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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 - 628001

....Petitioner

Vs

1. The Government of India,
Rep. by the Secretary,
Ministry of Home Affairs,
Foreigners Division, (FCRA wing)
NDCC-II building, Jai Singh Road,
Opposite Jantar Mantar, New Delhi.
2. The Deputy Secretary,
Government of India,
Ministry of Home Affairs,
Foreigners Division, (FCRA wing)
NDCC-II building, Jai Singh Road,
Opposite Jantar Mantar, New Delhi.
3. The Under Secretary,
Government of India,
Ministry of Home Affairs,
Foreigners Division, (FCRA wing)
NDCC-II building, Jai Singh Road,
Opposite Jantar Mantar, New Delhi.

....Respondents

COUNTER AFFIDAVIT FILED BY THE RESPONDENT

I, H.K.Kawllienthang S/o Shri R.Kama, aged about 55 years, Under Secretary to the govt. of India, (FCRA wing) Foreigners Division, Ministry of Home Affairs, NDCC-II building, Jai Singh Road, Opposite Jantar Mantar, New Delhi, do hereby solemnly affirm and sincerely state as follows:-

1. I am the Under Secretary in the respondents ministry and as such I am well acquainted with the facts and circumstances of the case. I am authorized to file this Counter Affidavit on behalf of the respondents.

Attested
Rais
25/11/12

(राईस अहमद)
(RAIS AHMAD)
भिवेधाक / Director
गृह मंत्रालय
Ministry of Home Affairs
भारत सरकार / Govt. of India

M.K.

(N. K. KAWLLIENTHANG)
अवर सचिव / Under Secretary
गृह मंत्रालय
Ministry of Home Affairs
भारत सरकार / Govt. of India

2. I deny all the averments made in the affidavit filed in support of the writ petition, except those that are specifically admitted hereunder.
3. It is respectfully submitted that the averments made in Para 1 to 11 needs no reply and these are self explanatory.
4. In reply to para 12, it is submitted that the reply of the NGO dated 02.12.2011 regarding questionnaire served to the NGO was received in this office. After thorough scrutiny of the reply, the inspection of books of the records of the NGO was carried out under section 20 & 23 of FCRA, 2010 by the team of MHA.
5. In reply to para 13, it is submitted that, the inspection revealed that the NGO has violated various provisions of FCRA 2010; therefore the order issued by the respondent no.2 on dated 09.02.2012 is fully justified. It is true that one round of inspection was conducted in January, 2012. As it was felt necessary to conduct a second round of inspection in order to bring greater clarity on some relevant points regarding the fund utilization, a second round of inspection was planned to be conducted from 04.06.2012 to 08.06.2012 and the NGO was duly informed by our letter dated 14.05.2012. As the NGO intimated by their telegram dated 19.05.2012 that their Chief Functionary and the President would not be available and the inspection team could visit after a month, a revised programme from 02.07.2012 to 06.07.2012 was communicated by our letter dated 14.06.2012. Thus, it is clear that the NGO was aware that they could have utilized the opportunity of inspection during 04.06.2012 to 08.06.2012 to convince the statutory authorities regarding their innocence, but they chose to seek postponement.
6. In reply to para 14, it is submitted that the order no. II/21022/58(480)/2011/FCRA-MU dated 09-02-2012 under section 9 & 10 of FCRA 2010 has been issued after conducting inspection of the records which revealed the violation of various provisions of FCRA, 2010.
7. In reply to para 15, it is submitted that the order dated 09.02.2012 has been issued against violation of various provisions of FCRA, 2010. Our case was not that this NGO is involved in the demonstrations against KKNPP. Our case at this stage is confined merely to the fact that the provisions of FCRA, 2010 have been violated and thus, the continued receipt of foreign contribution would prejudicially affect public interest. This was mentioned clearly in our order dated 09.02.2012. In this context, it is to be noted that while the NGO as part of Church may have a notion of 'morally sympathizing' with any cause,

Attested

Rais

26/6/12

(रईस अहमद)
(RAIS AHMAD)
निदेशक/Director
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भारत सरकार/Govt. of India

(सचिव: के. कवल्लिथंग)
(H. K. KAWLLIENTHANG)
अवर सचिव/Under Secretary
गृह मंत्रालय
Ministry of Home Affairs
भारत सरकार/Govt. of India

the fact remains that it is an NGO which is registered under FCR Act. For seeking the registration, it has made certain commitments. The registration under FCR Act was granted with certain conditions. If those conditions are violated, the competent authorities have the statutory duties to perform.

8. The averments made in para 16 is denied as Application for revision dated 06-03-2012 under section 32(1) of FCRA,2010 & Rule 20 of FCRR,2011 as referred to by the petitioner has not been received in this office. Further, our comments are as follows:-

(a) The order no. II/21022/58(480)/2011/ FCRA-MU dated 09-02-2012 has been issued as per the provisions of FCRA, 2010. Therefore, establishing the order by petitioner as illegal is not correct.

(b) The action has been taken based on the outcome of the inspection report within the frame work of FCRA, 2010, hence there is no violation of principles of natural justice.

(c) The information and evidence for issuing the order dated 09-02-12 are given below:-

(1) The association has violated section 8(1) (a) of FCRA, 2010 which provides that every person/NGO shall utilize Foreign Contribution for the purpose for which contribution has been received. But as per para 14 (b) of the inspection report dated 25.01.2012, all the 11 motorcycles purchased from foreign contribution during the year 2010-11 have been registered in the name of the priests instead of the association (copies enclosed). As such, the personal property has been acquired by office bearers/staff of the association through foreign contribution. Therefore, it has been established that foreign contribution received by the NGO is utilized for personal use other than specified.

(2) The bills/vouchers regarding expenditure of foreign contribution incurred by 'Tuticorin Diocesan Association' are in the name of another association namely Tamilnadu Multiple Social Service Society (TMSSS) which is separately registered under FCRA (vide registration no.076030038). For example, Sh. S. Amirtha Lingam Govt. Contractor has furnished the bill of toilets and Urinals of Rs. 1,25,000/- dated 16-03-2011 (copy enclosed) in the name of TMSSS. It is clear that these bills and vouchers cannot be cited to explain the expenditure of foreign contribution utilized as per rule.

26/6/12
 (राईस अहमद)
 (RAIS AHMAD)
 निदेशक / Director
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 Ministry of Home Affairs
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(एच. के. कवल्लिथंग)
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(3) The payments figures of FC-3 Form and that of Receipt & Payment Accounts for the year 2007-08 to 2010-11 differ from each other as detailed below:-

Sr. No.	Year	Payment as per Receipt & Payment Account	Payment as per FC-3 form
1.	2007-08	47548324	45029066
2.	2008-09	47951456	48973145
3.	2009-10	43685768	41586556
4	2010-11	52848982	48473107

The above table shows mismatch of payments made out of foreign contribution.

The above facts clearly show that the association has misappropriated/diverted the fund for the purpose other than it was received for.

- (d) The averments made in para 16(d) needs no reply and it is self explanatory.
- (e) The averments made in para 16(e) needs no reply and it is self explanatory.
- (f) The averments made in para 16(f) is denied as the order dated 09.02.2012 has been issued for violation of rule within frame work of FCRA, 2010. Hence, it is not injurious to fundamental civil rights as mentioned by petitioner.
- (g) The averments made in para 16(g) needs no reply and it is self explanatory.
- (h) The averments made in para 16(h) needs no reply and it is self explanatory.
- (i) The averments made in para 16(i) needs no reply and it is self explanatory.
- (j) The averments made in para (j) is denied as the order is based on objective material as stated at (c) above.
- (k) As stated at (c) above
- (l) As stated at (c) above
- (m) As stated at (c) above

[Handwritten Signature]
 26/10/12

(राईस अहमद)
 (RAIS AHMAD)
 निदेशक/Director
 गृह मंत्रालय
 Ministry of Home Affairs
 भारत सरकार/Govt. of India

[Handwritten Signature]
 (एच. के. कवल्लिथंग)
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- (n) The averments made in para 16(n) is denied as the order has been issued as per provisions of FCR Act 2010.
- (o) As stated at (n) above
- (p) The averments made in para 16(p) is denied as the order has been issued as per provisions of FCR Act 2010 and there is no question of selective political vendetta as claimed by the petitioner.
- (q) The averments made in para 16(q) needs no reply and it is self explanatory.
- (r) The averments made in para 16(r) is denied as the order dated 09-02-2012 is based on facts.
- (s) The averments made in para 16(s) is denied as the order has been issued as per provisions of FCR Act 2010.
- (t) The averments made in para 16(t) needs no reply and it is self explanatory.
- (u) The averments made in para 16(u) are denied as the order has been issued as per provisions of FCR Act 2010.

In these circumstances, it is prayed that this Hon,ble Court may be pleased to dismiss the writ petition and thus render justice.

Encl: As above

(H.K.Kawllienthang)
Under Secretary to the Govt. of India
Tel.011-23438038

(एच. के. कवल्लिन्थंग)
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