

(2017) 10 DEL CK 0461

In the Delhi High Court

Case No : Civil Writ Petition No. 12094 Of 2015

Dr. R N Gupta Technical Educational Society

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 10-10-2017

Acts Referred:

Foreign Contribution (Regulation) Act, 2010 — Section 11(1), 12, 12(1), 12(3), 12(4), 12(4)(vi), 12(4)(a)(vi)
Income Tax Act, 1961 — Section 11, 12, 12A(1)(b), 12A, 80G
Right to Information Act, 2005 — Section 8(1)(g)

Citation : (2017) 10 DEL CK 0461

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Aseem Mehrotra, Roshan Lal Goel, Anju Gupta

Judgement

Vibhu Bakhru, J

1. The petitioner - a Society registered under the Societies Registration Act, 1860 - has filed the present petition impugning communications dated

01.08.2014 and 07.12.2015 (hereafter referred to as "the impugned communications"), whereby the petitioner's request for registration under

Section 12 of the Foreign Contribution (Regulation) Act, 2010 (hereafter "FCRA") was rejected.

2. The petitioner was established in the year 1992 with the object of promotion of education in the field of technical/professional/paramedical/

law/teaching education/polytechnic etc. It is not disputed that the petitioner is running various colleges at Delhi, Gurgaon and Agra since 1994. The

petitioner claims that it has been established for a charitable purpose and, therefore, was granted registration under Section 12A of the Income Tax

Act, 1961 (hereafter "Income Tax Act") by the office of the Commissioner of

Income Tax, Agra. The petitioner has also been granted approval under Section 80G of the Income Tax Act.

3. The petitioner further states that the State of Uttar Pradesh has granted an essentiality certificate for establishing a medical college and the

petitioner has already been granted affiliation by Dr B.R. Ambedkar University, Agra for running a medical college. It is stated that the petitioner has

also obtained the necessary approvals from the concerned authorities like the Pollution Control Board for bio medical waste and the hospital being run

by the petitioner has also been registered by the Chief Medical Officer, Agra (Uttar Pradesh).

4. The petitioner submitted an online application to the respondent for registration under the FCRA. The said application was rejected by the impugned

communication dated 01.08.2014 on the ground that "the Organisation is functioning on commercial basis for personal gains". On receipt of the

aforesaid communication, the petitioner sent a letter dated 25.08.2014 requesting that the said decision be reconsidered. The petitioner pointed out that

the petitioner society was a non-profit making charitable society and the said aspect had been accepted by the Income Tax Authorities and the

petitioner was granted the approval/registration under Section 80G and Section 12A of the Income Tax Act. The petitioner also forwarded its Articles

and Memorandum of Association; the approval under Section 80G of the Income Tax Act; Registration under Section 12A of the Income Tax Act;

and a copy of its activity report for the past three years. However, the petitioner did not receive any response to its request for reconsideration of its

application for registration under the FCRA.

5. Thereafter, on 03.09.2014, the petitioner filed an application under the Right to Information Act, 2005, inter alia, requesting for information on the

basis of which the respondent had taken its decision to decline registration under Section 12 of the FCRA. The petitioner was subsequently informed

that the petitioner's application had been rejected on the basis of a "field agency verification report" which could not be shared with the

petitioners as it was exempt from disclosure under Section 8(1)(g) of the Right to Information Act, 2005.

6. The petitioner filed a writ petition captioned Dr R.N. Gupta Technical Education Society v. Union of India: W.P. (C) 1129/2015, which was

disposed of on the statement made on behalf of the respondent that "the petitioner's representation dated 25.08.2014 would be responded to

within a period of two weeks from the said date".

7. Thereafter the respondent sent a communication dated 07.12.2015 once again rejecting the petitioner's request for grant of registration on the

ground that the petitioner was found to be "purely working on commercial basis for personal gains".

8. The aforesaid submissions were reiterated by Mr Roshan Lal Goel, learned counsel who appeared for the respondent. He submitted that the

petitioner's request for registration under Section 12 of the FCRA was rejected on the basis of a report submitted by the Intelligence Bureau (IB).

9. In view of the above, the respondent was called upon to produce a copy of the said IB report. The relevant pages of the IB report as referred to by

Mr Roshan Lal Goel, learned counsel for the respondent were perused and photocopies of the same were taken on record.

10. Section 11 (1) of the FCRA mandates that no person having a definite cultural, economic, educational, religious or social programme shall accept

foreign contribution unless such person obtains a certificate from the Central Government.

11. Section 12 (1) of the FCRA provides for grant of certificate of registration. Section 12(1) mandates that an application for grant of registration

shall be made to the Central Government in such form and manner and along with such fees as may be prescribed. In terms of Regulation 9 of the

Foreign Contribution (Regulation) Rules, 2011, an application under Section 11(1) for Registration is required to be made electronically on-line in Form

FC-3 and is required to be followed by forwarding of a hard copy duly signed by the Chief Functionary of the association together with the required

documents. A bare perusal of the Form FC-3 indicates that an application is required to provide extensive information regarding the association and

also its office bearers. In addition, the applicant has to further disclose whether any of its office bearers have been convicted by any court of law;

prosecuted for any offence; and/or found guilty of diversion or mis-utilization of the funds of the organization and/or any other association in the past.

Further the applicant is also required to provide details of activities of the association for the past three years; audited statements of accounts of the

association for the past three years;

and the areas of operation.

12. Sub-section (3) of section 12 of the FCRA provides that if the Central Government, after such inquiry, is of the opinion that conditions specified

under sub-section (4) of section 12 of FCRA are satisfied, it would ordinarily within ninety days from the date of receipt of the application under sub-

section (1) of section 12, register such person and grant him a certificate subject to the terms & conditions as may be prescribed.

13. Section 12 of the FCRA is set out below:-

12. Grant of certificate of registration. " (1). An application by a person, referred to in section 11 for grant of certificate or giving prior

permission, shall be made to the Central Government in such form and manner and along with such fee, as may be prescribed.

(2) On receipt of an application under sub-section (1), the Central Government shall, by an order, if the application is not in the prescribed form or

does not contain any of the particulars specified in that form, reject the application.

(3) If on receipt of an application for grant of certificate or giving prior permission and after making such inquiry as the Central Government deems fit,

it is of the opinion that the conditions specified in sub-section (4) are satisfied, it may, ordinarily within ninety days from the date of receipt of

application under sub-section (1), register such person and grant him a certificate or give him prior permission, as the case may be, subject to such

terms and conditions as may be prescribed:

Provided that in case the Central Government does not grant, within the said period of ninety days, a certificate or give prior permission, it shall

communicate the reasons therefore to the applicant:

Provided further that a person shall not be eligible for grant of certificate or giving prior permission, if his certificate has been suspended and such

suspension of certificate continues on the date of making application.

(4). The following shall be the conditions for the purposes of sub-section (3), namely:--

(a) the person making an application for registration or grant of prior permission under sub-section (1),--

- (i) is not fictitious or benami;
- (ii) has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;
- (iii) has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;
- (iv) has not been found guilty of diversion or mis-utilisation of its funds;
- (v) is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;
- (vi) is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
- (vii) has not contravened any of the provisions of this Act;
- (viii) has not been prohibited from accepting foreign contribution;
- (b) the person making an application for registration under sub-section (1) has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilised;
- (c) the person making an application for giving prior permission under sub-section (1) has prepared a reasonable project for the benefit of the society for which the foreign contribution is proposed to be utilised;
- (d) in case the person being an individual, such individual has neither been convicted under any law for the time being in force nor any prosecution for any offence pending against him;
- (e) in case the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him;
- (f) the acceptance of foreign contribution by the person referred to in sub-section (1) is not likely to affect prejudicially--
 - (i) the sovereignty and integrity of India; or
 - (ii) the security, strategic, scientific or economic interest of the State; or
 - (iii) the public interest; or
 - (iv) freedom or fairness of election to any Legislature; or
 - (v) friendly relation with any foreign State; or
 - (vi) harmony between religious, racial, social, linguistic, regional groups, castes

or communities;

(g) the acceptance of foreign contribution referred to in sub-section (1),--

(i) shall not lead to incitement of an offence;

(ii) shall not endanger the life or physical safety of any person.

(5) Where the Central Government refuses the grant of certificate or does not give prior permission, it shall record in its order the reasons therefor

and furnish a copy thereof to the applicant:

Provided that the Central Government may not communicate the reasons for refusal for grant of certificate or for not giving prior permission to the

applicant under this section in cases where there is no obligation to give any information or documents or records or papers under the Right to

Information Act, 2005 (22 of 2005).

(6) The certificate granted under sub-section (3) shall be valid for a period of five years and the prior permission shall be valid for the specific purpose

or specific amount of foreign contribution proposed to be received, as the case may be.â??

14. In the present case, the registration under Section 12 (1) of the FCRA is sought to be denied on the ground as stated in Section 12(4)(a)(vi) of

FCRA. In other words, the respondent is not satisfied that the foreign contribution is not likely to be used for personal gains.

15. There is no dispute that the petitioner is a society registered under the Societies Registration Act, 1860 and has been registered under Section 12A

of the Income Tax Act.

16. A plain reading of the scheme of Section 11 & 12 of the Income Tax Act, 1961 indicates that income derived from property which is held wholly

for charitable and religious purposes is exempt from income tax subject to other conditions being complied. Section 12A of the Income Tax Act

provides for registration of a trust or institution which claims exemption under Section 11 and 12 of the said Act. In terms of Section 12A(1)(b) of the

Income Tax Act, the accounts of the trust/ institution as duly audited by a Chartered Accountant, are required to be furnished to the Income Tax

Department. Plainly, a trust/society which applies its income for purposes other than for charitable purposes would not be entitled to registration under

Section 12A of the Income Tax Act.

17. Undisputedly, the Income Tax Act contains an elaborate scheme for ensuring that only such institutions which utilize the income towards

charitable/religious purposes are granted the exemption as provided in respect of their income. Similarly, approval under Section 80G of the Income

Tax Act is only available to specified institutions/funds and such institutions, which are established for charitable purposes.

18. Since the petitioner is a society registered under the Societies Registration Act, 1860, no part of its income can be diverted for personal benefits of

the promoters/trustees and any such diversion would be unlawful. Indisputably, if the respondents had found any cogent material to indicate that the

petitioner or any of the institutions run by them, were in violation of its charter or had diverted any part of its receipts for personal benefits of its

promoters and not in accordance with its objects, the respondent would be well within its right to refuse registration under Section 12 of FCRA.

19. However, despite being called upon, the respondents have been unable to show any material, whatsoever which would justify such a conclusion. It

is apparent from the above that the impugned orders have been passed without any material except a bald report, which inter alia, states that ""it is

learnt that the colleges are run on purely for commercial purposes for personal gains of the office bearers"".

20. The learned counsel for the respondent had submitted that the norms applicable under FCRA are different from that as applied by the Income Tax

Authorities. This Court is unable to accept the said contention as the question whether a society established for charitable/religious purpose is one of

the principal considerations for grant of exemption under Section 11 and 12 of the Income Tax Act, 1961. One of the pre condition for availing

exemption from charge of Income Tax is that the charitable society/trust would utilise all funds for the purposes of its object and no part of it can be

distributed as dividends or profits. Any society/trust which is run for the commercial benefits of its founders or trustees would plainly be ineligible for

being accorded the certificate under Section 12A of the Income Tax Act. This is also the principal consideration, which is set out in Section 12(4)(vi)

of the Act.

21. Notwithstanding the registration granted to the petitioner under the Income Tax Act, the permission sought by the petitioner could have been

refused if there was any evidence to show that the foreign contribution is likely to be used for personal gains or diverted for undesirable purposes. But, as stated earlier, there is no material to indicate that these conditions were satisfied. There is no material which would justify the conclusion that the petitioners were likely to divert the foreign contribution for personal gains or utilise it for any undesirable purposes. In this view, the impugned orders cannot be sustained and are consequently, set aside.

22. The respondents are directed to process the petitioner's application for registration under Section 12 of the FCRA, as the only ground on which the same was denied is unsustainable.

23. The parties are left to bear their own costs.