Internet and Mobile Association of India v. Reserve Bank of India (AIR 2021 SC 2720)

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Introduction

In this case note, the judgement delivered by the Supreme Court in Internet and Mobile Association of India v. Reserve Bank of India (AIR 2021 SC 2720) is being analysed.

The facts of the case, point of law involved, ratio decidendi and other aspects have been discussed through my understanding of the same, as a novice.

Title of the Case and Citation

Internet and Mobile Association of India v. Reserve Bank of India (AIR 2021 SC 2720).

Bench Strength

The judgement was delivered by a division bench of three judges, comprising of Honourable Judges: Rohinton Fali Nariman, Aniruddha Bose, V. Ramasubramanian, JJ.

Area Of Law

The case falls in the area of banking law.

Author Of the Judgement

The judgement was authored by Justice V. Ramasubramanian.

Ratio

It was a unanimous decision.

Ratio Decidendi

RBI cannot prohibit the entities regulated by it from providing services to those who deal in virtual currencies as there is no empirical evidence of damage suffered by the regulated entities due to serving customers who deal in virtual currencies. Availability of power is different from the manner and extent to which it can be exercised.

Facts

The Reserve Bank of India had issued a Statement on 'Developmental and Regulatory Policies', directing the entities regulated by it not to provide services or enter into any dealings with any individual or business entities dealing with or settling virtual currencies and to exit from existing relationship with such individuals/business entities. Following this, RBI also issued a circular, in exercise of the powers conferred on it by Section 35A read with Section 36(1)(a) and Section 56 of the Banking Regulation Act, 1949 and Section 45JA and 45L of the Reserve Bank of India Act, 1934 and Section 10(2) read with Section 18 of the Payment and Settlement Systems Act, 2007, directing the entities regulated by RBI not to deal in virtual currencies nor to provide services that facilitate any person or entity in dealing with/settling virtual currencies and to exit the existing relationship with such persons or entities. The Petitioner (Internet and Mobile Association of India) challenged the said Statement and Circular and sought a direction to the Respondents not to restrict banks and financial institutions regulated by RBI, from providing banking services to those dealing in crypto currencies. They challenged the Statement and Circular on the following grounds-

- RBI does not have sufficient power to regulate matters relating to virtual currency as virtual currencies do not qualify as legal tender, neither do they fall within the payment system, financial system or credit system of the country. Thus, virtual currencies are beyond the regulatory framework of RBI.
- Even if we assume that RBI has power to regulate activities carried on by virtual currency exchanges, the mode in which the power was exercised can be tested on the

following parameters- application of mind, malice in law and colourable exercise of power, M.S. Gill reasoning and Proportionality.

- Many of the developed and developing economies, international and multinational bodies and foreign courts found nothing greatly harmful in virtual currencies. The attempt of the Government of India to pass a legislation banning virtual currencies has not reached a logical end.
- The petitioners have taken necessary precautions which include avoidance of cash transactions, compliance with KYC norms and allowance of peer-to-peer transactions within the country only.
- Since there are different types of virtual currencies like anonymous and pseudo-anonymous, RBI should have adopted different approaches towards different types of virtual currencies.
- The fact that blockchain technology is acceptable to RBI but virtual currency is not, is a paradox.
- Since RBI is like any other statutory authority, and a policy decision taken by it is neither a legislation nor an exercise of executive power, the measures taken by it did not warrant any deference.
- The measures taken by RBI violate Article 19(1)(g)
- The other stakeholders such as the Enforcement Directorate (concerned with money laundering), the Department of Economic Affairs (concerned with the economic policies of the State), SEBI (concerned with security contracts) and CBDT (concerned with the tax regime relating to goods and services), did not see any grave threat due to virtual currencies. Thus, RBI's reaction was knee-jerk.

RBI on the other hand, maintained that dealing in virtual currencies posed a risk to the regulated entities and that the circular issued by it does not ban virtual currencies but directs regulated entities not to deal in or facilitate dealings in crypto currencies.

Point of Law Involved

- Whether RBI has the power to prohibit the activity of dealing in virtual currencies through virtual currency exchanges.
- If RBI has the above-mentioned power, whether the mode of exercise of such power in the given case is justifiable.
- Whether the action taken by RBI warranted deference
- Whether the measures taken by RBI are liable to be set aside on grounds of violation of Article 19(1)(g).

Decision of the Majority

The court decided as follows-

- RBI has necessary power to regulate or prohibit the activity of dealing in virtual currencies through virtual currency exchanges. It derives these powers from the Reserve Bank of India Act, 1934 and the Banking Regulation Act, 1949.
- On considering the Payment and Settlement Systems Act, 2007, RBI has power to issue directions to system participants with respect to transactions that are categorised as payment obligation/payment instruction.
- RBI has applied its mind sufficiently and there was no omission of relevant considerations on its part.
- Acting in bad faith and exercising power with the intention of harming those in target is necessary for an act to qualify as colourable exercise of power. An act done wilfully and wrongfully without a reasonable cause qualifies as malice in law. Since the impugned circular does not show signs of any of the above, it does not fall under either of the two categories.
- The M.S. Gill test cannot be applied for evaluating the circular issued by RBI.
- The other stakeholders such as the Enforcement Directorate, the Department of Economic Affairs, SEBI and CBDT have different functions and consider issues from different points of view. Therefore, RBI cannot be blamed for adopting an approach that is different from that of these stakeholders.

- Though the petitioners argued that other countries have not imposed a ban, this does not further their argument. Comparison with other countries can only help with the principles of judicial decision making, not to test the validity of an action done under existing statutory scheme.
- The question as to whether the petitioners have taken necessary precautions to prohibit harm caused by crypto-currencies is to be answered by experts and not this court.
- The question as to whether different types of VCs require different treatment does not arise because RBI has clarified that it has not banned VCs.
- Accepting a technical development but rejecting one of its applications is not irrational. Thus, the challenge of rationality of accepting blockchain technology and rejecting VCs will be set aside.
- RBI is not like any other statutory authority. A decision taken by the central bank of our country does warrant deference.
- If the central authority like RBI perceives a threat in VCs after applying its mind and considering relevant factors and subsequently severs its ties with fiat currency, it cannot be nullified on grounds of violation of Article 19(1)(g).
- Since there is no evidence of harm caused by VCs to the entities regulated by RBI and the government of the country has also not been able to reach a conclusion on the treatment of VCs, the measure taken by RBI does not qualify as a proportionate measure.
- Therefore, the petitioners succeed and the circular is being set aside.
- RBI should direct Central Bank of India to release the funds in the account of Discidium Internet Labs Pvt. Ltd. along with the interest at applicable rates.

Discussion of Decision

I agree with the court's decision. It is a reasonable decision, where the judges have considered the arguments of both the parties. We find that the judges have applied necessary statutes and case laws in the appropriate manner to the facts of the case to arrive at this decision. SC set aside the circular issued by RBI on grounds of proportionality. Now, entities regulated by RBI are free to provide services to those dealing in crypto currencies. The court also ordered to defreeze the account of Discidium Internet Labs Pvt. Ltd. Though the judgement set the circular

issued by RBI aside, it did not comment on the legality of crypto-currency. Thus, crypto currencies remain unregulated.

Later Developments

There has not been any new case law on crypto currencies following this judgement. However, The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 proposes to ban private crypto currencies, with certain exceptions. Private crypto currencies are those that allow completely anonymous blockchain transactions.

Brief Summation

RBI on its circular dated 6 April, 2020, directed its regulated entities to refrain from providing services to those dealing in crypto currencies and exit such existing relationship. The petitioner challenged this circular of RBI on various grounds, including those like RBI did not have power to regulate VCs, the mode of exercise of power was not right and that the decision of RBI does not warrant deference. While deciding the case, the SC held that although RBI has the power to regulate VC dealings, the measure taken by RBI was not proportionate to the threat posed by VCs and hence, the circular is liable to be set aside on grounds of proportionality.

References

Internet and Mobile Association of India v. Reserve Bank of India (AIR 2021 SC 2720)

M S Gill v. The Chief Election Commissioner (AIR 1978 SC 851)