

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No. 131 of 2013

IN THE MATTER OF:

Association for Democratic Reforms & anr. ...Petitioners

Versus

Union of India & Ors ... Respondents

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New Delhi
Dated : 31st January, 2013

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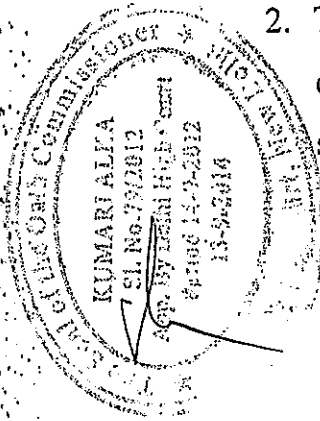
Versus.

Union of India & Ors ... Respondents

COUNTER AFFIDAVIT ON BEHALF OF THE
RESPONDENT NO. 1, THROUGH MINISTRY OF HOME
AFFAIRS.

I, Ashutosh Kumar Sinha, Director (MU), FCRA, Ministry of Home Affairs,
NDCC-II Building, (Opposite Janter Mantar), Jai Singh Road, New Delhi-110001.

1. That I am competent and authorized to depose this affidavit on behalf of respondents herein in my official capacity.
2. That I have read the contents of the present petition and I state that the contents mentioned therein to the extent they are inconsistent with the submissions made hereinafter in this counter affidavit are incorrect and denied. Unless any averment and contention is specifically admitted or traversed, the same may be treated as denied.



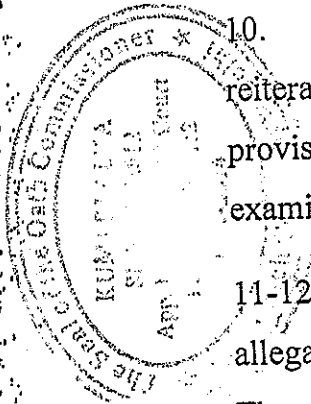
PRELIMINARY OBJECTIONS:

- A. That the matter of receipt of donations from foreign companies / foreign sources by the political parties is under consideration at the Ministry of Home Affairs and due action would be taken on the basis of the examination and findings thereof. Thus the abovementioned writ petition is pre-mature and should be dismissed on this ground.

PARA-WISE REPLY:

- 1-5. That the contents of paras 1 to 5 need no reply.

6. That the contents of para 6 are wrong and denied as stated. Representation filed by petitioner No.2, Shri E.A.S. Sarma to the Election Commission of India, has been received by the answering respondent vide letter No.56/CR/2012/PPEMS dated 28.9.2012 of the Election Commission. Due action has been initiated on said representation and a chronological list of the steps taken is annexed as ANNEXURE-A. It be noted for the sake of clarity that Foreigners Division, MHA is only concerned with Foreign Contribution (Regulation) Act of 1976 and 2010 (hereinafter referred to as "FCRA") related matters.
7. That the contents of para 7 of the writ petition need no reply.
8. That the contention of the petitioners in para 8 of the writ petition are wrong and denied inasmuch as due action and cognizance has been taken on the alleged violation of FCRA by the political parties and the matter is under examination at the moment. The Ministry of Home Affairs (hereinafter referred to as "MHA") has taken steps towards examination of the alleged violation of FCRA, 2010 by the political parties and steps taken have been chronologically listed and annexed above as Annexure-A. It is once again reiterated that the Foreigners Division, MHA is only concerned with matters falling within the scope and application of FCRA, 2010.
9. That the contents of para 9 of the writ petition need no comments being matter of fact.
10. That the contents of para 10 of the writ petition need no reply being reiteration of legal provisions. However, the allegation of brazen violation of the provisions by the respondent No. 1 is denied inasmuch as the matter is under examination.
- 11-12. That the contention in paras 11 and 12 of the writ petition are denied and the allegations are pre-mature inasmuch as the matter is being examined by the MHA. The MHA had sought clarification from political parties regarding why contribution received by them from M/s. Sterlite Industries(India) Ltd., M/s. Sesa Goa Ltd etc should not deemed to be receipts coming from foreign source as defined under section 2(1)(g) of FCRA, 2010. A reply from the Indian National Congress Party has been received, wherein, the party has admitted that they have received contribution from M/s. Sterlite Industries (India) Ltd and Sesa Goa Ltd. but they have clarified that said companies i.e. M/s. Sesa Goa Ltd and M/s. Sterlite Industries (India) Ltd are companies incorporated in India and are 'Indian Company' as per law inasmuch as these companies are held by Mr. Anil Agarwal, an Indian citizen. It is further made clear that in terms of Section 591(2) of the



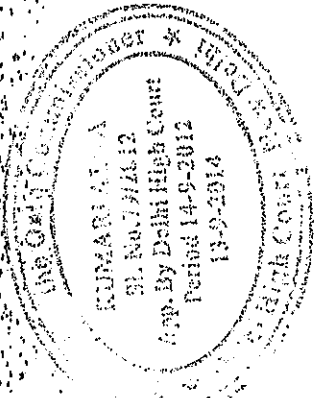
Companies Act, since the parent company is ultimately held by Mr. Anil Agarwal, who is an Indian, thus said companies fall within the definition of Indian Company. Hence, the contribution received from the aforesaid two companies cannot be considered as "foreign contribution" or contribution from a foreign source. Further, the Bharatiya Janta Party and Samajwadi party were also asked to clarify regarding receipt of contributions from companies alleged as foreign companies including the two aforesaid companies, however, their reply is awaited despite having sent reminders dated 19.11.2012 and 18.1.2013.

Furthermore, the Ministry of Corporate Affairs has been requested vide letter No.II/21022/58(0647)/2012-FCRA(MU) dated 22.1.2013 to inform whether M/s. Sesa Goa Ltd and Sterlite Industries (India) Ltd can be termed as foreign companies in the light of Section 2(1)(g) of FCRA, 2010 and Section 591(2) of the Companies Act, 1956.

13. That the contents of para 13 of the writ petition cannot be replied to at the moment since the matter is under consideration by MHA. The MHA has also written a letter to Ministry of Corporate Affairs vide letter No.II/21022/58(0647)/2012-FCRA(MU) dated 22.1.2013 to intimate whether these companies are "foreign company" within Sec. 2(1)(g) of FCRA, 2010. It be further noted that as per Section 17(2) of FCRA, 2010 relating to Foreign contribution through Schedule Bank it is stated that:

"Every Bank or authorized person in foreign exchange shall report to such authority as may be specified -

- (a) Prescribed amount of foreign remittance;
- (b) The source and manner in which the foreign remittance was received; and
- (c) Other particulars, in such form and manner as may be prescribed."



Furthermore, Rule 16(1) of FCRR, 2011 relating to reporting by banks of receipt of foreign contribution states as under:

"every bank shall send a report to the Central Government within 30 days of any transaction in respect of receipt of foreign contribution by any person who is required to obtain a certificate of registration or prior permission under the Act, but who was not granted such certificate or prior permission as on the date of receipt of such remittance."

The MHA has asked the Department of Financial Services vide letter No.II/21022/58(0647)/2012-FCRA(MU) dated 22.1.2013 to obtain reports from Banks on what basis the funds indicated in Annexure P-12 of writ petition were credited to the accounts of the political Parties and whether any procedure / scrutiny as prescribed by FCRA was under taken in this regard.

14. That the contention in para 14 of the writ petition are denied. It is submitted that under FCRA, 2010, the MHA considers application for requisition of NGOs/ Association etc or grant of prior permission for receiving foreign contribution. These registered NGOs/ Association are required to submit Annual Returns alongwith Income and Expenditure, Receipts and payments, balance sheets and bank statements. Through these mechanism, the MHA monitors violation of the FCRA by the registered NGOs/ Associations. Accordingly, action was taken by MHA against registered 4138 NGOs for violation of the FCRA.

15-18 That the contents of paras 15 to 18 of the writ petition need no reply from the answering respondent.

19-20 That in reply to the contents of paras 19 to 20 of the writ petition, it is submitted that the letter / representation of Petitioner No. 2 has been received from the Election Commission of India by the MHA and action has been taken on said representation which has been chronologically listed and annexed above as Annexure-A.

21. That the contents of para 21 of the writ petition need no reply.

GROUND

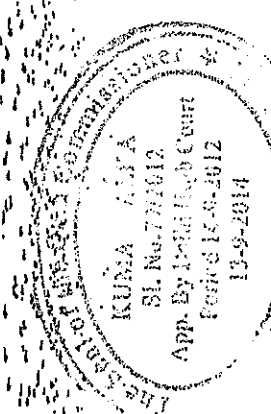
(A) & (B) That contents of grounds (A) and (B) raised are wrong and denied apart from being pre-mature since the matter is under examination by the MHA and an appropriate action will be taken after the findings.

(C) & (D) That the contents of Ground (C) and (D) of the writ petition are denied in view of submissions already made herein before.

(E) That the contents of Ground (E) of the writ petition are wrong and denied in view of submissions made hereinbefore.

(F) That the contents of Ground (F) of the writ petition needs no reply as does not relate to answering respondent.

Prayer



It is respectfully prayed that this writ petition be dismissed summarily in view of submissions made by respondent in this affidavit.

(Signature)
Deponent
(आशुतोष कुमार) (ASHUTOSH KUMAR)
निदेशक (Director)
गृह विभाग (Ministry of Home Affairs)
भारत सरकार, नई दिल्ली (Govt. of India, New Delhi)

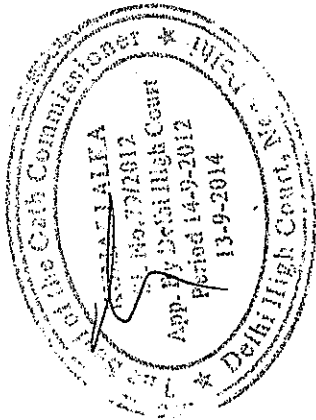
VERIFICATION:

I, the deponent named hereinabove, do hereby verify that the contents of the above counter affidavit are true and correct to my knowledge based on records and the legal submission are true and correct on the basis of information received and believed to be true and correct and nothing material has been concealed therefrom.

Verified at New Delhi on this 31st day of January, 2013.

(Signature)
(आशुतोष कुमार) (ASHUTOSH KUMAR)
निदेशक (Director)
गृह विभाग (Ministry of Home Affairs)
भारत सरकार, नई दिल्ली (Govt. of India, New Delhi)

Through



(Signature)
Richa Kapoor,
Central Govt. Standing Counsel
Advocate for the Respondent
407, Lawyers Chambers-1
Delhi High Court, New Delhi
Mobile No. 9810400407

Identify the Deponent who has Signed in my Presence

New Delhi
Dated : 31 January, 2013

... I AM PLED THAT THE DEPENDENT
... of Smt. Km. Ashutosh Kumar
No. W/A.....
No.....
Identified by Shri/Smt.....
has solemnly affirmed before me at
Gathi on..... as St. No.....
that the contents of the affidavit
which have been read & explained to
are true & correct to his knowledge
(Signature)
Civil Commissioner

After receiving the complaints from the ECI, action taken by MHA so far is indicated chronologically as given below:

S.No.	Date	Status
1.	4.10.2012	Election Commission of India vide their letter No.56/CR/2012/PPEMS dated 28.9.2012 has stated that complaints were received that certain political parties have received foreign contribution from Foreign source in contravention of the proviso of Sec. 29 B of RPA, 1951 and sec. 3 of FC(R) A 2010. ECI requested to examine the matter of such enquiry and further action under the said Act under the said Act as may be deemed appropriate by Ministry. This letter was received in MHA on 4.10.2012.
2.	18.10.2012	MHA has, as a first step, sent letters to three Political Parties (Indian National Congress, Bhartiya Janta Party and Samajwadi Party) in individual files seeking clarification regarding contribution received from specific companies.
3.	18.10.2012	MHA has sent a list of 40 companies vide letter No.11/21022/58(647)/2012-FC(MU), as the first lot to Ministry of Corporate Affairs with the request to give us information regarding shareholding pattern.
4.	23.10.2012	In response to MHA letter, the documents in respect of one company, viz., Sterlite Industries (India) Ltd. was sent to us by Ministry of Corporate Affairs regarding shareholding structure of companies.
5.	1.11.2012	MHA has written to Ministry of Corporate Affairs stating that as personnel available with us for the enquiry require augmentation, it is requested that a domain expert having experience in company law

		may be provided to MHA on 'Secondment Basis' for a period of six month.
6.	2.11.2012	MHA has written to Ministry of Corporate Affairs to provide access to MCA database of Ministry of Corporate Affairs and requested to provide User ID and Password. This has been received from them.
7.	12.11.2012	Central Vigilance Commission has forwarded complaints received by them, from Shri E.A.S. Sarma, Former Secretary, GOI vide letter Dy. No.15994/12/1/9/192753 dated 29.10.2012.
8.	7.11.2012	In meantime, in response to our letter Samajwadi party has replied that the transaction under reference is an indigenous transaction and may not be deemed from a foreign source u/s 2(j) of FCRA 2010.
9.	19.11.2012	MHA sent letter to Samajwadi Party to reply our query "why these transactions will not be deemed to be receipts coming from a foreign sources, as defined u/s 2(j) of the FCRA 2010?" The reply is awaited.
10.	19.11.2012	MHA sent reminders letter to Bhartiya Janta Party to reply our query "why these transactions will not be deemed to be receipts coming from a foreign sources, as defined u/s 2(j) of the FCRA 2010?" the reply is awaited.
11.	19.11.2012	MHA sent reminders letter to Indian National Congress to reply our query "why these transactions will not be deemed to be receipts coming from a foreign sources, as defined u/s 2(j) of the FCRA 2010?" The reply is awaited.

12.	20.11.2012	In response to our letter dated 1.11.2012, Ministry of Corporate Affairs has intimated that they will not be able to spare the service of an officer on full time basis due to shortage of officers. They nominated Shri A.K. Bunkar, AROC in office of ROC Delhi as Nodal Officer for MCA to whom queries can be sent.
13.	3.12.2012	Bhartiya Janta Party, in response to our letter has written back stating that "as these are old donations we are in process of getting information from the Companies mentioned in the MHA list." They will get back as soon as relevant information is available with them.
14.	8.12.2012	All India Congress Committee has submitted that they have received contributions from M/s. Sesa Goa Ltd., Sterlite Industries (India) Ltd. and M/s. Russel Credit Ltd. But they have clarified that M/s. Sesa Goa Ltd is incorporated in India and is an Indian Company. The majority of equity in M/s. Sesa Goa Ltd is held by companies incorporated outside India, but, it is held by Mr. Anil Agrawal, an Indian citizen. Hence contribution would not be a "foreign contribution" or from a "foreign source". They stated that, under the Act, the contribution made either by a company incorporated outside India or its Indian subsidiary would not be a foreign contribution or from a foreign source if such company satisfies the test of section 591(2) of the Company Act i.e. when 50% or more of its paid up capital is held by an Indian citizen. They stated that M/s. Sesa Goa Ltd has made contribution to Political Parties in accordance with Sec. 293A of Companies Act. They have stated same thing for contribution received from M/s. Sterlite Industries (India) Ltd.

15.	18.1.2013	MHA sent reminder letters to Samajwadi party and Bhartiya Janata Party to reply our query "why these transactions will not be deemed to be receipts coming from a foreign sources, as defined u/s 2(j) of the FCRA 2010?" The reply is awaited.
16.	22.1.2013	MHA has written letter to Ministry of Corporate Affairs to inform whether M/s. Sesa Goa Ltd and Sterlite Industries (India) Ltd would be foreign companies as defined within Sec 2(1) (g) of FCRA 2010.
17.	22.1.2013	MHA has written letter to Ministry of Corporate Affairs to intimate whether the companies at Annexures P-9 to P-12 of the PIL are "foreign companies" within Sec 2(1) (g) of FCRA 2010.
18.	22.1.2013	MHA has asked Department of Financial Services to obtain a report from Banks on what basis the funds indicated in annexure P-12 of PIL were credited to the accounts of the Political Parties and whether any procedure / scrutiny was undertaken in this regard within Sec 17(2) of FCRA 2010 and Rule 16 of FCRR 2011.