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W.P.No.28110 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.28110 of 2021 and
WMP.Nos.29689, 29691 & 29692 of 2021

Oasis Ministerial International
Rep. By its Managing Trustee
Sr.Solomon David Padma
No.AP, 249, Kambar Colony,
31st Street, Anna Nagar,
Chennai 600 040

... Petitioner

Vs.

1.Union of India,
Rep. By its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi 110 001
2.Ministry of Home Affairs,
Represented by its Director
FCRA Wing, 1st Floor,
Major Dhyan Chand National Stadium,
New Pragati Maidan,
New Delhi 110 001

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for records pertaining to the impugned order namely Email dated 15.11.2021 issued by the second respondent pertaining to application for renewal of registration of the petitioner bearing No.0300004372021 and to quash



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the said impugned order and consequently direct the second respondent to renew the registration of the petitioner under FCRA Act.

For Petitioner : Mr.B.Deepak Narayanan

For Respondents : Mr.T.L.Thirumalaisamy,
Central Government Standing Counsel

ORDER

This writ petition has been filed challenging the order passed by the second respondent dated 15.11.2021 thereby refused for renewal of registration under Foreign Contribution Regulation Act (hereinafter called as 'FCRA')

2. The petitioner is being a trust registered under FCRA with the first respondent and the petitioner was issued registration certificate on 19.05.2009. Subsequently, it was regularly renewed and renewal certificate was issued by the second respondent. The renewal certificate was valid for a period of five years from 01.05.2016 to 30.04.2021. As per Section 16 of FCRA, the renewal application has to be filed atleast six months before the date of expiry of the registration certificate. Due to covid-19 pandemic, there was lock down and as such, the second



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respondent had issued public notice thereby extended the period of registration certificates expiring during the period between 29.09.2020 and 31.05.2021 and shall remain valid upto 31st May 2021. By further public notice dated 18.05.2021, once again it was decided that the registration certificates expiring / expired during the period 29.09.2020 till 30.09.2021 shall remain valid upto 30.09.2021. Once again, by another public notice dated 30.09.2021, it was extended till 31.12.2021. In the meanwhile, FCRA Rules was amended on 10.11.2020, thus necessitated renewals to be made in electronic form along with other requirements. Therefore, due to covid-19 pandemic, the petitioner could not able to apply for renewal certificate within November 2020. As per the public notice, the renewal of registration was valid upto 31.12.2021 and as such, the petitioner ought to have renewed the same before six months from the date of expiry. Therefore, the petitioner had applied for renewal of registration certificate on 11.05.2021 before the second respondent on payment of required fees and in compliance with Section 16 of FCRA. However, it was rejected under Section 16(1) of FCRA.



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3. The learned counsel appearing for the petitioner would submit that the second respondent without even stating any reason for the rejection, rejected the application under Section 16(1) of FCRA. Therefore, it is a non speaking order and it cannot be sustained. As per proviso to Section 16 of FCRA, in case the Central Government does not renew the certificate within the said period of 90 days, it shall communicate the reasons therefor to the applicant. That apart, the registration certificate expiring during the period between 29th September 2020 and 31.05.2021, was valid upto 31.12.2021. Therefore, the petitioner ought to have applied for renewal of registration, six months before expiry of registration. Accordingly, the petitioner applied for renewal on 11.05.2021 and it is well within the time.

4. The respondents filed counter and the learned Central Government Standing Counsel appearing for the respondents submitted that the writ petition itself is not maintainable since there is revisional remedy as contemplated under Section 32 of FCRA. Therefore, without exhausting the revisional remedy, the petitioner cannot approach this



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Court under Article 226 of the Constitution of India. FCRA has been amended by Act No.33 of 2002. Accordingly, proviso to Section 16 has been amended as 'Central Government may, before renewing the certificate, make such enquiry, as it deems fit, to satisfy itself that such person has fulfilled all conditions specified in Sub-Section 4 of Section 12. Section 12(4) of FCRA provides for the conditions which need to be satisfied by the Associations before renewal of registration under FCRA, 2010. Further, Section 12(5) of FCRA provides that Central Government may not communicate the reasons for refusal for grant of certificate or for not giving prior permission to the applicant under this Section, in cases where there is no obligation to give any information or documents or records or papers under Right to Information Act. Therefore, the order passed by the second respondent cannot be termed as non speaking order. That apart, the petitioner had failed to submit its annual return for the financial year 2020-2021 on the FCRA portal and thus violated Section 17 of Foreign Contribution Regulation Rules, 2011.

5. Heard, the learned counsel appearing on either side.



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6. Admittedly, the petitioner was registered with the first respondent under FCRA and it received registration certificate dated 19.05.2009. Thereafter it was duly renewed by the renewal certificate dated 15.03.2016 issued by the second respondent valid for period of five years i.e. till 30.04.2021. Due to covid-19, the validity of the registration certificate was extended till 31st December 2021. As per Section 16(1) of FCRA, the petitioner submitted application for renewal as early as on 11.05.2021.

7. The only issue arises in this writ petition is whether the order impugned in this writ petition is speaking in nature or not? and further, whether the second respondent is liable to state reasons for rejection of the application for renewal of registration certificate under FCRA, 2010? It is relevant to extract the provision under Section 16(1) of FCRA hereunder:

“16(1)- Every person who has been granted a certificate under Section 12 shall have such certificate renewed within six months before the expiry of the period of the certificate”



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8. After amendment to the proviso to Section 16(1) of FCRA, the Central Government may, before renewing the certificate, make such enquiry as it deems fit to satisfy itself that such person has fulfilled all conditions specified in Sub Section 4 of Section 12. Another proviso says that in case the Central Government does not renew the certificate within the said period of 90 days, it shall communicate the reasons therefor to the applicant. Admittedly the petitioner filed application for renewal of registration certificate on 11.05.2021. Whereas the second respondent refused to renew the registration by an order dated 15.11.2021. It is beyond the period of 90 days. Therefore, the second respondent ought to have stated the reasons for rejection of application for renewal of registration certificate. Further in the counter, the second respondent stated that the petitioner had also failed to submit its annual return for financial year 2020-2021 on the FCRA portal and thus violated Section 17 of Foreign Contribution Regulation Rules, 2011. However, on perusal of the impugned order of rejection of renewal, the said reason was not stated. Therefore, the second respondent cannot strengthen the case by stating so many reasons in the counter.



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9. The learned counsel appearing for the petitioner, in support of his contention, relied upon the judgment of the Hon'ble High Court of Karnataka rendered in WP.No.1486 of 2017 dated 28.01.2019, wherein it is held as follows:

*9. It is trite law that even a quasi-judicial authority is required to assign reasons for passing the order. In the instant case, the respondents No.1 and 2 failed to even assign reasons. The impugned order therefore, cannot be sustained in the eye of law and it is accordingly quashed and set aside. The respondents No.1 and 2 is directed to decide the application for renewal preferred by the petitioner by a speaking order and in accordance with law after affording an opportunity of hearing to both the parties. In view of the decision laid down by the Supreme Court in '**VICTORIA MEMORIAL HALL vs. HOWRAH GANATANTRIK NAGRIK**', 2010 (3) SCC 732, reasons were held to be the heartbeat of every conclusion, apart from being an essential feature of the principles of nature justice, that ensure transparency and fairness, in the decision making process.*

9.1 He also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***The Secretary and Curator, Victoria***



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Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Ors

reported in (2010) 3 SCC 732, in which the Hon'ble Supreme Court of India held as follows:

31. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice - delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. "The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind." [Vide State of Orissa Vs. Dhaniram Luhar AIR 2004 SC 1794; and State of



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Rajasthan Vs. Sohan Lal & Ors. (2004) 5 SCC 573].

32. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. [Vide *Raj Kishore Jha Vs. State of Bihar & Ors. AIR 2003 SC 4664*; *Vishnu Dev Sharma Vs. State of Uttar Pradesh & Ors. (2008) 3 SCC 172*; *Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela I Circle & Ors. (2008) 9 SCC 407*; *State of Uttaranchal & Anr. Vs. Sunil Kumar Singh Negi AIR 2008 SC 2026*; *U.P.S.R.T.C. Vs. Jagdish Prasad Gupta AIR 2009 SC 2328*; *Ram Phal Vs. State of Haryana & Ors. (2009) 3 SCC 258*; *Mohammed Yusuf Vs. Faij Mohammad & Ors. (2009) 3 SCC 513*; and *State of Himachal Pradesh Vs. Sada Ram & Anr. (2009) 4 SCC 422*].

33. Thus, it is evident that the recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as why his application has been rejected.



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34. Indisputably, the High Court did not assign valid and good reasons for rejecting the recommendation made by the Expert Committee for allowing the construction in question in its judgment and order dated 28.09.2007 nor the reasons have been recorded in the impugned judgment dated 21.08.2009 rejecting the application for modification of the earlier order. Thus, in view of the above, the orders, so far as this particular issue is concerned, remain unsustainable.

The above judgments are squarely applicable to the case on hand.

10. In view of the above, the order impugned in this petition cannot be sustained and the same is liable to be quashed. Accordingly, the impugned order passed by the second respondent dated 15.11.2021 is quashed and the matter is remanded back to the second respondent for fresh disposal after giving opportunity of hearing to the petitioner to explain the queries raised by the second respondent for renewal of registration certificate under FCRA, 2010, since the respondents raised several objections in the counter, within a period of twelve weeks from the date of receipt of copy of this order.



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11. With the above direction, this writ petition is allowed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Neutral citation: Yes/No

Index: Yes/No

Speaking/Non-speaking order
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To

1. Secretary,
Union of India,
Ministry of Home Affairs,
North Block,
New Delhi 110 001
2. Director,
Ministry of Home Affairs,
FCRA Wing, 1st Floor,
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