2025:MHC:1466

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In the High Court of Judicature at Madras

Reserved on	Delivered on :
23.6.2025	**27.6.2025**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Civil Miscellaneous Appeal No.746 of 2022 &
Writ Petition No.4887 of 2022
& CMP.Nos.5453 & 5455 of 2022 &
WMP.Nos.5012, 5013 & 5017 of 2022

M/s.Sharma Centre for Heritage
Education repby its Secretary
Dr.Shanti Pappu ...Appellant in CMA

Ellen Sharma Memorial Trust
rep.by its Secretary ...Petitioner in WP

Vs

1.The Director, FRCA Wing,
Ministry of Home Affairs
(FRCA Wing), I Floor,
Mayor Dyan Chand National
Stadium, Near Pragati Maidan,
New Delhi-110002. ...Sole Respondent in CMA & R2 in WP

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2.The Union of India, rep.by
Secretary, Ministry of Home
Affairs, FRCA Wing, I Floor,
Mayor Dyan Chand National
Stadium, Near Pragati Maidan,
New Delhi-110002. ...R1 in WP

APPEAL under Section 31(2) of the Foreign Contribution (Regulation) Act, 2010 to set aside the order in MHA File No. 6700252021 (FRCA) dated 29.12.2021 passed by the respondent rejecting the application of the appellant for renewal of registration and direct the respondent to renew the registration of the appellant under the Foreign Contribution (Regulation) Act, 2010.

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents in respect of the impugned decision contained in email dated December 9, 2021 issued by the respondents, quash the same and consequently direct the respondents to renew the certificate/registration of the petitioner issued under the provisions of the Foreign Contribution (Regulation) Act, 2010 bearing FCRA Registration No.075900153.

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For Appellant in the CMA : Mr.S.Ramamurthy for Ms.E.Ann Priscilla Swarna Kumari & Ms.Saitanya Kesan

For Petitioner in the WP : Mr.Satish Parasaran, SC for Mr.Rahul Balaji

For Respondents in both the CMA & the WP : Mr.AR.L.Sundaresan, AGG assisted by Mr.K.S.Jeyaganeshan, Senior Panel Counsel

COMMON JUDGMENT

The issue involved in both these cases is common and hence, they are taken up together, heard and disposed of by this common judgment.

2. The civil miscellaneous appeal has been filed challenging the proceedings of the sole respondent dated 29.12.2021 rejecting the application submitted by the appellant for renewal of registration under the Foreign Contribution (Regulation) Act, 2010 (hereinafter called the Act).

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3. The writ petition has been filed challenging a decision contained in the e-mail dated 09.12.2021 issued by the respondents and for a consequential direction to the respondents to renew the certificate of registration of the petitioner trust under the Act.

4. Heard the respective learned counsel appearing for both the appellant as well as the writ petitioner and the learned Additional Solicitor General assisted by the learned Senior Panel Counsel appearing for the respondents.

5. The case of the writ petitioner is as follows :

(i) The petitioner is a trust, which was founded in the year 1982 with the object of improving education and overall welfare of children. The petitioner trust established :

(a) Ellen Sharma Primary School at Karaipakkam, Chennai;

(b) Ellen Sharma Memorial Matriculation School at Sholinganallur, Chennai for orphaned children and refugees from Tibet; and

(c) School Health Centres/Clinics at Sholinganallur and Karaipakkam.

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(ii) The petitioner trust receives foreign donations, which form part of 70 to 75% of the revenue of the trust and it is dependent on these funds for performing charitable and social work. The petitioner trust was duly registered under the provisions of the Act bearing FRCA No.075900153. They trust obtained a certificate of registration under Section 12 of the Act on 25.3.1983. The latest renewal took place on 23.4.2016 with effect from 01.11.2016 for a period of five years.

(iii) The petitioner trust claims to have filed all the returns, accounts and documents as required under the Act and the relevant Rules framed thereunder and no proceedings were initiated at any point of time against the petitioner trust for violation of any of the provisions of the Act.

(iv) The petitioner trust filed an application on 15.2.2021 before the respondents under Section 16 of the Act for renewal of the certificate of registration. Pursuant to that, various communications were received by the petitioner trust seeking clarification and the petitioner trust also provided necessary clarifications. Even after a lapse of eight months from the date of application, the petitioner trust was receiving only queries from the respondents. The final query pertained to the petitioner's two other sister Non Governmental

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Organisations (NGOs) (one of which is the appellant in the CMA) and the petitioner trust was asked (a) to explain as to whether they are functioning in the same premises and have common office bearers and (b) to provide the details of the movement of funds among the NGOs along with bank statements.

(v) The petitioner trust, vide letter dated 09.11.2021, responded stating that both the sister NGOs operate from the same premises and that not all the office bearers are common and only a few members overlapped. The certified bank statements for the year 2019-20 were also furnished by the petitioner trust. Apart from that, the purchase of land at Kanchipuram from the foreign contributions along with the annual returns had been submitted to the respondents.

(vi) However, the petitioner trust ultimately received the impugned e-mail communication dated 09.12.2021 informing them that the application for renewal was refused under Section 16(1) read with Section 12(4)(a)(vii) of the Act. This is put to challenge in the above writ petition.

6. The case of the appellant in the civil miscellaneous appeal is as follows :

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The appellant is one of the sister NGOs of the petitioner trust and it has a separate registration under the provisions of the Act. They had also applied for renewal on 20.3.2021 and it was rejected vide the impugned proceedings dated 29.12.2021 issued by the sole respondent (who is none other than the second respondent in the WP) by assigning the same reason that was put against the petitioner trust. Aggrieved by that, the above civil miscellaneous appeal has been filed under Section 31(2) of the Act.

7. A separate counter has been filed by the respondents in both the writ petition and the civil miscellaneous appeal wherein they took the following stand :

There was a violation of the provisions of Section 7 of the Act since there had been movement of funds among the three NGOs. Several transfers were made without obtaining prior permission. Both the petitioner trust as well as the appellant were not able to provide satisfactory answer for the queries raised by the respondents. As a consequence, the respondents exercised their power under Section 16(1) read with Section 12(4)(a)(vi) and (vii) of the Act. Both the petitioner trust as well as the appellant do not have any fundamental

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right to carry on with the activity of running the education institutions only by receiving the foreign contributions. Accordingly, the respondents sought for dismissal of both the writ petition as well as the civil miscellaneous appeal.

8. The respective learned counsel appearing on behalf of both the petitioner trust as well as the appellant made the following submissions :

(a) The impugned communications issued by the respondents did not even assign any reason as to why the renewal applications were rejected. The petitioner trust has not violated the provisions of Section 7 of the Act since the requirement for getting prior permission was brought in only through Act XXXIII of 2020, which came into effect on 29.9.2020. Till then, there was no prohibition on transfer of foreign contribution to any other person where the other person has been registered and has also been granted the certificate.

(b) When such a query was raised by the respondents, all the particulars were furnished and if at all there is alleged violation, it would be only for the period from October 2020 to February 2021. The movement of funds among the three NGOs was also submitted to the

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respondents by providing necessary bank statements. Right from the year 1982 onwards, absolutely there has been no complaint against the petitioner trust, which has dedicated itself for providing education to downtrodden children and they have been virtually stopped from extending their services.

(c) In order to substantiate their submissions, reliance is placed on

(i) the judgment of the Hon'ble Supreme Court in the case of ***Institute of Chartered Accountants of India Vs. L.K.Ratna & Others [reported in 1986 (4) SCC 537];***

(ii) another judgment of the Hon'ble Supreme Court in the case of ***Madhyamam Broadcasting Ltd. Vs. Union of India [reported in 2023 (13) SCC 401];***

(iii) the order passed by a learned Single Judge of this Court in the case of ***Trust Children rep.by its Trustee Vs. Union of India & another [W.P.No.14343 of 2024 dated 24.10.2024]***; and

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(iv) the order passed by another learned Single Judge of this Court in the case of ***Oasis Ministerial International rep.by is Managing Trustee Vs. Union of India & another [W.P.No.28110 of 2021 dated 14.6.2024]***.

9. Per contra, the learned Additional Solicitor General appearing on behalf of the respondents made the following submissions :

(a) The right to receive foreign contributions is not a vested right and it cannot be claimed as a matter of right by both the petitioner trust as well as the appellant. In order to substantiate this submission, he relied upon a judgment of the Hon'ble Apex Court in the case of ***Noel Harper Vs. Union of India [reported in 2023 (3) SCC 544].***

(b) The application for renewal is like a fresh permission to be granted and it cannot be claimed as a matter of right just because both the writ petitioner as well as the appellant were registered under the Act. To substantiate this submission, he relied upon the judgments of the Hon'ble Apex Court in the case of ***Gajraj Singh Vs. State Transport Appellate Tribunal [reported in 1997 (1) SCC 650]***

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and in the case of ***State of Gujarat Vs. Nirmalaben S.Mehta [reported in 2016 (9) SCC 240].***

(c) The assignment of reasons is not mandatory in all cases and the failure to give reasons itself does not violate the principles of natural justice. To substantiate this submission, reliance is placed on the Proviso to Section 12(5) of the Act.

(d) He concluded his submissions by stating that there is a violation in complying with the provisions of Section 7 of the Act and that there was a transfer of foreign contribution among the NGOs, which would, by itself, dis-entitle both the petitioner trust as well as the appellant to seek for renewal. He ultimately sought for dismissal of both the writ petition as well as the civil miscellaneous appeal.

10. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned communications.

11. At the outset, it is relevant to point out that the impugned e-mail communication, which has been put to challenge in the writ petition and the impugned order passed by the respondents, which has

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been challenged in the civil miscellaneous appeal, have not contained any reasons except stating that the renewal was refused under Section 16(1) read with Section 12(4)(a)(vii) of the Act.

12. A combined reading of Sections 16(1) and 12(4)(a)(vii) of the Act makes it clear that such renewal will not be granted if a person has contravened any of the provisions of the Act. It is not known as to which provision was contravened either by the petitioner trust or by the appellant and it has not been explicitly stated in the impugned communications.

13. It comes to surface only in the counter affidavits that have been filed by the respondents separately in the writ petition as well as the civil miscellaneous appeal wherein they have taken a stand that the petitioner trust and the appellant have violated the provisions of Section 7 of the Act since they have transferred the foreign contributions among different NGOs.

14. Section 7 of the Act, as it stood before the amendment brought forth under Act XXXIII of 2020 with effect from 29.9.2020,

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reads as follows :

> *"7. Prohibition to transfer foreign contribution to other person :*
>
> *No person, who*
>
> *(a) is registered and granted a certificate or has obtained prior permission under this Act; and*
>
> *(b) receives any foreign contribution,*
>
> *shall transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act :*
>
> *Provided that such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or obtained permission under this Act in accordance with the rules made by the Central Government."*

15. On a careful reading of the above provision before it stood amended, it is seen that no person, who is registered and granted a certificate under the Act and who receives foreign contribution, shall transfer such foreign contribution to any other person ***unless such other person is also registered and had been granted the certificate***.

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16. The petitioner trust and its other two sister NGOs did not have any issues when the above provision was in force since the transfer of funds was made amongst themselves and those NGOs were registered and granted the necessary certificates under the Act. On carefully going through the materials placed before this Court and the stand taken by both the petitioner trust as well as the appellant, it is seen that they received the foreign contribution from a common source and it is distributed among the NGOs to carry on with their activities of providing education to children. The bank statements that have been placed before this Court would show that all those fund transfers had taken place through the bank transactions. There is nothing to show that there is any misuse of funds.

17. The requirement of getting the prior permission started only after the provisions of Section 7 of the Act were amended under Act XXXIII of 2020 with effect from 29.9.2020. For proper appreciation, Section 7 of the Act, after its amendment, reads as follows :

> *"7. Prohibition to transfer foreign contribution to other person :*
>
> *No person, who*

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(a) is registered and granted a certificate or has obtained prior permission under this Act; and

(b) receives any foreign contribution,

shall transfer such foreign contribution to any other person."

18. After the above amendment came into force, even the transfer of foreign contribution to a person registered and granted the certificate can be done only after getting the permission from the Competent Authority. The period between October 2020 and February 2021 became applicable to the petitioner trust as well as the appellant and it would be hardly for a period of five months. In fact, after the applications were submitted by both the petitioner trust as well as the appellant seeking for renewal, various queries were raised from time to time and they were answered by them.

19. The final query sought for was received in November 2021, which dealt with the movement of foreign contribution among the NGOs and their functioning in the same premises. On receiving this query, the petitioner trust clarified as follows :

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"We provide here our clarifications :

(a)(i) The two other NGOs referred to namely viz. the Children's Garden School Society and the Sharma Centre for Heritage Education are functioning from the same premises to save on administrative overheads and expenses;

(ii) The NGOs have a few common office bearers, but many other members are different in each one and are not on the other Boards;

(iii) The activities and donars for all NGOs are different from each other;

(iv) We attach here a certified bank statement for 2019-20 to provide complete details of the funds."

20. This Court wanted to ascertain as to whether there are any other reasons for the rejection of renewal since it involved foreign contribution. Hence, an order was passed calling for the report in a sealed cover. Accordingly, the report was submitted in a sealed cover, pursuant to which, the following order came to be passed on 28.7.2022 :

"Today the information as sought for has been produced in a sealed cover in which the reason for denying the approval is on the basis that the field enquiry done by the IB (Intelligence

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Bureau) shows that the foreign contribution received by one NGO is being transferred to the others, the same is taken on file.

2. The learned Government Pleader had also produced the accounts statement of one of the NGOs, M/s. Ellen Sharma Memorial Trust to show how the foreign contributions are being transferred to the other NGO. It was also informed that the steps had been taken to cancel the approval granted to M/s.Ellen Sharma Memorial Trust against which the W.P.No.4887 of 2022 was filed and the same is pending. Considering the fact that the subject involved in the Writ Petition as well as in the above Civil Miscellaneous Appeal is same, therefore, this matter may also be tagged along with W.P.No.4887 of 2022.

3.The Registry is directed to get the necessary instructions from my Lord the Hon'ble Chief Justice for posting the two cases together."

21. The respondents have taken a stand in the counter affidavits as if the foreign contribution was also used for personal gain and hence, the cases will fall within the ambit of Section 12(4)(a)(vi) of the Act.

22. However, this stand was not indicated in the impugned

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communications that were sent to both the petitioner trust and the appellant.

23. On carefully going through the report that was placed before this Court in a sealed cover, it is seen that the appellant has two sister NGOs namely (i) Children Garden School Society; and (ii) Ellen Sharma Memorial Trust viz. the writ petitioner. All the NGOs are functioning in the same premises and they have shared the foreign contributions amongst themselves. The petitioner trust runs two schools along with hospital and they have also purchased a farm land at Kanchipuram for agricultural purposes.

24. In the entire report, there is absolutely no material to show that the petitioner trust and its sister NGOs are misusing the foreign contributions and not even once, they have come to the adverse notice of the respondents. It has also been stated that there is no personal gain or diversion of foreign contributions for undesirable purposes. The only reason that has been assigned in the entire report is that there is a violation of the provisions of Section 7 of the Act since there had been movement of foreign contribution amongst the sister NGOs.

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25. The learned Additional Solicitor General appearing on behalf of the respondents submitted that both the petitioner trust as well as the appellant cannot claim renewal of registration as a matter of right and they also cannot claim for foreign contribution in order to run the educational institutions.

26. In the instant case, the respondents alleged the violation of the provisions of Section 7 of the Act and that has been put against both the petitioner trust as well as the appellant thereby an impression has been attempted to be created as if there is a misuse of foreign contribution. The report placed before this Court in the sealed cover does not indicate even a single instance where any such diversion has taken place. The donors for the petitioner trust are one Mrs.Ellen Sharma and one Mr.V.N.Sharma, who wanted to propagate their vision and contribute generously for eduction and overall welfare of children. The source of contribution is only from them and they are living abroad.

27. The petitioner trust has been functioning effectively from the

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year 1983 onwards and till the final renewal that took place in the year 2016, there was no complaint against any misuse of foreign contribution. If really there is a violation of the provisions of Section 7 of the Act for the short period between October 2020 and February 2021, the respondents could have sought for a clarification from both the petitioner trust as well as the appellant. In fact, such a clarification was sought for and both the petitioner trust as well as the appellant responded to it.

28. If, ultimately, any violation is alleged against both the petitioner trust as well as the appellant, they must be necessarily put on notice and they must be informed regarding the violation and their response must be sought for. This is in view of the fact that such a non renewal will ultimately result in the closure of the institutions by giving an impression as if the petitioner trust had not properly utilized the foreign contributions received. As a matter of fact, there is no complaint against both the petitioner trust as well as the appellant that they have wrongly transferred any foreign contribution. Therefore, the reasoning given in the impugned communications will not strictly apply to both the petitioner trust as well as the appellant.

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29. It cannot be said that both the petitioner trust as well as the appellant are denuded of any right under the Act. When a person applies for renewal under Section 16 of the Act, the Central Government should renew the registration and grant the certificate ordinarily within 90 days from the date of receipt of the application and where such a renewal does not take place within the period stipulated, reasons must be assigned to the applicant. In the instant case, the renewal was pending for months together and in the meanwhile, only certain queries were raised and they were explained by both the petitioner trust as well as the appellant.

30. The contention of the respondents that they need not communicate the reasons for refusal to grant the certificate by bringing the case within the Proviso to Sub-Section (5) of Section 12 of the Act, is unsustainable.

31. In the case in hand, the foreign contributions were not diverted, misused and utilized for any other purpose against national interest or for any personal gain or for undesirable purposes.

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32. The Hon'ble Apex Court, in the case of ***Madhyamam Broadcasting Limited,*** dealt with this question regarding the non disclosure of reasons pitted against national interest. The Hon'ble Apex Court applied the principle of proportionality and held that the standard to test the reasonableness of not conveying the reasons, cannot infringe the substantive rights and the application of proportionality standard to test the reasonableness of the procedure guaranteed, cannot be taken away. The Hon'ble Apex Court further held that the standard of proportionality infuses a culture of justification where the State has to discharge the burden of justifying that its action was reasonable and not arbitrary.

33. Applying the above judgment to the case in hand, it is seen that the only complaint against both the petitioner trust as well as the appellant is that they had distributed the foreign contributions amongst themselves. This reason has nothing to do with national security or does not have propensity of going against public interest. Hence, the respondents ought to have informed both the petitioner trust as well as the appellant regarding the exact reason, for which, their respective

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application for renewal of registration was rejected. Now that the reason has been spelt out in the counters, this Court does not want to send the matters back to the respondents for a fresh consideration.

34. This Court must now see if the so called violation in transferring the foreign contributions amongst the NGOs for the period from October 2020 to February 2021 warrants non renewal of the registration.

35. For a long time, the petitioner trust has been transferring the foreign contributions received amongst the two sister NGOs since they were receiving funds from the same source and they were running the educational institutions together. Such distribution of foreign contribution amongst the sister NGOs was not questioned at any point of time and therefore, they continued such practice without understanding the consequence of the amendment of the provisions of Section 7 of the Act by Act XXXIII of 2020. In such an event, the respondents could have called for clarifications from both the petitioner trust as well as the appellant and informed them that such distribution of foreign contribution cannot take place without prior permission after

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the amendment. Even though ignorance of law is no excuse, this principle cannot be applied in the abstract and it must be tested on the facts and circumstances of each case.

36. The amendment that came into effect from October 2020 was a happen-stance and it is impossible for a layman to take note of such procedural changes brought in by the amendment. Therefore, just because the procedural formality was not followed for that short period, it should not be completely put against both the petitioner trust as well as the appellant.

37. Both the petitioner trust as well as the appellant would not have realized that the provisions of Section 7 of the Act have been amended towards the end of September 2020. They bona fidely continued the same practice of transferring the foreign contributions amongst the sister NGOs. If such transfer of foreign contributions has not resulted in diversion of funds or misuse of funds for personal use, violation of the provisions of Section 7 of the Act should not be put against both the petitioner trust as well as the appellant to deny the renewal of registration. One family is involved in sending the foreign

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contribution to provide education to children in India and such an objective should not be shot down by hyper technicalities.

38. Before parting with the case, it is inevitable to sum up that just because some institutions run with the aid of foreign contribution, it is not necessary to look at the institutions like that of the petitioners with suspicion unless there are materials to show that such foreign contribution is being misused and it is being used against public interest/national interest. This is more so where persons of Indian origin, settled in foreign countries, earn money and want to give something back to their country by contributing funds. In such cases, unless there are serious violations of misuse of foreign contribution, the Authorities must deal with it with an open mind. The case in hand is one where such contributions were made by persons of Indian origin settled in foreign countries and they wanted to contribute in terms of providing education to women and work for their welfare. Under such circumstances, to deny them that opportunity must have strong reasons to refuse renewal of the applications.

39. In the light of the above discussions, this Court is inclined to

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interfere with the impugned communications of the respondents.

40. In the result, both the civil miscellaneous appeal as well as the writ petition are allowed and the impugned communications of the respondents are hereby set aside. There shall be a direction to the respondents to act upon the respective application submitted by both the petitioner trust as well as the appellant for renewal of registration and grant renewal under Section 16 of the Act within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, all connected pending CMPs and WMPs are closed.

27.6.2025

Index : Yes
Neutral Citation : Yes

To
1.The Director, FRCA Wing,
Ministry of Home Affairs
(FRCA Wing), I Floor,
Mayor Dyan Chand National
Stadium, Near Pragati Maidan,
New Delhi-110002.

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2.The Union of India, rep.by
Secretary, Ministry of Home
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CMA.No.746 of 2022 &
WP.No.4887 of 2022 &
all connected pending CMPs
& WMPs

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