



SUSPENSION OF REGISTRATION UNDER FCRA

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- Dr. Manoj Fogla, FCA

1.1.01 Section 13 of FCRA 2010 provides the power to the Central Government to suspend the registration pending cancellation of certificate, for a period up to 180 days. During suspension, the organization cannot receive any foreign contribution without prior approval. The provision of section 13 on suspension of registration certificate is as under:

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

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

OPPORTUNITY OF BEING HEARD BEFORE SUSPENSION AND REASONS IN WRITING

1.2.01 FCRA 2010 does not specifically provide for any opportunity of being heard before affecting the suspension order. The section 13(1) also does not provide for reasons to be recorded in writing. However, the provision provides that the organization shall be provided opportunity of being heard during the period of 180 days of suspension. After the completion of 180 days and depending on the findings, the registration will either be cancelled or restored. The issue arising out of the provision is whether FCRA department can suspend registration without providing any opportunity of being heard or without giving any reasons in writing. Based on legal interpretation and judicial precedence, it seems that FCRA department cannot suspend registration without providing any opportunity of being heard or without giving any reasons in writing.

On plain reading of the provision, it can be seen that section 13 uses the word “may” as highlighted in the text of the section reproduced below:

“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 such period not exceeding one hundred and eighty days as may be specified in the order.”

1.2.02 The use of word “may” implies that there is a discretion provided in the act which may or may not be exercised. If the FCRA department wants to exercise such discretion, then it has to provide opportunity of being heard as well as reasons in writing. The Honorable Delhi High Court in the case Indian Social Action Forum (INSAF) v. Union of India W.P. (C) 4982/2013 & CM 11248/2013 ruled that the language of section 13(1) does not empower the FCRA department to suspend registration without providing opportunity of being heard or reasons in writing. The relevant extract is reproduced as under:

The scheme of the Act, therefore, is that if the Central Government, after making such enquiry as it may deem appropriate in this regard, is of the opinion that it is necessary in the public interest to do so, it can cancel the certificate after giving a reasonable opportunity of hearing to the organization concerned. If, while considering the cancellation of registration in terms of Section 14 of the Act, the Central Government is satisfied that it is necessary to suspend the certificate, during such

consideration, it can suspend the certificate of the organization concerned for a period not exceeding 180 days provided reasons for such suspension are recorded by the Government.

Admittedly, by the time the suspension order dated 30.04.2013 was passed, the Central Government neither had neither issued any notice of hearing / show-cause notice in terms of sub-section (2) of Section 14 nor had it initiated any enquiry in terms of the said Section. Therefore, there was no occasion to suspend the certificate of the petitioner in terms of sub-section (1) of Section 13 of the Act. The respondents wrote to the petitioner seeking certain information for the first time vide letter dated 02.05.2013, i.e., after the registration of the petitioner-society had already been suspended. The suspension, therefore, was contrary to the scheme of the Act which envisaged such suspension only when the issue of cancellation is already pending consideration of the Central Government. For this reason alone, the impugned order dated 30.04.2013 is liable to be quashed.

REASONS FOR SUSPENSION

1.3.01 If the Central Government has any information/evidence about the following, then a cancellation proceeding may be initiated preceded by suspension:

(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 there under; 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.

**CONDITION TO BE FOLLOWED DURING
SUSPENSION**

- 1.4.01** Every person whose certificate has been suspended shall not receive any foreign contribution during the period of suspension of certificate; such person can receive foreign contribution with prior permission only. The Central Government, on an application made by such person, if it considers appropriate, allow receipt of any foreign contribution by such person on such terms and conditions as it may specify;
- 1.4.02** Every person whose certificate has been suspended shall not utilize the foreign contribution in his custody without the prior approval of the Central Government.

**EXTENT OF AMOUNT THAT CAN BE UTILISED
DURING SUSPENSION**

- 1.5.01** In terms of Rule 14 of FCRR, 2011, in case the certificate of registration is suspended, then up to twenty-five per cent of the unutilized amount may be spent, with the prior approval of the Central Government, for the declared aims and objects for which the foreign contribution was received. The remaining seventy-five per cent of the unutilized foreign contribution shall be utilized only after revocation of suspension of the certificate of registration.

INSAF CASE

IN THE HIGH COURT OF DELHI AT New Delhi

Date of Decision: 19.09.2013

W.P. (C) 4982/2013 & CM 11248/2013

INDIAN SOCIAL ACTION FORUM (INSAF)... Petitioner

Through: Mr. Sanjay Parikh, Mr. Kabir Dixit and
Ms. Bushra Praveen, Advs.

Versus

UNION OF INDIARespondent

Through: Mr. Amrit Pal Singh, CGSC with
Mr. Pankaj Bansal, Assistant Director CORAM:
HON'BLE MR. JUSTICE V.K.JAIN JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner before this Court is a society registered under the Societies Registration Act, 1860. Vide order dated 30.4.2013 issued by the Director to the Government of India, Ministry of Home Affairs, Foreigners Division (FCRA Wing), the permanent registration of the petitioner association was suspended in exercise of the powers conferred upon the Central Government under Section 13 of the Foreign Contribution

(Regulation) Act, 2010. While suspending the said registration, it was also directed that the petitioner association can utilize the funds available with it, only after taking prior permission of the Central Government in terms of Section 13(2)(b) of the FCRA,

2010. Being aggrieved from the aforesaid order dated 30.4.2013, the petitioner is before this Court seeking setting aside of the said order.

2. In their counter-affidavit, the respondents have stated that reports were received by the Government which revealed that foreign funds received by the petitioner were being transferred to other FCRA registered as well as non-FCRA registered NGOs, which were utilizing the said fund for organizing the protest, etc. against the welfare policies of the Government and such utilization of foreign contribution may prejudicially affect the public interest. In its rejoinder, the petitioner has denied having transferred funds to any non-FCRA registered NGOs.
3. Section 13(1) and 14(1) and (2) of the Foreign Contribution (Regulation) Act, 2010, read as under:-

- “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 such period not exceeding one hundred and eighty days as may be specified in the order.
- 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 there under; 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.”
- 4.** The scheme of the Act, therefore, is that if the Central Government, after making such enquiry as it may deem appropriate in this regard, is of the opinion that it is necessary in the public interest to do so, it can cancel the certificate after giving a reasonable opportunity of hearing to the organization concerned. If, while considering the cancellation of registration in terms of Section 14 of the Act, the Central Government is satisfied that it is necessary to suspend the certificate, during such consideration; it can suspend the certificate of the organization concerned for a period not exceeding 180 days provided reasons for such suspension are recorded by the Government.
- 5.** Admittedly, by the time the suspension order dated 30.04.2013 was passed, the Central Government had neither issued any notice of hearing/show-cause notice in terms of sub-section (2) of Section 14 nor had it initiated any enquiry in terms of the said Section. Therefore, there was no occasion to suspend the certificate of the petitioner in terms of sub-section (1) of Section 13 of the Act. The respondents wrote to the petitioner seeking certain information for the first time vide letter dated 02.05.2013, i.e., after the registration of the petitioner-society had already been suspended. The suspension, therefore, was contrary to the scheme of the Act which envisaged such suspension only when the issue of cancellation is already pending consideration of the Central Government. For this reason alone, the impugned order dated 30.04.2013 is liable to be quashed.

6. Yet another reason which warrants quashing of the impugned order dated 30.04.2013 is failure of the Central Government to record the reasons which necessitated suspension of the certificate in terms of sub-section (1) of Section 13 of the Act. Though on account of use of the word 'may' in sub-section (1) of Section 13, the respondent has taken the plea that recording of the reasons is not a mandatory requirement, the plea, in my view, is wholly misconceived. A careful perusal of subsection (1) of Section 13 would show that the requirement of recording reasons which necessitate suspension of the organization is a mandatory requirement and the word 'may' has been used only in the context of giving a discretion to the Central Government whether to suspend the registration or not. In other words, the Central Government may or may not suspend the certificate of an organization, pending consideration of cancellation of the said certificate but, if the Government decides to suspend such certificate it can be done only for reasons to be recorded and such reasons, in my view, need to be incorporated in the suspension order itself so that the organization is in a position to know what were the reasons which impelled the Government to suspend its registration and in case the organization feels that certificate has been suspended for the reasons which are not envisaged under subsection (1) of Section 13 or are not otherwise cogent, objective and transparent, it can challenge such suspension by way of appropriate proceedings. Such reasons cannot be given, by way of extraneous evidence at a later stage. In the absence of reasons, it would not be possible for the organization to challenge the suspension.
7. For the reasons stated hereinabove, the impugned order dated 30.04.2013 is hereby set aside. It is, however, made clear that this order will not come in the way of respondent initiating a fresh action in terms of the provisions of the Act in the light of this order. The respondent is directed to release the account of the petitioner forthwith.

(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)