

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.11881 of 2004
and
W.M.P.No.19134 of 2017

A.Thiyaja

.. Petitioner

Vs

- 1.The Director (FCRA)
Monitoring Unit,
Ministry of Home Affairs,
Block No.3, GCO Road,
Lodhi Complex, New Delhi.
- 2.The Superintendent of Police,
Central Bureau of Investigation,
(SPE-ACB), Rajaji Bhavan,
Besant Nagar, Chennai.
- 3.Dohnavur Fellowship now
Rep. by R.David Rajamanian as
Secretary, Dohnavur, Nanguneri Taluk,
Tirunelveli District.
- 4.R.David Rajamanian,
Secretary, Dohnavur Fellowship,
Nanguneri Taluk, Tirunelveli District.
- 5.R.Ezekial Devairakkam सत्यमेव जयते
- 6.D.R.Jeremiah Rajanesan

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents 1 and 2 to complete the process of investigation carried on against the 3rd respondent on the basis of the representations dated 05.06.2003 followed by reminders dated 08.03.2004 and 26.03.2004 under Section 28 of the Foreign Contribution (Regulation) Act, 1976, to register the case against the respondents 3 to 6 and persons assisting those respondents and to take criminal and adjudicatory action for the

various offences and violations of Foreign Contribution (Regulation) Act, 1976 within a time frame fixed by this Court.

For Petitioner : Mr.N.S.Nandakumar
For R1 : Mr.G.Karthikeyan,
Assistant Solicitor General of India
For R2 : Mr.K.Srinivasan
Special Public Prosecutor (CBI)
For R3 to R6 : Mr.Ravikumar Paul
Senior Counsel

O R D E R

The prayer sought for herein is for a mandamus directing the respondents 1 and 2 to complete the process of investigation carried on against the 3rd respondent on the basis of the representations given by the petitioner dated 05.06.2003, followed by reminders dated 08.03.2004 and 26.03.2004 under Section 28 of the Foreign Contribution (Regulation) Act, 1976 to register the case against the respondents 3 to 6 and persons assisting those respondents and to take criminal and adjudicatory action for the various offences and violations of Foreign Contribution (Regulation) Act, 1976 within the time frame to be fixed by this Court.

The short facts which are required to be noticed for the disposal of this Writ Petition are as follows:

2(a).There had been a Society established in the name of "Dohnavur Fellowship" which was a Religious Charitable Society and the same was established by one Miss. Amy Wilson Carmichael, an Irish Missionary.

2(b).According to the constitution of the Fellowship, it is an association of men and women working for the benefit of people of India and such men and women are being members of Fellowship and not agents of the Fellowship. As per the founders of constitution, the Fellowship will be administered by (1) Senior Members (2) The Council and (3) The Leader. According to the petitioner, the Fellowship also was getting financial assistance or aid from Foreign Missionaries and in this regard, the Fellowship had to be registered under Foreign Contribution Regulation Act, Department of Ministry of Home Affairs. No such registration was made and the 4th respondent who became the Secretary of the Fellowship had thrown away the original Bye-law of the Society and had introduced a new Bye-law with the help of which he had misused the funds created by the Fellowship, without giving or rendering any account and without any valid approval from the authorities concerned. Therefore, in this

regard, the petitioner claimed to be the interested person, made a representation on 05.06.2003 to the Superintendent of Police, (CBI), Chennai to investigate the issue with regard to alleged violation of the Fellowship/Society under Foreign Contribution (Regulation) Act, 1976 (hereinafter referred to as 'the Act').

2(c). Since, no action was taken by the Superintendent of Police, (CBI) who is the 2nd respondent herein, the petitioner had moved this Writ Petition with the aforesaid prayer.

3. Mr. N. S. Nandakumar, learned counsel for the petitioner would submit that, though complaint was given by way of representation in the year 2003, the same had not been investigated by the 3rd respondent. Therefore, it was necessitated for the petitioner to approach this Court with the present Writ Petition. He would further submit that, there had been so much of violation of the provisions of the Act and the funds collected by the Fellowship/Society are being misused and apart from these irregularities, there had been committing of offences which are punishable under various provisions of Indian Penal Code and therefore, in order to have comprehensive investigation, the petitioner had given a representation to the 3rd respondent who is the elite investigation agency with specialized knowledge and work force and therefore, if the said agency investigate the issue, certain shocking revelation would come out and that is the reason, the petitioner had been fighting for all these years.

4. Per contra, Mr. Ravikumar Paul, learned Senior Counsel appearing for the private parties i.e., respondents 3 to 6 would submit that, the Society was formed or founded for a noble cause and in order to achieve the avowed object for which the Fellowship was formed, the respondents 3 to 6 and other interested persons had been working tirelessly and the Fellowship had been duly registered not only as a Society, but also as a NGO who is entitled to receive foreign aid under the provisions of the Act. सत्यमेव जयते

4(a). The learned Senior Counsel would further submit that, after having evaluated the functioning of the Society/Fellowship, the 1st respondent who is the authority under the Act to give such permission, had given such permission and time and again, the said permission by the said authority had been renewed. In this regard, the learned Senior Counsel would also submit that, the latest such renewal was issued by Government of India, Ministry of Home Affairs under Foreign Contribution (Regulation) Act, on 22.08.2016, by which, the approval of competent authority for renewal of registration under the Act i.e., Foreign Contribution (Regulation) Act, 2010 was given by way of renewal certificate for a period of 5 years

with effect from 01.11.2016.

4(b).The learned Senior Counsel would further submit that, that apart, in this regard, pursuant to the representations given by the petitioner dated 05.06.2003, the matter was referred to the 3rd respondent, who in turn had communicated stating that, the private respondents are private persons and they are not holding any public office and therefore, the jurisdiction of the 3rd respondent to enquire or investigate anything out of the representation given by the petitioner dated 05.06.2003 was not possible as they do not have the jurisdiction and accordingly, they had filed the report to that effect.

5.Apart from that, the 1st respondent also filed a counter affidavit before this Court, stating that, as per records available with the said respondent, it had been verified as to whether any violation was noticed in the functioning of the Society/Fellowship under the private respondents herein and it was specifically stated in the counter affidavit by the 1st respondent that, no such adverse action had been noticed. When that being the position, the learned Senior Counsel would submit that, the complaint given by the petitioner through the representation dated 05.06.2003 is a frivolous one and the same also has been enquired into by the authorities concerned and they had given a report to that effect.

6.The learned Senior Counsel appearing for the private parties would also submit that, in so far as the locus of the petitioner is concerned, he is neither member nor office bearer of the Fellowship/Society and he claim to be the employee of the District Court at Madurai and in what way, his connection with the Fellowship/Society has not been explained and if at all he projected any grievances in the interest of public, he should not have filed this Writ Petition as an adversary Writ Petition and therefore on that ground also the Writ Petition is liable to be rejected.

7.While so, the learned Assistant Solicitor General of India appearing for the 1st respondent would submit by relying upon the counter affidavit filed by the 1st respondent dated 17.04.2018 that, the book inspection of the Society i.e., 3rd respondent was conducted by respondent no.1 and during the course of book inspection, no apparent Foreign Contribution (Regulation) Act violation was noticed. In this regard, he relied upon the averments made in the counter affidavit filed by the 1st respondent which reads as follows:

"4. I submit that, the averment made in para no.14 is denied. The case files of the case are not traceable since they are very old. However, as

per records (noting portion of files) available with this Ministry, it is humbly submitted that book inspection of the society namely Dohnavur Fellowship (Respondent No.3) was conducted by the Respondent No.1 (Ministry of Home Affairs) from 26 July 2004 to 28 July 2004. During the course of book inspection no apparent FCRA violations were noticed (Annexure-I). Moreover, inspection of the said association was also conducted by District Registrar, Tirunelveli, Government of Tamil Nadu and no notable lapse of malpractices could be established (Annexure-II)."

7(a).He also relied upon paragraph No.10 of the counter affidavit which reads as follows:

"10. I submit that, field agencies had exercised its power under Rule-28 of FCRA 1976 (now repealed FCRA 2010) but allegations levelled against the functionaries of the association 'Dohnavur Fellowship' could not be corroborated during the enquiries. Moreover, before filing of W.P.No.11881 of 2004 by Shri A.Thiyaja, various writ petitions were filed against the association and they have been settled (Annexure R-III), which evidences that the petitioner and others from time to time tried to draw the attention of High Court of Madras in point out the irregularities existing in the NGO but court judgments have cleared the unfounded allegations of petitioner and others."

7(b).By relying upon these averments made in the counter affidavit filed by the 1st respondent, the Assistant Solicitor General of India would submit that, absolutely there had been no violation found in the functioning of the 3rd respondent Society/Fellowship. When that being the position, the question of taking any adverse action against the 3rd respondent Society does not arise.

8.Mr.K.Srinivasan, Special Public Prosecutor (CBI) appearing for the 2nd respondent would submit by relying upon the additional counter affidavit filed on behalf of the 2nd respondent dated 06.08.2018, that, the 2nd respondent had verified the complaint dated 05.06.2003 of the petitioner and it was found that the allegations pertain to private persons and there was no involvement of public servant in the said allegations. In this regard, the learned Special Public Prosecutor (CBI) appearing for 2nd respondent has relied upon the following averments in the additional counter affidavit filed by the 2nd respondent:

"4.It is submitted that CBI had verified the said complaint dated 05.06.2003 and found that the allegations pertain to private persons and there was no involvement of public servant in the said allegations. As such CBI/ACB/Chennai had no jurisdiction to take action on these allegations. Hence the complaint was referred to Shri.Rajan, Deputy Director, Intelligence Bureau, Government of India, Chennai on 05.09.2003 and the same was intimated to Shri.V.Ravindran, Director/FCRA/ Government of India, Ministry of Home Affairs, New Delhi vide letter dated 27.07.2004.

5.It is submitted that in the earlier counter it was mentioned that after completion of enquiry the entire file was sent to CBI directorate on 01.11.2004 for necessary action. It is clarified that the earlier version of the respondent that the complaint file was sent to CBI Directorate was not in connection with the present case."

8(a).In this regard, the learned Special Public Prosecutor (CBI) appearing for the 2nd respondent is also relying upon the two communications dated 05.09.2003 and 27.07.2004 which are reproduced herein:

"To
Shri Rajan
Deputy Director, Intelligence Bureau,
Government of India,
Chennai.

Sir,

Sub:Complaints against Dohnavur
Fellowship -Misutilisation Foreign
Funds and other illegal Activities - Reg.

We are in receipt of a few complaints alleging misutilisation of foreign funds and occurrence of illegal and immoral activities in the name of the above society.

We have ascertained from the FCRA Division of MHA, who informed that the above society is registered under FCRA to receive foreign contributions with effect from 03.04.1987. As this Branch does not have jurisdiction to look into the

above allegations, the complaints dated 05.06.2003 and 01.09.2003 are being forwarded herewith for appropriate action at your end.

Yours faithfully,
(C.D.TIRUMALA RAO)
SUPERINTENDENT OF POLICE
SPECIAL CBI/ACB/CHENNAI"

"To

Shri V.Ravindran
Director (FCRA),
Government of India,
Ministry of Home Affairs,
Lok Nayak Bhavan,
1st Floor, Khan Market, New Delhi - 110 003.

Sub:Complaint regarding misutilisation
of Foreign Funds - (Dohnavur Fellowship)

Sir,

Kindly refer your letter No.II/21022/52(501)/
2003-FCRA.II(MU) dated 21.07.2004 on the above
subject.

The subject was examined by this office. Since
this branch does not have any jurisdiction in the
matter, two complaints dated 05.06.2003 &
01.09.2003 received in this branch in this regard,
have been forwarded to Shri Rajan, Deputy
Director, Intelligence Bureau, Chennai for further
action at their end. As such, this branch has not
caused any enquiry into the matter.

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Yours faithfully,

(A.K.VISWANATHAN)

SUPERINTENDENT OF POLICE
CBI/ SPE/ACB/CHENNAI"

8(b).By relying upon these documents as well as the
averments made in the additional counter affidavit filed by the
2nd respondent, the learned Special Public Prosecutor (CBI) would
submit that, the issue raised by the petitioner through his
representation dated 05.06.2003 is no more the issue which comes
within the jurisdiction or purview of the 2nd respondent and

accordingly, there is no scope for any further investigation in this matter by the 2nd respondent.

9.I have considered the averments made in the pleadings as well as the submissions made by the learned respective counsel and also perused the materials placed before this Court.

10.The prayer sought for in this Writ Petition is for a mandamus directing the respondents 1 and 2 to enquire or investigate on the complaint given by the petitioner by way of representation dated 05.06.2003 against the respondents 3 to 6 and take criminal action against them under the provisions of the Act i.e., Foreign Contribution (Regulation) Act, 1976, especially under Section 28 of the Act.

11.The learned counsel for the petitioner during arguments has contended that, even though the 05.06.2003, representation of the petitioner has been considered by the 2nd respondent and has stated that it cannot be enquired into by the 2nd respondent for want of jurisdiction as the allegation made is only against the private persons and no one was the public servant and therefore, the 2nd respondent has not been entrusted to investigate anything on this issue. However, there had been allegations of not only the violation of the said act, but also some offences allegedly made by the private respondents which are triable and punishable in law, especially under Indian Penal Code and therefore, in that respect, investigation can be made by the regular investigation agency of the State Police.

12.Though such a plea has now been raised by the learned counsel for the petitioner, this Court is not impressed with the same, because, the prayer sought for herein is for a mandamus seeking direction to the respondents 1 and 2 to enquire on the complaint dated 05.06.2003 in the context of violation of Section 28 of the Act.

12(a).That aspect has been thoroughly verified by the 1st respondent and in this regard, they have filed a counter affidavit before this Court, stating that there had been no violation found on the part of the private respondents herein in functioning of the Society/Fellowship.

12(b).More over, it is pertinent to note that, every five years, the approval given by the 1st respondent to the Society has to be renewed. In this regard, a renewal application seems to have been filed by the private respondents on 14.03.2016. Having considered the same, the 1st respondent passed an order of renewal on 22.08.2016, wherein the 1st respondent has stated as follows:

"Subject: Renewal of Registration under

Foreign Contribution (Regulation) Act,
Sir/Madam,

With reference to your application dated 14.03.2016 seeking renewal of registration under the Foreign Contribution (Regulation) Act, 2010, I am directed to convey the approval of competent authority for renewal of registration of your Association in terms of the provisions contained in Section 16 of Foreign Contribution (Regulation) Act, 2010 read with Rule 12 of Foreign Contribution (Regulation) Rules, 2011 as amended from time to time, as follows:

Registration Number 076030011
Nature: Religious, Educational, Social"

"8.This renewed certificate is valid for a period of five years with effect from 01.11.2016."

13.On a reading of the aforesaid renewal order passed by the 1st respondent, it became abundantly clear that the 1st respondent who is the authority to give renewal under the said Act, i.e., Foreign Contribution (Regulation) Act, 2010, had given the renewal of approval/license for a further period of five years with effect from 01.11.2016. Before giving such renewal, the 1st respondent had thoroughly verified the performance of the Society/Fellowship and thereafter only, such a renewal was issued. Therefore, from the said document, one can easily infer that the authority has not found anything adverse against the private respondents and that is the reason why they have given the latest renewal of the permission/approval for a further period of five years.

14.So, all these documents would coherently and conjointly go to show that, all these stake holders/authorities have gone into the affairs of the Society/Fellowship and they found nothing adverse or anything illegal or in violation of any law much less the Foreign Contribution (Regulation) Act, 1976. When that being the position, the petitioner cannot even now insist upon this Court to still give certain direction to the respondents to probe into or investigate into or enquire into subsequent allegations.

15.It is to be noted that the petitioner cannot seek extension of the mandamus sought for herein as continuing mandamus for giving direction by this Court after several years to the authorities to have a continuous investigation or enquiry into the allegations to be made either by the petitioner or any other person against the Society/Fellowship.

16. In so far as the plea raised by the petitioner in this Writ Petition that his complaint dated 05.06.2003 has to be enquired into by the respondents 1 and 2, this Court feels that the said request has been accomplished. Both the respondents have responded to the said representation given by the petitioner and after having investigated, the 1st respondent has filed counter affidavit with the documents and 2nd respondent has filed a statement before this Court, that it does not come within their jurisdiction.

17. In this regard, if at all the petitioner has got any further grievances or still the petitioner has grievances, it is open to him to agitate the matter in the manner known to law. More over, since the learned Senior Counsel for the private parties raised the issue that the petitioner has no locus to file the Writ Petition like the one which is on hand, as he has not given anything, what so ever in any capacity with the private respondents/Society/Fellowship. The petitioner shall establish the said locus also in future endeavors like the one of the present Writ Petition.

18. If at all the petitioner has got any grievances in the public interest, he shall make endeavors to re-address the same in the manner known to law and not by way of adversary Writ Petition like the one which is presently dealt with by this Court.

19. Therefore, for all these reasons discussed above, this Court is of the considered view that the Writ Petition does not deserve any further consideration for adjudication and no relief can be given to the petitioner as the only relief sought for by the petitioner has already been accomplished in the eye of law.

20. In the result, the Writ Petition is dismissed as no further order is required to be passed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsa

To

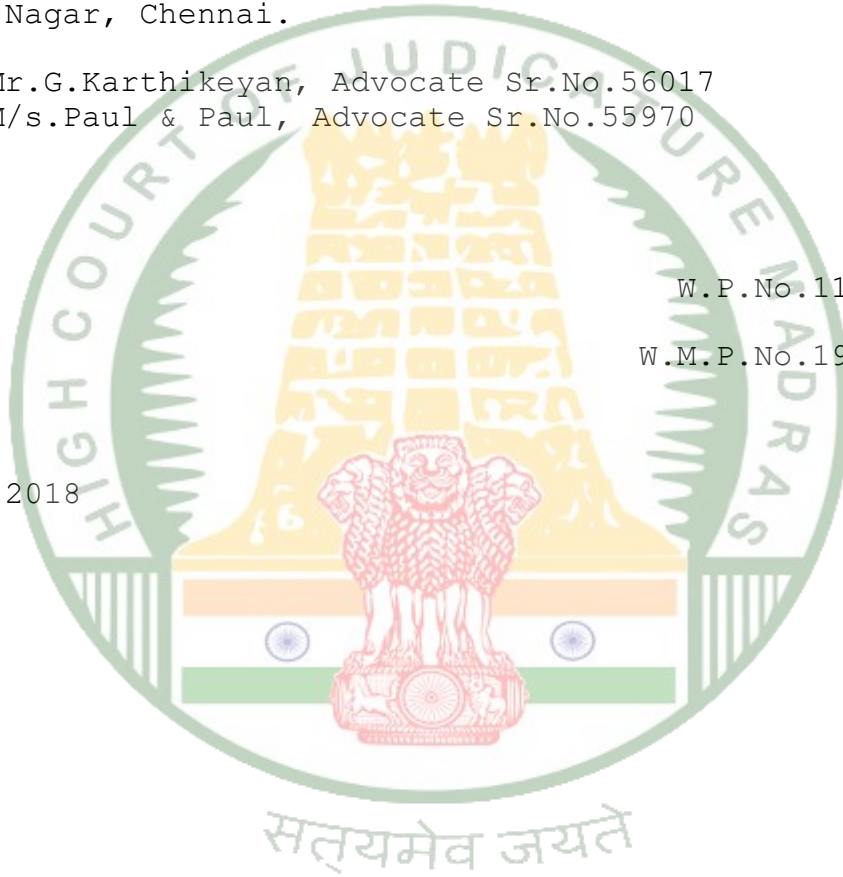
1.The Director (FCRA)
Monitoring Unit,
Ministry of Home Affairs,
Block No.3, GCO Road,
Lodhi Complex, New Delhi.

2.The Superintendent of Police,
Central Bureau of Investigation,
(SPE-ACB), Rajaji Bhavan,
Besant Nagar, Chennai.

+1 cc to Mr.G.Karthikeyan, Advocate Sr.No.56017
+1 cc to M/s.Paul & Paul, Advocate Sr.No.55970

W.P.No.11881 of 2004
and
W.M.P.No.19134 of 2017

RV (CO)
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