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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 26.11.2026

\# **CNR No. DLHC010462092022**

\+ RFA 635/2022 & CM APPL. 53018/2022

SOCIO-LEGAL INFORMATION CENTRE .....Appellant

Through: Ms. Mugdha, Advocate with Ms. Manisha Singh, Ms. Hetvi Patel and Mr. Paul Kumar K., Advocates.

versus

UNION OF INDIA .....Respondent

Through: Ms. Bani Dikshit, Ms. Astu Khandelwal, GP, Mr. Rudra Paliwal, GP and Ms. Usha Jamnal, Advocates for UOI.

HON'BLE MR. JUSTICE A. J. BHAMBHANI

J U D G M E N T

A. J. BHAMBHANI J.

By way of the present appeal the appellant impugns order dated 17.10.2022 bearing No. II/21022/58(316)/2020-FCRA(MU) issued by the Government of India, Ministry of Home Affairs, Foreigners Division ('MHA') ('impugned cancellation order'), whereby, in exercise of powers under section 14(1)(b) & (d) of the Foreign Contribution (Regulation) Act, 2010 ('FCRA' or 'Act'), the appellant's FCRA Registration Certificate No. 083780554R has been cancelled.

2. The appellant also seeks setting aside of order dated 04.02.2022 issued by the MHA, whereby the aforementioned registration certificate was suspended under section 13 of the Act for a period of 180 (one hundred

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and eighty) days ('impugned suspension order'). The appellant also challenges the freezing of the appellant's designated foreign contribution account and its utilisation accounts maintained with several banks across the country, which was effected by way of directions issued to the concerned banks alongwith the impugned suspension order.

3. At the outset, it is pertinent to point out that the present proceedings were initially filed as W.P.(C) No. 16791/2022 under Article 226 of the Constitution of India *inter-alia* seeking to quash order dated 17.10.2022, whereby the respondent had cancelled the appellant's FCRA registration, along with a plea to revoke the freeze placed on the appellant's bank accounts, and for grant of permission to the appellant to use the existing foreign contribution funds available with it for payment of salaries, fees, administrative and operational costs, and other liabilities. However, when the said petition first came-up for hearing on 07.12.2022, learned counsel appearing for the respondent took a preliminary objection that a Regular First Appeal would lie under section 31 of the FCRA against an order passed under section 14(1) of the FCRA. Accepting that position and in order to avoid delay, the learned Predecessor Bench directed that the writ petition be treated as a Regular First Appeal; and pursuant to such directions the petition was accordingly registered as an RFA.

4. The court has heard Ms. Mugdha, learned counsel appearing for the appellant; and Ms. Bani Dikshit, learned counsel appearing for the respondent.

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BRIEF FACTS

5. The brief factual background necessary for deciding the present appeal is set out hereunder:

5.1. The appellant organisation, Socio-Legal Information Centre ('SLIC' or 'appellant organisation' or 'appellant'), is stated to have been founded in the year 1989 and registered under the Bombay Public Trusts Act, 1950 *vidé* Certificate of Registration dated 25.03.1991. SLIC was granted registration on 22.01.1996 *vidé* Registration Certificate No. 083780554R under the erstwhile Foreign Contribution (Regulation) Act 1976, which permitted it to accept and utilise foreign contribution for undertaking "social" programmes.

5.2. Upon receiving the registration certificate in 1996 and up until 2016, through its 150 lawyers, activists, and trainers, the appellant organisation functioned from 24 offices in 22 States, *inter-alia* providing *pro bono* legal aid, creating legal awareness, providing free legal training, and carrying out fact-finding missions into violations of human rights. The impugned cancellation order narrates the aims and objectives declared by the appellant organisation for the acceptance and utilisation of foreign contribution, in the following manner:

> "*To give legal and other aid to those in need and to bring justice to their lives and their families with the help of the State and judicial machinery. To organise, promote, conduct, run and aid works of various nature. To render given and impart counselling consultations, lectures, write publish, aid and assistance in social and legal matters. To disseminate legal*

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knowledge and information through debates, discussion, camps literature, audio visual aids among the general public etc."

5.3. In 2016 SLIC's FCRA certificate was renewed under the Act. However, after the appellant organisation applied for renewal of its FCRA registration in 2021, the respondent conducted an audit/inspection of its accounts, records, etc. under sections 20 and 23 of the Act at the organisation's office at 576 Masjid Road, Bhogal, Jangpura, New Delhi between 07.09.2021 and 10.09.2021.

5.4. Thereupon, *vidé* letter dated 18.11.2021, the respondent communicated to the appellant their observations arising from the audit/inspection, and sought the appellant's comments/clarifications on the observations contained in paras 1 and 2 of the said letter within 15 days. After seeking extension of time to furnish its comments and clarifications, *vidé* letter dated 09.12.2021, the appellant organisation responded to the audit/inspection observations.

5.5. After considering the appellant's response, on 04.02.2022 the respondent took two actions against the appellant: *One*, in exercise of powers under section 13 of the Act and pending consideration of cancellation of the registration certificate, *vidé* order dated 04.02.2022 the respondent suspended the appellant's FCRA registration for a period of 180 days with effect from the date of the order or until further orders, whichever was earlier; and by the same order the respondent also directed the concerned banks to freeze the appellant's designated foreign contribution

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account and its several utilisation accounts, and to ensure that no inward or outward transaction is effected in such accounts from the date of receipt of the order. *Second*, the respondent issued to the appellant a show-cause notice under section 14(2) of the Act, calling upon the appellant to explain within 21 days why its FCRA registration certificate be not cancelled under section 14 of the Act, to which the appellant responded *vidé* its reply dated 21.02.2022.

5.6. Subsequently, the respondent passed impugned cancellation order dated 17.10.2022 cancelling SLIC's FCRA Registration Certificate No.083780554R.

SUBMISSIONS ON BEHALF OF THE APPELLANT

6. In the backdrop of the aforesaid factual matrix, learned counsel appearing for the appellant has made the following principal submissions in support of the present appeal:

6.1. It has been submitted that the appellant is a legal-aid organisation that has been in existence for over 03 decades, operating out of some 24 offices across the country through a network of about 150 lawyers, social workers, researchers, accounts and administrative personnel; that its Governing Body has been chaired by a former Judge of the Supreme Court of India; and that the appellant organisation's work has been recognised by awards conferred both in India and abroad. It has been emphasised that in all these years, not a single memo, complaint or objection has ever been issued against the appellant by any

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authority. It has been urged that the proportionality of the respondent's action, that is the subject matter of the present proceedings, must *inter-alia* be assessed keeping in mind the appellant's track record.

6.2. Learned counsel for the appellant has addressed the individual violations made in the impugned order. The *first violation* set out in the impugned order reads as under:

> "*a) The Association has transferred foreign contribution amounting to Rs.33,73,545/- to the FCRA registered Association "Prayas" during FY 2019-20. However, the Association did not furnish this information under point 3(d) of the statutory Annual Return FC-4 Form for FY 2019-20. This is a violation of section 18 of the Act.*"
>
> (emphasis supplied)

In relation to the aforesaid violation it has been submitted that the said amount was legitimately paid by the appellant organisation to Prayas (which is also an FCRA-registered organisation) in accordance with a Memorandum of Understanding dated 25.09.2019 between the two parties to jointly implement a project on reproductive rights; and that the said amount was not mentioned *under point 3(d)* of the Annual Return Form FC-4 for FY 2019-20 by reason only of an inadvertent omission and not as an act of suppression. It has further been submitted that when the respondent's audit team raised this issue, the appellant produced a payment record/RTGS form dated 10.10.2019 evidencing that the sum of Rs.33,73,545/- was remitted by the appellant to Prayas; and the Executive Director/Chief Functionary of the appellant even filed

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an affidavit dated 10.09.2021 to that effect before the FCRA authorities, the contents whereof are not disputed by the respondent. It has further been emphasised that even the respondent has nowhere alleged that the transfer made by the appellant to Prayas was illegal, and the allegation is only that the transfer made was not disclosed under the specific entry in the Annual Return Form FC-4.

6.3. The *second violation* made in the impugned order reads as under:

> "*b) The association has incurred the FC for payment of Annual membership fees of Bar Associations for Sh. Colin Gonsalves and Ms. Gayatri Singh, advocate. The payment is found beyond the terms & conditions of the contract agreements signed between the Association and Sh. Colin Gonsalves. This amounts to diversion of FC, and such diversion is likely to be used for personal gains or undesirable purposes. This amounts to diversion of FC and is a violation of the conditions of registration under sections 12(4)(a)(iv) and 12(4)(a)(vi) of the Act..*"
>
> (emphasis supplied)

It has been submitted that, lawyers working with the appellant organisation render *pro bono* services at the Supreme Court and in the High Courts of Delhi and Bombay, and often require access to the court libraries as well as to court premises for parking vehicles used for such work. It has further been submitted that membership facilities are available only to advocates in their individual capacity and not to organisations; and access to the court libraries and court premises is required to carry out SLIC's work in relation to its court cases, the expenses towards bar association memberships were borne by the

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appellant organisation. It is pointed-out that the said expenses were also duly approved by the appellant's Governing Board; and were subsequently discontinued in the financial year 2019-20. The court is informed that, in fact, in view of the objection taken by the respondent, the two concerned advocates have, without demur, handed over cheques to the appellant organisation towards refund of the entire sum of Rs.1,10,250/- incurred for the purpose, though those cheques could not be deposited since the appellant's accounts stand frozen.

6.4. The *third violation* made in the impugned order reads as under:

> "*c) The association has taken a property (at A-20, Jangpura Extension, New Delhi) on rent from Sh Colin Gonsalves, Contract Employee who is using free association's premises and administration support etc. to do his private practice. The Association has made payment of rent of the premises to Sh. Colin Gonsalves who is contractual employee of the Association from foreign contribution. This amounts to diversion of FC for the personal gain to Sh. Colin Gonsalves, and is violation of conditions of registration under section 12(4)(a)(vi) of the Act.*"
>
> (emphasis supplied)

Explaining the reason for renting of the subject premises, it has been submitted that, in the course of the years, SLIC's accounts team had expanded and required substantial space, including for storage of records that are statutorily required to be preserved, and no other suitable premises were available in the vicinity of the appellant's office. It has further been submitted that the premises was taken on rent only after a survey of prevailing rates in the area and after a Board Resolution dated

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07.11.2009 was passed for payment of rent of Rs.10,000/- per month for each of the two basements, which, as stated in the rejoinder and written submissions filed by the appellant, over the years came to be raised to Rs. 40,000/- per month for each of the basements. It has been emphasised that the decision to rent premises from Shri Colin Gonsalves was taken since it came with the assurance and advantage that the appellant would not be called upon to vacate the premises for at least 10 years, which gave stability and permanence to an arrangement that other landlords were unwilling to offer.

6.5. As regards the counterpart finding, that Shri Colin Gonsalves, Senior Advocate was thereby permitted the free use of the SLIC's premises and of the attendant administrative support for his private practice, it has been submitted that the said senior advocate (who is also the founder of the appellant organisation) was making a minimum of 03 appearances a day on behalf of SLIC's clients in the High Court, Supreme Court, the National Green Tribunal and the Central Administrative Tribunal, aggregating to about 60 appearances a month, apart from conducting trainings across the country (including on weekends), settling draft petitions drawn up by young lawyers, and guiding the appellant's publications. Against this quantum of work, the said Senior Advocate was paid a monthly fee of only Rs.1,00,000/-, which translates to only about Rs.2,000/- per appearance. It has been argued that it is "*a bit harsh*" to characterise such an arrangement with the Senior Advocate as

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having resulted in personal gain for the Senior Advocate. It has been further pointed-out that on the said objection being raised, the appellant organisation in fact surrendered the premises and terminated the lease; and the Senior Advocate tendered his resignation *vidé* letter dated 01.01.2022, which was accepted by SLIC on 05.01.2022; and this was communicated to the MHA by appellant's letter dated 01.04.2022.

6.6. The *fourth violation* made in the impugned order reads as under:

> "*d) The Association admitted that* ***"The funds received from KIOS was to organize trainings on human rights and the law in their respective countries."*** *The Association has also admitted that it was involved in arranging expert resources persons to go to the South Asian countries from India, recording, reporting, monitoring, evaluating the sessions. Hence the association had incurred the expenditure for these activities from the FC. Thus, Association had utilized FC for the benefits of foreign nationals. This act of Association amounts to misutilization and diversion of FC for undesirable purposes, and is a violation of the conditions of registration under sections 12(4)(a)(iv) and 12(4)(a)(vi) read with section 1 (2) of the Act.*"
>
> (emphasis supplied)

It has been argued that the fourth violation proceeds upon a misreading of the arrangement between the appellant and KIOS-The Finnish NGO Foundation ('KIOS'). It has been submitted that KIOS had entered into separate and independent agreements with each of its South Asian partner organisations, and each such organisation received funds directly from KIOS and conducted trainings in their *own respective countries* and rendered their own audited accounts to KIOS. Insofar as the

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appellant is concerned, it has been submitted that the appellant's agreement with KIOS was for Euro 101,000.00 and was confined for purposes of trainings in India; and, furthermore, that in relation to the India programmes, SLIC received Rs. 68,25,250/- (Euro 90,990.00) over a period of 02 years. It has been argued therefore that, not a rupee was transferred by the appellant to any partner organisation abroad.

6.7. It has also been explained that the confusion that resulted in the fourth violation arose from the consolidated financial report for the period 01.08.2016 to 31.01.2018, in which one of the columns gave the names of all the countries covered by the project as a whole *i.e.,* Afghanistan, Pakistan, India, Bangladesh, Sri Lanka and Nepal. It has been clarified that although the expenditure summary related to SLIC's India programme alone, the other countries were mentioned since the project in its entirety covered 06 other South Asian countries as well.

6.8. It has been submitted that though, using the Indian budget, one legal expert from India did travel to participate in the trainings on public interest litigation conducted in other South Asian countries, the objective behind such participation was to document the best cases and judgments and bring back the learnings to aid litigation in India for the benefit of the Indian poor. It has been argued that since only one lawyer attended trainings for exchange of case law and legal strategy, and in the course of the trainings certain Indian case law was cited, this

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cannot be characterised as mis-utilisation or diversion of funds for undesirable purposes.

6.9. The *fifth violation* made in the impugned order reads as under:

> "*e) Association had received foreign contribution from European Union (EU) under the project titled "Using the Law to protect Human Rights in conflict States" in the name to protect the Human Rights in unrest states viz., Punjab, Jammu and Kashmir, Jharkhand, Chhattisgarh, Andhra Pradesh, Orissa, Manipur and Assam. The agreement papers and the activities thereof clearly shows that Association is involved in activities impinging upon political and law & order domains and also attempting to portray a wrong image of public institutions of India in the eyes of international community. This is violation of the conditions of registration under sections 12(4)(a)(iv), 12(4)(a)(vi), 12(4)(f)(i), (ii) and (iii) of the Act.*"
>
> (emphasis supplied)

It has been submitted that in drawing the above inferences, the respondent has erroneously conflated the "*statement of the problem situation*" with the "*way forward*" or "*objective of the project*" proposed in the project document. It has been clarified that the first part of the project document, which the respondent is laying emphasis on, was only a description of the problem situation *i.e.*, unrest, malnutrition, illiteracy, homelessness and rights violations; however, the second part set-out the solution, which was to use the legal system as well as governmental institutions to bring justice to affected persons. It has been submitted that the institutions to be accessed as a part of the project were the National and State Human Rights Commissions, the Women's Commission, the Commission for Scheduled Castes & Scheduled Tribes, the disability rights machinery, the

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National and State Legal Services Authorities and the courts, ranging from the trial courts to the Supreme Court.

6.10. In this behalf, attention has been drawn to the stated overall objective and the expected results of the project, which were to secure justice for vulnerable persons in conflict states, particularly women and children, to increase the accountability of police, security forces and government officers in relation to legal aid, the public distribution system, and the rights to education and health; to sensitise judges and law-enforcement bodies through judicial colloquia; and to strengthen the capacity of civil society organisations to use human rights law. It has further been submitted that the identified beneficiaries of the project were adivasis, dalits, the poor, women, children, juveniles *etc*. It has further been pointed-out that the main themes of the project were acid attack victims, child abuse victims, rape survivors, and issues of maternal health.

6.11. It has also been stated that SLIC has throughout worked with institutions of the State, and not against them. It has further been submitted that the appellant is an apolitical organisation and does not support or criticise any government; and has had no affiliation with any political person or party, whether directly or indirectly, over the past 03 decades. It has been submitted that the aim of SLIC is to identify cases where the poorest sections of society are deprived of their constitutional rights and to provide representation, relief and justice to them.

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6.12. The *sixth violation* made in the impugned order reads as under:

> "*f) Association generated miscellaneous income Rs. 13,44,248 by receiving cash amounts from individuals on account of miscellaneous charges required for filling case on one's behalf in the court since January, 2018 and charging Rs. 3000/- from the intern advocate(s) for providing internship under the Association. The above said income/receipts are generated by Association utilizing its assets/infrastructure/services created out of FC. This being FC in terms of explanation-2 of the section 2(1(h) of the Act, should have been deposited in the FC a/c. Association has failed to take this income into the FCRA accounts and records and did not reflect in the statutory Annual Return(s). Non-furnishing of complete details of FC in Annual Returns is a violation of sections 17 and 18 of the Act.*"
>
> (emphasis supplied)

In relation to the above violation, it has been submitted on behalf of the appellant that the amount of Rs.13,44,248/- comprises Rs.67,050/- received in 2017-18, Rs.7,81,883/- in 2018-19 and Rs.4,95,315/- received in 2019-20, which monies were received in Indian Rupees from Indian nationals as modest contributions from interns and sums received towards miscellaneous charges for filing of court cases. It has been further submitted that, having regard to Explanation 3 to section 2(1)(h) of the FCRA, the said amounts did not constitute 'foreign contribution' and were therefore not reported as such in the appellant's annual returns. Instead, the amounts were reflected as "Miscellaneous Receipts" in the consolidated financial statements and were duly reported to the income tax authorities each year. It has been argued that there is no allegation that the

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said amounts were misused by the appellant organisation. It has been submitted that, without prejudice to the above position, the appellant has expressed to the MHA its willingness to deposit the said sums into the FCRA account, for which purpose the permission of the MHA and the de-freezing of the FCRA account were necessary, since showing rupee receipts as foreign contribution would otherwise itself be impermissible.

6.13. Coming to the manner in which the impugned action was taken, it has been strenuously submitted that the impugned suspension order and the consequential freezing of SLIC's bank accounts were effected without any notice, communication or hearing whatsoever to the appellant organisation. It is the appellant's contention that the suspension order was despatched only to the banks and not to SLIC, and the appellant organisation learned of the freezing of the said bank accounts on 09.02.2022 from the bank, when salaries could not be paid to the appellant's team across 24 States. Thereafter, *vidé* its letter dated 15.02.2022, the appellant sought a copy of the order from their bank. The appellant has claimed that to-date the suspension order has not been communicated by the MHA to the appellant. It has also been pointed out that, significantly, this specific grievance has not been traversed at all in the reply filed by the respondent to the present appeal; and the respondent has instead only answered that the allegations in the show-cause notice justified suspension and freezing of the appellant's bank accounts.

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6.14. It has also been argued that none of the aforementioned violations even *prima facie* make-out a case of breach of law; and therefore, the impugned cancellation order and all subsequent action taken by the respondent against SLIC is wholly disproportionate and unwarranted. It has been submitted that the consequences of the freezing of accounts were catastrophic, since salaries and fees of about 150 lawyers, social workers, researchers and support staff (including sweepers, peons, cleaners and court clerks) stopped abruptly in the immediate aftermath of the COVID-19 pandemic; health insurance policies lapsed; legal literacy programmes, publications, meetings and seminars across the country were cancelled; and thousands of litigants living below the poverty line were left without representation. It has been urged that less drastic measures were available to the respondent, for instance, permitting the appellant to continue to pay salaries and health insurance while stopping funds allocated to their programmes, trainings and publications, which would have achieved the respondent's object without visiting destitution upon the appellant's staff and their families.

6.15. It has further been submitted that, faced with this situation, the appellant made repeated representations, including by its letter dated 05.03.2022 to the MHA, showing SLIC's compliances and seeking the release (of upto 25%) of the appellant's funds for disbursement of salaries and other running costs. It has been further submitted that even the Chairperson of the SLIC's

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Governing Body, Justice Deepak Verma (Retd.), former Judge of the Supreme Court of India wrote letter dated 03.03.2022 to the Home Secretary; and letter dated 19.07.2022 to the Director and Under Secretary, FCRA in that regard; however, the only response ever received was to letter dated 05.03.2022 by way of MHA letter dated 29.03.2022, in which the respondent asked SLIC to furnish the exact details of the necessary expenditure with supporting documents and justification, and the details of the unspent balances. SLIC responded to the said letter on 06.04.2022, duly furnishing all the details along with supporting material as asked for; however the appellant never received a response from the respondent, despite making repeated subsequent requests.

6.16. It has been argued that the appellant's request for permission to withdraw and use upto 25% of the funds lying in its accounts is in fact permissible under Rule 14(a) of the Foreign Contribution (Regulation) Rules, 2011 ('FCRR 'or 'Rules'); and that, on point of fact, the 180-day suspension period had itself expired on 04.08.2022; and that the failure on the respondent's part to even consider the appellant's request for release of funds from its accounts, over months, discloses complete lack of application of mind, and is an act that is arbitrary, unreasonable and violative of Articles 14, 19 and 21 of the Constitution of India *qua* the appellant as well as its employees who have been denied their wages since February 2022.

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6.17. A further submission has been advanced on behalf of the appellant to rebut the respondent's allegation made in para 10 of the reply to the present appeal, namely that the appellant engaged in "*aggressive anti-government political activism powered by FCRA approved foreign funds*". It has been stated on behalf of the appellant that this allegation has been made by the respondent for the first time in their reply affidavit and is supposedly based on a reference/complaint dated 11.09.2020 received by the respondent against the appellant. However, it has been submitted that this allegation finds no place either in the show-cause notice or in the impugned cancellation order. It has been contended on behalf of the appellant that pointing out illegalities on the part of governmental authorities, at the instance of and on the instructions of clients, cannot be considered "anti-government" and no such allegation has ever been made against SLIC in the past 30 years, since the inception of the organisation.

6.18. On the legal question of what constitutes activity of a 'political nature' for an organisation that receives foreign contribution, the appellant has placed reliance on the decision of the Supreme Court in ***Indian Social Action Forum (INSAF) vs. Union of India***[1] ('INSAF'), in which the Supreme Court has held as under:

> "***21.*** *The object sought to be achieved by the Act is to ensure that the parliamentary institutions, political*

[1] (2021) 15 SCC 60

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associations and academic and other voluntary organisations as well as individuals working in the important areas of national life should function in a manner consistent with the values of a sovereign democratic republic without being influenced by foreign contributions or foreign hospitality. The long title of the Act makes it clear that the regulation of acceptance and utilisation of foreign contribution is for the purpose of protecting national interest. The candidates for election and political parties or office-bearers of political parties are barred from accepting any foreign contribution. The legislative intent is also to prohibit organisations of a political nature from receiving foreign contributions. It is clear that preventing foreign contribution into the political arena is the object sought to be achieved by the Act. Prevention of foreign contributions routed through voluntary organisations which are not connected to party politics is the reason behind introduction of Sections 3(1)(f) and 5 of the Act. The Central Government is required to take into account the activities, ideology or the programme of the organisation including the association of the organisation with activities of any political party before declaring an organisation as an organisation of political nature not being a political party. The guidelines that are prescribed by the Rules indicate that ***only those organisations which are actively involved in politics or associated with political parties can be declared as organisations of a political nature****.*

* * * * *

"***26.*** *A balance has to be drawn between the object that is sought to be achieved by the legislation and the rights of the voluntary organisations to have access to foreign funds. The purpose for which the statute prevents organisations of a political nature from receiving foreign funds is to ensure that the administration is not influenced by foreign funds. Prohibition from receiving foreign aid, either directly or indirectly, by those who are involved in active politics is to ensure that the values of a sovereign democratic republic are*

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protected. On the other hand, such of those voluntary organisations which have absolutely no connection with either party politics or active politics cannot be denied access to foreign contributions. Therefore, ***such of those organisations which are working for the social and economic welfare of the society cannot be brought within the purview of the Act or the Rules by enlarging the scope of the term "political interests". We are of the opinion that the expression "political interests" in Rule 3(v) has to be construed to be in connection with active politics or party politics****.*

"***27.*** *Any organisation which habitually engages itself in or employs common methods of political action like "bandh" or "hartal", "rasta roko", "rail roko" or "jail bharo" in support of public causes can also be declared as an organisation of political nature, according to the guideline prescribed in Rule 3(vi). Support to public causes by resorting to legitimate means of dissent like bandh, hartal, etc. cannot deprive an organisation of its legitimate right of receiving foreign contribution. It is clear from the provision itself that bandh, hartal, rasta roko, etc. are treated as common methods of political action.* ***Any organisation which supports the cause of a group of citizens agitating for their rights without a political goal or objective cannot be penalised by being declared as an organisation of a political nature****.* ***To save this provision from being declared as unconstitutional, we hold that it is only those organisations which have connection with active politics or take part in party politics, that are covered by Rule 3(vi)****. To make it clear, such of those organisations which are not involved in active politics or party politics do not fall within the purview of Rule 3(vi). We make it clear that organisations used for channelling foreign funds by political parties cannot escape the rigour of the Act provided there is concrete material. In that event, the Central Government shall follow the procedure prescribed in the Act and the Rules strictly before depriving such organisation the right to receive foreign contributions.*"

(emphasis supplied)

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Based on the law laid down by the Supreme Court in *INSAF*, it has been submitted that the appellant has no connection with any political party or with active politics; no political person has ever been invited even to address any meeting of the appellant; and the appellant does not, directly or indirectly, support any political party or politician at any election.

6.19. It has been submitted that the decision of a Co-ordinate Bench of this court in ***Commonwealth Human Rights Initiative vs. Union of India***[2], on which the respondent places reliance, is distinguishable since that case did not deal with the freezing of bank accounts without notice; and in any event, the appeal against that decision is stated to be pending before a Division Bench of this court. It has been urged that none of the six so-called violations, even if taken at face value, make-out a case of breach of the Act, least of all any breach that would warrant the extreme consequence of cancellation of the appellant's FCRA registration, especially since not a single rupee is even alleged to have been misappropriated or misused by the appellant; and it is only innocuous matters that have been magnified by the respondent to visit the appellant with a penalty that has brought its work to a halt.

6.20. In conclusion, it has been submitted that the officials who visited the appellant's office even expressed the view that some of the

[2] 2022 SCC OnLine Del 459

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pro bono litigation done on behalf of the poor had negatively impacted the government; and that it would be advisable for SLIC to avoid using foreign funds for certain litigation, since the resultant court orders might reflect poorly on the government. It has been submitted that SLIC immediately responded to the said view, conveying that only routine legal aid work would be done for tribals, workers, slum dwellers, dalits, women, children, trafficked victims, LGBTQI, and for persons with disability, etc. It has been emphasised that the appellant has always believed in the elected government and the Constitution, and that SLIC is not involved in any political activity and does not attempt to support or criticise any government.

6.21. It has been reaffirmed that the appellant's role is to simply identify cases concerning deprivation of constitutional rights to the poorest sections of society, and to represent their causes before Constitutional courts. It has further been submitted that, though it is true that court orders may sometimes upset one group or the other, that is the inherent nature of all litigation; but SLIC does not intend to cause hurt to any group or government and only intends to bring relief to the poor.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

7. Contesting the submissions made on behalf of the appellant, learned counsel appearing for the respondent (Union of India through the Ministry of Home Affairs, Central Government) has made the following principal submissions:

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7.1. At the outset, the respondent has raised a preliminary objection as regards the maintainability of the present appeal on two counts. *One*, that section 31(1) of the Act prescribes a limitation period of 30 days for preferring an appeal, which the appellant has not adhered to; nor has any application been filed seeking extension of time for filing the appeal. *Two*, that the appellant has approached this court without first availing the remedy of revision available under section 32 of the Act before the Central Government.

7.2. On merits, it has been submitted that the FCRA is a national security legislation, comprising a framework for regulating and monitoring the acceptance and utilisation of foreign contributions by persons and voluntary organisations, with the object and purpose that recipients of foreign contributions may function in a manner consistent with the values of a sovereign democratic republic; and to prohibit the acceptance and utilisation of foreign contribution for any activity detrimental to national interest. It has been urged that, having regard to the sensitive object of the enactment, the provisions of the Act mandate *strict*, *absolute* and *complete* compliance; and that the present appeal must be examined in light of the overall object of the Act and not *de-hors* it. It has been emphasised that there is no vested right in any entity to obtain or retain registration under the Act, and that any violation of the provisions of the Act entitles the Central Government to revoke such registration, as and when required.

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7.3. In support of their contentions, the respondent has placed reliance on the judgment of the Supreme Court in ***Noel Harper & Ors. vs. Union of India & Anr.***[3], in which the Supreme Court has recognised the need to strictly regulate the inflow of foreign funds and to oversee the utilisation thereof for the purposes for which such funds are received. The respondent has drawn attention to the observations in that ruling to the effect that a nation is entitled to completely prohibit foreign contribution, since its receipt is an indication that the nation is not able to take care of its own needs and affairs. The respondent has placed reliance on the following paras of *Noel Harper*:

> "***83.*** *…… Further, there is no fundamental right vested in anyone to receive foreign contribution (donation) or foreign exchange; and that the purport of the principal Act and the impugned amendments are only to provide a regulatory framework and not one of complete prohibition.*
>
> * * * * *
>
> "***87.*** *To eradicate misuse and abuse of foreign contribution in the past, despite the firm regime in place in terms of the 2010 Act, Parliament in its wisdom has now (vide the Amendment Act of 2020) adopted the path of moderation by making it mandatory for all to accept foreign contribution only through one channel and to utilise the same "itself" for the purposes for which permission has been accorded. Undeniably, the sovereignty and integrity of India ought to prevail and the rights enshrined in Part III of the Constitution must give way to the interests of general public much less public order and the sovereignty and integrity of the nation. It must be borne in mind that the legislation under consideration must be understood in the context of the underlying intent of insulating the democratic*

[3] (2023) 3 SCC 544

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polity from the adverse influence of foreign contribution remitted by foreign sources.

* * * * *

"***89.*** *It is unnecessary to underscore the distinction between foreign contribution and foreign investment. By its very nature, foreign contribution is a donation accepted from a foreign source purportedly for definite cultural, economic, educational, religious or social programme and to serve the cause of humanity. The expression "foreign contribution" has been defined in Section 2(1)(h) of the 2010 Act to mean donation, which can be in the form of delivery or transfer made by any foreign source of any article, currency, security, etc.*

"***90.*** *It is open to a sovereign democratic nation to completely prohibit acceptance of foreign donation on the ground that it undermines the constitutional morality of the nation, as it is indicative of the nation being incapable of looking after its own affairs and needs of its citizens. The third world countries may welcome foreign donation, but it is open to a nation, which is committed and enduring to be self-reliant and variously capable of shouldering its own needs, to opt for a policy of complete prohibition of inflow/acceptance of foreign contribution (donation) from foreign source. This was the first option noted by Parliament while considering the Bill concerning the 1976 Act.*

"***91.*** *When the 1976 Act was enacted, Parliament had discussed about three options. The first was of outright prohibition; the second being acceptance subject to prior permission of the Government; and the third—acceptance subject to intimation being given to the Government. Parliament opted for the second option and that continues to this day in the form of the 2010 Act, as amended in 2020. At the same time, from the experience gained aftermath implementation of the dispensation predicated for regulating the inflow of foreign contribution from foreign source and its utilisation, the need to make it more stringent was felt. The amendments vide the 2020 Act, are the product of that experience and Parliament, for accomplishing the objectives of*

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the principal Act and to uphold the sovereignty and integrity of the nation as well as public order and in the interests of the general public, introduced the regime requiring acceptance of foreign contribution from foreign source only through one channel and utilising the same by the recipient itself for the activities for which prior permission has been granted to him in that regard. The permission to be granted by the Central Government can be a general permission for definite cultural, economic, educational, religious or social programme or a special permission in respect of particular activity in that regard. In either case, it has to be a prior permission in the form of obtaining certificate of registration from the Central Government or obtaining prior permission of the Central Government for the specific purpose by person not so registered.

* * * * *

"***115.*** *Indubitably, foreign contribution is qualitatively different from foreign investment. Receiving foreign donation cannot be an absolute or even a vested right. By its very expression, it is a reflection on the constitutional morality of the nation as a whole being incapable of looking after its own needs and problems. The question to be asked is:"in normal times", why developing or developed countries would need foreign contribution to cater to their own needs and aspirations? Indisputably, the aspirations of any country cannot be fulfilled on the hope (basis) of foreign donation, but by firm and resolute approach of its own citizens to achieve the goal by sheer dint of their hard work and industry. Indeed, charitable activity is a business. Receiving contribution within India to do charitable activity can be and is being regulated differently. It is not possible to have a similar approach relating to foreign contribution from foreign source. In short, no one can be heard to claim a vested right to accept foreign donation, much less an absolute right.*

"***116.*** *We say so because the theory of possibility of national polity being influenced by foreign contribution is globally recognised. For, foreign contribution can have*

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material impact in the matter of socio-economic structure and polity of the country. The foreign aid can create presence of a foreign contributor and influence the policies of the country. It may tend to influence or impose political ideology. Such being the expanse of the effect of foreign contribution coupled with the tenet of constitutional morality of the nation, the presence/inflow of foreign contribution in the country ought to be at the minimum level, if not completely eschewed. The influence may manifest in different ways, including in destabilising the social order within the country. The charitable associations may instead focus on donors within the country, to obviate influence of foreign country owing to foreign contribution. There is no dearth of donors within our country.

"***117.*** *Pertinently, the 1976 Act came to be repealed by the 2010 Act, as it had become necessary to do so because of the experience gained that in the name of foreign contribution, attempts were made by unscrupulous entities to disturb the economy and sovereignty of our country. That being the underlying reason, it must follow that the legislative intent behind the Act and constant effort of the Government and of Parliament is to discourage foreign contribution generally, but allow it for specific definite purposes mentioned in Section 11 of the Act; and for which, the person receiving or accepting foreign contribution is obliged to obtain a certificate of registration under the Act or prior permission, as the case may be. Further, such person is obligated to comply with all the stipulations attached to the certificate of registration or prior permission, without any exception.*"

(emphasis supplied)

7.4. Reliance has also been placed by the respondent on the decision of a Division Bench of this court in ***Association for Democratic Reforms and Anr. vs. Union of India and Ors.***[4], in which it has been held that:

[4] 2014 SCC OnLine Del 1321

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> "*20. Therefore it can be safely gathered that amidst a spate of subversive activities sponsored by the Foreign Powers to destabilize our nation, the Foreign Contribution (Regulation) Act, 1976 was enacted by the Parliament to serve as a shield in our legislative armoury, in conjunction with other laws like the Foreign Exchange Regulation Act, 1973, and insulate the sensitive areas of life like - journalism, judiciary, and politics from extraneous influences stemming from beyond our borders.*"
>
> (emphasis supplied)

7.5. Explaining the genesis of the impugned action, it has been submitted that considering the aspect of national security, the respondent obtains reports from security agencies pertaining to donors and recipients of various organisations from time-to-time, which reports are classified as 'SECRET' and are exempt from disclosure under the Right to Information Act, 2005. It has been submitted that a reference/complaint dated 11.09.2020 was received against the appellant organisation alleging that it indulged in aggressive anti-government political activism powered by FCRA-approved foreign funds; and to ascertain the gravity of the allegations levelled in the complaint, comments and inputs of the security agencies were sought. It has been submitted that based on such inputs, and in order to check the correctness of the accounts and compliances, an audit and inspection of the appellant was conducted under sections 20 and 23 of the Act between 07.09.2021 and 10.09.2021; whereupon the violations appearing in the audit report were conveyed to the appellant, with a request to furnish its comments/clarifications

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within 15 days, informing the appellant that failing such response, appropriate action would be initiated against it under the Act.

7.6. It has been submitted that *vidé* letter dated 30.11.2021, SLIC requested additional time for submitting their response, which time was granted to them *vidé* letter dated 02.12.2021. Thereafter, *vidé* letter dated 09.12.2021, the appellant organisation submitted its response/reply to the audit and inspection observations; but since such clarifications were found to be unsatisfactory, and SLIC was found to be violating multiple provisions of the Act, in exercise of powers under section 13 of the Act, SLIC's registration certificate was suspended *vidé* letter dated 04.02.2022, pending consideration of cancellation of registration. Placing reliance on the ruling in *Commonwealth Human Rights Initiative*, it has been argued that, in fact, there was no need to grant any opportunity of hearing to the appellant before suspending their registration, since in that case the court has held as under:

> "***45.*** *Suffice to state, there is nothing in the provision to show that these violations cannot be construed as reasons which weighed with the Central Government, to suspend the certificate. Surely, if the violation makes a strong prima facie case against the certificate holder, if proved, would lead to cancellation of certificate under Section 14(2), then the Central Government will be justified in suspending the certificate. In other words, suspension order can be passed by the Central Government considering the gravity of violations, the nature of evidence available and effect on public interest. These aspects can be deduced from the material available on record including*

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the annual returns filed/the replies to the questionnaires. So, it follows that the violations of FCRA, 2010 can be reasons to suspend the certificate. In that sense, the reasons and grounds are inter-related. This conclusion of mine shall negate the submission of Mr. Datar and Mr. Singh that the order of suspension is wholly alien/ultra vires to the scheme of suspension under Section 13(1) of the FCRA, 2010."

(emphasis supplied)

7.7. It has been further argued that, in the present case however, an opportunity of being heard was also granted to the appellant *vidé* show cause notice dated 04.02.2022 issued under section 14(2) of the Act; and the appellant was granted an opportunity to offer an explanation within 21 days. However, reply dated 21.02.2022 furnished by the appellant was again found unsatisfactory, and the appellant organisation was unable to furnish any reasonable answers for the violations committed, subsequent to which the appellant's FCRA registration was cancelled. It has also been argued that the appellant has not alleged any non-compliance of the provisions of the Act; and the appellant's grievance is restricted only to the merits of the cancellation order.

7.8. In relation to the arguments made by the appellant against the impugned cancellation order, and in relation to the *first violation*, namely the violation pertaining to transfer of Rs.33,73,545/- by the appellant to 'Prayas', the respondent has submitted that section 18 of the Act requires every person who is granted a certificate of registration to intimate to the Central Government the amount of each foreign contribution received; the source and manner in which it was received; and the purposes for which and

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the manner in which it was utilised. Furthermore, Rule 17 of the FCRR mandates that a report in Form FC-4 be filed within 09 months of closure of the financial year; and Rule 17(2) requires that the details of funds transferred to any other bank accounts for utilisation be also disclosed. Also, it is pointed-out that any incomplete, late or non-filing of the annual return is a violation of section 18 read with Rule 17, and amounts to an offence under sections 35 and 37 of the Act.

7.9. It has been urged that it is not in dispute that the details of the transfer made to 'Prayas' were not disclosed in the statutory annual return for financial year 2019-20; and that the affidavit stating that the omission to disclose the transfer was an inadvertent error came to be filed only on 10.10.2021 *i.e.*, nearly two years after the transfer had been made on 09.10.2019, and only after the audit had been conducted. It has been argued that the appellant has failed to appreciate the mandatory nature of the provisions of the Act, and that the belated filing of the affidavit terming the omission as a mere error, cannot exonerate it. It has been added that the requirement of furnishing intimation under section 18 was not fulfilled; the manner of utilisation of the amount was not disclosed; and the timeline prescribed by Rule 17(1) of the FCRR was also not adhered to.

7.10. In relation to the *second violation i.e.,* the payment of Bar Association membership fees by the appellant, it has been submitted that section 12(4)(a)(iv) of the Act permits continuation of registration only where an applicant has not been

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found guilty of diversion or mis-utilisation of foreign funds, and section 12(4)(a)(vi) provides that registration can only be continued/renewed where an applicant is not likely to use the foreign contribution for personal gain or divert such funds for undesirable purposes. It has been argued that it is not in dispute that the payments were made from the foreign contribution received towards Bar Association membership fee of two lawyers, and that such payments fall beyond the terms and conditions of the contractual arrangement between the appellant and the advocates concerned. It has been argued that, if at all, the appellant could have used its domestic funds for this purpose and no explanation has been forthcoming as to why the foreign contribution received was applied towards Bar Association fees of counsel having a lucrative practice in the Supreme Court and the High Court; and such aberration cannot be condoned.

7.11. In relation to the *third violation i.e.,* relating to the premises taken on rent by the appellant, it has been submitted that the appellant does not dispute that the premises at A-20, Jangpura Extension, New Delhi were taken on rent from a lawyer who was in a contractual arrangement with SLIC nor has it been disputed that the said person was also using the premises and administrative support available at the premises, free of cost, for his private practice. It has been submitted that the appellant also does not deny that rent for the premises was paid from the foreign contribution received. It has been urged, that by reason of the rent being paid in this manner, the foreign contribution

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received was applied for the personal benefit of another person, which amounts to violation of section 12(4)(a)(vi) of the Act. It has been argued that SLIC's justification that the said advocate was appearing in some of its matters does not negate the statutory violation. It has further been submitted that the resignation of the said advocate on 01.01.2022 *i.e.,* after the audit was conducted in September 2021, is itself in the nature of an admission of the violation, and is an afterthought and a "corrective measure" taken only upon detection.

7.12. In relation to the *fourth violation,* in relation to the KIOS project, it has been submitted that the expenditure summary sheet in the financial report filed by the appellant for the period 01.08.2016 to 31.01.2018, reflects transfers for purposes of litigation, training and other matters in relation to 06 South Asian countries, *viz.,* Afghanistan, Pakistan, India, Bangladesh, Sri Lanka and Nepal; however, it is not disputed that trainings took place outside India using the foreign contributions received. It has been pointed-out that in reply dated 21.02.2022 sent to the show-cause notice the appellant has admitted that the funds received from KIOS were meant to organise trainings on human rights and law in the "*respective countries*", and it has also been admitted that SLIC had arranged expert resource persons to travel from India to the said South Asian countries, and in recording, reporting, monitoring and evaluating those sessions, for which expenditure was incurred out of foreign contributions received. It is the respondent's contention, therefore, that foreign

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contributions were admittedly utilised for the benefit of foreign nationals, which is impermissible having regard to section 1(2) of the Act, and this amounts to violation of sections 12(4)(a)(iv) and 12(4)(a)(vi) read with section 1(2) thereof.

7.13. In relation to the *fifth violation i.e.,* relating to the project supported by the European Union ('EU'), it has been submitted that it is not in dispute that foreign contribution received for the project titled "Using the Law to protect Human Rights in conflict States" was utilised in the 'unrest' [sic] States of Punjab, Jammu & Kashmir, Jharkhand, Chhattisgarh, Andhra Pradesh, Orissa, Manipur and Assam in the name of protecting human rights; and the agreement papers and the activities carried-out thereunder clearly show that the appellant was involved in activities that impinge upon political and law and order domains; and the appellant was thereby attempting to portray a wrong image of public institutions of India in the eyes of the international community.

7.14. In this behalf, attention has been drawn to the audit/inspection report relating to the appellant, which narrates the preface of the agreement entered into by the appellant with the EU, and carries reference to the State of Manipur as having suffered unrest for over 40 years with various groups demanding autonomy or independence; which describe the counter-insurgency efforts in Punjab as having included torture, forced disappearances and continuing abuses; which states that Jammu & Kashmir has experienced the worst forms of human rights violations

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including torture, custodial killings, rape, disappearances and fake encounters over 20 years, and that the Judiciary in that State has failed to live-up to the expectations of the victims. It has been emphasised that section 12(4)(f) of the Act permits registration only where the acceptance of foreign contribution is not likely to prejudicially affect the sovereignty, integrity, security and public interest, or friendly relations with any foreign State. It has been argued that the appellant was unable to explain the objective behind the reports prepared and the work it has done, which directly attack the integrity of the State. It has been submitted that it was impermissible for the appellant to have entered the domain of politics and diplomacy of the State.

7.15. In this context it has also been argued that the appellant's protestation that it is not aligned to any political party is beside the point, since that is not the issue; and that lengthy explanations and recital of the appellant's credentials will not serve the purpose, since the claimed credentials and intentions do not absolve the appellant of its statutory obligations.

7.16. In relation to the *sixth violation i.e.,* relating to the miscellaneous income of Rs.13,44,248/- received by the appellant, it has been submitted that by virtue of Explanation 2 to section 2(1)(h) of the Act, the interest accrued on foreign contribution deposited in any bank, and any other income derived from foreign contribution or interest thereon, is deemed to be foreign contribution. It has been submitted that such receipts were generated by the appellant by utilising its assets, infrastructure

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and services created from foreign contributions, and ought therefore to have been deposited in the foreign contributions account; and the failure to take such income into the FCRA accounts and records and the failure to reflect it in the statutory annual returns, amounts to violation of sections 17 and 18 of the Act, which cannot be remedied belatedly. It is pointed-out that the only explanation offered by SLIC is that the amounts were reported to the income tax authorities, and the offer to deposit the sums in the FCRA accounts once the accounts are activated is no answer, since strict compliance is the cornerstone of the Act, which permits of no dispensation.

7.17. In response to the appellant's plea of breach of principles of natural justice, it has been submitted that there is no provision in the Act requiring that an opportunity of hearing is to be given before suspending a registration certificate under section 13, and such opportunity is contemplated only at the stage of cancellation of registration. Reliance in this regard has also been placed on the ruling in *Commonwealth Human Rights Initiative*, in which it has been held that there is nothing in section 13 to show that violations of the FCRA and FCRR cannot form reasons for the Central Government to suspend a registration; and that where a strong *prima facie* case is made out, which, if proved, would lead to cancellation under section 14, the Central Government would be justified in suspending the registration certificate. It has been contended that a suspension order can be passed considering the gravity of the violations, the nature of the

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evidence available, and the effect on public interest. It has been added that to obviate arbitrariness, section 13(1) contemplates that reasons for suspension of registration must be recorded in writing, which was done in this case.

7.18. It has been emphasised that insofar as cancellation of registration is concerned, the requirements provided under section 14(2) of the Act were scrupulously complied with; a show-cause notice dated 04.02.2022 was issued calling upon the appellant to explain within 21 days why its registration should not be cancelled; the appellant availed of that opportunity by filing its reply dated 21.02.2022; and it is not the appellant's case that the procedure prescribed under section 14 was not followed. It is urged that the appellant's grievance relates to the merits of the cancellation.

7.19. Insofar as the freezing of the appellant's accounts is concerned, it has been submitted that having regard to the serious violations noticed, it was imperative that the foreign contributions received by the appellant should remain un-utilised so as to prevent further diversion of funds towards undesirable purposes or for personal gain. It has been further submitted that the law does not envisage the giving of any prior intimation before freezing of accounts so as to avoid a situation where a party may dissipate the funds in the interregnum between the furnishing of prior intimation and freezing of accounts. It has been argued that the appellant remains free to utilise its non-FCRA/domestic funds for carrying out its programmes and activities, but they have not

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disclosed their domestic funding, giving the impression that the organisation has been completely crippled, in order to obtain sympathy of this court.

7.20. In relation to the several representations made by the appellant, it has been submitted that the respondent was under no obligation to respond to those letters; and once their registration stands cancelled, the appellant no longer remains an FCRA-registered organisation. It has therefore been submitted that in terms of section 11 of the Act, the appellant is not entitled to receive or utilise any foreign contribution lying in its accounts, and in terms of section 15(1) of the Act, the Principal Secretary, Home (Special), Mumbai, Government of Maharashtra has been requested to take necessary action under section 15(2) to manage the assets created by the appellant from foreign contributions.

7.21. It has accordingly been submitted that the action taken against the appellant is legal and justified in terms of the Act and the Rules framed thereunder, and that the appeal alongwith any pending applications deserves to be dismissed with exemplary costs.

DISCUSSION & CONCLUSIONS

8. Before commencing the discussion, it is necessary to clarify that, though the appellant had also laid challenge to suspension order dated 04.02.2022 in the writ petition as originally filed, that challenge cannot be subject matter of an appeal filed under section

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31(2) of the Act, since, in the present case, such appeal would only lie against cancellation order dated 17.10.2022.

9. Besides, once cancellation order dated 17.10.2022 was passed, suspension order dated 04.02.2022 is rendered irrelevant, and it is unnecessary for this court to delve into the merits or demerits of the suspension order.

10. In view of the above, this court would confine the present discussion only to the following issues:

10.1. Whether the appeal is barred by limitation, and/or whether, before filing the appeal, the appellant ought to have exhausted the remedy of revision available before the Central Government under section 32 of the Act; and

10.2. Whether order dated 17.10.2022 cancelling the appellant's FCRA registration is sustainable.

11. Before proceeding further, it would be beneficial to extract the principal statutory provisions to which reference has been made by the learned counsel appearing for the parties:

> ***13. Suspension of certificate.****—(1) Where the Central Government, for reasons to be recorded in writing, is satisfied that pending consideration of the question of cancelling the certificate on any of the grounds mentioned in sub-section (1) of Section 14, it is necessary so to do, it may, by order in writing, suspend the certificate for a period of one hundred and eighty days, or such further period, not exceeding one hundred and eighty days, as may be specified in the order.*
>
> *(2) Every person whose certificate has been suspended shall—*
>
> *(a) not receive any foreign contribution during the period of suspension of certificate:*
>
> *Provided that the Central Government, on an application made by such person, if it considers*

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appropriate, allow receipt of any foreign contribution by such person on such terms and conditions as it may specify;

(b) utilise, in the prescribed manner, the foreign contribution in his custody with the prior approval of the Central Government.

* * * * *

***14. Cancellation of certificate.**—(1) The Central Government may, if it is satisfied after making such inquiry as it may deem fit, by an order, cancel the certificate if—*

(a) the holder of the certificate has made a statement in, or in relation to, the application for the grant of registration or renewal thereof, which is incorrect or false; or

(b) the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or

(c) in the opinion of the Central Government, it is necessary in the public interest to cancel the certificate; or

(d) the holder of certificate has violated any of the provisions of this Act or rules or order made thereunder; or

(e) if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct.

(2) No order of cancellation of certificate under this section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

(3) Any person whose certificate has been cancelled under this section shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.

* * * * *

***31. Appeal.**—(1) Any person aggrieved by any order made under Section 29 may prefer an appeal,—*

(a) where the order has been made by the Court of Session, to the High Court to which such court is subordinate; or

(b) where the order has been made by any officer specified under clause (b) of sub-section (1) of Section 29, to the Court

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of Session within the local limits of whose jurisdiction such order of adjudication of confiscation was made,

within one month from the date of communication to such person of the order:

Provided that the appellate court may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of one month, allow such appeal to be preferred within a further period of one month, but not thereafter.

(2) Any organisation referred to in clause (f) of sub-section (1) of Section 3, or any person or association referred to in Section 6 or Section 9, aggrieved by an order made in pursuance of Section 5 or by an order of the Central Government refusing to give permission under this Act, or by any order made by the Central Government under sub-section (2) or sub-section (4) of Section 12, or sub-section (1) of Section 14, as the case may be, may, within sixty days from the date of such order, prefer an appeal against such order to the High Court within the local limits of whose jurisdiction the appellant ordinarily resides or carries on business or personally works for gain, or, where the appellant is an organisation or association, the principal office of such organisation or association is located.

(3) Every appeal preferred under this section shall be deemed to be an appeal from an original decree and the provisions of Order XLI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall, as far as may be, apply thereto as they apply to an appeal from an original decree.

12. **Bar of limitation:** The respondent has argued that the appeal was filed beyond the 30-day period of limitation prescribed under section 31(1) of the Act and that no application for extension of time or condonation of delay was filed by the appellant. In so contending, however, the respondent has omitted to notice that the limitation of *01-month* prescribed under section 31(1) of the Act is in relation to

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an appeal filed against an order made under section 29 of the Act (that is, an order relating to 'Adjudication of Confiscation'). However, the order under challenge in the present appeal is an order under section 14(1), cancelling the appellant's FCRA registration, which is covered by the provision of section 31(2) of the Act, which prescribes a limitation period of *60 days* from the date of the order.

13. The record of the present case shows that the present matter (which was at that stage a challenge both to suspension order dated 04.02.2022 and cancellation order dated 17.10.2022) was first filed on 29.11.2022 as a writ petition bearing W.P.(C) No. 16791/2022, which writ petition was thereafter converted to an appeal under section 31(2) of the Act *vidé* order dated 07.12.2022. Accordingly, the challenge to the cancellation order dated 17.10.2022 must be taken to have been filed on 29.11.2022, *i.e.,* within the 60-day limitation period prescribed under section 31(2) of the Act.

14. In this view of the matter, the objection that the appeal is time-barred is rejected.

15. **Availability of remedy of revision under section 32:** The respondent says the appellant should have first availed the remedy of filing revisional proceedings before the Central Government. The respondent's own stand was that the writ petition originally filed by the appellant was not maintainable since the appellant had the remedy of an appeal available to it under section 31 of the Act (which, as stated above, was the basis for converting the writ petition into the present appeal). In these circumstances, the respondent cannot now assert that, before filing the appeal, the

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appellant ought to have exhausted the remedy of a revision petition before the Central Government. Moreover, nothing in the statute, as argued before this court, makes the filing of revisional proceedings under section 32 of the Act a condition precedent to the filing of an appeal under section 31. No judicial precedent has been cited by the respondent to that effect. The respondent's objection that the filing of a revision petition is a prerequisite to the filing of an appeal, is also accordingly rejected.

16. **Merits of the appeal**: Insofar as judicial precedent is concerned, the respondent has placed reliance principally on the Supreme Court verdict in *Noel Harper* as well as on the ruling of a Coordinate Bench of this court in *Commonwealth Human Rights Initiative*, to contend that the FCRA is national-security legislation which mandates strict compliance. On the other hand, the appellant has placed reliance on the decision of the Supreme Court in *INSAF* to argue that their organisation does not indulge in political activity.

17. In principle, this court accepts the respondent's first proposition, namely that, since the FCRA regulates the inflow and utilisation of foreign funds into the country, the State may demand rigorous compliance with the provisions of that statute. The question, however, is what is it that these judicial precedents, when read together, require the Central Government to consider when it alleges violation of the statutory provisions.

18. On a combined reading of the judicial precedents cited by the parties when considered in the backdrop of the statutory provisions, the following position emerges:

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18.1. **Purpose of the regulation:** The ruling of the Supreme Court in *Noel Harper* recognises the need to regulate inflow and to oversee "utilisation" of foreign funds for the purposes for which such funds are received. The purpose of the regulatory regime therefore is to keep close oversight on utilisation of foreign funds. The mandate for strict compliance with the terms of the Act is therefore intended to serve that end. *The requirement for strict compliance is not meant to be a tool for picking technical holes in the annual returns filed by an organisation in compliance with the FCRR or for making the filing of annual returns as an end in itself.* The following observations of the Supreme Court in *Noel Harper*, as cited by the respondent, bear repetition:

> "***87.*** *To eradicate* ***misuse*** *and* ***abuse*** *of foreign contribution in the past, despite the firm regime in place in terms of the 2010 Act, Parliament in its wisdom has now (vide the Amendment Act of 2020) adopted the path of moderation by making it mandatory for all to accept foreign contribution only through one channel and to utilise the same "itself" for the purposes for which permission has been accorded. Undeniably, the sovereignty and integrity of India ought to prevail and the rights enshrined in Part III of the Constitution must give way to the interests of general public much less public order and the sovereignty and integrity of the nation. It must be borne in mind that the legislation under consideration must be understood* ***in the context of the underlying intent of insulating the democratic polity from the adverse influence of foreign contribution remitted by foreign sources***.

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* * * * *

"***116.*** *We say so because the theory of possibility of national polity being influenced by foreign contribution is globally recognised. For,* ***foreign contribution can have material impact in the matter of socio-economic structure and polity of the country. The foreign aid can create presence of a foreign contributor and influence the policies of the country. It may tend to influence or impose political ideology****. …… The influence may manifest in different ways, including in* ***destabilising the social order*** *within the country. ……"*

(emphasis supplied)

18.2. Furthermore, para 24 of *Commonwealth Human Rights Initiative,* which has been relied upon by the respondent also stresses that the purpose of the Act is to ensure that foreign contributions are not utilised in a manner that affects the *governance structure* and *processes of the organs of the State* prejudicially; and further that accounts of an organisation receiving foreign contributions are so maintained as to safeguard auditability under section 20 and inspection under section 23. Para 24 reads thus:

"***24.*** *That FCRA, 2010 is internal security legislation that casts an obligation on the Central Government* ***to ensure that receipt and utilisation of foreign contributions do not in any way affect, prejudicially, the governance structure and processes of all the organs of the State****. The entities that receive and utilise foreign contributions have to fulfill various conditions provided under Section 12(4) of the FCRA, 2010.* ***They are also required to maintain an exclusive and proper account of utilisation of foreign contribution which is auditable as per Section 20 of the FCRA, 2010*** *and is also liable for inspection of their records and*

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activities by authorised officers of the Central Government as provided under Section 23 of the FCRA, 2010."

(emphasis supplied)

18.3. The essence and meaning of the Supreme Court observations in *Noel Harper* may therefore be summarized to say that the purpose of regulating foreign contributions by way of the Act is to: eradicate misuse and abuse of such contributions; insulate the democratic polity of the country from possible adverse influence of contributions remitted by foreign sources; ensure that foreign contributions do not have any material impact on the socio-economic structure and policy of the country, nor should such contributions be used to influence its policies, or impose some political ideology, or destabilize its social order. It is accordingly clear that whether or not a violation of FCRA is material and serious must be tested on the anvil of whether the violation threatens the objects sought to be achieved by the statute.

18.4. Furthermore, as enunciated in *Commonwealth Human Rights Initiative*, a Co-ordinate Bench of this court has articulated that in exercise of its powers under the Act, which is in the nature of an internal security legislation, the Central Government is to ensure that receipt and utilisation of foreign contributions do not prejudicially affect the governance structures and processes of the organs of the State. The court has further observed that an organisation receiving foreign contributions is required to maintain exclusive and proper accounts of the utilisation of

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foreign contributions received by it to ensure that such accounts are auditable.

18.5. **Opportunity of hearing:** The respondent has also placed reliance on para 45 of *Commonwealth Human Rights Initiative* to justify suspension of the appellant's FCRA registration. Para 45 reads as under:

> "***45.*** *Suffice to state, there is nothing in the provision to show that these violations cannot be construed as reasons which weighed with the Central Government, to suspend the certificate. Surely, if the violation makes a strong prima facie case against the certificate holder,* ***if proved****, would lead to cancellation of certificate under Section 14(2), then the Central Government will be justified in suspending the certificate. In other words, suspension order can be passed by the Central Government* ***considering the gravity of violations, the nature of evidence available and effect on public interest****. These aspects can be deduced from the* ***material available*** *on record including the annual returns filed/the replies to the questionnaires. So, it follows that the violations of FCRA, 2010 can be reasons to suspend the certificate. In that sense, the reasons and grounds are inter-related. This conclusion of mine shall negate the submission of Mr. Datar and Mr. Singh that the order of suspension is wholly alien/ultra vires to the scheme of suspension under Section 13(1) of the FCRA, 2010.*"
>
> (emphasis supplied)

18.6. The respondent has argued that in *Commonwealth Human Rights Initiative* a Co-ordinate Bench of this court has held that *suspension* is justified where the violation alleged makes a strong *prima facie* case which, *if proved*, would lead to *cancellation*. It

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has also been argued that, neither the statutory provision of section 13 of the Act nor its judicial interpretation mandates that the respondent should have given a personal hearing to the appellant. Besides, it has been urged that, in any case, the appellant was granted an opportunity to furnish a written response to the show cause notice issued to them prior to cancellation of their FCRA registration, which was sufficient compliance with the requirement of the law.

18.7. This court observes, however, that the very precedent relied on by the respondent makes "***considering*** the *gravity of violations*, the *nature of evidence available* and *effect on public interest*" the considerations *before* a suspension order can be passed. Also, it cannot be overemphasised that, though in *Commonwealth Human Rights Initiative* the court was dealing with suspension of an FCRA registration, the principles articulated in that order would apply, *a fortiori*, to cancellation of such registration. Therefore, applying the considerations set out in *Commonwealth Human Rights Initiative*, before cancelling an FCRA registration, there would then be an even greater burden on the authority to carefully consider, examine, and evaluate the violations alleged, the material available in support thereof, and whether or not the violations affect public interest, before taking any action against a person.

18.8. While it is true that in the context of a suspension order in *Commonwealth Human Rights Initiative* the court says that section 13 of the Act does not provide for any right of hearing,

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at the same time, the court also acknowledges that where the Legislature intended to grant a hearing, it has specifically so provided, as in section 14(2).

18.9. Section 14(2) of the Act reads as under:

> *Section 14*
>
> * * * * *
>
> *(2) No order of cancellation of certificate under this section shall be made unless the person concerned has been given a* ***reasonable opportunity of being heard****.*
>
> (emphasis supplied)

18.10. The Karnataka High court has interpreted the phrase "reasonable opportunity of being heard" occurring in section 14 in ***Center for Wildlife Studies (R) vs. Union of India & Ors.***[5] as under:

> "***16.*** *As observed hereinabove, sub-section (2) of S. 14 of the Act permits cancellation of registration. The consequence thereof is found in sub-section (3) which permits no registration under the Act for an entity which suffered cancellation for a period of three years. This is the dire civil and economic consequence that would ensue. Therefore,* ***it cannot be said that sub-section (2) of S. 14 of the Act is restricted only to hearing, hearing would mean only issuance of a show cause notice****. Therefore, the contention of the learned Central Government Counsel is to be repelled and is accordingly repelled. I am in respectful agreement with what the learned single Judge of the High Court of Madhya Pradesh has held, interpreting sub-section (2) of S. 14 of the Act. Principles of natural justice, is trite cannot be stretched to unlimited extent. But, it is equally trite that when consequences thereof are grave, it should be complied with in its entirety even stretching in a little further.* ***Therefore, the words depicted in the Act "reasonable opportunity of being***

[5] 2024 SCC OnLine Kar 12930

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heard" cannot be restricted to issuance of a show cause notice but a personal hearing in the peculiar facts of the case owing to the peculiarity of sub-section (3) of S. 14 of the Act must have been afforded to the petitioner. *Non-affording of personal hearing to the petitioner has rendered the order unsustainable and the unsustainability of it, would lead to its obliteration*. ***Let there be no confusion that there can always be a fusion between hearing and personal hearing***."

(bold with underscoring supplied; bold only in original)

18.11. This court is in complete agreement with the view taken by the Karnataka High Court in *Center for Wildlife Studies*, and is accordingly of the opinion that the impugned cancellation order could not have been passed by the respondent without granting to the appellant a *reasonable opportunity of personal hearing*, to enable the appellant to explain the nuances of its role in relation to the projects it undertakes, and in relation to the violations noticed in the audit report and in the show-cause notice.

19. **The six violations:** In the legal backdrop as set out above, this court would now proceed to examine the 06 violations based on which the appellant's FCRA registration has been cancelled by the respondent.

19.1. **First violation: Non-disclosure of transfer of Rs. 33,73,545/- made to Prayas in point 3(d) of Form FC-4:** Insofar as this violation is concerned, it is pertinent to note that the respondent does not allege that the transfer was illegal; nor is there any contestation that money was transferred by the appellant to another FCRA-registered organisation under a Memorandum of Understanding dated 25.09.2019 for a *joint project* being undertaken by

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the said two organisations relating to *"Expanding Access to Reproductive Rights: Using Law to Guarantee Reproductive Health and Rights in India"* supported by the European Union. There is no allegation that this payment is not reflected in the appellant's accounts; and it is the admitted position that the said sum of money was remitted by the appellant to Prayas by RTGS, that is to say, through regular banking channels. Upon conducting the required statutory audit of the appellant's accounts, their chartered accountant has also certified that the foreign contributions received by the appellant were utilised for the purposes for which the appellant is registered, and for the purposes for which it was granted permission under the Act.

19.2. Form FC-4 filed by the appellant for the year 2019-20 included the requisite auditor's report, as well as a statement of the appellant's designated FCRA account for the relevant period, which showed the RTGS remittance of money by the appellant to Prayas. The lapse alleged by the respondent is that the transfer of money to Prayas was *not reported at point 3(d)* of Form FC-4 filed by the appellant for the year 2019-20. The respondent also says the appellant's explanation in this regard came late, only after the violation was pointed-out in the course of the inspection conducted by the respondent.

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19.3. While assessing as to whether the non-reporting of the said transfer in point 3(d) of Form FC-4 is of consequence or not, it is necessary to notice the provisions of section 18 of the Act and Rule 17 of the FCRRs. The relevant portions of the said provisions, *as appplicable at the relevant time*, read as under:

> Section 18
>
> ***18. Intimation***.—*(1) Every person who has been granted a certificate or given prior approval under this Act shall give, within such time and in such manner as may be prescribed, an* ***intimation*** *to the Central Government, and such other authority as may be specified by the Central Government, as to the amount of each foreign contribution received by it, the source from which and the manner in which such foreign contribution was received, and the purposes for which, and the manner in which such foreign contribution was utilised by him.*
>
> *(2) Every person receiving foreign contribution shall submit a copy of a statement indicating therein the particulars of foreign contribution received duly certified by officer of the bank or authorised person in foreign exchange and furnish the same to the Central Government* ***along with the intimation*** *under sub-section (1).*
>
> Rule 17
>
> ***17. Intimation of foreign contribution by the recipient***.—*(1) Every person who receives foreign contribution under the Act, shall submit a signed or digitally signed report electronically online in Form FC-4 with scanned copies of income and expenditure statement, receipt and payment account and balance sheet for every financial year beginning on the 1st day of April within nine months of the closure of the financial year.*
>
> *(2) The annual return in Form FC-4 shall reflect the foreign contribution received in the exclusive bank account*

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and include the details in respect of the funds transferred to other bank accounts for utilisation.

(3) * * * * *

(4) * * * * *

(5) * * * * *

(6) Every such return in ***Form FC-4 shall also be accompanied by a copy of a statement of account from the bank where the exclusive foreign contribution account is maintained*** *by the person, duly certified by an officer of such bank.*

(7) * * * * *

(8) * * * * *

19.4. In the opinion of this court the object of section 18 of the Act read with Rule 17 of the FCRRs is that an organisation that holds an FCRA registration must send to the Central Government *intimation* about the foreign contributions received, the source of such receipt, and the purpose and manner in which such foreign contributions have been utilised. The additional and important requirement is that an organisation must also submit along with Form FC-4, a statement of the designated foreign contribution account, certified by the banker where such account is maintained. The purpose of this exercise is that the Central Government must know the source, receipt and utilisation of foreign funds.

19.5. In the present case, it is not in dispute that, along with their Form FC-4 submitted for the year 2019-20, the appellant had enclosed the statement of their designated foreign contribution account for

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the relevant period, which contained the requisite entry showing the RTGS remittance by the appellant to Prayas. This court is of the view that the intimation required to be sent under section 18 read with Rule 17 referred to above, is a compendium of Form FC-4 along with the other documents, including the statement of the designated foreign contribution account. The appellant had duly filed such compendium, thereby substantially fulfilling the said statutory requirements. There was no attempt at concealing the remittance, nor is there any allegation that the appellant had misused or misutilized the said amount received by way of foreign contribution.

19.6. **Second violation: Payment of Bar Association fees of Rs. 1,10,250/- for lawyers working for appellant:** The appellant's response to this violation alleged against them, is that bar association membership fee was paid by the appellant so that lawyers attending to the appellants' *pro bono* cases could access court libraries and premises. It is the appellant's response that since bar association membership is open to advocates only in their individual capacity, the requisite fee had to be paid in the names of the respective lawyers. The appellant has also stated that the expenditure was approved by the appellant's Governing Body and was discontinued in the year 2019-20, before the audit began; and the two advocates for whom bar association fee was paid, have since offered to tender cheques refunding the entire amount. However, the appellant has said that they have not been able to deposit those cheques in their bank since their accounts

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are frozen. On the other hand, the respondent's case is that the payment made by the appellant went beyond the terms of the advocates' contracts with them and that domestic funds should have been used for this purpose.

19.7. On a balance of all considerations, and since it is the undisputed position that the advocates in question were handling court cases for the appellant, which is one of the appellant organisation's stated objectives, it can hardly be said that the payment of bar association fee on behalf of the advocates amounts to diversion of foreign funds *for personal gain* or *for any undesirable purpose* or *misutilisation of foreign funds*. There is a clear nexus between the amounts spent and the performance of the appellant's own objects; the sum spent is modest; and it has also been offered back. Considering these circumstances, this court is of the view that this violation is, at most, an irregularity and not an infraction of the permissible use of foreign funds under the Act.

19.8. **Third violation: use of premises let out to appellant:** It is the appellant's case that the premises that are subject matter of this alleged violation were taken on rent after surveying the prevailing market rentals and after the appellant's Governing Body approved the transaction *vidé* Board Resolution of 07.11.2009. The appellant has answered this violation by saying that they were in need of additional office space and the arrangement with one of the senior advocates appearing for the appellant was beneficial, since it gave to the appellant a 10-year

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assurance against eviction, which other landlords were not willing to offer. The respondent does not allege that the rent agreed upon was in excess of the market rates; nor does the respondent cite any material to support that the landlord had made any wrongful gain.

19.9. This court is also persuaded to accept the answer given by the appellant to the allegation that the premises taken by the appellant on rent were also being used by the senior advocate who had rented the premises to the appellant. In this behalf, the appellant says that the senior advocate, who was the founder of the appellant organisation, made his services available by guiding other lawyers who were working for the appellant, by settling their draft petitions, while also making a minimum 03 appearances a day in court in the appellant's *pro bono* cases. It has been submitted that the senior advocate was therefore making about 60 court appearances a month for the appellant's clients for a fee of Rs. 1,00,000/- *per month*, which, by all standards is less than a nominal fee for a senior advocate. In these circumstances, this court is of the view that to allege that this arrangement amounted to the senior advocate making personal gain in the sense that it would be understood under the Act, can only be termed as a misconceived and far-fetched inference.

19.10. Moreover, it is also the undisputed position that once the respondent flagged the arrangement between the appellant and the senior advocate, the appellant terminated the lease, surrendered the premises, and the senior advocate resigned on

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01.01.2022, which resignation was accepted on 05.01.2022 and communicated to the respondent. The respondent argues that this was an "afterthought" and amounted to admission of wrongdoing on the appellant's part. However, this court is of the view that, in so contending, the respondent loses sight of the fact that by its own letter dated 18.11.2021 the respondent had invited the appellant's comments and clarifications on the audit observations; and once a response is invited, the noticee cannot be faulted for rectifying what is perceived as a deficiency by the respondent. Treating such rectification as proof of guilt, would defeat the very mechanism of seeking comments and clarifications on the audit observations.

19.11. **Fourth violation: the KIOS project:** This violation alleged against the appellant rests on a purported "admission" on the appellant's part that the KIOS funds were given to the appellant for conducting training "in their respective countries" but that the appellant used the money for conducting activities abroad.

19.12. However, the appellant has explained that this confusion on the respondent's part arises from a misreading of the consolidated financial report relating to the KIOS project, in which one of the columns gave the names of other countries covered by the project. The appellant has explained that the respondent has failed to comprehend that the other countries were mentioned only for the reasons that the project, in its entirety, covered 06 South Asian countries. That being said, however, it is stated that the appellant had confined the trainings conducted under the

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KIOS project *only to within India*, and not a rupee was transferred by the appellant to any partner organisation abroad.

19.13. The appellant has further clarified that only one legal expert from India had traveled to participate in certain trainings on public interest litigations conducted in other South Asian countries; and the objective of such travel was only to document the best cases and judgments and bring back the learnings to benefit litigation conducted for the Indian poor within India.

19.14. Considered objectively, the appellant's explanation, namely that KIOS had contracted separately with each partner, and each partner was to undertake training *in its own country* appears to be true. The appellant's agreement was for Euro 101,000.00; it received Rs. 68,25,250/- for the India programme; and there is no allegation that any money was transferred by the appellant to any organisation abroad. It also appears to be correct that certain foreign countries were mentioned in the consolidated report of the KIOS project, since the project covered a wider region across the world, but the expenditure summary related only to India. It is also undisputed that part of the foreign funding received was spent on the *appellants' Indian lawyer* participating in training in some South Asian countries, as part of the KIOS project. There is accordingly no basis to say that the foreign funds received by the appellant were *utilized for any foreign beneficiary*. It is therefore hardly available to the respondent to allege that the appellant has misutilissed foreign funds received

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under the KIOS project or used them for any undesirable purpose.

19.15. **Fifth violation: European Union project:** Invoking section 12(4)(f) of the Act, the respondent contends that the activities undertaken by the appellant under the EU Project were likely to prejudicially affect the sovereignty, integrity, security of India and public interest. The respondent also alleges that the appellant has indulged in "aggressive anti-government political activism."

19.16. The respondent contends that the EU project relates to activities conducted by the appellant in certain sensitive States in India, where there is unrest and alleged human rights violations, which the respondent says amounts to the appellant having engaged in activities impinging upon political and law-and-order domains and to an attempt at portraying a wrong image of public institutions of India in the eyes of the international community.

19.17. It is the appellant's response that, in alleging this violation, the respondent is selectively referring to certain passages which are *only* a description of the project in question, but do not describe the appellants' role in the project. It has been submitted that its role was to solve the problems faced by adivasis, dalits, the poor, women and children; and the project themes included acid-attack victims, child abuse victims, and maternal health in those States. It has been submitted that the appellant was only performing its role under the project through State, namely the National and State Human Rights Commissions, the Women's and SC/ST Commissions, the Legal Services Authorities and the courts upto

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the level of the Supreme Court. The appellant has emphasised that the project included holding judicial colloquia to sensitise judges and law-enforcement bodies; and that, therefore, the project fell squarely within the legitimate objects of the appellant organisation, namely the object of providing legal aid and access to justice.

19.18. It is the appellant's argument that to undertake activities to benefit adivasis, dalits, the poor, women and children, acid-attack victims, child abuse victims can never amount to indulging in political activity or to portraying a poor image of the country to outsiders.

19.19. It has further been pointed-out on behalf of the appellant that in *INSAF* the Supreme Court holds that for purposes of the Act, "political" activity must relate to *active or party politics*; and also that even habitual holding of *bandhs* or *hartals* in support of public causes does not make an organisation 'political'.

19.20. Based on the record, this court is unable to discern any material based on which it could be said that the appellant's activities would likely prejudicially affect the sovereignty, integrity, or security of India or public interest. The respondent's allegation that the appellant has indulged in "aggressive anti-government political activism", is also not based on any material. No documents or other material has been placed on record by the respondent to support that allegation. In fact the respondent's allegation that the appellant has indulged in "aggressive anti-government political activism" does not find mention either in

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the show-cause notice or in the cancellation order; and has only come to be mentioned in the reply filed by the respondent to the present appeal. Besides, on point of law, an order must sustain on the reasons that are stated therein; and the reasons that form the basis of an order cannot be supplied or supplemented by way of a reply or an affidavit filed subsequently in the course of court proceedings.

19.21. What has, however, been narrated in the audit/inspection report/communication, show-cause notice, suspension order, as well as in the cancellation order, is to the effect that the appellant is involved in activities impinging upon political and law-and-order domains; and that the appellant is attempting to portray a wrong image of public institutions of India in the eyes of the international community, which, according to the respondent, is violative of the provisions of section 12(4)(a)(iv) and (vi), and section 12(4)(f)(i), (ii), and (iii) of the Act.

19.22. On considering the submissions made and the record before it, in the opinion of this court, unless something sinister comes through from material available against it, an organisation that is engaged in assisting aggrieved persons in raising their grievances before courts and statutory commissions, acting through the available constitutional machinery, cannot be characterised as engaging in 'political activity' or in activities impinging on political and law-and-order domains. To assert that the appellant is engaging in 'political activity', their activities must be tested on the anvil of the principles laid down by the

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Supreme Court in *INSAF*; however, in the present case, the respondents' allegation against the appellant on that count does not pass muster.

19.23. In the impugned cancellation order, the respondent has also alleged that the appellant's activities amount to an attempt to portray a "wrong image of public institutions of India in the eyes of international community." This court would observe that this allegation strains credulity; and this court is dismayed by the respondent's attempt to baselessly portray the appellant organisation in such light.

19.24. While the respondent contends that the violations on the appellant's part were brought to its notice through 'security inputs', which cannot be divulged since they are 'secret'; this court is of the view that such inputs cannot be kept secret to the point that no material is brought even to the notice of this court, though the appellant has faced the drastic action of having its FCRA registration cancelled, arising from such inputs.

19.25. **Sixth violation: Miscellaneous income of Rs. 13,44,248/-:** It is the respondent's contention that the miscellaneous income of Rs. 13,44,248/- was generated by the appellant from the foreign funds received by them and therefore comprised 'foreign contribution' within the meaning of section 2(1)(h) of the Act; and this money should accordingly have been credited and retained in the designated FCRA account. The appellant contends otherwise.

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19.26. It is the appellant's contention that the monies that are subject matter of this alleged violation were received by them in Indian Rupees from Indian nationals, by way of small contributions made by interns and filing charges paid by litigants whose cases were filed by the appellant. The appellant says that these monies were shown as miscellaneous receipts in the appellant's financial statements and were duly reported to the income-tax authorities.

19.27. In support of its contention the appellant places reliance on Explanation 3 to section 2(1)(h) of the Act, to argue that any amount received towards cost in lieu of goods or services rendered by a person in the ordinary course of business, trade, or commerce (whether within or outside India) is to be excluded from the definition of foreign contribution. On the other hand, the respondent relies on Explanation 2 to argue that any income derived by a person from foreign contribution received is also deemed to be foreign contribution within the meaning of the Act.

19.28. The relevant portions of section 2(1) of the Act read as follows:

> *2. Definitions.—(1) In this Act, unless the context otherwise requires,—*
>
> * * * * *
>
> *(h) "foreign contribution" means the donation, delivery or transfer made by any foreign source,*
>
> * * * * *
>
> *Explanation 1.—* * * * * *
>
> *Explanation 2.—The interest accrued on the foreign contribution deposited in any bank referred to in sub-section (1) of Section 17 or any other income derived from the foreign*

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contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

Explanation 3.—Any amount received, by any person ***from any foreign source in India****, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contribution received from an agent of a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause;*

(emphasis supplied)

19.29. Upon examining the two explanations relied upon by the parties, this court is of the view that Explanation 3 to section 2(1)(h) of the Act cited by the appellant has no application to the present case, inasmuch as the money that is the subject of this violation has not been received towards cost in lieu of goods or services rendered by the appellant "*from any foreign source in India*", since this money has admittedly been received from Indian interns and litigants for whom the appellant had done court filings. There is no allegation that the interns and litigants in question were foreign persons or entities; or that the money was paid by the interns and litigants from any foreign sources.

19.30. Furthermore, this court is also of the view that the money that is the subject matter of this violation cannot be said to be "income derived from the foreign contribution", since there is no proximate nexus between the monies paid by interns or cost paid by litigants to the appellant *and* the foreign contribution received by them. The

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respondent's contention that the monies so received must be taken to have been generated from income derived from foreign contributions is, in the opinion of this court, remote and far-fetched. It cannot be the position of law that every rupee received or generated by an organisation *in Indian rupees, from an Indian source within India*, would acquire the character of foreign contribution merely because the organisation *also receives* foreign contributions and holds an FCRA registration.

19.31. Besides, there is also no allegation that the funds in question were misused by the appellant for any purpose or in any manner. In fact, as appears to be its wont, without prejudice to its rights and contentions but in order to avoid confrontation with the authorities, the appellant has also offered to deposit the sums in its FCRA account once its accounts are de-frozen. The respondent calls the appellant's offer to deposit the money in their FCRA account as 'no answer', and says the lapse cannot be remedied in this manner belatedly.

19.32. Be that as it may, in light of this court's view that the money in question does not acquire the character of a 'foreign contribution' within the meaning of the Act, and therefore does not warrant the consequence of cancellation of the appellant's registration certificate, without even a personal hearing.

20. **Cancellation of registration:** The appellant's FCRA registration has been cancelled based on the purported violations as discussed above, but it cannot be ignored that each of these matters was discovered in the course of inspecting the appellant's books, reports,

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and Board records, and there is no allegation that the petitioner attempted to conceal or suppress any documents. All of this speaks to the transparency on the part of the appellant organisation, which sections 20 and 23 of the Act are meant to secure. It is also worthy to note that by the time the show-cause notice was issued by the respondent, the appellant is stated to have already discontinued the aberrations as pointed-out.

21. It is important to articulate in clear terms that, in the opinion of this court, the violations alleged against the appellant were in the nature of aberrations, which did not amount to infractions, illegalities or the mischief that the FCRA is intended to proscribe. Quite apart from the fact that the appellant has disputed that there was any wrongdoing on its part on any of the counts cited by the respondent, this court is of the view that the remedial actions taken by the appellant must instead be construed as an effort on their part to obviate any future objections by the concerned authorities.

22. **Proportionality of consequences**: A very important facet of the matter, which has been of concern to this court, is the *proportionality* of the actions taken by the respondent arising from the violations alleged against the appellant.

23. It is not in dispute that the appellant has been functioning since 1996 under registration obtained under the 1976 Act that used to govern receipt of foreign contributions, which registration was renewed under the 2010 Act. The appellant operates through some 24 offices and engages about 150 personnel, functioning under a Governing Body chaired by a former Judge of the Supreme Court. The

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appellant has never been subject of any prior complaint or action at the hands of the respondent; the respondent has also not disputed the appellant's clean track record; and it is also undisputed that the appellant is engaged in the field of legal-aid and social welfare, and it is evident that the appellant is not a political party or an entity engaged in political activity.

24. On the other hand, it cannot be gainsaid that cancellation of the appellant's FCRA registration has brought the appellant's ability to receive foreign contributions to a grounding halt and, in terms of section 15 of the Act, has placed the assets created by the appellant from such contributions in the hands of the State Government. In effect, such action leads virtually to dismantling an organisation that was engaged in the field of legal-aid and social welfare and was serving the marginalized sections of society for over three decades.

25. At the risk of some repetition, this court would draw attention again to what the Supreme Court has said in *INSAF* in relation to the object sought to be achieved by the Act. To summarise, it has been said that the object of the Act is to ensure, *inter-alia*, that voluntary associations and organisations working in important areas of national life should function in a manner consistent with the values of a sovereign democratic republic, and without being influenced by foreign contributions. Most importantly, the Supreme Court has highlighted the following:

> "*26. A balance has to be drawn between the object that is sought to be achieved by the legislation and the rights of the voluntary organisations to have access to foreign funds. ……*"

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26. The violations alleged in the impugned cancellation order principally arise from the conditions for grant of an FCRA registration certificate, in particular invoking the conditions set out in section 12(4)(a)(iv) and (vi) of the Act, the essence of the allegation being that the appellant is guilty of diversion or misutilisation of such funds, or of using such funds for personal gains or diverting them for undesirable purposes. However, upon examining the use to which foreign contributions have been put by the appellant, it is seen that such funds have been utilised and deployed for activities that are perfectly in line with the stated objectives of the appellant, namely, of providing legal-aid and engaging in social welfare activities.

27. In this backdrop, the respondent has offered no justification or reason as to why it was necessary to adopt the drastic measure of cancelling the appellant's FCRA registration.

28. In the opinion of this court, the respondent has misconstrued the observations of the Supreme Court in *Noel Harper*, where it has been said that the FCRA demands strict compliance with its provisions. *Strict compliance does not mean mechanical compliance*, and this court is of the view that the respondent ought to have meaningfully deployed the provisions of the Act and its powers thereunder to promote the object and purpose of the Act, instead of adopting a harsh and over-exacting line of action.

29. As a sequitur to the above discussion, this court is persuaded to reject the preliminary objection taken on behalf of the respondent that the present appeal is time-barred; or that it is not maintainable

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in light of the revisional remedy available under section 32 of the Act.

30. This court is further of the view that the impugned cancellation order is misconceived, untenable and illegal, apart from being disproportionate and excessive in its rigour and impact.

31. Accordingly, order dated 17.10.2022 cancelling the appellant's FCRA Registration Certificate No. 083780554R is set-aside.

32. Since the cancellation order was issued after the term of the FCRA Registration Certificate No. 083780554R had already expired, the appellant is granted liberty to file and/or process its renewal application, which shall be decided by the respondent expeditiously without reference to the violations that were subject of cancellation order dated 17.10.2022, which has been set-aside.

33. The appeal is disposed-of in the above terms.

34. Pending applications, if any, also stand disposed-of.

A. J. BHAMBHANI, J

NOVEMBER 26, 2026/HMJ

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