

IN THE HIGH COURT OF DELHI
CIVIL ORIGINAL JURISDICTION
CONTEMPT PETITION (C) NO. _____ OF 2017
IN
Writ Petition (Civil) No. 131/2013

AND IN THE MATTER OF:

ASSOCIATION FOR DEMOCRATIC REFORMS AND ANR PETITIONER

VERSUS

UNION OF INDIA RESPONDENTS

**CONTEMPT PETITION ON BEHALF OF THE PETITIONER U/S 11
and 12 OF THE CONTEMPT OF COURTS ACT, 1971 FOR INITIATING
CONTEMPT PROCEEDINGS AGAINST THE ABOVE-NAMED
ALLEGED CONTEMNORS FOR NON-COMPLIANCE OF THE
JUDGMENT/ ORDER DATED 28.03.2014 OF THIS HON'BLE COURT
IN THE AFORE-MENTIONED CASE.**

To,

The Hon'ble Chief Justice of the High Court of Delhi and his Companion
Judges of the Hon'ble High Court of Delhi.

Humble Petition of the Petitioner above named:

MOST RESPECTFULLY SHEWETH:-

1. Petitioners above named are filing the instant contempt petition seeking initiation of contempt proceedings against the above named alleged contemnors for wilfully disobeying the specific directions of this Hon'ble Court issued vide order dated 28.03.2014, in W.P.C No. 131 of 2013 captioned as "ASSOCIATION FOR DEMOCRATIC REFORMS&ANR. Vs UNION OF INDIA & ORS"

wherein this Hon'ble Court came to the conclusion that the BJP and the INC had clearly fallen foul of the ban imposed under the Foreign Contribution (Regulation) Act, 1976 as the donations accepted by the political parties from Sterlite and Sesa accrue from "Foreign Sources" within the meaning of law. A copy of the judgment dated 28.03.2014 passed in WPC No. 131 of 2013, is annexed as **Annexure A** (Pg _____). Alleged Contemnor/Respondent herein is the Government of India who has failed to take action against the offenders even after three years of passing of the said judgment of this Hon'ble Court.

2. This Hon'ble Court vide Judgment dated 28.03.2014, while interpreting the Foreign Contribution Regulation Act 1976 gave two directions to the Union Government. They were -

"The second direction would concern the donations made to political parties by not only Sterlite and Sesa but other similarly situated companies/corporations. Respondents No.1 and 2 would relook and reappraise the receipts of the political parties and would identify foreign contributions received by foreign sources as per law declared by us hereinabove and would take action as contemplated by law"

This direction was to be complied within a period of six months from the date of the judgment.

3. Special leave petitions in this regard were filed by both the political parties. Despite the fact that there was no interim relief granted by the apex court on the SLPs filed by BJP and INC, the government has remained in non-compliance with the above cited judgement of the Hon'ble Delhi High Court.
4. On 29-11-2016, the apex court had disposed of the two SLPs with the following direction. *"Learned Counsel for the petitioners state, that they have been instructed to withdraw these petitions. Dismissed as withdrawn"*. Thus the judgment of this Hon'ble Court has become final and binding. A copy of the said order passed in

Special Leave Petitions (being SLP(C) 18190/2014 & SLP(C) 32626/2014) filed by the Congress and the BJP by the Hon'ble Supreme Court is annexed at **Annexure B**. (Pg _____)

5. The government was required to comply with the Hon'ble Delhi High Court judgement dated 28-3-2014 within six months. The Petitioners addressed letters to the Union Home Ministry seeking compliance with this Court's Order dated 28-3-2014. Copies of the relevant letters is annexed at **Annexure C**. (Pg _____)
6. Since the writ petition drew attention mainly to donations made to political parties for the period up to the year 2009, this Hon'ble Court recorded that its concern is not with the Foreign Contribution (Regulation) Act, 2010 which has come into force on September 26, 2010 and the discussion of the legal position would be with respect to the Foreign Contribution (Regulation) Act, 1976.
7. The Union Government had amended the Foreign Contribution (Regulation) Act (FCRA), 2010 through the Finance Act, 2016 (Act No. 28 of 2016). The relevant Section of the Finance Act, 2016 is extracted below.

“AMENDMENT TO THE FOREIGN CONTRIBUTION (REGULATION) ACT, 2010

*236. In the Foreign Contribution (Regulation) Act, 2010, in section 2, in sub-section (1), in clause (j), in sub-clause (vi), the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 26th September, 2010, namely:
'Provided that where the nominal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999, or the rules or regulations made thereunder, then, notwithstanding the nominal value of share capital of a company being more than one-half of such value at the time of making the contribution, such company shall not be a foreign source”*

The amendment made to FCRA of 2010 through Finance Act 2016 changing the definition of “foreign source” which has a retrospective operation w.e.f 26-9-2010. Per se, it is not applicable to the

transactions cited in this Court's judgment dated 28-3-2014 as the transactions in question were effected under the FCRA 1976, and before 26-9-2010 and hence have no bearing on the court order.

In the light of Section 6 of the General Clauses Act, 1897, the respondent cannot claim relief in view of the repeal of FCRA of 1976. Section 6 is stated below.

“Section 6: Effect of repeal. Where this Act, or any 1 [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

(a) Revive anything not in force or existing at the time at which the repeal takes effect; or

(b) Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) Affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

8. It is maintained that donations made by Sterlite and Sesa fall within the definition of “foreign source” according to **Section 2 (e) (iii) of the FCRA 1976** as they are subsidiaries of a Foreign Company namely Vedanta which is registered in the United Kingdom, which owns more than 50% of the nominal share value in both these companies. Section 2 (e) (iii) is read as follows.

Section 2

(e) "Foreign source" includes-

(iii) A foreign company within the meaning of section 591 of the Companies Act, 1956(1 of 1956), and also includes

(a) A company which is a subsidiary of a foreign company, and

(b) A multi-national corporation within the meaning of this Act.

9. Furthermore, Section 2 (e) (vi) (c) of FCRA 1976 states that

(e) "Foreign source" includes-

(vi) a company within the meaning of the Companies Act, 1956 (1 of 1956), if more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely,-

(c) Corporations incorporated in a foreign country or territory.

It is submitted that donations made by both Sterlite and Sesa would come under the definition of "Foreign Sources" as both these companies have more than one half of their nominal value of its share capital held by a corporation i.e. Vedanta, incorporated in a foreign country i.e. The United Kingdom.

10. Since, there has been wilful disobedience on the part of the respondent in compliance with the impugned order; respondent is liable for contempt of the court and contempt proceedings should be initiated against the respondent.

11. The petitioners herein have not filed any other petition in this Hon'ble Court, or before Supreme Court or any other Court throughout the territory of India regarding the matter in dispute. The petitioners have no better remedy available.

PRAYERS

In view of the abovementioned facts it is respectfully submitted that this Hon'ble Court may be pleased to:

a) Initiate contempt proceeding against the alleged contemnor for willfully and deliberately disobeying the judgment dated 28.03.2014 of this Hon'ble Court passed in the Writ Petition (Civil) 131 of 2013.

- b) Pass any other or further order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Through:

PRASHANT BHUSHAN
Counsel for the Petitioner

Drawn by: Pranav Sachdeva

New Delhi

Dated: March 2017