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

+ W.P.(C) 11130/2016

ASHOK SHARMA

..... Petitioner

Through: Mr.Arun Maitri with Ms.Radhika
Chandrasekhar, Advs.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr.Gaurang Kanth with Ms.Biji
Rajesh, Advs. for UOI.
Mr.K.S. Parihar with Mr.H.S. Parihar, Advs. for
RBI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR.JUSTICE V. KAMESWAR RAO

ORDER
02.12.2016

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CM No. 44401/2016

The applicant/petitioner in WP (C) No. 11130/16 has filed the present application seeking recall of order dated 25.11.2016.

By the said order, the writ petition was dismissed taking note of the fact that the restriction for cash withdrawal under Clause 2(vi) of the Notification dated 08.11.2016 was only till the end of business hours of 24.11.2016 after which the limit would be reviewed.

It is now pleaded in the present application that by virtue of an earlier Notification issued on 14.11.2016 the words, letters and figures “until the

end of business hours on 24th November, 2016, after which these limits shall be reviewed” were omitted and thus the condition imposed under Clause 2(vi) is applicable till 30.12.2016 and, therefore, the writ petition has to be adjudicated on merits.

The fact that by virtue of the Notification dated 14.11.2016, the Clause (vi) would continue till 30.12.2016 has not been disputed by the learned standing counsel appearing for the respondents. Hence, the order dated 25.11.2016 is hereby recalled and the writ petition is restored to file.

Application is accordingly disposed of.

W.P.(C) No.11130/2016

1. Heard both the parties afresh on the merits of the case.
2. It may, at the outset, be noticed that the petitioner does not seek to challenge the statutory validity of the Notification dated 08.11.2016 issued by the first respondent/Ministry of Finance, Department of Economic Affairs but the limited grievance of the petitioner is with regard to the applicability of Clause 2(vi) to the bank deposits that were made prior to 08.11.2016.
3. According to the petitioner, the money which is lying with the banks prior to 08.11.2016 has no connection with the declaration that the bank notes of the denomination of Rs.500 and Rs.1000 shall cease to be legal tender and therefore, immobilisation of bank transactions of the money deposited prior to 08.11.2016 is illegal. It is also contended that the

respondents are not empowered under Section 26 of the Reserve Bank of India Act, 1934 to impose conditions as stipulated under Clause 2(vi) of the Notification dated 08.11.2016.

4. Elaborating the said contentions, it is submitted by the learned counsel for the petitioner that though under Section 24(2) of the Reserve Bank of India Act, 1934, the Central Government may direct the discontinuance of issue of bank notes of such denominational values as may be specified, nothing under the said Act empowers the Central Government to restrict cash withdrawal from a bank account over the counter and therefore, Clause 2(vi) of the Notification dated 08.11.2016 is arbitrary and unconstitutional. It is also contended that the condition imposed under Clause 2(vi) virtually overrides Section 5(b) of the Banking Regulation Act, 1949 according to which 'banking' means accepting of deposits of money from the public repayable on demand.

5. We do not find substance in any of the above contentions.

6. The declaration under the Notification dated 08.11.2016 that the bank notes of denominations of the existing series of the value of Rs.500 and Rs.1000 shall cease to be legal tender with effect from 09.11.2016 has been made in exercise of the powers conferred by Section 26(2) of the Reserve Bank of India Act, 1934. Since the Supreme Court of India is seized of the issue relating to the validity of the said Notification, the consideration by us in this petition is only to the limited extent of tenability of the restrictions imposed under Clause 2(vi) on cash withdrawals from a bank account over the counter. Clause 2(vi) of the Notification dated 8.11.2016, as amended

by Notification dated 14.11.2016 may be reproduced hereunder for ready reference:

"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 up to and including the 30th December, 2016, subject to the following conditions, namely:—

- (i) xxx
- (ii) xxx
- (iii) xxx
- (iv) xxx
- (v) xxx

(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.”

7. Apparently, the restriction imposed under Clause 2(vi) is only with regard to cash withdrawal from a bank account over the counter. There are no restrictions or limits for operating the bank account by non-cash method. This is clear from Clause (vii) which provides that there are no restrictions 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. Therefore, the contention of the petitioner that Clause 2(vi) infringes the right of the account holder to withdraw from his account on demand is factually incorrect and misconceived. Be it noted that it is always open to the account holder to

withdraw from his account on demand, but the restriction is only with regard to withdrawal in the form of cash. Even assuming that the restriction so imposed on cash withdrawal from a bank account has resulted in some inconvenience or prejudice to the petitioner, we are unable to hold that the same runs contrary to Section 5(b) of the Banking Regulation Act, 1949.

8. We also found that the Petitioner's contention that Clause 2(vi) of the Notification dated 08.11.2016 shall not be made applicable to the bank deposits of the period prior to 08.11.2016, is wholly misconceived. According to us, no such distinction can be drawn between the bank deposits of the period prior to 8.11.2016 and after 8.11.2016 since the whole purpose of the restrictions imposed on cash withdrawal for a specified period i.e., upto 30.12.2016 appears to be to meet the demand of liquid cash in circulation in the light of the ban imposed on the bank notes of the denominations of Rs.500 and Rs.1000 under the Notification dated 8.11.2016.

9. It may be added that the manner in which the decision to withdraw the bank notes of specified amount w.e.f. 09.11.2016 is to be implemented is a policy decision which is beyond the scope of powers of judicial review. The law is well settled that the Court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded *ipse dixit* offending the basic requirement of Article 14 of the Constitution of India. It is also a settled principle of law that the Court cannot strike down a policy decision taken by the Government merely because it has been contended that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the

policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational. {Vide: *M.P. Oil Extraction v. State of M.P.* (1997) 7 SCC 592; *Ram Singh Vijay Pal Singh v. State of U.P.* (2007) 6 SCC 44; *Villianur Iyarkkai Padukappu Maiyam v. Union of India* (2009) 7 SCC 561; *State of Kerala v. Peoples Union for Civil Liberties* (2009) 8 SCC 46 and *M.P. v. Narmada Bachao Andolan* (2011) 7 SCC 639 }

10. In this context we may also refer to *Census Commr. v. R. Krishnamurthy* (2015) 2 SCC 796 wherein it was held by the Supreme Court that the interference with the policy decision and issue of a direction to frame a policy in a particular manner are absolutely different and the courts are not to plunge into policy-making by adding something to the policy or by issuing directions describing the manner in which a statutory Notification could be implemented.

11. Having considered an identical issue arising out of the very same Notification dated 8.11.2016, a Division Bench of this Court to which one of us, (Chief Justice) was a member held in W.P.(C) No.11234/2016 titled as *Birender Sangwan vs. Union of India and Ors.* as under;

" The law is well settled that on matters affecting policy this Court will not interfere unless the policy is unconstitutional or contrary to statutory provisions or arbitrary or irrational or in abuse of power, since the policy decisions are taken based on expert knowledge and the Courts are normally not equipped to question the correctness of the same. The scope of judicial enquiry is therefore confined to the question whether the decision taken by the Government is against any statutory provision or it violates the fundamental rights of the

citizens or is opposed to the provisions of the Constitution of India. [Vide: *Parisons Agrotech (P) Ltd. v. Union of India* (2015) 9 SCC 657, *Manohar Lal Sharma v. Union of India* (2013) 6 SCC 616, *Union of India v. Dinesh Engg. Corpn.* (2001) 8 SCC 491]

The power of judicial review cannot be extended to determine the correctness of such a policy decision or to find out whether there could be more appropriate or better alternatives. As held in *BALCO Employees' Union Vs. Union of India* (2002) 2 SCC 333, it is not within the domain of the Courts to embark upon an enquiry as to whether a particular public policy is wise or whether a better public policy can be evolved."

12. For the aforesaid reasons the writ petition is devoid of merit and the same is accordingly dismissed.

CHIEF JUSTICE

V. KAMESWAR RAO, J

DECEMBER 02, 2016/pmc