



W.P.Nos.7897, 7900, 7903 & 7906 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on: 28.03.2024

Order delivered on : 03.06.2024

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.Nos.7897, 7900, 7903 & 7906 of 2020

and

WMP.Nos.9329, 9331, 9333, 9334, 9335, 9337, 9339 & 9341 of 2020

Sri Raja Rajeshwari Devi Srichakra
Mahameru Temple Trust
rep.by its Founder cum Managing Trustee,
Mr.J.Senthil Kumar
alias Srichara Gnana Guruji,
No.41, Giri Road, T.Nagar,
Chennai – 600 017.

... Petitioner in W.P.No.7897/2020

Sri Raja Rajeshwari Devi Srichakra
Mahameru Seva Trust
rep.by its Founder cum Managing Trustee,
Mr.J.Senthil Kumar,
alias Srichara Gnana Guruji,
No.41, Giri Road, T.Nagar,
Chennai – 600 017.

... Petitioner in W.P.No.7900/2020

Sri Raja Rajeshwari Devi Srichakra
Devalok Seva Trust,
rep.by its Founder cum Managing Trustee,
Mr.J.Senthil Kumar
alias Srichara Gnana Guruji,
No.41, Giri Road, T.Nagar,
Chennai – 600 017.

....Petitioner in W.P.Nos.7903/2020



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Sri Raja Rajeshwari Devi Srichakra
Devalok Temple Trust,
rep.by its Founder cum Managing Trustee,
Mr.J.Senthil Kumar
alias Srichara Gnana Guruji,
No.41, Giri Road, T.Nagar,
Chennai – 600 017.

....Petitioner in W.P.Nos.7906/2020

-Vs-

The Union of India
Ministry of Home Affairs,
rep. by its Director,
Foreigners Division (FCRA Wing),
NDCC-II Building, Jai Singh Road,
New Delhi 110 001.

.... Respondent in all the writ petitions

PRAYER in W.P.No.7897 of 2020 : Writ Petition filed under Article 227 of Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records of the impugned order dated 27.02.2020 in No.II/21022/36 (0050)/2019-FCRA-II of the respondent and quash the same and consequently, direct the respondent to grant registration to the petitioner Trust under the Foreign Contribution (Regulation) Act, 2010, in pursuance of its applications dated 24.12.2019 in File No.II/21022/67(0285)/2019-FCRA-II in Form FC 3A.

PRAYER in W.P.No.7900 of 2020 : Writ Petition filed under Article 227 of Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records of the impugned order dated 27.02.2020 in No.II/21022/36(0049)/2019-FCRA-II of the respondent and quash the same and consequently direct the respondent to grant registration to the petitioner Trust under the Foreign



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Contribution (Regulation) Act, 2010, in pursuance of its application dated 24.12.2019 in File No.II/21022/67(0284)/2019-FCRA-II in Form FC 3A.

PRAYER in W.P.No.7903 of 2020 : Writ Petition filed under Article 227 of Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records of the impugned order dated 27.02.2020 in No.II/21022/36(0048)/2019-FCRA-II of the respondent and quash the same and consequently direct the respondent to grant registration to the petitioner Trust under the Foreign Contribution (Regulation) Act, 2010, in pursuance of its applications dated 16.12.2019 in File No.II/21022/67(0272)/2019-FCRA-II in Form FC 3A.

PRAYER in W.P.No.7906 of 2020 : Writ Petition filed under Article 227 of Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records of the impugned order dated 27.02.2020 in No.II/21022/36(0164)/2019-FCRA-II of the respondent and quash the same and consequently direct the respondent to grant registration to the petitioner Trust under the Foreign Contribution (Regulation) Act, 2010, in pursuance of its application dated 24.12.2019 in File No.II/21022/67(0283)/2019-FCRA-II in Form FC 3A.

For Petitioner in all petitions : Mr.Muralikumaran,
Senior Counsel
for M/s.McGan Law Firm

For Respondent in all petitions : Mr.A.R.L.Sundaresan, ASGI
Mr.K.S.Jeyaganeshan



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COMMON ORDER

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These batch of Writ Petitions are filed by Mr. J Senthil Kumar, Founder cum Managing Trustee of the 4 Charitable Trusts enumerated above against the impugned Orders all dated 27.02.2020 passed by the respondent against each of the 4 Trusts. The impugned orders rejected each of the 4 applications filed by the petitioners for seeking registration under the extant provisions of the Foreign Contribution Regulation Act, 2010. Since the issue agitated in all the writ petitions is identical they are bunched and dealt by this common order. The facts of one of the batch petitions viz. WP No 7897 of 2020 are discussed for the purpose of resolving the questions that rose in all the 4 Writ Petitions.

2. The petitioner is a registered Trust engaged in charitable activities. They had registered a Deed of Declaration dated 09.05.2018 vide document no 66/2018 in the file of Sub Registrar, Thyagaraya Nagar, Chennai. The objects and functions of the Trust are reduced in writing in the said Deed. The main object of the Trust is to carry out charitable activities like annadhanam (free food), free cloths, free books, free medicines, visual aids, hearing aids, free uniforms, chappals etc to the poor and needy.



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3. The Trust is assessed to Income Tax under PAN No AAVTS7181D.

Based on their objects, they are accorded exemption from payment of income tax under Sec 12 AA of the Income Tax Act, 1961 by the Commissioner of Income Tax (Exemptions) Chennai vide Order dated 10.12.2018. The said exemption is granted after appropriate scrutiny of the charitable activities of the Trust. The trust is actively engaged in charitable activities even before obtaining the above exemption under the Income Tax Act, 1961.

4. The foreigners who are impressed and attracted by the charitable activities of the Trust are willing to donate to the Trust. Since the flow of foreign funds by way of donations/ contributions is regulated by the Foreign Contribution Regulation Act, 2010, the petitioner approached the respondent with application dated 04.07.2018 seeking registration under Sec 11 of the Foreign Contribution Regulation Act, 2010.

5. Thereafter, it was pleaded that, the respondent conducted necessary inquiries through an officer of the Intelligence Bureau. The Officer from the Intelligence Bureau who had visited for inspecting the premises and activities



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of the Petitioner Trust and the similar other applications of the Petitioners had not sought any clarifications or raised any objections related to the running of the Trusts. Subsequent to the inspections, the petitioner received an order dated 22.10.2018 from the respondent rejecting the application of the petitioners for registration under FCRA rendering them ineligible to receive foreign contributions.

6. Aggrieved by the said Order of the respondent, the petitioner filed WP No 33797 of 2018 before this Court. The respondent while contending that the petitioners had not fulfilled the pre-registration conditions of undertaking reasonable activities as mandated under the Act and the Rules made thereunder admitted that no proper enquiry was conducted before rejecting the application of the petitioner. Recording the same, this Court vide Order dated 11.12.2019 in WP No 33797 of 2018 directed the respondent to obtain a fresh application from the petitioners and dispose them of after duly following the Principles of Natural Justice by giving them an opportunity of personal hearing.

7. In pursuance of the above order of this Court, the petitioner had filed a fresh application dated 24.12.2019 online. Shri J. Senthil Kumar had



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personally appeared before the respondent for the hearing conducted between 11.00 AM and 12.00 Noon on 24.01.2020 in respect of all 4 applications of the petitioner Trusts. During the Personal Hearing, all the documents relevant and necessary for the grant of registration certificate were submitted to the respondents. However, the applications were again rejected by the respondent through the impugned orders dated 27.02.2020.

8. Aggrieved by the same, the petitioners have preferred this batch of Writ Petitions seeking to issue a Writ of Certiorarified Mandamus calling for the records of the respondent pertaining to the impugned orders dated 27.02.2020 in File Nos.II/21022/36(0050)/2019-FCRA-II, No.II/21022/36(0049)/2019-FCRA-II, No.II/21022/36(0048)/2019-FCRA-II and No.II/21022/36(0164)/ 2019-FCRA-II respectively and quash the same and issue directions to the respondent to grant registration under the Act.

9. Heard the learned counsel for both sides.

10. The impugned orders rejected the application on the following findings:-



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1. The answer “No” to Item No 8(e) of the application in

Form FC-3A amounts to suppression of Material Facts. Item No 8 (e) requires the petitioner association to declare whether any of the key functionaries of the applicant association is/are also a key functionary of any other association. It was pointed out by the respondent that the three Key functionaries of the petitioner Trust are also the key functionaries of the other 3 petitioner trusts. It was further pointed out that the same functionaries are also functionaries of another FCRA registered Trust viz International Maritime Academy Trust. So it was alleged that the petitioner had suppressed material facts

2. The answer “No” to Items no 12 (i) and 12 (iii) (a) of the

application in Form FC-3A amounts to concealing of material facts. Item 12 (i) requires the petitioner association to declare whether the association has applied for Registration under FCRA, 2010 in the past and Question No 12 (iii) (a) requires the petitioner association to declare whether they had any close links with any other associations or its units or branches which has been refused registration or prior permission. It was pointed out that the other three petitioner applications had the same set of key functionaries and had applied for



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registration earlier during 2019 that has been refused. So, it was alleged that, by not mentioning the same, the petitioner Trust had concealed material facts.

3. On the back of the above findings, the respondent invoked Section 12 (2) of FCRA, 2010 to reject the application for registration. According to the respondent, the petitioner Trust had failed to fill the correct particulars in the Application in Form FC-3A rendering their application liable for rejection.

11. The petitioner, on the other hand, contended that they have rightly mentioned “No” in Item 8 (e) of Form FC-3A as they had presented all the 4 applications at the same time to the respondent. In any event, they claimed in as much as the particulars of all 4 trusts are available with the respondent and presented in a common personal hearing, there is no suppression of any facts whatsoever. Similarly for Item no 12 (i) and 12 (iii) (a) of FCRA, 2010 the counsel for the petitioner contends that the correct answer is “No” as their application dated 24.12.2020 is filed in continuation of their earlier application, as the present application is filed in pursuance of the Order dated 11.12.2019 of this Court in WP No 33797 of 2018. It was further argued



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that in view of the above order of this Court, the refusal cannot be taken as material refusal and in any event, the alleged “concealed/suppressed” information is already in the possession of the respondent.

12. Perused the records of the case. On going through the history of the litigations and the contentions in the present litigation, two grave lapses by the respondent are noticed in conducting the proceedings with regard to grant of registration/prior approval under FCRA, 2010. One, principles of natural justice is not followed while rejecting the applications and two; the order is passed mechanically with no application of mind.

13. In view of the tawdry fact that two writ petitions had to be filed by the petitioners over a period of 5 years in their quest to seek registration under the FCRA, 2010 for the noble purpose of doing charitable activities of the kind undertaken by them, it become imminent to put the FCRA, 2010 in perspective and interpret the provisions for grant of registration/prior permission under the Act to clarify the scheme of the Act for the benefit of all stake holders.



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14. FCRA, 2010 is an act to regulate the flow of foreign funds by way of foreign contribution and foreign hospitality into India. The Act stipulates the conditions and the manner under which foreign contributions can be received from a foreigner by a person resident in India. Section 11 of the FCRA, 2010 requires persons having a definite, cultural, economic, educational, religious or social program to obtain a Certificate of Registration from the Central Government. In other words, any donation or contribution or hospitality by way for foreign exchange inflow into the country is regulated under FCRA, 2010.

15. From the scheme of the Act, it could be seen that Section 12 of the Act provides for grant of registration certificate or prior permission for persons referred to under Section 11. Section 12 (2) of the Act is procedural in nature. Section 12 (3) is a mechanical provision. Sec 12 (4) is a substantive provision. The enquiry contemplated under Section 12 (3) of the Act is to find out whether any substantial violation of conditions provided under Section 12 (4) of the Act is noticed. Section 12 (4) is the substantive provision of the law which has the direct nexus with the object of the law as to what it intends to prohibit or regulate. So the finding arrived at in the enquiry as to whether the



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applicant falls vice of the provisions of Sec 12 (4) or not will determine whether the applicant is eligible or not for the grant of registration certificate or prior permission

16. The Act contemplates that an application to obtain a registration certificate or prior permission shall be made online in Form FC-3A before the Director, Foreigner's Division, FCRA (wing) Ministry of Home Affairs, New Delhi in terms of Section 12 (1) of FCRA, 2010. An application for registration or prior permission under the Act has to be accompanied by the relevant supporting documents.

17. Once an application for grant of registration certificate or prior approval mandated under Section 11 is received in the office of the Director above said, the same shall be scrutinized under Sec 12 (2) of the Act. The scrutiny under Section 12 (2) is strictly procedural in nature. Upon scrutiny of the application received under Section 12 (1), if the application is found to be in order, that is to say, if the Application is in the prescribed form and contains all the particulars contained in the said form, the application shall be accepted and taken up for further enquiry.



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18. Per contra, if the application is not in the prescribed form or does not contain all the particulars contained therein as stipulated under Sec 12 (2), the same is liable to be rejected. A bare reading of the provision indicates that the scrutiny under Sec 12 (2) is as to the completeness of the application and not the correctness of the application. It is to be interpreted that this rejection under Sec 12 (2) is a consequence of a procedural lapse and therefore, should not be counted as a rejection/refusal to grant certificate of registration or prior approval for the purposes of this Act. In such cases where the application is rejected under Sec 12 (2), the application may be resubmitted again making good the omissions. Since it is a mere procedure, principles of natural justice are not contemplated under the Act.

19. Once the application passes the test of Sec 12 (2) of the Act, an enquiry under Sec 12 (3) of the Act is to be instituted and upon satisfying the compliance of the substantive provisions of Sec 12 (4), the registration certificate or prior approval is granted within a period of 90 days. If the enquiry finds that the applicant failed to fulfill the substantive provisions of Sec 12 (4) the applicant would become ineligible for grant of a Certificate of Registration



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or Prior permission for receiving foreign contributions. Since such a rejection under Sec 12 (4) substantially affects the natural rights of the applicant, it becomes necessary that the principles of natural justice have to be read into the provision.

20. The purpose of enquiry under Section 12 (3) is to see whether the applicant satisfies the conditions laid down in Sec 12 (4) of the Act. If the enquiry finds that the registration certificate or prior permission cannot be granted for the reason of non compliance of Sec 12 (4) of the Act, a notice explaining the grounds for rejection of the application followed by an opportunity of personal hearing shall be given to the applicant to explain his position. Only when the applicant is not able satisfy the provisions of Sec 12 (4) after the objections are raised by the authority, an order of rejection of registration certificate or prior approval should be made.

21. The logical sequitur to the above is once an enquiry under Section 12(3) of the FCRA, 2010 is instituted, granting of or rejection of the application can happen only under Section 12 (3) of the Act, and that too for the reason of non fulfillment of the conditions prescribed under Sec 12 (4) of



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the Act and not under Sec 12 (2) of the Act and the occasion to order rejection of the application under Section 12 (2) ceases to exist.

22. The following principles were borne in mind while interpreting the provisions and the scheme of the Act. One, the principles of natural justice is not inbuilt in the process of grant of registration certificate or prior approval and therefore it becomes necessary to read principles of natural justice into Section 12 (3) of FCRA, 2010. The Hon'ble Supreme Court in a plethora of cases has held that where the actions affect substantial rights of the petitioners, Principles of Natural Justice has to be necessarily followed. Two, India has ratified the International Covenant for Economic, Social and Cultural Rights, 1953 wherein it is covenanted that in no cases may a people be deprived of its own means of subsistence. Therefore, any law that is interpreted to be oppressive of such rights would attract the vice of constitutional inhibition.

23. In the instant case, it is clear that the order of rejection under Section 12 (2) is made after completing the enquiry under Section 12 (3) and that too without a finding that the applicant failed to fulfill the conditions laid out in Section 12 (4) of the Act. Therefore, the reasons cited by the respondent



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for rejection of the applications of the petitioners are hyper technical and arbitrary exercise of power without application of mind. Least to say, the reason of rejection has no nexus with the object of the law.

24. Besides the above infirmities in the impugned order, the conclusion of the respondent that the applicant has suppressed or concealed material facts is patently flawed both on questions of law as well as fact. On facts, as rightly pointed out by the counsel for the petitioners, all the relevant materials on the basis of which suppression or concealment is alleged are voluntarily submitted by the petitioners, in pursuance of the directions of this court order and are already in possession of the respondent. On question of law, it is a settled principle that mere omission is not suppression or concealment. Suppression is something more than mere omission. Omissions may be bona-fide while suppression is conscious omission. To qualify as suppression, there should be an intention to hide substantial materials from the authority to obtain the benefit under a scheme which if revealed would be unavailable to the applicant. It should be a substantial violation and not a mere procedural violation. It's again a settled principle that substantial benefits under a scheme or policy cannot be denied on procedural grounds.



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25. Further, it is not the case of the respondent that the petitioners have failed to fulfill the conditions stipulated under Section 12 (4) of the Foreign Contribution Regulation Act, 2010. As discussed supra, a rejection under Sec 12 (3) is not permissible without a categorical finding that the provisions of Section 12 (4) of the Foreign Contribution Regulation Act, 2010 are violated.

26. In view of the discussions above, the writ petitions are allowed. The respondent is directed to grant registration certificates to all the 4 petitioners within a period of 8 weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petitions are closed.

03.06.2024

Index: Yes/No
Speaking/Non-speaking order
vsi

To

The Director,
The Union of India
Ministry of Home Affairs,
Foreigners Division (FCRA Wing),
NDCC-II Building, Jai Singh Road,
New Delhi 110 001.



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J.NISHA BANU, J.

vsi

Pre-delivery Order
in
**W.P.Nos.7897, 7900, 7903
& 7906 of 2020**

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