2020 INSC 290

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.1510 of 2020
(Arising out of SLP (C) No.33928 of 2011)

Indian Social Action Forum (INSAF)

.... Appellant(s)

Versus

Union of India

…. Respondent (s)

J U D G M E N T

L. NAGESWARA RAO, J.

1. The Appellant filed a Writ Petition in the High Court of Delhi for a declaration that Sections 5 (1) and 5 (4) of the Foreign Contribution (Regulation) Act, 2010 (hereinafter referred to as '*the Act'*) and Rules 3 (i), 3 (v) and 3 (vi) of the Foreign Contribution (Regulation) Rules, 2011 (hereinafter referred to as *'the Rules'*), are violative of Articles 14, 19 (1) (a), 19 (1) (c) and 21 of the Constitution of India. The High Court dismissed the Writ Petition, aggrieved by which this appeal has been filed. The

Appellant is a registered society involved in resisting globalization, combating communalism and defending democracy. In the Writ Petition filed before the High Court, the Appellant-organisation stated that it firmly believes in a secular and peaceful social order and opposes communalism and the targeted attacks on the lives and rights of people including religious minorities. Several activities of the Appellant-organisation in the interest of the society have been referred to in the Writ Petition. The power conferred by the Act on the Central Government to declare an organisation to be an organisation of a political nature under Section 5 (1) of the Act was challenged by the Appellant on the ground that no guidelines are provided for the exercise of such power. Section 5 (4) of the Act was assailed on the ground that the authority to which a representation made by the aggrieved party is to be forwarded, has not been specified. According to the Appellant, the guidelines provided in Rule 3 of the Rules are impermissibly wide, giving arbitrary discretion to the authorities which would result in abuse of the power. It was alleged in the Writ Petition that the Rules suffer from

unreasonableness and arbitrariness. Hence, the Appellant prayed for declaring Rules 3 (i), 3 (v) and 3 (vi) as violative of the fundamental rights enshrined in Articles 14, 19 (1) (a), 19 (1) (c) and 21 of the Constitution.

2. After considering the relevant provisions of the Act and the submissions made on behalf of the Appellant, the High Court of Delhi dismissed the Writ Petition as being bereft of merit.

3. Mr. Sanjay Parikh, learned Senior Counsel appearing for the Appellant submitted that Section 5 (1) of the Act confers unguided and uncanalised power on the Central Government to specify an organisation as an organisation of a political nature not being a political party. He submitted that Rule 3 (i), 3 (v) and 3 (vi) which contain the guidelines and grounds, suffer from the vice of vagueness. According to Mr. Parikh, Rules 3 (i), 3 (v) and 3 (vi) require to be declared as unconstitutional as they are vague, overbroad and unreasonable. He urged that the vagueness in the said provisions leads to arbitrary exercise of power in violation of Article 14 of the Constitution. He further submitted that an organisation, the activity of

which is to educate and promote civil, political, social, economic and cultural rights cannot be prevented from having access to funding, whether domestic or foreign. Curtailing the right of the Appellant-organisation in having access to foreign funds would result in the violation of the fundamental rights guaranteed under Articles 19 (1) (a) and 19 (1) (c) of the Constitution. He relied upon the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights which have been accepted as sources of human rights by the Protection of Human Rights Act, 1993. Mr.Parikh submitted that political rights are an integral part of human rights and any restriction in exercise of political rights would be unconstitutional.

4. Mr.K.M.Nataraj, learned Additional Solicitor General appearing for the Respondent defended the judgment of the High Court by arguing that all the relevant points have been rightly adjudicated by the High Court. He argued that the constitutional validity of a statute can be challenged only on two grounds which are legislative competence and violation of any of the fundamental rights

guaranteed under Part III of the Constitution. Additionally, he submitted that a subordinate legislation can be challenged successfully only on the ground of the subordinate legislation being *ultra vires* the Act. The learned Additional Solicitor General contended that the Appellant organisation is not entitled to invoke Article 19 of the Constitution of India. According to him, Article 19 provides for fundamental rights which are guaranteed only to citizens. The Appellant organisation cannot be considered as a citizen. Moreover, no individual member of the organisation has been made a party to the Writ Petition or in this Appeal. In support of this submission, he relied upon judgments of this Court reported in ***Tata Engineering and Locomotive Co. Ltd. v. State of Bihar***[1] and ***Shree Sidhbali Steels Ltd. vs. State of Uttar Pradesh***[2]**.** According to the learned Additional Solicitor General, right to receive foreign contribution is not a fundamental right guaranteed under Article 19 of the Constitution. We were taken through the provisions of the Act and the Rules by the learned Additional Solicitor

1 (1964) 6 SCR 885
2 (2011) 3 SCC 193

General who submitted that sufficient safeguards against possible abuse of power are incorporated in the Act and the Rules. That apart, it was contended that possibility of abuse of power cannot be a ground to challenge legislation. It was submitted that the object and purpose of the Act has to be taken into consideration by this Court while interpreting the provisions of the Act. The further submission on behalf of the Respondent was that the principle of 'reading down' has to be adopted in case this Court is of the opinion that there is ambiguity in Rule 3 of the Rules.

5. It is imperative to refer to the statutory regime. The Foreign Contribution (Regulation) Act, 1976 (hereinafter referred to as '*the 1976 Act'*) was enacted to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain persons or associations with a view to ensure that parliamentary institutions, political associations, academic and other voluntary organisations as well as other individuals working in important areas of national life may function in a manner consistent with the values of a sovereign democratic republic and the matters

connected therewith and incidental thereto. The background in which the 1976 Act was made has been succinctly stated by the High Court of Delhi in ***Association for Democratic Reforms v. Union of India***[3] as follows:

> "It can be safely gathered that amidst a spate of subversive activities sponsored by the Foreign Powers to destabilize our nation, the Foreign Contribution (Regulation) Act, 1976 was enacted by the Parliament to serve as a shield in our legislative armoury, in conjunction with other laws like the Foreign Exchange Regulation Act, 1973, and insulate the sensitive areas of national life like - journalism, judiciary and politics from extraneous influences stemming from beyond our borders."

6. In view of several deficiencies in the 1976 Act, a fresh law in the shape of the Foreign Contribution (Regulation) Act, 2010 was made by repealing the 1976 Act. The introduction of the Act is as under:

> "It had been noticed that some of the foreign countries were funding individuals, associations, political parties, candidates for elections, correspondents, columnists, editors, owners, printers or publishers of newspapers. They were also extending hospitality. The effects of such funding and hospitality were quite noticeable and

3 (2014) 209 DLT609

> 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."

7. The long title of the 2010 Act indicates that it is made to consolidate the law to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations 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 or incidental thereto. Section 3 of the Act prohibits acceptance of foreign contribution by the following:

> (a) candidate for election;
> (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
> (c) Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;
> (d) member of any Legislature;

(e) political party or office-bearer thereof;

(f) organisation of a political nature as may be specified under sub-section (1) of section 5 by the Central Government;

(g) association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000) or any other mode of mass communication;

(h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

8. Section 5 thereof stipulates that the Central Government shall specify an organisation as an organisation of a political nature not being a political party as referred to in Section 3 (1) (f) having regard to the activities of the organisation or the ideology propagated by the organisation or association of the organisation with the activities of any political party.

9. It is further provided in Section 5 (1) that the Central Government may by Rules frame guidelines specifying the ground(s) on which an organisation shall be specified as an organisation of a political nature. Section 48 (2) (d)

empowers the Central Government to frame guidelines, specifying the ground(s) on which an organisation may be specified as an organisation of a political nature under Section 5 (1). In exercise of power conferred under Section 48, the Central Government framed the Foreign Contribution (Regulation) Rules, 2011. Rule 3 of the Rules, which is relevant for this case, is as follows:

> "3. Guidelines for declaration of an organisation to be of a political nature, not being a political party. - The Central Government may specify any organisation as organisation of political nature on one or more of the following grounds:
>
> (i) organisation having avowed political objectives in its Memorandum of Association or bylaws;
> (ii) any Trade Union whose objectives include activities for promoting political goals;
> (iii) any voluntary action group with objectives of a political nature or which participates in political activities;
> (iv) front or mass organisations like Students Unions, Workers' Unions, Youth Forums and Women's wing of a political party;
> (v) organisation of farmers, workers, students, youth based on caste, community, religion, language or otherwise, which is not directly aligned to any political party, but whose objectives, as stated in the Memorandum of Association, or activities gathered

> through other material evidence, include steps towards advancement of Political interests of such groups;
> (vi) any organisation, by whatever name called, which habitually engages itself in or employs common methods of political action like 'bandh' or 'hartal', 'rasta roko', 'rail roko' or 'jail bharo' in support of public causes."

10. A plain reading of Section 3 of the Act shows that foreign contributions should not be accepted by a candidate in an election or by a political party or office bearer thereof and member of any legislature apart from Judges and Government servants and those belonging to the press, print and electronic media. As the dispute in this case revolves around the organisations which are not actively involved in politics, it is necessary to focus on the provisions of the Act and the Rules governing such organisations. Section 3 (1) (f) of the Act provides that an organisation of a political nature is also barred from receiving foreign contributions. Such an organisation of a political nature may be specified under Section 5(1) by the Central Government.

11. Section 5 of the 1976 Act provides that any organisation of a political nature not being a political party

shall not accept any foreign contribution except with the prior permission of the Central Government. However, according to the 2010 Act, an organisation of a political nature, as specified, is barred from accepting foreign contributions. The procedure to notify an organisation of a political nature is prescribed under Section 5 of the 2010 Act. Before declaring an organisation to be an organisation of a political nature not being a political party, the Central Government shall take into account the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisation with the activities of any political party. The Central Government is obligated in terms of Section 5 (2) of the Act, to issue notice in writing informing the organisation in respect of which the order is proposed to be made of the ground(s) on which an order under Section 5 (1) is proposed. As per Section 5 (3), the organisation is to be given an opportunity to submit its representation which shall be considered within the time prescribed in Section 5 and an order is required to be passed recording the reasons therefor.

12. Guidelines for declaration of an organisation to be an organisation of a political nature not being a political party are found in Rule 3 of the Rules. We are concerned with Rules 3 (i), 3 (v) and 3 (vi) of the Rules, which are the subject matter of challenge in this appeal.

13. The principal challenge of the Appellant-organisation to Section 5 (1) of the Act is on the ground that the terms 'activity, ideology and programme' are vague and have not been defined in the Act which result in conferring unbridled and unfettered power on the executive. Therefore, the Appellant-organisation contended that Section 5 (1) is violative of Article 14 of the Constitution. Section 5 (4) is also challenged on the ground that the authority to whom a representation should be made has not been specified and it is not clear whether the authority would be an independent authority or the Central Government itself. The High Court held that the words 'activities of the organisation, the ideology propagated by the organisation and the programme of the organisation' having nexus with the activities of a political nature are expansive but cannot be termed as vague or uncertain. Sufficient guidance is

provided by the Parliament in Section 5 and it is for the rule making authority to lay down the specific grounds. We are in agreement with the High Court that Section 5 (1) does not suffer from the vice of vagueness inviting the wrath of Article 14. Section 5 (4) cannot be declared as unconstitutional only on the ground that the authority to whom representation should be made is not specified. It is relevant to note that no serious attempt has been made by the Appellant-organisation to assail Section 5 (4) of the Act.

14. The contention of the Appellant is that the guidelines in Rule 3 of the Rules are vague giving scope for misuse and abuse of power by roping in voluntary organisations within the sphere of the Act. Thereby, an organisation which has no interest in active politics can be deprived of the right to receive foreign contribution at the whims and fancies of the executive by resorting to the vague guidelines in Rule 3. It was further submitted on behalf of the Appellant that the words ‘political objectives’, ‘political activities’, ‘political interests’ and ‘political action’ used in Rule 3 have no clarity and any activity though not

connected with party politics can be brought into the fold of Rule 3. Therefore, according to the Appellant-organisation, Rules 3 (i), 3 (v) and 3 (vi) suffer from the vice of over-breadth and are liable to be declared as unconstitutional being violative of Article 14. According to the Appellant-organisation, there is an infraction of Article 19 of the Constitution as the Rules are also unreasonable and violate the freedom of speech and expression and the right to form associations protected under Article 19 (1) (a) and 19 (1) (c) of the Constitution.

15. We find force in the objection taken on behalf of the Union of India that the Appellant-organisation is not entitled to invoke Article 19. No member of the Appellant-organisation is arrayed as a party. Article 19 guarantees certain rights to 'all citizens'. The Appellant, being an organisation, cannot be a citizen for the purpose of Article 19 of the Constitution. (*See*: ***State Trading Corporation of India Ltd. V. The Commercial Tax Officer, Visakhapatnam, (1964) 4 SCR 99; Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788*** **and** ***Tata Engineering and Locomotive Ltd. v. State of Uttar***

Pradesh, (2011) 3 SCC 193). In the absence of any member of the association as a petitioner in the Writ Petition, the Appellant-organisation cannot enforce the rights guaranteed under Article 19 of the Constitution.

16. The principal contention of the Appellant-organisation is that the guidelines provided in Rule 3 are vague and confer naked and untrammeled power on the executive thereby giving the scope for arbitrary exercise of power. In ***K. A. Abbas v. Union of India***[4] this Court was of the opinion that:

> "**46.** The real rule is that if a law is vague or appears to be so, the court must try to construe it, as far as may be, and language permitting, the construction sought to be placed on it, must be in accordance with the intention of the legislature. Thus, if the law is open to diverse construction, that construction which accords best with the intention of the legislature and advances the purpose of legislation, is to be preferred. Where however the law admits of no such construction and the persons applying it are in a boundless sea of uncertainty and the law prima facie takes away a guaranteed freedom, the law must be held to offend the Constitution, this is not application of the doctrine of due process. The invalidity arises from the probability of the misuse of the law to the detriment of the individual. If possible, the Court instead of striking down the law

4 (1970) 2 SCC 780

may itself draw the line of demarcation where possible but this effort should be sparingly made and only in the clearest of cases".

17. It is settled principle of interpretation that the provisions of the statute have to be interpreted to give the words a plain and natural meaning. But, if there is scope for two interpretations, the Courts have preferred purposive construction, which is now the predominant doctrine of interpretation[5]. In case of ambiguity in the language used in the provision of a statute, the Courts can take aid from the historical background, the Parliamentary debates, the aims and objects of the Act including the long title, and the endeavour of the Court should be to interpret the provisions of a statute to promote the purpose of the Act. **(***See*: **Chiranjit Lal Chowduri v. Union of India, (1950) SCR 869; Union of India v. Elphinstone Spinning and Weaving Co. Ltd., (2001) 4 SCC 139).**

18. The object sought to be achieved by the Act is to ensure that Parliamentary institutions, political associations and academic and other voluntary

5 Shailesh Dhairyawan v. Mohan Balkrishna Lulla, (2016) 3 SCC 619

organisations as well as individuals working in the important areas of national life should function in a manner consistent with the values of a sovereign democratic republic without being influenced by foreign contributions or foreign hospitality. The long title of the Act makes it clear that the regulation of acceptance and utilisation of foreign contribution is for the purpose of protecting national interest. Candidates for election and political parties or office bearers of political parties are barred from accepting any foreign contribution. The legislative intent is also to prohibit organisations of a political nature from receiving foreign contributions. It is clear that preventing foreign contribution into the political arena is the object sought to be achieved by the Act. Prevention of foreign contributions routed through voluntary organisations which are not connected to party politics is the reason behind introduction of Section 3 (1) (f) and Section 5 of the Act. The Central Government is required to take into account the activities, ideology or the programme of the organisation including the association of the organisation with activities of any political party before

declaring an organisation as an organisation of political nature not being a political party. Guidelines that are prescribed by the Rules indicate that only those organisations which are actively involved in politics or associated with political parties can be declared as organisations of a political nature. The question that falls for our consideration is whether the guidelines in Rule 3 suffer from vagueness and ambiguity and whether they can be stated to be conferring uncanalised power on the executive. According to Rule 3 (i) an organisation having avowed political objectives in its memorandum of association or bye laws is an organisation of a political nature. As the intention of the legislature is to prohibit foreign funds in active politics, an Association with avowed political objectives (i.e. to play a role in active politics or party politics) cannot be permitted access to foreign funds. There is no ambiguity in the provision and hence, cannot be termed as vague. Therefore, we find no substance in the contention of the Appellant that Rule 3 (i) is *ultra vires* the Act.

19. Rule 3 (v) deals with organisations of farmers, workers, students etc. which are not directly aligned to any political party but objectives of which include steps towards advancement of 'political interests' of such groups. The submission made on behalf of the Appellant is that such organisations agitating for their legitimate claims cannot be prevented access to foreign funds by resorting to the vague term 'political interests'. We are in agreement that the words 'political interests' are vague and are susceptible to misuse. However, possible abuse of power is not a ground to declare a provision unconstitutional[6].

20. Where the provisions of a statute are vague and ambiguous and it is possible to gather the intention of the legislature from the object of the statute, the context in which the provisions occur and purpose for which it is made, the doctrine of "reading down" can be applied[7]. To save Rule 3(v) from being declared as unconstitutional, the Court can apply the doctrine of "reading down".

6 Collector of Customs v. Nathella Sampathu Shetty, (1962) 3 SCR 786.
7 DTC v. Mazdoor Congress, 1991 Supp (1) SCC 600

21. A balance has to be drawn between the object that is sought to be achieved by the legislation and the rights of the voluntary organisations to have access to foreign funds. The purpose for which the statute prevents organisations of a political nature from receiving foreign funds is to ensure that the administration is not influenced by foreign funds. Prohibition from receiving foreign aid, either directly or indirectly, by those who are involved in active politics is to ensure that the values of a sovereign democratic republic are protected. On the other hand, such of those voluntary organisations which have absolutely no connection with either party politics or active politics cannot be denied access to foreign contributions. Therefore, such of those organisations which are working for the social and economic welfare of the society cannot be brought within the purview of the Act or the Rules by enlarging the scope of the term 'political interests'. We are of the opinion that the expression 'political interests' in Rule 3 (v) has to be construed to be in connection with active politics or party politics.

22. Any organisation which habitually engages itself in or employs common methods of political action like 'bandh' or 'hartal', 'rasta roko', 'rail roko' or 'jail bharo' in support of public causes can also be declared as an organisation of political nature, according to the guideline prescribed in Rule 3 (vi). Support to public causes by resorting to legitimate means of dissent like bandh, hartal etc. cannot deprive an organisation of its legitimate right of receiving foreign contribution. It is clear from the provision itself that bandh, hartal, rasta roko etc., are treated as common methods of political action. Any organisation which supports the cause of a group of citizens agitating for their rights without a political goal or objective cannot be penalized by being declared as an organisation of a political nature. To save this provision from being declared as unconstitutional, we hold that it is only those organisations which have connection with active politics or take part in party politics, that are covered by Rule 3 (vi). To make it clear, such of those organisations which are not involved in active politics or party politics do not fall within the purview of Rule 3 (vi). We make it clear that

organisations used for channeling foreign funds by political parties cannot escape the rigour of the Act provided there is concrete material. In that event, the Central Government shall follow the procedure prescribed in the Act and Rules strictly before depriving such organisation the right to receive foreign contributions.

23. The appeal is disposed of accordingly.

.....................................J.
[L. NAGESWARA RAO]

.....................................J.
DEEPAK GUPTA]

New Delhi,
March 06, 2020.