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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 16th January, 2023

+ **W.P.(C) 11360/2021 & CM APPL.35003/2021**

WNS CARES FOUNDATION & ANR. ..... Petitioners

Through: Mr. Aditya Jalan, Ms. Soyabani Basu, Ms. Aditi Bhansali and Ms. Shreya Choudhary, Advs. (M:7066659650).

versus

UNION OF INDIA ..... Respondent

Through: Mr. Arnav Kumar, (CGSC) with Mr. Harshil Manchanda & Mr. Gurudas Khurana, Advocates (M:7206023456).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioners seeking directions to the Respondent - Union of India, Ministry of Home Affairs to amend Form FC-4 so as to enable the Petitioners to file annual returns for FY 2019 – 2020 and FY 2020 – 2021 without providing details of the FCRA Account, SBI Main Branch, New Delhi as also to extend the last date for filing annual returns for FY 2019 – 2020 and FY 2020-21.

3. The Petitioner No.1 - WNS Cares Foundation, is a non-for profit company, which operates in the education sector. The Petitioner No. 1 was registered under Section 11(1) of the Foreign Contribution (Regulation) Act, 2010 (FCRA) for a period of 5 years *vide* letter 26th May, 2015 issued by the Respondent. The Petitioner No. 2 is the Director of the Petitioner No. 1.

The Petitioner No.1 was governed by the FCRA and as per the extant provisions of the FCRA, the Petitioner had opened a bank account with HSBC Bank.

4. It is submitted by the Petitioner No. 1 that it had complied with the FCRA and FCRA Rules, 2011 and submitted annual reports electronically on a year to year basis from FY 2015 to 2019 to the concerned authorities. It is further, submitted by the Petitioner No.1 that it did not receive any foreign exchange contributions in the FY 2019-20 and FY 2020-21.

5. The 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."*

6. Pursuant to the said amendment of the FCRA, the notification was issued by the Respondent on 7th October, 2020 specifying that the State Bank of India, 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.

7. The Petitioners' case is 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. The amendments having been introduced only in September, 2020, details of such a bank account could not have been sought in a retrospective manner as per the Petitioner. It is the Petitioner's case that the form could not be submitted on the Respondent's online portal without the Petitioners first identifying the designated FCRA Account with SBI, Main Branch, New Delhi. It is further submitted that the Respondent's online portal has clearly been designed in a manner such that it is impossible for the Petitioner No.1 to submit the Form FC-4 online for a period prior to September 29, 2020, i.e., for a period before the which the amendment pursuant to the Foreign Contribution Regulation (Amendment) Act, 2020 would apply. Thus, the Petitioner No.1 could not file the returns for the year 2019-20 and 2020-21.

8. Ld. Counsel for the Petitioners, urges that the Petitioners obtained an FCRA account with the SBI, Sansad Marg branch on 6th August, 2021. However, in view of the language of the Form FC-4, which states `as on 31st March', the Petitioner cannot fill in the details of the said account and does not wish to be alleged of misleading the authorities.

9. Ld. counsel for the Respondents seeks further time to file the counter affidavit.

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.

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

PRATHIBA M. SINGH
JUDGE

JANUARY 16, 2023/*dk/kt*