

SH. Prashant Bhusan  
Adv.

R.P. Kes-4

IN THE HIGH COURT OF DELHI, AT NEW DELHI  
(CIVIL ORIGINAL JURISDICTION)

Writ Petition (Civil) No.131 of 2013

IN THE MATTER OF PUBLIC INTEREST LITIGATION:

ASSOCIATION FOR

DEMOCRATIC REFORMS & Anr.

.....PETITIONERS

VERSUS

UNION OF INDIA & Ors

...RESPONDENTS

Next date:21.8.2013

INDEX

<u>Sr. No. Particulars</u>	<u>Pages</u>
1. Short counter affidavit on behalf of the respondent no.4	1-8
2. Annexure R4/1 Copy of order dt. 4.2.2013	9-10
3. Annexure R4/2(Colly) Copies of letter dt.18.10.12 & 19.11.12	11-12
4. Annexure R4/3 Copy of reply dt.18.01.13	13-15

AK

Sonali Singh

{ANIL SONI & S.S.SHAMSHERY}  
Advocates for the Respondent No.4  
69, Lawyers Chamber  
Supreme Court of India  
New Delhi

Dated -8-2013



4. That at the outset I deny each and every averment raised in the present Writ Petition except specifically accepted hereinafter.
5. That deponent craves leave of this Hon'ble Court to submit present "short" counter affidavit, reserving the right to address the other issues as well as on the final stand only in case Respondent No.1 file its second affidavit to that effect, as the Government of India has not taken a final stand as per the order dated 04.02.2013, passed by this Hon'ble Court. A copy of the order dated 04.02.2013 is annexed herewith and is marked as **ANNEXURE-R4/1**
6. That instant Writ Petition is being filed by the Petitioners only to gain publicity and nothing else needless to say that the Ministry of Home Affairs along with Election Commission (Respondent 1 & 2 respectively), already considering the matter on its own accord after their complaints and now the Petitioners have filed Writ Petition before this Hon'ble Court, preferring multiplicity of proceedings, despite invoking the jurisdiction of the concerned authority under FCRA, 2010. Therefore, the present Writ

Petition is pre-mature and liable to be dismissed on this very ground.

7. It is submitted that the perusal of the object of Foreign Contribution (Regulation) Act, 2010 (hereafter referred to as 'Act, 2010', it is crystal clear that the construction of the whole Act, is to prohibit such foreign contribution towards political party so much so that it should not be detrimental to the to the national interest and for matters connected there with or incidental thereto.

8. That perusal of the laws laid down in the Act, 2010, reveals that the Central Government has the pivot of the powers in all respect right from the beginning of the suspicion (Section 23) of contravention of any provision of the Act, 2010 for the purpose of the search and seizure to confiscation of any foreign contribution. However, merely saying that one has received a contribution from foreign source would not suffice the essence of the Act, 2010, so as to examine one has to see the nature of the company and its subsidiaries, and this has to be verified

factually as well as legally at the end of Ministry of Home Affairs.

9. That the stand of the Ministry of Home Affairs in para 12 of its Counter Affidavit dated 31.01.2013, is that it itself had vide letter no. II/21022/58(0647)/2012-FCRA(MU) dated 22.01.2013, sort suggestion form Ministry of Corporate Affairs, whether the alleged company can be termed as "Foreign Company" within Sec.2(1)(g) of FCRA, 2010. For ready reference the relevant para is produced herein:

*"Furthermore, the Ministry of Corporate Affairs has been requested vide letter no. II/21022/58(0647)/2012-FCRA(MU), dated 22.01.2013 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."*

10. That the Ministry of Home Affairs in its letter II/21022/58(347)/12 FC (MU) dated 18.10.2012 & 19.11.2012 solicit from the Respondent No.4 to furnish clarifications with supporting documents

about certain donations received. (Copies of the letters dated 18.10.2012 & 19.11.2012 are annexed herewith and is marked as **ANNEXURE-R4/2** collly).

In response to the same the Respondent no.4 has already sent a reply dated 18.01.2013 (A copy of the reply dated 18.1.2013 is annexed herewith and is marked as **ANNEXURE-R4/3**), explaining the entire circumstances and the content of the same be read as part and parcel of the present affidavit.

11. The clauses of FCRA are attracted only where there is "foreign contribution" or it is from a "foreign source". However, under the Act, the contribution made either by a company incorporated outside India or its Indian subsidiary will not constitute a "foreign contribution" or a "foreign source" where company satisfies the conditions of Section 591(2) of the Companies Act .1956, i.e., when 50% or more of its paid up capital is held by an Indian citizen.

12. That the Respondent no.4 had received the alleged donations from the companies since they were Indian Companies duly registered under the Indian Companies Act. [Alongwith the cheque for donation,

:the companies had given their confirmation that they were eligible to give donation u/s 293A of the Companies Act, 1956].

Further, as per the certificates from Sesa Goa Limited and The Madras Aluminium Co. Ltd. they have made contributions to Respondent no.4 in accordance with Section 293A of the Companies Act.

13. It is submitted that, the contribution made by companies to the political parties, are only after seeking requisite approval from the Audit Committee of Board of Directors of the respective companies and were within the permitted limits of 50% of their annual net profit determined in accordance with the provision of Section 349 and 350 of the Companies Act 1956, in the three immediately preceding financial years. Under these circumstances, Respondent no.4 has reasonable and lawful belief to proceed on the premise that being companies incorporated and registered in India and being subsidiaries of a company deemed to be incorporated in India under Section 591 of the Companies Act, 1956, were making contributions, as permissible under Companies Act, 1956 and the contribution

being made to Respondent no.4 did not attract the provision and prohibitions provided under FCRA 1976 and/or 2010.

14. That the contents in grounds A-B taken by the Petitioners in the Writ Petition are wrong and denied apart from being pre-mature since the matter is under consideration by the Ministry of Home Affairs.

15. In reply to other grounds raised in Writ Petition, it is submitted that grounds raised are vague so much so to determine the companies in question for "foreign company" and thus it did not warrant interference of this Hon'ble Court. It is submitted that contents of para 1 to 12 of the present Short Counter Affidavit be read as part and parcel of the present para also.

16. That the prayers of the Writ Petition (C) No. 131 of 2013 are vague so much so that it is beyond the jurisdiction of this Hon'ble Court when there are alternative remedy available to which the Petitioners have already resorted to.

17. That the Respondent No.4 seeks liberty to file the second affidavit in case the Union of India takes its final stand.



In these circumstances the above captioned writ  
petition is pre-mature and not maintainable at this  
stage hence liable to be dismissed.

*D. J. Verma*

DEPONENT

^

**VERIFICATION:**

Verified at New Delhi on this      day of August, 2013 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 therefrom.

*D. J. Verma*

DEPONENT

**ANNEXURE-R4/1**

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 131/2013

ASSOCIATION FOR DEMOCRATIC  
REFORMS AND ANR

... Petitioners

Through : Mr. Prashant Bhushan with Mr. Pranav Sachdeva,

Advvs.

versus

UNION OF INDIA AND ORS

... Respondents

Through : Mr. Rajeeve Mehra, ASG with Ms. Richa Kapoor,

Adv. for

R ? 1/UOI.

Mr. P.R. Chopra, Adv. for R ? 2/ECI.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MS. JUSTICE INDERMEET KAUR

O R D E R

04.02.2013

The stand of respondents No. 1 and 2 has been placed on record. The stand shows that in view of the recommendations made by the Election Commission of India and on examination of the matter, the Government of India itself has called upon respondents No. 3 and 4 to explain

their respective stands, but the stand of only respondent No. 3 is stated to have been received. Thus, as to what is the final stand of the Government of India has still not been placed on record. The second aspect is that there is an additional issue raised in the writ petition qua contributions made by the public sector enterprises and the State Governments and learned ASG states that the affidavit filed by him does not cover that aspect. Four weeks? time, as prayed for, is granted to place the stand(s) on record. Let notice to show cause as to why rule nisi be not issued, returnable on 19.03.2013.

Learned counsel for respondents No. 1 and 2 accepts notice. Respondents No. 3 and 4 be served dasti as well.

SANJAY KISHAN KAUL, J.

FEBRUARY 04, 2013 INDERMEET KAUR, J.

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ANNEXURE R-4/2  
(copy)

No. II/21022/58(647)/12 FC(MU)  
GOVERNMENT OF INDIA  
MINISTRY OF HOME AFFAIRS  
(FCRA- MONITORING UNIT)

New Delhi City Centre-II, 1<sup>st</sup> Floor, B-Wing,  
Jai Singh Road, Opposite Jantra Mantar,  
New Delhi, Dated 18<sup>th</sup> October 2012

To,  
  
The Treasurer  
Bharatiya Janata Party Headquarter,  
11, Ashoka Road,  
New Delhi - 110 001

Subject: Receiving Fund/Contribution from the Companies

Sir,


We have received information that some of the contributions received by your Party include the following:

- (i) 2006-07 : Rs. 5,00,000 : from Honda Siel Cars Ltd.
- (ii) 2007-08 : Rs. 27,50,000 : from Sesa Goa Ltd.
- (iii) 2008-09 : Rs. 15,00,000 : from Honda Siel Power Product Ltd.
- (iv) 2009-10 : Rs. 3,50,00,000 : From M/s Vedanta The Madras  
Aluminium Co. Ltd.
- (v) 2009-10 : Rs. 1,00,000 : From Honda Siel Car India Ltd
- (vi) 2009-10 : Rs. 50,00,000 : From Sesa Goa Ltd.

You are requested to furnish clarification with supporting documents, on why these transactions will not be deemed to be receipts coming from a foreign resource, as defined u/s 2 (j) of the Foreign Contribution (Regulation) Act 2010.

Your reply may reach the undersigned within two weeks from the date of receipt of this letter.

Yours faithfully,

  
18.10.12  
(Asnutosh Kumar Sinha)  
Director (MU)

"True copy"

ANNEXURE-R-4/2  
(Colly)

No. II/21022/58(647)/2012 FC (MU)  
Government of India  
Ministry of Home Affairs  
(FCRA - Monitoring Unit)  
\*\*\*\*\*

New Delhi City Centre-II, 1<sup>st</sup> floor, B-wing  
Jai Singh road, Opposite Jantar Mantar,  
New Delhi, Dated 19.11.2012

To

The Treasurer,  
Bharatiya Janata Party Headquarter,  
11, Ashoka Road,  
New Delhi - 110 001

Subject: Receiving Fund/Contribution from the Companies

Sir,

1. I am directed to refer Ministry of Home Affairs' letter of even No. dated 18<sup>th</sup> October 2012 on the above subject (copy enclosed).
2. Our query "why these transactions will not be deemed to be receipts coming from foreign source, as defined u/s 2(j) of the Foreign Contribution (Regulation) Act 2010", remained unanswered.
3. Your detailed reply may kindly be sent to the under signed within four weeks from the date of receipt of this letter.

Yours faithfully,

  
(Ashutosh Kumar Sinha)  
Director (MU)

"True copy"

ANNEXURE - R4/3



भारतीय जनता पार्टी  
Bharatiya Janata Party

18th January, 2013

Shri Ashutosh Kumar Sinha, Director (MU)  
Ministry of Home Affairs  
FCRA – Monitoring Unit  
New Delhi City Centre – II  
1<sup>st</sup> Floor, B Wing  
Jai Singh Road, Opp. Jantar Mantar, New Delhi

Re: your letter No. IV/21022/58347/12 FC (MU) dated 18.10.2012

Dear Sir,

With reference to the above letter asking us to furnish clarifications with supporting documents about certain donations received by us, we wish to submit as follows:

Donations have been received from companies as mentioned in your letter as under:

1. (i) Sesa Goa Ltd. – Rs.27.5 Lakhs in 2007-2008\*  
Sesa Goa Ltd. – (Rs.12.5 Lakhs and Rs.15 Lakhs)\*
- (ii) Sesa Goa Ltd. – Rs.50 Lakhs in 2009-2010
- (iii) The Madras Aluminium Co. Ltd. – Rs.350 Lakhs in 2009-2010

\* You have mentioned in your letter a sum of Rs. 27.5 Lakhs from Sesa Goa Ltd. whereas it is actually in two bifurcations of Rs.12.5 Lakh and Rs.15 Lakhs.

We had received the above referred donations from the companies since they were Indian Companies duly registered under the Indian Companies Act. (Alongwith the cheque for donation we had received the confirmation from the Company that they were eligible to give us donation u/s 293A of the Companies Act, 1956).

Sesa Goa Ltd. and The Madras Aluminium Co. Ltd. are companies incorporated in India and are Indian Companies. Although the majority shares of these companies is held by companies incorporated outside India, more than 50% equity in those holding companies is held by an Indian Citizen, viz. Mr. Anil Agarwal.

The clauses of FCRA are attracted only where there is "foreign contribution" or it is from a "foreign source". However, under the Act, the contribution made either by a company

11. अक्षांक रोड, नई दिल्ली-110001 दूरभाष : 011-23005700 फ़ैक्स : 011-23005787  
11. Ashok Road, New Delhi-110001 Phones : 011-23005700 Fax : 011-23005787

incorporated outside India or its Indian subsidiary will not constitute a "foreign contribution" or a "foreign source" where company satisfies the conditions of Section 59(2) of the Companies Act 1956, i.e., when 50% or more of its paid up capital is held by an Indian citizen.

The following observation of Retired Justice A.S. Anand in the opinion dated 19<sup>th</sup> November given by him on this subject confirms the above:

"I was informed during the conference, that the political contribution made by the querist to Political Parties in India made after seeking requisite approval from the Audit Committee of Board of Directors of the respective companies and were within the permitted limits of 5% of their annual net profit determined in accordance with the provision of Section 349 and 350 of the Companies Act 1956, in the three immediately preceding financial years. Under these circumstances, in my opinion it was quite reasonable for the querist to proceed on the premise that being companies incorporated and registered in India and being subsidiaries of a company deemed to be incorporated in India under Section 591 of the Companies Act, 1956, were making contributions, as permissible under Companies Act, 1956 and the contribution being made by the querist did not attract the provision and prohibited under FCRA 1976 and/or 2010."

While the parent company of Sesa Goa Ltd. and The Madras Aluminium Co. Ltd. are incorporated outside India, these companies are ultimately held by Mr. Anil Agarwal, who is an Indian citizen. Hence, the contributions would neither be a "foreign contribution" nor from a "foreign source".

Further, as per the enclosed certificates from Sesa Goa Ltd. and The Madras Aluminium Co. Ltd. they have made contributions to us in accordance with Section 293A of the Companies Act.

2. (iv) Honda Siel Cars Ltd. - Rs. 5 Lakhs in 2006-2007

(v) Honda Siel Power Product Ltd. - Rs. 5 Lakhs in 2008-2009 \*

Honda Siel Cars India Ltd. Rs. 10 lakhs in 2008-2009\*\*

(vi) Honda Siel Cars India Ltd. - Rs. 10 Lakhs in 2009-2010 \*\*

\* You have mentioned in your letter a sum of Rs. 15 Lakhs from Honda Siel Power Product Ltd. whereas it is actually Rs. 5 Lakh from Honda Siel Power Product and Rs. 10 Lakh from Honda Siel Cars India Ltd.

\*\* You have mentioned in your letter a sum of Rs. 1 Lakhs from Honda Siel Cars India Ltd. whereas it is actually Rs. 10 Lakh.

We had received the above referred donations from these companies since they were Indian Companies duly registered under the Indian Companies Act, and we were informed while receiving the donations that these donations were in full compliance w/s 293A of the Companies Act 1956. [Certificate enclosed].

Upon receiving your letter we contacted the companies to get the particulars of their shareholding and we are now informed that they are Indian subsidiary of a foreign company.

While we had accepted donation on the basis that they are Indian Companies registered under the Companies Act and are eligible to give donation w/s 293A of the Companies Act, it seems that now there is an uncertainty and ambiguity whether we, as a political party, may be permitted to accept any donation from these companies, even though they are Indian Companies duly registered under the Companies Act, as that may be construed as a donation from a foreign company. In view of this uncertainty and ambiguity in the matter, we have returned the said donations to these companies as under:

- (i) Cheque no. 408878 dated 12th December, 2012 for Rs. 5 lakhs drawn on Andhra Bank, A.P. Bhawan Branch, New Delhi in case of Honda Siel Power Products Ltd.
- (ii) Cheque no. 408879 dated 18th December, 2012 for Rs. 25 lakhs drawn on Andhra Bank, A.P. Bhawan Branch, New Delhi in case of Honda Siel Cars India Ltd.

Their receipts are enclosed for your ready references.

We trust that the above clarifications meet your requirements and request you to kindly close the matter.

Thanking you,

Yours truly,  
For Bharatiya Janata Party

*D.P. Kohli*  
(D.P. Kohli)  
Office Secretary

Enclosure: As Above

"True copy"