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

Judgment Reserved on: February 28, 2014
% *Judgment Delivered on: March 28, 2014*

\+ **W.P.(C) 131/2013**

ASSOCIATION FOR DEMOCRATIC REFORMS AND ANR ..... Petitioners

Represented by: Mr.Prashant Bhusan and Mr.Pranav Sachdeva, Advocates.

versus

UNION OF INDIA AND ORS ..... Respondents

Represented by: Mr.L.Nageshwar Rao and Mr.Rajeev Mehra, ASG with Mr.Sumeet Pushkarna, CGSC, Ms.Aditi Mohan, Ms.Sara Sundaram, Mr.Aditya Malhotra, Mr.D.Abhinav Rao, Mr.Mayank Pandey and Mr.Girish Kosaraju, Advocates for UOI.
Mr.P.R.Chopra, Advocate for R-2.
Mr.V.P.Singh, Senior Advocate instructed by Mr.K.C.Mittal, Ms.Ruchika Mittal and Mr.M.I.Choudhury, Advocate for R-3.
Ms.Pinky Anand, Senior Advocate instructed by Mr.Sybhashish Soren, Mr.Anil Soni and Mr.Aayush Chandra, Advocates for R-4.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. Filed in public interest, the petitioner asserts that there is a blatant violation of the Foreign Contribution (Regulation) Act, 1976 (hereinafter referred to as *'FCRA'*) by political parties which include the Respondent No.3 and the Respondent No.4. It is asserted that Section 29(b) of the Representation of People Act, 1951 prohibits political parties from taking donations from Government Companies as also from a foreign source. The petitioner asserts that FCRA prohibits acceptance of foreign contributions by political parties as per the mandate of Section 4(1)(e) thereof.

2. Since the writ petition drew attention to donations made to political parties for the period up to the year 2009, we record at the outset that our concern is not with the Foreign Contribution (Regulation) Act, 2010 which has come into force on September 26, 2010. Our discussion of the legal position would be with respect to the Foreign Contribution (Regulation) Act, 1976.

3. By way of illustration, the petitioner relies upon the annual report of Vedanta Resources plc, a company incorporated under the Companies Act, 1985 and registered in England and Wales with registration No.04740415 as also the annual report of M/s Sterlite Industries India Ltd. (hereinafter referred to as Sterlite), a company registered in India under the Companies Act, 1956 evidencing donation made by Sterlite to political parties in India. The petitioner also refers to a company by the name of M/s Sesa Goa Ltd. (hereinafter referred to as Sesa), which is incorporation in India under the

Companies Act, 1956 but controlling shareholding whereof is owned by Vedanta Resources plc. The said company has also made donations to political parties. The petitioner brings home with reference to the annual report of Vedanta Resources plc that it owns 55.1% of the issued share capital of Sterlite. The petitioner would concede that Sh.Anil Aggarwal, an Indian National and a citizen of India holds more than 50% issued share capital of Vedanta Resources plc. As regards the Respondent No.3 the petitioner brings out that two Government Companies: State Trading Corporation and Metals & Minerals Trading Corporation of India have donated money to the Respondent No.3, a fact admitted to by Sh.Motilal Mehra, the Treasurer of the party in his communication dated September 29, 2008 to the Election Commission of India. Section 293(a) of the Companies Act, 1956 is alleged to have been violated by the Respondent No.3 when it accepted donations from the State Trading Corporation and Metals & Minerals Trading Corporation of India.

4. The Respondent No.3 admits that ₹1,00,000/- each paid by State Trading Corporation and Metals & Minerals Trading Corporation of India finds a mention in the return submitted by its Treasurer to the Election Commission of India, but seeks to explain that the donations were actually made to the National Student Union of India (NSUI) as a part of a national campaign form Centenary Celebration of Satyagaraha which was sponsored by said two Corporations, which were conceded to be Government Companies. In other words, the defence is one of it being an inadvertent mistake. A donation required to be entered in the account of NSUI has been erroneously entered in the account of the Respondent No.3.

5. We shall be discussing the effect thereof at the end of our decision,

but would highlight at this stage that with respect to petitioner's pleading concerning the two Government Companies, the parties were not at variance on any question of law or fact. The only question would be to consider whether the defence of inadvertent mistake is plausible.

6. The major concern would be the interpretation of FCRA keeping in view the admitted fact that Sterlite and Sesa are companies registered in India under the Companies Act, 1956 and more than 50% of their issued share capital is held by Vedanta Resources plc a company incorporation under the Companies Act, 1985 and registered in England and Wales with registration No.04740415; the controlling shares whereof i.e. more than 50% of the issued share capital is held by Sh.Anil Aggarwal an Indian National and a citizen of India.

7. The understanding of the anatomy of a legislation would require a cognizance to be taken of the attending circumstances in wake of which the legislation was enacted. The Foreign Contribution (Regulation) Bill, 1973 was introduced in the Parliament which finally culminated into the Act No.49 of 1976 being passed.

8. The parliamentary debates that ensued on the Bill on the floor of the House in the Lok Sabha and the Rajya Sabha provide valuable insights and bring to fore the circumstances engulfing our nation which necessitated the legislation.

9. We are conscious that any interpretation flowing from the speeches made in the parliamentary debates by individuals cannot be a safe guide of the legislative intent of the entire house and therefore cannot be dispositive of the matter to halt the Court in its solemn pursuit of deciphering the true legislative intent. However, it assumes significance that it is permissible

under the law of our land to refer to the text of such debates and place reliance thereon to the limited extent viz. for discerning the state of affairs prevalent in the society at the point of time when the Bill was introduced and the mischief/evils which were sought to be suppressed by such a legislative enactment.

10. In the judgment reported as AIR 1951 SC 41 *Chiranjit Lal Chowdhury v. Union of India* the Supreme Court pertinently observed:-

> "*...legislative proceedings cannot be referred to for the purpose of constructing an Act or any of its provisions, but I believe that they are relevant for the proper understanding of the circumstances under which it was passed and the reasons which necessitated it.*"

11. In the decision reported as (1975) 3 SCC 862 *Anandji Haridas & Co.(P) Ltd. v. Engg. Mazdoor Sangh* the Supreme Court clarified that no external evidence such as Parliamentary debates, reports of the committees of the legislature or even the statement made by the Minister on the introduction of a measure or by the framers of the Act is admissible to construe those words. It is only when the statute is not exhaustive or where the language is ambiguous, uncertain, clouded or susceptible of more than one meaning or shades of meaning that external evidence as to the evils, if any, which the statute was intended to remedy or the circumstances which led to the passing of the statute may be looked into for the purpose of ascertaining the object which the legislature had in view in using the words in question

12. In the decision reported as (1990) 4 SCC 366 *Shashikant Laxman Kale v. Union of India* the Supreme Court recognized the vital distinction between the use of material (external aids) for the purpose of finding the

mischief dealt by the Act and the circumstances which necessitated the passing of such legislation as distinguished from its use for finding the meaning of the Act. The former course was held to be permissible.

13. In this regard it would be relevant to recount the words of Lord Atkinson in the decision reported as (1911) AC 641 *Keates v. Lewis Merthyr Consolidated Collieries Ltd.*:-

> *"In connection of statutes it is, of course, at all times and under all circumstances permissible to have regard to the state of things existing at the time the statute was passed and to the evils, which as appears from the provisions, it was designed to remedy."*

14. The said observations have been cited by approval by the Supreme Court in its judgment reported as AIR 1953 SC 58 *D.N Banerjee v. P.R Mukherjee* and (1981) 2 SCC 585 *Sonia Bhatia v. State of U.P*.

15. The practice of referring to *travaux preparatories* such as parliamentary history - debates, Statement of Object and Reasons appended to the Bill etc. as evidence of the circumstances which necessitated the passing of a piece of legislation and reliance upon the Constituent Assembly debates in interpreting the provisions of the Constitution has been consistently approved by the Supreme Court since time immemorial and is evinced by line of decisions : AIR 1956 SC 246 *A Thangal Kunju Musaliar v. M Venkatachalam Potti*; (1969) 1 SCC 839 *A.V.S Narasimha Rao v. State of A.P*; AIR 1993 SC 477 *Indira Sawhney v. Union of India*; (2001) 7 SCC 126 *S.R Chaudhuri v. State of Punjab*; and (2003) 7 SCC 224 *Karnataka Small Scale Industries Development Corporation Ltd. V. Commissioner of Income Tax*.

16. The debates which took place on the floor of the two Houses of

Parliament upon the introduction of the Foreign Contribution (Regulation) Bill, 1973 provide valuable insights into the turbulent state of affairs prevalent in our nascent democracy as shaped by the events across the globe. A reading of the text of the debates reveals that newly independent countries like India, amongst many others, were latently under a relentless siege by the Foreign Powers despite end of the colonial era and imperialist regime. The *modus operandi* seemed to have now undergone a novel change. Though the said Foreign Powers were no longer involved in subjugating the territories of the newly independent colonies, yet a vicious onslaught of political and economic subjugation was conceived and executed through their instrumentalities, which practice has been popularly termed as '*Neo-Colonialism'*. The reasons are not hard to seek. The predominant object ostensibly being to gain economically and cripple the economies of the developing and the underdeveloped Third-World Countries till eternity. Interestingly, the other compelling reason which impelled the Foreign Powers to exhibit a keen interest in the affairs of newly independent nation-states stemmed from the 'Cold-War' that virtually polarised the war-torn world into two power blocs premised upon clear cleavage of ideology. The Western Bloc led by the United States of America comprised of the NATO and others, whereas, the Eastern Bloc was spearheaded by the Soviet Union and its allies in the Warsaw Pact. The Western Bloc countries shared a capitalistic outlook and desired a world order in such terms. *Per Contra*, the Eastern Bloc countries had gravitated towards a socialistic political ideology. Thus, commenced an era of unceasing conflict of rival ideologies that also engulfed within its fold the newly independent 'Non-Aligned Countries' like-India. Each bloc zealously attempting to win-over the

allegiance of such countries, for creation of a world order in accordance with its ideology. Mobilizing the public opinion through Trade Unions and Voluntary Groups, circulating publications to spread propaganda, orchestrating *coupes* or even assassinations became the order of the day. Political Parties and pliant public functionaries were influenced by these Foreign Powers to toe their lines and in return were handsomely rewarded in myriad forms, which included bribes, extending lavish hospitality, sponsorship of education of their relatives in reputed Universities abroad and even securing attractive career opportunities in Multi-National Corporations. It has perhaps been eloquently stated in a decision of this Court reported as 68 (1997) DLT 553 *P.V Narsimha Rao v. Central Bureau Of Investigation*:-

> *"What is the best way to win political foes? Persuasion? Understanding? Love? Compassion? Dale Carnegie's sermons? ...secret of success lies, at least with regard to some, in mastering the art of transferring one's own bulging wallets into the eager pockets of others."* ***[Emphasis Supplied]***

17. In this regard it may be profitable to take a note of the observations in V.K.R.V.Rao and Dharm Narain's *Foreign Aid and India's Economic Development*, wherein it has been pertinently observed on page 72:-

> *"India's policy of non-alignment with power blocs enabled it to receive foreign contributions from both the blocs. Eventually, with too much money coming in, with no self-discipline, regulation, transparency or public accountability, and with some groups building empires in the name of contribution."*

18. In the debates on the floor of the two Houses of Parliament reference to an enquiry conducted by the Intelligence Bureau can also be found, as per

which it was revealed that the Political Parties in India were funded by Foreign Powers for the elections held in the year 1967. Various distinguished Members of the House extensively referred to materials, including reporting's, contained in prestigious newspapers of the United States of America such as the New York Times, confirming the subversive activities undertaken by the CIA in the Third-World Countries with a view to further American hegemony and tilt the balance of power. Similar developments witnessed in other parts of the globe such as - Chile, Angola, Bangladesh, Japan, Netherlands, Italy were also the subject matter of debate before the House. Deep concern was unanimously expressed by all Members cutting across party lines that in the recent past the Foreign Powers were alarmingly successful in wielding their satanic influence to corrupt public life and create a class of citizens having *'extra-territorial loyalty'*. It was gathered from experience, domestic as well as international, that such covert operations were executed through the aid of seemingly innocuous organisations like - Research Foundations, Religious and Cultural Societies, Voluntary Associations and Multi-National Corporations. It had dawned that India had denigrated into a playground for the world powers; who were coining ingenious means to latently push across huge sums of money through puppet organisations and destabilize the country. The Members of the House unanimously supported the Aim and Object(s) of the legislation and the mischief of pervasive foreign influence on our polity that it sought to suppress.

19. It would be beneficial for our purpose to cite some extracts from the speech delivered by Shri Khurshed Alam Khan on the floor of Rajya Sabha on 9th March 1976 which are luminous and throw light upon the attending

circumstances necessitating the introduction of the Bill.

> *"Sir, I rise to support the Bill as amended by the Select Committee. In fact, this Bill has not been introduced too soon. Originally it was introduced on the 24th December, 1973, and the Select Committee has taken considerable time in redrafting the Bill.*
> *The nation is today poised for a take-off and we are determined to reshape our destiny and our economy. Nourished by the new economic programme, which has received spontaneous and overwhelming support, the nation has acquired a new purpose and a new reality.*
>
> *Sir, there was a time when territorial domination and spheres of influence of the imperialist powers and big powers were the order of the day. But now money seems to be the best way of interference in the domestic affairs of the country. But it is now a well-known and universally accepted fact that neo-colonialism is a clever substitute for the old type of crude colonialism. This is usually backed by the generous foreign contributions in various shapes, foreign hospitality.…*
>
> *... Sometimes these contributions assume the shape of foundations and chain of institutions and under the garb of other cultural activities. The foreign exchange deficits and requirements of developing countries and poor countries that particularly do not have oil resources these days have added to the dimension of this problem. Even our trade unions are not spared by the people who are interested in financing their activities in other countries. ...*
>
> *The CIA's doings all over the world have very clearly indicated as to what could be done by foreign money and foreign interference. Take, for instance, the investments of multinational corporations and firms. If you examine carefully their total investment and their remittances of profits during the last ten years, you would observe that their remittances will be ₹100 crores more than their investment during the same period and at the same time, they are over-generous in the matter of*

entertainment and expense accounts which are very well understood and well accepted…

Sir, it is almost a regular feature of some societies and organisations to receive generous grants and aid from foreign agencies. No patriotic and no self-respecting Indian will appreciate this generosity on the part of the foreign agencies. Sometimes it is done in a very subtle way and it is done under the pretext of helping literary activities. This is a very subtle way of doing it and we have, therefore, to be very careful. We must stop all such inflow of foreign money and we must see that these undesirable sources of money dry up for ever and as soon as possible. Surely, such an aid is neither for good purposes nor in the interest of the country or the people. All such societies and all such persons must be exposed. Contributions in the name of research and exchange programmes, etc., must be discouraged as they have always a motive behind them…

We are passing through a very important phase of life, in our chequered history, and the new economic programme is the beginning of an enormous task to bring about social and economic changes in the country. We have to be careful in this regard. There are still about 540 foreign companies in this country and their operations must be watched very carefully. In order to improve their prospects, they are also indulging in a lot of hospitality and aids of various types of agencies which are not working in the national interest…

Sir, the nation is on the move and prepared to face any challenges. The new era leads us from darkness to light, from uncertainty to stability and from lack of coincidence to self-reliance. This situation has brought about the transformation in our national life. Therefore, all loopholes, wastages and interference, whether political or through the power of money, should be stopped and done away with as early and as effectively as possible…"

20. Therefore 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.

21. As a matter of fact, the architects of our great nation, in their profound wisdom and foresight, sounded a note of caution even before we attained Independence from the British colonial rule. The Father of the Nation Mahatma Gandhi, in the magazine '*Harijan'* wrote *:* '*We know what American aid means. It amounts in the end to American influence, if not American rule added to the British.'* (Harijan, April 26, 1942)

22. John D.Montgomery in his book titled *Foreign Aid in International Politics*, 1st Ed. 1969, whilst explaining the nuances of foreign contributions and aids has remarked on page 7

> *"... Both foreign contribution and foreign aid can have different effects in diplomacy. It could serve to create a 'national presence' by the foreign contributor. It has the potential of procuring international favours, and even influence or impose political ideology..."*.

23. In this backdrop, it would be fruitful to analyze the relevant statutory provisions that are germane to the adjudication of the vexing questions raised before us in the present *lis*.

24. Section 4 of the Foreign Contribution (Regulation) Act, 1976 (hereinafter referred to as the 'Act') imposes prohibition on certain classes of persons from accepting foreign contribution. It reads as under:-

> *"**4. Candidate for election, etc., not to accept foreign***

contribution-

(1) No foreign contribution shall be accepted by any-

(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,

(d) member of any Legislature,

(e) political party or office-bearer thereof.

Explanation: In clause (c) and in section 9, "corporation" means a corporation owned or controlled by government and includes a government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

(2) (a) No person, resident in India, and no citizen of India resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any currency from a foreign source, on behalf of any political party, or any person referred to in sub-section (1), or both.

(b) No person, resident in India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to any political party or any person referred to in sub-section (1), or both.

(c) No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to-

(i) any political party or any person referred to in sub-section

(1), or both, or

(ii) any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in sub-section (1), or both.

(3) No person receiving any currency, whether Indian or foreign, from a foreign, source on behalf of any association, referred to in sub-section (1) of section 6, shall deliver such currency-

(i) to any association or organisation other than the association for which it was received, or

(ii) to any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to an association other than the association for which such currency was received."

25. The term 'Foreign Contribution' has been defined under Section 2(c) of the Act as under:-

"2. Definitions- (1) In this Act, unless the context otherwise requires,-

xxx

***(c)"foreign contribution"** means the donation, delivery or transfer made by any foreign source-*

(i) of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, does not exceed one thousand rupees,

(ii) of any currency, whether Indian or foreign;

(iii) of any foreign security as defined in clause (i) of section 2

of the Foreign Exchange Regulation Act, 1973 (46 of 1973).

Explanation: A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause."

26. Section 2(e) of the Act defines 'Foreign Source' as under:-

"2. Definitions- (1) In this Act, unless the context otherwise requires,-

Xxx

***(e) "foreign source"** includes-*

(i) the government of any foreign country or territory and any agency of such government,

(ii) any international agency, not being the United Nations or any of its specialized agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification in the Official Gazette, specify in this behalf,

(iii) a foreign company within the meaning of section 591 of the Companies Act, 1956 (1 of 1956), and also includes

(a) a company which is a subsidiary of a foreign company, and

(b) a multi-national corporation within the meaning of this Act.

(iv) a corporation, not being a foreign company, incorporated in a foreign country or territory,

(v) a multi-national corporation within the meaning of this Act,

(vi) a company within the meaning of the Companies Act, 1956

(1 of 1956), if more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely,-

(a) government of a foreign country or territory,

(b) citizens of a foreign country or territory,

(c) corporations incorporated in a foreign country or territory,

(d) trusts, societies or other associations of individuals (whether incorporatedor not), formed or registered in a foreign country or territory,

(vii) a trade union in any foreign country or territory, whether or not registered in suchforeign country or territory,

(viii) a foreign trust by whatever name called, or a foreign foundation which is either inthe nature of trust or is mainly financed by a foreign country or territory,

(ix) a society, club or other association of individuals formed or registers outsideIndia,

(x) a citizen of a foreign country,but does not include any foreign institution which has been permitted by the CentralGovernment, by notification in the Official Gazette, to carry on its activities in India."

27. The interpretation of the term 'Foreign Source' as defined under Section 2(e) of the Act lies at the heart of the present controversy and begs for judicial consideration.

28. It is the case of the petitioner that the donations made by Sterlite and Sesa to the political parties during the period when Foreign Contribution (Regulation) Act, 1976 was in vogue would be foreign contributions because

Sterlite and Sesa are a 'Foreign Source' within the meaning of Section 2(e)(vi) of the said Act. It has been argued that though the donors are companies registered in India under the Companies Act, 1956, however, significantly, more than one-half of their share capital is held by Vedanta - a company incorporated in the United Kingdom. Therefore, in view of the mandate of clause (vi) of Section 2(e) the donations in favour of the political parties are to be construed as emanating from a 'Foreign Source' and fall within the prohibition imposed by Section 4 of the Act, which bans acceptance of foreign contributions by Political Parties.

29. *Per Contra*, it is contended by the respondents that the donations made by Sterlite and Sesa in favour of the political parties cannot be construed as a 'Foreign Contribution' as they are not a 'Foreign Source' within the meaning of Section 2(e) of the Act. The respondents emphasized that the said companies are incorporated in India under the provisions of the Companies Act, 1956. The fact that more than one-half of their share-capital is held by Vedanta - a company incorporated in the United Kingdom is not disputed, however, it was pointed out that more than one-half of share-capital of Vedanta is in fact held by Mr.Anil Agarwal; who is a citizen of India. In this regard much reliance was placed by the respondents upon Section 2(e)(iii) of the Act to contend that even Vedanta is not a 'Foreign Company' within the meaning of Section 591 of the Companies Act, 1956 in view of the operation of clause(2) of Section 591 and therefore its subsidiaries – Sterlite and Sesa cannot be construed as a 'Foreign Source' to attract the rigour of the Act.

30. It would be relevant to note that the term 'Foreign Source' is not exhaustively defined under the Act and it assumes significance that the

legislature has chosen to employ the word- '*includes*', which signifies that the entries contained in the said provision are only illustrative of what could constitute a 'Foreign Source'.

31. The reason for providing an '*inclusive definition*' seems to be that the legislature, at the time of enacting the Act, was not in a position to exhaustively foresee the myriad means through which foreign contributions could be channelized into India. The debates have also recognized that such operations are covert in their innate nature and the foreign powers are known to have operated behind the cloak of '*dummy-organisations*' and adopt ingenious means to perforate the polity of nations. With a view to address such a mischief, enacting an '*inclusive definition*' seems to provide the best remedy since it lends the necessary flexibility to bring within its purview certain situations which do not stand expressly covered therein, lest loopholes of law may be explored and exploited in future.

32. A bare perusal of the provision also reveals that not only has the term 'Foreign Source' been defined in an inclusive manner, furthermore, nine clauses are comprised therein that deal with a wide spectrum of possible sources from which foreign contribution could flow.

33. The enactment by the legislature of an umbrella provision with plenary amplitude is reflective of the intent of the legislature that a wide coverage be given to the term 'Foreign Source' to advance the objects of the Act and suppress the mischief/evils it was designed to remedy.

34. At this juncture it would be apposite to take notice of the preamble of the Act, which unequivocally spells out the solemn object of the legislation:-

> *"An Act to regulate the acceptance and utilization 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 organizations 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, and for matters connected therewith or incidental thereto."

35. As observed by us even earlier, 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, and insulate the sensitive areas of national life like - journalism, judiciary and politics from extraneous influences stemming from beyond our borders.

36. The respondents have unanimously planked their submissions on a conjoint reading of Section 2(e)(iii) of the Foreign Contribution (Regulation) Act, 1976 and Section 591(2) of the Companies Act, 1956 to contend that since a citizen of India - Mr.Anil Agarwal holds more than one-half of share-capital of Vedanta (a company incorporated in the United Kingdom), Vedanta is not a 'Foreign Company' within the meaning of Section 591 of the Companies Act, 1956 and neither Vedanta nor its subsidiaries – Sterlite and Sesa can be treated as a 'Foreign Source' within the meaning of the Foreign Contribution (Regulation) Act, 1976.

37. For the purpose of analyzing the argument it would be beneficial to reproduce the relevant provisions pressed into service by the respondents:-

"2. Definitions- (1) In this Act, unless the context otherwise requires,-

xxx

(e) 'foreign source' includes-

xxx

(iii) a foreign company within the meaning of section 591 of the Companies Act, 1956 (1 of 1956), and also includes-

(a) a company which is a subsidiary of a foreign company, and

(b) a multi-national corporation within the meaning of this Act."

38. It is evident that Section 2(e)(iii) of the Foreign Contribution (Regulation) Act, 1976 treats 'Foreign Company' within the meaning of Section 591 of the Companies Act, 1956, its subsidiaries and multi-national corporations as a 'Foreign Source' for the purpose of the Act. The term 'Foreign Company' is not defined in the Foreign Contribution (Regulation) Act, 1976, however it prescribes that a 'Foreign Company' within the meaning of Section 591 of the Companies Act, 1956 would be treated as a 'Foreign Source' for the purpose of the Act.

39. Therefore, it would be necessary to have a glimpse at the contours of Section 591 of the Companies Act, 1956 for the purpose of unraveling the legislative prescription contained in Section 2(e)(iii) of the Foreign Contribution (Regulation) Act, 1976.

40. Part XI of the Companies Act, 1956 under the caption 'Companies Incorporated Outside India' has Sections 591 to 608 as a part of the Chapter. Section 591 reads as under:-

"591. Application of sections 592 to 602 to foreign companies

(1) Sections 592 to 602, both inclusive, shall apply to all foreign companies, that is to say, companies falling under the following two classes, namely:—

(a) companies incorporated outside India which, after the

commencement of this Act, establish a place of business within India; and

(b) companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act.

(2) Notwithstanding anything contained in sub-section (1), where not less than fifty per cent of the paid up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India."

41. In the present era of globalization fostered by treaties warranting the removal of trade barriers and other cognate measures, it is an established tenet of jurisprudence in all advanced nation - states that a corporation, duly incorporated in one country, is recognized as a corporation in others and it would be contrary to the accepted policy of nations to try and prevent a company incorporated in one country from carrying on business in another, without being incorporated there. Needless to state, as a concomitant of sovereignty it is, however, open to a country to regulate the activities of a 'Foreign Company' within the limits of its territorial jurisdiction.

42. The principle underlying these provisions is that a company, incorporated outside India, however in a sense '*domiciled*' within the territory of India by establishing a place of business therein, should be

brought within the regulatory framework of the Companies Act, 1956 and in public interest be saddled with some rudimentary obligations. Section 591(1) of the Companies Act, 1956 defines 'Foreign Company' as companies falling under the following two classes, namely:-

(a) companies incorporated outside India which, after the commencement of this Act, establish a place of business within India; and

(b) companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act.

43. It may also be worthwhile to notice that the recently encated Companies Act, 2013 distinctly defines 'Foreign Company' under section 2(42) in the following terms-

> *"2. In this Act, unless the context otherwise requires,—*
>
> *xxx*
>
> *(42) "foreign company" means any company or body corporate incorporated outside India which—*
>
> *(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and*
>
> *(b) conducts any business activity in India in any other manner."*

44. In light of the legislative mandate flowing from clause (1) of Section 591 of the Companies Act, 1956, Vedanta is unquestionably a 'Foreign Company' by virtue of the fact that Vedanta is incorporated outside India i.e. in the United Kingdom and has established its place of business in India,

as it operates in the territory of India through its subsidiary companies like Sterlite and Sesa.

45. However, the pertinent question arising for consideration is : *Whether clause (2) of Section 591 qualifies the meaning of 'Foreign Company' as laid down under clause (1) and brings out Vedanta from the conception of a 'Foreign Company' within the meaning of Section 591 of the Companies Act, 1956*?

46. It would be incumbent upon us to microscopically analyse Section 591(2) of the Companies Act, 1956.

> *"591. Application of sections 592 to 602 to foreign companies-*
>
> *xxx*
>
> *(2) Notwithstanding anything contained in sub-section (1), where not less than fifty per cent of the paid up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India."*

47. It would be relevant to note that Section 591 of the Companies Act, 1956 in its original form did not contain the above-highlighted clause and in fact clause (2) was subsequently added to Section 591 of Companies Act, 1956 vide a legislative amendment by Act 41 of 1974 with effect from February 01, 1975.

48. Therefore, interestingly, it would be pertinent to highlight that when the Foreign Contribution (Regulation) Bill, 1973 was prepared by its draftsmen and reference to Section 591 of Companies Act, 1956 was made, clause (2) of Section 591 was not even in existence in the statute book and therefore not within their contemplation. However, by the time the Foreign Contribution (Regulation) Bill, 1973 was actually passed by the parliament in the year 1976, clause (2) of Section 591 Companies Act, 1956 was in place.

49. A careful analysis of Section 591(2) reveals that if more than one-half of the share-capital of a company incorporated outside India and having an established place of business in India (A 'Foreign Company' within the meaning of section 591(1) of Companies Act, 1956) is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, ***as if it were a company incorporated in India***.

50. Therefore, by virtue of the fulfilment of the conditions prescribed in clause (2) of Section 591 of the Companies Act, 1956, a fiction of law operates, and even a 'Foreign Company' as defined is clause (1) is obliged to scrupulously comply with all the provisions of the Companies Act, 1956 as if it were a company incorporated in India and not merely comply with sections 592 to 602 of the said Act.

51. The sublime philosophy and rationale for introduction of clause (2) seems that it was being experienced that some 'Foreign Companies'

operating in India were foreign only namesake, i.e., only by virtue of incorporation in a foreign country, but the business was being essentially transacted in the territory of India and the ownership also vested in citizens of India. The provisions of the Companies Act, 1956 had a restricted application to the 'Foreign Companies' operating in India and this circumstance perhaps may have impelled many Indian nationals to have got companies incorporated abroad to operate their business within the territory of India. With a view to bring such 'Foreign Companies' within the regulatory framework to a much greater extent and exercise more effective control thereon, the Companies (Amendment) Bill, 1972 proposed insertion of a provision which provided for the equivalence of such 'Foreign Companies' with the companies incorporated in India, for the purpose of compliance of the obligations comprised in the Companies Act, 1956.

52. Thus, upon the satisfaction of certain conditions contained in clause (2) of Section 591, 'Foreign Companies' are required to comply with the provisions of Companies Act, 1956 just like any company incorporated in India and it would not suffice to merely comply with the limited range of provisions [Sections 592-602] that are required to be complied by a 'Foreign Company'.

53. The purport and intent of clause (2) of Section 591 of the Companies Act, 1956 does not seem to qualify or whittle down the meaning of 'Foreign Company' which is laid down under clause (1) of the said provision. The *litmus-test* for determining whether a company is a 'Foreign Company' is contained in clause (1) alone viz. incorporation outside the territory of India. The effect of clause (2) is rather to impose a greater burden of compliance on 'Foreign Companies' having place of business in India, which are

essentially held by citizens of India. The said burden is equivalent to the burden cast upon a company incorporated in India. As highlighted earlier, clause (2) was added to section 591 to address the growing tendency amongst Indian nationals to incorporate companies outside the territory of India and operate through their aegis within the territory of India, successfully circumventing many obligations envisaged under the Companies Act, 1956 which were applicable only to the companies incorporated in India.

54. The nationality of a company is determined exclusively on the touchstone of the *situs* of its incorporation and there exists a profusion of judicial authorities to this effect. The nationality of its shareholders or directors have no bearing upon the nationality of a company, the company being a distinct jural entity having an existence independent of its constituents. Reliance may be placed on the decision of the House of Lords reported as (1902) A.C 484 *Janson v. Driefontein Consolidated Mines, Private Limited*. In our considered view, there is nothing contained in the language of Clause (2) of Section 591 which affords an interpretation that it militates against the recognized principle of law that the nationality of a company is premised on the *situs* of incorporation *de hors* the nationality of its constituents.

55. In this regard it would be apposite to cite the view of an eminent author - C.R.Dutta in his celebrated treatise on Company Law, wherein he has expressed the view that a company incorporated in England having shareholders who are all Indian citizens would be construed as 'Foreign Company' [C.R Dutta-'The Company Law', 6th Edition, 2008-Volume 4; Page7087].

56. Thus, in ultimate analysis, we are of the considered view that Vedanta is a 'Foreign Company' within the meaning of Section 591 of the Companies Act, 1956 and therefore, Vedanta and its subsidiaries - Sterlite and Sesa are a 'Foreign Source' as contemplated under Section 2(e)(iii) of the Foreign Contribution (Regulation) Act, 1976. However, in view of the operation of clause (2) of the Section 591 of the Companies Act, 1956, Vedanta would be required to comply with the provisions of the Companies Act, 1956 like a company incorporated in India.

57. We may hasten to point out that even if the submissions of the Respondents in this regard were to be accepted by this Court and Vedanta and its subsidiaries like – Sterlite and Sesa were not held to be a 'Foreign Source' within the meaning of Section 2(e)(iii) of the Foreign Contribution (Regulation) Act, 1976, yet there would be no escape from the applicability of Section 2(e)(vi) of the Foreign Contribution (Regulation) Act, 1976.

58. It would be relevant to advert our consideration to the said provision.

> *2. Definitions- (1) In this Act, unless the context otherwise requires,-*
>
> *xxx*
>
> *(e) "foreign source" includes-*
>
> *xxx*
>
> *(vi) a company within the meaning of the Companies Act, 1956 (1 of 1956), if more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely,-*
>
> *(a) government of a foreign country or territory,*

(b) citizens of a foreign country or territory,

(c) corporations incorporated in a foreign country or territory,

(d) trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory."

59. It would be pertinent to note that the term 'corporations' has not been defined under the Foreign Contribution (Regulation) Act, 1976.

60. Section 2(2) of the Foreign Contribution (Regulation) Act, 1976 prescribes that the words and expressions used in the said Act and not defined therein, but defined in the Foreign Exchange Regulation Act, 1973 (46 of 1973), shall have the meanings respectively assigned to them in that Act. Furthermore, Section 2(3) mandates that the words and expressions used in the Foreign Contribution (Regulation) Act, 1976 and not defined in the said Act or in the Foreign Exchange Regulation Act, 1973 (46 of 1973), but defined in the Representation of the People Act, 1950 (43 of1950), or the Representation of the People Act, 1951 (43 of 1951), shall have the meanings respectively assigned to them in such Act.

61. However, we find that the term - '*corporation*' is not defined in either of the statutes referred above. Even the General Clauses Act, 1897 does not assign meaning to the term '*corporation*'.

62. Therefore, this Court must traverse beyond in order to ascertain the true meaning and import of the term 'corporation', which has not been defined under the Foreign Contribution (Regulation) Act, 1976 or the statutes prescribed therein.

63. It has been pertinently observed in the decision reported as (1914) 1

KB 641 *Camden (Marquis) v. IRC*:-

> "*It is for the court to interpret the statute as best it can. In so doing the court may no doubt assist itself in the discharge of its duty by any literary help which it can find, including of course the consultation of standard authors and references to well known and authoritative dictionaries.*"

64. The Supreme Court has held in the decision reported as 1985 Supp SCC 280 *State of Orissa v. Titaghur Paper Mills Co. Ltd.* that the court may take the aid of dictionaries to ascertain the meaning of a word in common parlance, where the word has not been statutorily defined or judicially interpreted

65. Black's Law Dictionary, Ninth Edition, defines the word - '*corporation*' in the following terms:-

> *"corporation, n. (l5c) An entity (usu. a business) having authority under law to act as a single person distinct from the shareholders who own it and having rights to issue stock and exist indefinitely; a group or succession of persons established in accordance with legal rules into a legal or juristic person that has a legal personality distinct from the natural persons who make it up, exists indefinitely apart from them, and has the legal powers that its constitution gives it. Also termed corporation aggregate; aggregate corporation; body corporate; corporate body. See COMPANY. [Cases: Corporations] - incorporate, vb. corporate, adj. "A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law.... [I]t possesses only those properties which the charter of its creation confers upon it." Trustees of Dartmouth College v. Woodward, 17 U.S. (4 WheaL) 518, 636 (1819) (Marshall,J.)."*

66. The term '*Corporation*' has also been defined in the Concise Law Dictionary by P.Ramanatha Aiyar, Third Edition, in somewhat similar

terms.

> *"...Artificial persons established for prescribing in perpetual succession certain rights, which, if conferred on certain natural persons, would fail in process of time. A corporation is an artificial being, invisible, intangible and existing only in contemplation of law. Being, the mere creature of law it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity, or perpetual conveyances for the purpose of transmitting it from hand to hand.*
>
> *It is a body corporate legally authorized to act as a single person. [Art. 19(6)(ii), Const]..."*

67. Section 2(7) of the Companies Act, 1956 defines '*corporation*', as under:-

> *"2. Definitions.—In this Act, unless the context otherwise requires,—*
>
> *xxx*
>
> *(7) "body corporate" or "corporation" includes a company incorporated outside India but does not include—*
>
> *(a) a corporation sole;*
>
> *(b) a co-operative society registered under any law relating to co-operative societies; and*
>
> *(c) any other body corporate not being a company as defined in this Act which the Central Government may, by notification in the Official Gazette, specify in this behalf;"*

68. The new Companies Act, 2013 defines a '*Corporation*' under section 2(11).

> *"2. In this Act, unless the context otherwise requires,—*
>
> *xxx*
>
> *(11) "body corporate" or "corporation" includes a company incorporated outside India, but does not include—*
>
> *(i) a co-operative society registered under any law relating to co-operative societies; and*
>
> *(ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;"*

69. Thus, it is unequivocal that the term '*corporation*' ordinarily includes within its meaning entities like a company; amongst others.

70. We have already highlighted in the earlier part of our judgment that the legislature in its wisdom has defined the term 'Foreign Source' in a wide and an expansive manner with a view to suppress the mischief. This Court cannot impose artifices and thereby restrict the natural/ordinary meaning of the words contained in the definition, lest it would frustrate the legislative intent and render the provision redundant. We see no reason why an entity such as a company would not fall within the ambit of the term '*corporation*' employed in the Foreign Contribution (Regulation) Act, 1976.

71. Analysis of the meaning that has been ascribed to '*corporations*' in various law lexicons and other legislations operating in our country, establishes beyond a pale of doubt that a '*corporation*' incorporated in a foreign country or territory for the purpose of Section 2(e)(vi)(c) includes within its fold, companies incorporated outside the territory of India, such as Vedanta; which is incorporated in the United Kingdom.

72. It is not disputed by the respondents that more than one-half of the nominal value of the share-capital of Sterlite and Sesa is held by Vedanta. It has already been held by us in the preceding paragraph that Vedanta is a corporation incorporated in a foreign country or territory within the meaning of Section 2(e)(vi)(c) of the Foreign Contribution (Regulation) Act, 1976. Therefore, this leads to the irresistible conclusion that the present case is also squarely covered under Section 2(e)(vi)(c) of the Foreign Contribution (Regulation) Act, 1976.

73. For the reasons extensively highlighted in the preceding paragraphs, we have no hesitation in arriving at the view that *prima-facie* the acts of the respondents *inter-se*, as highlighted in the present petition, clearly fall foul of the ban imposed under the Foreign Contribution (Regulation) Act, 1976 as the donations accepted by the political parties from Sterlite and Sesa accrue from 'Foreign Sources' within the meaning of law.

74. The response by the Union of India which was supported by the Respondent No.3 and Respondent No.4 being found to be based on a wrong understanding of the law, we dispose of the writ petition issuing two directions. The first direction would concern the donations made by State Trading Corporation of India and Metals and Minerals Corporation of India shown in the books of accounts of the Respondent No.3 in respect whereof the stand taken is that the donations were actually made to National Students Union of India (NSUI) and that inadvertently the two donations were entered in the accounts of Respondent No.3. The first and the second respondent would investigate the matter with respect to the justification given to find out whether the same is a stray incident and possibly a mistake or otherwise. Depending upon the decision taken further action would be

taken as per law. The second direction would concern the donations made to political parties by not only Sterlite and Sesa but other similarly situated companies/corporations. Respondents No.1 and 2 would relook and re-appraise the receipts of the political parties and would identify foreign contributions received by foreign sources as per law declared by us hereinabove and would take action as contemplated by law. The two directions shall be complied within a period of six months from date of receipt of certified copy of the present decision.

75. There shall be no order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

MARCH 28, 2014
skb/mamta