Indian Banks' Association, Bombay & Ors vs M/S Devkala Consultancy Service & Ors on 16 April, 2004

Equivalent citations: AIR 2004 SUPREME COURT 2615, AIR 2005 (NOC) 27 (AP), 2004 AIR SCW 2491, 2004 AIR - KANT. H. C. R. 1514, 2005 TAX. L. R. 79, 2004 (4) COM LJ 80 SC, 2004 (4) SCALE 628, 2004 (4) ACE 658, 2004 (11) SCC 1, (2004) 137 TAXMAN 69, 2004 (3) SLT 488, (2004) 4 JT 587 (SC), (2004) 22 ALLINDCAS 142 (SC), 2004 (4) JT 587, 2004 (22) ALLINDCAS 142, (2004) 4 COMLJ 80, (2005) 1 ACC 1, (2004) 5 ANDH LT 511, (2004) 3 BANKCAS 1, (2004) 5 ANDHLD 68, (2004) 5 SUPREME 422, (2004) 4 SCALE 628, (2004) 17 INDLD 141, (2004) 4 ALL WC 3544, (2004) 2 BANKJ 920, (2004) 267 ITR 179, (2005) 1 KANT LJ 185, (2004) 181 TAXATION 43, (2004) 120 COMCAS 612, (2004) 2 BANKCLR 1

Author: S.B. Sinha

Bench: Chief Justice, S.B. Sinha

CASE NO.:
Appeal (civil) 4655 of 2000

PETITIONER:
Indian Banks' Association, Bombay & Ors.

RESPONDENT:
M/s Devkala Consultancy Service & Ors.

DATE OF JUDGMENT: 16/04/2004

BENCH:
CJI & S.B. Sinha.

JUDGMENT:

J U D G M E N T WITH CIVIL APPEAL NO.5218 OF 2000 S.B. SINHA, J :

The authority of the bankers to round up the existing interest rates to 0.25% is in question in these appeals which arise out of a judgment and order dated 18.12.1994 passed by the High Court of Karnataka in Writ Petition No.3927 of 1994. Civil Appeal No. 5218 of 2000 has been filed by the Association of Borrowers of Karnataka upon getting itself impleaded as a party in the connected appeal.

Appellant No.1 herein is an Association of Bankers. Appellant Nos.2 to 28 are banks

which were created under respective Parliamentary Acts or nationalized in terms of provisions of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1980.

FACTUAL MATRIX :

Interest Tax Act was enacted by the Parliament w.e.f 1.8.1974 with an object of imposing tax on the total amount of interest received by Scheduled Banks/Credit Institutions on loans and advances. It, however, was withdrawn in the year 1978, but reintroduced in the year 1980; whereafter it was again withdrawn in the year 1985. The said tax, however, was reintroduced w.e.f. 1.10.1991 by reason of Finance Act, 1991. The Reserve Bank of India by its Circular letter dated 2.9.1991 advised all the Scheduled Commercial Banks that the incidence of interest tax should pro rata be passed on to the borrowers wherefor a uniform practice should be followed in consultation with the First Appellant herein.

The first appellant purported to be acting pursuant to or in furtherance of the said circular as also with a view to formulate a structure of uniform interest rate chargeable after including the interest tax payable, which was passed on to the borrowers by the concerned banks, advised them that the rate of interest be loaded with interest tax of 3% and rounded up to the next higher 0.25%. Such rounding up was allegedly found necessary allegedly on account of grossing up involved in calculating the incidence of tax. The Reserve Bank of India purportedly gave its approval to the proposal of the first appellant in terms of its letter dated 22.4.1993. Other appellants herein followed the said purported policy.

The aforementioned action on the part of the appellants herein came to be questioned by the respondents in a public interest litigation filed before the Karnataka High Court, inter alia, on the ground that such purported rounding up is illegal and without jurisdiction as thereby the tax element came to be increased and as a result thereof the banks collected additional sums of Rs.723.79 crores annually by way of resorting to rounding up on the basis thereof.

HIGH COURT JUDGMENT:

The appellants herein inter alia contended that such rounding up of interest was done by way of enhancement of the rate of interest which is permissible. Such a matter, the appellants, contended, being contractual in nature, the writ petition was not maintainable.

The High Court of Karnataka by reason of its impugned judgment dated 18.12.1998 rejected the said contention and found the action on the part of the appellants herein illegal and consequently issued the following directions :

> "...The Writ Petition is allowed. Rule issued is made absolute. The action of the Respondents-Banks in rounding up interest rates to the next higher 0.25% is held illegal, arbitrary and untenable. A command is issued to all the Banks to submit an account of the excess interest collected by them from the borrowers and deposit the same with the Reserve Bank of India to be debited in the account of the Union of India. The Reserve Bank of India-Respondent No.2 is directed to take immediate effective steps for implementation of our directions by calculating the excess interest collected by the Banks and ensuring the same to be deposited in the funds of the Union of India."

The appellants herein are before us questioning the said judgment.

SUBMISSIONS:

> Mr. Dushyant A. Dave, Senior Counsel appearing on behalf of the first appellant, Mr. P. Chidambaram, Senior Counsel appearing for State Bank of India, Mr. Gopal Subramanium, Senior Counsel appearing for Punjab National Bank and Mr. Altaf Ahmed, Additional Solicitor General appearing on behalf of Canara Bank, would submit that :
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> (a) having regard to the provisions contained in Sections 4 and 5 of the Interest Tax Act read with Section 26C thereof, as interest tax was payable on the total chargeable interest which was enhanced on the loan in terms of Section 26C as also in terms of contractual provisions of other term loans, a great deal of difficulties had arisen as calculations therefor were required to be made in several steps.

An example in respect thereof has been placed before us which is as under:

> Step 1:
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> * Cum Tax Interest to be earned in an attempt to retain Rs.10 post Interest Tax 10.30 * Interest Tax payable on Rs.10.30 (since whole of the amount collected is assessable to Interest Tax) 0.309 Step II :
>
> * Cum Tax Interest to be earned in an attempt to retain Rs.10 post Interest Tax 10.309 * Interest Tax payable on Rs.10.309 (since whole of the amount collected is assessable to Interest Tax) 0.30427 Step III :
>
> * Cum Tax Interest to be earned in an attempt to retain Rs.10 post Interest Tax 10.30427 * Interest Tax payable on Rs.10.30427 (since whole of the amount collected is assessable to Interest Tax) 0.3092781 Step IV :
>
> * Cum Tax Interest to be earned in an attempt to retain Rs.10 post Interest Tax 10.3092781 * Interest Tax payable on Rs.10.3092781 (since whole of the amount

collected is assessable to Interest Tax) 0.309278343 Step V :

* Cum Tax Interest to be earned in an attempt to retain Rs.10 post Interest Tax 10.309278342 * Interest Tax payable on Rs.10.309278343 (since whole of the amount collected is assessable to Interest Tax) 0.30927835026

(b) Such action was necessary with a view to ensure the retaining of interest at the contractual rate;

(c) At or after Step V; as the amount of post tax interest earned by banks prior to imposition of interest tax would not be enough, if banks raised rate of interest only exactly by 3%, they necessarily had to increase the rate of interest by 0.30927835026 so as to continue to earn pre tax interest @ 10%, the impugned decision had been taken;

(d) Since the calculation would come to an impossible fraction, the revised rate had to be rounded up for easy calculation in collection; (e) The appellants, therefore, had not realised any tax de'hors the provisions of the Act but had realised interest in terms of Section 26C which was authorised by the Reserve Bank of India;

(f) In any event, increase in the rate of interest being of not much significance, the doctrine of de minimus should be applied;

(g) As the appellants have merely collected a higher rate of interest to which they were entitled to in terms of the loan agreements, as the Reserve Bank of India only fixes minimum rate, the same had no nexus with collection of tax within the meaning of Article 265 of the Constitution of India and, thus, the finding of the High Court to the effect that the appellants have collected excess amount of tax must be held to be bad in law;

(h) In any view of the matter, as pursuant to or in furtherance of the circular letter issued by the Reserve Bank of India, the borrowers had been given notice and the terms of the loan agreement having been altered, no writ application was maintainable;

(i) The writ petition suffered from gross delay and laches on the part of the writ petitioner and, thus, the same should not have been entertained.

Reliance in support of the aforementioned contentions has been placed on Dhanyalakshmi Rice Mills and Others etc. etc. vs. The Commissioner of Civil Supplies and Another etc. etc. [(1976) 4 SCC 723]; B.O.I. Finance Ltd. vs. Custodian and Others [(1997) 10 SCC 488] and Central Bank of India vs. Ravindra and Others [(2002) 1 SCC 367].

Mr. K.N. Bhat, learned senior counsel appearing on behalf of the Reserve Bank of India, would submit that his client permitted rounding up of interest having regard to the practical difficulties faced by the banks; but the same has since been withdrawn in the year 1997. Keeping in view the fact that there are five crores borrowers throughout India, it may not be feasible to comply with the

directions issued by the High Court.

Mr. L. Nageswara Rao, the learned Additional Solicitor General, appearing on behalf of the Union of India, however, would point out that the gross interest rate charged to the borrowers by the banks being made up of three elements, namely, (a) interest rate; (b) interest tax on the interest rate; and (c) element of rounding up interest rate to higher 25 paise; the appellants had not only paid to the Government interest tax on the gross interest, that is, rounded off cum tax interest rate collected by them (which would be in excess of the amount of tax under the Act) but also retained some parts thereof. Supporting the judgment of the High Court, Mr. Nageswara Rao would contend that as the amount belongs to the ultimate borrowers, it should be returned to them wherever feasible but in the event the same is not feasible it should be paid over to the Government.

As Respondent No.1, writ petitioner, did not appear, we requested Mr. T.L. Viswanatha Iyer, Senior Advocate, to assist the Court. The learned counsel (Amicus Curiae) would contend that the appellants have construed Section 26C wrongly and, thus, acted under a confusion. Mr. Iyer would submit that Section 26C of the Act, if properly read, would only mean that the enabling provisions had been made so as to enable the appellant-banks to recover the amount of tax from the borrowers under the Act and nothing more.

STATUTORY PROVISIONS :

The relevant provisions of the Interest Tax Act, 1974 read as under :

"2(5)"chargeable interest" means the total amount of interest referred to in section 5, computed in the manner laid down in section 6;

2(7) "interest" means interest on loans and advances made in India and includes

-

(a) commitment charges on unutilized portion of any credit sanctioned for being availed of in India; and

(b) discount on promissory notes and bills of exchange drawn or made in India, but does not include -

(i) interest referred to in sub-section (1B) of section 42 of the Reserve Bank of India Act, 1934 (2 of 1934);

(ii) discount on treasury bills;

"Charges of tax.

4(1) Subject to the provisions of this Act, there shall be charged on every scheduled bank for every assessment year commencing on or after the 1st day of April, 1975, a tax in this Act referred to as interest-tax in respect of its chargeable interest of the previous year at the rate of seven per cent of such chargeable interest Provided that the rate at which interest-tax shall be charged in respect of any chargeable interest accruing or arising after the 31st day of March, 1983 shall be three and a half per cent of such chargeable interest.

(2) Notwithstanding anything contained in sub-section (1) but subject to the other provisions of this Act, there shall be charged on every credit institution for every assessment year commencing on and from the 1st day of April, 1992, interest-tax in respect of its chargeable interest of the previous year at the rate of three per cent of such chargeable interest :

Provided that the rate at which interest-tax shall be charged in respect of any chargeable interest accruing or arising after the 31st day of March, 1997 shall be two per cent of such chargeable interest.

Scope of chargeable interest.

5. Subject to the provisions of this Act, the chargeable interest of any previous year of a credit institution shall be the total amount of interest (other than interest on loans and advances made to other credit institutions or to any cooperative society engaged in carrying on the business of banking, accruing or arising to the credit institution in that previous year :

Provided that any interest in relation to categories of bad or doubtful debts referred to in section 43D of the Income-tax Act shall be deemed to accrue or arise to the credit institution in the previous year in which it is credited by the credit institution to its profit and loss account for that year or, as the case may be, in which it is actually received by the credit institution, whichever is earlier.

Computation of chargeable interest.

6(1) Subject to the provisions of sub- section (2), in computing the chargeable interest of a previous year, there shall be allowed from the total amount of interest (other than interest on loans and advances made to credit institution accruing or arising to the assessee in the previous year, a deduction in respect of the amount of interest which is established to have become a bad debt during the previous year :

Provided that such interest has been taken into account in computing the chargeable interest of the assessee of an earlier previous year and the amount has been written off as irrecoverable in the accounts of the assessee for the previous year during which it is established to have become a bad debt.

Explanation - For the removal of doubts, it is hereby declared that in computing the chargeable interest of a previous year, no deduction, other than the deduction specified in this sub-section shall be allowed from the total amount of interest accruing or arising to the assessee.

(2) In computing the chargeable interest of a previous year, the amount of interest which accrues or arises to the assessee before the 1st day of March, 1978, and ending with the 30th day of June, 1980, or during the period commencing on the 1st day of April, 1985 and ending with the 30th day of September, 1991 shall not be taken into account.

Power of credit institutions to vary certain agreements.

26C. Notwithstanding anything contained in any agreement under which any term loan has been sanctioned by the credit institution before the 1st day of October, 1991, it shall be lawful for the credit institution to vary the agreement so as to increase the rate of interest stipulated therein to the extent to which such institution is liable to pay the interest-tax under this Act in relation to the amount of interest on the terms loan which is due to the credit institution.

Explanation.-For the purposes of this section, "term loan" means a loan which is not repayable on demand."

The relevant provisions of the Banking Regulations Act, 1949 are as under : -

"35A. Power of the Reserve Bank to give directions.- (1) Where the Reserve Bank is satisfied that -

(a) in the public interest; or (aa) in the interest of banking policy;

or

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

(c) to secure the proper management of any banking company generally;

it is necessary to issue directions to banking companies, generally or to any banking company in particular, it may, from time to time, issue such directions as it deem fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or canceling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.

The Reserve Bank is entitled to give directions to bankers under Section 20(3) of the Foreign Exchange Regulation Act, 1947 blocking certain accounts.

Section 20(3) does not contemplates the issue of a prior notice before taking such action under that section. Mohamed Ayisha Nachiyar vs. Deputy Director, Enforcement, (1976) 46 Com Cas 653 (Mad) Directions by Reserve Bank cannot prevent payment of higher bonus in terms of the agreement. American Express International Banking Corp. v. S. Sundaram, (1978) 1 SCC 101 : 1978 SCC (L&S) 34."

SECTION 26C OF THE ACT:

> The Parliament by reason of the said Act imposed a tax on the banks and other financial institutions. By reason of the said Act, the appellants were not statutorily empowered to pass the burden thereof to the borrowers or realise the same on behalf of the Union of India. Concededly, in terms of the agreement of the term loan, the appellants were not entitled to charge interest at a higher rate than the agreed one. Section 26C was, therefore, enacted so as to enable the bankers to realise the amount of tax which they were liable to recover on the chargeable interest. The appellants have proceeded on the basis that having regard to definition of 'chargeable interest' as contained in Section 2(5) of the Act, the additional interest will have also to be calculated for the said purpose and the rate of tax must be calculated thereupon which, as noticed hereinbefore, resulted in adding of interest for the purpose of calculation of tax ad infinitum.
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> How the Parliament thought of the matter is the question. The Union of India does not agree with the contentions of the Appellants, nor do we. The action on the part of the appellants suggests that they had put the cart before the horse. The action of taking recourse to Section 26C would arise only when the chargeable interest is calculated whereupon only the incidence of tax under the said Act is required to be passed on to the borrowers by way of additional interest. The entire approach of the appellants was based on a wrong premise. The said Act is a taxing statute. The Union of India under the said Act cannot direct or permit the bankers or the financial institutions to raise interest. The Act must, therefore, receive purposive construction so as to give effect to the purport and object it seeks to achieve. [See BBC Enterprises vs. Hi-Tech Xtravision Ltd. (1990) 2 All ER 118 at 122-3; Mohan Kumar Singhania and Others vs. Union of India and Others, AIR 1992 SC 1, Murlidhar Meghraj Loya vs. State of Maharashtra, (1976) 3 SCC 684, Superintendent and Remembrancer of Legal Affairs to Govt. of West Bengal vs. Abani Maity, (1979) 4 SCC 85, Khet Singh vs. Union of India (2002) 4 SCC 380 and High Court of Gujarat & Anr. Vs. Gujarat Kishan Mazdoor Panchayat & Ors., JT 2003 (3) SC 50], Indian Handicrafts Emporium & Ors. V. Union of India & Ors.

[JT 2003 (7) SC 446], Ashok Leyland Ltd V. State of T.N. and Anr. [2004 (3) SCC 1] and High Court of Gujarat & Anr. Vs. Gujarat Kishan Mazdoor Panchayat & Ors. [JT 2003 (3) SC 50].

In the event, the contention of the appellants is accepted, the same would give rise to incongruous results. Such an interpretation, as is well-known, must be avoided, if avoidable. Furthermore, a statutory impost must be definite. Having regard to Article 265 read with Article 366(28) of the Constitution of India nothing is realizable as a tax or by way of recovery of tax or any action akin thereto which is not permitted by law.

It is neither in doubt nor in dispute that Section 26C is an enabling provision. It has to be so construed, having regard to the term 'lawful' used therein.

It merely prevails over an agreement under which any term loan has been sanctioned by the credit institution before the 1st day of October, 1991. It was 'lawful' for the credit institution to vary the agreement as regard rate of interest only for the purpose of recovering the amount of tax which was payable by the Appellants and a fortiori - nothing over and above the same. Such increase in rate of interest would be (a) to the extent to which such institution is liable to pay the interest tax; (b) in relation to the amount of interest on the term loan; and (c) which is due to the credit institution.

Increase in rate of interest in terms of Section 26C of the Act, thus, has a direct nexus with the statutory impost. The action on the part of the appellants in rounding up of the interest, thus, was wholly unjustified. Once it is held that increase in interest in a justifiable manner pertains to passing of the burden of tax, the contention that the same had been done by the bank in exercise of its contractual power must be rejected. A taxing statute must be construed reasonably. Nothing can be realised by way of tax or akin thereto which has not been authroised by the Parliament.

The Executive cannot levy tax. It, for the said purpose, therefore, cannot even take recourse to the process of interpretation of a statute.

In Commissioner of Central Excise, Lucknow, U.P. Vs. M/s Chhata Sugar Co. Ltd. reported in 2004 (3) SCALE 6, administrative charges levied under U.P. Sheera Niyantran Adhiniyam, 1964 has been held to be a tax.

In Mathuram Agrawal vs. State of Madhya Pradesh [(1999) 8 SCC 667], the law is stated in the following terms :

> "...The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law i.e. the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity

> regarding any of these ingredients in a taxation statute then there is no tax in law.
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> Then it is for the legislature to do the needful in the matter."

(Emphasis Supplied) If a statute was ambiguous the contemporaneous construction placed thereon by the officers charged with its enforcement and administration might be required to be considered and given due weight but therefor the First Respondent or the Reserve Bank of India were not competent. In this case, the stand of the Union of India also runs counter to the contentions of the Appellants.

A plain reading of Section 26C of the Act leaves no manner of doubt that the same was enacted only for a limited purpose, namely, to pass on the burden of tax to the borrowers. The amount of tax must be calculated having regard to the contractual rate of interest as thence obtaining and not upon in addition of the purported interest by way of tax or otherwise. Once Section 26C is read in a meaningful way, no difficulty arises in giving effect to sub-section (2) of Section 4 and Section 5 and 6 of the Act. If the provisions of the Act are read in a manner in which we have made an endeavour, for an amount of Rs.100/- charged and the rate of interest charged by the bank being 10%, the interest thereon having been earned would come to Rs.10, and, thus, the borrower would be bound to pay only Rs.10.30 and not Rs.10.50, which is said to be the effect of calculation at various steps as referred to by the appellants. The appellants are, thus, not correct to contend that they have exercised the power to claim a higher rate of interest only. They may have a power to claim a higher rate of interest under the agreement but they did not exercise the said jurisdiction. They invoked the enabling provisions contained in Section 26C of the Act and/or raised rate of interest so as to pass on the burden of tax upon the borrowers. They, while purporting to exercise their jurisdiction under a statute were required to act in terms thereof and not in derogation thereto. The appellants sought to achieve the same object indirectly which they could not do directly.

The purported difficulties faced by the appellants were their own creations. The borrowers cannot suffer on account of wrong interpretation of law by the appellants or by the Reserve Bank of India. Section 26C of the Act, therefore, must be held to have wrongly been applied and consequently the action taken by the appellants herein in grossing up and rounding the rate of interest must be held to be illegal.

It is well-settled that when a procedure has been laid down the statutory authority, it must exercise its power in the manner prescribed or not at all.

DE MINIMIS:

> The principle of de minimis, as contended by Mr. Chidambaram, has no application in the instant case.
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> In Black's Law Dictionary 'De minimus' has been defined as follows:

"The law does not care for, or take notice of, very small or trifling matters. The law does not concern itself about trifles."

It is not a matter which would not receive the attention of anybody. Not only a public interest litigation was filed but also the association of borrowers of Karnataka has also filed a Special Leave Petition. The amount collected from the borrowers may be negligible for the appellant banks but the amount they have realised from five crores of borrowers is not a small one. By reason of a self-created confusion, misconception as regard application of a statute and misapplication and misconstruction thereof by the appellants herein had resulted in an illegal action; as a result whereof the borrowers have been deprived of a huge amount. Consequently the Union of India and the appellants have unjustly enriched themselves. When such an unjust enrichment takes place, the doctrine of de minimis, in our view, should not be applied in equity or otherwise.

LOCUS OF THE RESPONDENT:

The writ petitioner before the High Court was a firm of the Chartered Accountant. As an expert in accountancy and auditing, it must have come across several cases where its client had to pay a higher amount of interest to the banks pursuant to or in furtherance of the impugned action of the appellants. By reason of such an action on the part of the appellants as also the Reserve Bank of India, as noticed hereinbefore, the citizens of India had to pay a higher amount of tax as also a higher amount of interest for no fault on their part. The same had been recovered from them without any authority of law. While entertaining a public interest litigation, this Court in exercise of its jurisdiction under Article 32 of the Constitution of India and the High Courts under Article 226 thereof are entitled to entertain a petition moved by a person having knowledge in the subject matter of lis and, thus, having an interest therein as contradistinguished from a busy body, is the welfare of the people. The rule of locus has been relaxed by the courts for such purposes with a view to enable a citizen of India to approach the courts to vindicate legal injury or legal wrong caused to a section of people by way of violation of any statutory or constitutional right.

In fact the Courts had even been treating a letter or telegram sent to them as a public interest litigation by relaxing the procedural laws especially the law relating to pleadings. We need not dilate further on this subject as a Bench of this Court in Guruvayur Devaswom Managing Committee & Anr. Vs. C.K. Rajan & Others [JT 2003 (7) SC 312] observed:

"The Courts exercising their power of judicial review found to its dismay that the poorest of the poor, depraved, the illiterate, the urban and rural unorganized labour sector, women, children, handicapped by 'ignorance, indigence and illiteracy' and other down trodden have either no access to justice or had been denied justice. A new branch of proceedings known as 'Social Interest Litigation' or 'Public Interest Litigation' was evolved with a view to render complete justice to the aforementioned classes of persons. It expanded its wings in course of time. The Courts in pro bono

publico granted relief to the inmates of the prisons, provided legal aid, directed speedy trial, maintenance of human dignity and covered several other areas.

Representative actions, pro bono publico and test litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to by pass the real issues on the merits by suspect reliance on peripheral procedural shortcomings. (See Mumbai Kamgar Sabha, Bombay Vs. M/s. Abdulbhai Faizullabhai & Others (1976) 3 SCR 591).

The Court in pro bono publico proceedings intervened when there had been callous neglect as a policy of State, a lack of probity in public life, abuse of power in control and destruction of environment. It also protected the inmates of prisons and homes. It sought to restrain exploitation of labour practices.

The court expanded the meaning of life and liberty as envisaged in Article 21 of the Constitution of India. It jealously enforced Article 23 of the Constitution. Statutes were interpreted with human rights angle in view.

Statutes were interpreted in the light of international treatises, protocols and conventions. Justice was made available having regard to the concept of human right even in cases where the State was not otherwise apparently liable. (See Kapila Hingorani Vs. State of Bihar reported in JT 2003 (5) SC 1) The people of India have turned to courts more and more for justice whenever there had been a legitimate grievance against the States statutory authorities and other public organizations. People come to courts as the final resort, to protect their rights and to secure probity in public life.

Pro bono publico constituted a significant state in the present day judicial system. They, however, provided the dockets with much greater responsibility for rendering the concept of justice available to the disadvantaged sections of the society. Public interest litigation has come to stay and its necessity cannot be overemphasized. The courts evolved a jurisprudence of compassion. Procedural propriety was to move over giving place to substantive concerns of the deprivation of rights. The rule of locus standi was diluted. The Court in place of disinterested and dispassionate adjudicator became active participant in the dispensation of justice."

Furthermore, even where a writ petition has been held to be not entertainable on the ground or otherwise of lack of locus, the court in larger public interest has entertained a writ petition. In an appropriate case, where the petitioner might have moved a Court in his private interest and for redressal of the personal grievance, the Court in furtherance of public interest may treat it a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. Thus, a private interest case can also be treated as public interest case. (See Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi AIR 1987 SC 294) We, therefore, do not agree with the submissions of the learned counsel of the appellants that the respondent had no locus to maintain the public interest

litigation or the writ petition filed by him pro bono publico before the High Court was not maintainable.

AUTHORITY OF THE APPELLANTS AND THE RESERVE BANK OF INDIA:

The appellants have filed additional documents before us to show that the borrowers had been given due notice but such notice/information had been given by applying wrong legal principles. The appellants are State within the meaning of Article 12 of the Constitution of India. They, as noticed hereinbefore, acted in an arbitrary and whimsical manner.

The submission of the learned counsel for the appellants to the effect that they had been permitted to enhance the rate of interest by the Reserve Bank of India is equally misconceived. The Reserve Bank of India apparently proceeded on the basis that the mode of calculation of rate of interest vis-`-vis the tax under the Act, as contended by the Appellant No. 1, was correct. The Reserve Bank of India was not an authority for construction of a statute. Its functions are confined only to the provisions of the Reserve Bank India Act and the Banking Regulation Act and not any other statute.

Section 35A of the Banking Regulation Act empowers the Reserve Bank of India to issue directions in relation to matters specified under Section 35A and not for any other purpose. The contention of the appellants to the effect that rate of interest had been enhanced by them pursuant to or in furtherance of the directions issued by the Reserve Bank of India must be held to be self-contradictory inasmuch as according to them the Reserve Bank of India fixes only the minimum rate of interest leaving a determination thereof in a case of each individual borrower upon the bank concerned. If the matter relating to increase in the rate of the interest was within power of the appellants, we fail to understand as to why the Reserve Bank of India was approached at all. The same being not permissible under the Act, any approval given by the Reserve Bank of India for the satisfaction of the members of the first appellant herein was futile.

It is not in dispute that action on the part of the appellants in grossing up of interest was not at all relevant. The appellants could not have suo motu taken recourse to rounding up of interest for the purpose of obtaining a higher amount of interest or otherwise. The purported practical difficulty sought to have been put forth by the appellants is a self created one. If such practical difficulty existed there was apparently no reason as to why the Reserve Bank of India refused to grant such approval since 1997.

In any view of the matter, the purported directions contained in the letter dated 2.9.1991 of the Reserve Bank of India are not even in the nature of executive construction under the said Act. It was not binding on the banks, far less on the borrowers. In any event by reason of a misplaced and misapplied construction of

statute, a third party cannot suffer.

Furthermore, having regard to the provisions contained in Article 265 of the Constitution of India read with Article 366(28) thereof the purported demand from the borrower for a higher amount of tax and consequently a higher amount of interest by way of rounding up was wholly illegal and without jurisdiction. We also fail to understand as to why in this modern electronics age, this difficulty would be encountered while calculating the exact amount of tax.

We, therefore, are of the opinion that the purported approval granted by the Reserve Bank of India was wholly without jurisdiction and ultra vires the provisions of the said Act.

CASE LAWS:

In Dhanyalakshmi Rice Mills (supra), this Court merely held that in triable issues of limitation, disputed questions of fact may not be gone into by the High Court in exercise of its writ jurisdiction. Therein the appellants had been claiming refund in terms of Section 72 of the Indian Contract Act. Under the export scheme involved therein the payment made was voluntary in nature. The appellant did not enter into any contract under mistake of law or under coercion. In the fact situation obtaining therein, this Court held that the remedy under Article 226 was not appropriate in the said cases, stating :

"...First, several petitioners have joined. Each petitioner has individual and independent cause of action. A suit by such a combination of plaintiffs would be open to misjoinder. Second, there are triable issues like limitation, estoppel and questions of fact in ascertaining the expenses incurred by the Government for administrative surcharges of the scheme and allocating the expenses with regard to quality as well as quantity of rice covered by the permits."

The aforesaid decision is not applicable in the instant case.

However, we may notice that in ABL International Ltd. & Anr. Vs. Export Credit Guarantee Corporation of India Ltd. [JT 2003 (10) SCC 300], this Court recently observed:

"Merely because the first respondent wants to dispute this fact, in our opinion, it does not become a disputed fact. If such objection as to disputed questions or interpretations are raised in a writ petition, in our opinion, the courts can very well go into the same and decide that objection if facts permit the same as in this case."

In B.O.I. Finance Ltd. (supra), the question which arose for consideration was as to whether the transaction arising out of agreement to do an illegal act could be

enforced. In that case certain circulars were issued by the Reserve Bank of India in terms of 36(1) of the Banking Regulation Act which had not been published. It was held :

"It was then submitted that even if it is held that the said circulars were binding they could only bind the banks and not the third parties. The submission was that by contravening the direction contained in the said circulars, the contracts which were entered into between the banks and the third parties could not be invalidated and the only result of such contravention would be the levy of penalty under Section 46 of the said Act."

The question which arose for consideration therein does not arise in the instant case.

In Central Bank of India (supra), this Court, inter alia, held that Sections 21 and 35-A of the Banking Regulation Act confers a power coupled with duty to act. The question which arose for consideration related to many phrases, namely, "The principal sum adjusted", "such principal sum" and "such" occurring in Section 34 of the Code of Civil Procedure. This Court held that a long- established banking practice of charging interest at reasonable rates on periodical rests and capitalizing the same on remaining unpaid should not be found fault with and in that context the circular letter issued by the Reserve Bank of India under Sections 21 and 35A was commented upon :

"...The Reserve Bank of India is the prime banking institution of the country entrusted with a supervisory role over banking and conferred with the authority of issuing binding directions, having statutory force, in the interest of the public in general and preventing banking affairs from deterioration and prejudice as also to secure the proper management of any banking company generally. The Reserve Bank of India is one of the watchdogs of finance and economy of the nation. It is, and it ought to be, aware of all relevant factors, including credit conditions as prevailing, which would invite its policy decisions. RBI has been issuing directions/circulars from time to time which, inter alia, deal with the rate of interest which can be charged and the periods at the end of which rests can be struck down, interest calculated thereon and charged and capitalized. It should continue to issue such directives. Its circulars shall bind those who fall within the net of such directives. For such transaction which are not squarely governed by such circulars, the RBI directives may be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy."

We have noticed hereinbefore that the Reserve Bank of India could not have interpreted the provisions of the said Act nor thereby could have empowered the banks to charge something more from the borrowers by the process of rounding up of interest. The appellants and the Reserve Bank of India with a view to touching the end of their own shadows in the guise of exercise of their contractual powers vis-a-

vis Banking Regulation Act exceeded their jurisdiction in recovering the tax imposed on them by way of interest under the Parliamentary Act.

CONCLUSION:

For the reasons aforementioned, we are of the opinion that the impugned judgment cannot be faulted with. However, the matter does not end there. The question which looms large is what effective order can be passed by this Court. More than five crores of borrowers are involved. A huge sum of money is to be recovered from Union of India as also a large number of banks. Directions may be issued for refund of the amount to the borrowers, but implementation thereof would take a long time. The court may not be able to effectively monitor such recovery.

The Union of India, as noticed hereinbefore, had proposed that the banks concerned be directed to deposit the excess recovered by it, if no direction is issued by us that the same be returned to the borrowers. Interestingly, the Union of India has not volunteered, which as 'a State' it should have done, to suo motu undertake the exercise of identifying the borrowers and refund the excess amount recovered, a part whereof had been deposited by way of interest tax by the concerned banks. Furthermore, directing the Union of India to refund the excess amount collected through the banks and consequently ask the banks to refund the same to the borrowers whether with the amount retained by them by way of rounding up of interest invariably would take a long time.

We, therefore, are of the opinion that a fund may be created for the benefit of the disadvantaged people.

The Parliament has enacted "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" (the 1995 Act). The Chapter V of the 1995 Act deals with education. Section 28 provides for research for designing and developing new assistive devices, teaching aids, etc. for the disabled persons. Section 29 mandates appropriate governments to set up teachers' training institutions to develop trained man power for schools for children with disabilities. Chapter IX of the said Act provides for research and manpower development which includes grant of financial incentives to universities to enable them to undertake research. Chapter XI provides for institution for persons with severe disabilities whereas Chapter XIII provides for social security. It is no gainsaying that despite the 1995 Act came into force on or about 1st January, 1996 only a beginning has been made to implement the beneficient provisions thereof but a lot lot more is required to be done.

In India, the number of disabled people is around 100 million, and there are approximately 160 million victims, direct and vicarious, of disablement. National as also international efforts to combat this situation are on but the task is a gigantic one.

The General Assembly of the United Nations has passed several Resolutions dealing with the rights of the mentally and physically disabled emphasising that the disabled persons have the rights as regard human dignity, civil and political rights, entitlement to measures to ensure their self-reliance, the right to treatment, education and rehabilitation, the right to economic and social security, the right to live with their families, the right to have their special needs taken into account in economic and social planning and the right against discrimination, abuse and exploitation, apart from the fact that the disabled persons enjoy all rights available to other human beings.

It may not be necessary for us to delve deep into the non-implementation or part implementation of the provisions of the 1995 Act at the hands of the State but we are not oblivious of the fact that it may not be possible to achieve the legislative target for the Central Government or State Government alone.

We are also not oblivious that the Parliament enacted the The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 providing for constitution of a National Trust which would provide for maintenance allowance for persons with disabilities; the object being to enable the disabled persons to live independently within the community, to deal with problems of such persons who do not have family support, to facilitate the realisation of equal opportunities; protection of rights, full participation of such persons; to evolve a procedure for appointment of guardians or trustees for such persons requiring protection.

We are, furthermore, aware that the Ministry of Social Justice and Empowerment had taken the following actions to implement the provisions of the aforementioned Acts:

(i) Notification of Central Co-ordination Committee as per Section 3 of the Act

(ii) Notification of Central Executive Committee as per Section 9 of the Act

(iii) Creation of post of Chief Commissioner, Deputy Chief Commissioner, and Staff for Office of Chief Commissioner

(iv) Five core groups of experts and officials of relevant Ministries have been set up to make recommendations and formulate schemes to give effect to various provisions of the Act. These are (a) Group on Prevention, Early Detection and Intervention; (b) Vocational training and employment; (c) Education, including pre-school education; (d) Barrier free environment; (e) Women and children with disabilities

(v) National Fund for People with Disabilities set up on 11/08/1983 has been activated and assistance has been sanctioned to non-government agencies. 17

projects have been sanctioned under the scheme

(vi) A new scheme the Viklang Bandhu has been formulated to provide training t disabled volunteers

(vii) A National Programme for Rehabilitation of Persons with Disabilities has been submitted to the Planning Commission for establishment of infrastructure for realizing the Act. The Programme contemplates the establishment of a District Level Rehabilitation Centre, two multi-purpose rehabilitation workers at the Block/PHC level; two community based rehabilitation workers at the Gram Panchayat level

(viii) To support entrepreneurial activity by the disabled, the National Handicapped Finance and Development Corporation has been operationalised with effect from 24/10/1997

(ix) The proposal for the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities with a corpus fund of Rs. 100 crores has been approved by the Cabinet This Court as also the High Courts have taken pro-

active views in the matter of implementation of the rights of the disabled.

In National Federation for the Blind v. Union Public Service Commission [(1993) 2 SCC 411], the Court directed the Government and the UPSC to permit blind and partially blind eligible candidates to compete and write the Civil Services Examination in Braille script or with the help of a scribe. It also recommended to the Government to decide the question of providing reservations to visually handicapped persons in Group 'A' and 'B' posts in the Government and Public Sector Enterprises.

In Javed Abidi v. Union of India [(1999) 1 SCC 467], the Court directed Indian Airlines to give concessions to orthopaedically handicapped persons suffering from locomotor disability to the extent of 80% for traveling by air in India. The Court was mindful of the financial position of Indian Airlines and yet felt that this direction was in keeping with the objectives of the Disabilities Act and was in consonance with the concession already given by Indian Airlines to visually disabled persons.

Kunal Singh v. Union of India [(2003) 4 SCC 524] saw the Court interpreting the Disabilities Act in a manner so as to further its objective. The Court opined that Section 47 of the Act mandates that an employee who acquires a disability during service must be protected. If such an employee is not protected, he would not only suffer himself, but all his dependants would also undergo suffering. Therefore, merely granting him pension would not suffice, but there must also be an attempt to secure him alternative employment.

Despite the progressive stance of the Court and the initiatives taken by the Government, the implementation of the Disabilities Act is far from satisfactory. The disabled are victims of discrimination in spite of the beneficial provisions of the Act.

We are, therefore, of the opinion that in a larger interest a fund for the aforementioned purpose should be created with the amount at the hands of the Union of India and the Appellants and other concerned Banks, which may be managed by the Comptroller and Auditor General of India.

We would request the Comptroller and Auditor General of India to effect recoveries of all the excess amount realised by the Union of India by way of interest tax and interest by the banks and other financial institutions and create the corpus of such fund therefrom. The appellant and other concerned banks are also hereby directed to contribute to the extent of Rs. 50 lakhs each in the said fund.

The Comptroller and Auditor General of India would be the Chairman of the said Trust and the Finance Secretary and the Law Secretary of the Union of India would be the ex- officio members thereof. The corpus so created may be invested in such a manner so as to enable the trustees to apply the same for the purpose of giving effect to the aforementioned provisions of the 1995 Act.

The Union of India, the Reserve Bank of India, the appellant Banks, other scheduled banks and financial institutions are directed to render all cooperation and assistance to the trustees.

The Committee as also the Committees set up by the Central Government should act in close cooperation with each other. The Committee may, if it thinks proper, invest any amount in the Trust set up by the Central Government under the 1999 Act or any other scheme framed by the Central Government, as noticed hereinbefore.

The trustees aforementioned with a view to give effect to this order may frame an appropriate scheme. In case of any difficulty they may approach this Court for any other or further order/orders or direction/directions.

The Central Government, however, with a view to implement the aforementioned provisions may by amending the 1995 Act provide for creation of such a fund and in such an event, the statutory authority, if any, would be entitled to take over the corpus of the fund but so long no legislative step is taken in this behalf, this order shall remain in force.

These appeals are dismissed with the aforementioned terms. There shall be no order as to costs.