
(1991) 07 MAD CK 0022
In the Madras High Court

Usmania Trust (Registered)

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 19-07-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 225, 226, 30(1)
Foreign Contribution (Regulation) Act, 1976 — Section 6(1A)

Citation : (1991) 2 MLJ 238

Hon'ble Judges : K.S. Bakthavatsalam, J

Bench : Single Bench

Judgement

K.S. Bakthavatsalam, J.—The petitioner has come up to this Court to quash the order of the respondent dated 7.3.1990, refusing

permission u/s 6(1A) of the Foreign Contribution (Regulation) Act, 1976 for acceptance of foreign contribution amounting to Rs. 20 lakhs from the

Islamic Development Bank, Jeddah.

2. The facts leading to the filing of the writ petition are:

The petitioner/trust was formed in terms of registered trust deed dated 5.1.1979 for establishing schools, hostels, etc., and encouraging Arabic

language. It is a public charitable Trust and donations u/s 80-G to the trust are exempted from tax. The trust acquired about one acre of land in

Podanur Road, Coimbatore, for establishing an educational Institution and construction of 7, 500 sq.ft. has been made, spending Rs. 12 lakhs

received through donations from public. The trust wants to name the institution as ""Jamiathul Muhsinath Arabic College for Women"", since it

teaches women, tailoring, embroidery, general education, carpentry, etc. apart from Arabic language. For construction of a self-contained hostel

with other infrastructural facilities, a plan was drawn and the cost worked out to Rs. 26 lakhs. The trust learnt that since it intended to teach Arabic

and Urdu, donations from Islamic Development Bank would be given., provided registration or permission under the Foreign Contribution

(Regulation) Act, 1876, was obtained, Accordingly, the trust made application u/s 6(1) on 22.4.1988 but no reply was given. After many

reminders and representations, by order dated 2.1.1990, the respondent rejected the application for registration, but stated that the trust could

receive foreign contribution, after obtaining prior permission of the Central Government u/s 6(1A). Application made in this regard was rejected by

the impugned order dated 7.3.1990. Aggrieved by the said order, the petitioner/trust has come forward with the present writ petition.

3. It is stated in the affidavit that no reasons had been set out in the said impugned order for rejecting the application, nor had the petitioner/trust

been given any opportunity in this regard, and the before the same is arbitrary, unreasonable and inconsistent with the earlier order dated 2.1.1990,

and consequently liable to be set aside. If the respondent had any material to reject the petitioner/trust's claim he should have given the trust an

opportunity before rejecting the claim, and this in violation of the principles of natural justice. The respondent cannot be said to have an absolute

discretion or power to reject an application and unless it is shown that the permission sought for is against the scheme of the Act, there cannot be a

rejection order u/s 6(1A) of the Act. The impugned order has no basis or relevance to the object underlying the Act and offends Article 30(1) of

the Constitution of India. In such circumstances, the affidavit proceeds to state that the impugned order has to be set aside.

4. In the counter-affidavit filed on behalf of the respondent, it is stated that the petitioner/trust sought permission to receive foreign contribution

amounting to Rs. 20 lakhs from Jeddah, that the Central Government conducted enquiries regarding the activities" of the trust, that there was no

need or opportunity to be given to the trust to rebut the materials leading to rejection of the request since it was not in public interest, that

subjective satisfaction of the Central Government was arrived at, that it is against the constitutional right of any association or individual to receive

foreign contribution, that in public interest some reports and reasons for rejection are not to be disclosed, that the trust deed was altered

subsequently deleting the word "religious" from the object clause, that the application was rejected after scrutinising all the aspects including the project report, etc. and that, the before, the impugned order is not liable to be set aside.

5. Mr. R. Krishnamurthy, learned Senior Counsel appearing for the petitioner/trust, represents that the scheme of the Act and a reading of the various provisions the rein clearly show that the impugned order has been passed arbitrarily without application of mind, that the petitioner/trust has been given exemption by the Income Tax authorities and registered as a "public trust", that the arriving at decision of the alleged subjective satisfaction is nothing but an arbitrary decision, that any decision taken without a valid reason has to be struck down as violative of Article 14 of the Constitution, that this is a typical case where the respondent has not applied his mind at all in passing the cryptic or laconic order and that in these circumstances, the impugned order is liable to be set aside.

6. Mr. P. Narasimhan, learned Senior Central Government Standing Counsel, argues that it is the subjective satisfaction of the Government to grant or deny permission, that the petitioner cannot approach this Court under Article 226 of the Constitution of India, that the impugned order is perfectly valid and that, the before, the writ petition has to be dismissed.

7. Considering the arguments of learned Counsel appearing on both sides and after going through the records produced before me, I am satisfied that the impugned order cannot stand for a minute's scrutiny under Article 225 of the Constitution. I have gone through the entire file. There is no piece of paper which shows anything against the petitioner/trust excepting a statement that the trust is purely a private association started in 1979 by one Usman Koya and family members and that the proceeds of the trust would be enjoyed by the said family. I think this is a statement which could be made against any trust. It is not as if the respondent is helpless in such a situation. The Indian Trust Act has to be enforced, if the property of the trust is misapplied. Apart from that, even the provisions contained in the Central Act 49 of 1975, provide for sufficient security. Section 13 provides for maintaining accounts by the Association which receives foreign contribution, Section 14 provides for inspection of accounts or records, Section 15 provides for seizure of accounts or records, and power to

impose penalty is also found in the Act. Section 10 empowers the Central Government to prohibit receipt of foreign contribution, etc. in certain cases. On a reading of Section 10, in my view, it cannot apply to the facts of this case. This is not a case where it could be said that if permission is granted, it will affect the sovereignty and integrity of India, or public interest or freedom or fairness of election to any Legislature or friendly relations with any foreign State or harmony between religious, racial, linguistic or regional groups, castes or communities. It is seen from the file that the State Government has given report that a College is being run by the trust. The trust, in addition, wants to start a hostel for which huge amount is necessary. Section 6(1A) of the Act was introduced by the Amendment Act, 1985 and it prescribes that every association may, if it is not registered with the Central Government, accept any foreign contribution only after obtaining prior permission of the Central Government and shall also give within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of foreign contribution received by it the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised by it. As such, the granting of permission would not entail any loss to the respondent. The contention of Mr. Narasimhan, learned Senior Central Government Standing Counsel, that the satisfaction is purely subjective and this Court cannot sit over it is not available to him. Any administrative Authority has to pass an order in a fair manner, is the settled position of law nowadays. After going through the files and after going through the order, it seems the respondent has passed a cryptic or laconic order, without assigning any reasons for the rejection of the application. In my view, this is a fit case where the respondent has to consider granting permission under the Act, taking note of the object and purpose of the Trust and for what purpose the amount is sought from the foreign country. If it is not considered, then in my view, the whole purpose of the Act is lost. It is not correct on the part of Mr. Narasimhan to contend that the petitioner has got no right to insist on such a permission being accorded to it. It is not a question of right. The statute gives a right to petitioner to apply for sanction to get foreign contribution which is regulated under the Act. The respondent cannot

deny this claim arbitrarily and say that the petitioner has no right at all. It is not as if the petitioner has got a fundamental right to claim the same and it is not the argument of the learned Senior Counsel, also. All that is contended before me is that an application has been made, which has not been considered properly, and a cryptic order has been passed without assigning any reason. In such circumstances, the Impugned order is set aside and the writ petition is allowed. The respondent is directed to consider the issue after giving an opportunity to the petitioner and pass orders on merits within two months from the date of receipt of a copy of this order. No costs.