IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.17775 of 2023

Smt. Jayanti Das …. ***Petitioner***

Mr.B.K. Ragada, Advocate

-versus-

Union of India and others …. ***Opp. Parties***

Mr. Prasanna Kumar Parhi,
Deputy Solicitor General of India

CORAM:
JUSTICE S.K. SAHOO
JUSTICE MURAHARI SRI RAMAN

ORDER

Order No. **06.06.2023**

01. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

The instant writ petition under Article 226 of the Constitution of India has been filed by the petitioner Smt. Jayanti Das in the form of a Public Interest Litigation (PIL) to issue a Rule Nisi calling upon the opposite parties to show cause as to why a writ of mandamus or any other appropriate writ/writs shall not be issued to the opposite parties

(i) to make necessary changes in the press release, notification and circular to different

banks based on the above grey areas identified like ascertaining the limit of exchange by a person per day in cash because the same person can exchange several times repeatedly standing in the queue;

(ii) shall not to make mandatory for exchange of ₹2,000 banknotes either through bank account or through requisition slip with full details like mobile number, Aadhar card number, source of income, PAN card as such persons who have these detail can be assumed to have surplus money and the rest of 81 crores having free ration does not come under this purview;

(iii) shall not to provide the details of the minutes and the office note with name and designation of the officers of RBI passed such statutory policy and survey report which confirmed that ₹2,000 banknotes are mutilated and life span has expired based on which they issued circular for withdrawal of ₹2,000 banknotes from circulation;

(iv) shall not to explain to the Court why only

₹2,000 banknotes and not any other currency of other denomination whose lifespan has already expired and are in mutilated condition printed much earlier to ₹2,000 banknotes and still in circulation;

(v) shall not to explain to the Court what are the checks and balances followed in this exchange policy procedure so that the black money holders are caught red handedly.

The very same notification issued by the Reserve Bank of India dated 19.05.2023 was under challenge in Delhi High Court on the ground that it is arbitrary and violative of Article 14 of the Constitution of India and a Division Bench of the said Court in the case of **Aswini Kumar Upadhyay -Vrs.- Union of India and others reported in 2023 SCC Online Del 3218** decided on 29.05.2023 in paragraph 14 has held as follows:-

"14. The decision of the Government is only to withdraw Rs. 2000 denomination banknotes from circulation for the reason that the purpose of issuing these denominations has achieved its purpose which was to meet the currency requirement of the economy in an expeditious manner in November, 2016 when all Rs. 500

and Rs. 1000 denomination banknotes were declared to be not legal tender and in order to meet the situation at that point of time, the Government took a decision to bring banknotes of Rs. 2000 denomination to ensure adequate supply of money to meet the day-to-day requirements of the people. Six years after the said decision, the Government has now decided to withdraw Rs. 2000 denomination banknotes from circulation which is not being used commonly. Banknotes of Rs. 2000 shall continue to be a legal tender and this policy is only for exchange of banknotes having denomination of Rs. 2000 with other banknotes. In order to facilitate the exchange of Rs. 2000 denomination banknotes with other denomination banknotes, the Government has given a window of four months to the citizens and in order to avoid inconvenience to citizens, the Government is not insisting of providing any kind of identification. As stated earlier, this decision of the Government is purely a policy decision and Courts should not sit as an Appellate Authority over the decision taken by the Government."

While arriving at the above conclusion, the Delhi High Court has relied upon the decision of the Hon'ble Supreme Court in the case of **BALCO Employees' Union (Regd.) -Vrs.- Union of India reported in (2002) 2 Supreme Court Cases 333**, wherein it has been observed as follows:-

> "93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001.
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> 94. Thus, apart from the fact that the policy of disinvestment cannot be questioned as such, the facts herein show that fair, just and equitable procedure has been followed in carrying out this disinvestment. The allegations of lack of transparency or that the decision was

taken in a hurry or there has been an arbitrary exercise of power are without any basis. It is a matter of regret that on behalf of the State of Chhattisgarh such allegations against the Union of India have been made without any basis. We strongly deprecate such unfounded averments which have been made by an officer of the said State.

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98. In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself."

The Delhi High Court has also relied upon the decision of the Hon'ble Supreme Court in the case of **Directorate of Film Festivals -Vrs.- Gaurav Ashwin Jain reported in (2007) 4 Supreme Court Cases 737**, wherein it has been observed as follows:-

"16. The scope of judicial review of governmental policy is now well defined. Courts

> do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review."

Mr. P.K. Parhi, learned Deputy Solicitor General of India contended that the decision rendered by the Division Bench of the Delhi High Court is also under challenge before the Hon'ble Supreme Court of India. He has relied upon the demonetization case of the Five Judge Bench of the Hon'ble Supreme Court of India in the case of **Vivek Narayan Sharma and others -Vrs.- Union of India and others reported in (2023) 3 Supreme Court Cases 1**, wherein at paragraphs 218,

227, 228, 254 and 255, it has been observed as follows:-

> "218. The law with regard to scope of judicial review has been very well crystalized in the case of **Tata Cellular -Vrs.- Union of India (1994) 6 SCC 651**. In the said case, it has been held by this Court that the duty of the court is to confine itself to the question of legality. Its concern should be whether a decision-making authority exceeded its powers, committed an error of law, committed a breach of the Rules of natural justice, reached a decision which no reasonable tribunal would have reached or abused its powers. The Court held that it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken.
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> 227. This Court in **Small Scale Industrial Manufactures Assn. -Vrs.-Union of India, (2021) 8 SCC 511** observed that the Court would not interfere with any opinion formed by the government if it is based on the relevant

facts and circumstances or based on expert's advice. The Court would be entitled to interfere only when it is found that the action of the executive is arbitrary and violative of any constitutional, statutory or other provisions of law. It has been held that when the government forms its policy, it is based on a number of circumstances and it is also based on expert's opinion, which must not be interfered with, except on the ground of palpable arbitrariness. It is more than settled that the Court gives a large leeway to the executive and the legislature in matters of economic policy.

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254. The Constitution Bench in **R.K. Garg -Vrs.- Union of India, (1981) 4 SCC 675** holds that the Court would not have the necessary competence and expertise to adjudicate upon such an economic issue. The Court cannot possibly assess or evaluate what would be the impact of a particular immunity or exemption and whether it would serve the purpose in view or not. It has been held that it

would be wise for the Court not to hazard an opinion where even economists may differ. It has been held that while examining the constitutional validity of such a legislation, the Court must "be resilient, not rigid, forward looking, not static, liberal, not verbal.

255. We are, therefore, of the considered view that the Court must defer to legislative judgment in matters relating to social and economic policies and must not interfere unless the exercise of executive power appears to be palpably arbitrary. The Court does not have necessary competence and expertise to adjudicate upon such economic issues. It is also not possible for the Court to assess or evaluate what would be the impact of a particular action and it is best left to the wisdom of the experts. In such matters, it will not be possible for the Court to assess or evaluate what would be the impact of the impugned action of demonetization. The Court does not possess the expertise to do so. As already discussed hereinabove, on one hand, the Petitioners urged that there has been an adverse effect upon the economy and on the other hand, the

learned Attorney General had given a long list of direct and indirect advantages of demonetization. In any case, mere errors of judgment by the government seen in retrospect is not subject to judicial review. In such matters, legislative and quasi-legislative authorities are entitled to a free play, and unless the action suffers from patent illegality, manifest or palpable arbitrariness, the Court should be slow in interfering with the same."

On perusal of the writ petition, it appears that the petitioner has taken the following main grounds while challenging the notification dated 19.05.2023 under Annexure-1:-

(i) For that the RBI has also not issued guidelines for exchange of Rs.2,000/- banknotes like the persons who exchange the currency to fill up forms mentioning all the details like occupation, monthly income, permanent address, whether ration card holder or not, mobile number Aadhar card, PAN card, mentioning whether he is doing the exchange for self or for somebody else etc. which would have checked the unlawful entry of persons to

the banking system.

(ii) For that a non-account holder also can exchange Rs.2,000/- banknotes upto a limit of Rs.20,000/- at a time at any bank branch. This particular instruction of RBI is only made for encouragement of converting black money into white, it can be inferred that the same person can exchange several times repeatedly standing in the same queue and the concerned bank does not have KYC of that person and without any risk a person can exchange any amount of Rs.2,000/- bank notes as no documentation is done and no identity card is checked. There cannot be more blunder than this and threat to the economy as RBI is allowing the conversion of black money into white legally on the pretext of clean money policy."

Law is well settled a public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, a publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. It should be

aimed at redressal of genuine public wrong or public injury and should not be publicity oriented which is detrimental to the public interest at large. A publicity interest litigation should be nipped in the bud so that valuable time of the Court is saved which can be effectively utilized in reducing huge pendency of cases.

After going through the averments taken in the writ petition and on hearing the learned counsel for the petitioner as well as learned Deputy Solicitor General for the Union of India and on going through the decisions of the Hon'ble Supreme Court regarding the scope of interference in the economic policy decision of the Government, we are of the view that the present writ petition is a publicity interest litigation in the garb of public interest and thus, we are not inclined to entertain the same. Accordingly, the writ petition being devoid of merits, stands dismissed.

(S.K. Sahoo)
Vacation Judge

PRAMOD KUMAR SAHOO
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(M.S. Raman)
Vacation Judge

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