IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2019

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THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.5441 of 2018

S.Goutham Chand ... Petitioner

Vs.

1. The District Revenue Officer,
   Villupuram District,
   Villupuram.

2. The Revenue Divisional Officer,
   Tirukoilur-605 757,
   Villupuram District.

3. The Tahsildar,
   Tirukoilur-605 757,
   Villupuram District.

4. The Assistant Treasure Officer,
   Sub Treasury Tirukoilur Taluk Office Campus,
   Tirukoilur-605 757.

5. Reserve Bank of India,
   represented by its Regional Director,
   Rajaji Salai, Fort Glacis,
   Chennai-600 001. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondents to forthwith refund Rs.10,00,000/- to the petitioner by cheque or Demand Draft drawn in favour of the petitioner.

For Petitioner : Mr.T.K.Saravanan

For Respondents: Mr.E.Balamurugan,
Special Government Pleader for RR 1 to 4

Mr.Chevanan Mohan,
for M/s.King and Patridge for R5

O R D E R

This writ petition has been filed by the petitioner seeking a direction to the respondents to refund a sum of Rs.10,00,000/- to him by drawing a cheque or Demand Draft in his favour, being the amount seized by the flying squad team of Tirukoilur Assembly Constituency.

2. The petitioner was running a jewellery shop at Tirukoilur. According to him, a sum of Rs.10,00,000/- was earned on 09.05.2016 and 10.05.2016 on the occasion of Akshaya Tiruthi, out of sale of jewellery. When he sent his staff one K.Karthick for depositing the said money into his bank account on the fateful date of inspection by the Flying Squad Team of respondent authorities on the eve of 2016 Tamil Nadu State Assembly Constituency elections, on 11.05.2016, it was seized by them. Thereafter, the officials of the Income Tax Department conducted search at his house and inspected the accounts. The first respondent sent a communication to the tax authorities to verify his records and send a No Objection Certificate for releasing the seized money. Since the Income Tax authorities expressed no objection for releasing the amount, the first respondent on 25.03.2017 itself authorized the second respondent to refund the amount to the petitioner under due acknowledgment.

3. While so, the petitioner approached the second and fourth respondents umpteen times seeking refund of the said money. However, on 12.09.2017, the third respondent sent the communication stating that they were told by the Reserve Bank of India that the time limit for exchange of old currency after demonetization expired on 31.12.2016 and hence, the petitioner was asked to approach the competent court. It is claimed by the petitioner that as on date, the said amount of Rs.10,00,000/- is kept at the fourth respondent office. Under the said circumstances, the petitioner is before this Court with this petition.

4. Admitting the undisputed facts, the respondents 1 to 4 have filed a counter affidavit, however, seeking to dismiss this writ petition placing reliance on the observation of the Hon'ble Apex Court in the judgment in W.P.(C)No.906 of 2016, dated 16.12.2016 and the order dated 21.08.2017 passed by a learned Single Judge of this Court in the writ petition in W.P.No.33681 of 2017 filed by this petitioner, relying upon the afore-stated judgment of the Apex Court.

5. Heard Mr.T.K.Saravanan, learned counsel appearing on behalf of the petitioner, Mr.E.Balamurugan, learned Special Government Pleader appearing on behalf of the respondents 1 to 4

and Mr.Chevanan Mohan, learned counsel appearing on behalf of the respondent 5.

6. Admittedly, the law enforcement agency during the 2016 T.N. State Assembly Election seized the amount of Rs.10,00,000/- from the employee of the petitioner. Indisputably, the first respondent vide communication in Na.Ka.T1/6335/2016, dated 25.03.2017, after obtaining No Objection from the Income Tax Department, authorized the second respondent to refund the seized amount to the petitioner under due acknowledgment. However, the third respondent sent the communication to the petitioner in Na.Ka.E1/3344/2016, dated 12.09.2017 informing him that due to demonetization, they could not take further steps for refund and asked him to approach the competent court. The seized amount is kept in the safe custody in the office of the fourth respondent.

7. When this petition was taken up for hearing on 07.01.2019, this Court found that the counter affidavit of the third respondent does not speak about the noting of the serial numbers of the notes confiscated and accordingly, directed the learned Special Government Pleader appearing for the respondents 1 to 4 to file an additional counter affidavit. Though no additional counter affidavit has been filed, the third respondent sent a letter in Rc.E1/3344/2016, dated 09.01.2019 to the Special Government Pleader annexing therewith the serial numbers of the seized currency notes. The same shall form part and parcel of this matter.

8. At this juncture, it is relevant to note that the Department of Economic Affairs, Ministry of Finance, Government of India, notified G.S.R.460(E), dated 12.05.2017, in exercise of its power conferred by sub-section (1) of section 11 read with clause (c) of the proviso to section 5 of the Specified Bank Notes (Cessation of Liabilities) Act, 2017, issuing the Specified Bank Notes (Deposit of Confiscated Notes) Rules, 2017. Rule 3 of the said Rules states that it would not apply to the specified bank notes confiscated or seized after 30.12.2016. Rule 2, in its entirety, is usefully extracted hereunder :

> "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 subsection (1) of section 4 of the Act or a nationalised 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."

9. The above said rules were not brought to the notice of the learned Single Judge, while passing the order dated 21.08.2017 in W.P.No.33681 of 2017 rejecting the prayer of the petitioner.

10. It is also apt to note that the operational instructions were issued by the Reserve Bank of India in Specified Bank Notes (Deposit of Confiscated Notes) Rules, 2017 dated 25.05.2017. Clause 3 of the same would read thus :

"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."

As stated above, these rules specify the operational procedure to be followed.

11. Though the respondents 1 to 4 relied on the judgment of the Hon'ble Apex Court in W.P.(C) No.906 of 2016, dated 16.12.2016 and the above-mentioned order of this Court, it is relevant to state that a Division Bench of this Court in W.A.No.581 of 2017, by the judgment dated 19.12.2017 held as follows :

"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 25.05.2017, 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."

12. Another Division Bench of this Court in the judgment dated 23.03.2018 in W.A.Nos.409 and 445 of 2018, in similar circumstances, held as follows :

"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."

13. Following the decisions rendered by the Division Benches of this Court and Rule 2 of the Specified Bank Notes (Deposit of Confiscated Notes) Rules, 2017, this Court is of the view that the petitioner is entitled for a refund of a sum of Rs.10,00,000/- (Rupees ten lakhs only).

14. Accordingly, this writ petition is allowed, directing the second respondent to tender the seized currency notes at the office of the fifth respondent after taking it from the custody of the Sub-Treasury, Tirukoilur, in accordance with Rule 2 of

the Specified Bank Notes (Deposit of Confiscated Notes) Rules, 2017, who, in turn, after verifying the serial numbers of the notes with that of the serial numbers of the currency notes that were entrusted by the first respondent in the office of the fourth respondent, as mentioned in the reports as well as in the communication in Rc.E1/3344/2016, dated 09.01.2019 issued by the third respondent, which is enclosed herewith, shall refund of the aforesaid amount to the second respondent in terms of the operational instructions dated 25.05.2017, within a period of two weeks and the second respondent shall, in turn, transfer the said amount to the petitioner's account or issue a Cheque in favour of the petitioner within a period of two weeks thereafter. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

*The xerox copy of Communication Letter
dated 9/01/2019 in R.C.E1/3344/2016
along with order copy enclosed

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The District Revenue Officer,
   Villupuram District, Villupuram.

2. The Revenue Divisional Officer,
   Tirukoilur-605 757,
   Villupuram District.

3. The Tahsildar,
   Tirukoilur-605 757,
   Villupuram District.

4. The Assistant Treasure Officer,
   Sub Treasury Tirukoilur Taluk Office Campus,
   Tirukoilur-605 757, Villupuram District.

5. The Regional Director,
Reserve Bank of India,
Rajaji Salai, Fort Glacis,
Chennai-600 001.

+1cc to M/S.King & Partridge, Advocate Sr.9489
+1cc to the Government Pleader Sr.10247

W.P.No.5441 of 2018

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