

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
(Under Article 32 of the Constitution of India)
WRIT PETITION (CIVIL) NO. 142 OF 2019
(ORDER XXXVIII OF THE SUPREME COURT RULES 2013)

IN THE MATTER OF:

1. **Lawyers Voice** ..PETITIONER
Through its secretary,
Flat No.103, Kaushalya Park,
Hauz Khas, Delhi

VERSUS

1. **Union of India**
Through Secretary
Ministry of Home Affairs
North Block, New Delhi-110001

RESPONDENT NO. 1

2. **Indira Jaising,**
A-54 (FF), Nizamuddin East,
New Delhi- 110013.

RESPONDENT NO. 2

3. **Anand Grover,**
Masjid Road, Bhogal,
Jangpur, New Delhi -110014

RESPONDENT NO. 3

4. **Lawyers Collective,**
Jalaram Jyot,
4th Floor, Janambhoomi Marg,
Fort, Mumbai

RESPONDENT NO. 4

All are Respondent contesting

A PETITION UNDER ARTICLE 32 OF THE CONSTITUTION
OF INDIA

To,

The Hon'ble Chief Justice of India
and His Companion Judges of
the Hon'ble Supreme Court of India

The Humble Petition of the
Petitioner above named

MOST RESPECTFULLY SHOWETH:

1. The petitioner above named is constrained to file this PIL under Article 32 of the Constitution of India seeking kind indulgence and interference of this Hon'ble Court in constituting a special investigating team [SIT] comprising of officers of investigating agencies as deemed fit and proper by this Hon'ble Court and direct it to function under the monitoring and supervision of this Hon'ble Court, to investigate into the apparent illegality and non-action of the government in registering IPC, PC Act, PMLA, Income Tax Act and other offences committed by the Respondent No 2 - 4 abovenamed which is apparent from order dated 31.5.2016 and order dated 27.11.2016 passed by the Ministry of Home Affairs.
2. It is submitted that as per the reliable information of the petitioner, despite recording serious acts of commission and omission by the Respondent No 1 UOI in its order dated 31.5.2016 and order dated 27.11.2016, which led to cancellation of the FCRA certificate of the respondent, the officers of the Union of India have deliberately not register offences against the aforesaid respondents under the respective criminal acts for the reason best known to themselves.
3. It is respectfully submitted that the acts of omission and commission as recorded by the Respondent No 1 UOI in its order dated 31.5.2016 and order dated 27.11.2016, for the purpose of cancelling the FCRA registration of Respondent No 4 Association also constitutes separate and distinct offences under the provision of IPC, PC, PMLA, Income tax act and other applicable penal acts. However, the Union of India, either malafidely or for other extraneous reasons have not taken any action against the

respondent no 2 - 4 under the said Act so as to reach to the bottom of the truth and to unearth the nefarious conspiracy behind such foreign funding. The said non action on behalf of the Respondent No.1 UOI, has resulted in violation of fundamental rights of the petitioner and has given cause to the petitioner to file the present PIL.

4. It is submitted that from the order dated 31.5.2016, it is clear that the Respondent No 4 Association working through its President and Secretary i.e. Respondent No.3 and 2 respectively has indulged in acts of omission and commission which were violative of sections 3, 6, 7, 8, 11, 17, 18 and 33 of the FCRA, 2010.

5. It is submitted that the violation of aforesaid sections itself attracts a very serious consequences *de hors* the provisions of FCRA, 2010, inasmuch as, the said sections have been incorporated in the statute book to prevent the "foreign powers" from interfering and meddling with the democratic process of the country by means of illegitimate, disguised and veiled funding to the individuals, associations and non-governmental organizations functioning in the country who acts as executors and conduits of such nefarious and ostensible designs of such foreign contributors / influencers.

6. It is submitted that since last about two decades a growing tendency is witnessed by the nation. There are several voluntary organizations which are mushrooming in the country who are funded by such forces who are trying to thwart the development of India. Such so called voluntary organizations or NGOs thrive and prosper on foreign and domestic fundings and carry out various activities which are clearly not in the interest of a nation. Their agenda is either to influence body politics or disrupt the administration of justice.

Such NGOs are not under any statutory framework and are not answerable to their code of conduct. They get finances in crores either using their proximity with the Government in power or get finances by the forces opposed to Government in power.

In many cases, the individuals who man such organizations project themselves as idealists, activists and social workers and under the garb and façade of such "activism" try to terrorize the system, public functionaries and work against the interest of the nation. The present case is one such case in which this Hon'ble Court may go into the actual funding pattern of the Respondent No.2, 3 and 4 and examine as to how such funding is utilized.

There already exist substantial inquiry conducted by the statutory authorities which justify registration of offences under various Acts which needs to be monitored by this Hon'ble Court. Unless this Hon'ble Court monitors the investigation, the Respondent No.2 to 4 would anyhow ensure that the truth and / or nefarious designs, if any, do not see the light of the day.

In fact, it is pertinent to mention here that so far as NGOs who were using government funds to carry out their activities were concerned, this Hon'ble Court in Writ Petition [Crl.] No.172 of 2011 titled as Manohar Lal Sharma vs State of Maharashtra vide its order dated 10.1.2017 directed the Respondent No.1 UOI to initiate civil as well as criminal actions against the defaulting NGOs. For ready reference of this Hon'ble Court, the said order is quoted hereinbelow:

"5. It is apparent from the responses of Respondent Nos.2 and 5, that the respondents are not aware of the responsibility of audit, depicted in General Rules, 2005, which is meant for such like VO's and NGO's. Keeping in mind the aforesaid misconception (at the hands of Respondent Nos.2 and 5), we consider it just and appropriate to direct Respondent Nos.2 and 5, to complete the exercise of audit contemplated under the General

Rules, 2005, and submit a report to this Court, by 31st March, 2017.

6. There can be no doubt about the fact, that the amount disbursed by CAPART and other similar nodal agencies, is public money. The same, must be accounted for. It seems from the counter affidavit filed by Respondent Nos.2 and 5, that the only action taken for non-submission of balance-sheets/returns by the VO's/NGO's, is that the concerned VO/NGO is blacklisted. In case of non-compliance, it is essential to initiate civil as well as criminal action, whereby, the concerned public fund is returned to the CAPART/Government, and criminal action is initiated for defalcation/misappropriation. It is, therefore, essential to direct, that the aforesaid action be taken immediately on the completion of the exercise referred to hereinabove. Ordered accordingly"

[Emphasis Supplied]

A copy of the order dated 10.1.2017 passed in WP [Crl] No.172/2011 is annexed hereto and marked as **Annexure P-1**.

Furthermore vide order dated 26.4.2017, this Hon'ble Court directed, the UOI to consider regulating the government funding of the NGOs by way of a legislation. A copy of the order dated 26.4.2017 passed in WP [Crl] No.172/2011 is annexed hereto and marked as **Annexure P-2**.

The petitioner is praying for orders akin to orders passed in W.P. [crl] No.172/2011 for NGOs who have received foreign contribution.

7. It is respectfully submitted that as a matter of fact, the very purpose of FCRA, 2010 is to ensure that no foreign organization, whether it may be a sovereign foreign nation or any of its instrumentalities, by use of money power, influences the democratic functioning of the country, the political institutions, the academics and the administration of justice to suit and further its nefarious agenda, which amounts to nothing short of a blatant, disguised and a veiled attack on the sovereignty of the Republic of India and smooth functioning of its democratic institutions,

through participative process or other illegal means. The very purpose of the FCRA in the respective submission of the petitioner is to foreclose a channel through which foreign powers could bribe and / or grant illegitimate gratification to those who would penetrate into the democratic system of the country and influence, mould and disrupt the same by their acts of commission and omission to further and suit the nefarious agenda of such foreign contributor/s.

8. It is submitted that the purport and intention of the FCRA, 2010 is to ensure that the foreign contribution receipt is not utilized to effect or influence or disrupt electoral politics, policy decision, public servants, admiration of justice and / or other people working in important area of public life who are influential in creating public perception and carving out public policies. The said act, therefore, comes with a presumption that any person who accepts foreign funding in violation of provisions of FCRA and indulges into an act which either influences or disrupts the electoral politics, functioning of public servants, admiration of justice and / or functioning of other people working in important area of public life to create a certain kind of public perception and to carve out a certain public policy in furtherance of the agenda of its foreign contributor is doing nothing but furthering the agenda of a foreign power to the detriment of the democratic process of the country and smooth functioning of constitutional institutions of the country. The said act at times constitutes an attack on the sovereignty of the country itself.

9. It is respectfully submitting the advocating views of such foreign donors and lobbying with the legislature to pursue goals of such foreign donations by using their foreign contribution, *ipso facto*, attracts the presumption, pointing out towards an attempt to influence the framing of public police, legislature, administration of justice, etc. by the outsiders, which are executed through the recipient of such foreign contribution.

10. The utilization of foreign contribution for lobbying and advocating a particular line of action with the members of parliament, thereby influencing the political process and the parliamentary institutions clearly points towards an illegitimate and nefarious indulgence of foreign powers in the democratic process of the country. A bare perusal of the Statement of Objects and Reasons manifests the aforesaid purpose of the FCRA, 2010. The said Statement of Objects and Reasons is quoted hereinbelow for ready reference of this Hon'ble Court.

"It had been noticed that some of the foreign countries were funding individuals, associations, political parties, candidates for elections, correspondent, columnists, editors, owners, printers or publishers of newspapers. They were 8150 extending hospitality. The effects of such funding and hospitality were quite noticeable and to have some control over such funding and hospitality and to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that Parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life may function in a manner consistent with the values of a sovereign democratic republic the Foreign Contribution (Regulation) Act, 1976 (49 of 1976) was enacted. Since its enactment in 1976 several deficiencies had been found and it was proposed to enact a fresh law on the subject by repealing the Act 49 of 1976. Accordingly the Foreign Contribution (Regulation) Bill was introduced in the Parliament."

11. From the order dated 31.5.2016 and order dated 27.11.2016, it is clear that the respondent no.2 and 3 in violation of FCRA have indulged in influencing the democratic process of the country in political arena by unauthorisedly lobbying with the Members of Parliament and Media for passing of certain legislations and to influence the policy decisions. The sensitivity and the gravity of the aforesaid illegitimate interference with the policy formation and legislative action of the government has aggravated in the present case in view of the fact that the same was done while Respondent No.2. was occupying one of the most sensitive office in the

Government of India namely the office of the Additional Solicitor General of India, which has a potential of changing the policy of the Government of India through binding legal opinions.

12. Thus from the acts of commission and omission mentioned by the Respondent No 1 UOI in its order dated 31.5.2016 and order dated 27.11.2016, it cannot be ruled out that the Respondent No.1 has not abused its official position as an ASG to the Government of India and has accepted such foreign contribution as a reward for forbearing any official act and or official function or to favor or disfavor any person rendering any services to the state or to influence a public servant and/or to pass binding direction in form of legal opinion to any governmental department favoring and furthering the goals of the foreign donors.

13. Furthermore, organizing of *dharnas*, rallies, campaigns for advocating framing of a particular policy and using foreign contributions to bear the expense of such *dharnas*, rallies and campaigns further aggravates the situation and points out towards a larger conspiracy conceived to influence the decision making process of the country.

14. Thus from a conjoint reading of the aforesaid facts as stated in the order dated 31.5.2016 and order dated 27.11.2016, makes it evidence that apart from violating the provision of the FCRA 2010, the acts of commission and omission as stated in the aforesaid orders, also constituted separate and distinct offence under the other penal statutes such as IPC, PC, PMLA, Income Tax Act etc and hence it was incumbent on the Respondent No 1 UOI to report and register same so as to set the criminal law machinery in motion so as to reach to the bottom of the truth.

15. It is respectfully submitted that the aforesaid acts conceptually entails great ramification on the smooth and effective

functioning of the democratic process, legislative action and administration of justice of the country and, therefore, if the Union of India has taken cognizance of fact that a person has used foreign contribution, illegally, to pursue the aforesaid activities which comes with a presumption that foreign powers are trying to penetrate the democratic system of the country and influence its decision making process then, it was incumbent on the Respondent No.1 UOI to investigate threadbare as to whether such activity was in pursuance of the treacherous conspiracy hatched by a foreign power to interfere with the political process and administration of justice in the country which was executed through Indian associations and persons in the present case through Respondent Nos.2 to 4 abovenamed. As such in view of the above, a detailed and impartial investigation into the matter was, since inception, necessary to reach to the bottom of the truth, which apparently has not been done by the Respondent No 1 UOI in the present case.

16. The present PIL is, therefore, filed to remediate the aforesaid non action on behalf of the Respondent No.1 UOI and to prevent further perpetration of what in the opinion of the petitioner amount to a frontal attack on the Constitution of the country, its democratic process and administration of justice.

17. It is respectfully submitted that the nature and reputation of the source of the foreign contribution is equally essential in determining as to whether the illegal utilization of said foreign contribution was in pursuance of a nefarious design of a foreign contributor, intended to interfere and meddle with the political process and disrupt administration of justice in the country and whether the same has caused detrimental effect to the democratic process of the country.

18. In the present case, as evident from the orders passed by the competent authority, it is clear that the foreign funds received by

Respondent No. 2 to 4 have been predominantly from Ford Foundation, Open Society Foundation.

19. It is submitted that it is a matter of public knowledge that Ford Foundation acts as a frontal organization of premier international investigative agency of the country of its registration. The said association has been known in playing ostensible roles in destabilizing the economics and political establishments of other countries through participative process and / or by influencing the public servants and public opinions of the targeted country. The nature and activities of the contributor organization in the present case, namely, Ford Foundation, in the opinion of the petitioner is highly suspicious, warranting a full-fledged inquiry as to the aims and objects behind such foreign funding. Similarly, the Open Society Foundation also has a chequered and controversial history. The funding from the said organisation has had detrimental effects on the economy and political stability of various sovereign countries. The funding from the aforesaid organisation raises a huge suspicion as to the intention and design behind these fundings which again warrants a full-fledged investigation in the facts and circumstances of the present case.

DETAILS OF THE PETITIONER

20. The petitioner is voluntary organization of lawyers practicing in diverse field of law represented by Its Secretary Mr. Neeraj, having its registered office at Flat No.103, Kaushalya Park, Hauz Khas, Delhi, having e-mail i.d. as neerajindia@hotmail.com with Phone No.9811075937. As identification, copy of registration certificate of society is enclosed with petition (Registration No.S/684/District South 2011 at Delhi), the society does not have any income and also does not have PAN card. The petitioner was constituted in the year 2011 and since its inception has been working for betterment and advancement in the field of law. The petitioner has been rendering legal aid for the benefit of poor and socially marginalized member of the society on pro bono basis. The

petitioner has also been a pro active in organizing legal seminars and lectures for spreading legal awareness. There are no civil or criminal cases pending against the petitioner in any court of law throughout the country. The petitioner unequivocally submits that it is neither personally interested in the outcome of the present litigation nor has any pecuniary benefit in the same.

20A. The present PIL is filed so as to bring into the notice of this Hon'ble Court the wide spread mal-practices on behalf of respondent No.2 to 4 and inaction on behalf of Respondent No.1 UOI so that appropriate orders in this regard can be passed by this Hon'ble Court if it deems fit and proper in the facts and circumstances of the present case. If no action is taken by respondent No.1 against Respondent No.2 to 4 huge loss to public exchequer will go un-noticed. The activities of Respondent No.2 to 4 are in the knowledge of Respondent No.1, who has failed to take any action against them so far.

21. The petitioner in the present PIL is not giving the details of the activities conducted by it in the field of legal awareness so far as the same is not relevant to the cause espouse by the petitioner in the present petition. However, the petitioner craves leave of this Hon'ble Court to file a detailed affidavit so far as its credential and the credential of its members and office bearers are concerned at a later stage of the hearing, if necessary and / or required by this Hon'ble Court. it is unequivocally stated that the present PIL is filed bonafide and in the interest of justice.

BRIEF FACTS OF THE CASE-

22. Respondent No.4-Lawyers' Collective, a Society bearing registration no. BOM/183/8/GBBSD was registered on 09.03.1981 under the provisions of Societies Registration Act, 1860. The Respondent No.4 was further registered as an Association under Foreign Contribution Regulation Act, 1976 on 23.10.2000 bearing

registration no. 083780742R. The Respondent No.2 and 3 are Secretary and President respectively of the Respondent No.4.

23. That the Respondent No.1, Union of India, received information from various sources pertaining to violation of provision of FCRA by Respondent No.4

24. That an appropriate authority conducted an onsite inspection of records and accounts of the Respondent No.4 Association from 19.1.2016 to 23.1.2016 in the registered office of the Respondent No.4. Based on the findings of the inspection, a questionnaire was issued to the Respondent No.4-Association for their reply and comments on 29.2.2016.

25. That the Respondent No.4- Association submitted its reply on 30.3.2016.

26. That vide order dated 31.5.2016, the registration of Respondent No 4 was suspended under section 13 of FCRA. It is submitted that vide the said order, the appropriate authority recorded its prima facie conclusion that the Respondent No 4 violated the provisions of section 3, 6, 7, 8, 11, 17, 18 and 33 of the FCRA read with Rule 9 and 24 of the Rules framed thereunder. Accordingly, a Show Cause notice was issued to Respondent No 4- Association to show cause within 30 days as to why its registration should not be cancelled for violation of above provisions. A copy of the order dated 31.5.2016 is annexed hereto and marked as **Annexure P-3.**

27. That on 28.1.2016, the Respondent No.4 applied for renewal of its registration certificate. However, the same was rejected by the Respondent No 1, UOI vide its order dated 28.10.2016. It is submitted that as per the information of the petitioner, the Respondent No 4 has also filed a writ petition against the order

dated 28.10.2016 which is pending consideration before the said High Court.

28. That pursuant to the issuance of the aforesaid show cause notice, the Respondent No.4 filed its reply dated 2.6.2016 and also availed an opportunity of personal hearing on 6.9.2016. The Respondent No.4 was also granted an opportunity to file its written submissions in the matter.

29. That vide order dated 27.11.2016, the Competent Authority upon recording its satisfaction that the Respondent No.4-Association transgressed the provision of FCRA, 1976 as well as FCRA, 2010 read with the relevant Rules and that the Respondent No.4-Association suppressed material facts to cover up its acts and omission and commission, in exercise of powers conferred to it under clauses [b], [c] and [d] of sub-section [1] of section 14 of the FCRA, 2010, cancelled the FCRA registration of Respondent No.4. Furthermore, the Competent Authority also further directed that the balance of money in the concerned FCRA Account / utilization accounts including other accounts to which the money has flown out of foreign contribution shall stand frozen from the date of the order and shall be in the custody of the Bank concerned in accordance with Rule 15 of Foreign Contribution [Regulation] Rules, 2011 as amended from time to time. A copy of the order dated 27.11.2016 is annexed hereto and marked as Annexure P-4.

30. That the Respondent No 4 filed a First Appeal bearing Appeal No.36 of 2017 before the Hon'ble Bombay High Court impugning the order dated 27.11.2016 passed by the competent authority. Vide the said appeal, the Respondent No 4 also sought for an interim stay of the aforesaid order. A copy of the First Appeal No.36 of 2017 is annexed hereto and marked as Annexure P-5.

31. That the aforesaid First Appeal came up before the Bombay High Court and vide order dated 30.1.2017, the Bombay High Court was pleased to grant a very limited stay to the Respondent No 4 insofar as utilization and operation of non FCRA domestic bank accounts were concerned. It is submitted that insofar as the cancellation of FCRA registration certificate and operation of FCRA designated bank accounts were concerned, the Hon'ble High Court refused to grant any relief to the Respondent No 4. The said matter is still pending before the Hon'ble Bombay High Court. A copy of the order dated 30.1.2017 passed by Bombay High Court in First Appeal No.36 of 2017 is annexed hereto and marked as Annexure P-6.

32. It is submitted that the respondent nos.2 to 3, under the grab of working as "activists"/organization are involved in several activities to pressurize public functionaries and others and, therefore, it is in public interest that the true facts of such "activists" come in public domain.

33. It is submitted that apart from the foreign contribution which the respondent nos. 2 to 4 receive-clearly to indulge in activities which are against the nation, the respondents nos. 2 to 4 also receive domestic contribution both by cheque as well as a huge amount by cash as it is known to everyone which needs to be thoroughly probed. Unless an investigation is conducted under the supervision of this Hon'ble Court, the respondent no. 2 to 4 will ensure that the truth never come out.

GROUND

34. It is respectfully submitted that from the order dated 31.5.2016 and order dated 27.11.2016, it is clear that acts of commission and omission on the part of respondent no 2-4 had conclusive ingredients to register offences under various other criminal statutes currently in force. The said acts of commission

and omission attracting registration of distinct and separate cases against the respondent no 2-4 are as under-

A. Offence under Prevention of Corruption Act:

- A-1 It is clear from the order dated 31.5.2016 that Respondent No.2, Ms Indira Jaising, while function as Additional Solicitor General for Union of India from the year July, 2009 to May, 2014, received an admitted remuneration of Rs.96.60 lacs. It is submitted that it is impermissible in law for a law officer of the country to remain on the rolls of private entity being paid out of foreign contribution for undisclosed purpose. Furthermore, the Respondent No.2 also travelled to foreign countries while her travelling expenses were borne by the contribution received by Respondent No.4 from foreign sources.
- A-2 In the respectful submission of the petitioner the activities of respondent no.2, as recorded in the orders dated 31.5.2016 and 27.11.2016, while being a government servant, clearly amounted to violation of the provision of Prevention of Corruption Act, inasmuch as, the said money was accepted by the Respondent No.2 while being on the post of Additional Solicitor General of India and there is a presumption that such money was used to influence the political activities, lobby with the Members of Parliament, influence the legislative process, interfere with the administration of justice by filing cases before the courts for and on behalf of foreign donors, though Respondent Nos. 2 And 3.
- A-3 It is submitted that the permissions cited by the Respondent No.2 from Respondent No 1, UOI, is nothing but a façade, inasmuch as, no reason and / or appropriate disclosure was made by the Respondent No.4 before the Respondent No 1, UOI as to for what purposes such remuneration were received

by her and what were the activities and the brief instruction of the respondent for which she was accepting such hefty remunerations. In fact, the said contentions have been rejected by the Respondent No.1-UOI of India in its order dated 31.5.2016 and order dated 27.11.2016.

A-4 It is submitted that the post of Additional Solicitor General of India is a very sensitive post wherein the appointee gets privy to the confidential / secret government documents which are part of the matters of national importance and as such a vague application as allegedly made by the Respondent No.2 and seeking permission of the Respondent No.1, UOI and acceptance of the same, does not suffice in law without precise details and the same is void *ab-initio*.

A-5 It is submitted that as per Law Officers [Condition of Services] Rules, 1972, the Law Officers perform very sensitive and important work which, *inter alia*, include giving advice to Respondent No. 1, UOI on legal matters of national importance, appearance in Supreme Court and High Court in the said legal matters. The legal opinion of a Law officer is binding on the Government of the day. However, despite holding such important position, the Respondent No.2 not only accepted Rs.96.60 lacs from the corpus of foreign contribution but also travelled abroad from the same fund for which no approval or intimation was given and / or taken by the Respondent No.2 from Respondent No.1 UOI.

A-6 It is submitted that despite recording that there was widespread violation of section 3 of the FCRA Act, which itself was incorporated in the statute book, so as to prevent foreign power from meddling, interfering and influencing the political process of the country as well as smooth functioning of the Constitutional institutions, the UOI has failed to further investigate as to whether in light of the other activities of the

Respondent No.2 and Respondent No.4 organization, an offence under Prevention of Corruption Act was made out or not.

A-7 It is further respectfully submitted that the foreign organizations which have funded the respondents abovenamed, are known for their surreptitious interference in political sovereignty of the other States and to influence, abrogate and overturn the same through money power and by interfering with its political functions through participating methods which are veiled. The said fact aggravates the call for instituting an investigation against Respondent Nos.2 to 4.

A-8 It is submitted that the activities of the Respondent No.1 while being the Government Servant clearly amounted to, directly or indirectly, affect or influence electoral politics, decision making process by public servants / bureaucrats, interference with administration of justice through lobbying and media advocacy which fact also aggravates the call for initiating an investigation by an SIT against Respondent Nos.2 to 4.

A-9 It is submitted that despite there being such grave charges against Respondent No.2, the Respondent No.1 -UOI for reasons best known to it, has chosen not to investigate or inquire as to whether the activities of the Respondent No.2 violated the provision of Prevention of Corruption Act. The petitioner is accordingly, by way of present Writ Petition is seeking a direction of this Hon'ble Court to direct the Respondent No.1 UOI to place a status report before this Hon'ble Court bringing out its stand as to whether the act of Respondent No.2 in receiving foreign contribution while being a Government Servant and spending on the activities which it pursued during the said period amounted to an offence under

the section 7, 8, 9, 10, 11, 13 of the Prevention of Corruption Act.

B. Offences under Indian Penal Code and provisions of Companies Act:

B-1 It is submitted that apart from commissioning of offences under PC Act, the orders dated 31.5.2016 and 27.11.2016, also clearly manifest that certain activities of the Respondent Nos.2-4 abovenamed were also violative of various provisions of IPC and constituted an offence under the said Act.

B-2 It is submitted that the orders dated 31.5.2016 and 27.11.2016 clearly demonstrates that the funds received by the Respondent Nos.2-4 above named were embezzled by them and used for their personal gains / expenditure. This again constitutes a separate and distinct offence.

B-3 It is further submitted that the orders dated 31.5.2016 and 27.11.2016, clearly make out that travel expenses of Respondent No.2 and 3 were made out from the foreign contributions, for activities which were contrary to the aims and objects of the Respondent No 4. This again constitutes a separate offence.

B-4 It is clear from the facts enumerated from the aforesaid orders that the funds were utilized not to further the objects of Respondent No.4 but for their personal benefits. The said act clearly amounts as an act of embezzlement of funds which is an IPC offence. However, the Respondent No 1, UOI despite taking cognizance of such acts, have chosen not to take any consequential action against the respondents for violation of IPC offences. It is further the case of the petitioner that the respondent no.2-4 apart from receiving funds in their designated bank account have also received cash funding

which has not been disclosed by the said respondents and no enquiry in respect thereto has been undertaken by Respondent No.1 -UOI.

B-5 It is submitted that once it came to the notice of the Respondent No 1, UOI that the funds were utilized by the Respondent No.2 and 3 not for the purpose for which Respondent No.4 was incorporated, it was incumbent on Respondent No 1, UOI to take the matter to its logical conclusion by registering offences under the IPC and allied acts and it was completely impermissible for them to use the said facts only for the purpose of recording violation of FCRA and closing the matter there itself.

B-6 It is submitted that it is the duty of the Respondent No 1, UOI to initiate process of criminal law as and when it receives or take cognizance of any fact which leads to commission of a cognizable offence under IPC and / or other allied criminal acts. In the present case, it is apparent that despite recording and taking cognizance of facts which showed a clear and manifest act of embezzlement of money, the Respondent No 1, UOI chose to initiate no action against the Respondent No.2-4.

B-7 It is submitted that such an act on behalf of the Respondent No 1, UOI clearly amounts to either abdication of duty or shielding the Respondent Nos.2 and 3 for the reasons best known to them and as such a full-fledged investigation in this regard investigating all those who have illegitimately benefited themselves from the funds and / or tried to shield Respondent Nos. 2 and 3 is warranted.

C. Violation under Income Tax Act:

- C-1 It is submitted that a bare perusal of the orders dated 31.5.2016 and 27.11.2016 reveal that the Respondent No. 4 abovenamed received foreign contribution in non-designated accounts, utilized the same for extraneous reasons, transferred the foreign contribution to foreign countries and did not disclose the funds from foreign contribution in Annual Return Form FC-6.
- C-2 It is submitted that from the order dated 31.5.2016, it is clear that the Respondent No.4 association received foreign contribution from foreign donor amounting to Rs.29.33 lacs, Rs.16.18 lacs and Rs.7.54 lacs by way of bank transfers during the financial years 2013-14, 2014-15 and 2015-16 which was credited directly to the utilization bank [non-designated bank] instead of FC designated bank account of the Respondent No.4.
- C-3 From a reliable information received by the petitioner, which closely analyses the FC data and IT return filed by Respondent No.4, it is revealed that Respondent No.4 committed the following violations –
- f) The Respondent No 4 under-reported the foreign contribution under FCRA to the Ministry of Home Affairs to the tune of Rs.1.58 crores.
 - g) The Respondent No 4 instead of giving the exact particular and details of the donor, showed them under a generic head i.e. "others" while reporting the same to the Income Tax Department.
 - h) That the Respondent No 4 concealed the income of about Rs.1.5 crores in Income Tax Return and around Rs.22 lacs in FC-6 return to the MHA in the financial year 2009-10.

- i) The Respondent No 4 concealed an income of Rs.2.5 crore in Income Tax Return for the financial year 2010-11 and an income of Rs.2.3 Crore in FC-6 Return filed by it with Ministry of Home Affairs during the said year.
- j) The Respondent No 4 further concealed an income of Rs.2 crores in its FC-6 return filed by Ministry of Home Affairs for the financial year 2011-12.

C-4 It is respectfully submitted that the aforesaid facts constitute gross violation of the provision of Income Tax Act, however, as per the best knowledge of the petitioner no consequent action has been taken by the Respondent No 1, UOI in this behalf till date.

C-5 It is submitted that no action in this behalf amounts to serious abdication of duty on behalf of the officials of Respondent No 1, UOI which clearly warrants an impartial and court monitored investigation into the affairs of the state.

C-6 Thus, in view of the aforesaid, it is clear that UOI has not carried out a detailed investigation into the activities pursued by the Respondent No 2 to 4 above and has restricted its inquiry only insofar as grant and cancellation of FCRA license to Respondent No 4 was concerned, despite noticing and concluding that the activities of the Respondent No 2 to 4 amounted to interference and influencing with the political decision making process, administration of justice and meddling with public perception.

33. That the petitioner has filed no other writ petition or any other proceedings before this Hon'ble Court or any other Court.

PRAYER

In view of the aforesaid, it is respectfully prayed that this Hon'ble Court may be pleased to

- a) Direct the Respondent No.1 -Union of India to register an FIR for various offences committed by the Respondent No.2, 3 and 4 as recorded in its orders dated 31.5.2016 and 27.11.2016 which constitute separate and independent offences under the various criminal statutes namely IPC, PC Act, PMLA, Advocates Act etc.;
- b) Direct the Union of India to initiate appropriate action / proceedings against Respondent No.2 to 4 for violation of the provision of Income Tax Act as recorded by in its order dated 31.5.2016 and order dated 27.11.2016 and as may come out during such proceedings;
- c) Direct the Union of India to place on record of this Hon'ble Court all the materials including confidential material received by it which led to passing of the order dated 31.5.2016
- d) Constitute a Special Investigation Team [SIT] comprising of officers of investigating agencies as deemed fit and proper by this Hon'ble Court for the purpose of investigating the offences committed by Respondent No.2 to 4 which constitutes offences under other criminal acts namely PC Act, IPC, PMLA and Income Tax Act etc. and direct it to function under the monitoring and supervision of this Hon'ble Court.
- e) Pass such other or further order/s as this Hon'ble Court may deem fit and proper by this Hon'ble Court.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY:

Drawn on : 06.05.2019

Filed on : .05.2019

SURENDER KUMAR GUPTA
ADVOCATE FOR THE PETITIONER

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
WRIT PETITION (CRIMINAL) NO. 142 OF 2019

IN THE MATTER OF :-

Lawyers Voice

... PETITIONERS

VERSUS

Union of India & Ors.
Indira Jaising & Ors.

... RESPONDENTS

AFFIDAVIT

I, Neeraj, S/o Lt Shri S. S. Lal, aged about 50 years, having my address at Flat No 103, kaushalya park, Hauz Khas, New Delhi, do hereby solemnly affirm and state as follows:

1. That I am the secretary of the Petitioner organization in the above mentioned case and being conversant with the facts of the case, I have been duly authorized by the Petitioner Organization am competent to swear this affidavit.

1.A. The Petitioner will not get any personal gain Private or Public or any other reason in filing the Public Interest Litigation

2. That I have gone through and understood the contents of the accompanying Writ Petition, page 1 to 23 para 1 to 34, Synopsis and List of Dates, page B to V, and the accompanying Applications. I say that the contents of the same are true and correct.
3. That the annexures filed along with the accompanying Writ Petition are true copies of their respective originals.

DEPONENT

For LAWYERS VOICE

Verification:

Verified at New Delhi on this the 06 day of May, 2019 that the contents of the above affidavit are true and correct, no part of it is false and nothing material has been concealed therefrom.

DEPONENT

For LAWYERS VOICE