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

+ W.P.(C) 5749/2014

**GREENPEACE INDIA SOCIETY
THR. ITS EXECUTIVE DIRECTOR**

..... Petitioner

Through: Mr Sanjay Parikh & Ms Mamta Saxena,
Advts.

versus

UNION OF INDIA & ANR Respondents

Through: Mr Jasmeet Singh, CGSC with Ms
Kritika Mehra, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **20.01.2015**

1. This is a writ petition filed under Article 226 of the Constitution whereby the petitioner seeks following prayers:

“(a) Direct the respondents to produce all the papers/ documents in the file maintained by them before this Hon’ble Court and to set aside/ quash all the letters/ documents/ orders/ directions by which the crediting of amounts received by the petitioner as foreign contribution has been prohibited.

(b) Direct that amount of Euros 235000 transferred on 23.06.2014 from St. Greenpeace Council be credited in the FCRA Account No. 005103000000888 of the petitioner with IDBI Bank Ltd., Chennai...”

1.1 Notice in this petition was issued on 03.09.2014. Since then, the respondents have filed their return. The petitioner thereafter has filed a rejoinder to the affidavit-in-reply filed by the respondents.

2. Briefly, the petitioner is aggrieved by the fact that funds remitted to it

by Green Peace International and Climate Works Foundation (in short GPICWF), via proper banking channel, i.e., IDBI Bank Ltd., have not been allowed to be accessed, based on directions of the respondents herein, in particular, Ministry of Home Affairs. The petitioner is, therefore, in one sense, at a loss, as to why such a directive has been issued qua it.

3. The record shows that on 04.07.2014, the petitioner wrote to the concerned branch of IDBI Bank Ltd., located in Chennai, (obviously upon being made aware of the aforementioned situation) as to whether a reference had been made to the Ministry of Home Affairs, with regard to the matter in issue, i.e., the non-clearance of funds lying to the credit of the petitioner.

3.1 This communication was followed by an Email dated 29.07.2014. By this Email, the petitioner, sought information from IDBI Bank Ltd., as to whether it had received any information from the Ministry of Home Affairs. The petitioner, also expressed its concern with regard to the fact that its funds were lying idle, and as a result of it interest was being lost on the amount remitted to it by its donor.

3.2 Furthermore, the petitioner made it a point to inform the concerned bank that they are entitled to know as to whether any instructions had been received from the Reserve Bank of India (RBI), and if, that was so, it ought to be provided, those guidelines.

3.3 The basic assertion of the petitioner was that, if there were guidelines received from the RBI, regarding necessity to obtain prior concurrence from Ministry of Home Affairs, those should be made known to it.

4. It is in this background, that on 17.07.2014, the petitioner, made a representation to the Ministry of Home Affairs. In this representation, the petitioner pointed out that it stood registered under the Foreign Contribution

(Regulations) Act, 2010 (in short FCRA), and that, its registration was in place since September, 2005. The registration number accorded to the petitioner was also quoted in the representation.

4.1 The petitioner also made it a point to indicate, in the representation, that it had been, regularly, filing its annual returns, along with duly audited accounts, with the FCRA Division of the Ministry of Home Affairs. Furthermore, it was indicated that the return for the last financial year, which was ending on 31.03.2014, would also be submitted before the due date, that is, 31.12.2014. The petitioner's grievance with regard to denial of access to remitted funds, was also brought to fore.

4.2 As to the activities, that the petitioner had undertaken in the past, a brief resume of the same was given. The petitioner indicated that, it was, essentially, involved in taking up issues pertaining to environment.

5. Apparently, the said representation triggered a response from the Government of India, Ministry of Home Affairs. This response was sent vide communication dated 28.07.2014. In this communication, the respondents sought complete details of the "project" for which inward remittance was sought to be accessed; which otherwise was lying credited to its account maintained with the IDBI Bank. The petitioner, was asked to furnish the information within a period of fifteen (15) days.

5.1 I may only note that, during the course of arguments, it has been brought to my notice that the communication dated 28.07.2014, was in fact dispatched to the petitioner only on 04.09.2014. It is for this reason that the communication dated 28.07.2014 was brought on record of this court vide an interlocutory application, which was numbered as: CM No. 15637/2014.

5.2 This aspect has been adverted to by the petitioner, in paragraph 4 of

the said application.

5.3 Learned counsel for the respondents does not dispute the factum of late dispatch of communication dated 28.07.2014. He, however, says that the communication dated 28.07.2014, was dispatched, on 03.09.2014, and not on 04.09.2014, as alluded to in the said application.

6. Continuing with narrative, immediately, after the dispatch of communication dated 28.07.2014, yet another communication was sent by the respondents, which is dated 08.09.2014; this communication, apparently, was received on 12.09.2014.

6.1 The sum and substance of this communication, was that, respondents indicated to the petitioner that they were seeking to exercise their powers under Section 23 of the FCRA, and that, for this purpose, they had authorized a designated officer, who was holding Group 'A' post in the Government of India.

6.2 Accordingly, the petitioner was put to notice that its record and accounts, for the financial years 2008-09 to 2012-13, would be inspected.

6.3 The petitioner, by a return communication dated 15.09.2014, indicated to the Director, FCRA Division, in the Ministry of Home Affairs, that the inward remittance, which is in issue, was received from the Green Peace Council, Amsterdam, and that, the said remittance would be utilized by the petitioner as per its "*aims and objects on environmental projects*", as also for meeting, office expenses, payment of salaries, contingencies, travel, and other miscellaneous expenses.

6.4 I am informed by the learned counsel for the parties that, as indicated in the communication dated 08.09.2014, an inspection did take place between 24.09.2014 to 27.09.2014. I have been further informed by the

learned counsel for the respondents that a report in the matter is being prepared, which should be ready, shortly.

7. In the background of the aforesaid facts, Mr Parikh, learned counsel for the petitioner has submitted that pending enquiry and preparation of the inspection report, there is no good reason as to why the petitioner, should not be allowed to access its bank accounts maintained with IDBI Bank, Chennai Branch.

7.1 It is Mr Parikh's submission that the petitioner has not been put to any notice whatsoever as to what is the infraction, if at all, of the provisions of the FCRA, committed by the petitioner. Mr Parikh submits, that the, petitioner is into legitimate activities and, therefore, denial of access to its bank account, is violative of its fundamental rights under the Constitution. It is also Mr Parikh's submission that, such an action of the respondents, is violative of Article 14 of the Constitution, being completely in breach of principles of natural justice.

8. Mr Jasmeet Singh, who appears for the respondents, has with all vehemence at his command, attempted to defend the stand of the respondents. He says that the respondents have no difficulty in the petitioner accessing funds or receiving donations, generally, for carrying out its activity. According to the learned counsel, presently, the problem that the respondents have, is with the donor, which has remitted funds that lie with the IDBI Bank (Chennai branch).

8.1 In this behalf, Mr Jasmeet Singh has referred me to paragraph (III) of the counter affidavit under the heading 'parawise reply'. This paragraph is indicative of the fact that the donor, i.e., GPICWF is on the "watch-list" of the Ministry of Home Affairs.

8.2 It is in this connection that, apparently, inspection was carried out by the respondents. The respondents, have taken the stand that the activities undertaken by the petitioner are detrimental to the national interest.

9. I have heard the learned counsels for the parties. According to me, there is no material whatsoever, on record, which would, presently justify, declining the petitioner's request for allowing it access to its bank account maintained with IDBI Bank (Chennai branch). The stand taken by the respondents that the donor, GPICWF, is on the "watch-list" of the Ministry of Home Affairs, is not enough, as no material of any sort has been placed on record which would warrant, respondents reaching such a conclusion.

9.1 Nevertheless, what we are dealing with, as of now, is the petitioner, which is the recipient of the funds. There is no material placed on record, which would show, not at least at this juncture, that the activities carried out by the petitioner, as claimed by the respondents, are detrimental to national interest. The petitioner's disagreement with the policies of the Government of India, could not, *per se* be construed as actions which are detrimental to national interest. Non-Governmental Organizations often take positions, which are contrary to the policies formulated by the Government of the day. That by itself, in my view, cannot be used to portray, petitioner's action as being detrimental to national interest. The government is free to execute its policies as it has the mandate of the people behind it, notwithstanding a different point of view of Non-Governmental Organizations, such as the petitioner.

9.2 What makes the stand of the respondents even more untenable is, the position taken in the counter affidavit that they have not exercised the powers vested in it, under Section 9 of FCRA; which is, perhaps, the only

provision whereby, if at all, it could have prohibited the petitioner from accessing its accounts maintained with the IDBI Bank. In my opinion, even if, the power exercised can be traced to Section 9, I have no doubt in my mind that principles of natural justice, which are implicit in such like provision, would have to be taken recourse to, as denying access to funds in the instant circumstances, will result in civil consequences.

10. In these circumstances, the writ petition is allowed. Accordingly, the IDBI Bank (Chennai Branch) will permit the petitioner to access its FCRA Account No. 005103000000888, maintained with it. The fixed deposit created, pursuant to the order of this court dated 03.09.2014, shall stand dissolved. The money reflected in the F.D.R, will be credited to the aforesaid account, along with interest accrued thereon.

10.1 Needless to say, the petitioner will maintain accounts, as also, details of the manner of utilization of the amount so accessed, in accordance with provisions of the FCRA and the regulations framed thereunder. It is also made clear that the respondents will be free to proceed against the petitioners, if it is otherwise found to be in violation of any of the provisions of the FCRA.

11. The writ petition is, accordingly, disposed of.

RAJIV SHAKDHER, J

JANUARY 20, 2015

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