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Civil Miscellaneous Appeal No.1080 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 24.07.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

**Civil Miscellaneous Appeal No.1080 of 2024**

**and**

**C.M.P.Nos.10009 & 10010 of 2024**

Tripura Foundation (India)  
represented by its Authorised Representative and  
Chief Functionary  
B.Yadeesh  
Plot No.1163, 57th Street,  
T.N.H.B.Colony, Korattur,  
Chennai - 600 080.  
Previously at G1, Ananthapuri,  
Plot No.14, T.V.S. Nagar,  
1st Main Road, Korattur,  
Chennai - 600 076.

... Appellant

Vs.

The Secretary to Government of India,  
Ministry of Home Affairs,  
Foreigners Division (FCRA Wing),  
1st Floor, Major Dhyan Chand National Stadium,  
India Gate, New Delhi - 110 002.

... Respondent

Civil Miscellaneous Appeal filed under Order XLI Rule 1 of the Code of Civil Procedure read with Section 31(2) of the Foreign Contribution (Regulation) Act, 2010, against the order dated 31.03.2024 passed by the respondent refusing the Renewal Application No.0300091252021 dated 17.09.2021 of the Appellant communicated vide email dated 31.03.2024 (hereinafter "Refusal Order").



Civil Miscellaneous Appeal No.1080 of 2024

For Appellant : Mr.V.P.Raman

For Respondent : Mr.S.Janarthanam  
Sr. Panel Central Government Counsel  
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### **JUDGMENT**

The present appeal has been filed under Section 31(2) of the Foreign Contribution (Regulation) Act, 2010 against the order passed by the respondent in Renewal Application No.0300091252021 dated 17.09.2021, refusing to grant renewal of permanent registration to the appellant.

2. The case of the appellant is that the appellant foundation was established in the year 1999 and it is a trust registered under Section 12-A of the Income Tax Act. The appellant was granted prior permission on 03.03.2000 under Section 6(1A) of the Foreign Contribution Regulation Act, 1976 and permanent registration was granted on 16.07.2003 under Section 6(1)(a) of the Foreign Contribution Regulation Act, 1976. The permanent registration was granted for the purpose of education and social activities. It was renewed from time to time and the last renewal was valid from 01.11.2016 for a period of five years.



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3. The further case of the appellant is that the appellant applied for renewal of its registration. The appellant received a e-mail dated 31.03.2024 from the competent authority informing the appellant that the renewal application has been refused under Section 16(2) r/w Sections 12(4)(a)(vii) and 12(4)(f)(iii) of the Foreign Contribution Regulation Act, 2010 (hereinafter referred to as 'FCRA 2010']. Aggrieved by the same, the present appeal has been filed before this Court.

4. The respondent has filed a counter affidavit. The respondent has preliminarily taken two grounds opposing the present appeal. The first ground is that the appeal itself is not maintainable under Section 31 of the FCRA 2010 and only a revision can be filed against rejection of renewal of registration, under Section 32 of the FCRA 2010. The other ground raised in the counter affidavit is that the renewal application submitted was not in the prescribed format since it was not notarized in India by a notary public or by a 1st Class Magistrate. In view of the same, Rule 12(2) of the Foreign Contribution (Regulation) Rules, 2011 [hereinafter referred to as 'FCRR, 2011'] comes into operation and consequently, the renewal application was rejected.



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5. Heard Mr.V.P.Raman, learned counsel for appellant and Mr.S.Janarthanam, learned Senior Panel Central Government Counsel, appearing for respondent.

6. This Court has to first go into the preliminary objection raised by the respondent with regard to the maintainability of the present appeal under Section 31(2) of FCRA, 2010. For proper appreciation, Section 31(2) of FCRA, 2010 is extracted hereunder:

"31(2) Any organisation referred to in clause (f) of sub-section (1) of section 3, or any person or association referred to in section 6 or section 9, aggrieved by an order made in pursuance of section 5 or by an order of the Central Government refusing to give permission under this Act, or by any order made by the Central Government under sub-section (2) of sub-section (4) of section 12, or sub-section (1) of section 14, as the case may be, may, within sixty days from the date of such order, prefer an appeal against such order to the High Court within the local limits of whose jurisdiction the appellant ordinarily resides or carries on business or personally works for gain, or, where the appellant is an organisation or association, the principal office of such organisation or association is located."

7. On a careful reading of Section 31(2) of FCRA, 2010, it is seen that an appeal will lie if any order has been made by the Central Government under Section 12(2) or Section 12(4) of FCRA, 2010.

Learned counsel for appellant brought to the notice of this Court an order



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passed by the High Court of Delhi in a writ petition in W.P.(C) 9344/2024, dated 11.07.2024, in the matter of ***Samuel Foundation Charitable India Trust v. Union of India***. On carefully going through this order, it is seen that a writ petition was filed before the High Court of Delhi against the rejection of an application submitted for renewal of registration by a trust. An objection was raised by the respondent and for proper appreciation, the objection as recorded in the order is extracted hereunder:

"3. At the outset, Mr.Ravi Prakash, CGSC for the Respondent, objects to the maintainability of the present petition in light of availability of efficacious remedies under the FCRA. While placing reliance on the orders passed by this Court in ***Lok Jagriti Kendra v. Union of India [W.P.(C) 13730/2022, dated 23.02.2023]***, ***AROH Foundation v. Union of India [W.P.(C)5901/2024, dated 26.04.2024]*** and ***South Asia Foundation - India v. Union of India [W.P.(C) 6922/2024, dated 14.05.2024]***, he contends that Petitioner can apply for revision of the order passed by Respondent under Section 32 of FCRA, by approaching the revisional authority. In addition, Mr.Prakash highlights the remedy of filing an appeal before the High Court in terms of Section 31 of the FCRA. He points out that since the impugned rejection is founded on Section 12(4) of the FCRA, the Petitioner can prefer an appeal to the High Court of competent jurisdiction under Section 31(2)."

8. The High Court of Delhi, after considering the stand taken by the respondent, permitted the petitioner therein to withdraw the writ



petition and granted liberty to file an appeal. It is, therefore, clear that the respondent has taken a stand before the High Court of Delhi that as against an order of rejection of a renewal application, an appeal in terms of Section 31(2) of FCRA, 2010 is maintainable.

9. *De hors*, the above stand taken by the respondent before the High Court of Delhi, even on a plain reading of Section 31(2) r/w Section 14 of FCRA, 2010, it is clear that an appeal is maintainable. The renewal of registration certificate is applied under Section 16 of FCRA, 2010. The proviso to sub-section 1 of Section 6 of FCRA, 2010, makes it clear that the Central Government before renewing the certificate must make such enquiry and satisfy itself that the person, who has applied for renewal, has fulfilled all the conditions specified in Section 12(4) of FCRA, 2010. Therefore, while dealing with a renewal application, the authority is expected to deal with the same in terms of Section 12(4) of FCRA, 2010. Section 16 of FCRA, 2010, cannot be read in isolation and it has to be necessarily read along with Section 12 of FCRA, 2010.



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10. A careful reading of the impugned e-mail communication sent to the appellant shows that the renewal application was rejected in line with Section 16(2) r/w Sections 12(4)(a)(vii) and 12(4)(f)(iii) of FCRA, 2010. A reading of the counter affidavit filed by the respondent shows that the main ground for refusing renewal of the registration is because the application was not in the prescribed format and it did not satisfy the requirements. The counter affidavit has not dealt with any other ground specified in the e-mail communication touching upon Sections 12(4)(a)(vii) and 12(4)(f)(iii) of FCRA, 2010.

11. Section 31(2) of the FCRA, 2010, which has been extracted supra, specifically talks about Section 12(4) of FCRA, 2010. The order passed rejecting the renewal application under Section 16 of FCRA, 2010, was on the basis of relying upon Section 12(4) of FCRA, 2010. Therefore, only an appeal will lie as against the order passed rejecting the renewal application.

12. Learned counsel for respondent has relied upon the judgments of the Supreme Court in (i) *State of Orissa and Ors. v. Gopinath Dash*



*and Ors. [(2005) 13 SCC 495]; (ii) United Bank of India v. Satyawati Tondon and Ors. [(2010) 8 SCC 110]; and (iii) The State of Maharashtra & another v. Bhagwan & others [Civil Appeal Nos.7682-7684 of 2021]* to substantiate his submissions that where there is an alternate remedy provided under the Act for filing a revision before the Government, no appeal will lie before this Court.

13. The judgments that were relied upon by learned counsel for respondent will not have any bearing in the present case. This Court reminds itself that the right of appeal is a right created by a statute and unless and otherwise the statute provides for a specific right, an appeal cannot be filed. In the instant case, this Court has reached a categorical finding that the application for renewal submitted under Section 16 of FCRA, 2010, has to be necessarily read along Section 12(4) of the FCRA, 2010 and therefore, the order rejecting the renewal application will squarely fall within the parameter under Section 31(2) of the FCRA, 2010.



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14. In the light of the above discussion, this Court holds that the appeal filed before this Court is maintainable and the preliminarily objection raised by the respondent is hereby rejected.

15. The next issue is with regard to the reasons assigned for rejection of renewal application. Before going into this issue, this Court wants to make a mention on the mechanical fashion in which the counter affidavit has been filed by the respondent. Paragraph Nos.13 to 17 in the counter affidavit talks about the fact that a writ petition will not be maintainable if there is an alternate remedy. This Court is perplexed as to why paragraph Nos.13 to 17 was even incorporated in the counter affidavit since the instant case does not deal with a writ petition and only an appeal has been filed under Section 31(2) of FCRA 2010. 'Cut, Copy and Paste' culture has seeped into the system and therefore, the authorities do not even apply their mind while preparing the counter affidavit and they merely cut, copy and paste from some other affidavit, which is completely irrelevant. This affidavit has been signed by none other than the Under Secretary to the Ministry of Home Affairs, Government of India, New Delhi. This Court only hopes that this culture



of 'Cut, Copy and Paste' is avoided at least in future and persons holding higher authority spend some time reading the affidavit before signing a counter affidavit to be filed before the Court.

16. Coming back to the merits of the case, the impugned e-mail communication talks about rejection of the renewal application for non-compliance of Section 12(4)(a)(vii) and 12(4)(f)(iii) of FCRA 2010.

17. Section 12(4)(a)(vii) of FCRA 2010 reads as follows:

"Section 12 of FCRA 2010:

(1)....

(2)....

(3)....

(4) The following shall be the conditions for the purposes of sub-section (3), namely :-

(a) the person making an application for registration or grant of prior permission under sub-section (1), -

(i)....

(ii)....

(iii)....

(iv)....

(v)....

(vi)....

(vii) has not contravened any of the provisions of this Act."



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18. Section 12(4)(f)(iii) of FCRA 2010 reads as follows:

"Section 12 of FCRA 2010:

(1)....

(2)....

(3)....

(4) The following shall be the conditions for the purposes of sub-section (3), namely :-

(a) ....

(b)....

(c)....

(d)....

(e)....

(f) the acceptance of foreign contribution by the person referred to in sub-section (1) is not likely to affect prejudicially -

(i)....

(ii)....

(iii) the public interest; or"

19. Section 16 merely states that while dealing with the renewal application, the authority must satisfy himself that the person, who is applying for renewal fulfills the conditions specified in sub-section 4 of Section 12 of FCRA, 2010. The first proviso to sub-section 3 of Section 12 of FCRA, 2010, makes it clear that where the Central Government is not satisfied that the person applying for registration has not fulfilled the



conditions specified in sub-section 4 of Section 12 of FCRA, 2010, the rejection shall be communicated to the concerned persons by assigning proper reasons. Hence, if the Central Government decides not to renew the registration for non-fulfillment of the requirements in sub-section 4 to Section 12 of FCRA, 2010, it is not enough for the Central Government to merely quote the relevant provision. The Central Government must assign reasons for coming to a conclusion as to how the pre-condition prescribed under sub-section 4 of Section 12 of FCRA, 2010, has not been fulfilled. The same is completely absent in the impugned e-mail communication dated 31.03.2024 that was sent to the appellant.

20. In the counter affidavit, there is yet another ground raised for the rejection of the renewal application. It is stated in the counter affidavit that the renewal application submitted was not in the prescribed format. It is stated that one S.Baskaran Pillai, who was the founder trustee, has signed an affidavit and this affidavit has not been notarized in India by a notary public or by a 1st Class Magistrate. Therefore, Rule 12(2) of the FCRR, 2011, has been relied upon to reject the renewal application.



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21. Typed set of papers has been filed by the respondent. It contains Form FC-3C, which is relatable to Rule 12(2) of the FCRR, 2011. It also contains the format of affidavit and the actual affidavit submitted by the above said S.Baskaran Pillai. There are totally three trustees belonging to the appellant foundation. Two of them are in India and the said Baskaran Pillai is the resident of USA. Hence, a non-judicial stamp paper was purchased in India in the name of the appellant foundation and it was typed and sent to United States to enable Mr.Baskaran Pillai to sign the affidavit. While undertaking this exercise, Mr.Baskaran Pillai has signed the affidavit in the presence of a notary public at San Diego County, California, United States of America. This affidavit was annexed to Form FC-3C and it was submitted to the respondent for renewal.

22. The respondent has taken an objection that the non-judicial stamp paper has been purchased in India, whereas, the said Baskaran Pillai has subscribed his signature at United States in the presence of a notary public at San Diego County.



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23. The requirements under Form FC-3C must be read along with proforma AA which provides for format of affidavit to be submitted. While going through this proforma, the affidavit must be executed on a non-judicial stamp paper of Rs.10 and it must be attested by a notary public or a 1st Class Magistrate. If a person is residing in India, there will be no difficulty in complying with all the conditions prescribed under proforma AA. In fact, the condition was fulfilled by the other two trustees in India. Non-judicial stamp paper of Rs.10 can be purchased only in India and therefore, it was duly purchased and the contents were typed. It was sent to United States where Mr.Baskaran Pillai is residing. The said Baskaran Pillai has signed the affidavit in the presence of the notary public at San Diego County. Proforma AA does not prescribe that a notary public must belong only to India. There must be a practical approach in cases of this nature. Considering the fact that the entire world has become a global village, people residing outside the country has become a very common feature. In the instant case, one of the trustee happens to be the resident of United States. Therefore, when the affidavit is sent to the said trustee and he signs the affidavit in the presence of a



notary public in that country and it is duly certified by the notary public, the requirements under Form FC-3C r/w proforma AA stands fulfilled. Hence, the stand taken by the respondent in the counter as if the appellant foundation failed to fulfill the requirement under Rule 12(2) of FCRR, 2011 is hereby rejected.

24. In the light of the above discussion, the impugned rejection order passed by the respondent rejecting the renewal application submitted by the appellant in Renewal Application No.0300091252021 dated 17.09.2021 is hereby set aside. The matter is remanded back to the file of the respondent and the respondent is directed to deal with the renewal application on its own merits and in accordance with law as per the provisions of FCRA, 2010 and the rules thereunder and take a decision within a period of eight (8) weeks from the date of receipt of a copy of this order. This Court had already passed an interim order on 30.04.2024 permitting the appellant to continue with its functioning and directed the respondent not to disturb the functioning of the appellant. In view of the same, the appellant shall be permitted to utilize the funds available in the appellant's State Bank of India Account



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No.40154578828, New Delhi Main Branch FCRA Division and

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**N.ANAND VENKATESH, J.**

gm

Appellant's HDFC Bank Account in Chennai Anna Nagar - I [Current Account No.00172000010209] till the final decision is taken by the respondent in the renewal application within the time frame fixed by this Court.

In the result, the Civil Miscellaneous Appeal is allowed with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

**24.07.2024**

Speaking Judgment  
Index :Yes  
Neutral citation: Yes  
gm

To

The Secretary to Government of India,  
Ministry of Home Affairs,  
Foreigners Division (FCRA Wing),  
1st Floor, Major Dhyan Chand National Stadium,  
India Gate, New Delhi - 110 002.