

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HON'BLE Ag. CHIEF JUSTICE MR.THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 24TH DAY OF MAY 2016/3RD JYAISHTA, 1938

WA.No. 524 of 2015

JUDGMENT DATED 20-12-2014 IN WP(C) 10334/2014

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APPELLANT(S)/PETITIONERS:

1. PATTAMBI SERVICE CO-OPERATIVE BANK LTD.
NO.P-585, PATTAMBI P.O., PALAKKAD DISTRICT,
PIN-679 373, REPRESENTED BY ITS SECRETARY.
2. N.MOHANASUNDARAN,
S/O.KALYANI AMMA, NAZRATH HOUSE,
COURT ROAD, PATTAMBI-679 303.
3. UNNIKRISHNAN H.K.,
S/O.GOPALAKRISHNAN, 'SAKTHI', MELEPATTAMBI,
PALAKKAD ROAD, PATTAMBI-679 306.

BY ADVS.SRI.V.M.KURIAN
SRI.K.T.THOMAS

RESPONDENT(S)/RESPONDENTS:

1. UNION OF INDIA,
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE,
NORTH BLOCK, NEW DELHI-110 001,
REPRESENTED BY THE SECRETARY TO GOVERNMENT (REVENUE).
2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
CO-OPERATIVE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
3. THE REGISTRAR OF CO-OPERATIVE SOCIETIES ,
OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
STATUE, THIRUVANANTHAPURAM-695 001.

msv/

WA.No. 524 of 2015

4. THE DIRECTOR OF INCOME TAX (INTELLIGENCE),
CENTRAL REVENUE BUILDING, I.S.PRESS ROAD,
ERNAKULAM-682 018.
5. THE INCOME TAX OFFICER (INTELLIGENCE),
AYAKAR BHAVAN, SAKTHAN THAMPURAN NAGAR,
THRISSUR-680 001.

R1 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 & R3 BY GOVERNMENT PLEADER
SRI.BOBMY JOHN PULICKAPARAMBIL
R4 & R5 BY ADVS.SRI.K.M.V.PANDALAI, INCOME TAX
SRI.CHRISTOPHER ABRAHAM
SRI.JOSE JOSEPH, SC

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 04-04-2016 ALONG WITH WA. 828/2015 AND
CONNECTED CASES, THE COURT ON 24-05-2016,
DELIVERED THE FOLLOWING:

msv/

'CR'

THOTTATHIL B.RADHAKRISHNAN, Ag.C.J.&
ANU SIVARAMAN, J.

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W.A.Nos.524, 828, 2582 of 2015,
99,100,153,154
& 155 of 2016

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Dated this the 24th day of May, 2016

JUDGMENT

Anu Sivaraman,J.

1.These writ appeals are preferred against common judgment which considered the constitutional validity of the amendment to Section 133(6) of the Income Tax Act, 1961 which adds the words 'inquiry or' in the main section and adds the second proviso thereto. The relevant provision of the I.T.Act reads as follows:-

"Section 133: Power to call for information

The Assessing officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner (Appeals) may, for the purposes of this Act,-

xxx xxxx xxxx xxx

(6) require any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified by the Assessing Officer, the Deputy Commissioner (Appeals) the Joint Commissioner or the

Commissioner (Appeals), giving information in relation to such points or matters as, in the opinion of the Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner (Appeals) will be useful for, or relevant to, any inquiry or proceeding under this Act:

Provided that the powers referred to in clause (6), may also be exercised by the Director-General, the Chief Commissioner, the Director and the Commissioner:

Provided further that the power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income- tax- authority below the rank of Director or Commissioner without the prior approval of the Director or, as the case may be, the Commissioner.

2.The contentions of the appellants who are Service Co-operative Banks and its members who maintained deposits are to the effect that the provisions under challenge in the writ petition infringed on the right to privacy guaranteed to them under Article 21 of the Constitution of India. The notices issued to the Co operative Societies under the impugned provisions were also under challenge. The learned single Judge considered the contentions advanced on either side and held, drawing support from the decisions of the Apex Court, that right to privacy cannot be pleaded

as a ground to invalidate a provision of the Income Tax Act, especially where the avowed object of the provision was to get details of financial transactions which could be associated with black money. Aggrieved thereby, the appellants have preferred this appeal.

3. Heard Sri.V.G.Arun, Sri Mathew B Kurian, Sri O.D.Sivadas and Sri.P.I.Georgekutty, learned counsel for the appellants and Sri. Christopher Abraham, learned standing counsel appearing for the Revenue.

4. Learned counsel for the appellants would contend that right to privacy is a necessary corollary of the right to life and human dignity and cannot be lightly interfered with. A law which violates the right to privacy is violative of the fundamental rights of the citizen and is thus liable to be struck down. They would contend that a roving and fishing inquiry seeking details of persons against whom no proceedings are pending or even contemplated under any fiscal statute is clearly a licence to the Revenue to exercise

arbitrary powers without any checks or measures. It is submitted that Section 133(6) as it originally stood had been construed by the Hon'ble Supreme Court in **DBS Financial Pvt.Ltd. vs. Smt.M.George** [1994 207-ITR 1077] and it had been held that demand for addresses of all credit card holders whose account showed an annual expenditure of over Rs.5000/- cannot be sustained as there were no proceedings pending against such persons. It is therefore contended that by adding the word 'inquiry' in the section and introducing a new proviso, the ambit of the section has been widened so as to include a roving inquiry into the legal financial transactions of private citizens even where no financial wrong doing is alleged or suspected against them. The details of their transactions cannot be extracted from co-operative banks so as to make investigations into their private financial affairs, it is contended. The learned counsel further contend that the relationship between a banker and its customer being fiduciary in nature and the Hon'ble Apex Court having held that the Co-operative Banks are not expected to give out the details of its customers even under

the Right to Information Act, the attempt to elicit such details through a notice issued under Section 133(6) is totally vitiated and arbitrary.

5.Learned counsel appearing for the Revenue, on the other hand, would submit that the provision is a part of the direct taxing system of the nation and the intention of Section 133 (6) and other like provisions in the Act is to gather information which could be crucial for the nation's economic interests. Curbing the menace of black money which tends to erode the very foundation of the nation's economy is the ultimate object of all provisions relating to search, seizure, inspection and gathering of information with regard to financial transactions. It is to be remembered that what is sought for is only the details of customers or members who hold deposits having a value specified in the circular. The notices issued in the instant case refer to a list of persons having a deposit of Rs.5 lakhs and interest income exceeding Rs.10,000/-. It is submitted by the learned counsel for the appellants that the said circular has

subsequently been modified and the limit of deposit stands enhanced to Rs.25 lakhs. The attempt is evidently to gather information about funds deposited in Co-operative Banks to verify the sources thereof. This is evidently intended in the best national interest.

6.The learned counsel appearing for the Revenue would further submit that the scope of the right to privacy vis a vis the need for gathering of information for the proper administration of the economic interest of the nation have to be balanced and the courts have to look at the issue of the constitutional validity of a provision of a taxing statute in its proper perspective. The learned counsel places reliance on the decisions in **Gobind v. State of Madhya Pradesh and another** [(1975)2 SCC 148] and **Ram Jethmalani v. Union of India** [(2011)8 SCC 1].

7.It is submitted by Sri.Christopher Abraham, learned counsel appearing for the Revenue that the general guidelines for considering the constitutionality of a law have been laid

down by the Apex Court over the years. It is stated that the general rule of constitutional law is to support the presumption of constitutionality of a statute. In support of this proposition, the learned counsel would place reliance on the decision in **Kedar Nath v. State of Bihar** [AIR 1962 SC 955]. It is submitted that the Hon'ble Supreme Court has specifically held that the attempt of the courts should be to support the constitutional validity of a provision of law and attempts should be made to construe the law to make it consistent with its constitutional validity. It is further submitted that apart from this rebuttable presumption as to the constitutional validity of a statute, it is stated that the Apex Court has further held that in matters of laws relating to economic activities, such laws should be viewed with a greater latitude than laws touching civil rights such as freedom of speech, religion etc. Reliance is placed on the decisions of the larger Bench of the Apex Court in **R.K.Garg v. Union of India** [AIR 1981 SC 2138] and **Government of Andhra Pradesh and others v. P.Laxmi Devi** [(2008)4 SCC 720].

8. It is submitted by the learned counsel for the Revenue that an earlier challenge raised against notices under Section 133(6) issued to Co-operative Credit Societies had earlier been repelled by this Court which was confirmed in appeal and the SLP filed against the same was dismissed. Learned counsel relies on the judgment of the Apex Court in **Kathiroor Service Co-operative Bank Ltd. v. Commissioner of Income-Tax (CIB) and others** [(2014) 360 ITR 243 (SC)]. It is further submitted that the Apex Court had in **Karnataka Bank Ltd. v. Secretary, Government of India and others** (2002) 255 ITR 508 (SC) held that power is given under Section 133(6) of the Income Tax Act to issue notice requiring a banking company to furnish information in respect of such points of matters as may be useful or relevant and it is not necessary that any inquiry should have commenced before Section 133(6) could have been invoked. It is submitted that the learned single Judge has considered all the aspects of the matter as raised and argued before him and that there is no error of law in

the impugned judgment justifying the invocation of the appellate jurisdiction of the Division Bench under Section 5 of the Kerala High Court Act.

9.The contentions raised by the appellants based on the right to privacy the difficulty in collecting the necessary details as well as the futility of collection of details have been dealt with in detail by the learned single Judge. The contention with regard to possible misuse of power has also been answered. The learned single Judge after considering the safeguards incorporated in the statute found that sufficient guidelines were provided to guard against possible misuse of the provision. The decisions cited on either side have also been considered in extenso. The learned single Judge came to the conclusion that there was no arbitrariness or constitutional invalidity in the amendment in question. The standards to be applied when deciding the constitutional validity of a fiscal statute were also dealt with.

10.The question whether right to privacy is a fundamental

right or only a legal right as recognized in the Law of Torts is itself pending consideration before a Constitution bench of the Apex Court having been referred for an authoritative pronouncement by a three member bench in **Justice K.S.Puttuswamy v. Union of India** [(2015)8 SCC 735]. Even if it is a necessary corollary to the right to life, such a right would be subject to the reasonable restrictions which could be imposed by the State in exercise of its legislative power. When a legislation, especially one in the fiscal realm is being examined by courts to check whether it infringes the right of individuals to privacy in own affairs, it has to be borne in mind that the larger public and economic interest of nation is to be balanced against such right to privacy. All decisions which have espoused the right to privacy have been cautious in pointing out that such rights would not extend to militate against right of the State to gather information under its fiscal administration.

We do not find any ground to interfere with the decision of the learned single Judge in exercise of appellate jurisdiction

through this intra court appeal filed under Section 5 of the Kerala High Court Act. These appeals therefore fail.

In the result, the writ appeals are dismissed. No order as to costs.

sd/-

**Thottathil B. Radhakrishnan,
Acting Chief Justice**

sd/-

**Anu Sivaraman,
Judge**

sj

/True Copy/

P.A. to Judge