

December 05, 2016

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Shri A.K. Joti
Election Commissioner
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Shri Om Prakash Rawat
Election Commissioner
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Subject: (i) Violation of FCRA by the BJP and the Congress
(ii) Delhi High Court judgment of March 28, 2014
(iii) Withdrawal of appeals by BJP and Congress against the Delhi High Court judgment, from the Supreme Court on November 29, 2016

Dear Dr. Zaidi, Shri Joti, and Shri Rawat,

1. We write this on behalf of the Association for Democratic Reforms (ADR) which was one of the petitioners in the W.P.(C) 131/2013, the judgment of which was delivered by the Hon'ble Delhi High Court (HC) on March 28, 2014, inter alia holding the BJP and the Congress guilty of violating the Foreign Contribution (Regulation) Act, 1976, and (b) "directs" the Election Commission of India (ECI) and Union of India to "take action as contemplated by law... within a period of six months." The full judgment can be seen at <http://lobis.nic.in/dhc/PNJ/judgement/27-03-2014/PNJ28032014CW1312013.pdf>
2. For the sake of easy recollection, para 73 of the Delhi HC judgment is reproduced below:
"73. 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 *inter-se*, as highlighted in the present petition, 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."
3. Based on available information using the RTI Act, it is learnt that the ECI wrote a letter to the Ministry of Home Affairs (MHA) on July 24, 2014 (D.O. No. 56/CR/2012-PPEMS/858) to the Home Ministry (addressed by name to Shri Anil Goswami, Secretary, Home), and the MHA responded by writing two letters to the ECI, on August 20, 2014 and September 11, 2014 (F.

- No. II/21022/58(647)/2012-FCRA(MU), “wherein names of companies falling under the category of ‘foreign source’, who have donated to Political parties namely, Indian National Congress and Bharatiya Janata Party” during a few specific years were intimated to the ECI. No other specific action is known to have been taken.
4. In the meanwhile, Congress and BJP file Special Leave Petitions (SLPs) against the Delhi High Court order in the Supreme Court on 26 June, 2014, and 26 August, 2014, and the matter became *sub judice*, so no further action seems to have been taken by the ECI or the MHA.
 5. The SLPs in the Supreme Court were “dismissed as withdrawn” on November 29, 2016, as per the order of the Supreme Court which stated “Learned counsel for the petitioners state, that they have been instructed to withdraw these petitions.” The order can be seen at http://courtnic.nic.in/supremecourt/casestatus_new/querycheck_page2.asp.
 6. In view of the fact that now there is no legal challenge to the Delhi HC order of March 28, 2014, and it has been re-affirmed in a way, it can be considered to have attained finality, it is imperative that ECI, as a constitutional body, takes “action as contemplated by law... within a period of six months,” as directed by the Delhi HC.
 7. When the Delhi HC judgment first came in March 2014, the ECI wrote a letter to the Ministry of Home Affairs (MHA) on July 24, 2014, as mentioned in item 3 above, in which it wrote inter alia “The final report on the matter along with clear findings of the team may be sent to the Commission by 25th August 2014, so that action if any can be taken by the Commission within the time frame allowed by the Hon’ble High Court.” The MHA responded to the ECI on August 20, 2014 and September 11, 2014 “wherein names of companies falling under the category of ‘foreign source’, who have donated to Political parties namely, Indian National Congress and Bharatiya Janata Party” during a few specific years were intimated to the ECI. No other specific action is known to have been taken.
 8. It can be presumed from para 7 above that this must have been done in an attempt to comply with the Delhi HC’s direction, contained in para 74 of the judgement, to “relook and reappraise the receipts of the political parties and would identify foreign contributions received by foreign sources as per law declared by us hereinabove and would take action as contemplated by law.”
 9. While implementing and complying with the full judgment of the Delhi HC is the appropriate and correct action to take, what needs to be remembered is that the violation of FCRA by the BJP and the Congress in accepting donations from Sterlite and Sesa has already been adjudicated and declared by the Hon’ble Delhi High Court in its judgment of March 28, 2014. There is therefore no reason or need for further investigation or enquiry so far as these two donations to the two political parties is concerned, and “as contemplated by law” must be taken immediately. As a matter of fact, this “action as contemplated by law” should have been taken immediately following the Delhi HC order in March 2014.
 10. It is recognised that the competent authority to directly take action violation of FCRA is the MHA but it is also undeniable that (a) the authority to conduct free and fair elections “to Parliament and to the Legislature of every State and of elections to the offices of President

and Vice-President held under this Constitution” vests in the ECI, and (b) the ECI has powers to take action against political parties under section 16A(b) of the Election Symbols (Reservation and Allotment) Order, 1968 (http://eci.nic.in/eci_main/ElectoralLaws/OrdersNotifications/Election_Symbol_2011_order_1968.pdf), which reads as follows:

“(b) to follow or carry out the lawful directions and instructions of the Commission given from time to time with a view to furthering the conduct of free, fair and peaceful elections or safeguarding the interests of the general public and the electorate in particular, the Commission may, after taking into account all the available facts and circumstances of the case and after giving the party reasonable opportunity of showing cause in relation to the action proposed to be taken against it, either suspend, subject to such terms as the Commission may deem appropriate, or withdraw the recognition of such party as the National Party or, as the case may be, the State Party.”

11. In view of the above, it is urged that “action as contemplated by law” against the BJP and the Congress for violating the FCRA in the donations accepted from Sterlite and Sesa be taken without any further delay.
12. One of the interim actions suggested is to suspend the recognition of BJP and Congress with immediate effect till such time as the final action on this issue is taken.
13. It will be appreciated if the receipt of this letter is acknowledged.

Regards,

Yours sincerely,

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Copy to Shri Rajiv Mehrishi, Secretary, Ministry of Home Affairs, Govt. of India