

IN THE SUPREME COURT OF INDIA
[S.C.R., Order XXI Rule 3(1)(a)]
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF
2020
UNDER ARTICLE 136 OF CONSTITUTION
OF INDIA

(Arising from the impugned interim order dated 19.03.2020 passed by the Hon'ble High Court of Judicature at Kerala, Ernakulam Bench in W.P.(C) No. 8231/2020 and impugned interim order dated 19.03.2020 passed by the Hon'ble High Court of Judicature at Allahabad, Allahabad Bench in Writ-C No. 7014/2020)

WITH PRAYER FOR INTERIM RELIEF

- (A) In Writ Petition (Civil). 8231 OF 2020 before Hon'ble High Court of Judicature at Kerala, Ernakulam Bench

BETWEEN:

POSITION OF PARTIES

Court

High Court

Supreme

IN THE COURT IN THIS
FROM WHOSE COURT
ORDER THE
PETITION
ARISES

1. Union of India, through
Secretary, Ministry of Finance
No. 137, North Block, New
Delhi – 110 001

-

PETITIONER

AND

1. P.D. Sunny	PETITIONER	RESPONDENT No. 1
2. Shriram Housing Finance Ltd.	RESPONDENT NO. 1	RESPONDENT No. 2
3. Authorized Officer	RESPONDENT NO. 2	RESPONDENT No. 3

(B) In Writ-C No. 7014 OF 2020 before Hon'ble High Court of Judicature at Allahabad, Allahabad Bench

BETWEEN:

POSITION OF PARTIES

Court	High Court	Supreme
	IN THE COURT FROM WHOSE ORDER THE PETITION ARISES	IN THIS COURT
1. Union of India, through Secretary, Ministry of Finance No. 137, North Block, New Delhi – 110 001	-	PETITIONER

AND

- | | | |
|------------------|---------------------|---------------------|
| 1. Darpan Sahu | PETITIONER | RESPONDENT
No. 1 |
| 2. State of U.P. | RESPONDENT
NO. 1 | RESPONDENT
No. 2 |
| 3. | RESPONDENT
NO. 2 | RESPONDENT
No. 4 |
| 4. | RESPONDENT
NO. 3 | RESPONDENT
No. 5 |
| 5. | RESPONDENT
NO. 4 | RESPONDENT
No. 6 |

To

Hon'ble The Chief Justice of India

And His Hon'ble Companion Justices of

The Hon'ble Supreme Court of India

The humble Petition of the Petitioner above named:

MOST RESPECTFULLY SHEWETH:

1.1. This Special Leave Petition under Article 136 of the Constitution is being filed by the Petitioners herein, against the the impugned interim order dated 19.03.2020 passed by the Hon'ble High Court of Judicature at Kerala, Ernakulam Bench in W.P.(C) No. 8231/2020 and impugned interim order dated 19.03.2020 passed by the Hon'ble High Court of Judicature at Allahabad, Allahabad Bench in Writ-C No. 7014/2020 wherein the Hon'ble High Courts have erroneously broad and omnibus directions to defer all recovery proceedings by various tax authorities of Central and State Governments, banks etc till 06.04.2020 as well as extended limitations to conclude tax assessments, etc.

1.2. The petitioner submits that though a Writ Appeal is maintainable against the impugned order, but given the nature of directions passed by the Hon'ble Single Judge, the Petitioner is directly preferring the present Special Leave Petition.

2. QUESTIONS OF LAW:

The present Special Leave Petition raises the following substantial questions of law of general/public importance which require the consideration of this Hon'ble Court:

- (A) Whether the Hon'ble High Court has exceeded its jurisdiction in giving broad omnibus directions to defer recovery proceedings by various tax authorities of Central and State Governments as well as banks till 06.04.2020 on account of the Coronavirus outbreak?
- (B) Whether the impugned order of the High Court will incentivise people to postpone their payment of taxes by effectively deferring the consequences of non-payment of taxes to 06.04.2020 - as a result of which the government will not get its taxes and revenue in time and thereby face severe cash flow and liquidity crisis and cash crunch and consequently the Government will find extremely difficult to

run even its basic maintenance and development activities and pay salary to its crores of employees, pensioners, wage earners including armed forces, police, and health workers?

- (C) Whether the impugned order fails to consider that that even those who are financially capable to pay taxes in time would also wait till 06.04.2020 because the consequences of late payment such as late fee, penalty, interest etc. have been deferred and it has been the common experience that that almost 90% of the taxes get paid only on the last date or one or two days before the last date?
- (D) Whether the impugned order of the High Court will incentivize people to either delay payment of taxes or not pay any taxes at all which fall due, without facing any consequences in light of directions to defer recovery proceedings and it would lead to a devastating consequences for the country's financial system wherein even those who are able to pay and are not affected by Corona Virus may not comply with their obligations under the various laws to file

returns or pay taxes in time, secure in the knowledge that all recovery proceedings have been deferred?

- (E) Whether the impugned directions of the High Court will severely impact the monthly revenue collections of the Government of India which are to the tune of 2 lakh crores without considering the fact that the Government has to balance various factors including meetings its monthly expenditure commitments for the various governmental functions and dealing with the situation out of the Corona Virus pandemic?
- (F) Whether the High Court has failed to consider that the Government is fully committed to use all its resources at its command to deal with the situation arising out of the Corona Virus pandemic and it is taking pro-active precautions and measures from time-to-time and has also been praised by the World Health Organization for its response?
- (G) Whether the High Court has encroached upon purely executive functions and policy decision-making

which should be best left to the executive who are being advised by experts in the field?

- (H) Whether the High Court has failed to consider that most of the taxes which are required to be paid and compliances which are required to be made are made online without human-to-human contact and there is no legal basis or rationale behind the broad direction to defer recovery proceedings till 06.04.2020?
- (I) Whether the High Court has failed to consider that Governments require taxes and collect revenue to provide services to the citizenry and that process cannot be arbitrarily halted by omnibus deferring the recovery proceedings?
- (J) Whether the directions issued by the Hon'ble High Court of Kerala are in violation of the doctrine of separation of powers inasmuch as it encroaches upon the functions of the Executive, and is opposed to the basic framework of the Constitution of India?
- (K) Whether the Hon'ble High Court has exceeded its jurisdiction and encroached upon the powers of the Government of India to take policy decisions?

- (L) Whether in the facts and circumstances of the case, the directions of the Hon'ble High Court amount to judicial legislation inasmuch as such a call would be purely in the realm of a policy decision to be taken by the Government of India in consultation with various experts?
- (M) Whether the order passed by the Hon'ble High Court suffers from grave violation of principles of justice inasmuch as broad omnibus directions have been passed against various tax authorities suo moto, without hearing or issuing notice to the Union of India?

3. DECLARATION IN TERMS OF RULE 4(2):

The Petitioner has not filed any other Petition seeking reliefs to Appeal against the impugned final judgment and order dated 19.03.2020 passed by the Hon'ble High Court of Judicature at Kerala, Ernakulam Bench in W.P. (C) No. 8231 of 2020.

4. DECLARATION IN TERMS OF RULE 6:

The Annexures - P1 to P__ produced along with the SLP are a true and correct copy of the

pleadings/documents, which formed part of the record of the case in the Court below against whose order the leave to appeal is sought for in this petition.

5. GROUNDS:

The present Special Leave to appeal is sought for on the following amongst other grounds, which are taken in the alternative and without prejudice to one another:

- A. Because the Hon'ble High Court has exceeded its jurisdiction in giving broad omnibus directions to defer recovery proceedings by various tax authorities of Central and State Governments as well as by banks till 06.04.2020, on account of the Coronavirus outbreak.
- B. Because the High Court has encroached upon purely executive functions and policy decision making which should be best left to the executive who are being advised by experts in the field.
- C. Because the Hon'ble High Court has exceeded its jurisdiction in giving broad omnibus directions to defer recovery proceedings by various tax

authorities of Central and State Governments as well as banks till 06.04.2020 on account of the Coronavirus outbreak.

- D. Because the impugned order of the High Court will incentivise people to postpone their payment of taxes by effectively deferring the consequences of non-payment of taxes to 06.04.2020 - as a result of which the government may not get its taxes and revenue in time and thereby may face severe cash flow and liquidity crisis and cash crunch and consequently the Government may find extremely difficult to run even its basic maintenance and development activities and pay salary to its crores of employees, pensioners, wage earners including armed forces, police, and health workers.
- E. Because the impugned order fails to consider that that even those who are financially capable to pay taxes in time would also wait till 06.04.2020 because the consequences of late payment such as late fee, penalty, interest, etc. have been deferred

and it has been the common experience that that almost 90% of the taxes get paid only on the last date or one or two days before the last date.

- F. Because the impugned order of the High Court will incentivize people to either delay payment of taxes or not pay any taxes at all which fall due, without facing any consequences in light of directions to defer recovery proceedings and it would lead to a devastating consequences for the country's financial system wherein even those who are able to pay and are not affected by Corona Virus will not comply with their obligations under the various laws to file returns or pay taxes in time, secure in the knowledge that all recovery proceedings have been deferred.
- G. Because the impugned directions of the High Court will severely impact the monthly revenue collections of the Government of India which are to the tune of 2 lakh crores without considering the fact that the Government has to balance various factors including meetings its monthly expenditure commitments for the various governmental functions and dealing with the situation out of the Corona Virus pandemic.

- H. Because the High Court has failed to consider that the Government is fully committed to use all its resources at its command to deal with the situation arising out of the Corona Virus pandemic and it is taking pro-active precautions and measures from time-to-time and has also been praised by the World Health Organization for its response.
- I. Because the High Court has failed to consider that most of the taxes which are required to be paid and compliances which are required to be made are made online without human-to-human contact and there is no legal basis or rationale behind the broad and omnibus direction to defer all recovery proceedings till 06.04.2020.
- J. Because the High Court has failed to consider that Governments require taxes to collect revenue to provide services to the citizenry and that process cannot be arbitrarily halted by giving omnibus directions to defer recovery proceedings in all cases.
- K. Because the order passed by the Hon'ble High Court is in violation of the doctrine of separation of powers in as much as it encroaches upon the functions of the

Executive and is opposed to the basic framework of the Constitution of India.

- L. Because Hon'ble High Court has exceeded its jurisdiction and encroached upon the powers of the Government of India to take policy decisions.
- M. Because the Court has lost sight of the basic fact the Government would require funds which it collects through revenue, which cannot be deferred by an *ipse dixit* of the Court.
- N. Because this Hon'ble Court in the case of **CCE v. Dunlop India Ltd., (1985) 1 SCC 260** was pleased to observe as under:

"3... Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass

the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.

7...Even assuming that the Company had established a prima facie case, about which we do not express any opinion, we do not think that it was sufficient justification for granting the interim orders as was done by the High Court. There was no question of any balance of convenience being in favour of the respondent Company. The balance of convenience was certainly in favour of the Government of India. Governments are not run on mere bank guarantees. We notice that very often some courts act as if furnishing a bank guarantee would meet the ends of justice. No governmental business or for that matter no business of any kind can be

*run on mere bank guarantees. **Liquid cash is necessary for the running of a Government as indeed any other enterprise. We consider that where matters of public revenue are concerned, it is of utmost importance to realise that interim orders ought not to be granted merely because a prima facie case has been shown.** More is required. The balance of convenience must be clearly in favour of the making of an interim order and there should not be the slightest indication of a likelihood of prejudice to the public interest. We are very sorry to remark that these considerations have not been borne in mind by the High Court and interim order of this magnitude had been granted for the mere asking. The appeal is allowed with costs."*

- O. Because the directions of the Hon'ble High Court amount to judicial legislation inasmuch as the nature of broad directions passed are purely in the realm of a policy decision, which can be taken only by the Government of India in consultation with various experts of the relevant fields.

P. Because this Hon'ble Court in the case of **Census Commissioner and Others v. R. Krishnamurthy, (2015) 2 SCC 796**, was pleased to observe that: -

"25. Interference with the policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central Government to issue notification regarding the manner in which the census has to be carried out and the Central Government has issued notifications, and the competent authority has issued directions. It is not within the domain of the court to legislate. The courts do interpret the law and, in such interpretation, certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court may also fill up the gaps in certain spheres applying the doctrine of constitutional silence or abeyance. But, the courts are not to plunge into policy-making by adding something to the policy by way of issuing a writ of mandamus. There the judicial restraint is called for remembering what we have stated in the beginning. The

courts are required to understand the policy decisions framed by the executive. If a policy decision or a notification is arbitrary, it may invite the frown of Article 14 of the Constitution. But when the notification was not under assail and the same is in consonance with the Act, it is really unfathomable how the High Court could issue directions as to the manner in which a census would be carried out by adding certain aspects. It is, in fact, issuance of a direction for framing a policy in a specific manner."

- Q. Because this Hon'ble Court in the case of **Santosh Singh v. Union of India, (2016) 8 SCC 253**, noted that: -

"23. It is unrealistic for the court to assume that it can provide solutions to vexed issues which involve drawing balances between conflicting dimensions that travel beyond the legal plane. Courts are concerned with issues of constitutionality and legality. It is difficult to perceive how matters to which solutions may traverse the fields of ideology, social theory, policy-making and experimentation can be regulated by this Court such as by issuing a mandamus to

enforce a scheme of instruction in a particular subject in school education. Should a subject be taught at all? Should a set of values or a line of enquiry and knowledge be incorporated as a separate subject of discourse in an educational system? Would a horizontal integration of a given set of values across existing subjects better achieve a desirable result? Is it at all desirable to impose another subject of study upon the already burdened school curriculum?"

- R. Because the order passed by the Hon'ble High Court suffers from grave violation of principles of justice inasmuch as broad omnibus directions have been passed against various Central Government tax authorities without hearing or issuing notice to the Union of India.
- S. Because the Hon'ble High Court failed to consider that most of the payments, which the High Court has directed to defer, are required to be made online without any human-to-human contact.
- T. Because the Hon'ble High Court could not have taken it upon itself to pass directions to contain the outbreak of Coronavirus.

U. Because the High Court failed to consider that the Government of India in its executive capacity has taken various pro-active steps to contain the outbreak of the Corona Virus, and various initiatives and decisions are constantly being reviewed and undertaken which *inter alia* include:

- a. Ministry of Health and Family Welfare has issued various travel advisories and travel restrictions including the restriction imposed on International Flights to India.
- b. Ministry of Health and Family Welfare has issued advisory on social distancing measure in view of the spread of COVID-19 disease which *inter alia* includes closing down of educational institutions, postponing of exams, encouraging of work from home in private sector, video conferencing, etc.
- c. Regulation of production, quality, distribution and logistics of hand sanitizers and masks (2ply & 3ply surgical masks, N95 masks) has been included under the Essential Commodities Act, 1955.

- d. Ministry of Human Resource and Development has directed to reschedule all the ongoing examinations and evaluation work after 31.03.2020.
- e. The Central Board of Secondary Education, as a precautionary measure, all the ongoing board examinations of board examinations for classes X and XII being held in India and abroad scheduled between 19.03.2020 to 31.03.2020 as shall be rescheduled after 31.03.2020. Further, evaluation work in various evaluation centers has been suspended till 31.03.2020.
- f. In a meeting chaired by the Hon'ble Finance Minister as early as 22.02.2020, various decisions were taken which are listed hereunder:
 - i. The CBIC to immediately set up a dedicated helpline on its website where any person can seek resolution of any contextual issues, and the required relief or assistance from concerned Dept/Agency would be provided at the earliest.

- ii. All Customs formations including testing facility have to function 24x7 immediately for the next four months.
 - iii. To ensure expedited clearances in cases of delayed receipt of requisite documents in the contextual situation, all concerned Ministries to identify the import documents that are getting delayed, and where clearances can be permitted when documents are subsequently presented within a prescribed period.
 - iv. All processes related to clearance of goods to be prioritized and monitored in the contextual situation by all concerned such as Customs, Port authorities as well as Partner Govt Agencies.
- g. The Central Board of Indirect Taxes has taken the following measures:
- i. Help Desk on CBIC website has been started on 21.02.2020 (<https://icegate.gov.in/coronavirus-tradehelp/>). Queries received on the

website are screened and taken up with the concerned Ministry/Department through nominated nodal officers.

- ii. 24x7 customs clearance has been issued vide Instruction no. 02/2020-Cus dated 20.02.2020 issued. All customs stations and testing labs have been directed to function on 24x7 basis till end of May 2020. Report received for the period 21.02.2020 to 29.02.2020 reflects that approximately 20% of Out of Charge (import cargo) and 30% of Let Export Order (export cargo) have been granted beyond normal office hours.
- iii. Waiver of late fee in filing bills of entry DO letter dated 20.02.2020 of Member (Cus) and DO letter dated 24.02.2020 of Chairman, CBIC issued asking the field formations to show greater sensitivity in dealing with cargo from affected areas and waive late fee arising due to delayed receipt of documents in genuine cases.

Report for the period 21.02.2020 to 01.03.2020 shows that out of total 133 requests seeking waiver, 130 requests were allowed waiving late fee of approximately Rs 1.06 crore.

- iv. Immediate compliance of various notifications/advisories of other Ministries has been undertaken and various notifications of DGFT pertaining to the contextual situation, e.g. prohibition on export of masks, protective clothing, and APIs & formulations, were immediately circulated and implemented.
- h. There is screening at 30 Airports, 12 major seaports and 65 minor seaports and land crossings, particularly bordering Nepal.
- i. Passengers are monitored under community surveillance through IDSP network on daily basis.
- j. All existing visas except diplomatic, official, employment, project visas, etc., stand suspended till 15.04.2020

k. International traffic through land borders will be restricted to designated 20 check posts with robust screening facilities.

V. Because even now about one lakh GST Returns are being filed every hour and the High Court's directions would have an effect on the entire direct and indirect tax regime of the country. The data on GSTR3B February return filing on hourly basis are as follows:

Hour Ending	Till 14-Mar-2020	15-Mar-2020	16-Mar-2020	17-Mar-2020	18-Mar-2020	19-Mar-2020	Total Filing
1		28	592	1,005	1,505	2,222	
2			234	359	543	753	
3			114	122	217	353	
4			28	57	116	211	
5		55	46	107	179	261	
6		135	215	335	439	473	
7		300	513	787	939	1,285	
8		783	1,267	1,891	2,397	3,138	
9		1,499	2,780	4,025	5,153	6,920	
10		2,702	6,568	9,294	11,387	15,244	
11		5,479	21,955	31,008	36,835	46,124	
12		9,146	46,250	59,310	69,083	86,146	
13		10,926	55,651	68,227	80,824	98,456	
14		9,665	47,719	56,479	68,486	87,176	
15		7,752	37,784	47,359	56,751	73,766	
16		7,188	45,917	56,269	70,834	90,615	
17		7,314	53,463	65,966	80,289	106,043	
18		7,348	52,198	66,167	77,706	107,555	
19		7,208	42,158	53,444	66,618	90,824	
20		6,344	27,210	34,103	44,333		
21		5,222	14,732	18,792	25,071		
22		3,911	8,083	10,700	14,408		
23		2,691	4,863	6,336	9,151		
24		1,498	2,489	3,569	5,118		
G.Total	2,237,950	97,194	472,829	595,711	728,382	817,565	4,949,631

- W. Because the Government also announced the creation of 'COVID-19 Economic Response Task Force' under the Union Finance Minister which will consult stakeholders, take feedback, on the basis of which decisions will be taken to meet the challenges. The Task Force will also ensure implementation of the decisions taken to meet these challenges.
- X. Because the World Health Organization (WHO) praised Indian Government's commitment to combat the novel coronavirus. The WHO representative, Bekedam has been quoted as follows "I think the commitment of the Indian government from the top level -- the Prime Minister's office himself -- has been enormous, very impressive. This is one of the reasons why India is doing very well. I am very impressed that everyone has been mobilised".
- Y. Because there is also no justification for stopping direct action for all recoveries by banks under section 14 of the SARFAESI Act, since many matters that are at the recovery stage have not arisen due to economic loss related to the Corona virus.

Z. Because the High Court has also failed to consider that if banks cannot recover loans, it will also face cash problem which will limit its capacity to give further loans and the directions of the High Court will have far reaching consequences on the economy of the country.

6. GROUNDS FOR INTERIM RELIEF

The petitioner has a good prima facie case on merits and the balance of convenience is also in favour of the petitioner. The Hon'ble High Court has issued broad directions to defer recovery proceedings by various tax authorities of Central and State Governments, banks etc till 06.04.2020 as well as extended limitations to conclude tax assessments, etc by which the Hon'ble High Court has exceeded its jurisdiction in giving broad omnibus directions in violation of the doctrine of separation of powers inasmuch as it encroaches upon the functions of the Executive and has transgressed itself into the realm of taking a policy decision without any notice to the Government of India. The Hon'ble High Court has lost sight of the basic fact that the Government would require funds which it collects

through revenue for its various basic functions which cannot be deferred by an *ipse dixit* of the Court. In light of the above, it is submitted that irreparable loss and injury would be occasioned if an ad-interim ex parte stay is not granted. Therefore, the impugned judgment has very wide ramifications and hence, it will be in the interest of justice to stay the operation of the impugned interim order.

7. MAIN PRAYER

It is respectfully submitted in the facts and circumstances of the case that this Hon'ble Court may be pleased to:

(a) Grant Special Leave to Appeal to the Petitioner against the impugned interim order dated 19.03.2020 passed by the Hon'ble High Court of Judicature at Kerala, Ernakulam Bench in W.P.(C) No. 8231/2020 and the impugned interim order dated 19.03.2020 passed by the Hon'ble High Court of Judicature at Allahabad, Allahabad Bench in Writ-C No. 7014/2020;

(b) to pass such further and other orders as may be deemed just and proper in the facts and circumstances of the case.

8. INTERIM RELIEF:

It is respectfully submitted in the facts and circumstances of the case that this Hon'ble Court may be pleased to:

(a) Grant Ex-parte Ad-interim Stay of the impugned interim order dated 19.03.2020 passed by the Hon'ble High Court of Judicature at Kerala, Ernakulam Bench in W.P.(C) No. 8231/2020 and impugned interim order dated 19.03.2020 passed by the Hon'ble High Court of Judicature at Allahabad, Allahabad Bench in Writ-C No. 7014/2020; and

(b) pass such other and further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

FOR THIS ACT OF KINDNESS, THE HUMBLE PETITIONER
SHALL EVER PRAY AS DUTY BOUND

DRAWN BY:

Drawn on: 19.03.2020

Filed on: 20.03.2020

Place: New Delhi

ZOHEB HOSSAIN
[Advocate for the Petitioner]

FILED BY:

[Advocate for the Petitioner]

IN THE SUPREME COURT OF INDIA

[S.C.R., Order XXI Rule 3(1)(a)]

CIVIL APPELLATE JURISDICTION

**SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF
2020**

UNDER ARTICLE 136 OF CONSTITUTION OF INDIA

IN THE MATTER OF:-

Union of India

...Petitioner

Versus

P.D. Sunny and Ors.

...Respondents

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court/Tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. The certificate is given on the basis of the instructions given by the Petitioner/person authorized by the Petitioner whose affidavit is filed in support of the S.L.P.

FILED BY:

Filed on: __.03.2020

ADVOCATE FOR PETITIONER