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THE LEGALLY UNSUSTAINABLE CANCELLATION OF FC REGISTRATION

(Legal note on the Mass cancellation of FC registration by FCRA department)



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INTRODUCTION

1.01 Recently, the FCRA department has cancelled FC registration of more than 4,300 NPOs located all over the country. Such sudden cancellation has created panic and has also stalled charitable activity all over the country. Such cancellation will have far reaching deep impact on the lives of the individuals and institutions engaged in the activities conducted by such NPOs. In this issue we shall analyse the legal legitimacy of such cancellation, the impact and the way forward.

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SUMMARY OF THE ANALYSIS & WAY FORWARD

1.02 The FCRA Department, Central Government has cancelled FC registration of more than 4,300 NPOs. Such cancellation can be done under section 14 of the Foreign Contribution Regulation Act, 2010 (FCRA, 2010) only under 5 circumstances :

- Making incorrect or false statement
- Violating any of the terms and conditions of registration
- It is necessary in the public interest to cancel the certificate
- Violating any of the terms and conditions of the Act or Rules or order made thereunder
- Not been engaged in any reasonable activity for two consecutive years or has become defunct.

1.03 The law provides that before passing an order of cancellation the Central Government has to provide an opportunity of being heard.

1.04 It is understood that most of such orders have been passed because the FCRA department did not receive any response to repeated notices being sent to such NPOs. The most plausible reason for such non response by NPOs is the change of address which may not have been updated at FCRA department.

1.05 It is also understood that notices were sent to all such NPOs regarding non filing of FC-3 or FC-6 returns. Most of the organisation whose FC registration has been cancelled have been regularly filing FC-3 or FC-6 returns and such returns can be viewed at the Home Ministries' website www.mha.nic.in.

1.06 Based on the above facts, the issue is whether the FCRA department have legal rights to cancel the registration certificate and is such cancellation legally sustainable. In our opinion such cancellation are not sustainable legally for the following reasons :

- Under section 14 of FCRA 2010 the registration certificate can be cancelled under specific circumstances. And not responding to notices cannot be a reason for cancellation, particularly when such notices were not served due to change of address.
- Not responding to notices, at best, can give a right to pass *ex parte* or unilateral orders. That to if it is conclusively proved that the notices were served and the proper opportunity of being heard was provided.
- Even when an *ex parte* or unilateral order is passed the reason can only be one of the five reasons specified in section 14. Not responding to notices is not a reason which can be used U/s. 14. In such order the FCRA department should cite the formal reason of cancellation.
- It has been noticed that the FC registration of those organisations, who have been regularly filing FC-3 or FC-6 returns, has also been cancelled. In spite of the fact that the returns and financial details are available and can be viewed at the Home Ministries' website www.mha.nic.in. Therefore, it is a self defeating argument that such organisation are not

in communication or untraceable. All such organisations have also formally (with evidence) sent hard copies of the annual returns.

- It is also understood that most of the organisations whose address was changed have formally intimated and sent hard copies of such change of address. Such organisation have in their possession the evidence of such intimation. The change of address has to be made through hard copies only.
- When action is required to be taken against a mass group of people or entity, it is the responsibility of government to provide **public notice in newspapers** in case it is unable to communicate on individual basis.
- There are instances of numerous NPOs who also had received such notices regarding non filing of FC-3 or FC-6 returns. In most of the cases it was found that there such NPOs were regularly filing returns and no action of cancellation was possible and all such proceedings were dropped.

1.07 We appeal and hope that all such orders of cancellation, which have been passed merely on the ground of non response to notices, shall be restored if all other compliances are upto date. Because such orders are legally void and unsustainable.

1.08 All the effected organisation, for the time being should, maintain *status quo* and freeze all financial transaction. Infact it is the responsibility of the bank to freeze the bank account of all such organisations.

1.09 All the effected organisation, should seek in writing the reasons which have been recorded for cancellation in the records of the FCRA Department, Ministry of Home Affairs.

1.10 If the organisation do not get immediate relief then they should individually or collectively take shelter of the respective hon'ble High Court through writ petition against such illegal and unsustainable order which can cause irreparable damage to the lives of lakhs of people.

THE LAW PERTAINING TO CANCELLATION OF REGISTRATION

1.11 Under section 14, of FCRA 2010 the Central Government may cancel the registration certificate for various reasons. However, no certificate shall be cancelled unless reasonable opportunity of being heard is provided. The provision of section 14 on cancellation of registration certificate is as under :

“14.(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."

1.12 The Central Government may, if it is satisfied after making such inquiry as it may deem fit, by an order, cancel the certificate if the reason(s) as specified above are found to be correct.

1.13 Section 14(1)(d) above does not prescribe that the organisation should have been engaged in its activities by spending FC funds. Therefore, even if the organisation had not been engaged in any reasonable activity for two consecutive years in spending its FC funds, if any, but had been reasonably active carrying out its activities through domestic funds, then the organisation may be allowed to continue with the registration certificate if adequate reasons for such continuation are provided.

OPPORTUNITY OF BEING HEARD

1.14 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.

RE-APPLICATION FOR REGISTRATION AFTER CANCELLATION

1.15 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. **Any such application will be accepted only after 3 years.**

CUSTODY OF FOREIGN CONTRIBUTION AFTER CANCELLATION

1.16 In terms of section 15 of FCRA 2010 and Rule 15 of FCRR, 2011, the amount of foreign contribution lying unutilised in the exclusive foreign contribution bank

account of a person whose certificate of registration has been cancelled shall vest with the bank concerned till the Central Government issues further directions in the matter.

CUSTODY OF FOREIGN CONTRIBUTION OF SUBSEQUENT RECIPIENT

1.17 If a person whose certificate of registration has been cancelled transfers/has transferred the foreign contribution to any other person, then the rule regarding custody of foreign contribution will also apply to the person to whom the fund has been transferred. In other words, the unutilised foreign contribution available with the subsequent recipient also shall vest with the bank concerned till the Central Government issues further directions in the matter.

MANAGEMENT OF FOREIGN CONTRIBUTION AND ASSETS AFTER CANCELLATION OF REGISTRATION

1.18 Under section 15 of the FCRA 2011, it is provided that the custody of foreign contribution or assets of any organisation or person whose certificate has been cancelled shall vest in such authority as may be prescribed. In other words, once the registration certificate is cancelled, then the Central Government reserves the right to determine the authority and manner in which the foreign contribution and foreign assets shall be kept and managed. The text of section 15(1) is as under :

- “15.(1) The foreign contribution and assets created out of the foreign contribution in the custody of every person whose certificate has been cancelled under section 14 shall vest in such authority as may be prescribed.*
- (2) The authority referred to in sub-section (1) may, if it considers necessary and in public interest, manage the activities of the person referred to in that sub-section for such period and in such manner, as the Central Government may direct and such authority may utilise the foreign contribution or dispose of the assets created out of it in case adequate funds are not available for running such activity.*
- (3) The authority referred to in sub-section (1) shall return the foreign contribution and the assets vested upon it under that sub-section to the person referred to in the said subsection if such person is subsequently registered under this Act.”*

1.19 Further, as per Rule 15 of FCRR 2011 the bank balance available in the designated bank account shall remain in the custody of the respective bank after the cancellation of FC certificate. The text of the Rule is reproduced as under :

- “15. Custody of foreign contribution in respect of a person whose certificate has been cancelled.-***(1) The amount of foreign contribution lying unutilised in the exclusive foreign contribution bank account of a person whose certificate of registration has been cancelled shall vest with the banking authority concerned till the Central Government issues further directions in the matter.*

(2) *If a person whose certificate of registration has been cancelled transfers/has transferred the foreign contribution to any other person, the provisions of sub-rule (1) of this rule shall apply to the person to whom the fund has been transferred."*

1.20 In the event of cancellation of the FCRA registration, the Central Government may exercise that the following powers :

- The Central Government reserves the right to take over or determine the manner in which the asset shall be managed or preserved.
- In the absence of any limitation, the power to take over or manage FC funds and FC assets shall apply to all the FC assets and balances accumulated since 1976 i.e. the applicability of the FCRA 1976.
- The Central Government reserves the right to dispose of the assets or utilise the funds during the cancellation period.
- The Central Government shall return all the assets and fund if the FC registration is restored.
- At the time of the cancellation of FC registration the bank balance available in the designated bank account shall automatically remain in the custody of the respective bank and the organisation cannot use it. The funds available in the designated bank account can only be used as per any further directions from the Central Government. It may be noted that Rule 15 of FCRR 2011 only talks about the bank balance in the designated bank account, therefore any fund available in other bank accounts or FDRs shall not remain in the custody of the bank. However, the Central Government shall have the right to issue direction over the use and management of such funds also.

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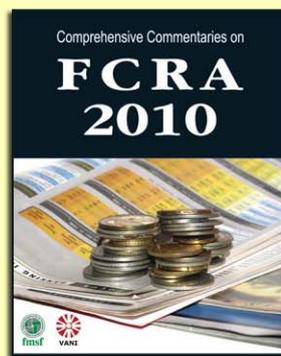
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