

PETITIONER:
JAYANTILAL RATANCHAND SHAH

Vs.

RESPONDENT:
RESERVE BANK OF INDIA & ORS.

DATE OF JUDGMENT: 09/08/1996

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
KULDIP SINGH (J)
PUNCHHI, M.M.
SINGH N.P. (J)

CITATION:
JT 1996 (7) 681 1996 SCALE (5)741

ACT:

HEADNOTE:

JUDGMENT:
W I T H
WRIT PETITION (C) NOS. 97-100 OF 1981
Devkumar Gopaldas Aggarwal & Ors.
V.
Reserve Bank of India & Anr.

J D G M E N T

M.K. MUKHERJEE. J.

The constitutional validity of the High Denomination Bank Notes (Demonetization) Act, 1978 (hereinafter referred to as the 'Demonetization Act') and the legality of certain orders passed thereunder are under challenge in these petitions under Article 32 of the Constitution of India. The Act replaced an Ordinance, bearing a similar title, which was promulgated by the President and had come into force on January 16, 1978. To appreciate the contentions raised on behalf of the petitioners it will be necessary, at this stage to refer not only to the relevant provisions of the Demonetization Act but also of the Reserve Bank of India Act, 1934 ('RBI Act for short), which empowers Reserve Bank of India (Bank for short) to issue bank notes and imposes an obligation upon it to exchange those notes.

The Bank has been constituted under the RBI Act to regulate the issue of bank notes and the keeping of reserves with a view to security monetary stability in India and generally to operate the currency and credit system of the country to its advantage. Section 22 of that Act provides that the Bank shall have the sole right to issue bank notes. Section 24, which prescribes the denomination of the notes, reads as under :

(1) Subject to the provisions of sub-section (2) bank notes shall be of the denominational values of two rupees, five rupees, ten rupees, twenty rupees, fifty rupees one

thousand rupees, five thousand rupees and ten thousand rupees or of such other denominational values, not exceeding ten thousand rupees, as the Central Government may, on the recommendation of the Central Board, specify in this behalf.

(2) The central Government may, on the recommendation of the Central Board, direct the non-issue of the such discontinuance of issue of bank notes of such denominational values as it may specify in this behalf."

Section 26 lays down that every bank note shall be legal tender at any place in India in payment or on account of the amount expressed therein and shall be guaranteed by the Central Government. It further lays down that on recommendation of the Central Board the Central Government may however by notification in the Gazette of India declare that with effect from such date as may be specified in the notification any series of bank notes of any denomination shall cease to be legal tender except at such office or agency of the Bank and to such extent as may be specified in the notification. The other Section of the RBI Act relevant for our purposes is Section 39 which imposes on the Bank an express obligation to issue, rupee coin or notes of lower values on demand, in exchange for bank notes and currency notes of the Government of India.

On a conspectus of the above provisions of the RBI Act is patently clear that Bank is the sole note issuing authority and has the obligation to exchange those notes when demand except when, and to the extent, it is relieved of that obligation by the Central Government.

Coming now to the Demonetization Act as we first find that high denomination bank note has been defined in Section 2 (d) to mean a bank note of the denominational value of the one thousand rupees, five thousand rupees or ten thousand rupees issued by the Reserve Bank. Section 3 declares that on expiry of January 16, 1978 all high denomination bank notes shall notwithstanding anything contained in Section 26 of the Reserve Bank of India Act, 1934 (emphasis supplied) cease to be legal tender in payment or on account at any place. Section 4 which prohibits transfer and receipt of high denomination bank notes reads as follows :

"Save as provides by or under this Act, no person shall, after the 16th of January, 1978, transfer to possession of another person or receive into his possession from another person any high denomination bank note."

Section 7 and B of the Demonetization Act, around which a large part of the arguments of the petitioners revolves, reads as under :

"Section 7, Exchange of high denomination bank notes held by other persons :-

(1) Notwithstanding anything to the contrary contained in the Reserve Bank of India Act, 1934, any denomination bank note owned by a person other than a bank or Government Treasury may be

exchanged after the 16th day of January, 1978, only on tender of the note ----

(a) where the high denomination bank note is owned by an individual, by the individual himself; or where the individual is absent from India, by the individual concerned or some person duly authorized by him in this behalf; or where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(b) to
and within the time and in the manner provided in this section.

(2) Every person desiring to tender for exchange a high denomination bank note under this section shall prepare in the form set out in the Schedule three copies of a declaration signed by him giving in the full and shall, not later than the 19th day of January, 1978, deliver such copies in person together with the high denomination bank notes he desires to exchange -

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(a) to (c)

Provided that if such person resides in a place not within convenient reach of any such office or branch, or if, by reason of age, infirmity or illness he is unable to attend thereat, he may forward the high denomination bank notes he desires to exchange together with three copies of the declaration in respect thereof by insured post to the Reserve Bank at Bombay not later than the 19th day of January, 1978.

(3)

(4) Unless it appears that the declaration has not been complete in all material particulars, the Reserve Bank, the State Bank or any Bank notified under the State of Bank or any Bank notified under Cl.

(c) of sub-section (2) as the case may be, to which an application for exchange of high denomination bank notes is made under this section, shall pay the exchange value of the said notes shall be paid only on proper identification and until payment is so made, the amount shall remain in the custody of the Reserve Bank or the Bank, as the case may be, to which the high denomination bank notes were tendered.

(5) where it appears that the

declaration has not been completed in all material particulars, the Reserve Bank, the State Bank or the notified Bank, as the case may be, to which such application as aforesaid is made shall, unless the declarant is able to supply the omission without delay, refuse to accept and pay for the bank notes to which the declaration relates, anywhere it does so refuse, shall return one copy of the declaration to the declarant after entering therein the date on which it is presented and shall refer the matter to the Central Government to which it shall forward a copy of the declaration with a brief statement of the reasons for refusing to pay for the bank notes.

(6) The Central Government may require any declarant referred to in sub-section (5) to amplify his declaration to such extent and in respect of such particulars as it thinks fit and may, unless the declarant is able to fully comply with such requirement refuse, for reasons to be recorded in writing, to sanction the exchange of the high denomination bank notes to which the declaration relates.

(7) The Central Government or any person or authority authorized by it in this behalf may, by order in writing and for reasons to be recorded therein, extend in any case or class of cases the period during which high denomination bank notes may be tendered for exchange under this section.

Section 8 - Exchange of notes after the time limit specified in 6.7

(1) Notwithstanding anything contained in 6.7, any person who fails to apply for exchange of any high denomination bank notes within the time provided in that section may tender the notes together with the declaration required under that section to the Reserve Bank at any of the places specified in clause (a) of sub-section (2) of that section, not later than 24th day of January, 1978 together with a statement explaining the reasons for his failure to apply within the said time limit :

Provided that if such person resides in a place not within convenient reach of the sub-office, office or branch of the Reserve Bank at any of the said places on if, by reason of age, infirmity or illness, he is unable to attend

thereat, he may forward the high denomination bank notes he desires to exchange together with the three copies of the declaration required under 5.7 by post to the Reserve Bank at Bombay not later than the 24th day of January, 1978, along with a statement explaining the reasons for his failure to apply within the time specified in Section 7.

(2) The Reserve Bank may, if satisfied after making such inquiries as it may consider necessary that the reasons for the failure to submit the notes for exchange within the time provided in 6.7 are genuine, pay the value of the notes in the manner specified in sub-section (4) of that section.

(3) Any person aggrieved by the refusal of the Reserve Bank to pay the value of the notes under sub-section (2) may prefer an appeal to the Central Government within fourteen days of the communication of such refusal to him."

In assailing the Demonetization Act it was contended on behalf of the petitioners that it violated their fundamental rights enshrined in Articles 19 (1) (f) and 31 of the Constitution (since repealed), which were available to them at the material time. In elaborating their contention it was submitted that Bank to make payment of high denomination bank notes whenever tendered and the Central Government guaranteed such payment but on promulgation of the impugned Act those notes ceased to be legal tender, notwithstanding the above provision of the RBI Act, in view of Section 3 thereof; and, resultantly, the Bank and for that matter the Central Government stood discharged of their such obligations. In other words, according to the petitioners, the impugned Act extinguished the debts due and owing from the Bank to the holders of the high denomination bank notes. the petitioners contended that such extinguishment of debts amounted to compulsory acquisition of property within the meaning of Article 31(2) of the Constitution and since the acquisition was not made for a public purpose nor adequate and appropriate provisions were incorporated in the impugned Act for payment of compensation in respect thereof the impugned Act was violative of the above Article. Besides, the petitioners contended, they had a right to acquire and hold the high denomination bank notes and to carry on any trade or business by using the same in the course thereof and the Demonetization Act in so far as it provided for non-payment of exchange value of high denomination bank notes except in those cases mentioned in Section 7 and 8 thereof, it imposed unreasonable restriction on their fundamental rights under Article 19 (1) (f) and (g) of the Constitution. Since it cannot be disputed that the direct effect of the High Denomination Bank Notes (Domination Bank Notes (Demonetization) Ordinance, 1978 is the wiping out of a public debt owing to the holders of the high denomination bank notes from the state, the other contention of the petitioners that their property was compulsorily acquired has got to be accepted in view of Pathak vs. Union of India

(1978) 2 SCC 50 wherein it has been held that property within the meaning of Article 19 (1) (f) and clause (2) of Article 31 comprises every form of property, tangible or intangible, including debts and chooses in action and that extinguishment of a public debt due and owing from the State amounts to compulsory acquisition of such debt.

The next question that necessarily falls for determination is whether such acquisition was for a public purpose for under Article 31 (2) no property could be compulsorily acquired except for a public purpose. To answer this question we may profitably look to the preamble of the Demonetization Act which reads as follows :

Whereas the availability of high denomination bank notes facilitates the illicit transfer of money for financing transactions which are harmful to the national economy or which are for illegal purposes and it is therefore necessary in the public interest to demonetize high denomination bank notes."

From the above preamble it is manifest that the Act was passed to avoid the grave menace of unaccounted money which had resulted not only in affecting seriously the economy of the country but had also deprived the State Exchanger of vast amounts of its revenue. Considering the evil the above Act sought to remedy it cannot be said that it was not enacted for a public purpose. The petitioners other contention based on 19 (1) (f) and (g) of the Constitution is wholly misconceived for after compulsory acquisition of their property by the impugned Act the petitioners right thereto stood extinguished and consequently the question of reasonable restriction to the exercise or enjoyment of a right, which became non est, could not arise. Equally untenable is the petitioners right they were deprived of their right to get compensation for such acquisition, as Sections 7 & 8 of the Demonetization Act lay down an elaborate procedure to apply for and obtain an equal value of the high denomination bank notes in the manner prescribed thereunder.

It was, however, contended on behalf of petitioners that even if it was assumed that Article 31 had not been violated the time prescribed for exchange of the high denomination bank notes under Sections 7 and 8 of the Demonetization Act was unreasonable and violative of their fundamental rights. When the above provisions of the Act are considered in the context of the purpose the Demonetization Act sought to achieve, namely, to stop circulation of high denomination bank notes as early as possible, the above contention of the petitioners cannot be accepted. Consequent upon the high denomination bank notes ceasing to be legal tender on the expiry of January 16, 1978 and in view of the prohibition in the transfer of possession of such notes from one person to another thereafter as envisaged under Section 4, it was absolutely necessary to ensure that no opportunity was available to the holders of high denomination bank notes to transfer the same to the possession of others. At the same time it was necessary to afford a reasonable opportunity to the holders of such notes to get the same exchanged. However, if the time for such exchange was not limited the high denomination bank notes could be circulated and transferred without the knowledge of the authorities concerned from one person to another and any such transferee could walk into the Bank on any day thereafter and demand exchange of his notes. In that case it would have been well

high impossible for the Bank to prove that such a person was not the owner or holder of the notes on January 16, 1978. Needless to say in such an eventually the very object which the Demonetization Act sought to achieve would have been defeated. Obviously, to strike a balance between these competing and disparate considerations that Section 7 (2) of the Demonetization Act limited the time to exchange the notes till January 19, 1978. However, even thereafter, in view of Section 8, the high denomination bank notes could be exchanged from the Bank till January 24, 1978 provided the tenderers was able to explain the reasons for his failure to apply for such exchange within the time stipulated under Section (2) of Demonetization Act. Apart from the above provisions regarding exchange of high denomination bank notes by the Bank within the time stipulated therein, provision has been made in sub-section 97) of Section 7, permitting the Central Government, for reasons to be recorded in writing, to extend in any case or class of cases the period during which high denomination bank notes may be tendered for exchange. From a combined reading of Sections 7 and 8 it is evidently clear that on furnishing a declaration complete in all particulars in accordance with sub-section (2) of Section 7 by January 19, 1978, the holder was entitled to get the exchange value of his notes from the Bank without any let or hindrance; thereafter, till January 24, 1978, he was entitled to such exchange from the Bank if he could satisfactorily explain the reasons for his inability to apply by January 19, 1978 and after that date the Central Government was empowered to extend the period of such exchange. Such being the scheme of the Act regarding exchange of high denomination bank notes it cannot be said that the time and the manner in which the high denomination bank notes could be exchanged were unreasonable, unjust and violative of the petitioners fundamental rights.

Now that we have found the Demonetization Act to be a valid piece of legislation, we may proceed to consider whether the orders passed by the respondents, in exercise of their powers thereunder, refusing to exchange the high denomination bank notes of the respective petitioners of the writ petitions are justified or not.

WRIT PETITION NO. 1188 OF 1979

The Petitioner is the Chairman of a relief Society which runs a medical dispensary at Surat. In the year 1974 the Executive Committee of the Society decided to construct a public charitable hospital. With that object in view the Executive Committee decided to collect funds through donations and for that purpose donation boxes were kept at Surat and Bombay. As per Managing Committee's resolution dated August 4, 1974 these boxes were opened from time to time in presence of the Chairman and Vice-Chairman of the Society and the amounts so collected were recorded in separate minute books.

Accordingly to petitioner, immediately after the promulgation of the High Denomination Bank Notes (Demonetization) Ordinance, 1978, on January 16, 1978 instructions were given to the office bearers of the Society both at Bombay and Surat not accept any deposit or to allow anyone to deposit any high denomination bank notes in the collection boxes after midnight of January 16, 1978. For that purpose the boxes at Surat and Bombay were taken possession of by the respective offices bearers and steps were taken by the Society to open the boxes. The collection boxes at Bombay, which were opened in the afternoon of January 17, 1978, were found to contain Rs. 22, 11, 000/- in

high denomination bank notes. The amount so received was properly minuted in the minute book and entered in the cash book. Thereafter the Society obtained the requisite statutory declaration form to be submitted for exchange of those notes and along with the declaration delivered the notes to the State Bank of India, Bombay on January 19, 1978.

As regards the boxes at Surat the petitioner's case is that they were opened on January 20, 1978 and found to contain Rs. 34, 76, 000/- in high denomination bank notes. The above sum of money along with the requisite declaration was deposited by the petitioner in the bank in Bombay on January 23, 1978 along with a letter explaining the delay for failure to deposit the same within the prescribed time. Thereafter from time to time the Society addressed letters to the State Bank of India, Bombay asking for the payment of the value of the high denomination bank notes deposited. But it did not receive any reply thereto until April 25, 1978, when the Society received an order of the Currency Officer of the Bank rejecting their claim for exchange of the high denomination Bank notes received in Surat on the grounds, that the Society had not explained satisfactorily its failure to open the collection boxes immediately after the issue of the Ordinance and that it had not been established to his satisfaction that the notes had reached the Society before demonetization. Aggrieved by the above order the Society preferred an appeal under Section 8 (3) of the Demonetization Act to the Central Government. After giving a personal hearing to the Society the Central Government dismissed the appeal with the following findings:

"As far as the notes found at Surat are concerned, the Government of India agree with the Reserve Bank of India that the failure on the part of the trust to open after the issue of Ordinance has not been satisfactorily explained. The trustees have admitted knowledge of the promulgation of the Ordinance on the evening of 16th January, 1978 and opened the boxes at Bombay on 17th of January, 1978 and then declared on the 23rd of January, 1978 does leave scope for doubt as to whether the trust was in possession of the high denomination notes on or before the 16th January, 1978 and not subsequently. The Trust has also furnished details of the collection from the boxes on earlier occasions, During 1977 the boxes were opened on five occasions, the details of the which are as follows :-

Details of cash boxes collection at Surat

	Amount
1977	
January	Rs. 18,012
April	Rs. 16,161
May	Rs. 56,000
June	Rs. 10,000
11th November	Rs. 20,051

On the previous occasions the amounts were much less and on 11th November, 1977 they were only

Rs. 20,051/-. Thus in more than 5 months, June 77 to November 77, the total collections were a little over to Rs. 20,000/- which come to an average of about Rs. 5,000/- per month. Keeping these facts in view it seems, most unlikely that the donations in the next two months i.e. November, 1977 to January 16, 1978 would aggregate to Rs. 34,74,519/- out of which denomination notes besides the appellant had also not been able to prove that even in the past the trust was getting donations in high denomination notes from the charity boxes and that this was a regular feature."

In impugning the order of the Currency Officer of the Bank it was submitted on behalf of the petitioner that no opportunity of being heard was given to the Society so as to enable it to explain the reasons for delay in submitting the declaration form. Even if we proceed on the assumption that such an opportunity for personal hearing was imperative to comply with the rules of natural justice the petitioner cannot raise any grievance on that score for the Appellate Authority gave them such an opportunity before dismissing their appeal. This apart, as noticed earlier, the Appellants Authority has given detailed reasons for its inability to accept the explanation of the Society for not filing the declaration in time. Under the Demonstration Act if a holder of high denomination bank notes had acquired those notes after January 16, 1978 he would not be entitled to exchange the same, if therefore, the Bank and Central Government obtained a satisfaction that the Society failed to prove that the high denomination bank notes for which value was claimed had reached its hands on or before January 16, 1978 payment could legitimately be refused. It was however contended that the respondents having accepted their claim for exchange in respect of notes found in the collection boxes of Bombay ought to have accepted their explanation offered by them in respect of the notes received at Surat. It appears that this contention was raised before the Appellate Authority which rejected the same with the following observations :

"The Government of India have carefully considered all the facts of the case and are of the view that the decision regarding the amount found in the charity boxes maintained at Bombay which were opened on the 17th and declared on the 19th has hardly any relevant to the decision taken on the notes found in the charity boxes at Surat. The declaration regarding the notes found in the donation boxes at Bombay was within the prescribed time i.e. January, 1978 and if the forms were complete in all material particulars the bank had no alternative but of exchange the notes in accordance with the provisions of law. However, for the declarations filed after the 19th

till 24th the declarant had to satisfy the Reserve Bank was fully satisfied could not notes be exchanged. It is therefore, clear that the notes found in the boxes at Bombay and those found at Surat stand on a different footing."

We need not however deliver into the matter any further, for the above findings are of facts and nothing has been brought to our notice to indicate that the impugned orders are perverse. Indeed, the materials on record persuade us to hold that the reasons which weighed with the authorities to refuse payment to the Society in exchange of their high denomination bank notes are cogent and we, therefore, do not find any merit in this petition.

WRIT PETITION NOS. 97-100 OF 1981

The petitioners herein are the trustees of Tulsiram Mansadevi Charity Trust (Trust for short) which is registered as a public charitable Trust under the Bombay Public Trusts Acts, 1950. The objects of the Trust, amongst others, is to render help to the poor and destitute. According to the petitioners, sometimes in 1977 one Gopaldas Aggarwal Foundation, (Foundation for short a trust having common trustees with the Trust started a donation collection drive for their "Hospital Building & Equipment Fund" to be utilised for the proposed construction of hospital. The Trust also agreed to participate in that drive and accordingly undertook sale of donation tickets of the Foundation from door to door for cash. For that purpose, the Trust received donation tickets worth Rs. 3,00,000/- from the Foundation and during the period between November 15, 1977 and January 14, 1978 managed to sell tickets worth Rs. 1,57,050/- out of which Rs. 1,53,000/- were in 153 currency notes of Rs. 1,000/- each. The above sale was effected through employees of the Trust, its representatives and other persons connected or associated with the trustees, who rendered detailed account of such sales. Receipts in respect of the sales were recorded in the cash book of the Trust as and when received and the same was handed over to the said Foundation. According to the petitioners, no record was kept nor could be kept of the various individuals to whom the donation tickets were actually sold considering the manner in which the transactions took place. Besides, the petitioners aver, the donations were received in cash from the employees, representatives and associates and retained in the form received as the same had to be directly handed over to the Foundation on whose behalf the amounts had been collected.

Consequent upon the promulgation of the High Denomination Bank Notes (Demonetization) Ordinance on January 16, 1978 the Trust delivered a declaration in respect of the 153 currency notes of Rs. 1,000/- each, which they had received by sale of tickets as also the notes on January 19, 1978 to the Bank at its office in Bombay. According to the petitioners the said declaration gave complete particulars of the said currency notes and also specifically stated that the amount had been received by way of donations. By its letter dated 4th December, 1978, the Bank however called for the following further details from the Trust :

- (a) Denominational details of the tickets issued for collection of donations, and the tickets actually sold till 14th January, 1978;
- (b) whether high denomination notes were directly received, and if not, when and from whom the same were got exchanges,

and also called upon the said Trust -

(c) To produce counter-foils of the tickets for perusal and return;

In response to the said requisitions the Trust furnished a statement giving complete particulars of the tickets sold by it, and produced and counter-foils of the tickets for perusal.

Thereafter by its letter dated August 16, 1979 the Bank intimated the Trust that the declaration filed by the Trust could not be treated as complete in all material particulars for the following reasons;

(a) against column 15 of the said declaration form, it is stated that "the amount received as donations remaining in hand pending utilisation of the same" This seems very unusual since the said trust had a bank account and the cash was not required for being utilised in the very near future and

(b) against column 16 of the declaration, it is stated that "the amount was received from donors, names not recorded". This was every vague reply and does not establish whether the notes were received before or after the promulgation of the Ordinance. Since the amount was collected that all of them would like to remain anonymous though they had donated for a good cause.

and, accordingly, rejected the Trust's claim for payment of the exchange value of the high denomination bank notes. Against such refusal the Trust preferred an appeal to the Government of India which was rejected by an order dated August 23, 1979. The above two orders are under challenge in these writ petitions.

It was submitted on behalf of the petitioners that considering the manner in which the notes in question were received, the concerned authorities ought to have held that the particulars given by it against Column petitioners further contended that no obligation was cast upon them under the Demonetization Act to furnish complete particulars of names of all the persons from whom notes had been acquired nor were they obligated to satisfy the Reserve Bank that the notes in question had been received before or after the promulgation of the Ordinance. In all such circumstances, the petitioners urged, the impugned orders were liable to be quashed Under Column 15 of the form of declaration, required to be filed under Section 7 (2) of the Demonetization Act, the reasons for keeping the amount in cash and under Column 16 the sources when and wherefrom the notes came into the possession of the declarant are to be disclosed. Having regard to the provisions of Section 3 and 4 of the Demonetization Act the reasons for disclosure of such details are not far to seek. After the High denomination bank notes ceased to be valid tender on the expiry of January 16, 1978 transfer of the same to the possession of others thereafter was forbidden. That necessarily means, that the right and opportunity of exchanging those notes was available only to those persons who were possessing the same on January 16, 1978. Therefore, to obtain satisfaction that the declarant was in possession of the notes or before January 16, 1978 the Bank was

required to make necessary enquiry and in that context complete disclosure of the particulars referred to in Column 15 and 16 were absolutely necessary. As noticed earlier, in the declaration submitted by the petitioners it was stated against Column Nos. 15 and 16 that "amounts received by donations, remaining on hand pending utilisation of same" and "Donors name not recorded" respectively. The particulars so furnished did not favour with the concerned authorities for according to the authorities, as the Trust had a bank account and the cash was not required to be utilised in the near future it seemed very unusual that it would be kept in hands pending utilisation. As regards the failure of the Trust to disclose the names of the donors, the comment was that this was a vague reply and did not establish whether note were received before or after they had donated for a good cause. The grounds so canvassed in refusing payment to the petitioners cannot be said to be unreasonable or unjust so as to entitle us to disturb the same. These petitions are, therefore, also liable to be rejected.

On the conclusions as above we dismiss all the writ petitions but without any order as to costs.