

IN THE HIGH COURT OF JUDICATURE AT MADRAS
MADURAI BENCH
(Special Original Jurisdiction)

W.P.No. 7587 of 2012

The Tuticorin Diocesan Association,
Rep. by Rev. Fr. M. Jebanathan,
Procurator & Chief Functionary,
Catholic Bishop's House,
G.C. Road, Tuticorin – 628 001.

... Petitioner

Vs

1. The Government of India,
Rep. by The Secretary,
Ministry of Home Affairs,
Foreigners Division, (FCRA wing)
Jaisalamer House,
26, Man Singh Road,
New Delhi – 110 011.
2. The Deputy Secretary,
Government of India,
Ministry of Home Affairs,
Foreigners Division, (FCRA wing)
Jaisalamer House,
26, Man Singh Road,
New Delhi – 110 011.
3. The Under Secretary,
Government of India,
Ministry of Home Affairs,
Foreigners Division, (FCRA wing)
Jaisalamer House,
26, Man Singh Road,
New Delhi – 110 011.

... Respondents

AFFIDAVIT OF FR. M. JEBANATHAN

I, Fr. M. Jebanathan, S/o Michael Anthony, Christian, Aged about 63, and
having office at Catholic Bishop's House, G.C. Road, Tuticorin – 628 001
and having come down to Madurai, do hereby solemnly affirm and sincerely
state as follows:

1. I am the Chief Functionary and representative of the petitioner Association. I am well acquainted with the facts of the case. I am filing this affidavit on behalf of the Association.

2. I humbly submit that the petitioner Association represents the Catholic Diocese of Tuticorin, with a membership of 4.5 lakhs of Catholics, following Catholic Christian religious faith. The Catholic religion is rooted and practiced in the deep south of Tamil Nadu from the days of St. Francis Xavier, who landed in Tuticorin in 1542. From the later part of the 16th century, the Catholic religion is very vibrant in the said region. The said area was under the jurisdiction of the Diocese of Goa from 1557. When the Diocese of Trichinappalli was erected as a separate Diocese, the region of Tuticorin was brought under the jurisdiction of Diocese of Trichirappalli in the year 1886. Subsequently, Tuticorin was erected as a separate Diocese, bifurcated from the Diocese of Trichirappalli in the year 1923, by His Holiness Pope Pius XI, from Vatican, Rome. The petitioner Diocese of Tuticorin is comprised of major parts of the civil Districts of Tuticorin and Tirunelveli and a small portion of Kanyakumari district.

3. I humbly submit that the petitioner Diocese has got 108 parishes with their own parish Churches and thousands of small village Churches, Chapels, Kurusadis and Grottos, attached to the parish Churches within the said defined geographical jurisdiction. There are different kinds of institutions, for educational, health-care, social development and pastoral-religious activity, within the said Diocese. All these institutions are community based and non-profit in nature.

4. I humbly submit that the petitioner Association has a time tested traditional administrative machinery to discharge its religious, charitable and

social functions, especially for the practice of Catholic religion and for the welfare of the catholic population. Thus, the petitioner Diocese is involved in the life and development of the people, by its religious and charitable activities, for the last 450 years.

5. I humbly submit that for the purpose of legal perpetuity, the said Diocese was registered as a society, having Registration No.S.1 of 1937-38, under the Societies Registration Act 1860 (Act XXI of 1860). But even before the Registration of the society, the Diocese, as a community of Catholics, is involved as a body, in social, cultural and pastoral - religious activities, through various institutions, established for that purpose. In this context, it will be relevant to mention that some of the institutions of the diocese exist and function for more than a century, even before the society came into existence. All these institutions and their functions are not owned by any individual. They are collectively owned by the catholic community. The Bishop, appointed by the Holy Father, the Pope in Vatican as per Canon Law, is the head of the Diocese and presides over the society and all other allied institutions under the jurisdiction of the Diocese.

6. I humbly submit that the petitioner Association is deeply involved mainly in six areas, for the purpose of charitable and religious services.

i) Educational Services: The petitioner society is a pioneer in the field of education in the south of Tamil Nadu. It has a network of educational institutions as follows:

| | | |
|-------------------------|---|-----|
| Primary schools | - | 124 |
| Middle Schools | - | 63 |
| High Schools | - | 21 |
| Higher Secondary School | - | 17 |
| Matriculation Schools | - | 2 |

| | | |
|----------------------------------|---|------------|
| B.ED. College | - | 1 |
| Teacher Training Institution | - | 1 |
| Special School for the Disabled- | | 1 |
| Technical Institutes | - | 31 |
| Total | - | <u>261</u> |

There are around 2300 teaching and non-teaching staff, working in these institutions. Most of these institutions are pre-independent and are aided by the Government. The student base of the educational institutions under the petitioner is around 1,00,000. The petitioner society has invested incalculable material and human resources, by way of land, building, infrastructure, capital and dedicated personnel in establishing and administering these intuitions. The petitioner society also incurs regular expenditure on maintenance and infra-structure of all these aided institutions, as well as by financially supporting the unaided institutions from its limited resources. All these institutions are invariably non-profit institutions, run for the welfare of the people and the development of the nation. Though all the above mentioned institutions are minority educational institutions under Art. 30(1) of the Constitution of India, they are imparting quality secular education and the Constitutional values, to all the children, irrespective of caste and creed.

ii) Health Services: The petitioner Diocese is involved in Health Care through the following institutions:

| | |
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| Hospitals | - 13 |
| Dispensaries | - 9 |
| Nursing Institute | - 1 |
| Alcoholic Rehabilitation Centre | - 1 |
| Leprosy Rehabilitation Centre | - 1 |

That apart, the petitioner Association has implemented a health-care project, covering 300 villages. In the last two years, it has established around 2,800 private toilet facilities for the villagers, in private houses and public places. Many dedicated nuns and health workers are involved in the said health mission.

iii) Charity Services: The petitioner has established the following charitable institutions:

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|---------------------------------|-----|
| Orphanages in Common | -11 |
| Orphanages for Girls | -10 |
| Orphanages for Boys | - 6 |
| Crèches | - 6 |
| Home for the Destitute Children | - 4 |
| House for the Disabled | - 4 |
| Home for the aged | - 2 |
| Rescue Homes | - 1 |
| Women welfare Home | - 1 |
| Home for the Mentally Retarded | - 1 |

In all, the petitioner Diocese approximately takes care of thousands of persons, in respect of their day- today life, through the above mentioned institutions. By training them, it also prepares them for their future lives. Most of them are orphans, semi-orphans, children, women or the disabled, dependent on the petitioner Association, for their survival and well-being.

iv) Developmental Services: The petitioner society, for hundreds of years, has committed itself for the development of the people, especially the poor. Not only the Christians, but all the marginalized, have benefitted out of the developmental schemes, undertaken by the petitioner, irrespective of caste and creed. Thousands of Self- Help Groups have been organized for income generation and micro-finance, through bank loans and innovative lending

schemes. There are many projects and activities undertaken by the society, for the welfare of the fishermen, by improving fishing technology, marketing opportunities, through cold-storage facilities, etc.,. That apart, special schemes have been undertaken with a focus on Right to Food, Right to Education, etc., A scientific survey has been launched to assess the life and status of the disabled in the area, as disability is wide prevalent. Preventive schemes have been undertaken to reduce the recurrence of disability by scientific methods.

v) Relief and Rehabilitation: The petitioner society has earnestly involved in relief programmes, during natural disasters, floods, fires and diseases. During the post-tsunami years, multiple relief programmes have been launched in co-operation with the local authority, the government agencies, the members of the Parliament and Legislature. By a meticulous plan for rehabilitation, such as construction of houses and other structures, thousands of victims and the poor have benefitted all these years.

vi) Pastoral – Religious Service: The petitioner, being a Catholic Diocese, naturally has duties arising out of religious precepts. There are more than 108 parish Churches and thousands of other small Churches, Chapels, Kurusadies and Grottos, which are maintained by the Diocese. There are around 125 convents and religious houses, wherein more than 500 nuns and 230 priests are engaged full-time, in the multifarious religious and humanitarian activities. They are directly or indirectly maintained by the petitioner diocese. There is regular religious activity such as celebration of Holy Mass, Sacraments like Baptism, first Communion, Confession, Confirmation, Marriages, Last Anointments, Para-liturgical services, Vespers and special Feasts, involving thousands of people. By undertaking all these activities, the

petitioner professes and promotes the cultural and religious heritage of the Catholic community. All these activities have their supportive infra-structure and personnel founded on convention and periodicity.

7. I humbly submit that out of the above mentioned functions of the petitioner society, except the specific religious work, which benefits the Catholic community, all other activities are secular in character, benefiting one and all, irrespective of caste, creed, language and gender. All these 450 years, the petitioner diocese, epitomizing the Catholic Community, has drawn from the local and foreign resources, for maintaining its religious and social structures and its innumerable functions.

8. I humbly submit that the activities of the diocese, dating back to 450 years, came to be taken over by the society, after its formation in the year 1937 and has been continued for the last 75 years. The diocese undertakes these above mentioned activities, in coordination with the other sister organizations of the diocese, such as Tuticorin Multipurpose Social Service Society, ~~St. Loucia Society for the Blind and Vallioor Multipurpose Social Service Society~~. The Bishop of Tuticorin Diocese, who is the president of the petitioner by virtue of his office, also becomes the president of the other sister organizations. All of the said organizations, established by the diocese and presided over by the Bishop, work in tandem for the welfare of the catholic community and for the secular objects, such as humanitarian actions and nation-building. Only for the purpose of legal perpetuity, these organizations are registered as societies. Even otherwise, they will have their identity and functions, because they are founded on a minority catholic community.

9. I humbly submit that after the enactment of Foreign Contribution (Regulation) Act, 1976 (Act 49 of 1976), the petitioner had the statutory duty

to register under Foreign Contribution (Regulation) Act, 1976. After the new enactment (Act 42 of 2010), the said registration is saved under the new Act, vide FCRA Registration No. 076030032. The foreign contributions, received by the diocese and the petitioner Association, previously all these years, thereafter came to be channelized through the said FCRA Number and the designated Bank Account No. 7080100000620 in Bank of Baroda, Victoria Street, Tuticorin, Tamil Nadu.

10. I humbly submit that during the process of implementation of the above referred projects, that are secular – humanitarian and cultural – religious, the petitioner has fully complied with all the rules and regulations of the central and state laws. The Returns, Audited statements, FC-3 statements, have been regularly filed in stipulated form and in time. Apart from the statutory compliance, the petitioner Association is also accountable to the Church authorities in Vatican. The petitioner Association has never defaulted at any point of time, in respect of any legal compliance. It has an unblemished record of transparency and accountability in all its undertakings. One of the reasons for its integrity is because it is a representative organization of the catholic community and not under the exclusive control of any particular individual or a group of individuals, only by creation of law. It has its own checks and balances in time-tested organizational structure.

11. I humbly submit that the activities of the petitioner, either religious or secular has never been prejudicial to the sovereignty, the security and the territorial integrity of the nation. On the other hand, it has positively contributed towards communal harmony, nation-building and public interest. The petitioner Association and the Catholic Diocese of Tuticorin is in the public domain for more than 450 years, enjoying a high degree of integrity,

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good-will and confidence of the general public and the Government. It can be verified from the track record of the society. Its functions and performance is well-founded in the historical and traditional charitable legacy of the catholic community, benefitting millions of people, especially the weaker sections, the children, the women, the old-aged, the disabled, victims of diseases and disasters, all these years. The catholic community has invested incalculable material and human resources, by way of land, building, infra-structure in establishing this religious-charitable network. Lot of local resources and contributions from the catholic community have gone into the making of these structures and functions, apart from foreign contributions.

12. I humbly submit that while facts being so, the petitioner received a communication, dated 14.11.2011, in No. II/21022/58(460)/2011/FC-MU, from the 3rd respondent, requiring the petitioner to furnish "point-wise reply along with the requisite enclosures/documents" and send them to their office by 02.12.2011. A questionnaire was also enclosed along with the communication. The petitioner, vide its reply dated 02.12.2011, submitted all the details required by them as per the questionnaire. The petitioner has also stated in the said communication dated 02.12.2011, that the petitioner had immediately submitted the documents pertaining to six preceding years, as per the requirement u/s 44AA of the Income Tax Act r/w Rule 6F(5) and further requested to grant some more time to collect and submit the rest of the required records from the Archives of the Diocese. Total number of 16 files, running to 2500 pages, were compiled and submitted along with the details furnished vide communication dated 02.12.2011.

13. I humbly submit that pursuant to the dispatch of enclosure and documents vide communication dated 2.12.2011, the 2nd respondent, vide

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communication dated 02.01.2012, in No. II/21022/58(480)/2011/FC-MU, informed the petitioner that the Central Government, U/S 20 and 23 of the FCR Act, has authorized two officers, an Under-Secretary, and an Accountant, to inspect any account or record maintained by the Association for the period from 2006-07 to 2010-11, at our office premises in Tuticorin from 10th to 13th January 2012. The said inspection was conducted as referred above. The petitioner fully cooperated with inspecting officers and provided all the documents and informations, vouchers and bills as required by them. The inspecting team orally expressed their satisfaction that the records were in compliance with law and as such there was no violation. However they further stated that they will contact us, if they require any further documents or informations.

14. I humbly submit that all of a sudden, the Petitioner was shocked to receive the impugned order dated 09-02-2012 in Order No:II/21022/58 (480)/2011/FCRA-MU under section 9 and 10 of the Foreign Contribution (Regulation) Act 2010, stating that the Association has violated certain provisions of the Act and so it is prohibited in public interest, to receive foreign contribution from the date of issue of the order. It further states that the Central Govt. is in possession of certain information and evidence and so it is satisfied that the acceptance of foreign contribution by the Petitioner is likely to prejudicially affect the public interest. In the copy of the order, marked to the banker of the petitioner, there is a direction to freeze the bank account of the petitioner in Account Number 07080100000620, till further direction from the Ministry of Home Affairs.

15. I humbly submit that the abovesaid developments are situated in the wake of demonstration against the commissioning of a Nuclear Power

Project in Koodankulam, though not specifically referred to, in the impugned order. However there are repeated statements by the Hon'ble Ministers of the Central Government, to the effect that foreign contribution is being diverted towards these demonstrations. One of the Central Ministers has also stated that the inspection is conducted by the authorities, into the activities of the NGOs, operating in the said area, only in this context. This allegations is unfounded and not supported by any evidence in respect of the petitioner. The petitioner Association has not violated any law, by diverting funds for the said demonstrations, as alleged by the Hon'ble Ministers of the Central Government. At no point of time, the petitioner had diverted any foreign contribution to any other purpose, than that for which it was received. The petitioner Diocese or the Association has no role in the said demonstrations. The respondents and the Central Government cannot malign the reputation of the reputed Association like the diocese of the petitioner, as if it is acting against the public interest, that too through the foreign contributions, received by it for other purposes. Except morally sympathizing with the people of the area, who are afraid of their life and livelihood, the petitioner has no other financial connection with the said demonstrations. The Church has a moral duty to sympathize with the suffering people. It has no independent stand on nuclear policy. The respondents are acting on baseless presumptions, harassing the petitioner Association, for reasons, not mentioned in the impugned order. Thus the impugned order suffers from malafide and selective victimization. While the petitioner diocese is in existence for around 450 years, actively involved in nation-building and public interest, it cannot be adjudged to be against public interest only in the light of the recent developments and controversies that arose in the last six months in respect of

Koodankulam nuclear issue. That will be an unfair criteria to assess the petitioner.

16. I humbly submit that the petitioner has also preferred a Revision u/s 32(1), r/w Rule 20, before the statutory authorities, on 06.03.2012. But, the authorities have not acted upon the same. In any event, the authorities cannot independently decide over the said Revision, as they act upon the political positions of the Government and the very impugned order has been issued only in the light of the recent political developments. Hence, the petitioner prefers this Writ Petition, especially in the light of gross violation of the principles of natural justice.

Aggrieved by the order of the 2nd respondent in Order No: II/21022/58 (480)/2011/FCRA-MU dated 9th of February 2012, and having no other alternative and effective remedy open, the petitioner begs to invoke the extraordinary jurisdiction of this Hon'ble High Court under Article 226 of the Constitution of India for issuance of a **WRIT OF CERTIORARIFIED MANDAMUS** for the following among other grounds:

GROUND

- a) The said order of prohibition, vide Order No: II/21022/58 (480)/2011/FCRA-MU dated 9th of February 2012 - Ministry of Home Affairs, Foreigners Division, (FCRA wing), from receiving foreign contribution from the date of issue of the order and freezing of the connected Bank Account Number is illegal and contrary to the facts of the petitioner.

- b) The impugned order has been issued without even show-cause notice to the petitioner, to explain its position, and so it is in gross violation of the principles of natural justice.
- c) The petitioner was not given to know the information and evidence on the petitioner, purported to be in possession of the respondent which are alleged to be prejudicial to the public interest, depriving the opportunity to the petitioner.
- d) The respondent has failed to consider the fact that the diocese has unblemished track record for more than 450 years and the society for around 75 years, in the field of religious and charitable activities.
- e) The impugned order has failed to consider the fact that it will cause undue hardship to the lakhs of marginalized people, who stand to benefit from the activities of the petitioner society.
- f) The respondent has failed to see that the impugned order is injurious to the fundamental civil right of the petitioner, adversely affecting the smooth functioning of the voluntary religious-charitable agency of a minority community.
- g) The respondent has failed to see the civil and social consequences to the citizens and the petitioner by the said impugned order.
- h) The respondent has failed to see that the impugned order has caused serious hurt and damage to the reputation of the petitioner Association and the Catholic Diocese of Tuticorin, which is doing voluntary social work for around 450 years and enjoys high reputation among the general public.
- i) The action of the respondent, has failed to consider that there will be an unwarranted public outcry against the reputed Association like the

petitioner, which is known for its integrity, service and for its commitment to constitutional values.

- j) The satisfaction of the respondent to the effect that the activities of the petitioner is prejudicial to the public interest, is not founded upon objective material, but based on a subjective approach and is an arbitrary and a colorable exercise of Executive power.
- k) The impugned order is non-speaking and is silent on the state of material on the basis of which the "satisfaction" was arrived at by the respondents.
- l) The impugned order suffers from the serious lacuna of not stating the reasons for passing such order or the reasons for the subjective 'satisfaction' of the respondent.
- m) The impugned order does not talk of any specific activity of the petitioner, which is prejudicial to the public interest, and is quite generic.
- n) The impugned order failed to consider the fact that, it will jeopardize the sustenance of the religious, the priests, the nuns and the employees of the religious institutes, who depend on the petitioner, which is in violation of Article 21 of the Constitution of India.
- o) The impugned order failed to see that the prohibition of receiving foreign contribution by the religious society will greatly prejudice the minority community from exercising its religious rights in consonance with Article 25(1) and 26(b) of the Constitution of India.
- p) The impugned order, suffers from non-application of mind and smacks of selective political vendetta, indirectly threatening the voluntary and charitable body, to fall in line with the political position of the Government, for reasons extraneous to the provisions of law.

- q) The impugned order fails to consider the plight of the children, the old-aged, the orphans, the destitute and women, who draw their sustenance, from the petitioner society on a day to day basis.
- r) The allegation in the impugned order against the petitioner society is baseless, bald, motivated and therefore suffers from mala-fide.
- s) The exercise of inspection and the issuance of an illegal order in a hurry even without a notice will show the selective victimization of the petitioner society in the hands of the respondent, for reasons of bias, best known to the respondents.
- t) The respondent failed to consider the fact that at any point of time the petitioner has neither acted against the public interest nor there was any complaint or report in this regard, for the last 75 years.
- u) As the petitioner Association is running more than 260 educational institutions, the impact of the impugned order, over the maintenance of the said educational institutions, is in violation of Art. 21A of the Constitution of India and the provisions of The Right to Free and Compulsory Education of Children Act, 2009.

Under these circumstances, unless there is an urgent order of interim stay of the impugned proceedings dated 09-02-2011 in Order No: II/21022/58 (480)/2011/FCRA-MU, on the file of the 2nd respondent, the petitioner diocese will be greatly prejudiced. The freezing of funds and the prohibition to receive foreign funds has adversely affected the life of the orphans, the children, the sick, the disabled, the destitute and women, who are the immediate beneficiaries of the Association. It has also affected the network of educational institutions, health services, the charitable institutes

and their allied functions. The religious and liturgical activities of the minority catholic community, the maintenance of priests, nuns and catechists, the up-keeping of Churches, Chapels and Grottos and pending religious constructions have been greatly affected as a result of the impugned order. Therefore, an urgent order of interim stay is highly just and essential.

Therefore, it is humbly prayed that this Hon'ble Court may be pleased to stay the operation of the impugned order passed by the 2nd Respondent dated 09.02.2011, in Order No: II/21022/58 (480)/2011/FCRA-MU, pending disposal of the above Writ Petition and thus render justice.

For the reasons stated in the foregoing paragraphs, it is humbly prayed that this Hon'ble Court may be pleased to issue a **Writ of Certiorarified Mandamus** or any other appropriate writ or order or direction in the nature of writ, calling for the records pertaining to the order dated 09-02-2011 in Order No: II/21022/58 (480)/2011/FCRA-MU, on the file of the 2nd respondent and quash the same directing the respondents to lift the prohibition on the petitioner, Tuticorin Diocesan Association, in FCRA Registration No. 076030032 from receiving foreign contributions and consequently defreeze the designated bank Account Number 07080100000620 in the Bank of Baroda, Victoria Street, Tuticorin, Tamil Nadu or pass any further orders as it deems fit and proper and thus render justice.

Solemnly affirmed and signed
on this, the 4th day of April, 2012
at Madurai in my Presence

Before me,

Advocate, Chennai.