

**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**  
**SPECIAL LEAVE PETITION (CIVIL) NO. 18190 OF 2014**

**In the matter of:**

Indian National Congress

...Petitioner

**Versus**

Union of India & Ors.

...Respondents

**COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 2 AND 3**

I, Prof. Jagdeep Chhokar S/o Shri. Raghbir Singh, Founder Member, Association for Democratic Reforms, T-95 A, First Floor, C.L House, near Gulmohar Commercial Complex, Gautam Nagar, New Delhi- 110049 do hereby solemnly affirm & state as under:

1. I am the Respondent No. 2 in the instant special leave petition and being conversant with the facts and circumstances of the case, am competent and authorised to swear this Affidavit. I have also been authorised by the Respondent No. 3 to file this counter affidavit on his behalf.
2. I have gone through the contents of the special leave petition and submit my response to the same as given below. I submit that no new fact or ground has been taken in this counter affidavit which was not taken or argued before the Hon'ble High Court.
3. The Association for Democratic Reforms (a registered public trust) and Dr. EAS Sarma (Former Secretary, Govt. of India) had jointly filed a public interest litigation (WPC 131 of 2013) before the Hon'ble High Court of Delhi against the complete inaction of the authorities in the

face of violation of Representation of People's Act 1951, Foreign Contribution (Regulation) Acts (FCRA) of 1978 and 2010 by major political parties, particularly the Indian National Congress (INC) and the Bhartiya Janta Party (BJP). The said petition was allowed by the Hon'ble High Court of Delhi vide a detailed judgment dated 28.03.2014. I respectfully submit that the instant SLP filed by the INC against the said judgment is misconcieved and deserves to be dismissed.

4. The admitted facts of the case are that the both INC and BJP are political parties, which are barred from accepting donations from any "foreign source" under the FCRA. It is also an admitted fact that both these major political parties have in fact taken donations from several companies which are subsidiaries of a foreign company, i.e. the foreign company concerned owns more than 50% of shares in these corporations.
5. The Hon'ble High Court judgment is based on the admitted case of M/s Sesa Goa and M/s Sterlite, two subsidiaries of M/s Vedanta Resources (a foreign company registered in United Kingdom), who have made huge donations amounting to crores of rupees to these political parties. The Hon'ble High Court has rightly found that the donations from companies of M/s Sesa Goa and M/s Sterlite would constitute a "foreign source" as defined under Section 2(e)(vi)(c) of the FCRA 1976. Therefore, the Hon'ble Court has rightly found the actions of the INC and BJP to be in contravention of the FCRA which is a serious offence punishable with imprisonment.

6. Therefore, the Hon'ble High Court has directed the Central Government and the Election Commission *“would relook and reappraise the receipts of the political parties and would identify foreign contributions received... as per law declared by us hereinabove and would take action as contemplated by law... directions shall be complied within a period of six months from date of receipt of certified copy of the present decision.”*
7. The High Court after a detailed examination of the history and the debate leading to the enactment of FCRA 1976 has observed: *“Therefore it can be safely gathered that amidst a spate of subversive activities sponsored by the foreign powers to destabilize our nation, the Foreign Contribution (Regulation) Act 1976 was enacted by the Parliament to serve as a shield in our legislative armoury... to insulate the sensitive areas of national life like journalism, judiciary and politics from extraneous influences stemming from beyond our borders.”*  
(para 20)
8. The High Court has noted in para 30 that *“the term ‘Foreign Source’ is not exhaustively defined under the Act and it assumes significance that the legislature has chosen to employ the word- ‘includes’ which signifies that the entries contained in the said provision are only illustrative of what could constitute a ‘Foreign Source’.”* (Para 30)
9. The High Court has further noted that *“The reason for providing an ‘inclusive definition’ seems to be that the legislature at the time of enacting the Act was not in a position to exhaustively foresee the myriad means through which foreign contributions could be channelized into India. The debates have also recognised that such*

- operations are covert in their innate nature and the foreign powers are known to have operated under the cloak of 'dummy-organisations' and adopt ingenious means to perforate the polity of nations. With a view to address such a mischief, enacting an 'inclusive definition' seems to provide the best remedy since it lends the necessary flexibility to bring within its purview certain situations which do not stand expressly covered therein, lest loopholes of law may be explored and exploited in future."* (Para 31)
10. The Preamble of the FCRA 1976 itself states: *"An Act to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life may function in a manner consistent with the values of a sovereign democratic republic..."*
11. The Hon'ble High Court in para 36 of the judgment has noted the contention of the Union of India and the political parties that since a citizen of India Mr Anil Agarwal holds more than 50% of share capital of Vedanta (a company incorporated in UK), so it is not a foreign company. After analysing the provisions of the law and citing various authorities on the issue, the Hon'ble High Court has rejected this contention. The judgment in para 54 states: *"The nationality of a company is determined exclusively on the touchstone of the situs of its incorporation and there exists a profusion of judicial authorities to this effect. The nationality of its shareholders or directors have no bearing upon the nationality of a company, the company being a*

- distinct jural entity having an existence independent of its constituents.”*
12. In Para 57 the Hon'ble High Court has held: *“We may hasten to point out that even if the submissions of the Respondents in this regards were to be accepted by this Court and Vedanta and its subsidiaries like Sterlite and Sesa were not held to be a ‘Foreign Source’ within the meaning of Section 2(e)(iii) of the Foreign Contribution (Regulation) Act 1976, yet there would be no escape from the applicability of Section 2(e)(vi) of the Foreign Contribution (Regulation) Act 1976.”*
  13. The Hon'ble High Court has therefore stated in para 70 that: *“the legislature in its wisdom has defined the term ‘Foreign Source’ in a wide and an expansive manner with a view to suppress the mischief. This Court cannot impose artifices and thereby restrict the natural/ordinary meaning of the words contained in the definition, lest it would frustrate the legislative intent and render the provision redundant.”*
  14. Therefore the Hon'ble High Court rightly concludes in its judgment: *“It is not disputed by the respondents that more than one-half of the nominal value of the share-capital of Sterlite and Sesa is held by Vedanta... Therefore this leads to the irresistible conclusion that the present case is also squarely covered under Section 2(e)(vi)(c) of the Foreign Contribution (Regulation) Act 1976. For the reasons extensively highlighted in the preceding paragraphs, we have no hesitation in arriving at the view that prima-facie the acts of the respondents... clearly fall foul of the ban imposed under the Foreign*

*Contribution (Regulation) Act 1976 as the donations accepted by the political parties from Sterlite and Sesa accrue from 'Foreign Sources' within the meaning of law.” (Para 72 and 73).*

15. As far as the donations taken by the INC (petitioner herein) from Public Sector Undertakings(PSUs) are concerned, the Hon'ble High Court has directed the Union of India and the Election Commission to investigate the same and take action as per law, since the same is an offence under the Companies Act of 1956.
16. Under these circumstances, I respectfully submit that the judgment of the Hon'ble High Court of Delhi is correct both in law as well as in the facts of the case, and is also in public interest. Therefore, I submit that this Hon'ble Court may be pleased to uphold the said judgment and dismiss the instant special leave petition.

DEPONENT

**VERIFICATION:**

I, the above named Deponent, do hereby verify that the contents of the above Affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed there from.

Verified at New Delhi on this      day of October 2014.

DEPONENT