

December 05, 2016

Shri Rajiv Mehrishi  
Secretary  
Ministry of Home Affairs  
Govt. of India  
North Block  
Central Secretariat  
New Delhi – 110001

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 Shri Mehrishi,

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 MHA or the ECI.
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](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 MHA, representing the Union of India, as the administering authority for the FCRA, takes” action as contemplated by law... within a period of six months.”

7. When the Delhi HC judgment first came in March 2014, it could be inferred from the MHA’s letters of August 20, 2014 and September 11, 2014 to the ECI, that the MHA must have written to the Ministry of Corporate Affairs (MCA) seeking “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. It can be presumed 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.”
8. 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.
9. 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 will be taken without any further delay.
10. Given the background described above, if “action as contemplated by law” is not taken within a reasonable time, the inescapable conclusion will be that the verdict of the Hon’ble Delhi HC is not being complied with wilfully, and there will be no option but to initiate proceedings for contempt of court against the MHA through its administrative head, the Secretary.
11. It will be appreciated if the receipt of this letter is acknowledged.

Regards,

Yours sincerely,

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Copy to: (1) Dr Nasim Zaidi, Chief Election Commissioner;  
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