In the said notification, in paragraph 1, after clause (h), the following clauses shall be inserted, namely :-

"(i) for making payments in all pharmacies on production of doctor?s prescription and proof of identity;

(j) for making payments on all toll plazas on the State and National Highways;

(k) for payments on purchases LPG gas cylinders;

(l) for making payments to catering services on board, during travel by rail;

(m) for making payments for purchasing tickets for travel by suburban and metro rail services;

(n) for making payments for purchase of entry tickets for any monument maintained by the Archeological Survey of India.?.

3. A reading of the Notification in S.O.3407(E) would go to show that as announced by the Hon''ble Prime Minister, the decision to demonetize 500 and 1000 rupees currency notes, which are now in circulation, was made on the basis of the recommendations of the Central Board Directors of the Reserve Bank of India. The Central Board had made such a recommendation, in the following circumstances:

"It has been found that fake currency notes of the specified bank notes have been largely in the circulation and it has been found to be difficult to easily identify genuine bank notes from the fake ones and that the use of fake currency notes is causing adverse effect to the economy of the Country. Secondly, the Board took into account that high denomination bank notes are used for storage of unaccounted wealth as has been evident from the large cash recoveries made by the law enforcement agencies and the third one in the mind of the Board of Directors is that fake currency is being used for financing subversive activities such as drug trafficking and terrorism, causing damage to the economy and security of the Country. "

4. Based on these facts, the Board made a recommendation to the Central Government to declare that the bank notes of Rs.500 and Rs.1000 denomination is ceased to be legal tender with effect from 09th November, 2016. The Government of India accepted the said recommendation, finding reasons to accept and accordingly, issued the above Notification. The said Notification is now under challenge in this Writ Petition.

5. We have heard Mr.S.M.A.Jinnah, learned counsel appearing for the petitioner, Mr.G.R.Swaminathan, learned Assistant Solicitor General of India appearing for the first and second respondents and Mr.K.R.Laxman, learned counsel appearing for the third and fourth respondents. We have also perused the records carefully.

6. Though specific legal grounds have not been raised in the Writ Petition, during the course of hearing, the learned counsel raised only two legal grounds. The first and the foremost ground raised by the learned counsel for the petitioner is that under Section 24 of the Reserve Bank of India Act, 1934, there has been no Notification issued by the Government to release 2000 rupees currency notes. This argument is met with by the leaned Assistant Solicitor General of India, by producing the Notification No.S.O.3409(E), as extracted herein above. Thus, the

first ground raised by the learned counsel fails.

7. The second ground raised by the learned counsel for the petitioner is that these Notifications offend the fundamental rights of the citizens of this Country. But the learned counsel has not specified as to what is the fundamental right and what provision of the Constitution, which, according to him, has been violated by the above action of the Government of India. In this regard, we may refer to a Constitution Bench judgment of the Hon''ble Supreme Court in Jayantilal Ratanchand Shah v. Reserve Bank of India & Ors reported in 1996 Scale (5) 741. That was a case where the High Denomination Bank Notes (Demonetization) Act of 1978 was challenged before the Hon''ble Supreme Court on the touchstone of Article 19(1)(f) of the Constitution of India and with reference to Article 31 of the Constitution of India. The main contention was that the currency notes are the properties of the persons who are holding the same and demonetization of the same would amount to compulsory acquisition of the property of the individual. The Hon''ble Supreme Court negatived all contentions raised with reference to Article 19(1)(f) as well as Article 31 of the Constitution of India and dismissed the challenge made against the said Act. Now, Article 19(1)(f) is no more in force as the same has been repealed. Therefore, as of now, right to own a property is no more a fundamental right. Similarly, Article 31 also stands supplemented by certain other provisions introduced. When the Hon''ble Supreme Court had declared that the demonetization did not violate even Article 19(1)(f) of the Constitution of India, it is difficult for us to hold that it offends any other fundamental right guaranteed under the Constitution of India.

8. The learned counsel, however, submitted during the course of argument that it violates Article 21 of the Constitution of India. Of course, it is true that the scope and ambit of right to life, as guaranteed under Article 21 of the Constitution of India, has been expanded time and again by the Hon''ble Supreme Court, taking into account the need of the hour. But, it cannot be, at the same time, overstretched. In order to substantiate the contention that right to life of the citizens is infringed by the action of the Government, the learned counsel submitted that the action of the Government in not giving prior notice to the people, has caused unnecessary and unbearable hardship and thus, it violates Article 21 of the Constitution of India.

9. The above said argument does not persuade us, for the reason that such drastic measure has been taken by the Central Government to curtail the black money, corruption and various other evil acts of unscrupulous anti-social and anti-National elements. If any prior notice is so issued about the proposal to demonetize, in our considered view, that would defeat the very purpose of such a measure. It is, of course, true that because of the sudden announcement made by the Government, there has occurred some inconvenience or hardship to the common man of this Country. But, at the same time, it cannot be forgotten that the people, who are mostly affected by these anti-social activities, such as Black marketing, black money, etc., are only the common man. Any fall in the economy

of this Country would have adverse effect firstly on the common man and the poor man. Therefore, the common man has to yield to these measures taken by the Government with the laudable object of curbing these anti-social and anti-National activities. As it has been concluded by the Central Board of Reserve Bank of India that demonetizing these currency notes would eradicate these evils, the common man and the poor have to bear with the hardship, that is highlighted in this Writ Petition, which, in our considered view, is only a temporary hardship and we are hopeful that the Government will take all efforts to obviate or minimise such hardship.

10. Now, we need to go into the power of judicial review in respect of the policy decisions of the Central Government. We do not say that this Court lacks power of judicial review to go into the policy decisions of the Government. The question is as to what extent it could be extended. In this regard, it is suffice for us to refer to the Judgment of the Hon''ble Supreme Court in S.R.Bommai v. Union of India, reported in AIR 1994 SC 1918.

11. The Hon''ble Supreme Court has, in the said judgment, referred to Lord Brightman in Chief Constable of the North Wales Police v. Evans, wherein it has been held that judicial review is not an appeal from a decision, but, a review of the manner in which the decision was made. In other words, judicial review is concerned with reviewing not the merits of the decision but the decision-making process itself. Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Services has enunciated three heads of grounds, upon which, administrative action is subject to control by judicial review, viz., (i) illegality, (ii) irrationality and (iii) procedural impropriety. He has also stated that the three grounds evolved till then did not rule out that "further developments on a case by case basis may not in course of time add further grounds" and has added that "principle of proportionality" which is recognised in the administrative law by several members of European Economic Community may be a possible ground for judicial review. The Hon''ble Supreme Court in S.R.Bommai v. Union of India(supra) case has further held that a decision may be so outrageous or in defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided, could have arrived at it, and it is for the judges to decide whether a decision falls in the said category. By "procedural impropriety", he means not only failure to observe the basic rules of natural justice or failure to act with procedural fairness, but also failure to observe procedural rules that are expressly laid down in the legislative instrument by which the tribunal''s jurisdiction is conferred even where such failure does not involve any denial of natural justice. Where the decision is one which does not alter rights or obligations enforceable in private law, but only deprives a person of legitimate expectations, procedural impropriety will normally provide the only ground on which the decision is open to judicial review.

12. In the instant case, the petitioner has not made out any case even prima facie to show that the impugned Notification is either illegal or irrational or it

suffers from procedural impropriety or proportionality.

13. The learned Assistant Solicitor General of India would submit that the impugned Notification reflects the economic policy of the Government in order to obviate such kinds of evils, as enumerated hereinbefore. He would submit that power of judicial review cannot be expanded to go into the correctness of the policy decision taken by the Government in respect of the economy of the Nation. In this regard, he referred to a judgment of the Hon''ble Supreme Court in BALCO Employees'' Union (Regd) v. Union of India [2002(2) SCC 333], wherein in paragraph Nos.92 and 93, the Hon''ble Supreme Court has held as follows:

"92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se interfered with by the court.

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts.

14. The learned Assistant Solicitor General of India also placed reliance on a judgment of the Hon''ble Supreme Court in Centre for Public Interest Litigation v. Union of India [2016(6) SCC 408], where the principles stated in BALCO''s case have been followed with approval.

15. From the legal principles, which we have highlighted, referred to/held in the above judgments, we hold that in the instant case, power of judicial review cannot be expanded to go into the policy decision of the Central Government in demonetizing Rs.500 and Rs.1000 currency notes. Though there may be a dissent from some quarters about this decision of the Government, the people have to wait and see whether this policy decision of the Government achieves the desired object. Since, we have already held that neither it violates Section 24 or any other provisions of the Reserve Bank of India Act, 1934, or any other enactment for that matter and since it does not violate any of the provisions of the Constitution also, we are unable to exercise the power of judicial review in this matter to go into the correctness of the policy decision of the Government of India.

16. The learned counsel for the petitioner submitted that after the demonetization was notified by the Government, people, more particularly, the common man and the poor have been put to lot of hardships, as they find it difficult to exchange Rs.500 and Rs.1000 currency notes, which they do possess,

which are not ill-gotten properties, but hard-earned legal money. Of course, it is true that it has caused some inconvenience. As expressed by the Hon''ble Prime Minister of India, in his address to the Nation, it is not as though the Government was not aware of these possible inconvenience or hardship to the common man and the poor people of this Country. His Excellency, the President of India, who himself is a great Scholar, Economist and has held the portfolio of Finance for a considerable time, has issued a Press Note on 08.11.2016, wherein, His Excellency has welcomed the said action taken by the Central Government, which, according to him, will help to unearth unaccounted money as well as counterfeit currency. His Excellency has called upon the people not to panic and to follow the Government guidelines for exchange of 1000 and 500 rupee notes available with them.

17. In our considered view, as we have already pointed out, this hardship and inconvenience, which are highlighted by the learned counsel for the petitioner, would not in any manner go to support his case that the demonetization deserves to be interfered with by this Court. As it has been expressed by His Excellency the President of India and the Hon''ble Prime Minister of India, we, the people of this Country, be hopeful that this measure would speed up the growth of the economy of the Country and it would free the Country from corruption, black money, terrorism and other evils. Thus, we do not find any merit at all in this Writ Petition.

18. In the result, the Writ Petition fails and the same is, accordingly, dismissed. No costs. Consequently, the connected miscellaneous petitions are also dismissed.