IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 36 OF 2017
WITH
CIVIL APPLICATION NO. 137 2017

The Lawyers Collective .. Appellants.
vs.
Union of India through
the Ministry of Home Affairs
Foreigners Division .. Respondent.

Mr. Aspi Chinoy with Mr. Jamshed Mistry a/w. Sandeep Bhimekar, Mr. Dinesh Parmar, MS Amrita Chakraborty, Mr. Indrajeet Bhosale for the Appellants.

Mr. Anil Singh, A.S.G. a/w. Mr. Sandesh Patil i/b Mr. pranil Sonawane for UOI.

CORAM : M. S. SONAK, *J*.

Date of Reserving the Order : 27 JANUARY 2017
Date of Pronouncing the Order : 30 JANUARY 2017.

ORDER :-

1] First Appeal No. 36 of 2017 is filed against the order dated 27 November 2016 made under section 14 of the Foreign Contribution (Regulation) Act, 2010 (FCRA) cancelling the certificate of registration of the appellants with all legal consequences, with immediate effect. The impugned order, in addition to cancellation, the issues the following directions:

(a) The balance of money in the concerned FCRA Accounts/Utilization Accounts stands frozen with immediate effect and shall be in the custody of the bank concerned in accordance with Rule 15 of the Foreign Contribution (Regulation) Rules, 2011 (said Rules), as amended from time to time;

(b) The balance of money in other accounts to which the money has flown out of foreign contribution stands frozen with immediate effect and shall be in the custody of the bank concerned in accordance with Rule 15 of the said Rules; and

(c) The registering authority of the said association, namely, Lawyers Collective, i.e., the Charity Commissioner Maharashtra State, Mumbai may take action as deemed appropriate under section 22 of the FCRA, pursuant to the order.

2] There is no dispute that an appeal lies as against the impugned order dated 27 November 2016 under section 31 of the FCRA. In fact, section 31(3) of the FCRA provides that every appeal preferred under this section shall be deemed to be an appeal from an original decree and the provisions of Order XLI of the First Schedule to the Code of Civil Procedure, 1908, shall, as far as may be, apply thereto as they apply to an appeal from an original decree. In the light of such a provision, as also, being satisfied that a case for admission of the appeal has been made out, this appeal is admitted. The parties are at liberty to file a private paper book within a period of 16 weeks from today and thereafter apply for a fix date for final hearing in the appeal.

3] In Civil Application No. 137 of 2017, the appellants have applied for the following interim reliefs:

> *"a. The impugned order dated 27.11.2016 passed by the Respondent be stayed*
>
> *b. Without prejudice to prayer (a) and in the alternative:*
>
> *(i) the Respondent be restrained from taking any further steps pursuant to the impugned order;*
>
> ***(ii) The direction to the Charity Commissioner, Mumbai, in the impugned order, to take action under sec 22 FCRA be stayed forthwith and the bald direction to the HSBC to block/freeze "other accounts" on the bald allegation that "money has flown out of the Foreign Contribution" to such accounts be stayed and the Applicant be allowed to operate its non-FCRA/domestic accounts with the HSBC, being Bank Account No. 051141513007 [H.S.B.C, Delhi], Account No. 053227906006 [H.S.B.C, Delhi] and Account No. 002726024006 [H.S.B.C, Mumbai] and utilize the moneys therein;***
>
> *(iii) The Respondent be directed to consider the application of the Appellant for approval to utilize the foreign contribution lying in the Appellant's Accounts and pass order thereon within a period of one month from the date of the application;"*

4] Mr. Aspi Chinoy, learned senior advocate for the appellants, has however, pressed for the interim relief in terms of prayer clause (b)(ii), at this stage. He submits that present is clearly not a case where the appellants have either ceased to exist or become defunct. Therefore, there was no case made out for exercise of powers under section 22 of the FCRA. Further submits that in terms of section 15 of the FCRA read with Rule 15 of the said Rules only foreign contribution or assets created by foreign contribution vest in the prescribed authority. There is, according to him, no jurisdiction whatsoever to extend the scope of such provision and to make any orders freezing bank accounts, other than FCRA Accounts/Utilization

Accounts. In any case, Mr. Chinoy submits that even on facts, there is no case made out to make a drastic order of such nature, which will virtually bring to a stand still all the activities of the appellants. Mr.Chinoy submits that the directions in the impugned order have a chilling effect upon the fundamental as well as other rights of the appellants and therefore, the interim reliefs in terms of prayer clause (b) (ii) may be granted pending disposal of the appeal. He submits that the appeal may be posted at an early date for final hearing.

5] Mr. Anil Singh, learned ASG for the Union of India, submits that the impugned order records very serious violations on the part of the appellants in relation to compliances of the FCRA and the said Rules. He submits that the Trustees of the appellants, in breach of the provisions of section 7 of the FCRA read with Rule 24 of the said Rules received and spent foreign contributions for activities not listed in the objectives of the appellants association. In this regard, reference was made to the appointment of Mr. Anand Grover, a Trustee of the appellant as United Nation Special Rapporter (UNSR) and the amounts received and spent by him towards travel expenses and other expenses. Mr. Singh pointed out that some amounts were sent and spent in Hungary and Malaysia, which is, again, in breach of provisions of section 7 of the FCRA and Rule 24 of the said Rules. On account of such serious breaches, Mr. Singh submitted that there is no case made out for grant of any interim reliefs.

6] Mr. Singh, by laying particular emphasis upon findings/observations in clause (vi) & (viii) of the impugned order submitted that the appellants have received foreign contribution through an account other than designated foreign contribution bank and consequently, there is "*mixing of foreign contribution with local/domestic funds*" thereby violating section 7 of FCRA r/w. Rule 9 of the said Rules. For this reason, Mr. Singh submits that there is no infirmity whatsoever in freezing other accounts to which money has flown out from the FCRA Accounts. He submits that such a direction is entirely consistent with the provisions of section 15 of the FCRA and accordingly, no case is made out for grant of any interim reliefs. Mr. Singh also submits that since the registration under FCRA stands cancelled by the impugned order, there is nothing wrong in the direction for taking appropriate action against the appellants under section 22 of the FCRA.

7] Section 22 of the FCRA reads thus:

> *"22. Disposal of assets created out of foreign contribution. - Where any person who was permitted to accept foreign contribution under this Act, ceases to exist or has become defunct, all the assets of such person shall be disposed of in accordance with the provisions contained in any law for the time being in force under which the person was registered or incorporated, and in the absence of any such law, the Central Government may, having regard to the nature of assets created out of foreign contribution received under this Act, by notification, specify that all such assets shall be disposed off by such authority, as it may specify, in such manner and procedure as may be prescribed."*

8] At least *prima facie,* for any action under section 22 of the FCRA, the authority concerned has to be satisfied that the person who was permitted to accept foreign contribution under the said Act, which would, in the present case, include an association like the appellants "*ceases to exist or has become defunct*". There is absolutely no material on record to even suggest that the appellants have either ceased to exist or have become defunct.

9] The show cause notice dated 31 May 2016 and the consequential impugned order dated 27 November 2016, make no reference whatsoever to the appellants ceasing to exist or becoming defunct. Section 14(1)(e) enables the Central Government to cancel certificate of registration under FCRA if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct. Perusal of the impugned order makes it clear that the same is not based upon the ground as contemplated by section 14(1)(e) of the FCRA. For all these reasons, at least *prima-facie,* the direction for action under section 22 of the FCRA is in excess of jurisdiction. Further, the balance of convenience is also in favour of the appellants, as otherwise, pending the appeal all the assets of the appellants may be disposed off. Therefore, a case is made out for grant of interim relief staying the direction for action under section 22 of the FCRA.

10] Section 15 of the FCRA provides that the foreign contribution and assets created out of the foreign contribution in the custody of every person whose certificate has been cancelled under section 14 shall vest in such authority as may be prescribed. Similarly, Rule 15 of the said Rules provides that the amount of foreign contribution lying unutilised in the exclusive foreign contribution bank account of person whose certificate of registration has been cancelled shall vest with the bank concerned till the Central Government issues further directions in the matter. A composite reading of the two provisions, at least *prima-facie,* indicates that the amounts in the FCRA Accounts/FCRA Utilization Accounts vest in the bank concerned till the Central Government issues further directions in the matter. The impugned order does not make any reference to assets created out of the foreign contribution in the custody of any other person. The allegations of "*mixing of foreign contribution with local/domestic funds*" are quite vague. On the basis of same, pending the hearing and final disposal of the appeal, it may not be proper to freeze practically all the bank accounts of the appellants and thereby, completely cripple its activities and functioning. There is no allegation in this case that any amounts were siphoned out of the FCRA Accounts/FCRA Utilization Accounts by the appellants after the issue of show cause notice dated 31 May 2016. Such siphoning was perhaps not even possible, since, the respondent in exercise of powers conferred upon them under section 13 of the FCRA had suspended the registration of the appellants for a period of 180 days, thereby, disabling the appellants from operating the FCRA Accounts/ FCRA Utilization Accounts. Based upon the impugned order, however, the FCRA Accounts/ FCRA Utilization Accounts will have to remain frozen pending final disposal of this appeal.

11] The FCRA is an act to consolidate the law to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or association or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto. In ***State vs.***

M. Kurian, Chief Functionary Of the Cross[1] , the Hon'ble Supreme Court, in the context of FCRA 1976 has held that the main object was to regulate and keep a control over the acceptance and utilization of foreign contribution. The entire purpose behind the Act was that the recipients of such foreign contribution may not act in a manner inconsistent with the values of the sovereign republic which our founding fathers have given to us. Section 11 of FCRA provides that save as otherwise provided under the Act, no person having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such person obtains a certificate of registration from the Central Government. In this case, there is no dispute that the appellants had applied for and were issued certificate of registration in terms of sections 11 and 12 of FCRA. Sections 13 and 14 of FCRA provide for suspension and cancellation of certificate of registration. Section 15 of FCRA provides for management of foreign contribution of person whose certificate has been cancelled. Rule 15 of the said Rules provides for custody of foreign contribution in respect of a person whose certificate has been cancelled.

12] From the aforesaid provisions, it is quite clear that the Central Government is quite competent under the FCRA to regulate acceptance and utilization of foreign contribution or foreign hospitality by persons, which would in the present case include the appellants. Upon satisfaction that the predicates of sections 13 and 14 of the FCRA are fulfilled, the Central Government can stifle the acceptance and utilization of foreign contributions by individuals or

1 (2001) 4 SCC 290

associations like the appellants. However, at least *prima-facie*, by resort to the provisions of FCRA, the Central Government cannot stifle the very functioning and the activities of individuals or associations, provided, such activities and such functioning is not otherwise in breach of any legal provisions.

13] The direction under section 22 of the FCRA, if given effect to during pendency of the appeal, might enable the Charity Commissioner to dispose of all the assets of the appellants. Similarly, the direction to freeze all the bank accounts of the appellants, including in particular, non-FCRA Accounts, will render the very functioning and discharge of activities by the appellants, virtually impossible. The entire functioning and the activities of the appellants, which are otherwise not alleged to be in breach of any legal provisions will stand stifled, if, such directions are to operate during the pendency of the appeal. The appellants have not only made out a *prima facie* case, but also the balance of convenience is in favour of grant of limited interim reliefs to the appellants.

14] As noted earlier, at least *prima facie* , the parameters of section 22 of the FCRA are not attracted to the facts and circumstances of the present case. Similarly, the allegations are quite vague, when it comes to the charge of mixing of foreign contribution with local/domestic funds. The scope and amplitude of the precise powers of the Central Government under section 15 of the FCRA read with Rule 15 of the said Rules to deal with non-FCRA Accounts is required to be decided, at the stage of final hearing. Rule 15 of the said Rules simply states that the amount of foreign contributions lying unutilised in the exclusive foreign bank account of a person whose certificate of registration has been cancelled vest with the bank concerned till the Central Government issues further directions in the matter. This, at least, *prima facie* suggests that powers can be exercised in respect of foreign contributions lying unutilised in the exclusive FCRA Accounts. There is no allegation of siphoning of amounts from the FCRA Accounts after issue of show cause notice dated 31 May 2016. The allegations of mixing or flow from out of foreign contributions, as noted earlier, are quite vague and bereft of details or reasoning. The freeze order upon the FCRA Accounts/FCRA Utilization Accounts shall remain pending the appeal and the same is not liable to be disturbed

15] Therefore, upon cumulative consideration of the aforesaid, there shall be interim relief in terms of paragraph 15(b)(ii) of the civil application (this paragraph is transcribed in paragraph '3' of this order). However, the appellants shall maintain and file each quarter, account of the amounts utilized (spent) from the non-FCRA/Domestic Accounts referred to in paragraph 15(b)(ii).

16] Accordingly, Civil Application No. 137 of 2017 is disposed of in aforesaid terms.

17] Liberty to apply for final hearing, no sooner private paper book is filed by the parties.

(M. S. SONAK, J.)

dinesh

18] At this stage, Mr. Anil Singh, learned ASG for Union of India, applies for a stay upon the order just pronounced. He submits that the stay may be granted mainly in relation to utilization of the non-FCRA/Domestic Accounts referred to in paragraph 15 (b) (ii) of the civil application. Since, a direction has been issued to the appellants that they shall maintain and file each quarter, account of the amounts utilized (spent) from these accounts, there is no necessity to grant any further stay. The request is accordingly not accepted.

(M. S. SONAK, J.)

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