**IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Judgment delivered on: February 14, 2022***

\+ W.P.(C) 6400/2021, CM Nos. 20091/2021, 34987/2021, 37037/2021, 44671/2021 & 46751/2021

COMMONWEALTH HUMAN RIGHTS INITIATIVE ..... Petitioner

Through: Mr. Arvind P. Datar Sr. Adv. and Mr. Chandra Uday Singh, Sr. Adv. with Mr. Kabir Dixit and Ms. Illa Sheel, Advs.

Versus

UNION OF INDIA ..... Respondent

Through: Ms. Aishwarya Bhati, ASG with Mr. Anil Soni, CGSC, Mr. Devesh Dubey and Mr. Aman Sharma, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**J U D G M E N T**

**V. KAMESWAR RAO, J**

1. This petition has been filed by the petitioner with the following prayers:

> *"The Petitioner, therefore, prays that in the facts and circumstances of the present case this Hon'ble Court may be pleased to:*
>
> *a) Issue a writ, order, or direction in the nature of Certiorari quashing the Impugned Suspension Order dated June 07, 2021, Number F.No. II/21022/58(855)/2016-FCRA(MU} passed by the Deputy Secretary to the Government of India, Foreigners Division [FCRA Monitoring Unit], Ministry of Home Affairs under Section 13 of the Foreign Contribution Regulation Act, 2010.*

*b) Pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

2. It is the case of the petitioner, being Commonwealth Human Rights Initiative (*hereinafter, 'CHRI'*) that it is an independent, non-profit, civil society organisation, headquartered in New Delhi, India since 1993, working to promote access to justice, access to information and timely fulfilment of the United Nations Sustainable Development Goals (SDGs) in India and in Commonwealth countries. The petitioner was registered under the Societies Registration Act, 1860 on July 21, 1993.

3. It is stated in the petition that several institutions of the Central and State Governments including Human Rights Commissions, Central and State Information Commissions, law enforcement agencies and legal aid authorities, recognise the petitioner as a resource partner in the domains of police and prison reform and transparency in governance.

4. On September 03, 1993, the petitioner was granted a Certificate of Registration No. 231650671 under the Foreign Contribution Regulation Act, 1976. Thereafter, on October 28, 2016, the petitioner's registration was renewed up to October 31, 2021, under the Foreign Contribution (Regulation) Act, 2010 *(hereinafter, 'FCRA, 2010'*).

5. On June 07, 2021, the petitioner's FCRA Registration was suspended for 180 days under Section 13 of the FCRA, 2010 pending

consideration of cancellation of Certificate of Registration of the petitioner under Section 14(1)(d) of the FCRA, 2010.

6. On June 26, 2021, the petitioner communicated its response to the impugned suspension order, wherein it is stated that there was no violation of the FCRA, 2010 or Foreign Contribution (Regulation) Rules, 2011 (*hereinafter, 'FCRR, 2011'*) by the petitioner as alleged. Accordingly, the petitioner requested urgent revocation of the impugned suspension order by June 30, 2021.

7. On December 01, 2021, the impugned suspension was extended for another period of 180 days. On December 07, 2021, a Show Cause Notice under Section 14(2) of the FCRA, 2010, was served on the petitioner. According to the Show Cause Notice, the respondent had authorised an audit of the petitioner's books of accounts and activities for the first time vide order dated July 29, 2021, passed under Section 20 and Section 23 of the FCRA, 2010. The said audit was conducted from August 09, 2021, to August 14, 2021. Upon scrutiny of audited records, certain observations were drawn and shared with the petitioner vide letter dated October 07, 2021, for comments.

8. It is the case of the petitioner that the impugned order of suspension is erroneous in terms of the following finding:

> (a) *"Details of activities/ projects for which foreign contribution has been received and utilized has not been given at the prescribed point 3(a) in FC-4 form in AR for the FY 2018-19."*

In this regard, it is stated that the response by the petitioner dated June 26, 2021, to the impugned order has duly clarified that the

details of project-wise foreign contribution received and utilised during the Financial Year (*hereinafter, 'FY'*) 2018-2019 along with the opening and closing balance of foreign contribution that has been furnished online by the petitioner in the receipts account, payments account, income account and the expenditure account for the year ended March 2018-2019. These documents were annexed to the Annual Report (AR) uploaded online in FC-4 Form. Further, all the information required to be submitted under point 3(a) of the FC-4 Form had already been disclosed in the documents annexed to the said form. The said information was submitted again as per the format given under point 3(a) of the FC-4 Form in Annexe-2 to the petitioner's response dated June 26, 2021.

(b) *"The Bank Account No. 60051011 0004721, Bank of India, New Delhi opened on 18.02.2016 has not been intimated online to the Ministry and there is flow of foreign contribution in this Bank account."*

*"Further, one utilization account through which the Association has been utilizing foreign contribution has not been intimated in ARs for the FY 2016-17 and 2017-18."*

In this regard, it is stated that the response by the petitioner dated June 26, 2021, to the impugned order has duly clarified that:

a. On February 22, 2012, the petitioner opened a new utilisation bank account with the name: "Commonwealth Human Rights-FNF" with account number: 600510110003989 with the Bank of India, Green Park Branch, New Delhi, 110016. This action was taken in accordance with the requirement of the donor

specified in the grant letter that an exclusive utilisation account be opened for the purpose of utilising funds under this grant.

b. The above-mentioned bank account was closed on October 05, 2016, after the said project came to an end. There was no utilisation of foreign funds from this account after that date. Moreover, it was submitted that in the FYs 2016-2017, the only entries are of bank interest deposited.

c. The details of this utilisation account have been intimated to the respondent (FCRA Division) through various returns and on multiple occasions. In addition, the details of the said utilisation account were intimated to the FCRA Division while submitting the petitioner's application for renewal of the certificate of registration (FC-3) on February 22, 2016, i.e., four days after the opening of that account. Furthermore, it is submitted that the intimation of the opening of a new utilisation account was given by the petitioner as per Rule 9(1)(e) of the FCRR, 2011. The said account was in fact reported to the respondent since its opening. The respondent was well acquainted with the opening of the said account and in no way has the petitioner concealed this information. Consequently, the renewal of the registration of the petitioner was approved on October 28, 2016.

d. That apart, further on March 02, 2016, the petitioner informed the FCRA Division of the aforementioned new utilisation account with details such as the account name, number, address of the bank branch; IFSC Code was dispatched to the

Secretary, Ministry of Home Affairs (*hereinafter, 'MHA'*) via Speed Post.

e. The operation of the said account was again disclosed in the Annual Return of 2015-2016 submitted on December 15, 2016, and in future years.

f. Moreover, on January 18, 2017, the petitioner furnished a detailed reply to the Questionnaire received from the respondent vide communication No. F.No. II/21022/58(0855)/2016-FC(MU) dated January 02, 2017, regarding the manner of receipt and utilisation of foreign funds for the FYs 2011-2012 to 2015-16. The details of every receipt and utilisation account including the aforementioned bank account were furnished at Annexure-I of the said reply.

g. The "closed status" of this utilisation account was also duly intimated to the FCRA Division of the respondent vide Annexe-I attached to petitioner's detailed reply of September 20, 2018, to the Questionnaire received from the respondent vide communication No. II/21022/ 58(213)/2018-FC(MU) dated September 05, 2018, regarding the manner of receipt and utilisation of foreign funds by the petitioner for the FYs 2011-2012 to 2016-2017.

h. Further, the bank statement pertaining to the said utilisation account was attached to the Annual Return for every FY subsequent to the date of its opening until its closure on October 05, 2016, filed online in the FC-4 Form. It is stated that from the copy of the statement of the bank account,

attached with the return for the AY 2016-2017, it may be seen that the account has been closed with NIL balance. It was further stated that the hard copy of the said return was also submitted by speed post on December 23, 2017, with a copy of the bank statement.

i. The details of the above-mentioned account had been closed, the same was not reported in the Annual Return for 2017-2018 onwards. However, it appears that this closed account is incorrectly being reflected in the pre-populated format of the FC-4 Form by the respondent although the status of the account is closed. It is submitted that the said account was not utilised for any purpose since its closure on October 05, 2016.

(c) *"In addition the Association has refunded some foreign contribution back to the donor in the FY 2013-2014 and 2014-2015 in violation of Section 8(1)(a) of the FCRA, 2010."*

In this regard, it is submitted that Section 8(1)(a) of the FCRA, 2010 does not apply to or prohibit *bona fide* refunds of unutilised foreign contributions back to the donor. That such refunds in the FYs 2013-2014 and 2014-2015 have wrongly been held to violate this provision. It is stated that the said refunds were in accordance with the express provision contained in the respective grant letters, after following due banking procedure, and were a part and parcel of the scheme of the utilisation of the project funds. The correct position is that there is no provision in the FCRA, 2010 preventing or prohibiting refund of foreign contribution / donation to the Foreign Source (defined under Section 2(1)(j)) from whom the foreign contribution

was received as per the terms of the grant. It is stated that in the absence of any such express or even implied prohibition on refund of unutilised contribution, the respondent is wrong to consider a refund to be a violation of the provision of the FCRA, 2010 merely because there is no provision for refund in the Act.

(d) *"It is also observed from bank statement of utilization account that the Association is mixing foreign contribution with domestic donation in violation of Section 17 of the Act."*

In this regard, it is stated that the specific bank accounts / transactions and the FYs for which mixing of foreign contribution with domestic donation has been alleged have not been mentioned. It is submitted that according to the petitioner's records and understanding, there has been no mixing of foreign contributions and domestic donations on any account.

9. Mr. Arvind P. Datar and Mr. Chandra Uday Singh, learned Senior Counsel appearing on behalf of the petitioner submitted that Section 13 of the FCRA, 2010 requires recording of reasons as to why the Competent Authority was satisfied that the drastic and optional action of suspension was necessary pending consideration of the question of cancellation of the certificate on any of the grounds mentioned in Section 14(1) of the FCRA, 2010. However, no such reason(s) explaining the necessity of suspension has been recorded or communicated through the impugned order dated June 07, 2021. They further contended that given the drastic nature of the power of suspension under Section 13(1) to bring an organisation to a grinding halt and to threaten its existence as well as damage its reputation, this

particular safeguard of recording reasons for the necessity of suspension enshrines an important principle of natural justice, which has been violated.

10. That apart, they contended that the impugned order is *ultra vires* to Section 13(1) of the FCRA, 2010 as the reasons in the order of suspension are wholly alien to the scheme of suspension under Section 13(1) of the FCRA, 2010. Moreover, they stated that the impugned order has made a hotchpotch of the provision of suspension under Section 13(1) along with the provision for cancellation under Section 14 of the FCRA, 2010.

11. According to them, the Competent Authority without any inquiry and without giving any opportunity of being heard to the certificate holder, has concluded that certain provisions of FCRA, 2010 have been violated and on that basis proceeded to suspend the certificate under Section 13(1) of the FCRA, 2010. In this regard, they also contended that the impugned order has been passed in the exercise of a power not vested with the respondent under Section 13 of the FCRA, 2010.

12. It was further contended that the first three allegations in the impugned order of non-intimation of specific accounts are erroneous vide petitioner's response to the impugned suspension order dated June 26, 2021, the petitioner has demonstrated that the accounts / details referred to in the impugned order had in fact been furnished by the petitioner and there was no violation of Sections 17(1), 18, and 19 of the FCRA, 2010 read with Rules 9(1)(e) and 17 of the FCRR, 2011 as alleged. Moreover, the findings of fact relating to such violations are

extraneous to an order of suspension under Section 13(1) of the FCRA, 2010.

13. In response to the averment that field inputs are "grave" and "sensitive", it is submitted that in absence of any indication of any reason for such adjectives, the same can only be considered merely prejudicial. Furthermore, it is submitted that all of the petitioner's activities are already in the public domain. Any donors who have ever given foreign contributions to the petitioner are distinguished and credible and have already been disclosed by the petitioner to the respondent. Section 12(4) of the FCRA, 2010 provides an exhaustive list of reasons for which registration or renewal may be denied to an organisation. However, terms such as "grave", "sensitive", and "officially classified as secret" are not listed in Section 12(4) or anywhere else in the Act for grounds for action and thus the respondent is using such terms to cause prejudice.

14. It is submitted that the provisions under FCRA, 2010 do not provide for automatic suspension of FCRA certificate on initiation of inquiry into an organisation's affairs or on commencement of consideration on the question of cancellation of such organisation's certificate. The power of suspension has been provided only as an optional power under Section 13 of the FCRA, 2010.

15. According to them, based on proceedings initiated during the pendency of this petition, which impugns the order of suspension dated June 07, 2021, on December 07, 2021, a Show Cause Notice under Section 14(2) of the Act was served on the petitioner. As stated in the said notice, the respondent had authorised an audit of the

petitioner's books of accounts and activities for the first time vide order dated July 29, 2021, passed under Section 20 and Section 23 of the Act. The said audit was conducted from August 09, 2021, to August 14, 2021. Upon scrutiny of audited records, certain observations were drawn and shared with the petitioner vide letter dated October 07, 2021, for comments. The petitioner's response dated November 10, 2021, was duly examined by the respondent. Only after such consideration of the petitioner's reply to audit observations, the respondent discovered each of the grounds under Section 14(1) stated in the Show Cause Notice, and thereafter the said notice was served on the petitioner.

16. The Show Cause Notice dated December 07, 2021, read with Section 20 and Section 23 of the FCRA, 2010 shows that an inquiry as required under Section 14 of the FCRA, 2010 was authorised by the respondent only on July 29, 2021, and the question of cancellation can be said to have been pending consideration only after that date for the purpose of Section 13(1). These subsequent events however do not state the material illegality of the June 07, 2021 suspension order as extended on December 01, 2021, with retrospective application. It is submitted that the impugned Order is liable to be quashed as the same was passed without the existence of the necessary jurisdictional facts prescribed under Section 13(1) of the FCRA, 2010

17. As an after-thought, in its final arguments, the respondent has urged that two questionnaires which are 3 and 4 years old respectively may be treated as inquiries for the purpose of Section 14(1) and Section 13(1) of the FCRA, 2010. Neither does the impugned

suspension order refer to the said questionnaires nor do they find any mention in the order of extension or in the Show Cause Notice dated December 07, 2021. According to them, it is the petitioner's case that there was no inquiry or Show Cause notice on the date of suspension. Even the respondent's counter-affidavit nowhere stated that the said questionnaires were in fact an inquiry into FCRA violations by the petitioner. The said questionnaires are general questionnaires that are sent to all FCRA registered entities in the country from time to time and do not constitute an inquiry for the purpose of Section 14. To accept them as an inquiry for Section 14 would be to forego an important procedural safeguard for all FCRA registered entities.

18. They stated it is a gross misinterpretation to state that *"the Impugned Suspension order itself records as many as five irregularities/contraventions by way of example and this could not have been possible without an inquiry as required under Section 14(1)."* It is their submission that on the contrary, the language of Section 20 and Section 23 of the FCRA, 2010 is instructive on the question of nature of inquiry contemplated under Section 14(1). Section 20 and Section 23 of the FCRA, 2010 incorporate important procedural safeguards. Section 20 obligates the respondent to conduct a necessary inquiry into the accounts and activities of a registered entity if there is reasonable cause to believe that it has contravened any provisions of the Act or has furnished incorrect information. There is no provision of suspension before or prior to an inquiry under Section 20 or Section 23. Section 23 enjoins the Central Government to record reasons in writing as to the grounds for suspecting that an organisation

has violated any provisions of this Act before authorising a gazetted officer to conduct an inspection of the accounts or record maintained by the organisation. The Scheme of the FCRA, 2010, as it emerges on a conjoint reading of Sections 13, 14, 20, and 23 does not contemplate, but in fact, offers protection against, trigger-happy suspension orders at the first hint of the slightest violation by an organisation without proper inquiry.

19. These safeguards exist because the suspension of FCRA registration has drastic consequences for an organisation, threatening its very existence. Freezing of FCRA accounts causes disruption of operations, reputational loss, and threatens employees' livelihood for an unduly long period of 360 days. Impugned suspension is liable to be quashed for failing to adhere to the said safeguards and for issuance without jurisdictional fact under Section 13.

20. It is their contention that the respondent in its counter affidavit has failed to rebut the petitioner's response to each allegation. Allegations contained in the impugned suspension order dated June 07, 2021, are not retained in the Show Cause Notice dated December 07, 2021, served under Section 14(2) of the Act. In any case, the said allegations were hyper-technical in nature and only of form and not substance. The allegations do not warrant suspension as they violate the doctrine of proportionality.

21. It is stated that the impugned suspension order is liable to be set aside on grounds of violation of the doctrine of proportionality as laid down in the case of ***Modern Dental College and Research Centre and Others vs. State of Madhya Pradesh and Others, (2016) 7 SCC***

***353***. That apart, the learned Senior Counsels appearing on behalf of the petitioner are of the view that the impugned order is arbitrary in nature, and in this regard, they relied upon the law laid down in the case of ***Shayara Bano vs. Union of India and Others***, ***W.P. (C) No. 118/2016***.

22. According to them, the case of the petitioner is covered by the judgment of this Court in the case of ***Indian Social Action Forum (INSAF) vs. Union of India, W.P. (C) No. 4982/2013***, as: (i) Reasons explaining the necessity of suspension are separate from grounds for cancellation; (ii) Suspension is not mandatory upon initiation of a cancellation proceeding. It is an optional course of action available to the respondent because the consequences of suspension under the Act were drastic, to avail the option of exercising the power of suspension the respondent must record reasons in writing for why it is necessary to exercise the power of suspension; (iii) If the reasons for suspension are not recorded in the order of suspension they cannot be subsequently supplied in a legal proceeding; (iv) A suspension order passed without strict observance of such statutory safeguards is liable to be quashed. Therefore, in terms of paragraph 6 of the judgment in the case of ***Indian Social Action Forum (supra)***, the suspension is liable to be quashed.

23. In the counter affidavit, the respondent has stated, that it administers the FCRA, 2010 to regulate receipt and utilisation of foreign contribution by Indian entities like NGOs, Non-Profit Organisations, Voluntary Organisations, etc.

24. That FCRA, 2010 is internal security legislation that casts an obligation on the Central Government to ensure that receipt and utilisation of foreign contributions do not in any way affect, prejudicially, the governance structure and processes of all the organs of the State. The entities that receive and utilise foreign contributions have to fulfill various conditions provided under Section 12(4) of the FCRA, 2010. They are also required to maintain an exclusive and proper account of utilisation of foreign contribution which is auditable as per Section 20 of the FCRA, 2010 and is also liable for inspection of their records and activities by authorised officers of the Central Government as provided under Section 23 of the FCRA, 2010.

25. The FCRA registration of the petitioner was granted vide letter dated September 03, 1993, and was subsequently renewed on October 28, 2016, and was valid up to October 31, 2021. It is submitted that the grant of FCRA registration to NGOs / Associations under Section 12 of the FCRA, 2010 and its subsequent renewal / continuation under Section 16 of the FCRA, 2010 is subject to fulfillment of terms and conditions as envisaged under the FCRA, 2010. In the present matter, the petitioner's association has come under adverse notice of the respondent through the inputs of the security agency. It is stated by the respondent that the security agency inputs in a sealed cover are submitted before this Court at the time of the preliminary hearing on June 26, 2021, which suggests that the petitioner's association is involved in such other activities, that are grave in nature and carry potentially serious violation of the provisions of the FCRA, 2010 and rules made thereunder.

26. On examination of Annual Returns and other records of the petitioner's association available with respondent / MHA, following multiple violations of the provisions given under FCRA, 2010 and FCRR, 2011 were observed:

a. That the petitioner's association failed to meet the statutory requirements of point 3(a) of the FC-4 Form in Annual Return for the year 2018-2019 by not giving the details of its activities and thus thereby violating Section 18 and 19 of the FCRA, 2010.

b. That the petitioner's association had operated a bank account bearing A/c No. 600510110004721 with Bank of India, New Delhi on February 18, 2016, but failed to intimate about it online to the respondent, whereas there is the flow of foreign contribution in the said bank account and thereby violating Rule 9(1)(e) of the FCRR, 2011.

c. That the petitioner's association had not intimated FCRA utilisation bank account in the Annual Return for the FYs 2016-2017 and thereby violating Section 19 of the FCRA, 2010.

d. That the petitioner association has refunded some unspent foreign contribution back to the donor in the FYs 2013-2014 and thereby violating Section 8(1)(a) of the FCRA, 2010.

e. That the petitioner's association has mixed local / domestic and foreign donation in the FCRA utilisation bank account and thereby violating the third proviso to Section 17(1) of the FCRA, 2010.

27. According to the respondent, as there exists a need for deeper scrutiny and inquiry, which is already underway, the MHA has conducted an audit as well as inspection of the petitioner's association under Section 20 and 23 of the FCRA, 2010 from August 09, 2021, to August 14, 2021.

28. It is also stated that pending decision on cancellation of FCRA registration certificate under Section 14(d) of the FCRA, 2010, the FCRA registration Certificate No. 231650671R of the petitioner's association was suspended vide Order dated June 07, 2021, in the exercise of the powers conferred by Section 13 of the Act for a period of 180 days with effect from the date of the order or until further orders whichever is earlier.

29. It is submitted by the respondent that the suspension order dated June 07, 2021, is a reasoned / speaking order that cites the reasons for the suspension. That apart, as far as the right of opportunity of being heard is concerned, there is no such provision(s) envisaged under Section 13 of the FCRA, 2010, to offer an opportunity to the registration certificate holder of being heard before suspending the registration certificate. It is submitted by the respondent that the opportunity of being heard is provided under Section 14(2) of the FCRA, 2010, before the proceedings leading to the cancellation of registration certificate and if things would turn in that direction, that opportunity of being heard would be duly provided to the petitioner.

30. It is stated that the Central Government had reasonable grounds to issue suspension order and those grounds are mentioned in the said order. Moreover, the respondent stated that the suspension

order is not a punitive measure, nor is it stigmatic and it is only interim in nature which may or may not lead to cancellation of the certificate of registration of the petitioner. It is submitted that the FC-4 Form of Annual Return is a statutory document and NGO / Association is obligated to provide / furnish the information sought on each point in the FC-4 Form. Further, the receipt, payment account, income statement, expenditure statement, and balance sheet are supportive documents to the Annual Return in which the information is provided in the FC-4 Form. Therefore, non-furnishing of complete information in the statutory FC-4 Form (Annual Return) constitutes a violation of Section 18 of the Act read with Rule 17 of the FCRR, 2011.

31. According to the respondent, as per Rule 9(1)(e) of the FCRR, 2011, the association may open one or more utilisation account(s) and in all such cases intimation shall be furnished to MHA within 15 days of the opening of any such account. Further, vide notification No. GSR 966(E) dated December 14, 2015, it is made mandatory to furnish such information in electronic form on FCRA Portal through Form FC-6 only. However, as per the respondent the petitioner has failed to comply with the aforesaid rule. That completing / filling up details in the renewal of registration certificate Form (FC-3) is the basic requirement of the renewal process and the same cannot be termed as intimation as stipulated in Rule 9(1)(e) of the FCRR, 2011. Furthermore, as per Rule 17(6) of the FCRR, 2011, a copy of the statement of the foreign contribution account is required to be submitted with the Annual Return (FC-4). In this regard, it is stated by the counsel for the respondent that furnishing of statement of

utilisation account along with Annual Return cannot be termed as intimation as specifically stipulated in Rule 9(1)(C) of the FCRR, 2011.

32. It is further submitted that the opening of a new utilisation account in accordance with the donor is relevant to the petitioner. However, intimation of the opening of a new utilisation account was to be given by the petitioner's association as per Rule 9(1)(C) of the FCRR, 2011. Moreover, it is stated that furnishing details of utilisation bank account in reply to the Standard Questionnaire (SQ) cannot be termed as a specific intimation as expressly stipulated in Rule 9(1)(C) of the FCRR, 2011. That apart, the respondent is of the view that foreign contribution / donation is received for fulfillment of only a defined aim / objective and it has to be utilised for the same. There is no provision in the FCRA, 2010 for a refund of foreign contribution / donation to the donor, and any interest or income derived by utilisation foreign contribution also becomes foreign contribution, which is to be utilised as per law.

33. It is submitted by Ms. Aishwarya Bhati, learned Additional Solicitor General reiterating the above stand:

i. That the power under Section 13 of the FCRA, 2010 for suspension of certificate is not predicated on the issuance of Show Cause Notice under Section 14(2) of the FCRA, 2010. Moreover, Section 13 empowers the Central Government to suspend the certificate of registration of a defaulting organisation "pending consideration of the question of cancelling the certificate on any of the grounds mentioned in

Section 14(1)" after recording reasons in writing. That the period for suspension cannot exceed 180 days at first instance or for a further period not exceeding 180 days.

ii. It is submitted that during the period of suspension, the Central Government may permit receipt and / or utilisation of foreign contribution if considered appropriate. Further, under Rule 14 of the FCRR, 2011 up to 25% of the unutilised amount may be spent during suspension with prior approval of the Central Government, whereas the remaining 75% only after revocation of suspension. Vide order dated July 29, 2021, of this Court, the petitioner has been permitted to utilise 25% of the amount lying in its custody as foreign contribution. Section 14(1) of the FCRA, 2010 empowers the Central Government to, after making "such enquiry as it may deem fit", cancel the certificate of a defaulting organisation for the reasons prescribed. Moreover, Section 14(2) of the FCRA, 2010 mandates that no order for cancellation of the certificate under this section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

iii. It is also submitted that it is therefore clear that consideration under Section 14 of the FCRA, 2010 starts as soon as an inquiry is initiated, as deemed appropriate by the Central Government under Section 14(1), and not when the Show Cause Notice is issued under Section 14(2). The mandate of Show Cause Notice is contemplated as the penultimate stage before an order of cancellation is passed.

iv. A conjoint reading of Section 13 and Section 14 of the FCRA, 2010 makes it clear that suspension of the certificate under Section 13 only requires the question of cancellation of the certificate under Section 14, and is not circumscribed by the issuance of Show Cause Notice under Section 14(2). As far as the contention of the petitioner is concerned, no action under Section 13 can be taken unless the Show Cause Notice is issued under Section 14 is clearly contrary to the plain reading and mandate of the statute itself.

v. The facts in the present case clearly demonstrate that inquiry into the infirmities in the account of the petitioner had started in the year 2017 itself. It is submitted that a questionnaire is issued to an organisation against whom a security input or a complaint has been received. It was only when some serious anomalies and contravention of the Act and rules were found that the impugned suspension order dated June 07, 2021, was issued.

vi. Furthermore, it is stated that the petitioner has also sought to impugn the order of extension of suspension for the period of 180 days dated December 01, 2021, on the same ground that the Show Cause Notice under Section 14(2) was issued only on December 07, 2021. According to them, this challenge cannot be sustained on account of the admitted facts between the first suspension dated June 07, 2021, and its extension dated December 01, 2021.

vii. Moreover, as far as the judgment in the case of ***Indian Social Action Forum (supra)*** relied upon by the petitioner is concerned, it is submitted that the petitioner has misread the ratio of the said judgment in support of his contention that Show Cause Notice under Section 14(2) of the FCRA, 2010 is a precursor to suspension under Section 13. However, it is clear from the bare reading of the judgment that the suspension, in that case, was found to be contrary to the scheme of the Act only because "the Central Government had neither issued any notice of hearing / Show Cause Notice in terms of Section 14(2) nor had it initiated any inquiry in terms of the said Section".

viii. The material and relevant facts of the instant case are distinguishable from the said judgment wherein the suspension order dated April 30, 2013, was passed by the Central Government and it had neither issued any notice of hearing / Show Cause Notice in terms of Section 14(2) of the FCRA, 2010 nor had it initiated any inquiry in terms of same. The Central Government wrote to the petitioner seeking certain information for the first time vide letter dated May 02, 2013, which is after the petitioner was suspended. Further, no reasons were recorded in the order of suspension as to why the registration of the organisation was suspended in that case. However, in the instant case, the inquiry was underway when the order of suspension was passed, which itself records as

many as five contraventions that were found in the accounts of the petitioner.

34. Having heard the learned counsel for the parties and perused the record, to answer the issues which arise for consideration, it is necessary to reproduce the provisions of Section 13 and 14 of the FCRA, 2010.

> *"**Section 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 1[for a period of one hundred and eighty days, or such further 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) utilise, in the prescribed manner, the foreign contribution in his custody with the prior approval of the Central Government.*
> ***Section 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 thereunder; 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.*

*(2) No order of cancellation of certificate under this section shall be made unless the person concerned has been given a reasonable opportunity of being heard.*

*(3) Any person whose certificate has been cancelled under this section shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate."*

35. In the present case, the impugned suspension order *inter alia* reads as under:

*"******** ******** *********

***Whereas**, scrutiny of Annual Returns (ARs) of the Association reveals multiple violations of provisions of the FCRA, 2010 and Rules made there under. For example, details of activities/projects for which foreign contribution has been received and utilized has not been given at the prescribed point 3(a) in FC-4 form in AR for the FY 2018-19. The Bank Account No.600510110004721, Bank of India, New Delhi opened on 18.02.2016 has not been intimated online to the Ministry and there is flow of foreign contribution in this Bank account. Further, one utilization account through which the Association has been utilizing foreign contribution has not been intimated in ARs for the FY*

> *2016-17 and 2017-18. Such acts of omission and commission by the Association amount to violation of provisions of* ***Sections 17(1), 18 and 19 of the Act read with rule 9(1)(e) and 17 of the Foreign Contribution (Regulation) Rules, 2011****. In addition, the Association has refunded some foreign contribution back to the donor in the FY 2013-14 and 2014-15 in violation of* ***Section 8(1)(a) of the FCRA, 2010****. It is also observed from bank statement of utilization account that the Association is mixing foreign contribution with domestic donation in violation of* ***Section 17 of the Act.***
>
> ******** ******** ********"

36. The first plea of Mr. Datar and Mr. Singh is that the Central Government without an inquiry and without giving opportunity, has concluded that certain provisions of FCRA, 2010, have been violated and on that basis issued the impugned suspension order, which is impermissible. Suffice to state that Section 13(1) of the FCRA, 2010 does not provide for any opportunity to be given to the certificate holder before the suspension of the certificate. Wherever the legislature intended to stipulate inquiry / opportunity, it had said so, like in Section 14(1) and 14(2) of the FCRA, 2010. Not prescribing inquiry / opportunity to the holder of the certificate before suspension under Section 13(1) of the FCRA, 2010 has also to be understood from the perspective, that the FCRA, 2010 is to consolidate the law, to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or association or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith. Therefore, the

provisions for suspension of certificate under Section 13 and cancellation of certificate under Section 14 are measures in keeping with the general mandate of the Act and the rules. So, it follows if reasons exist, that the utilisation of the contribution is not in accordance with the mandate of the Act, the Central Government by recording in writing the reasons, can suspend the certificate.

37. The suspension under Section 13(1) of the FCRA, 2010 is pending consideration of the question of cancelling the certificate under Section 14. A suspension is not a final action but an interim measure for a period of 180 days, extendable by a further 180 days. The only effect of suspension is that the certificate is kept in abeyance and the certificate holder does not receive contribution during that period. There is also a safeguard, that is, in case of hardship, the certificate holder can apply to the Central Government for receiving the financial contribution or utilising the foreign contribution in its custody which may be allowed by the Central Government.

38. The only caveat is that the power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as a vindictive misuse of power. It is precisely to obviate arbitrariness, that Section 13(1) of the FCRA, 2010 contemplates recording of reasons in writing, which shows the satisfaction of the Central Government that pending consideration of the question of cancellation of the certificate, it is necessary to suspend the certificate.

39. The reasons to be recorded is on the basis of the material available on record, which can include the material filed by the certificate holder as per the provisions of the Act / Rules and Order which *prima facie* reveal case against the certificate holder, that grounds as stated in Section 14(1) of the FCRA, 2010 exist, requiring the suspension of the certificate.

40. I must state, Section 13(1) of the FCRA, 2010 gives discretion to the Central Government to suspend the certificate only if it is satisfied that it is necessary to do so. It is not necessary that in all cases suspension is resorted to.

41. I must also state here, it is the case of the respondent as contended by Ms. Bhati that inquiry into the infirmities in the account of the petitioner had started in the year 2017 itself. She stated that a questionnaire is issued to an organisation against whom there is some security input or a complaint has been received. It was only when anomalies and contraventions of the Act were found that the impugned suspension order dated June 07, 2021, was issued. The factum of issuance of questionnaire and submission of replies is accepted by petitioner at pages 34 and 35 of the paper-book wherein the following has been stated:

> *"e. Further, on 18.01.2017, the Petitioner furnished a detailed reply to the Questionnaire received from the Respondent vide communication no. F.No. II/21022/58(0855)/2016-FC(MU) dated 02.01.2017 regarding the manner of receipt and utilisation of foreign funds for the FY s 20 11-12 to 2015-16. The details of every receipt and utilisation account including the aforementioned bank account were furnished at Annexure-I of the said reply. A copy of the said detailed reply along with the*

*said Annexure-I is at Annexe-6 to Petitioner's response dated 26.06.2021 (Annexure P-7 to this petition).*
*f. Further, on 20.09. 20 18, the Petitioner once again submitted a detailed reply to the Questionnaire received from MHA vide communication no. F.No. II/21022/ 58(213)/20 18-FC(MU) dated 05.09.2018, regarding the manner of receipt and utilisation of foreign funds by the Petitioner for the FYs 2011-12 to 2016-17. The details of all receipt and utilisation accounts including the aforementioned bank account were furnished at Annexure I to the said reply. A copy of the said detailed reply along with said Annexure I is at Annexe-7 to Petitioner's response dated 26.06.2021 (Annexure P-7 to this petition).''*

On this, the submissions of Mr. Datar and Mr. Singh were, that neither does the suspension order refer to the said questionnaires nor do they find mention in the order of extension or in the Show Cause notice dated December 07, 2021. According to them, they are general questionnaires that are sent to all FCRA registered entities in the country from time to time and do not constitute inquiry for the purpose of Section 14 of the FCRA, 2010. I am unable to agree with the submission for the reason, the subject matter of questionnaires is not a general information sought from the petitioner, but with regard to the manner of receipt and utilisation of foreign funds for the FYs 2011-2012 to 2015-2016 and regarding manner of receipt and utilisation of foreign funds by the petitioner for the FYs 2011-2012 to 2016-2017. In fact, the suspension order also records the non-intimation of utilisation of foreign contribution in annual returns for the year 2016-2017 and 2017-2018. It also refers to the fact that petitioner has refunded some contribution back to the donor in FYs 2013-2014 and 2014-2015, which according to the respondent is in

violation of the FCRA, 2010. So, it is clear that the reasons depicted in the suspension order are relatable to the questionnaires. Therefore, it can be said that the questionnaires were part of the process of inquiry and the plea that the suspension was made without inquiry is unsustainable. But I must state, that Section 13(1) of the FCRA, 2010 does not contemplate any inquiry to be caused before suspension.

42. Having said that, I also find, the impugned order records the following violations of the FCRA, 2010:

i. The activities / projects for which foreign contribution has been received and utilised have not been given in the prescribed Point 3(a) in FC-4 Form in AR for the FYs 2018-2019.

ii. The bank account No.600510110004721, Bank of India, New Delhi opened on February 18, 2016, has not been intimated online to the Ministry and there is a flow of foreign contribution in this bank account.

iii. One utilisation account through which the Association has been utilizing foreign contribution has not been intimated in ARs for the FYs 2016-2017 and 2017-2018.

iv. In addition, the association has refunded some foreign contributions back to the donor in FYs 2013-2014 and to 2014-2015 in violation of Section 8(1)(a) of the FCRA, 2010.

On this, the submissions of Mr. Datar and Mr. Singh were, (1) that the Section 13 of the FCRA, 2010 requires recording of reasons as to why the competent authority was satisfied that the drastic and

optional action of suspension was necessary pending consideration of the question of cancellation of the certificate on any of the grounds mentioned in Section 14(1) of the FRCA, 2010, however, no such reasons explaining the necessity of suspension has been recorded in the impugned order dated June 07, 2021. (2) The drastic nature of the power of suspension under Section 13(1) to bring an organisation to a grinding halt and to thereafter damage its reputation and existence, this particular safeguard of recording reasons for the necessity of suspension enshrines an important principle of natural justice which has been violated.

43. Suffice to state, there is nothing in the provision to show that these violations cannot be construed as reasons which weighed with the Central Government, to suspend the certificate. Surely, if the violation makes a strong *prima facie* case against the certificate holder, if proved, would lead to cancellation of certificate under Section 14(2), then the Central Government will be justified in suspending the certificate. In other words, suspension order can be passed by the Central Government considering the gravity of violations, the nature of evidence available and effect on public interest. These aspects can be deduced from the material available on record including the annual returns filed / the replies to the questionnaires. So, it follows that the violations of FCRA, 2010 can be reasons to suspend the certificate. In that sense, the reasons and grounds are inter-related. This conclusion of mine shall negate the submission of Mr. Datar and Mr. Singh that the order of suspension

is wholly alien / *ultra vires* to the scheme of suspension under Section 13(1) of the FCRA, 2010.

44. The plea of Mr. Datar and Mr. Singh, that given the drastic nature of the power of suspension to bring an organisation to a grinding halt can be answered by noting the safeguard stipulated in proviso to Section 13(2)(a), empowering the Central Government to permit receipt of foreign contribution by such person on such terms and conditions as it may specify. Section 13(2)(b) stipulate permission being granted for the utilisation of the foreign contribution in the custody, which is 25% of the unutilised amount as per the FCRR, 2011.

45. There is no dispute that in the month of August, 2021 the respondent carried audit and inspection of the petitioner in terms of Sections 20 and 23 of the FCRA, 2010, and based on the outcome of the audit, the suspension was extended for a further period of 180 days and also the Show Cause notice dated December 07, 2021, was issued.

46. The decision of the Central Government to carry out the audit / inspection under Sections 20 and 23 is an inquiry as contemplated under Section 14(1) of the FCRA, 2010 to ascertain whether there has been a contravention of any provisions of the Act, rules, or order made thereunder to take action for cancellation of the certificate.

47. The plea of Mr. Datar and Mr. Singh that the first three allegations in the impugned suspension order of non-intimation of specific accounts are erroneous as vide response to the suspension order dated June 26, 2021, the petitioner had demonstrated that the

same is not in violation of the FCRA, 2010 and FCRR, 2011 is concerned, suffice to state the respondents have justified the reasons which I have noted in the paragraphs 30 to 32 above. The satisfaction is of the Central Government and this Court cannot substitute the reasons unless such reasons are perverse. The scope of judicial review is very limited and should be exercised only when it is a case of *mala fide*, arbitrariness, or an ulterior motive.

48. The plea of Mr. Datar and Mr. Singh that the audit / inspection as required under Section 20 and Section 23 of the FCRA, 2010 was authorised on July 29, 2021, and the question of cancellation can be said to have been pending consideration only after that date and cannot cure the illegality of the suspension order dated June 07, 2021, is also unmerited, in view of my finding above that, no inquiry is contemplated under Section 13(1) of the FCRA, 2010 before suspending the certificate of registration and the audit / inspection authorised on July 29, 2021, is an inquiry contemplated under Section 14(1) of the FCRA, 2010 which precedes the issuance of Show Cause Notice under Section 14(2) for cancellation of the registration. In any case, it is the case of the respondent that inquiry into the infirmities in the account had started in the year 2017 that is before June 07, 2021. That apart, pursuant to the finding in audit / inspection, and after seeking the response of the petitioner, the Central Government has extended the suspension, for a further period of 180 days, vide order dated December 01, 2021, which shall justify the suspension more particularly when Show Cause notice under Section 14(2) of the FCRA, 2010 has also been issued.

49. The plea of Mr. Datar and Mr. Singh that a conjoint reading of Sections 13, 14, 20, and 23 of the FCRA, 2010 does not contemplate, but in fact, offers protection against suspension orders at the first hint of the slightest violation by any organisation without proper inquiry, is unmerited. If reasons to suspend under Section 13 of the FCRA, 2010 exist pending consideration of the question of cancelling the certificate, the decision to hold audit / inspection under Section 20 and 23 of the FCRA, 2010, is justified which is in furtherance to an inquiry under Section 14(1) of the FCRA, 2010, even if it is the first violation. But it is reiterated that for an action under Section 13(1) no inquiry is required to be conducted. Even otherwise, it is the case of the respondent that the inquiry into the infirmities in the account of the petitioner had started in the year 2017 itself, resulting in the impugned order.

50. Much reliance has been placed by Mr. Datar and Mr. Singh on the judgment of a Coordinate Bench of this Court in the case of ***Indian Social Action Forum (INSAF) (supra)***. The judgment has been relied upon to contend that this Court in the said case has held that by the time suspension order 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 an inquiry in terms of the said Section. Therefore, there was no occasion to suspend the certificate of the petitioner in terms of Section 13(1) of the Act. Whereas Ms. Bhati submitted that petitioner has misread the ratio of the judgment in support of its contention that Show Cause notice under Section 14(2) is a precursor to suspension under Section

13. According to her it is amply clear from the bare reading of the judgment, especially paragraph 5 thereof that the suspension, in that case, was found to be contrary to the scheme of the Act only because the Central Government had neither issued any notice of hearing / Show Cause notice in terms of sub-Section 14 nor had it initiated an inquiry in terms of the said section. She also stated in the instant case, the inquiry was underway when the order of suspension was passed which itself records as many as five contraventions that were found in the accounts of the petitioner.

51. I must state that on a first blush, the submission made by Mr. Datar and Mr. Singh looked appealing, but on deeper consideration, I find that this Court, in the facts of that case had set aside the suspension order on two grounds, firstly, no reasons have been spelt out in the suspension order and secondly, the respondents have neither issued Show Cause notice nor initiated an inquiry by the time the suspension order was passed.

52. Insofar as, stating the reasons for suspension is concerned, as concluded above, I am of the view that the reasons have been given in the impugned order. To that extent, the judgment has no applicability. Insofar as the conclusion of the Court by the time the suspension order was passed neither an inquiry was initiated nor any Show Cause notice was issued is concerned, it is my conclusion that the process of inquiry was started in the year 2017. So, it is not a case where neither any inquiry was initiated nor any Show Cause notice was issued. So, the judgment relied upon by Mr. Datar and Mr. Singh is clearly distinguishable.

53. Insofar as the reliance placed by Mr. Datar and Mr. Singh on the judgment in the case of ***Modern Dental College and Research Centre and Ors. (supra)*** the same is inapplicable to the present case, inasmuch as, the impugned order suspending the petitioner is in consonance with the object which the instant legislation/statute strives to achieve and has not gone in excess of that object, as my findings above would depict, and as such, satisfies the doctrine of proportionality.

54. As far as the judgment in the case of ***Shayara Bano (Supra)*** relied upon by Mr. Datar and Mr. Singh is concerned, the same have no applicability in the facts of this case and in view of my conclusion above.

55. In view of my above discussion, I do not see any reason to interfere with the impugned order dated June 07, 2021. The writ petition is dismissed. No costs.

**C.M. No. 20091/2021 - Application under Section 151 of CPC, 1908 for Interim Directions along with Affidavit.**

**C.M. No. 34987/2021 - Application under Section 151 of CPC, 1908 for Interim Directions along with Affidavit.**

**C.M. No. 37037/2021 - Application under Section 151 CPC, 1908 for striking out paragraphs 4, 6, and 10 from the respondent's counter affidavit dated 14.09.2021.**

**C.M. No. 44671/2021 - Application under Section 151 CPC, 1908 for interim directions along with an affidavit.**

**C.M. No. 46751/2021 - Application under Section 151 CPC, 1908 on behalf of respondent / UOI seeking modification of Order dated 25.10.2021 and further consequent direction.**

In view of the fact that I have decided the writ petition on the scope of Section 13 and 14 of the FCRA, 2010 and dismissed the petition, these applications also are liable to be dismissed.

**V. KAMESWAR RAO, J**

**FEBRUARY 14, 2022***/jg*