$~37, 38 & 39

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

Date of Decision: 18th April, 2023

\+ **W.P.(C) 8442/2021 and CM APPL. 26155/2021**

SHREE SWAMINARAYAN MANDIR ..... Petitioner

Through: Mr. Ruchesh Sinha, Advocate (M: 9650569767).

versus

UNION OF INDIA ..... Respondent

Through: Mr. Ajay Digpaul CGSC with Mr. Kamal Digpaul and Ms. Swati Kwatra, Advocates for UOI (M: 9811157265).

38 WITH

\+ **W.P.(C) 9118/2021 and CM APPL. 28372/2021**

KUTCH NAV NIRMAN ABHIYAN ..... Petitioner

Through: Mr. Ruchesh Sinha, Advocate (M: 9650569767).

versus

UNION OF INDIA ..... Respondent

Through: Mr. Ajay Digpaul CGSC with Mr. Kamal Digpaul and Ms. Swati Kwatra, Advocates for UOI (M: 9811157265).

39 WITH

\+ **W.P.(C) 9564/2021 and CM APPL. 29593/2021**

SHRI SWAMINARAYAN DWISHATABDI MEDICAL AND CHARITABLE TRUST ..... Petitioner

Through: Mr. Ruchesh Sinha, Advocate (M: 9650569767).

versus

UNION OF INDIA ..... Respondent

Through: Mr. Ajay Digpaul CGSC with Mr. Kamal Digpaul and Ms. Swati Kwatra, Advocates for UOI (M:

9811157265).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petitions have been filed by Shree Swaminarayan Mandir, Kutch Nav Nirman Abhiyan and Shri Swaminarayan Dwishatabdi Medical & Charitable Trust seeking directions to the Respondent – Ministry of Home Affairs, Union of India to allow the Petitioners to fill and upload Form FC-4 on the Respondent's portal in order to enable them to file the annual returns for the financial year 2019-2020.

3. The Foreign Contribution Regulation Act, 2010 (FCRA) was amended by the Foreign Contribution Regulation (Amendment) Act, 2020, under which substantial changes were brought. The same was notified with effect from 29th September, 2020. Section 17(1) of the FCRA was amended to provide as follows:

> *"17. (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."*

4. Pursuant to the said amendment of the FCRA, notification was issued by the Respondent on 7th October, 2020 specifying that the State Bank of India (SBI), New Delhi Main Branch, 11, Sansad Marg, would be the branch for opening of FCRA account as per amended Section 17 of the FCRA. Correspondingly, on November 10, 2020, the FCRA Rules were also

amended vide Foreign Contribution (Regulation) (Amendment) Rules, 2020 such that the Form FC-4 (Annual Returns) reflected the amended Section 17. The said FCRA account was to be opened at the latest by March 31, 2021 which was extended till 30th June, 2021 by way of a notification dated 18th May, 2021.

5. The case of the Petitioners is that the SBI accounts with the SBI, Sansad Marg Branch were opened by them on the following dates:

(i) Shri. Shree Swaminarayan Mandir - 16th March, 2021

(ii) Kutch Nav Nirman Abhiyan - 23rd March, 2021

(iii) Shri Swaminarayan Dwishatabdi Medical and Charitable Trust - 25th March, 2021

However, in view of the fact that the annual returns for the years 2019-2020 were to be uploaded in Form FC-4 for which SBI account as of 31st March, 2020 was needed, the details of the SBI bank account could not be given. The submissions of the Petitioners is that the FCRA amendment itself came into effect in September, 2020 and six months extension was also given for the purposes of opening the bank accounts in SBI. Thus, the SBI account opened later could not be filled by them *`as of 31st March 2020'*, which was the requirement as per the Portal.

6. Thus, the Form FC-4 had a technical deficiency as it was asking for the account number in SBI prior to the introduction of the amendment itself.

7. In the present petition, vide order dated 16th August, 2021, notice was issued in this matter and a direction was given to the Respondent that no coercive action shall be taken against the Petitioner for non-filing of the returns.

8. Since then, a short affidavit has been filed by the Respondent. As per

the Respondent, the FCRA amendment required all organisations which were receiving foreign exchange to comply with the same. Pursuant thereto, in terms of the affidavit 826 NGOs of Gujarat have already filed their returns for 2019-2020 within the prescribed period. From all across the country, 14,775 NGOs have filed their annual returns for the said year. Therefore, according to the Respondents, there was no glitch or error in the Form FC-4 thus the writ petitions are not maintainable.

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***.

10. In ***WNS Cares Foundation (Supra)***, this Court has observed as under:

> *10. A perusal of the record shows that the notice was issued in the writ petition and directions to file the counter affidavit was issued by this Court vide order dated 5th October, 2021 and more than one and a half years have passed since then. The issue is very narrow in nature and relates to the Form FC - 4, which is to be filed by the Petitioners. A perusal of the said form at serial no.7 requires FCRA account to be filled up in the following terms.*
>
> > *"7. (a) Details of "FCRA Account" for receipt of foreign contribution (**As on 31st March of the year ending**):*

Name of the Bank	*Branch address (with PIN code)*	*Phone number*	*e-mail*	*IFSC Code*	*Account Number*	*Date of account opening*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*
State Bank of India	*New Delhi Main Branch 11, Sansad Marg, New Delhi-111001.*			*SBIN0000691*		

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.*

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.

13. The petitions are disposed of in these terms. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 18, 2023
mr/kt