



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD) No. 12895 of 2017

S.Balasubramanian

: Petitioner

Vs.

1. The Joint Secretary,
Ministry of Home Affairs,
FCRA Department, NDCC II Building,
Jai Singh Road, Off Parliament Street,
Near Jantar Mantar, New Delhi-110001.

2. Mr.M.P.Vasimalai
Executive Director, DHAN Fountation,
1A, East Vaidhyanathapuram, Kennet Cross Road,
Mahaboobpalayam, Madurai 625 016.

3. Mr. B.T.Bangera
Chairperson , DHAN Fountation,
(Hi-tech Arai Ltd.) 33, Sarojini Street)
Chinna Chokkikulam, Madurai-625 002

4. Mr.R.D.Thulasiraj,
Treasurer, DHAN Fountation,
LAICO Building, 72, kuruvikkaran Salai,
Gandhi Nagar, Madurai-625 020.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondent 1 to consider the petitioner representation dated 23.03.2017 and accord sanction for criminal prosecution against the respondent 2 to 4, as per the provisions of Foreign Contribution Regulation Act, within the time frame fixed by this Court.

For Petitioner

: T.Aswin Rajasimman

For Respondents

: R.Murugappan

Senior Panel Counsel

**O R D E R**

This Writ Petition is filed for issuance of a Writ Mandamus, to direct the first respondent to consider the representation dated 23.03.2017 and accord sanction for criminal prosecution against the respondents 2 to 4, as per the provisions of Foreign Contribution Regulation Act.

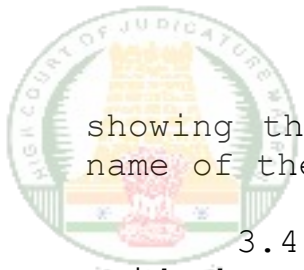
2. The learned Additional Government Pleader, takes notice for the respondents. By consent, the Writ Petition itself is taken up for final disposal.

3. The brief facts that are necessary for disposing of this Writ Petition are as follows:

3.1. The petitioner states that he was working as a Counsellor at Financial Literacy Centre at Poomalai Vaniga Valagam. Before this job, the petitioner states that he joined as Team Leader in one Trust, namely "Dhan Foundation" having office at Kennett Cross Street, Madurai. The petitioner claims that he was working in the said Trust for a period of 14 years and was promoted as Programme Leader. The petitioner further submitted that he resigned his job on 28.02.2017. According to the petitioner, Dhan Foundation, used to receive foreign contribution from foreign Government and from foreign Non-Government Organizations.

3.2. The petitioner submitted that he implemented a scheme of micro insurance for the benefit and protection of economically poor people, on behalf of Dhan Foundation. It is the further case that by foreign Governments and foreign Non-Government Organizations, the petitioner was engaged to perform research on the implementation of new insurance scheme in India. Though the office bearers of Dhan Foundation, assured the petitioner that they would pay the research fee to the petitioner apart from his salary, it is the case of the petitioner that the research fee, which was sanctioned to the petitioner was not paid.

3.3. The said Dhan Foundation entered into an agreement with a foreign company, M/s.German International Co-operation (GIZ), for a sum of Rs.2,73,400/- to conduct a research on the insurance on livestock risks. The said company has earmarked a sum of Rs.2,20,000/- towards research fee. The abstract of the contract indicates that for the petitioner there was a claim at the rate of Rs.10,000/- per day towards research fee and the entire sum of Rs.2,20,000/- was on account of the petitioner. The learned counsel for the petitioner in his affidavit filed in support of the petition refers to a subsequent agreement whereby, the petitioner is entitled to a professional fee of Rs.10,000/- per day for a period of 40 days. Sum and substance, the petitioner relied upon the xerox copy of the so called abstract,



showing that Dhan Foundation has claimed professional fee in the name of the petitioner.

3.4. Now the allegation is that the office bearers of the said Dhan Foundation has not settled the research fee, but harass the petitioner without any reasonable cause. Hence the petitioner has approached this Court for directing the first respondent to accord sanction for criminal prosecution against the respondents No.2 to 4, as per the provisions of Foreign Contribution Regulation Act.

4. The learned counsel for the petitioner also refers to Section 40 of the Foreign Contribution Regulation Act, 2010, which reads as follows:

"40.Bar on prosecution of offences under the Act.- No Court shall take cognizance of any offence under this Act, except with the previous sanction of the Central Government or any officer authorised by that Government in this behalf."

This clause contains provisions relating to bar on prosecution of offences under the proposed legislation. It provides that no court shall take cognizance of any offence under the proposed legislation, except with the previous sanction of the Central Government or any officer authorised by that Government in this behalf.

5. The learned counsel for the petitioner, though refers to Section 40, he is not in a position to refer any other provisions of the Act, under which the respondents 2 to 4 should be prosecuted under the provisions of the Act. The claim against the office bearers of the said Dhan Foundation, is based on some abstract without there being any contract between the petitioner and the said Dhan Foundation, so that this Court or any forum could fix or adjudicate the liability. The fact that Dhan Foundation had not settled some claim made by the petitioner is not a ground for initiating any proceedings against the respondents, who are individual office bearers of the company.

6. In the said circumstances, this Court is not inclined to entertain this Writ Petition. Hence this Writ Petition is dismissed with liberty to the petitioner to approach appropriate forum to establish his right to recover the amount, which he claims due from the company or its office bearers. No costs.

Sd/-

Assistant Registrar(Records)

/True copy/



To

The Joint Secretary,
Ministry of Home Affairs,
FCRA Department, NDCC II Building,
Jai Singh Road, Off Parliament Street,
Near Jantar Mantar, New Delhi-110001.

+1 cc to Mr.R.Murugappan , Advocate in SR.No. 65387
+1 cc to The Special Government Pleader in SR.No.65657

cmr/dss

AE/MR KKR/SAR3/28.07.2017/4P/4C

W.P. (MD) No. 12895 of 2017
13.07.2017