

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 17TH DAY OF FEBRUARY 2021 / 28TH MAGHA, 1942

WP(C).No.10768 OF 2017(U)

PETITIONERS:

- 1 DR. SREEKUMARAN NAIR
AGED 70 YEARS, S/O.KESHAVA PILLAI, NOW A
CITIZEN OF THE UNITED STATES, BEING A NON
RESIDENT INDIAN HAVING AN ADDRESS IN INDIA AS
FOLLOWS: "THIRUVATHIRA", VETTIYARA, NAVAIKULAM,
THIRUVANANTHAPURAM DISTRICT, KERALA STATE.
- 2 SHYAMALA NAIR
AGED , W/O.DR.SREEKUMARAN NAIR, A NON RESIDENT
INDIAN WITH UNITED STATES CITIZENSHIP HAVING
THE SAME ADDRESS AS ABOVE.
- 3 PREM CHAND AGED 52 YEARS
S/O.K.JAGADEESCHANDRAN NAIR, NON -RESIDENT
INDIAN HAVING THE FOLLOWING ADDRESS IN INDIA:
ARYAPALLIL HOUSE, KUMMANOM PO, KOTTAYAM
DISTRICT, KERALA STATE.
- 4 MANJU PREM CHAND
AGED 48 YEARS, W/O.PREM CHAND, NON -RESIDENT
INDIAN HAVING THE FOLLOWING ADDRESS IN INDIA:
HOUSE NO.22, 1ST STAGE, INDIRA NAGAR,
BANGALORE 36.

BY ADV. SRI.K.JAGADEESCHANDRAN NAIR

RESPONDENTS:

- 1 UNION OF INDIA
REP. BY ITS SECRETARY, MINISTRY OF FINANCE,
NEW DELHI PIN 110001.
- 2 RESERVE BANK OF INDIA
CENTRAL OFFICE, S.B.S. MARG, MUMBAI 400001,
REP. BY GENERAL MANAGER.
- 3 RESERVE BANK OF INDIA
KALOOR, ERNAKULAM, REP. BY ITS MANAGER 682
017.

R1-2 BY ADV. SRI.MILLU DANDAPANI
R1 BY ADV. SHRI.P.VIJAYAKUMAR, ASG OF INDIA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17.02.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.B.SURESH KUMAR, J.

Writ Petition (C) No.10768 of 2017

Dated this the 17th day of February, 2021.

J U D G M E N T

Petitioners in this writ petition are non-resident Indians. Each of them had with them currency notes demonetised by the Government of India of value not exceeding Rs.25,000/-. As they were not in India during the period during which they should have claimed the value of said currency notes, they were later permitted to claim the value of the demonetised currency notes till 30.06.2017 from the designated offices of the Reserve Bank of India at Delhi, Mumbai, Calcutta, Nagpur and Chennai. The case set out by the petitioners in the writ petition is that the value of the

demonetised currencies in their possession being less than Rs.25,000/-, it is not practical to go to the designated offices of the Reserve Bank which are situated far off from the State of Kerala. Petitioners, therefore, seek orders directing the Reserve Bank of India to make alternative arrangements to enable them to claim the value of the demonetised currencies in their possession.

2. At the time of admission, this court passed an interim order permitting the petitioners to surrender the demonetised currencies in their possession before the Ernakulam office of the Reserve Bank of India, and directing the Ernakulam office of the Reserve Bank of India to keep the same subject to further orders. The petitioners have accordingly surrendered the demonetised currency notes at the Ernakulam office of the Reserve Bank of India and the same are retained in that office.

3. When the matter was taken up for hearing, the learned Senior Counsel for the Reserve Bank of India pointed out that the Apex court has interdicted entertainment of writ petitions of this nature, in terms of the order passed on 16.12.2016 in W.P.(C) No.906 of 2016 and connected cases.

4. The learned counsel for the petitioners, however, pointed out that the order of the Apex Court referred to by the learned Senior Counsel for the Reserve Bank of India is the order in terms of which the Apex Court has made a reference of a few questions relating to the demonetisation of the currency notes made by the Government of India to a Larger Bench and the issue arising for consideration in this writ petition does not fall within the scope of the questions formulated by the Apex court in the said batch of cases for decision by the Larger Bench.

5. It is seen that the case made out by the

petitioners in the writ petition is that the decision of the Reserve Bank of India in confining the facility extended to non-resident Indians to claim the value of demonetised currency notes to five designated offices far off from the State is discriminatory and violative of Article 15 of the Constitution. The questions formulated by the Apex Court for decision by the Larger Bench in terms of the order dated 16.12.2016 read thus:

2.1(i) Whether the Notification dated 8.11.2016 is ultra vires Section 26(2) and Sections 7, 17, 23, 24, 29 and 42 of the Reserve Bank of India Act, 1934?;

2.2(ii) Does the Notification contravene the provisions of Article 300A of the Constitution?;

2.3(iii) Assuming that the Notification has been validly issued under the Reserve Bank of India Act, 1934, whether it is ultra vires Articles 14 and 19 of the Constitution?;

2.4(iv) Whether the limit on withdrawal of cash from the funds deposited in bank accounts has no basis in law and violates Articles 14, 19 and 21?;

2.5(v) Whether the implementation of the impugned notification(s) suffers from procedural and/or substantive unreasonableness and thereby violates Articles 14 and 19 and, if so, to what effect?;

2.6(vi) In the event that Section 26(2) is held to permit demonetisation, does it suffer from excessive delegation of

legislative power thereby rendering it ultra vires the Constitution?;

2.7(vii) What is the scope of judicial review in matters relating to fiscal and economic policy of the Government?;

2.8(viii) Whether a petition by a political party on the issues raised is maintainable under Article 32?; and

2.9(ix) Whether District Cooperative Banks have been discriminated against by excluding them from accepting deposits and exchanging demonetised notes?(underline supplied)

The issue arising for consideration, according to me, would certainly fall within the scope of question 2.5(v). Paragraph 14 of the said order which deals with the interdiction reads thus :

“14. We further direct that no other court shall entertain, hear or decide any writ petition/proceedings on the issue or in relation to or arising from the decision of the Government of India to demonetise the old notes of Rs.500 and Rs.1000, as the entire issue in relation thereto is pending consideration before this Court in the present proceedings.”

Even if there is any ambiguity on the question as to whether the issue arising for consideration in this matter would fall

within the scope of question 2.5(v) formulated by the Apex court for decision by the Larger Bench in terms of the order referred to above, the direction in paragraph 14 of the order of the Apex Court that no court shall entertain, hear or decide any writ petition / proceedings on the issue or in relation to or arising from the decision of the Government of India to demonetise the old notes of Rs.500 and Rs.1000, as the entire issue in relation thereto is pending consideration before that court, removes the said ambiguity, as the petitioners cannot be heard to contend that the issue raised in the writ petition is not one in relation to or arising from the decision of the Government of India to demonetise the old notes of Rs.500 and Rs.1000. If that be so, according to me, the interdiction applies squarely to the case on hand as well.

The writ petition, in the circumstances, is closed in the light of the order of the Apex Court dated 16.12.2016. It is,

however, made clear that the petitioners would be at liberty to move this court once the reference in terms of the order referred to above is answered by the Apex Court.

Sd/-
P.B.SURESH KUMAR, JUDGE

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APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	CUSTOMS OFFICER'S CERTIFICATE DATED 4.1.2017
EXHIBIT P2	CUSTOMS OFFICER'S CERTIFICATE DATED 4.1.2017
EXHIBIT P3	CUSTOMS OFFICER'S CERTIFICATE DATED 3.1.2017
EXHIBIT P4	CUSTOMS OFFICER'S CERTIFICATE DATED 18.1.2017
EXHIBIT P5	PRESS RELEASE OF RBI DATED 3.12.2016
EXHIBIT P6	RECEIPT BY R.B.I. DATED 30.6.2017
EXHIBIT P7	LETTER DATED 30.6.2017 BY ASSISTANT GENERAL MANAGER, R.B.I. ERNAKULAM