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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 22nd AUGUST, 2023

IN THE MATTER OF:

\+ **W.P.(C) 8889/2023, CM APPL. 33600/2023**

KHOJA SHIA ISNA ASHARI MEDICAL AID AND WELFARE SOCIETY ..... Petitioner

Through: Mr. D. K. Sharma, Mr. Vishal Tyagi, Ms. Vandana Sharma, Advocates

versus

UNION OF INDIA ..... Respondent

Through: Ms. Arunima Dwivedi, CGSC with Mr.Rahul Sharma, GP, Ms. Pinky Pawar, Mr. Aakash Pathak, Advocates for UOI

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. *Vide* the present Writ Petition the Petitioner seeks to challenge the communication dated 24.05.2023 issued by the Respondent herein directing the Petitioner to submit its returns under the Foreign Contribution (Regulation) Act, 1976 (*hereinafter referred to as 'the FCRA Act'*) online with penalty.

2. The facts, in brief, leading to the present Writ Petition are that the Petitioner is a Society registered with the Government of India the FCRA Act. Section 18 of the FCRA Act mandates that every person who has been granted a certificate or given prior approval under the FCRA Act shall give

an intimation to the Central Government as to the amount of each foreign contribution received by it, the source from which the contribution is received and the manner in which such foreign contribution was received, and the purposes for which, and the manner in which such foreign contribution was utilised by him. Rule 17 of the Foreign Contribution (Regulation) Rules, 2011 (*hereinafter referred to as 'the FCRA Rules'*) postulates that every person who received foreign contribution under the FCRA Act has to submit a signed or digitally signed report in Form FC-4 with scanned copies of income and expenditure statement, receipt and payment account and balance sheet for every financial year beginning on the 1st day of April within nine months of the closure of the financial year.

3. It is stated by the Petitioner that the Petitioner tried to upload its returns online for the year 2019-20 but was not successful. It is stated that the Petitioner has written several e-mails stating the difficulties faced by it to file its return. It is pertinent to mention that failure to upload returns can lead to cancellation of registration of the entity. It is stated that the Petitioner received the impugned e-mail which stated that the Petitioner is liable to pay a penalty for non-filing of returns for the year 2019-20, 2020-21 which has been calculated at Rs.1,00,000/- or 5% of the foreign contribution received by entity during the period of statement, whichever is higher. Material on record shows that the penalty for the year 2019-20 comes to Rs.11,36,412/- and for the year 2020-21 it comes to Rs.15,87,841/-. It is stated that the Petitioner filed an appeal to the Secretary, Government of India stating that it was unable to file the returns under the FCRA for the year 2019-20 & 2020-21 on time because of the technical issues faced by it on the online portal. In the appeal the Petitioner prayed for waiver of penalty imposed on

him for non-filing of the FCRA returns because of technical issues. It is also stated in the appeal that the Petitioner has been able to upload its returns for the year 2021-22 as the glitch was rectified but it was not able to file its returns for the year 2019-20, 2020-21 because of the technical glitch on the portal of the regulator.

4. The appeal filed by the Petitioner has been disposed of by the communication impugned herein directing the Petitioner to furnish its returns online with penalty as there was no issue on the portal of the Respondent.

5. The Petitioner has approached this Court by filing the present Writ Petition praying for a direction to the Respondent to quash the letter dated 24.05.2023 and to waive off the penalty levied by it on the Petitioner for delay in filing the annual FCRA returns for the financial year 2019-20 & 2020-21.

6. It is stated by the learned Counsel for the Petitioner that despite many efforts, returns could not be filed online because of the glitches in the online portal and that the Petitioner has been diligent and has made several efforts to file the annual FCRA returns for the financial year 2019-20 & 2020-21 but was not able to file the same because of a technical glitch on the portal. He states that the delay on the part of the Petitioner in filing the returns is not wanton or deliberate and, therefore, the penalty imposed on the Petitioner ought to be waived off.

7. Per contra, learned Counsel for the Respondent contends that this Court ought not interfere in this case under Article 226 of the Constitution of India as there was no glitch in the portal of the Respondent.

8. Heard the Counsels and perused the material on record.

9. Section 18 of the FCRA Act which mandates furnishing of intimation reads as under:

> "***18***. *Intimation.*
> *(1) Every person who has been granted a certificate or given prior approval under this Act shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government, and such other authority as may be specified by the Central Government, as to the amount of each foreign contribution received by it, the source from which and the manner in which such foreign contribution was received, and the purposes for which, and the manner in which such foreign contribution was utilised by him.*
>
> *(2) Every person receiving foreign contribution shall submit a copy of a statement indicating therein the particulars of foreign contribution received duly certified by officer of the bank or authorised person in foreign exchange and furnish the same to the Central Government along with the intimation under sub-section (1).*"

10. The manner of giving information is given in Rule 17 of the FCRA Rules and the same reads as under:

> "*17. Intimation of foreign contribution by the recipient.— 56[(1) Every person who receives foreign contribution under the Act shall submit a signed or digitally signed report 57[in electronic form] in Form FC-4 with scanned copies of income and expenditure statement, receipt and payment account and balance sheet for every financial year beginning on the 1st day of April within nine months of the closure of the financial year.]*
>
> *(2) The annual return in Form 58[FC-4] shall reflect the foreign contribution received in the exclusive bank*

account and include the details in respect of the funds transferred to other bank accounts for utilisation.

(3) If the foreign contribution relates only to articles, the intimation shall be submitted in Form 59[FC-1].

(4) If the foreign contribution relates to foreign securities, the intimation shall be submitted in Form 60[FC-1],

(5) Every report submitted under sub-rules (2) to (4) shall be duly certified by a chartered accountant

(6) Every such return in Form 61[FC-4] shall also be accompanied by a copy of a; statement of account from the bank where the exclusive foreign contribution account is maintained by the person, duly certified by an officer of such bank.

(7) The accounting statements referred to above in the preceding sub-rule shall be preserved by the person for a period of six years.

(8) A 'NIL' report shall be furnished even if no. foreign contribution is received during a financial year:

62[Provided that where foreign contribution has not been received or utilised during a financial year, it shall not be required to enclose certificate from Chartered Accountant or income and expenditure statement or receipt and payment account or balance sheet with Form FC-4.]"

11. There is nothing on record to show that there was any glitch on the portal of the FCRA. It has been stated by the learned Counsel for the Respondent that during the relevant point of time, intimations under Section 18 have been received by other entities.

12. In view of the fact that there is nothing to show that there was a glitch on the portal of the Respondent, this Court is not inclined to accept the ipse dixit of the Petitioner that it was not able to upload its returns on the portal because of technical glitch. No provision has been shown by the Petitioner in the FCRA Act or in any other statute which gives power to the Respondent to waive off the penalty.

13. Accordingly, the Writ Petition is dismissed. Pending applications, if any, also stands dismissed.

SUBRAMONIUM PRASAD, J

AUGUST 22, 2023
Rahul