

\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 6031/2021 & CM APPL. 19077/2021, CM APPL.
19078/2021

ARBOR CHARITABLE FOUNDATION & ORS.... Petitioners
Through Ms. Srishti Agnihotri, Adv. for
petitioner nos. 1 and 2
Mr. Abishek Jebaraj and Ms.
Nupur Raut, Adv. for R-3

versus

UNION OF INDIA Respondent
Through Mr. Farman Ali, Sr. Panel
Counsel with Mr. Jatin, Govt.
Pleader and Mr. Athar Raza
Farooquei, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER
% **01.07.2021**
(Video-Conferencing)

CM APPL. 19078/2021 in W.P.(C) 6031/2021

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 6031/2021

1. Issue notice to show cause as to why rule *nisi* not be issued, returnable on 3rd September, 2021.

2. Notice is accepted by Mr. Farman Ali, learned Sr. Panel Counsel, on behalf of the respondent.

3. Counter affidavit, if any, be filed within a period of four weeks from today with advance copy to learned Counsel for petitioners, who may file rejoinder thereto, if any, within two weeks thereof.

CM APPL. 19077/2021 in W.P.(C) 6031/2021

1. Issue notice, returnable on 3rd September, 2021.

2. Notice is accepted by Mr. Farman Ali, learned Sr. Panel Counsel, on behalf of the respondent.

3. Reply, if any, be filed within a period of four weeks from today with advance copy to learned Counsel for applicants/petitioners, who may file rejoinder thereto, if any, within two weeks thereof.

4. The grievance of the petitioners in the present case arises out of the peculiarities in the FC-4 Form, whereunder returns, regarding contributions received by beneficiaries under the Foreign Contribution Regulation Act, 2010 (“FCRA”) are required to be filed. The petitioners are recipients of foreign contributions in accordance with the protocol set out in the FCRA. It is asserted, in the petition, that the petitioners are possessing valid incorporation certificates and FCRA registration certificates as required under Section 11 of the FCRA.

5. Section 18 of the FCRA requires the beneficiary of the

contribution to file an intimation before the Central Government regarding the contributions received. The process for filing said intimation is set out in Rule 17 of the Foreign Contributions Regulations Rules, 2011 (“the FCR Rules”). These Rules, it appears, were amended with effect from 28th September, 2020. By the amendment, the earlier Form FC-6, whereunder the intimation/return was required to be submitted by the beneficiary of the contributions, was replaced by an FC-4 Form. The FC-4 Form is required to be accompanied by a copy of the Statement of Account of the beneficiary from the bank in which the beneficiary maintains the requisite exclusive Foreign Contribution Account, and is also required to be certified by an officer of the bank.

6. Section 12 of the FCR (Amendment) Act, 2020 amended Section 17 of the FCRA and, by virtue of said amendment, foreign contribution can be received only in a branch of the State Bank of India (SBI) located at New Delhi, to be specified by notification by the Central Government.

7. In tandem with this amendment, para 7(a) of the FC-4 Form (which has to be submitted online), too, accepts the entry only if the account is in the SBI, New Delhi Main Branch, 11, Sansad Marg, New Delhi -11001 which was, *vide* notification no. 3479(E), dated 7th October, 2020, prescribed as the bank in which the FCR account is to be opened.

8. The petitioners submit that this has resulted in a peculiar

situation in which, though 31st March, 2020 would be the relevant date for filing of the return for the year 2019-2020, the requirement of the account under the FCRA/FCR Rules being in the SBI, New Delhi was introduced only in September, 2020 and the bank was notified only on 7th October, 2020. Prior thereto, the petition asserts that there was no requirement of the FCR account being in SBI.

9. The petitioners' accounts wherein foreign contributions were received were not in the SBI, till 7th October, 2020. As a result, the petitioners submit that it has become impossible for them to submit the return under FC-4 Form for the year 2019-2020.

10. It is further submitted in the petition that, though the petitioners represented in this regard to the respondent on 15th June, 2021, the problem continues.

11. The difficulty being faced by the petitioners appears, *prima facie*, to be genuine.

12. To a query from the Court as to how this situation could be remedied, Mr. Farman Ali, learned Counsel for the respondent, seeks a short adjournment in order to enable him to obtain instructions specifically on this aspect. However, he submits that no stay ought to be granted, as the petitioners can submit their return even after 30th June, 2021, with appropriate penalty.

13. This submission does not commend itself to acceptance at all.

14. The citizen cannot be penalised for a discrepancy in the form prescribed by the respondent which has resulted in the form being unable to be submitted even in the case of a law abiding citizen.

15. In view thereof, till the next date of hearing, the respondent is restrained from taking any coercive action against the petitioner for failure to file the requisite return under the FC-4 Form before 30th June, 2021.

16. In case the respondent comes up with a solution to the impasse, it is at liberty to move the court by way of an appropriate application so that a quietus can be achieved to the dispute.

**C. HARI SHANKAR, J.
(VACATION JUDGE)**

JULY 01, 2021
dsn