* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29th MAY, 2023

IN THE MATTER OF:

\+ **W.P.(C) 7129/2023**

ASHWINI KUMAR UPADHYAY ..... Petitioner

Through: Petitioner in – person.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Apoorv Kurup, CGSC, Mr. Amit Gupta, Mr. Saurabh Tripathi, Mr. Aakansh Srivastava, Mr. Vikramaditya Singh and Ms. Apoorva Jha, Advocates for UoI.
Mr. Parag P. Tripathi, Senior Advocate with Mr. Ramesh Babu, Ms. Nisha Sharma, Ms. Tanya Chowdhary and Ms. Vashundhara Bakhru, Advocates for RBI
Mr. Rajiv Kapur, Mr. Akshit Kapur and Mr. Tushar Bagga, Advocates for SBI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant writ petition under Article 226 of the Constitution of India has been filed by the Petitioner as a Public Interest Litigation (PIL) seeking for a declaration that the RBI Notification dated 19.05.2023 and SBI Notification dated 20.05.2023, which permits exchange of Rs.2000 denomination banknotes without obtaining any requisition slip and identity proof, is arbitrary and violative of Article 14 of the Constitution of India.

2. The Petitioner, who appears in – person, submits that out of total denomination of Rs.2000 banknotes, at present Rs.3.62 lakh crores banknotes are in circulation and are not being commonly used for transactions. He, therefore, submits that these notes are primarily black money. He submits that these notes have been hoarded by the separatists, terrorists, maoists, drug smugglers, mining mafias and corrupt people. The Petitioner contends that at present, the total population of India is around 142 crores and out of which 130 crores people have Aadhar Card which means that every family has 3-4 Aadhar Cards. He submits that out of the total 225 crore of bank accounts, 48 crores bank accounts are Jan Dhan accounts of the people who are below the poverty line. He submits that by not insisting any form of identification at the time of exchange of Rs.2000/- denomination banknotes to other denomination banknotes, the Government is actually encouraging persons who are indulged in Benami transactions, money laundering and drug trafficking etc., and therefore, this decision of the Government has to be struck down by the Court.

3. The Petitioner has placed reliance upon the various provisions of Income Tax Act, Prevention of Corruption Act, Prevention of Money laundering Act and other legislations to contend that the policy of the Government is to unearth black money and prevent corruption and, therefore, the Government itself cannot be a party to a decision which promotes corruption. He, therefore, challenges the Notifications issued by the RBI and SBI which dispenses with the requirement of a provision to provide details of identity proof for the purposes of exchanging Rs.2000 denominations banknotes with other denomination banknotes consequent to the decision of the Government to discontinue Rs.2000 denomination banknotes.

4. The Petitioner places reliance upon the following judgments in support of his contentions:

i. M/s Galaxy Transport Agencies vs. Fleet Owners and Transport Contractors & Ors., **SLP (Civil) No.1266/2020**.

ii. S.G. Jaisinghani vs. Union of India, **(1967) 2 SCR 703**.

iii. State of Mysore vs. S.R. Jayaram, **(1968) 1 SCR 349**.

iv. E.P. Royappa vs. State of T.N., **(1974) 4 SCC 3**.

v. Maneka Gandhi vs. Union of India, **(1978) 1 SCC 248**.

5. *Per contra*, Mr. Parag P Tripathi, learned Senior Counsel appearing for RBI, contends that it is well settled that Courts should not normally interfere with the policies of the Government. He submits that it is now settled that the Courts do not run contrary and sit over the decision taken by the Government in the matters of policy unless the decision of the Government is so perverse and arbitrary that it shocks the conscious of the Courts.

6. Heard the Petitioner, learned Counsel appearing for the Respondents, and perused the material on record.

7. The present decision of the Government to dispense with Rs.2000 denomination banknotes is not a decision towards demonetisation. The Notification dated 19.05.2023 issued by the RBI reads as under:

"May 19, 2023

Rs.2000 Denomination Banknotes - Withdrawal from Circulation; Will continue as Legal Tender

The Rs.2000 denomination banknote was introduced in November 2016 under Section 24(1) of RBI Act, 1934, primarily to meet the currency requirement of the economy in an expeditious manner after the withdrawal of legal tender status of all Rs.500 and Rs.1000 banknotes in circulation at that time. The objective of introducing Rs.2000 banknotes was met once banknotes in other denominations became available in adequate quantities. Therefore, printing of Rs.2000 banknotes was stopped in 2018-19.

2. About 89% of the Rs.2000 denomination banknotes were issued prior to March 2017 and are at the end of their estimated life-span of 4-5 years. The total value of these banknotes in circulation has declined from Rs.6.73 lakh crore at its peak as on March 31, 2018 (37.3% of Notes in Circulation) to Rs.3.62 lakh crore constituting only 10.8% of Notes in Circulation on March 31, 2023. It has also been observed that this denomination is not commonly used for transactions. Further, the stock of banknotes in other denominations continues to be adequate to meet the currency requirement of the public.

3. In view of the above, and in pursuance of the "Clean Note Policy" of the Reserve Bank of India, it has been decided to withdraw the Rs.2000 denomination banknotes from circulation.

4. The banknotes in Rs.2000 denomination will continue· to be legal tender.

5. It may be noted that RBI had undertaken a similar withdrawal of notes from circulation in 2013-2014.
6. Accordingly, members of the public may deposit Rs.2000 banknotes into their bank accounts and/or exchange them into banknotes of other denominations at any bank branch. Deposit into bank accounts can be made in the usual manner, that is, without restrictions

and subject to extant instructions and other applicable statutory provisions.

7. In order to ensure operational convenience and to avoid disruption or regular activities of bank branches, exchange of Rs.2000 banknotes into banknotes of other denominations can be made upto a limit of Rs.20,000/- at a time at any bank starting from May 23, 2023.

8. To complete the exercise in a time-bound manner and to provide adequate time to the members of public, all banks shall provide deposit and/or exchange facility for Rs.2000 banknotes until September 30. 2023. Separate guidelines have been issued to the banks.

9. The facility for exchange of Rs.2000 banknotes upto the limit of Rs.20,000/- at a time shall also be provided at the 19 Regional Offices (ROs) of RBI having Issue Departments from May 23, 2023.

10. The Reserve Bank of India has advised banks to stop issuing Rs.2000 denomination banknotes with immediate effect.

11. Members of the public are encouraged to utilise the time up to September 30, 2023 to deposit and/or exchange the Rs.2000 banknotes. A document on Frequently Asked Questions FAQs in the matter has been hosted on the RBI website for information and convenience of the public.

(Yogesh Dayal)
Chief General Manager"

8. A perusal of the above Notification issued by the RBI shows that Rs.2000 denomination banknotes were introduced in November, 2016 to meet the currency requirement of the economy in an expeditious manner after the withdrawal of legal tender status of all Rs.500 and Rs.1000

banknotes in circulation at that time and the objective of introducing Rs.2000 banknotes was met once banknotes in other denominations became available in adequate quantities. The notification also indicates that about 89% of Rs.2000 denomination banknotes had been issued prior to March 2017 and the same are at the end of their estimated life-span of 4-5 years. At present, Rs.2000 denomination banknotes worth Rs.3.62 lakh crores are in circulation and even they are not being commonly used for transactions and for this purpose, the Government has decided to withdraw these Rs.2000 denomination banknotes from circulation.

9. In order to ensure that there is a smooth transition of Rs.2000 denomination banknotes, which continue to be a legal tender till September, 2023 i.e. for four months, banks have provided facilities for conversion of these banknotes to other denomination banknotes. As stated earlier, the present case is not the case of demonetisation but withdrawal of Rs.2000 denomination banknotes from circulation. For this purpose, the Government has taken a decision not to insist upon requirement of identity proof for exchange of Rs.2000 denominations banknotes so that everybody can exchange the same with the other denomination banknotes. Therefore, it cannot be said that the decision of the Government is perverse or arbitrary or it encourages black money, money laundering, profiteering or it abets corruption.

10. It is well settled that decision taken by the Government in relation to the economic policies is not ordinarily interfere with by the Courts unless the decision of the Government is manifestly arbitrary. While dealing with a writ petition challenging the constitutional validity of the Special Bearer Bonds (Immunities and Exemptions) Act, 1981, the Apex Court in R.K. Garg v. Union of India, **(1981) 4 SCC 675**, has observed as under:

19. It is true that certain immunities and exemptions are granted to persons investing their unaccounted money in purchase of Special Bearer Bonds but that is an inducement which has to be offered for unearthing black money. Those who have successfully evaded taxation and concealed their income or wealth despite the stringent tax laws and the efforts of the tax department are not likely to disclose their unaccounted money without some inducement by way of immunities and exemptions and it must necessarily be left to the legislature to decide what immunities and exemptions would be sufficient for the purpose. It would be outside the province of the Court to consider if any particular immunity or exemption is necessary or not for the purpose of inducing disclosure of black money. That would depend upon diverse fiscal and economic considerations based on practical necessity and administrative expediency and would also involve a certain amount of experimentation on which the Court would be least fitted to pronounce. The Court would not have the necessary competence and expertise to adjudicate upon such an economic issue. The Court cannot possibly assess or evaluate what would be the impact of a particular immunity or exemption and whether it would serve the purpose in view or not. There are so many imponderables that would enter into the determination that it would be wise for the Court not to hazard an opinion where even economists may differ. The Court must while examining the constitutional validity of a legislation of this kind, "be resilient, not rigid, forward looking, not static, liberal, not verbal" and the Court must always bear in mind the constitutional proposition enunciated by the Supreme Court of the United States in Munn v. Illinois [94 US 13] , namely, "that courts do not substitute their social and economic beliefs for the judgment of legislative bodies". The Court must defer to legislative judgment in matters relating to social and economic policies and must not interfere, unless the exercise of legislative judgment appears to be palpably arbitrary.

The Court should constantly remind itself of what the Supreme Court of the United States said in Metropolis Theater Company v. City of Chicago [57 L Ed 730 : 228 US 61 (1912)] :

> *"The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere error of government are not subject to our judicial review."*

It is true that one or the other of the immunities or exemptions granted under the provisions of the Act may be taken advantage of by resourceful persons by adopting ingenious methods and devices with a view to avoiding or saving tax. But that cannot be helped because human ingenuity is so great when it comes to tax avoidance that it would be almost impossible to frame tax legislation which cannot be abused. Moreover, as already pointed out above, the trial and error method is inherent in every legislative effort to deal with an obstinate social or economic issue and if it is found that any immunity or exemption granted under the Act is being utilised for tax evasion or avoidance not intended by the legislature, the Act can always be amended and the abuse terminated. We are accordingly of the view that none of the provisions of the Act is violative of Article 14 and its constitutional validity must be upheld."

11. Similarly, the Apex Court in BALCO Employees' Union (Regd.) v. Union of India, **(2002) 2 SCC 333** has observed as under:

> *"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. Here the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001.

94. Thus, apart from the fact that the policy of disinvestment cannot be questioned as such, the facts herein show that fair, just and equitable procedure has been followed in carrying out this disinvestment. The allegations of lack of transparency or that the decision was taken in a hurry or there has been an arbitrary exercise of power are without any basis. It is a matter of regret that on behalf of the State of Chhattisgarh such allegations against the Union of India have been made without any basis. We strongly deprecate such unfounded averments which have been made by an officer of the said State.

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98. In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself."

12. The Apex Court in Directorate of Film Festivals v. Gaurav Ashwin Jain, **(2007) 4 SCC 737** has observed as under:

"16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope

of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review (vide Asif Hameed v. State of J&K [1989 Supp (2) SCC 364] , Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223] , Khoday Distilleries Ltd. v. State of Karnataka [(1996) 10 SCC 304] , BALCO Employees' Union v. Union of India [(2002) 2 SCC 333] , State of Orissa v. Gopinath Dash [(2005) 13 SCC 495 : 2006 SCC (L&S) 1225] and Akhil Bharat Goseva Sangh (3) v. State of A.P. [(2006) 4 SCC 162])"

13. The Apex Court in Small Scale Industrial Manufactures Assn. v. Union of India, **(2021) 8 SCC 511** has observed as under:

"60. In catena of decisions and time and again this Court has considered the limited scope of judicial review in economic policy matters. From various decisions of this Court, this Court has consistently observed and held as under:

60.1. The Court will not debate academic matters or concern itself with intricacies of trade and commerce.

60.2. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and

advisability of economic policy are ordinarily not amenable to judicial review.

60.3. Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters.

61. In R.K. Garg [R.K. Garg v. Union of India, (1981) 4 SCC 675 : 1982 SCC (Tax) 30] , it has been observed and held that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It is further observed that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters.

62. In Arun Kumar Agrawal [Arun Kumar Agrawal v. Union of India, (2013) 7 SCC 1] , this Court (at SCC p. 18, para 43) had an occasion to consider the following observations made by the Supreme Court of the United States in Metropolis Theater Co. v. Chicago [Metropolis Theater Co. v. Chicago, 1913 SCC OnLine US SC 123 : 57 L Ed 730 : 228 US 61 (1913)] :

> *"43. ... '... The problems of Government are practical ones and may justify, if they do not require, rough accommodation, illogical, if may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void....' (Metropolis Theater Co. case [Metropolis Theater Co. v. Chicago, 1913 SCC OnLine US SC 123 : 57 L Ed 730 : 228 US 61 (1913)] , L Ed p. 734)"*

> *63. This Court in Nandlal Jaiswal [State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566] has observed that the Government, as laid down in Permian Basin Area Rate Cases, In re [Permian Basin Area Rate Cases, In re, 1968 SCC OnLine US SC 87 : 20 L Ed 2d 312 : 390 US 747 (1968)] , is entitled to make pragmatic adjustments which may be called for by particular circumstances. The court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide."*

14. The decision of the Government is only to withdraw Rs.2000 denomination banknotes from circulation for the reason that the purpose of issuing these denominations has achieved its purpose which was to meet the currency requirement of the economy in an expeditious manner in November, 2016 when all Rs.500 and Rs.1000 denomination banknotes were declared to be not legal tender and in order to meet the situation at that point of time, the Government took a decision to bring banknotes of Rs.2000 denomination to ensure adequate supply of money to meet the day-to-day requirements of the people. Six years after the said decision, the Government has now decided to withdraw Rs.2000 denomination banknotes from circulation which is not being used commonly. Banknotes of Rs.2000 shall continue to be a legal tender and this policy is only for exchange of banknotes having denomination of Rs.2000 with other banknotes. In order to facilitate the exchange of Rs.2000 denomination banknotes with other denomination banknotes, the Government has given a window of four months to the citizens and in order to avoid inconvenience to citizens, the Government is not insisting of providing any kind of identification. As

stated earlier, this decision of the Government is purely a policy decision and Courts should not sit as an Appellate Authority over the decision taken by the Government.

15. In the considered opinion of this Court, the present PIL is devoid of merits. Resultantly, the PIL is dismissed, along with pending application(s), if any

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

MAY 29, 2023
S. Zakir