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Sl. No. 26
AB

High Court at Calcutta
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Aniruddha Roy

W.P.A. 1736 of 2026

Darjeeling Mary Ward Social Centre
Vs.
The Union of India & Ors.

For the petitioner : Mr. Deep Chaim Kabir, Ld. Sr. Adv.
Mr. Rudrajit Sarkar (VC)
Mr. Debasish Mukhopadhyay
Mr. Anirban Banerjee
Ms. Srishti Sarkar
Ms. Payel Chanda
Ms. Bipasha Mrug

For Union of India : Mr. Dhiraj Trivedi, Ld. ASGI (VC)
Mr. Sudipto Kumar Mazumdar, Ld. DSGI (VC)
Mr. Ajoy Kumar Singhania

Heard on : August 20, 2026

Judgment on : : August 20, 2026

[IN COURT]

Aniruddha Roy,J.

Facts :

1. Petitioner claims to be a society duly registered with the Registrar of Firms, Societies and Non-Trading Corporations, West Bengal under the West Bengal Societies Registration Act, 1961.

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2. Petitioner was also registered by holding a valid certificate of registration within the meaning of **Section 12 of the Foreign Contribution (Regulation) Act, 2010** [hereinafter, the **said 2010 Act**]. The relevant certificate of registration is dated **August 6, 2021, annexure P-7** at **page 166** to the writ petition (volume II). The certificate was valid for a period of **five years** from the date of registration under the Act. Unless the registration certificate is there, no person or entity having a definite cultural, economical, educational, religious or social programme shall accept foreign contribution.

3. Before expiry of last **six months** of the validity of the certificate, petitioner had applied for renewal of the same **under Section 16** of the **2010 Act**. The jurisdictional authority by its impugned order dated **July 28, 2026, annexure P-20** at **page 571 (volume – IV)** of the writ petition, had refused the application under **Section 12(2) of 2010 Act**.

4. The petitioner being aggrieved with the said refusal and the impugned order of refusal dated **July 28, 2026** has filed the instant writ petition.

Submission:

5. Mr. Deep Chaim Kabir, leaned Senior Advocate appearing for the petitioner has referred to Section 11 of the said 2010 Act and has submitted what are the necessity for applying to obtain registration from the Central Government. Then he refers to the provisions laid down under Section 12 of 2010 Act and has submited that, if the terms and conditions laid down under the statute are fulfilled, the authority shall

grant the certificate within a specific time frame as provided under the statute. Section 13 of the Act provides for suspension of certificate and Section 14 of the Act provides for cancellation thereof.

6. Referring to Section 16 of 2010 Act, learned Senior Advocate Mr. Kabir submits that, this is the relevant provision under which a renewal has to be applied for and the petitioner also applied accordingly. On the basis of the said provision laid down under Section 16 of 2010 Act, with a conjoint reference to the said impugned order dated July 28, 2026 [hereinafter, **the impugned order**], he submits the mandate of the statute is that every person who have been granted certificate under Section 12 shall have such certificate renewed within six months before expiry of the period of the certificate. The Central Government may before renewing the certificate make such enquiry, as it deems fit, to satisfy itself that such person has fulfilled all the conditions specified under Sub-Section 4 to Section 12 of the Act. The renewal has to be applied by filling up the statutory form prescribed and the renewal has to be made, if the renewing authority is otherwise satisfied within a specific time frame. However, Central Government may refuse to renew the certificate in case where a person violated any of the provisions of the Act or Rules made there under.

7. With specific reference to impugned order at page 571 to the writ petition, learned Senior Advocate submits that on the face of it, it would be evident that the renewing authority/Central Government has not recorded its

satisfaction for refusal to renew the certificate. The refusal has taken place under Section 12(2) of 2010 Act, which is not the relevant statutory provision at all. He submits that, the ground, if any, for refusal for renewal should be in exercise of and in accordance with Section 16 and not under Section 12(2) of 2010 Act. While refusing the said renewal, the authority had observed and opined that the foreign contribution lying unutilized in the FCRA account and assets created out of such foreign contribution shall vest with the prescribed authority, until the association obtains a fresh certificate of registration under the Act from the Central Government.

8. Mr. Kabir submits that, in the event of refusal to renew the certificate under the provisions of Section 16 of the statute, Central Government is not authorized or Central Government does not have jurisdiction to observe that the foreign contribution or the assets created out of any foreign contribution shall vest with the prescribed authority, unless the certificate is cancelled under Section 15 of 2010 Act.

9. Learned Senior Advocate Mr. Kabir with reference to the said impugned order submits that on the face of it, it is without jurisdiction and palpably illegal and therefore, even though there exists an alternative remedy under Section 31 or 32 of 2010 Act, the same shall not stand in the way to entertain and maintain this writ petition.

10. Learned Senior advocate refers to the schedule from the relevant amendment of 2026 of the relevant Rules framed under the Act,

appearing at **page 574** of the writ petition (volume – IV), **annexure P-21** and submits that, the amended schedule under Rule 9 of the Rules provide for carrying out religious activities and the finding of the authority has been one of the grounds for refusal for renewal of certificate to the effect that the memorandum of association, the trust deed of the petitioner, *inter alia*, provides that membership shall be open to only institute of blessed Virgin Mary is in contradiction to the nature of the association (Social), is perverse *ex facie* and contrary to the amended Rules under the statute. The petitioner performs social activities and not the religious activities and the same would be evident from the income tax certificate of the petitioner at **page 578** of the writ petition.

11. In the light of the above submissions, Mr. Kabir prays for quashing of the said impugned order under which the renewal of the certificate has been refused.

12. Mr. Dhiraj Trivedi, learned Additional Solicitor General of India (VC) appears for Union of India with Mr. Sudipto Kumar Mazumdar, learned DSG and Mr. Ajoy Kumar Singhania, learned advocate has placed a bunch of documents which can be taken and accepted by this Court, as a report of the Central Government, the same is taken on record. Copy has been handed over to the learned advocate on record for the petitioner in Court today.

13. Mr. Dhiraj Trivedi, learned ASGI (VC), at the threshold, has taken the point of maintainability of the writ petition in view of existence of the

statutory alternative remedy, under Section 32 of 2010 Act, before the revisional authority.

14. Learned ASGI further submits that on a close perusal of the said impugned order at page 571, it would be evident that, all the materials which are required for consideration by the authority while refusing the renewal of certificate were duly considered. Reasons are sufficiently given in the impugned order. Therefore, the impugned order is sustainable in law.

15. With further reference to the said impugned order with the conjoint reading of Section 16 of the Act learned ASGI submits, nowhere under the statute it is provided that, a personal hearing has to be provided to the applicant claiming renewal of the certificate. It is the absolute discretion of the authority of the Central Government while considering the renewal application to refuse the renewal, if it finds sufficient material, as recorded in the impugned order, contrary to the provisions laid down under the statute and the Rules. It is nowhere mentioned under the provision for renewal, a prior notice of enquiry has to be given to the applicant or participation of the applicant during such enquiry is mandatory. Learned ASGI submits that, the enquiry can also happen at the instance of the authority on the basis of the existing materials before it. In fact on the basis of such existing materials, the writ petitioner was found to be disqualified for renewal of the certificate and hence his

application for renewal was refused. Adequate reasons in this regard are also available in the impugned order.

16. Learned ASGI has also pointed out from the impugned order that the petitioner has already been granted liberty to apply afresh praying for renewal, if it so desires.

17. In the light of the above, learned ASGI submits that, this writ petition should be dismissed and the impugned order should not be interfered with.

Decision:

18. After considering the rival contentions of the parties and on perusal of the materials on record, it appears to this Court that, the admitted position is petitioner was holding a valid certificate under Sections 11 and 12 of 2010 Act. Admittedly, the petitioner had applied within the time frame under the statute seeking renewal of certificate. Admittedly, it is neither a case for suspension of certificate under Section 13 nor cancellation of certificate under Section 14 of 2010 Act.

19. Provision for renewal of certificate, for convenience is quoted below:

> ***'16. Renewal of certificate.-*** *(1) Every person who has been granted a certificate under section 12 shall have such certificate renewed within six months before the expiry of the period of the certificate.*
>
> *[Provided that the Central Government may, before renewing the certificate, make such inquiry, as it deems fit, to satisfy itself that such person has fulfilled all conditions specified in sub-section (4) of section 12.]*

(2) The application for renewal of the certificate shall be made to the Central Government in such form and manner and accompanied by such fee as may be prescribed.

(3) The Central Government shall renew the certificate, ordinarily within ninety days from the date of receipt of application for renewal of certificate subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years:

Provided that in case the Central Government does not renew the certificate within the said period of ninety days, it shall communicate the reasons therefor to the applicant:

Provided further that the Central Government may refuse to renew the certificate in case where a person has violated any of the provisions of this Act or rules made thereunder.'

20. On a meaningful and harmonious reading of **Section 16 of the Act** it appears to this Court that, to have the certificate renewed to deal with the foreign contribution is a mandatory requirement, in the event, the certificate expires. **Proviso to Sub-Section 1 of Section 16** confers power to Central Government before renewing the certificate to make an enquiry, if it deems fit, and to satisfy itself that the applicant has fulfilled all the conditions specified under Sub-Section 4 to Section 12 of the Act. Though the power and discretion is there with the Central Government, but of course subject to restrictions imposed under the Section by using the expressions ***as it deems fit, to satisfy itself***. This clearly means that the discretion should be subject to satisfaction of the Central Government and such satisfaction has to be recorded on the basis of existing materials.

21. On a reading of **Subsection 4 to Section 12** this Court finds several factual issues are also required to be examined to arrive at a satisfaction to assess the conditions mentioned thereunder. The existing materials before the authority at the time of grant of certificate may vary subsequently when the renewal application is filed by the applicant nearly after five years. Therefore, to arrive at a satisfaction, the authority concerned must examine all the criterion and qualifications mentioned under **Sub-Section 4 to Section 12 of the Act** at the time of considering the renewal application. The moment a further enquiry is required to be carried out, it is implied that the same should be carried out upon due notice to the applicant and after granting it an opportunity to place its case for the satisfaction of the appropriate authority of the Central Government. Otherwise, the applicant might face civil and evil consequences. Hence, the provision for compliance of natural justice is in built and has to be and should be read as embodied under this provision.

22. **Sub-Sections (2) and (3) to Section 16** relates to the statutory prescription on time, which is not relevant in the facts and circumstances of this case.

23. The last proviso being the **second proviso to sub-section (3) to Section 16** reserves the power for the Central Government to refuse to renew the certificate in case where a person has violated any provisions of the Act or Rules made thereunder.

24. A meaningful reading of this proviso also shows that, the appropriate authority of the Central Government while refusing to renew the certificate must arrive at its satisfaction of mind, that the applicant has violated the provisions of the Act and the Rules framed thereunder. Such finding must also be accompanied with reasons on the basis of available materials. The same principle shall also apply during the interregnum between granting of licence and its renewal for about after five years. On an appropriate fact finding inquiry, the appropriate authority of the Central Government must come to a finding by satisfying its mind that the applicant has violated any of the provisions of the Act or the Rules made thereunder.

25. In the event, the certificate, already granted and is not renewed upon application being made under 2010 Act, the same would amount to taking away of a valuable right of the certificate holder, as the benefits granted to such a certificate holder would no more be available to it. Its right would be **defeated** and **forfeited**. Such a statute and the rules framed thereunder, thus, is required to be **construed and interpreted strictly and no liberal construction is permitted**.

26. On a close scrutiny of the impugned order this Court finds that, the satisfaction required to be recorded on the basis of the available materials or on the basis of violation of any provision of the Act or the rules, such exercise is absent in the impugned order, save and except, mentioning of some vague and bald finding and thereby refusing to grant the renewal.

27. Inasmuch as, from the impugned order it appears that, the application was refused under Section 12(2) of the 2010 Act which shows a clear non-application of mind by applying a wrong provision of the statute. The recording of vesting of foreign contribution or the property arising out of the foreign contribution are also not provided under Section 16 of the statute but it is provided under Section 15 of the statute, when a licence is cancelled under Section 14 or surrendered under Section 14A of the Act. Those are not the consequences mentioned in the event renewal of certificate is refused.

28. In view of the foregoing reasons and discussions, this Court is of the firm and considered view that, the said impugned order dated **July 28, 2026** suffers from an *ex facie* jurisdictional error and illegality. The jurisdictional error and illegality is so clear on the face of the impugned order that no further scrutiny on facts or material is required to be carried out and no further evidence is required to be looked into. **The same should not sustain in law**.

29. Now comes the plea of **alternative remedy**, urged by the learned Additional Solicitor General.

30. Relying upon a decision of the Hon'ble Supreme Court ***In the matter of : Godrej Sara Lee Ltd. V. Excise and Taxation Officer-cum-assessing authority*** reported at ***(2023) 109 GSTR 402 : 2023 SCC OnLine SC 95,*** this Court ***In the matter of : State Bank of India v.***

Commercial Central Goods and Service Tax and Central Excise and Others reported at ***2026 SCC OnLine Cal 7539*** has observed as under :

> ***"47. The law is trite that it is the self-imposed restriction of the Constitutional Court in exercising its power under Article 226 of the Constitution of India when an alternative and efficacious remedy exists under the statute. However, if the Constitutional Court finds on the face of record that an act committed by an Article 12 authority on the face of it is de hors and in violation of the statutory provisions and is without jurisdiction or in excess of jurisdiction, such self-imposed restriction is not an absolute bar before a writ court.***
>
> ***48. If on a close scrutiny of an act of an authority, on record, it appears that the jurisdictional error is so apparent and ex facie for which no further fact or evidence is required to be enquired or looked into, existence of an alternative remedy is not a bar. The plenary power of the Constitutional Court in exercise of its plenary jurisdiction under Article 226 of the Constitution of India has the authority and jurisdiction to correct such a jurisdictional error. If a Constitutional Court finds that without going into any factual dispute or any triable issue, the jurisdictional error can be corrected or is required to quashed, it would always be open for judicial scrutiny.***
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> ***49. The Supreme Court In the matter of: Godrej Sara Lee Ltd. (supra) had observed as under:***

5. A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision reported in (1957) 3 SCC 14: 1958 SCR 595 (State of Uttar Pradesh v. Mohd. Nooh) had the occasion to observe as follows:

> ***"10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute (Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a Rule of Law and instances are numerous where a writ of certiorari has***

> ***been issued in spite of the fact that the aggrieved party had other adequate legal remedies...."***

6. At the end of the last century, this Court in para 15 of the its decision reported in (1998) 8 SCC 1 (Whirlpool Corporation v. Registrar of Trade Marks, Mumbai) carved out the exceptions on the existence whereof a writ court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under:

> ***(i) where the writ petition seeks enforcement of any of the fundamental rights;***
>
> ***(ii) where there is violation of principles of natural justice;***
>
> ***(iii) where the order or the proceedings are wholly without jurisdiction; or***
>
> ***(iv) where the vires of an Act is challenged.***

7. Not too long ago, this Court in its decision reported in (2022) 16 SCC 447 (Assistant Commissioner of State Tax v. Commercial Steel Limited) has reiterated the same principles in para 11.

8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724: 1977 SCC (Tax) 335: (1977) 39 STC 355 (State of Uttar Pradesh v. Indian Hume Pipe Co. Ltd.)** and (2000) 10 SCC 482 (Union of India v. State of Haryana). What appears on a plain

reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring determination by the high court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not

(2021) 93 GST 1 (SC).

***** (1977) 2 SCC 724: 1977 SCC (Tax) 335: (1977) 39 STC 355 (SC).***

involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available."

31. In view of the above facts and circumstances this Court holds that, the instant **writ petition is maintainable**.

32. Accordingly, the impugned order dated **July 28, 2026 at page 571** to the writ petition stands **set aside** and **quashed**.

33. The appropriate authority of the Central Government shall revisit the application for renewal submitted by the petitioner after granting an opportunity of hearing to the petitioner and by passing a reasoned order strictly in accordance with law but positively within **six weeks** from the date of communication of this Judgment.

34. It is made clear that, this Court has not expressed any opinion on the merits of the application for renewal and the petitioner shall be at liberty to urge whatever points it wishes to urge by relying upon whatever records and documents, it wishes to rely upon before the appropriate authority of the Central Government but the same shall not travel beyond the scope of the application for renewal, already filed.

35. Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

36. With the above observations and directions the instant writ petition, **WPA 1736 of 2026** stands **allowed**, without any order as to costs.

37. Parties shall act on the server copy of this order duly obtained from the official website of this Court.

38. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)