

Commonwealth Human Rights Initiative vs Union Of India on 24 July, 2024

Author: Sanjeev Narula

Bench: Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 8666/2022 & CM APPL. 26095/2022,
26884/2022

COMMONWEALTH HUMAN RIGHTS INITIATIVE ...

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UNION OF INDIA

Through:

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA
ORDER

% 24.07.2024

1. The present petition impugns order dated 19th April, 2022 issued by the Respondent - Director, Foreigners Division [Monitoring Unit], Ministry of Home Affairs, cancelling the Petitioner's registration under the Foreign Contribution Regulation Act, 2010,¹ in terms of Section 14(1)(d) of the said Act.²

2. The Respondent issued a show-cause notice to the Petitioner on 07th December, 2021, which reads as follows:

SHOW CAUSE NOTICE WHEREAS, Commonwealth Human Rights Initiative (CHRI), Delhi (hereinafter referred to as "the Association") registered under the "FCRA."

"impugned order."

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 30/07/2024 at 20:38:54 Societies Registration Act, 1860 vide No. S-24565 dated 21.07.1993 was granted registration certificate under the Foreign Contribution (Regulation) Act, 2010 (hereinafter referred to as 'the Act') vide Registration Certificate No. 231650671R dated 09.03.1993 (renewed upto 31.10.2021) to accept foreign contribution for undertaking 'Social' programmes.

Whereas, the Central Government on examination of the Annual Returns (ARs) submitted online by the Association. and records available in the Ministry observed multiple violations of the Act. The Ministry suspended the FCRA registration certificate of the Association under section 13 of the Act for a period of one hundred and eighty (180) days vide order dated 07.06.2021. The same was extended further for 180 days vide Order dated 01.12.2021.

Whereas, the Central Government authorized an audit/inspection of books of accounts and activities of the Association under Section 20 and 23 of the FCRA, 2010 from 09.08.2021 to 14.08.2021 vide order dated 29.07.2021. On examination and scrutiny of the records made available by the Association during the audit/ inspection period, observations were drawn. These audit observations were shared with the Association vide Ministry's letter dated 07.10.2021 for their comments.

Whereas, the Association vide its letter dated 10.11.2021 submitted its comments/clarifications and the same were duly examined by the Ministry.

Whereas, on examination of reply of the Association to the Audit Para Nos. (i) & (ii), it was found that the Association has utilized foreign contribution on activities carried outside Indian territories in foreign countries in contravention of sections 8(1)(a), 12(4)(a)(iv) and 12(4)(a)(vi) of the FCRA, 2010 read with section 1(2) of the Act.

Whereas, on examination of reply of the Association to Audit Para No. (iii), it was found that the Association has credited/deposited consultation fee amounting Rs 31,90,598/- in its FC designated account which is not covered under the definition of foreign contribution as per explanation 3 to section 2(1)(h) of the Act. This is a violation of section 17 of the FCRA, 2010."

3. A detailed response to the allegations of violation of the FCRA was submitted by the Petitioner on 20th December, 2021. A personal hearing was conducted on 16th February, 2022 and supplementary written submissions were filed on 02nd March, 2022, which culminated in the issuance of the impugned order.

4. Amongst the grounds of challenge urged, the Petitioner's chief This is a digitally signed order.

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5. Notice in the present petition was issued on 30th May, 2022, whereafter the Respondent filed a counter affidavit. In the counter affidavit, the plea of alternate remedy was not raised. However, subsequently, in the written submissions filed on 28th June, 2024, Respondent has urged that the present petition is not maintainable in view of the remedy of revision provided under Section 32 of the FCRA. Ms. Pratima N. Lakra, CGSC for Respondent, states that the contentions raised in the present petition could have been agitated before the revisional authority. On merits, she defends the impugned order, arguing that the impugned order is justified and gives cogent reasons for the cancellation of registration.

6. Given that the plea of alternate remedy has been raised after an interval of two years, as well as the jurisdictional challenge involved in the present petition, the Court is not inclined to consider the preliminary objection of the Respondent, and has accordingly, proceeded to entertain the matter. For reasons noted hereinafter, the Court refrains from delving into a detailed deliberation of the grounds of rejection, as the Petitioner's argument of the order being a non-speaking one, finds favour with the Court.

7. The impugned order first recites the procedural history of the proceedings. The reasons for cancellation of Petitioner's registration are only spelt out in the concluding paragraphs, in the following terms:

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(i) The Association has credited

account consultation fee amounting Rs.31,90,598/- which is not covered under the definition of foreign contribution as per This is a digitally signed order.

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(ii) The Association has provided incomplete information in FC-4 Form in AR for FY 2018-19 by not disclosing the details of the activities/projects for which foreign contributions had been received and utilized. Further, the Association has also provided incorrect and conflicting information in FC-4 Form in AR from 2013-14 to 2018-19 regarding opening and closing balances of FC. These are violations of section 18 of the FCRA, 2010.

(iii) The Association has utilized foreign contribution on activities beyond the scope of the Act for which the registration was granted thereby violating section 8(1)(a), 12(4)(a)(iv) and 12(4)(a)(vi) read with section 1(2) of the Act.

NOW, THEREFORE, in view of above mentioned violations the competent authority in exercise of the powers conferred by section 14(1)(d) of the Act hereby cancels the FCRA Registration Certificate No. 231650671R of the Association.

This issues with the approval of the competent authority."

8. The impugned order manifestly lacks any discussion on the response received from the Petitioner in their reply to the show-cause notice, submissions at the hearing, and written submissions filed subsequently. For instance, the Petitioner clarified that the amount of Rs. 31,90,598/- was received from the Department of International Development, UK and Transparency International Sri Lanka for conducting certain learning programmes in India in 2014 and 2018. They explained their reason for construing the payments as a "foreign contribution" in terms of S. 2(h) of the FCRA. However, the Respondent has not provided their grounds for rejecting this submission. Similarly, the Petitioner had offered an explanation for the purported discrepancy in providing information in FC-4 form for financial year 2018-19. They maintained that the foreign contributions received from various entities had been utilized in compliance with the Act. The Court is unable to discern the consideration of these contentions from the impugned order. The conclusion to the impugned order This is a digitally signed order.

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9. In light of the above, the impugned order dated 19th April, 2021 issued by the Respondent is unsustainable in law, and is accordingly, set aside.

10. The Respondent is directed to consider the matter afresh in accordance with law, taking into account the Petitioner's replies dated 20th December, 2021 as well as supplementary response dated 02nd March, 2022. A final decision shall be rendered within a period of eight weeks from today.

11. With the above directions, the present petition is disposed of, along with pending applications.

12. It is made clear that the Court has not expressed any opinion on the merits of the case. All rights and contentions of the parties are left open.

SANJEEV NARULA, J JULY 24, 2024 d.negi This is a digitally signed order.

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