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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE K.NATARAJAN

REGULAR FIRST APPEAL NO. 833 OF 2024

BETWEEN:

ACTION FOR COMMUNITY ORGANISATION,
RAHABILITATION AND DEVELOPMENT
A SOCIETY REGISTERED UNDER THE KARNATAKA
SOCIETIES REGISTRATION ACT, 1960,
HAVING ITS REGISTERED OFFICE AT
THEKAEKARA HOUSE, 10TH MAIN, 2ND CROSS,
BANASAWADI, KALYANA NAGAR,
BANGALORE - 560 043.

REPRESENTED BY ITS PRESIDENT
SRI. STANY GEORGE THEKAEKARA.

...APPELLANT

(BY SRI. SUBRAMANYA S UPASANA, ADVOCATE)

AND:

UNION OF INDIA
THE MINISTRY OF HOME AFFAIRS,
FOREIGNERS DIVISION,
FCRA WING, NEW DELHI - 110 002.
REPRESENTED BY ITS SECRETARY.

...RESPONDENT

(BY SRI. SHANTHI BHUSHAN H., DSGI)

THIS RFA IS FILED UNDER SECTION 31 OF FOREIGN CONTRIBUTION (REGULATION) ACT 2010 R/W ORDER XLI OF THE CPC, PRAYING TO SET ASIDE THE ORDER DATED 30.03.2024 COMMUNICATED TO THE APPELLATE BY THE RESPONDENT VIDE THEIR E MAIL NO REPLY MHAFCRA @ NIC.IN VIA NIC.IN IN REJECTING THE APPLICATION OF THE APPELLANT FOR RENEWAL UNDER FCRA, 2010 UNDER SECTION 16(1) R/W SEC.12(4) (f)((iii) OF FCRA 2010 FOR ALLEGED CONCEALMENT OF FACTS AND PENDING CASE.





THIS APPEAL, COMING ON FOR FURTHER HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE K.NATARAJAN

ORAL JUDGMENT

This appeal is filed by the appellant under Section 31 / 31(2) of Foreign Contribution (Regulation) Act, 2010 (hereinafter referred to as 'FCRA, 2010') read with Order XLI of CPC for setting aside the order dated 30.03.2024, whereby the application made by the appellant for renewal of licence has been refused by the respondent herein.

2. Heard the arguments of learned counsel appearing for the appellant and learned Deputy Solicitor General of India (DSGI) appearing for the respondent.

3. The case of the appellant is that the appellant is said to be a Society registered under the Karnataka Societies Registration Act, 1960, who has been confirmed by the Central Government under Section 12 of FCRA, 2010. The appellant received foreign contribution for an object to provide health, education, economic development, housing and construction



activities to some Adivasis residing in the border areas of Karnataka, Tamil Nadu and Kerala State. The appellant also filed an application under Section 16 of FCRA, 2010 for renewal of certificate, which came to be rejected by the respondent authority vide e-mail order dated 30.03.2024. Feeling aggrieved by the same, the appellant is before this Court.

4. The learned DSGI appearing for the respondent raised an objection regarding maintainability of the appeal filed under Section 31(2) of the FCRA, 2010. It is contended by the DSGI that there is a revision provision provided under Section 32 of the FCRA, 2010. Such being the case, the appeal is not maintainable. The learned DSGI has also filed a counter affidavit on the maintainability.

5. The learned counsel for the appellant has contended that the application was filed for renewal of licence under Section 16 of the FCRA, 2010. It is contended that as per Section 31(2) of the FCRA, 2010, it is an appealable order. Any order passed by the Authority is deemed to be a decree, which is available under Order XLI of First Schedule of CPC.



Therefore, the appeal is maintainable. In support of his contentions, the learned counsel has relied upon the judgment of the similar order passed by the High Court of Judicature at Madras in the case of **TRIPURA FOUNDATION (INDIA) Vs. THE SECRETARY TO GOVERNMENT OF INDIA**, passed in Civil Miscellaneous Appeal No.1080/2024 and C.M.P. Nos.10009 and 10010/2024 dated 24.07.2024. It is contended by the learned counsel for the appellant that the Madras High Court on considering the similar issue, has held that the appeal is maintainable under Section 31(2) of the FCRA, 2010, and therefore, the appeal is maintainable. The learned counsel, on merits, has contended that the order passed by the Authority rejecting the renewal application was based upon Section 12 of the FCRA, 2010, and therefore, the appeal is maintainable. There is no speaking order or any reason is assigned for rejection of the application for renewal of licence of the appellant. Therefore, prayed setting aside the impugned order.

6. Per contra, the learned DSGI has seriously objected the appeal contending that the appeal is not maintainable. Further, there is reason assigned for rejection of the application



as the application was made from Karnataka State, but most of the business is done at the State of Tamil Nadu. Such being the case, the functioning of the appellant-Society itself is suspicion. It is further submitted that the amount was received from the Foreign Country, but it was being diverted for other desirable purpose. Therefore, the application came to be rejected. The order cannot be appealable and a revision has to be filed. In support of his contentions, the learned DSGI has relied upon the judgment of the Delhi High Court in the case of **DR. R.N. GUPTA TECHNICAL EDUCATIONAL SOCIETY Vs. UNION OF INDIA** decided on 01.05.2024 in W.P. (C) No.5986/2024.

7. Having heard the learned counsel for the parties, perused the records.

8. The points that arise for consideration in this appeal are:

(i) Whether rejection of the original application under Section 16 of the FCRA, 2010, would attract, for filing an appeal Under Section



31(2) or a revision lies under Section 32 of the FCRA, 2010.

(ii) What order?

9. On perusal of the records, the impugned order passed by the Authority for having rejected the renewal application filed by the appellant is available, which reads as under:

" Your application 0300105462021 has been refused due to following reasons:

As determined by the Competent Authority the application for RENEWAL under FCRA, 2010 has REFUSED under section 16(1) read with section 12(4)(a)(vi) and 12(4)(f)(iii) of FCRA 2010 for concealment of facts and pending case."

10. On perusal of the aforesaid order, it reveals that the application for renewal filed by the appellant was refused under Section 16(1) read with Section 12(4)(a)(vi) and 12(4)(f)(iii) of the FCRA, 2010, for concealment of the facts and pending case. A careful reading of the impugned order passed by the respondent-Authority, of course, is not a speaking order and the Authority has not given any proper reason for rejection of the application. However, it is blatantly rejected by the



Authority by quoting Section 12 of the FCRA, 2010. Now, the question is whether the appeal is maintainable or not ?

11. In this regard, the High Court of Judicature at Madras in the case of *Tripura Foundation*, cited supra, has passed an order holding that the appeal is maintainable under Section 31(2) of the FCRA, 2010. By relying upon the paragraph 3 of the judgment in the case of **SAMUEL FOUNDATION CHARITABLE INDIA TRUST Vs. UNION OF INDIA** passed in W.P. (C) No.9344/2024 decided on 11.07.2024 by the High Court of Delhi, the High Court of Madras, at paragraphs 9, 10, 11 and 13 of the judgment in the case of *Tripura Foundation*, cited supra, has held as under :

9. De hors, the above stand taken by the respondent before the High Court of Delhi, even on a plain reading of Section 31(2) r/w Section 14 of FCRA, 2010, it is clear that an appeal is maintainable. The renewal of registration certificate is applied under Section 16 of FCRA, 2010. The proviso to sub-section 1 of Section 6 of FCRA, 2010, makes it clear that the Central Government before renewing the certificate must make such enquiry and satisfy itself that the person, who has applied for renewal, has fulfilled all the conditions specified in



Section 12(4) of FCRA, 2010. Therefore, while dealing with a renewal application, the authority is expected to deal with the same in terms of Section 12(4) of FCRA, 2010. Section 16 of FCRA, 2010, cannot be read in isolation and it has to be necessarily read along with Section 12 of FCRA, 2010..

10. A careful reading of the impugned e-mail communication sent to the appellant shows that the renewal application was rejected in line with Section 16(2) r/w Sections 12(4)(a)(vii) and 12(4)(1)(iii) of FCRA, 2010. A reading of the counter affidavit filed by the respondent shows that the main ground for refusing renewal of the registration is because the application was not in the prescribed format and it did not satisfy the requirements. The counter affidavit has not dealt with any other ground specified in the e-mail communication touching upon Sections 12(4)(a)(vii) and 12(4)(f)(iii) of FCRA, 2010.

11. Section 31(2) of the FCRA, 2010, which has been extracted supra, specifically talks about Section 12(4) of FCRA, 2010. The order passed rejecting the renewal application under Section 16 of FCRA, 2010, was on the basis of relying upon Section 12(4) of FCRA, 2010. Therefore, only an appeal will lie as against the order passed rejecting the renewal application.



13. The judgments that were relied upon by learned counsel for respondent will not have any bearing in the present case. This Court reminds itself that the right of appeal is a right created by a statute and unless and otherwise the statute provides for a specific right, an appeal cannot be filed. In the instant case, this Court has reached a categorical finding that the application for renewal submitted under Section 16 of FCRA, 2010, has to be necessarily read along Section 12(4) of the FCRA, 2010 and therefore, the order rejecting the renewal application will squarely fall within the parameter under Section 31(2) of the FCRA, 2010.

12. Finally, the Madras High Court has held that the appeal under Section 31(2) of FCRA, 2010 is maintainable. However, learned DSGI for the respondent has contended that the judgment of the High Court of Madras is not applicable to the facts of this case, since there is no proper appreciation of the provision of Sections 31 and 32 of the FCRA, 2010, where the provisions of Section 31 of FCRA, 2010, clearly reveals that the appeal lies only in respect of the order passed under Section 29 of the FCRA, 2010 and in clause (f) of sub-section (1) of section 3, or any person or association referred to in



section 6 or section 9, aggrieved by an order made in pursuance of section 5 or by an order of the Central Government refusing to give permission under this Act. Therefore, the revision lies and not the appeal.

13. In this background, let me verify the impugned order and the provisions of Section 31(1)(a) and (b) of FCRA, 2010, which reads as under:

Section 31 - Appeal :

(1) Any person aggrieved by any order made under section 29 may prefer an appeal,—
(a) where the order has been made by the Court of Session, to the High Court to which such Court is subordinate; or

(b) where the order has been made by any officer specified under clause (b) of sub-section (1) of section 29, to the Court of Session within the local limits of whose jurisdiction such order of adjudication of confiscation was made,

within one month from the date of communication to such person of the order:

Provided that the appellate court may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal



within the said period of one month, allow such appeal to be preferred within a further period of one month, but not thereafter.

14. On careful reading of sub-section (1) of Section 31 of FCRA, 2010, where the appeal lies on any order passed by any Authority for adjudication of confiscation of the articles or currency under Section 28 and the adjudication of confiscation of the articles under Section 29 of the FCRA, 2010.

15. Sub-section (2) of Section 31 of the FCRA, 2010, reads as under:

(2) Any organisation referred to in clause (f) of sub-section (1) of section 3, or any person or association referred to in section 6 or section 9, aggrieved by an order made in pursuance of section 5 or by an order of the Central Government refusing to give permission under this Act, or by any order made by the Central Government under sub-section (2) or sub-section (4) of section 12, or sub-section (1) of section 14, as the case may be, may, within sixty days from the date of such order, prefer an appeal against such order to the High Court within the local limits of whose jurisdiction the appellant ordinarily resides or carries on business or personally works for gain, or, where the appellant is



an organisation or association, the principal office of such organisation or association is located.

16. On careful reading of Sub-section (2) of Section 31 of the FCRA, 2010, it clearly says that any organisation referred to in clause (f) of sub-section (1) of Section 3, or any person or association referred to in Section 6 or Section 9, aggrieved by an order made in pursuance of Section 5 or by an order of the Central Government refusing to give permission under this Act, or by any order made by the Central Government under sub-section (2) or sub-section (4) of Section 12, or sub-section (1) of Section 14, as the case may be, the appeal lies.

17. Once the Central Government grants certificate, it has power to suspend the certificate under Section 13 and cancel the same under Section 14 of the FCRA, 2010. Sub-section (2) of Section 31 provides for appeal, if any order made by the Central Government under sub-section (1) of Section 14 for the purpose of cancellation of the certificate. There must be some adjudication of the matter and then it is appealable.



18. Section 16 of FCRA, 2010, is only for renewal of certificate. The application shall be renewed within six months before the expiry of the period of the certificate. As per the procedure, the Central government may renew the certificate, provided it may refuse to renew the certificate in case where a person has violated any of the provisions of this Act or Rules made thereunder.

19. On perusal of Section 13 or Section 14, any such order passed for suspension or cancellation of certificates and granting certificate under Section 12, these orders are all appealable, apart from any order passed under Sections 28 read with Section 29 of the FCRA, 2010 which is appealable under Section 31(2) of the FCRA, 2010. But, here, in this case, Section 16 of the Act is not covered under sub-section (2) of Section 31 of the FCRA, 2010, where the respondent-authority refused renew the license. Though there is a reference available in the impugned order as per Section 12(4)(a)(vi) and 12(4)(f)(iii) of the FCRA, 2010, the renewal was refused. But, only mentioning Section 12 of FCRA, 2010, itself is not sufficient to give a right to the appellant to file an appeal under



Section 31(2) of the FCRA, 2010. On the other hand, I am of the view that the impugned order is a revisable order under Section 32 of the FCRA, 2010, and not an appealable order under Section 31(2) of the FCRA, 2010.

20. In this regard, learned Counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of ***KOUSHIK MUTUALLY AIDED COOPERATIVE HOUSING SOCIETY Vs. AMEENA BEGUM AND ANOTHER*** reported in ***2023 LiveLaw (SC) 1056***, wherein at paragraph 17, the Hon'ble Supreme Court has held that when there is express provision available under the CPC or any statute under which an appeal is maintainable, by-passing the same, a Revision Petition cannot be filed. It is needless to observe that in the absence of an appellate remedy, a revision may be maintainable.

21. In this case, Section 31 of the FCRA, 2010, itself provides the procedure for filing an appeal for certain provisions mentioned therein. The High Court of Delhi in the case of *Gupta Technical Educational Society*, cited supra, relied



on by the learned DSGI for the respondent, has held that the revision lies and at the request of the petitioner, the said case was also permitted to withdrawn with liberty to the petitioner to file a revision before the competent authority. In respectful agreement with the view taken by the High Court of Delhi, the same is applicable to the case on hand, where the appeal is not maintainable under Section 31(2) of the FCRA, 2010 and on the other hand, the revision lies under Section 32 of the FCRA, 2010.

22. In view of the above reasons, whether the impugned order is a speaking or cryptic order, is to be decided by the authorities in the revision is filed by the appellant before the appropriate authorities. However, in respect of the limitation, though the appeal is filed within limitation and chosen the wrong Forum, the limitation can be exempted under Section 14 of the Limitation Act. Therefore, I am of the view that the contention taken by the appellant shall be kept open to be urged before appropriate Forum.



23. Accordingly, the appeal is dismissed as not maintainable.

24. However, liberty is granted to the appellant to file a revision before the appropriate authority. The time consumed before this Court, in this appeal, is given exemption.

Sd/-
(K.NATARAJAN)
JUDGE

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List No.: 1 SI No.: 16
CT:SK