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

\+ W.P.(C) 8907/2014, CM No. 20388/2014

SWATI AGGARWAL

..... Petitioner

Through: Mr. Vivek Kumar Tandon, Adv.

versus

RESERVE BANK OF INDIA & ORS.

..... Respondent

Through: Mr. Suhail Dutt, Sr. Adv. with Mr. H.S. Parihar, Mr. Kuldeep Parihar & Mr. Azhar Alam, Advs. for R-1/RBI
Mr. Rajiv Kapur, Adv. with Ms. Divya Sigh, Adv. for R-2, 3 & 4
Ms. Ratna Dwivedi Dhingra, Adv. with Ms. Bhavna Dhami & Mr. Ajay Pratap Singh, Adv. for IBA

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

<u>O R D E R</u>

% **16.08.2018**

1. The present petition has been filed by the petitioner inter-alia challenging the directive dated August 14, 2014 issued by the Reserve Bank of India, more particularly paras (f) and (g), which stipulates as under:-

"(f) The provisions related to levy of charges for use of own-

bank ATMs, vide our circular dated March 10, 2008, has also been reviewed. Accordingly, banks are advised that at least five free transactions (inclusive of financial and non financial transactions) per month should be permitted to the savings bank account customers for use of own bank ATMs at all locations. Beyond this, banks may put in place appropriate Board approved policy relating to charges for customers for use of own bank ATMs.

(g) The ceiling / cap on customer charges of ***Rs.20/- per transaction (plus service tax, if any) will be applicable."***

2. It is the case of the petitioner and also contended by Mr. V.K. Tandon, learned counsel for the petitioner that the respondent No.1/Reserve Bank of India (for short 'RBI') vide its circular dated March 10, 2008 by relying on international practices relating to usage of ATMs, had given directions to all Banks in the Country, making the usage of ATMs free for unlimited number of transactions on own banks ATMs, be it withdrawal transaction or balance enquiry. According to him, the RBI contradicting its earlier stand of international practices of free ATM usage, had on August 14, 2014 issued the impugned directive, which is at the behest of few banks and the Indian Banks' Association who had approached the RBI seeking changes in the extant instructions regarding free transactions at other banks' ATMs. He submitted that the number of mandatory free ATM

transactions for savings bank account customers at other banks' ATM was reduced from five to three transactions per month, inclusive of both financial and non-financial transactions and that too, for transactions done at the ATMs located in the six metro centres viz. Mumbai, New Delhi, Chennai, Kolkata, Bengaluru and Hyderabad. Further, the banks were advised that at least five free transactions, inclusive of financial and non-financial transactions per month be permitted to the savings bank account customers for use of own bank ATMs at all locations. The ceiling / cap on customer charges of ₹20/- per transaction was also permitted. In other words, any transaction beyond five times, either withdrawing cash or even checking account balance, even on an own bank ATM will end up paying charges upto ₹20/- per transaction. He referred to the international scenario as available on Wikipedia to contend that most of the Countries abroad have no charges for the usage of ATM. He concedes to the fact that there are certain countries where usage of ATM entails charges.

3. He submitted, besides a complete departure from international banking practices, making ATM transactions chargeable is not at all justifiable or prudent in Indian context, be it the state of development of our

economy, the socio-economic factors, the penetration/awareness/usage of alternative modes of payments. He states, the intent of the respondents in making transactions at own bank ATMs chargeable is to discourage customers from using ATMs and avoid using cash as a medium of transacting, besides making a profit out of such ATM usage in view of the fact that an own bank ATM transaction does not cost bank an amount as high as ₹20/- per transaction. It is his submission that most of the transactions, which an ordinary middle class or a lower class Indian carries out are purely cash based requiring him to keep cash handy or withdrawable at ease, be it buying groceries from the neighbourhood kirana shop, buying vegetables from a vendor, paying for a bus ticket or fare of an auto, paying utility bills like electricity bill or mobile phone recharges/bills. He also stated that the customers will be discouraged to use ATMs and rather forced to visit their bank more often in order to avoid payment of transaction charges. According to him, the customers will be forced to use cheques and other similar instruments to make payments which will unnecessarily increase workload on banking industry/personnel. With a withdrawal cap of

₹20,000/- per ATM transaction of cash withdrawal, any person intending to withdraw an amount of more than ₹1,00,000/- in a month will end up paying charges to banks. In the end, he would submit that the respondents must ensure that the ATM transactions are free of cost. He states, such an action does not hold to any logic and liable to be set aside.

4. He has also referred to an additional affidavit filed by the petitioner to show the number of chargeable ATM transactions and amount collected by various banks inasmuch as in the month of January, 2016 there were 1,61,95,483 transactions and the amount collected for those transactions was ₹31,54,62,365.16, which according to him is a huge amount and the normal citizen should not be fastened with the liability.

5. The RBI being represented by Mr. Suhail Dutt, learned Senior Advocate and Mr. Kuldeep Parihar, Advocate has taken a stand in its counter affidavit that the issuance of the impugned directive is not in violation of any law of the land or otherwise. The RBI is a body corporate constituted under the provisions of the Reserve Bank of India Act, 1934. The Payment and Settlement Systems serve as a backbone of financial system of a country. In India, a host of payment systems are in operation

ranging from manual paper-based clearing, to the Real Time Gross Settlement for facilitating non-cash mode of payments. The Parliament has enacted the legislation viz, the Payment and Settlement Systems Act, 2007 (for short 'Act of 2007'). The object of the Act is to provide for regulation and supervision of payment systems in India, which inter-alia contemplate a system that includes payment to be effected inter-alia between a payer and a beneficiary involving clearing, payment or settlement services or all of them, but does not include a stock exchange. The payment system includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations. The RBI has been empowered under the Act to determine standards and prescribe guidelines in respect of the payment systems.

6. It is the case of the RBI that decisions relating to the fiscal, financial and economic policies of the State should be left to the necessary statutory and expert bodies of the State and unless are patently illegal or unconstitutional should not be interfered with. A reference is made to the judgment of the Supreme Court and this Court in the following cases:-

(i) ***Bhavesh D. Parish & Ors v. Union of India and another (2000) 5 SCC 471;***

(ii) Bajaj Hindustan Ltd. v. Sir Shadi Lal Enterprises Ltd. and Anr. (2011) 1 SCC 640;

(iii) Centre for Public Interest Litigation v. Union of India (2012) 3 SCC 1;

(iv) BALCO Employees Union (Regd.) v. Union of India and Ors. (2002) 2 SCC 333;

(v) Peerless General Finance and Investment Co. Limited and Anr. etc v. Reserve Bank of India etc. (1992) 2 SCC 343;

(vi) Shri Sitaram Sugar Co. Ltd and another v. Union of India and others (1990) 3 SCC 223;

(vii) M/s Holystar Natural Resources Pvt. Ltd and Anr. v. Union of India and Anr. 207 (2014) DLT 396;

(viii) Raghunath Shankar Kelkar v. Union of India and Ors. PIL No. 40/2008.

7. According to the RBI, the guidelines and circular of 2007-2008 were required to be reviewed in view of the various changes in the payment

settlement system relating to ATMs due to the growing cost of deployment and maintenance by banks as a consequence of ATMs which stood as approximately 27,000 at the end of March, 2007 have increased by 1.6 lakh across the country at the end of March 2014. Further, point of sale infrastructure increased from 3.2 lakh to 10.65 lakh terminals, the ATMs are being used by banks to deliver financial and non-financial services to their customers. It is also represented that white label ATMs have been introduced in the country with the objective of increasing the ATM density and also building the rural and semi-urban ATM infrastructure. It is because of all these factors, RBI took an informed decision to issue the impugned directive.

8. A rejoinder to the counter affidavit has been filed by the petitioner.

9. The respondent No. 3 SBI has also filed reply to the additional affidavit filed by the petitioner. In paras 2, 3, 4, 5 and 7, it is stated as under:-

"2. The stipulation is not applicable to small/no frills/basic saving bank deposit account holder. Hence, the contention of the petitioner that the charges are levied to the poor customer is factually incorrect and denied

specifically as they are excluded. The respondent bank has filed the circular dated 28.10.2014 which refers to the revision in service charge w.e.f 01.11.2014 wherein it clarifies in para 3 that the stipulation is applicable to six metro centers namely Mumbai, New Delhi, Chennai, Kolkata, Bangalore and Hyderabad excluding small/no frills (less than Rs.10,000/- in account) / basic saving bank deposit account holder. The chart annexed along with the circular clarifies the fact that the poor customers who have less than Rs.10,000/- in the account are not charged for the transactions through ATM.

3. The customer who is having saving bank account is permitted to use withdrawal facility maximum four times in a month and cannot claim right to have more transactions. The said customer is permitted 25 cheque leaves free in a period of 6 months. The customers who desires unlimited transactions have to open a current account which does not earn interest on credit balance.

4. The ATM facility is an additional facility provided by the bank at very high cost and cannot be claimed as a matter of right. The bank cannot evaluate the total cost being incurred "for running/maintaining ATMs as the cost of running and maintaining ATMs are different in each state/region. The cost per transaction would differ from location to location and it is difficult to assess with certainty the exact cost per transaction. There are various type of cards viz. magstrip card, EMV card etc on which certain *limits are fixed by the banks as different facilities are provided to the customers.*

5. The details sought by the' petitioner under RTI were with respect to the number of chargeable ATM transactions and the amount collected, however the following chart would establish that the free transactions were much more. Hence the contention of the petitioner that the bank has collected Rs 372 crore per annum (at a conservatively estimated average of Rs. 31 crore per month) is not clear and the words are "baseless and futile". However from the chart it is established that in November 2015 the total transactions were of 27 crores approximately through ATM and the bank has charged only 1 crore transactions and 25 crores approx were free transactions. Similarly, for the month of December 2015 and January 2016 it is evident that the bank has not charged on huge amount on free transactions and bigger transactions the charges have been levied.

Month	Successful	Unsuccessful	Total	Charged TXNS	Free TXNS
Nov-15	24,69,56,955	2,43,02,804	27,12,59,759	1,61,95,483	25,50,64,276
Dec-15	26,20,27,399	2,69,59,923	28,89,87,322	1,72,31,515	27,17,55,807
Jan-16	26,21,25,609	2,65,73,110	28,86,98,719	1,62,63,438	27,24,35,281

The cost of running 1 ATM in metro city is Rs. 1,00,000/- per month approx and the total ATM is 16,000/- approx whereas the cost outside metro city is Rs.75,000/- per month approx and the total ATM would be 44,000/- approx. The aforesaid fact would be evident that the bank is incurring heavy *expenses for running the ATM whereas the amount collected under the said Directive is very meagre amount and the amount so collected only meets the expenses for running the ATM and does not add to the profit of the bank.*

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7. The charges are monitored by RBI and they are empowered u/s 10 (2) read with sec 18 of the Payment and Settlement System Act, 2007 to lay down the policies to regulate the payment systems and give such directions in writing as it may consider necessary to system provider or the system participants in the interest of management or operation of any of the payment systems or in public interest, relating to the regulation of payment systems and in particular, pertaining to the conduct of business relating to payment systems."

10. Having noted the stand of the parties, the grievance of the petitioner is primarily with regard to sub-clauses (f) and (g) of Clause 4, which inter-alia stipulate that at least five free transactions per month are permitted to the savings bank account customers for use of own bank ATMs at all locations. Beyond this, a decision has to be taken by the Bank concerned to charge the customers for use of the ATMs and the ceiling / cap being ₹ 20/- per transaction (plus service tax, if any). It is the case of the RBI that such a directive is in view of the provisions of Act of 2007. It is the case of the

RBI that such a directive has been issued under Section 10(2) read with Section 18 of the Act of 2007. The said provisions are reproduced as under:-

> *"10.(2) Without prejudice to the provisions of sub-section (1), the Reserve Bank may, from time to time, issue such guidelines, as it may consider necessary for the proper and efficient management of the payment systems generally or with reference to any particular payment system.*
>
> *18. Without prejudice to the provisions of the foregoing, the Reserve Bank may, if it is satisfied that for the purpose of enabling it to regulate the payment systems or in the interest of management or operation of any of the payment systems or in public interest, it is necessary so to do, lay down policies relating to the regulation of payment systems including electronic, non-electronic, domestic and international payment systems affecting domestic transactions and give such directions in writing as it may consider necessary to system providers or the system participants or any other person either generally or to any such agency and in particular, pertaining to the conduct of business relating to payment systems."*

11. It is not the case of the petitioner that the said provisions do not

empower the RBI to issue the directive in the nature issued by the RBI, which is the subject matter of this petition. If that be so, the issue must be proceeded on the premise that the RBI is competent to issue such directives due to the factors already enumerated in para 7 above. The said factors surely suggest a well considered decision. The impugned directive is, at least five free transactions (inclusive of financial and non-financial transactions) per month should be permitted to the savings bank account customers for use of own bank ATMs at all locations. The chargeability of transaction (s) over and above five is left to the decision of the bank concerned. If in a given case, the bank concerned imposes transaction fee, for transactions beyond five then there is a ceiling / cap on customer charges of ₹20/- per transaction (plus service tax, if any). Surely, in the competitive world of banking service, the discretion vested is justified.

12. The respondents are right in contending that the usage of ATM is an additional facility granted to a customer. There is no obligation on the part of the customer to use an ATM only. He surely has an alternative mode of withdrawing cash through a cheque or doing a non financial transaction like updating of the passbook , by physically going to the bank. Further, the

establishment / maintenance of ATMs as an additional facility by a bank concerned, surely involves a cost. The same cannot be provided by the bank incurring huge financial liability. That apart, the figures of transactions given by the SBI, as noted above suggest the popularity / wide usage of the facility of the ATM. It is a common knowledge that the ATM facilities can be availed, if a customer is abroad and even during holidays when banks are closed. Any direction at the behest of one person i.e the petitioner can also result in the banks closing the facility being economically unviable, which would be against the interest of the public at large, who we feel, have accepted the facility as is seen from the statistics shown by the SBI. We agree with the stand of the RBI that the directive is not arbitrary as it does not mandate, that a bank shall offer more than five transactions per month at its ATM at a cost. As stipulated in the directive that such a decision is discretionary and need to be approved by the Board of the banks and communicated to the customer in a fair and transparent manner. At the same time, it must be held, the relevancy / sufficiency of the reasons, which weighed with the bank to confine the free transactions only to five and not more, cannot be the subject matter of a judicial review.

13. Further, the RBI is right in contending that a decision of this nature is purely a policy decision taken in the larger public interest with due application of mind. Such a decision cannot be interfered with by the Courts in view of the judgments already referred to by the RBI and noted above. In this regard, we refer to the judgment of this Court in ***M/s Holystar Natural Resources Pvt. Ltd and Anr. v. Union of India and Anr. (supra),*** wherein this Court has held that the statutes dealing in fiscal matters and / or where discretion is conferred on high ranking statutory authorities like the RBI, should not ordinarily be interfered with in exercise of power of judicial review.

14. Further the Supreme Court in the case reported as ***(2018) 11 SCC 260 State of Jammu and Kashmir and Ors. v. Trikuta Roller Flour Mills P. Ltd. and Ors,*** in para 10 held as under:-

> *"10. The respondents had no legal or indefeasible right to claim refund of CST paid by them. The policy rested on an executive decision to encourage entrepreneur investment. It naturally includes the power of the State to review the policy from time to time, including on considerations for the manner in which the policy was proving beneficial or detrimental to*

the larger public interest, and the State exchequer. The policy could therefore well be withdrawn or modified at any time for just, valid and cogent reasons. Judicial review of a policy decision, especially an economic policy decision, shall have to be restricted to the presence of just and valid reasons eschewing arbitrariness, so as not to fall foul of Article 14 of the Constitution. But, in the garb of judicial review, the Court will not examine the sufficiency or adequacy of the reasons or materials, in the manner of an appellate authority, to substitute its own wisdom for that of the government. That would tantamount to taking over of the executive decision making process."

15. We do not see any merit in the writ petition. The same is dismissed. No costs.

CM No. 20388/2014 (for stay)

Dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

AUGUST 16, 2018/*ak*