

## **Supreme Court upholds Govt.'s decision on demonetisation of 500 and 1000 Rupee Notes**

### **1. Introduction**

The Supreme Court has upheld the Government's 2016 year decision to demonetise the currency notes of Rs 500 and Rs 1000 denominations.

The Central Government vide Notification dated Nov 8, 2016<sup>1</sup>, had declared that the bank notes of existing series of denomination of the value of Rs 500 and Rs 1000 (hereinafter referred to as the specified bank notes), would cease to be legal tender on and from the 9th November, 2016.

The Court held that the Centre's notification dated November 8, 2016 is valid and satisfies the test of proportionality. Further, section 26(2) of the RBI Act empowers the Centre to demonetize any series of bank notes of any denomination.

### **2. Background**

On November 8, 2016, the Government of India announced the demonetization of all Rs 500 and Rs 1000 banknotes of the Mahatma Gandhi Series. The Government also announced the issuance of new Rs 500 and Rs 2000 banknotes in exchange for the demonetized banknotes. The main objective of demonetization was to curb black money. The Year 2016 wasn't the first time when demonetization was announced in India, It had already been implemented twice- once in the year 1946 and once in the year 1978 in the past. The first currency ban was in the year 1946, the currency note of Rs 1000 and Rs 10,000 were removed from circulation.

### **3. Challenging the validity of Demonetisation by petitioners**

The petitioners challenged that the process followed by the Government was deeply flawed and should be struck down by the court. The former finance minister and advocate P Chidambaram tore into the Centre's 2016 demonetisation policy and submitted that the process followed wasn't in accordance with the RBI Act, 1934.

It was submitted that any power of the Government to demonetise is only on the basis of recommendations of the Central Board. However, in this case, the

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<sup>1</sup> Notification No. S.O. 3408(E) [F.NO.10/03/2016-CY.I], dated 8-11-2016

position was reversed. The currency being the RBI's matter, the process can't be reversed to the centre advising it to RBI and RBI submitted to the centre advice itself.

#### **4. Does Government has the power to announce demonetisation of any series of bank notes? What does Section 26(2) of the RBI Act say?**

Section 26(2) of the RBI Act empowers the Central Government to demonetize any series of bank notes of any denomination. Section 26(2) is read as follows

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*"On recommendation of the Central Board the Central Government may, 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 [save at such office or agency of the Bank and to such extent as may be specified in the notification.]"*

Thus, this provision gives the Central Government of India the authority to declare that any series of banknotes will no longer be accepted as a form of payment. This means that banknotes can no longer be used as a means of payment or exchange and will no longer be accepted by financial institutions. This provision allows the Central Government, on the recommendations of the Central Board to declare that a specific series of bank notes of any denomination will no longer be legal tender.

#### **5. Supreme Court's Ruling -**

The Constitutional Bench comprising 5 judges upheld the demonetisation as valid by a 4:1 majority with Justice BV Nagarathna dissenting from the other four judges. The majority of the bench held that there was no flaw in the decision-making process relating to November 8, 2016 decision. Also, the decision satisfied the tests of proportionality.

##### **Test of Proportionality**

The Apex Court observed that Demonetisation is the process of withdrawing a particular type of currency from circulation. Demonetisation satisfies the test of proportionality. The test of proportionality refers to whether the benefits of demonetisation outweigh the costs. To satisfy the test of proportionality, the benefits of demonetisation must be significant enough to justify the costs and disruptions that it may cause.

The following points were concluded by the Court-

- (a) The power available to the Central Government u/s 26(2) of the RBI Act, 1934 cannot be restricted to mean that it can be exercised only for one or some series of banknotes and not for all the series of bank notes. Thus, the power can be exercised for all the series of bank notes.

- (b) Section 26(2) of the RBI Act, 1934 does not provide for excessive delegation as there is an inbuilt safeguard that such power has to be exercised only on the recommendations of the Central Board. As such, section 26(2) is not liable to be struck down on the said ground.
- (c) The impugned notification dated Nov 8, 2016 doesn't suffer from any flaws in the decision-making process.
- (d) The impugned notification dated Nov 8, 2016 satisfies the test of proportionality and cannot be struck down on this very ground.
- (e) The period provided for the exchange of notes cannot be said to be unreasonable as the prescribed period of 52 days for currency exchange cannot be said to be unreasonable.
- (f) Demonetisation had a reasonable nexus with the objectives (i.e. eradicating black marketing, terror funding etc.) sought to be achieved. It is not relevant whether the objectives were achieved or not.

#### **6. Dissenting views of Justice BV Nagarathna**

However, Justice BV Nagarathna in her dissenting view concluded that the demonetisation of the whole series of Rs 500 and Rs 1000 currency notes is a serious matter and it could not be done away with by the Centre by merely issuing a gazette notification. According to her, the measure was well-intentioned and well-thought and the same has to be declared unlawful on legal grounds and not on the basis of objectives.

The judge expressed that the RBI didn't show any independent application of mind and merely approved the Centre's desire for demonetization. The entire exercise was carried out in 24 hours only.

Source: News Websites