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

+ W.P.(C) 6400/2021

COMMONWEALTH HUMAN RIGHTS INITIATIVE. ... Petitioner

Through Mr Arvind P. Datar & Mr Chander
Uday Singh, Sr. Advocates with
Mr Kabir Dixit & Ms Ila Sheel, Advs.

versus

UNION OF INDIA

... Respondent

Through Mr. Anil Soni (CGSC) with Mr.
Sahaj Garg, GP

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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29.07.2021

CM APPL. 22152/2021 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 22151/2021 (interim order)

3. The present petition has been filed assailing the order dated 07.06.2021 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 (hereinafter referred to as the 'FCR Act'), whereby the petitioner's registration under the FCR Act was suspended pending a purported investigation into its affairs. This suspension also had the effect of freezing the petitioner's receipt and utilization bank accounts, which compelled it to send a representation to the respondent seeking interim permission to utilize

a portion of the foreign contribution lying in its custody in order to pay salaries and meet its operational expenses. Since the representation went unanswered, the petitioner approached this Court.

4. On 19.07.2021, keeping in view the fact that the petitioner's employees' salaries were yet to be paid, this Court, while issuing notice in the petition and granting time to the respondent to file its counter affidavit, had also granted time to the respondent to obtain instructions as to whether, in view of the admitted position that the petitioner has around 40 employees whose salaries have not been paid yet, the respondent was willing to consider, as an interim measure, the petitioner's request for utilizing a part of the foreign contributions in its custody. It was the case of the petitioner that this amount would be solely used to pay the salaries of its employees and other personnel engaged in respect of the projects which had been commenced by the petitioner even before the impugned suspension order came to be passed.

5. Today, despite having had ten days to assess the situation, Mr. Soni submits that no decision in this regard has been taken by the respondent till date, as they are waiting for further report in respect of the petitioner from a foreign agency.

6. In my view, a decision on whether the petitioner should be permitted to utilize a part of the foreign contribution in its possession as on date, in accordance with Section 13(2) of the FCR Act read with Rule 14 of the Foreign Contribution (Regulation) Rules, 2011, ought not to be made dependent on the report from a foreign agency. Even otherwise, such a report, at best, would provide the respondent with further information that would enable it to decide the appropriate course of action in respect of the

suspension order. Given that the COVID-19 pandemic has thrown most of our citizens in the throes of financial hardship and personal losses, it is a matter of deep concern that the Government has failed to take a more active approach for addressing the issues raised by the petitioner in the interim application. It is likely that these employees are finding it hard to meet ends and take care of their families, not to mention the prohibitive medical bills that most of them would have been saddled with in the aftermath of the second wave. Considering that grant of such a permission would not, in any manner, hinder with the respondent's investigations, I am of the view that the petitioner has been able to make out a *prima facie* case for being permitted to utilize 25% of the amounts lying in its custody as foreign contribution to meet its expenses towards payment of salaries of its employees and other personnel engaged by them in any project(s) which had commenced before the passing of the said suspension order.

7. Needless to say, the petitioner will maintain an account of these expenses and furnish a copy of the same to the respondent, on a monthly basis, till the next date.

8. The application is accordingly disposed of.

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9. At request, list on 05.10.2021.

REKHA PALLI, J

JULY 29, 2021/acm