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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 11th May, 2023

+ W.P.(C) 948/2022 and CM APPL. 2724/2022, 24305/2023

HELPING HANDS JAIPUR SOCIETY Petitioner

Through: Mr. Ruchesh Sinha and Ms. Vaishali
Advocates.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Ruchir Mishra, Mr. Sanjiv Kr.
Saxena, Mr. Mukesh Kr. Tiwari, Ms.
Poonam Shukla & Ms. Reba Jena
Mishra, Advocates. (M:836-
8422800)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

W.P.(C) 948/2022 and CM APPL. 2724/2022 (interim stay), 24305/2023
(condonation of delay)

1. This hearing has been done through hybrid mode.
2. The Petitioner-M/s. Helping Hands Jaipur Society is an NGO operating in Jaipur, Rajasthan. It obtained its Foreign Contribution Regulation Act, 2010 (*hereinafter*, 'FCRA') registration in terms of Section 11 and 12 of the FCRA on 15th May 2011.
3. The Petitioner had applied for renewal of the FCRA registration on 2nd February 2016 under Section 16 of the FCRA, and the same was renewed by Respondent No. 2- Ministry of Home Affairs (*hereinafter*, MHA) on 15th October 2016.

4. The Foreign Contribution (Regulation) Amendment Act, 2020 (*'the Amendment Act'*), which amended the FCRA, was introduced in September, 2020. The said Amendment Act vide Section 17(1) of the FCRA mandated the opening of an "FCRA bank account" with the State Bank of India ('SBI') branch at SBI Sansad Marg, Parliament Street, New Delhi. The amended Section 17(1) of the FCRA, is as follows:

"17. Foreign contribution through scheduled bank.—

(1) Every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as "FCRA Account" by the bank, which shall be opened by him for the purpose of remittances of foreign contribution in such branch of the State Bank of India at New Delhi, as the Central Government may, by notification, specify in this behalf:

Provided that such person may also open another "FCRA Account" in any of the scheduled bank of his choice for the purpose of keeping or utilising the foreign contribution which has been received from his "FCRA Account" in the specified branch of State Bank of India at New Delhi:

Provided further that such person may also open one or more accounts in one or more scheduled banks of his choice to which he may transfer for utilising any foreign contribution received by him in his "FCRA Account" in the specified branch of the State Bank of India at New Delhi or kept by him in another "FCRA Account" in a scheduled bank of his choice:

Provided also that no funds other than foreign contribution shall be received or deposited in any such account.

5. In the present petition, the Petitioner faced difficulties in uploading the FCRA annual return under Form FC-4 under Rule 17 of the Foreign Contribution (Regulation) Rules, 2011 for F.Y 2019-2020, due to the fact

that the bank account details were being sought *as of 31st March, 2020*. It is also submitted that the Petitioner opened the designated FCRA bank account with the SBI only on 4th October 2021. The prayer in this writ petition is, thus, as under:

“a) Pass any writ, order or direction in the nature of mandamus directing the Respondent to allow the Petitioner to file and upload the Form FC-4 on the Respondent's portal for the Financial Year 2019-20 beyond the schedule date of 30th June 2021, without the levy and payment of any penalty amount.

b) Pass any writ, order or direction thereby directing the Respondents to, not to, resort to any adverse measures in the present case, as stipulated in section 13 or section 14 of the FCRA Act or any other similar sections which may be attracted, due to non-filing of the FC-4 return for the F.Y. 2019-20 in the case of the Petitioner.

c) Pass any other order/ directions in. the interests of justice as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

6. Vide order dated 17th January, 2022, the Petitioner was asked to file an affidavit giving the steps that were taken by it for opening of the bank account. The said order is as follows:

“In substance, the submission of Mr. Ruchesh Sinha, learned counsel appearing for the petitioner is, the petitioner could not upload the FC-4 Form on the respondent's portal within the scheduled time period of June 30, 2021 as there was delay in opening the designated account in the main Branch of the State Bank of India, 11, Sansad Marg, New Delhi – 110001. On a specific query to the learned counsel for the petitioner what steps, were taken by the petitioner to open the account, when the concerned amendment was notified on October 7, 2020, the

learned counsel for the petitioner seeks some time to take instructions and file relevant documents along with an affidavit”.

7. Thereafter, vide order dated 1st February, 2023, it was observed as under:

“2. The issue in this case is in respect of the returns of the Petitioner for the year 2019-20 which have to be filed in Form FC-4 on the Respondent’s portal. The present case would be covered by the order dated 16th January, 2023 passed by this Court in **W.P.(C) 11360/2021** titled **WNS Cares Foundation & Anr., v. Union of India**.

3. Ld. Counsel for the Respondent shall examine the said order and revert with the instructions, inasmuch as on 31st March, 2020, the SBI account, Sansad Marg, New Delhi could not have been opened due to the fact that the amendment in the Act came only in September, 2020.

4. Insofar as the delay by the Petitioner in opening the bank account in SBI, Sansad Marg, New Delhi between July and October, 2020 is concerned, the penalty would be payable by the Petitioner.

5. Let. Ld. Counsel for the Respondent seek instructions in the matter.

6. List on 3rd March, 2023 at top of Board.”

8. On 3rd March, 2023, the Court was informed that the penalty amount was deposited by the Petitioner to the tune of Rs. 5,18,062/- on 28th October 2022.

9. The FCRA annual return under Form FC-4 for the F.Y 2019-2020 has also now been uploaded after paying the penalty.

10. Admittedly, in the present case, the FCRA account in the SBI was opened by the Petitioner only on 4th October, 2021, which was much beyond the deadline fixed initially i.e. 31st March 2021, and even after the

expiry of the extended period till 30th June 2021 vide notification dated 18th May 2021.

11. Keeping in mind that the Petitioner has now opened the said FCRA bank account in SBI Sansad Marg Branch, Parliament Street-New Delhi, and has deposited the penalty and also uploaded the annual return for the F.Y 2019-2020, the relief sought for in this petition has become infructuous.

12. Moreover, none of the cases which have been decided by this Court including *WNS Cares Foundation v. Union of India (2023:DHC:000391)* and *Shree Swaminarayan Mandir v. Union of India (2023:DHC:2678)* would be applicable in the facts of the present case.

13. In *Shree Swaminarayan (supra)*, the Petitioners sought directions to the Respondents to allow the Petitioners to fill and upload Form FC-4 for annual returns for the F.Y 2010-20 on the MHA portal. The Petitioners opened their respective FCRA bank accounts with the SBI in the month of March 2021. The issue involved therein was whether FCRA bank accounts in SBI could have been sought for as of 31st March 2020, when the Amendment Act itself came into effect later i.e., in September 2020. This Court held as under:

“9. The Court has heard the ld. Counsels for the parties. The short issue is whether the SBI bank account could have been sought for as of 31st March 2020, when the amendment itself came into effect later i.e., in September 2020. It is noticed that the issues raised in this writ petitions are no longer res integra and have already been considered by this Court in various other cases including WNS Cares Foundation and Anr. v. Union of India, W.P.(C) 11360/2021 as also in Helping Hands Jaipur Society v. Union of India and Ors., W.P.(C) 948/2022.

11. In view of the reasoning given in the said order in WNS Cares Foundation (Supra), the Petitioners also having already opened their bank accounts with SBI Sansad Marg Branch, the Petitioners are permitted to upload their annual returns for the year 2019-2020 by specifying the SBI account number of the account which was subsequently opened by them.

12. If the said annual returns are uploaded within one month from today, no penalty shall be charged qua the Petitioners.”

The observation in ***Shree Swaminaryan Mandir (supra)*** in paragraph 9 was regarding the interim order which was passed by this Court in the present case and not the final order. The facts in the present case are also distinguishable. In the present case, the said FCRA bank account was opened in October 2021, whereas in ***Shree Swaminaryan Mandir (supra)***, the FCRA bank accounts were opened in March 2021, which was well within the extended deadline of June 2021.

14. In ***WNS Cares Foundation (supra)***, the Petitioners’ case was that in March, 2021, while submitting the returns for the FY 2019-20, they were confronted with an issue, inasmuch as the said Form FC-4 required a FCRA account as on 31st March of the end of financial year. Further, therein the Petitioner had not received any foreign contribution under the FCRA for the period of 2019-2020 and 2020-2021. Therefore, this case is also clearly distinguishable from the present case. Thus, Court had held as follows:

“11. The language used in the said form is that the receipt of foreign contribution “as on 31st March of the year ending” has to be provided and the bank account has to be in the SBI, Sansad Marg branch. Since the Petitioner No.1 opened its account in August, 2021 and in any case, as on 31st March, 2020, the

Foreign Contribution Regulation (Amendment) Act, 2020, had not come into effect, there appears to be some justification in the Petitioners' case.

12. The Petitioner No.1 having opened its FCRA account in August, 2021 is, accordingly, permitted to fill up the said details of its FCRA account in serial no.7 of the Form FC – 4 and submit the same.

13. No coercive steps shall be taken against the Petitioners for having opened the FCRA account belatedly, inasmuch as it is the case of the Petitioners is that no foreign contribution has been received by them in the FY 2019-2020 and FY 2020-21.

14. No penalty shall be imposed upon the Petitioners if the returns for FY 2019-2020 and FY 2020-21 are filed within a period of one month. No further orders are called for by filling in the details of the bank account opened in August 2021, in SBI, Sansad Marg branch."

15. In the facts of the present case, there was a delay in the opening of the said FCRA bank account and the delay has not been convincingly explained by the Petitioner. Further, the penalty amount has been deposited with Respondent No. 1-MHA, therefore the prayer for refund is not tenable and is accordingly rejected.

16. However, it is made clear that FCRA FC-4 annual return for the F.Y 2019-2020 which has been uploaded, shall be taken as valid without any payment of further penalties by the Petitioner.

17. The present petition, along with all pending applications, is disposed of.

**PRATHIBA M. SINGH
JUDGE**

MAY 11, 2023

dj/dn