IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Writ Appeal No. 828 of 2020
C.M.P. Nos. 10324 & 10325/2020

Shekina Prophetic Mission Trust
rep. by its Managing Trustee Rev.Fr.Prabhudas
Sirumugal Road
Senthil Nagar 1st Street
Annur, Coimbatore - 641 653 .. Appellant

Versus

The Secretary to Government of India
Ministry of Home Affairs
Foreigners Division
1st Floor, Mayor Dhyan Chand National Stadium
India Gate Circle
New Delhi - 110 001 .. Respondent

Prayer: Appeal filed under Clause 15 of Letters Patent against the Order dated 07.08.2020 passed in WP No. 10545 of 2020 on the file of this Court.

W.P. No. 10545/2020:
Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to Call for the entire records of impugned order dated 11.02.2020 vide No.11/21022/58(34)/2020-FCRA(MU) by the respondent and quash the same and consequently direct the respondent to grant permission to the petitioner trust to continue and to accept foreign contribution for Economic Education Social and Religious Programme.

For appellant : Mr. Ravi Kumar Paul, Senior Advocate for M/s. Paul and Paul and J. Hudson Samuel & Partners

For respondents : Mr. A. Kumaraguru

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

This appeal is filed as against the order dated 07.08.2020 passed by the learned single Judge in WP No. 10545 of 2020 filed by the appellant herein.

2. The appellant herein has filed the Writ Petition before the learned single Judge to quash the order dated 11.02.2020 passed by the respondent and consequently to direct the respondent to grant permission to the petitioner trust to continue and to accept foreign contribution for Economic, Education, Social and Religious Programme.

3. According to the appellant, they are a public charitable religious trust functioning under the name and style of Shekhina Prophetic Mission Trust. It is stated that the appellant is a registered trust having Registration No. 428 of 2004 and it is functioning with the object of establishing old age homes, providing worship service, educating the poor and needy etc., According to the appellant, they have obtained a Certificate of Registration under Section 12AA of The Income Tax Act on 14.10.2005 and are complying with the Income Tax Rules and Regulations by filing periodical returns. It is also stated that the accounts of the appellant trust is being audited periodically. Further, on 08.07.2011, the appellant has obtained a Certificate of Registration as required under Section 12 of the Foreigner Contribution (Regulation) Act, 2010, after due enquiry by the respondent. Even as on 27.11.2019, the appellant has filed the annual returns in Form FC-4 for the assessment year 2018-2019 in compliance with the Foreigner Contribution (Regulation) Act. While so, the respondent passed the order dated 11.02.2020 under Section 13 of the Foreigner Contribution (Regulation) Act suspending the registration granted to the appellant under Section 12 of the said Act for a period of 180 days on untenable grounds. Challenging the order dated 11.02.2020, the appellant has filed the writ petition before the learned single Judge.

4. The learned single Judge, on consideration of the fact that the order of suspension, which was impugned in the writ petition, itself is going to expire, disposed of the writ petition with the following direction namely:-

> "4. It is vehemently contended by the learned counsel for the petitioner that the very suspension order impugned in this writ petition was issued without issuing any show cause notice. She further contended that the allegation made in the suspension order is also factually incorrect.

5. On the other hand, the learned counsel appearing for the respondent pointed out that the suspension order was issued only for a period of 180 days from 11th February 2020 which is also going to expiry on 9th August 2020 (day after tomorrow). Therefore, he submitted that the matter will become infructuous on 09.08.2020 and thus, it is going to be futile exercise for entertaining and hearing the writ petition.

6. Without going into the merits of the contentions raised by the learned counsel for the petitioner, I find force in the contention made by the learned counsel for the respondent that when the impugned order was issued on 11.02.2020 for a period of 180 days with effect from the date of the said order and such period is going to expire on 09.08.2020 (day after tomorrow), act of the petitioner in filing the present writ petition on 06.08.2020 and seeking indulgence of this Court, is simply a futile exercise.

7. Accordingly, the writ petition is disposed of, without expressing any view on the merits of the claim made by the petitioner, however by granting liberty to the petitioner to work out the remedy, if any action is taken under Section 14. No costs. The connected miscellaneous petitions are closed."

5. It is this order dated 07.08.2020 of the learned single Judge, which is challenged in this writ appeal.

6. Mr. Ravi Paul, learned Senior counsel for the appellant would vehemently contend the learned single Judge did not go into the merits of the case pleaded by the appellant but disposed of the writ petition only on the ground that the order of suspension will remain in force only for 180 days and it expires on 09.08.2020. The learned single Judge did not consider the fact that the order dated 11.02.2020, which was impugned in the writ petition, was passed without any show cause notice and it was contrary to the Foreign Exchange Regulation Act and in violation of principles of natural justice. In this context, the learned Senior counsel placed reliance on the decision of the Delhi High Court in the case of Indian Social Action Forum vs. Union of India reported in 2013 SCC Online Delhi 3743 and contended that the order of suspension of registration passed by the respondent is contrary to Section 14 of the Foreign Exchange Regulation Act and it is not legally sustainable. Above all, it was contended by the learned Senior counsel for the appellant that even though the order dated 11.02.2020, which was impugned before the learned single Judge, expired on 09.08.2020, even as on date, the respondent is not

permitting the appellant to operate the Bank account maintained with South Indian Bank, Coimbatore. Therefore, the learned Senior counsel for the appellant prayed for allowing this appeal.

7. On the above contentions raised by the learned Senior counsel for the appellant, we have heard the learned counsel for the respondent. Admittedly, the order dated 11.02.2020, which was impugned before the learned Single Judge, expired on 09.08.2020. This was also taken note of by the learned single Judge and disposed of the writ petition giving liberty to the appellant to work out their remedy, in the event of any action taken by the respondent under Section 14 of The Foreign Exchange Regulation Act. As on the date of filing the present appeal, the order dated 11.02.2020 passed by the respondent, which was impugned before the learned single Judge, expired. Thereafter, there is no proceeding initiated against the appellant by the respondent. Therefore, as on date, there is no impediment or embargo for the respondent to continue their Trust activities, including operating their bank account. In such circumstances, we see no reason to delve any further into the merits of the case pleaded by the appellant.

8. Accordingly, we dispose of the writ appeal filed by the appellant. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Secretary to Government of India
Ministry of Home Affairs
Foreigners Division
1st Floor, Mayor Dhyan Chand National Stadium
India Gate Circle
New Delhi - 110 001

+1 CC to M/s. Paul & Paul, Advocate sr 42379.

WA No. 828 of 2020

SSV(CO)
SP(23/02/2021)