IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.3.2018

CORAM

The HON'BLE MR.JUSTICE M.VENUGOPAL
AND
The HON'BLE MR.JUSTICE S.VAIDYANATHAN

Writ Appeal Nos.409 & 445 of 2018

R.Sarathkumar ...Appellant in both Was/Petitioner

Vs

1.The Chief Electoral Officer, Tamil Nadu, Public (Election) Department, Secretariat, Fort.St.George, Chennai-9.

2.The Project Director, DRDA, Thoothukudi & Appellate Committee on Seizure for Tamil Nadu Assembly Election 2015, Thoothukudi.

3.The District Election Officer & The District Collector, Thoothukudi District, District Collectorate, Thoothukudi-628101.

4.The Electoral officer, No.215, Thiruchendur Legislative Constituency cum Revenue Divisional Officer, RDO Office, Thoothukudi, Thoothukudi District. ...Respondents 1 to 4 in both the Was/Respondents

5.The Reserve Bank of India, rep. by its Regional Director, Rajaji Salai, Fort, Chennai-101.

6.The Sub-Treasury Officer, Tiruchendur, Thoothukudi District.

(R5 & R6 were impleaded as per order of Court dated 23.3.2018 in C.M.P. No. 4694/2018)
...Respondents 5 & 6 in WA.No. 445 of 2018

APPEALS under Clause 15 of the Letters Patent respectively

(i) to set aside the order dated 08.2.2018 made in Review Petition No.13 of 2018 in W.P.No.23605 of 2017 (WA.No.409 of 2018) and

Review Application (Writ No.13 of 2018 has been filed under order 47 Rule 1 of the Civil Procedure Code praying to review the order dated 01.09.2017 passed by this court in W.P.No.23605 of 2017.

(ii) to set aside the order dated 01.9.2017 in W.P.No.23605 of 2017 (WA. No.445 of 2018)

Petition filed under Article 226 of the constitution of India praying to issue a Writ of Mandamus directing the respondents to forthwith refund Rs.9,00,000/- to the petitioner by cheque of Demand Draft drawn in favour of the petitioner.

For Appellant in both WAs :	Mr.K.Ravi for M/s.Rugan & Arya
For Respondents 1 to 4 in both WAs :	Mr.Niranjan Rajagopal for Ms.G.Janane
For Respondent-5 in WA.No.445 of 2018 :	Mr.Chevaran Mohan
For Respondent-6 in WA.No.445 of 2018 :	Mr.A.N.Thambidurai, SGP

COMMON JUDGMENT

(Judgment was delivered by M.VENUGOPAL,J)

W.A.No.445 of 2018

The Appellant has preferred the intra court Writ Appeal (as an aggrieved person) as against the order dated 01.9.2017 in W.P.No.23605 of 2017 passed by the Learned Single Judge in closing the Writ Petition.

2. Earlier, this Court, while passing the order in W.P.No. 23605 of 2017 (filed by the Appellant as the Writ Petitioner), at paragraphs 4 and 5, had observed as follows :

> "4. The Hon'ble Supreme Court of India in the order dated 16.12.2016 made in W.P. (Civil) No.906 of 2016 has observed as follows:-
>
> '...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'.
>
> 5. In view of the directions given by the Hon'ble Supreme Court of India, the petitioner can approach only the Hon'ble Supreme Court of India seeking for the relief sought for in the present writ petition.",

and resultantly closed the writ petition. However, the Learned Single Judge observed that it is open to the Petitioner (Appellant) to move the Hon'ble Supreme Court seeking for appropriate remedy.

3. Assailing the correctness, validity and legality of the impugned order dated 01.9.2017 in W.P.No.23605 of 2017 passed by the Learned Single Judge, the Learned Counsel for the Appellant submits that the Learned Single Judge, based on misconception that the writ petition falling under the category of petitions that was directed by the Hon'ble Supreme Court vide order dated 16.12.2016 in W.P.(C).No.906 of 2016 etc., [reported in 2017 (1) SCC 388] shall not be entertained by any High Court, but to be filed only before the Hon'ble Supreme Court, passed the order.

4. The Learned Counsel for the Appellant takes a plea that the Writ Petition is not 'on the issue or in relation to or arising from the decision of the Government of India to demonetize' and as such, the judgment of the Hon'ble Supreme Court relied upon by the Learned Single Judge at the time of passing the impugned order in W.P.No.23605 of 2017 dated 01.9.2017 is inapplicable.

5. The Learned Counsel for the Appellant contends that the relief sought for in the Writ Petition is only to direct the Respondents to refund to him a sum of Rs.9 lakhs that was seized from him on a misapprehension and later on, after clearing the misapprehension, the amount was directed to be refunded to him as per order dated 28.11.2016 passed by the Assistant Director of Income Tax (Investigation), Tirunelveli. However, the said amount is not refunded till date.

6. In substance, the Learned Counsel for the Appellant fervently takes a stand that the Authorities concerned owe a duty to refund the amount of Rs.9 lakhs in question to him and viewed in that perspective, the Writ Appeal is to be allowed by this Court.

7. Per contra, it is the submission of the learned Standing Counsel for Respondents 1 to 4 that the seized amount of Rs.9 lakhs was with reference to 2016 General Elections for the Legislative Assembly in respect of the State of Tamil Nadu and after obtaining clearance from the Income Tax Department, through its letter dated 28.11.2016, the amount became liable to be released. However, it is represented on behalf of Respondents 1 to 4 that due to demonetisation, Rs.500/- and Rs.1,000/- denomination notes could not be dealt with for the purpose of returning the same to the Appellant.

8. The Learned Standing Counsel for Respondents 1 to 4 fairly submits that the Election Commission of India took up this issue before the Reserve Bank of India and the Union of India, Ministry of Finance clarified that the Instructions of the Reserve Bank of India namely the Specified Bank Notes (Deposit of Confiscated Notes) Rules 2017, which were brought into force on 12.5.2017, can be applied for the said purpose.

9. In this regard, it is projected on the side of Respondents 1 to 4 that the Fifth Respondent/Reserve Bank of India had sent a communication dated 24.7.2017 to the First Respondent confirming the same. Therefore, the Learned Standing Counsel for Respondents 1 to 4 points out that this Court may issue a direction permitting exchange of Rs.500/- and Rs.1,000/- denominations, the details of which are annexed in this order and also that the total notes in Rs.1,000/- are 518 and in Rs.500/- denomination, the total notes are 764 as reported by the Fifth Respondent/Reserve Bank of India.

10. The Learned Standing Counsel for the Fifth Respondent/ Reserve Bank of India submits that a Division Bench of this Court, in W.P.(MD)No. 21634 of 2016 on 10.11.2016 between M.Seeni Ahamed and Union of India and three others, had upheld the demonetization and consequently, the Writ Petition was dismissed.

11. Added further, the Learned Standing Counsel for the Fifth Respondent/Reserve Bank of India proceeds to bring it to the notice of this Court that the Hon'ble Supreme Court, in the order dated 16.12.2016 in Writ Petition (Civil) No.906 of 2016, between Vivek Narayan Sharma and Union of India, had observed the following :

> "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.

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."

12. The Learned Standing Counsel for the Fifth Respondent/ Reserve Bank of India cites a Division Bench judgment of this Court in W.A.No.581 of 2017 dated 19.12.2017 [between M/s.VRV Asia Pacific Private Limited and Union of India & Others] whereby and whereunder at paragraphs 2 to 5, it is observed as follows :

"2. Pursuant to our order dated 07.11.2017, the Junior Civil Judge cum Judicial Magistrate of I Class, Sathyavedu, Andhra Pradesh, has submitted a report dated 23.11.2017.

2.1. A perusal of the report would show that a sum of Rs.6,00,000/- was seized from accused No.1 in Crime No.59 of 2016 on the file of the Varadaiahpalem Police Station. However, neither in the mazaharnama nor in the panchananama, the currency numbers were recorded. The report is, however, accompanied by three photographs and two (2) CDs.

3. In these circumstances, we are inclined to dispose of the appeal with a direction to the Reserve Bank of India (in short, RBI), to act in accordance with the Gazettee notification issued by the Department of Economic Affairs, Ministry of Finance, Government of India, being : G.S.R.No.460(E), dated 12.05.2017 and its own instructions bearing No.DCM(Plg) No. 5066/10.27.00/2016-17, dated 25.5.2017, after satisfying itself as to whether the sum of Rs.6,00,000/- (Rupees six laksh only), which, the appellant says it has in its custody, comprises of the same currency

notes that were returned to it by the Junior Civil Judge cum Judicial Magistrate of I Class Court, Sathyavedu, Andhra Pradesh, vide order dated 27.12.2016, passed in Crl.M.P.No.1933 of 2016.

3.1. The Registry is, thus, directed to handover a certified copy of the aforesaid report dated 23.11.2017, along with the three (3) photographs and two (2) CDs to Mr.C.Mohan, Advocate, for RBI.

4. The appellant will be free to approach the RBI in terms of the directions issued by us hereinabove.

5. Consequently, the appeal is allowed, to the extent indicated above. The order of the learned Single Judge is set aside. Resultantly, pending application shall stand closed."

13. In this connection, the Learned Standing Counsel for the Fifth Respondent/Reserve Bank of India brings it to the notice of this Court that the Ministry of Law and Justice (Legislative Department) had issued the Specified Bank Notes (Cessation of Liabilities) Act, 2017 (Act II of 2017) and the same has been published in the Extraordinary Gazette whereby and whereunder in Section 11, it is observed as under :

"11. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

14. Subsequently, the Ministry of Finance, (Department of Economic Affairs), issued a Notification dated 12.5.2017 in G.S.R. No.460(E) dated 12.5.2017 notifying the Specific Bank Notes (Deposit of Confiscated Notes) Rules, 2017 and the relevant Rules namely Rules 2 and 3 run as under :

> "2. Deposit of confiscated specified bank notes.- Where specified bank notes have been confiscated or seized by a law enforcement agencies or produced before a court on or before the 30th day of December 2016, such specified bank notes may be tendered, at any office of the Reserve Bank specified under sub-section (1) of section 4 of the Act or a nationalized bank designated by the Reserve Bank for the said purpose, for deposit in a bank account or exchange of the value thereof with legal tender, subject to the following conditions, namely:-
>
> (a) in case confiscated specified bank notes are returned by the court to a person who is a party in case pending before that court, then, the person shall be entitled, on production of the direction of the court, to deposit or exchange such specified bank notes, the serial numbers of which-
>
> (i) have been noted by the law enforcement agency which confiscated or produced them before the court; and
>
> (ii) are mentioned in the direction of the court;
>
> (b) in case specified bank notes are forfeited in favour of the Central Government or the State Government by an order of the court, then, that Government shall be entitled, on production of the direction of the court, to deposit or exchange such specified bank notes; or
>
> (c) in case specified bank notes are placed in custody of any other person by an order of the court on or before the 30th day of December, 2016, then, the person shall be entitled, on production of the direction of the court, to deposit or exchange such specified bank notes, the serial numbers of which-
>
> (i) have been noted by the law enforcement agency which confiscated or produced them before the court; and
>
> (ii) are mentioned in the direction of

the court.

3. These rules not to apply in certain cases.- These rules shall not apply to specified bank notes confiscated or seized after the 30th day of December, 2016."

15. The Learned Standing Counsel for the Fifth Respondent/ Reserve Bank of India also refers to the Specified Bank Notes (Deposit of Confiscated Notes) Rules, 2017 - Operational Instructions issued by the Fifth Respondent/Reserve Bank of India dated 25.5.2017 wherein Clause 3(1) envisages the operational procedure, which runs as under :

"3. The operational procedures for the above shall be as under :

(1) Documents and scrutiny thereof

i. An application (containing details of court order, serial number and denominational details of SBNs, bank account details, etc.) shall be obtained from the tenderer.

ii. On receipt of tender, the original court order shall be scrutinized and authenticity of the same shall be confirmed from the court/law enforcement agency concerned.

iii. Identification of the person authorized to tender SBNs, shall be checked with any valid identity proof.

iv. Verification of documents with regard to serial numbers of the SBNs, as specified in para (2)-(a) and (c) shall be carried out.

v. In case of eligible individuals, PAN card, Form 16 in Original shall be seen.

vi. Self certified copies of all the above documents shall be obtained and on satisfactory verification with the originals, the copies shall be stamped as seen and initialed by the scrutinizing official."

16. In this connection, it is not out of place for this Court to make a pertinent mention that Section 451 of the Criminal Procedure Code enjoins the Court to pass an order for custody or disposal of property during an Inquiry or Trial. Likewise, Section 452 Cr.P.C. confers power on the Court to pass orders for the custody or disposal of any property at the conclusion of Trial or Inquiry. While disposing of the Petition for Return of Property, the Court must inform all the persons concerned.

17. It is to be pointed out that the power under Section 451 Cr.P.C. is to be exercised by the Competent Court in an expeditious and in a judicious fashion because of the reason that the owner of the property is not to suffer because of its remaining unused etc. If proper zimanama before handing over the possession of property/article is prepared, then, that will be the documentary evidence describing the character of property in detail for disposal of property as per Section 451 Cr.P.C. It is necessary that the property should be under the control of the Magistrate.

18. Section 102 Cr.P.C. defines the power of a Police Officer to seize the property specially where the purported commission of an offence is alleged. The power under Section 102 Cr.P.C. is wide enough to cover the offences under the Indian Penal Code or under any special Statute. Unless the property so seized is not incriminating or if the property is not involved or incriminating any offence nor any offence is disclosed after the seizure of property, then, it is not open to the concerned officer to seize and keep the property to himself or when it is produced from whom it is seized.

19. It is to be remembered that Section 171B of the Indian Penal Code speaks of 'Bribery'. Section 171C I.P.C. refers to 'Undue influence at Elections'. Section 171D I.P.C. pertains to 'Personation at Elections'. Section 171E I.P.C. relates to 'Punishment for Bribery'. Section 171G I.P.C. concerns with 'False statement in connection with an Election'. Section 171H I.P.C. refers to 'Illegal payments in connection with an Election'. Section 171-I I.P.C. deals with 'Failure to keep election accounts'.

20. Admittedly, a sum of rupees nine lakhs was seized from the Appellant by the Election Officials on 07.5.2016 and the matter was reported to the office of the Assistant Director of Income Tax (Investigation), Tirunelveli.

21. It is not in dispute that the Fourth Respondent/Electoral Officer, 215, Tiruchendur Legislative Constituency cum Revenue Divisional Officer, Tiruchendur had addressed a communication dated 24.2.2017 to the Sixth Respondent/Sub-Treasury Officer, Tiruchendur to keep the seized sum of rupees nine lakhs at the Sub-Treasury and also made a request to furnish an acknowledgment after receipt of the amount in this regard.

22. Be that as it may, considering the fact that the Appellant/Writ Petitioner was given a clean chit after investigations were completed and the Assistant Director of

Income Tax (Investigation), Tirunelveli, through his letter, had informed the Second Respondent/Project Director, DRDA, Thoothukudi and Appellate Committee even as early as 28.11.2016 that money may be released back to him as per procedure and also this Court, taking note of the fact that the Learned Standing Counsel for the Fifth Respondent/Reserve Bank of India has fairly brought to the notice of this Court some of Notifications issued by the Ministry of Finance, the Specified Bank Notes (Cessation of Liabilities) Act, 2017 and the Operational Instructions relating to the Rules, 2017 and also keeping in mind the facts and circumstances of the present case, which float on the surface and taking into consideration the primordial fact that as on date, there is no impediment for the return of the said sum of Rs.9 lakhs seized from the Appellant by the Authority concerned, this Court, in the interests of justice, fair play, equity and good conscience and even as a matter of prudence, directs Respondents 1 to 4, by adhering to the relevant provisions such as the Specified Bank Notes (Cessation of Liabilities) Act, 2017 and the Rules made thereunder and also the Operational Instructions issued by the Fifth Respondent/Reserve Bank of India dated 25.5.2017, to take necessary steps to hand over the seized sum of Rs.9 lakhs to the Fifth Respondent/Reserve Bank of India together with the serial numbers of the seized notes. After a careful and meticulous scrutiny of the same, by exercising utmost caution and circumspection, the Fifth Respondent/Reserve Bank of India shall transfer the said amount to Respondents 1 to 4, who, in turn, shall transfer the said amount to the Appellant/ Writ Petitioner after subjectively satisfying and adhering to all the relevant provisions of the aforesaid Act, 2017, the Rules framed thereunder and the Operational Instructions and also the Procedural Requirements, which are in force. The handing over exercise of the aforesaid amount by the concerned Respondent(s) shall be carried out within a period of two weeks from the date of receipt of a copy of this order. After receipt of the same from the Fifth Respondent/Reserve Bank of India, Respondents 1 to 4 shall remit the sum of Rs.9 lakhs in the bank account of the Appellant to be specified by him within a period of 10 days thereafter.

23. In view of the foregoings, the order of the Learned Single Judge in closing Writ Petition No.23605 of 2017 stands modified and W.A.No.445 of 2018 is disposed of in the above terms. No costs.

W.A.No.409 of 2018

24. Since this Court has disposed of W.A.No.445 of 2018, nothing survives for adjudication in W.A.No.409 of 2018. Accordingly, W.A.No.409 of 2018 is closed. No costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

RS
Encl: Xerox copy of serial Number of the Notes Seized-7 pages

To:
1.The Chief Electoral Officer, Tamil Nadu, Public (Election) Department, Secretariat, Fort.St.George, Chennai-9.
2.The Project Director, DRDA, Thoothukudi & Appellate Committee on Seizure for Tamil Nadu Assembly Election 2015, Thoothukudi.
3.The District Election Officer & District Collector, Thoothukudi District, District Collectorate, Thoothukudi-628101.
4.The Electoral officer, No.215, Thiruchendur Legislative Constituency cum Revenue Divisional Officer, RDO Office, Thoothukudi, Thoothukudi District.
5.The Regional Director, Reserve Bank of India, Rajaji Salai, Fort,
Chennai-101.
6.The Sub-Treasury Officer, Tiruchendur, Thoothukudi District.

+2 Ccs to Mr. King and Partridge, sr 22285, 22286.
+2 Ccs to Mr. Rugan and Arya, Advocate sr 22491.

W.A.Nos.409 & 445 of 2018

SP(28/03/2018)