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VIVEK NARAYAN SHARMA

v.

UNION OF INDIA

(Writ Petition (Civil) No. 906 of 2016)

B

DECEMBER 16, 2016

[T.S. THAKUR, CJI, A.M. KHANWILKAR AND
DR. D.Y. CHANDRACHUD, JJ.]

Demonetization:

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Reserve Bank of India Act, 1934 – ss. 26(2), 7, 17, 23, 24, 29 and 42 – Notification dated November 08, 2016 whereby old currency notes of Rs. 500 and Rs. 1000 demonetized – Vires of Notification – Nine questions framed – In view of general public importance and far reaching implications, matters referred to Five Judge Bench.

D

Bar on District Cooperative Banks to accept deposits or exchange of demonetized currency of Rs.500/- and Rs.1000/- – Challenge to – Held: Decision is the outcome of financial policy, adopted on the basis of experience – There is apprehension that the possibility of demonetized notes being converted or exchanged without proper audit, control or supervision – Further, the District Cooperative Banks not directly under the control of the Reserve Bank of India but within the purview of NABARD – Dispensation provided by NABARD not in conformity with the strict regime provided under the provisions of Banking Regulation Act, 1949 and Reserve Bank of India Act, 1934 – Thus, no inclination to suspend the bar as an interim measure – Banking Regulation Act, 1949 – Reserve Bank of India Act, 1934.

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District Cooperative Banks precluded from utilizing the demonetized notes deposited with them between 11th to 14th November 2016, when it was so permitted by RBI – Challenge to – Held: Instructions of Under Secretary to Government of India that RBI has recommended that the Specified Bank Notes (SBNs) collected by the DCCBs between 10th and 14th November 2016 may be exchanged after audit of the veracity of the KYC documents by NABARD – Issuance of suitable Notification by the Competent

Authority within two days – Policy of replacement of legal tender notes as applicable to Public Sector Banks and other Banks would be applied even in the case of District Cooperative Banks for exchange of demonetized currency. A

Extension of time limit for exemption for use of demonetized currency notes of Rs.500/- and Rs.1000/- – Held: Whether exemption period should be extended or not must be best left to the judgment of the Government – No interim direction can be issued to the Government in the said matter – Government can take appropriate decision. B

Denial of right to withdraw the prescribed amount of Rs.24,000/- per week per account holder, in spite of Notification issued by Reserve Bank of India permitting such withdrawal – Non-availability of enough volume of legal tender currency – Held: As per Attorney General, the Government has already made it amply clear that it would take around 50 days time to streamline the cash flow and the period is still not exhausted – Authorities are working to the best of their ability to defuse the crisis of cash flow situation by printing new notes – To maintain complete secrecy to unearth the black money, new currency notes could not be printed well in advance – Authorities to fulfill their commitment made in terms of the Notification permitting withdrawal to the extent possible and review the decision periodically and take necessary corrective measures. C
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Transfer Petitions: Transfer Petitions by Union of India for withdrawing all writ petitions/proceedings pending in the various High Courts and to hear those cases along with the writ petitions pending in this Court – Held: Such withdrawal would be just and proper, to avoid multiplicity of hearing and conflicting decisions on the same subject matter – Issuance of notice in the respective Transfer Petitions and stay of the further proceedings of the writ petitions/proceedings in the concerned High Court as also pending in any High Court – No other court to entertain, hear or decide any writ petition/proceedings on the issue of demonetization of the old notes. F
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CIVIL / CRIMINAL ORIGINAL / APPELLATE
JURISDICTION: Writ Petition No. 906 of 2016.

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A Under Article 32 of the Constitution of India.

WITH

B W. P. (C) No. 908/2016, W. P. (C) No. 913/2016, W. P. (C) No. 916/2016, W. P. (C) D. 37946/2016, W. P. (C) No. 929/2016, W. P. (C) No. 930/2016, W. P. (C) No. 943/2016, W. P. (Crl.) No. 162/2016, W. P. (C) No. 951/2016, W. P. (C) No. 952/2016, W. P. (C) No. 953/2016, W. P. (C) No. 954/2016, W. P. (C) No. 958/2016, W. P. (C) No. 957/2016, T. P. (C) No. 2018-2022/2016, W. P. (C) No. 971/2016, W. P. (C) No. 972/2016, SLP (C) No. 35356/2016, T. P. (C) No. 2030-2038/2016, W. P. (C) No. 978/2016, W. P. (C) D. No. 40114/2016, W. P. (C) No. 944/2016, SLP (C) No. 35805/2016, W. P. (C) No. 996/2016, W. P. (C) No. 997/2016, T. P. (C) No. 1958-1967/2016, T. P. (C) No. 1982-1996/2016, W. P. (C) No. 1006/2016, W. P. (C) No. 1008/2016, W. P. (C) No. 1009/2016, W. P. (C) No. 1010/2016, W. P. (C) No. 1011/2016, S.L.P.(C) No. 36757/2016.

D Petitioner-in-person.

E Mukul Rohatgi, AG, Tushar Mehta, Maninder Singh, ANS Nandkarni, ASG, Kapil Sibal, Salman Khurshid, B. H. Marlapalle, Basant R., V. Giri, P. V. Surendranath, Jaideep Gupta and Arvind V. Savant, Sr. Advs. Ms. Kamini Jaiswal, Talha Abdul Rehman, Jatinder Pal Singh, Shumaila Altaf, Gaurav Gosh, Santi Ranjan Das, Anindo Mukherjee, Mrs. Sarla Chandra, Tripurari Ray, Asad Alvi, Ms. Saba Asad Alvi, D. Vidyanandam, Zaki Ahmed Khan, Ms. Satya Mitra, Manoj Prasad, Ashutosh Dubey, Harshul Singh, Kritika Khurana, Ankur Prakash, Karuna Nundy, T.R.B. Sivakumar, Adeeba Mujahid, Jabbar Shaikh, Ms. Pratiksha Sharma, Kunal Kanungo, Amit Khemka, Sunil Kumar Gupta, Ankur F Prakash, Rishi Sehgal, Varchana Taneja, Viplav Sharma, Dhaval Deshpanda, Ms. Aparna Jha, C.R. Jaya Sukin, Ms. Niharita Dudeja, Sonu Lohia, A. Arockia Raj, Ajit Wagh, Aditya Gaggar, Yogesh Abhinav, Ms. Manju Jetley, Shariq Ahmed, Amit Kishore Sinha, Sunil Kumar Verma, R.D. Upadhyay, Mohd. Shahid Hussain, Z.U. Khan, H.S. Saran, G M.T. George, Ms. Kavitha K.T., Adv. Imtiaz Ahmed, Mrs. Nagma Imtiaz, Mr. Ahmed Zargham, Adil Singh Boparai, Ms. Roshni W. Anand, Ms. Azra Rehman, M/s Equity Lex Associates., Kislay Panday, Ankur Gogia, Arjun Singh Bhati, Ms. Liz Mathew, Izhar Alam, Vijendra Kasana, Ms. Niharika Dudeja, Ms. Sadhna Kumar, M.P. Parthiban, Mathews J. Nedumpara, A.K. De, Saurabh Kirpal, Nikhil Rohatgi, Mrs. Anil Katiyar,

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A.C. Philip, A.D. Tamboli, S. Gowthaman, Varun Punia, P.V. Dinesh, A
 Ajit Sharma, Alok Shukla, M.V. Holamagi, R. Balasubramanian, Ms.
 Rekha Pandey, Ajay Sharma, Ms. Movita, Santosh Kumar, Ms. Diksha
 Rai, Ms. Akhila, Prabhas Bajaj, Akshay Amritanshu, Mrs. Anil Katiyar,
 Devashish Bharuka, Vikas Mehta, Ms. Anushree Menon, Rajat, Sourabh
 Kirpal, Nikhil Rohatgi, N.R. Shonker, Ms. Resmitha R. Chandran, Kuldeep
 S. Parihar, H.S. Parihar, Basava Prabhu Paul, Satyajit Desai, Akash
 Kakade, Ms. Anagha S. Desai, Vivek Narayan Sharma, Sidharth
 Mahajan, Rajeerv Kumar Jha, Ms. Nikita Singh, Ms. Ankita Singh, V.K.
 Biju, Ms. Ria Sachthey, P.V. Krishnaiah, Mr. Aditya Kumar, Praveen
 Kumar Pandey, C.S.N.M. Rao, Sanjay Kharde, Sunil Kumar Verma,
 M.P. Vinod, Dileep Pillai, Ajay Kr. Jain, Atul S. Vinod, Vibhakar Mishra, C
 Nischal Kumar Neeraj, Umesh P. Wadhwani, V.K. Sidharthan, Ms.
 Resmitha R. Chandran, Satbir Singh Pillania, Satish Kumar and M.P.
 Parthiban, Advocates for the appearing parties.

The following Order of the Court was delivered

ORDER

1. Writ Petitions are admitted.

2. Issue notice on the Writ Petitions, special leave petitions and
 other applications. The respondents may file reply affidavit within six
 weeks. Rejoinder, if any, within three weeks thereafter.

3. We have heard the learned counsel for the parties at some
 length. In our opinion, the following important questions fall for our
 consideration in this batch of petitions:

(i) Whether the notification dated 8th November 2016 is ultra vires
 Section 26(2) and Sections 7,17,23,24,29 and 42 of the Reserve
 Bank of India Act, 1934;

(ii) Does the notification contravene the provisions of Article
 300(A) of the Constitution;

(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;

(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;

- A (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?
- B (vi) In the event that Section 26(2) is held to permit demonetization, does it suffer from excessive delegation of legislative power thereby rendering it ultra vires the Constitution;
- (vii) What is the scope of judicial review in matters relating to fiscal and economic policy of the Government;
- C (viii) Whether a petition by a political party on the issues raised is maintainable under Article 32; and
- (ix) Whether District Co-operative Banks have been discriminated against by excluding them from accepting deposits and exchanging demonetized notes.

D 4. Keeping in view the general public importance and the far reaching implications which the answers to the questions may have, we consider it proper to direct that the matters be placed before the larger Bench of five Judges for an authoritative pronouncement. The Registry shall accordingly place the papers before Hon'ble the Chief Justice for constituting an appropriate Bench.

E 5. We may now advert to the issues which are of immediate concern. The first issue is about the restriction placed on the District Cooperative Banks to accept deposits or exchange of demonetized currency of Rs.500/- and Rs.1000/-. Two broad aspects have been presented before us. The first is about the complete exclusion of the

F District Cooperative Banks from accepting deposits or exchanging demonetized notes. The second is about the avoidable financial stress on the District Cooperative Banks because of freezing the deposited demonetized notes received by the District Cooperative Banks between 11th and 14th November 2016, which is stated to be around Rs.8000/-

G Crore (Rupees Eight Thousand Crore).

H 6. The first point whether the decision of the Authority to forbid the District Cooperative Banks from accepting deposits and exchanging demonetized notes, may require detailed hearing. It is only upon acceptance of challenge to that decision, that the bar placed on the District Cooperative Banks can be lifted. We are not inclined to suspend that bar

as an interim measure. This is especially when the decision is the outcome of financial policy which the respondents claim to have adopted on the basis of experience. In particular, an apprehension has been expressed about the possibility of demonetized notes being converted or exchanged without proper audit, control or supervision. The District Cooperative Banks, it has been urged, are not directly under the control of the Reserve Bank of India but within the purview of NABARD. The dispensation provided by NABARD is, according to the Attorney General, not in conformity with the strict regime provided under the provisions of Banking Regulation Act, 1949 and the Reserve Bank of India Act, 1934.

7. Reverting to the second aspect, of District Cooperative Banks being precluded from utilizing the demonetized notes deposited with them between 11th to 14th November 2016 (when it was so permitted by the Reserve bank of India), the learned Attorney General has invited our attention to the written instructions received by him from the Under Secretary to the Government of India dated 14th December 2016. The relevant extract of the said letter reads thus:

“In this regard, it is to inform that as regards the deposits of Specified Bank Notes (SBNs) collected by DCCBs, the RBI has recommended that the SBNs collected by the DCCBs between 10th and 14th November 2016 may be exchanged with their linked currency chests after a 100% audit of the veracity of the KYC documents of the SBN depositing customers of DCCB is conducted by NABARD, the supervisor and to the extent of such verified SBNs only. For SBNs deposited by Primary Agricultural Credit Societies (PACS) also, similar 100% audit of the KYC documents of the members of the PACS should be conducted by NABARD and to the extent of such verified SBNs only, exchange value will be given by the linked currency chest. In either case, the linked currency chest will subject those SBNs to usual checks, especially relating to finding out FICN.”

For that purpose, suitable Notification can be issued by the Competent Authority within two days. We commend to the Competent Authority to do so.

8. Learned counsel for the District Cooperative Banks, however, submitted that the Reserve Bank of India must assure that the entire amount offered by the District Cooperative Banks for exchange after

- A due verification in the form of demonetized notes, will be duly replaced
by commensurate amount of legal tender notes contemporaneously. The
learned Attorney General on instructions submitted that the policy of
replacement of legal tender notes as applicable to Public Sector Banks
and other Banks will be applied even in the case of District Cooperative
Banks for exchange of demonetized currency with the legal tender
currency. We accept the assurance given by the learned Attorney General
in this behalf.

9. The other broad point was about extending the time limit for
exemption for use of demonetized currency notes of Rs.500/- and
Rs.1000/- at specified counters as per the relevant Notifications issued
in that behalf by the Reserve Bank of India. It was contended that the
exemption period provided in the concerned notification is expiring.
Hence, it will not be possible to deposit the demonetized notes at specified
counters thereafter, even in case of emergency situation like hospitalization,
travel by Railway or Air etc. In our opinion, whether the exemption
period should be extended or not must be best left to the judgment of the
Government of the day with a hope that the Government will be responsive
and sensitive to the problems encountered by the common man.
Accordingly, we decline to issue any interim direction to the Government
in the matter of extending the period of exemption and leave it open to
the Government to take appropriate decision in that behalf, as may be
advised.

10. The other serious grievance made by the petitioners is about
the denial of right to withdraw the prescribed amount of Rs.24,000/- per
week per account holder, in spite of Notification issued by the Reserve
Bank of India permitting such withdrawal. It was submitted that if the
Government has issued such Notification after due consideration, it is
obliged to ensure that its commitment made under the said Notification
is implemented without any exception. The ground reality, however,
contends learned counsel, is that the Banks are refusing to pay full amount
of Rs.24,000/- per account holder per week on the ground of non-
availability of enough volume of legal tender currency. According to the
learned Attorney General, the Government has already made it amply
clear that it would take around 50 days time to streamline the cash flow.
That period is still not exhausted. He submits that as of now the Reserve
Bank of India has been able to infuse around Rs.5,00,000/-Crore (Five
Lakh Crore) of the new legal tender notes in the form of Rs.500/- and

Rs.2,000/-. That is almost over 40% of the amount of demonetized notes already deposited with the Banks. Further, the Authorities are working to the best of their ability to defuse the crisis of cash flow situation by printing new notes. It is further submitted that for the nature of decision taken by the Government - to unearth the black money or unaccounted money and to dry up the terror fund and defeat the attempt of circulation of large scale counterfeit currency, maintaining complete secrecy of such a decision was imperative. For that reason, new currency notes could not be printed well in advance. He submits that the old demonetized notes will be replaced by new legal tender notes in the form of Rs.500/- and Rs.2000/- progressively in right earnest. Considering the stand taken by the learned Attorney General, we may commend to the Authorities to fulfill their commitment made in terms of the stated Notification permitting withdrawal of Rs.24,000/- per account holder of the Bank per week to the extent possible and review that decision periodically and take necessary corrective measures in that behalf.

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11. In our opinion, besides the observations made hitherto, no other direction can be given at this stage by way of an interim relief.

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12. That takes us to the Transfer Petitions filed by the Union of India for withdrawing all Writ Petitions/proceedings pending in the various High Courts across the country and to hear those cases along with the Writ Petitions pending in this Court. In our opinion, it would be just and proper to withdraw all the Writ Petitions/proceedings pending in different High Courts across the country and to be heard by this Court along with the Writ Petitions which are already pending in this Court raising same or similar issues, to avoid multiplicity of hearing and conflicting decisions on the same subject matter. Accordingly, we issue notice in the respective Transfer Petitions and by way of interim direction, stay the further proceedings of the Writ Petitions/proceedings in the concerned High Court.

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13. We further direct that if any other Writ Petitions/proceedings are pending in any High Court, further hearing of those matters shall also remain stayed in terms of this order. 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 demonetize 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.

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- A 14. We make it clear that petitioners before the High Court(s) or any other Court in India in respect of proceedings already instituted on the subject matter under consideration before this Court, will be free to intervene in the Writ Petitions pending consideration before this Court on the subject matter of demonetization of old currency notes of Rs.500/- and Rs.1000/-, if so advised.

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15. The Registry shall place the matter before the Chief Justice for further orders.

Nidhi Jain

Matter referred to CJI.

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