BLACK MONEY IS A CURSE TO OUR NATION'S DEVELOPMENT

THE HON'BLE SUPREME COURT OF INDIA IN CASE OF R.K. Garg And Ors. vs Union Of India (1981) 4 SCC 675 Bench: Y Chandrachud, A Gupta, A Sen, P Bhagwati, S M Ali.

FACTS OF THE CASE:- These writ petitions raise a common question of law relating to the constitutional validity of the Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981 and the Special Bearer Bonds (Immunities and Exemptions) Act 1981. The principal ground on which the constitutional validity of the Ordinance and the Act is challenged is that they are violative of the equality clause contained in Article 14 of the Constitution. …………………… The Preamble of the Act which "affords useful light as to what the statute intends to reach" or in other words "affords a clue the scope of the statute" makes it clear that the Act is intended to canalise for productive purposes black money which has become a serious threat to the national economy.

COURT OBSERVATIONS:-

IMPACT OF BLACK MONEY:- It is an undisputed fact that there is considerable amount of black money in circulation which is unaccounted or concealed and therefore outside the disclosed trading channels. It is largely the product of black market transactions and evasion of tax. Indeed, as pointed out by the Direct Taxes Enquiry Committee headed by Mr. Wanchoo, retired Chief Justice of India "tax evasion and black money are closely and inextricably interlinked." The abundance of black money has in fact given rise to a parallel economy operating simultaneously and competing with the official economy. This parallel economy has over the years grown in size and dimension and even on a conservative estimate, the amount of black money in circulation runs into some thousand crores. The menace of black money has now reached such staggering proportions that it is causing havoc to the economy of the country and poses a serious challenge to the fulfilment of our objectives of distributive justice and setting up of an egalitarian society.

EFFECTS OF BLACK MONEY:-

1. The first casualty of this evil of black money is the revenue because it loses the tax which should otherwise have come to the exchequer.
2. The generation of black money through tax evasion throws a greater burden on the honest tax payer and leads to economic inequality and concentration of wealth in the hands of the unscrupulous few in the country.
3. In addition, since black money is in a way 'cheap' money because it has not suffered reduction by way of taxation, there is a natural tendency among those who possess it to use it for lavish expenditure and conspicuous consumption.
4. The existence of black money is to a large extent responsible for inflationary pressures, shortages, rise in prices and economically unhealthy speculation in commodities.

5. It also leads to leakage of foreign exchange, making our balance of payments rather distorted and unreal and tends to defeat the economic policies of the Government by making their implementation ineffective, particularly in the field of credit and investment.
6. Moreover, since black money has necessarily to be suppressed in order to escape detection, it results in immobilisation of investible funds which would otherwise be available to further the economic growth of the nation and in turn, foster the welfare of the common man.
7. It is therefore no exaggeration to say that black money is a cancerous growth in the country's economy which if not checked in time is certain to lead to chaos and ruination.
8. There can be no doubt that urgent measures are therefore required to be adopted for preventing further generation of black money as also for unearthing existing black money so that it can be canalised for productive purposes with a view to effective economic and social planning. ………………………

HOW BLACK MONEY GENERATED:- There are several causes responsible for the generation of black money and they have been analysed in the Report of the Wanchoo Committee. Some of the principal causes may be summarised as follows:

(1) high rates of taxation under the direct tax laws: they breed tax evasion and generate black money;

(2) economy of shortages and consequent controls and licences leading to corruption for issuing licences and permits and turning blind eye to the violation of controls;

(3) donations of black money encouraged by political parties to meet election expenses and for augmenting party funds and also for personal purposes;

(4) Corrupt business practices such as payments of secret commission, bribes, money, pugree etc. which need keeping on hand money in black;

(5) ineffective administration and enforcement of tax laws by the authorities and

(6) deterioration in moral standards so that tax evasion is no longer regarded as immoral and unethical and does not carry any social stigma.

These causes need to be eliminated if we want to eradicate the evil of black money. But whether any steps are taken or not for removing these causes with a view to preventing future generation of black money, the fact remains that today the re is considerable amount of black money, unaccounted and concealed, in the hands of a few persons and it is causing incalculable damage to the economy of the country.

GOVERNMENT EFFORTS TO TACKLE:- Now this problem of black money corroding the economy of the country is not a new or recent problem. It has been there almost since the Second World War and it has been continuously engaging the attention of the Government. The Government has adopted various measures in the past with a view to curbing the generation of black money and bringing it out in the open so that it may become available for strengthening the economy. For instance, the Government introduced several changes in the administrative set up of the tax department from time to time with a view to strengthening the administrative machinery for checking tax evasion. The Government also amended Section 37 of the Indian Income Tax Act 1922 with a view to conferring power on the tax authorities to carry out searches and seizures and this power was elaborated and made more effectual when the Income Tax Act 1961 came to be enacted. Quite apart from these legal and administrative measures taken for the purpose of curbing evasion of tax, certain steps were also taken to tackle the black money built up out of past evasions. In 1946, just at the close of the Second World War, high denomination notes were demonetized so as to bring within the net of taxation black money earned during the War. This was followed by the enactment of the Taxation of Income Investigation Commission Act 1947. Then came the Voluntary Disclosure Scheme of 1951, popularly known as Tyagi Scheme, to facilitate the disclosure of suppressed income by affording certain immunities from the penal provisions. This scheme was however not successful because it helped to unearth only Rs. 70.20 crores of black money. Thereafter, nearly a decade and a half later, a second scheme of voluntary disclosure was introduced by Section 68 of the Finance Act 1965. This scheme, popularly known as the sixty-forty scheme, enabled the tax evaders to disclose suppressed income by paying 60% of the concealed income as tax and bringing the balance of 40% into their books. This scheme was a little more successful than the earlier one, but it could help to net only about Rs. 52.11 crores of black money. Closely following on the heels of this scheme came another scheme under Section 24 of the Finance (No. 2) Act 1965 popularly known as the 'Block Scheme' according to which tax was payable at rates applicable to the block of concealed income disclosed and not at a flat rate as under the sixty-forty scheme. This scheme received a slightly better response and the income disclosed under it amounted to about Rs. 145 crores. Then came the Taxation Laws (Amendment and Miscellaneous Provisions) Ordinance 1965 followed by an Act in identical terms, which provided for exemption from tax in certain cases of undisclosed income invested in National Defence Gold Bonds 1980. We shall have occasion to consider the broad scheme of this Act a little later, but for the time being as we may point out that the scheme as envisaged in this Act was very closely similar to the scheme under the impugned Act. Subsequent to this Act followed the Report of the Wan???oo Committee and as a result of the recommendations made in this Report certain penal provisions contained in the Income-tax Act 1961 were made more severe and rigorous. Then came the Voluntary Disclosure of Income and Wealth Ordinance 1975 which was followed by an Act in the same terms. This legislation introduced a scheme of voluntary disclosure of income and wealth and provided certain immunities and exemptions. The record before us does not show as to what was the concealed income and wealth disclosed pursuant to this scheme. But it is an indisputable fact that the adoption of these stringent legal and administrative measures as also the introduction of these different voluntary disclosure schemes did not have any appreciable effect and despite all these efforts made by the Government, the problem of black money continues unabated and has assumed serious dimemsions.

ENFORCEMENT MACHINERY CRITICISED:- It may be possible to say and that was the criticism of Mr. R.K. Garg that the enforcement machinery of the tax department is not as effective as it should be and no serious effort has been made to eliminate the other causes of generation of black money, but whatever may be the failures of the political and administrative machinery-and we are not here concerned to inquire into that question nor are we competent to express any opinion upon it-the fact remains that there is considerable amount of black money in the hands of persons which is causing havoc to the economy of the country and seriously prejudicing mobilisation of resources for social and economical reconstruction of the nation. ………..

WHAT IS BLACK MONEY ? Shri K.N. Wanchoo, retired Chief Justice of the Supreme Court of India, as Chairman explains what the term black money means in its final report submitted in December, 1971: It [black money] is, as its name suggests, 'tainted' money-money which is not clean or which has a stigma attached to it... Black is a colour which is generally associated with evil. While it symbolises something which violates moral, social or legal norms, it also suggests a veil of secrecy shrouding it. The term 'black money' consequently has both these implications. It not only stands for money earned by violating legal provisions-even social conscience-but also suggests that such money is kept secret and not accounted for…… Today the term 'black money' is generally used to denote unaccounted money or concealed income and/or undisclosed wealth, as well as money involved in transactions wholly or partly suppressed. ……………

Held :- Ordinance and Act as invalid violating Article 14.

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Common cause - a society registered under the Societies Registration Act, 1860 which takes up various matters of general public interest/importance for redress before the courts - through its Director Mr. H.D. Shourie, has filed this public interest petition under Article 32 of the Constitution of India. The primary contention raised in the petition is that the cumulative effect of the three statutory provisions, namely Section 293A of the Companies Act 1956, Section 13A of the Income-tax Act 1961 and Section 77 of the Representation of People Act 1950 is, to bring transparency in the election-funding. People of India must know the source of expenditure incurred by the political parties and by the candidates in the process of election. It is contended that the mandatory provisions of law are being violated by the political parties with impunity. During the elections crores of rupees are spent by the political parties without indicating the source of the money so spent. According to Mr. Shourie the elections in this country are fought with the help of money-power which is gathered from black-sources. Once elected to power, it becomes easy to collect tons of black-money which is used for retaining power and for re-election,, The vicious circle, according to Mr. Shourie, has totally polluted the basic democracy in the country.

It is averred in the petition that most of the political parties in the country - registered and recognized by the Election Commission - have, for many years, been flouting the provisions of the Income Tax Act so much so that they have not been maintaining accounts as required under Section 13A of the Income Tax Act. Most of the political parties have not been filing returns of income in violation of the mandatory provisions of law. According to The petitioner it is a matter of common knowledge that political parties receive large amounts of money by way of donations/contributions from companies on a quid pro quo basis. The companies invest to seek favours when the party is in power. Neither the companies nor the political parties show the contributions/donations in their account-books. The donations and contributions received by the political parties are obviously out-of- account and in the nature of black money which would not figure in the balance sheets of the companies concerned. There is, thus, patent violation of Section 293A of the Companies Act and Section 13A of the Income Tax Act.

The political parties, therefore, are under a statutory obligation to furnish a return of income for each assessment year. To be eligible for exemption from income- tax they have to maintain audited accounts and comply with the other conditions envisaged under Section 13A of the Income-tax Act. Admittedly most of the parties have done neither. It is not a matter where the parties have overlooked to file a return of income by accident once or twice. The political parties have in patent violation of law - neither maintained audited accounts nor paid tax since 1979-80. - Subsection 4B of Section 139 of the Income Tax Act makes it obligatory for the Chief Executive Officer of every political party to furnish a return of income for each year in accordance with the provisions of the Income Tax Act. Section 142(1) provides for inquiry before assessment. It it not disputed that notices under Section 142(1) were issued by the income tax authorities to the defaulting political parties but despite that the returns of income have not been filed by the said parties Failure to furnish a return of income has been made a criminal offence punishable under Section 276 CC of the Income Tax Act. It leaves no leeway. The mandatory provisions of the law have to be enforced. It is common knowledge that there is ostentatious use of money by political parties in the elections to further the prospects of candidates set up by them. Display of huge - cut-outs etc. of political leaders on road-sides, crossings, street corners, etc. and setting up of arches, gates, hoardings, etc. at prominent places and printing of posters and pamphlets are some of the ways in which money-power is displayed by the parties. In many cases large-scale advertisements are also given in newspapers by political parties.

The General Elections - to decide who rules over 850 million Indians - are staged every 5/6 years since independence. It is an enormous exercise and a mammoth venture in terms of money spent. Hundreds and thousands of vehicles of various kinds are pressed on to the roads in the 543 parliamentary constituencies on behalf of thousands of aspirants to power, many days before the general elections are actually held. Millions of leaflets and many millions of posters are printed and distributed or pasted all over the country. Banners by the lakhs are hoisted. Flags go up, walls are painted, and hundreds of thousands of loud speakers play-out the loud exhortations and extravagant promises. VIPs and VVIPs come and go, some of them in helicopters and air-taxis. The political parties in their quest for power spend mora than one thousand crore of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of the money so spent and there is no accountability anywhere. Nobody discloses the source of the money. There are no proper accounts and no audit. From where does the money come nobody knows. In a democracy where rule of law prevails this type of naked display of black money, by violating the mandatory provisions of law, cannot be permitted.

Mr. R.V. Pandit - a writer, and an economic analyst - has intervened in this petition. Along with his intervention application, he has annexed an article written by him and published in the "imprint" of September, 1988. In the said article, he highlights the corruption in this country in the following words: "I maintain a Savings Bank account; and from this account drew crossed Account Payee cheques of varying sums of money towards election expenses of candidates I felt would serve the public cause. Armed with my Bank Pass Book, I have discussed the question of elections and corruption with almost all important office holders since Jawaharlal Nehru. From these discussions, I have drawn the conclusion that most politicians are not interested in honest money funding for elections. Honest money entails accountability. Honest money restricts Pending within legally sanctioned limits (which are ridiculously low). Honest money leaves little scope for the candidate to steal from election funds. Honest money funding is limiting. While the politicians want money for election, more importantly, they want money for themselves - to spend to hoard, to get rich. And this they can do only if the source of money is black The corruption in quest of political office and the corruption in the mechanics of survival in power has thoroughly vitiated our lives and our times. It has sullied our institutions The corrupt politician groomed to become the corrupt minister, and, in turns the corrupt minister set about seducing the bureaucrat THINK OF ANY problem our society or the country is facing today, analysis it, and you will inevitably conclude, and rightly, that corruption is at the root of the problem. Prices are high. Corruption is the cause. Quality is bad. Corruption is the cause. Roads are pockmarked. Corruption is the cause. Nobody does a good job. Corruption is the cause. Hospitals kill. Corruption is the cause. Power-failures put homes in darkness, businesses into bankruptcy. Corruption is the cause. Cloth is expensive. Corruption is the cause. Bridges collapse Corruption is the cause. Educational standards have fallen. Corruption is the cause. We have no law and order. Corruption is the cause. People die from poisoning, through food, through drink, through medicines. Corruption is the cause. The list is endless. The very foundation of our nation, of our society, is now threatened. And corruption is the cause."

According to Mr. Pandit the above quoted scenario has not improved, it has rather become worse. The General Elections bring into motion the democratic polity in the country. When the elections are fought with unaccounted money the persons elected in the process can think of nothing except getting rich by amassing black money. They retain power with the help of black money and while in office collect more and more to spend the same in the next election to retain the seat of power. Unless the statutory provisions meant to being transparency in the functioning of the democracy are strictly enforced and the election-funding is made transparent, the vicious circle cannot be broken and the corruption cannot be eliminated from the country.

We have no hesitation in holding that the political parties who have not been filing returns of income for several years have violated the statutory provisions of Incomes Tax Act. The income tax authorities have been wholly re-miss in the performance of their statutory duties under law. It was mandatory for the income tax authorities to have put in motion the statutory machinery against the defaulting political parties. The reasons for not doing so - as disclosed in the counter affidavits - are wholly extraneous and unjustified. The political parties are not above law and are bound to follow the same.

We, (HON'BLE SUPREME COURT) therefore, hold and direct as under :

1. That the political parties are under a statutory obligation to file return of income is respect of each assessment year in accordance with the provisions of the Income Tax Act, The political parties referred to by us in the judgment - who have not been filing returns of income for several years have prima facie violated the statutory provisions of the Income Tax Act as indicated by us in the judgment.

2. That the Income-tax authorities have been wholly remiss in the performance of their statutory duties under law. The said authorities have for a long period failed to take appropriate action against the defaulter political parties.

3. The Secretary, Ministry of Finance, Department of Revenue, the government of India shall have an investigation/inquiry conducted against each of the defaulter political parties and initiate necessary action in accordance with law including penal action under Section 276CC of the Income Tax Act.

The Secretary, Ministry of Finance, Department of Revenue, Government of India shall appoint an inquiring body to find out why and in what circumstances the mandatory provisions of the Income Tax Act regarding filing of return of income by the political parties were not enforced. Any officer/officers found responsible and remiss in the inquiry be suitably dealt with in accordance with the rules.

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