

Information Note

1. Very recently, Odhikar appealed to the Senior Secretary, Prime Minister's Office challenging the decision of disapproval, in accordance with the section-17¹ of "Foreign Donations (Voluntary Activities) Regulation Act-2016".
2. In order to deliver a decision on the appeal petition, the Appellate authority took into account the following during the hearing:
 - i) The communication of the NGOAB conveying its decision of disapproval to Odhikar;
 - ii) The appeal petition of Odhikar, and their arguments presented during the hearing;
 - iii) The replies sent by the NGOAB, and their rebuttal during the hearing
3. NGO Affairs Bureau presented the following reasons as rationale for the disapproving Odhikar's application for renewal of registration:
 - Not providing information properly as sought from "Odhikar" by NGO Affairs Bureau.
 - Non-payment of increased fees and Value Added Taxes (VAT) by "Odhikar", as imposed under the 'Foreign Donation (Voluntary Activities) Regulation Act-2016'.
 - Failure in providing satisfactory reply/explanation to the objections raised in 08 audit reports pertinent to the Bureau approved projects implemented with foreign donation.
 - Refraining from providing the information sought by the Bureau regarding irregularities in the financial transaction identified by NGO Affairs Bureau in the investigation of the activities of 03 projects of 'Odhikar'.
 - Publishing misleading information on the organization's own website on enforced and involuntary disappearances, and failure to provide the list of names of so-called victims

¹Appeal.- (1) Any NGO or individual, being aggrieved by any order passed by the Bureau, shall prefer an appeal before the Secretary, Prime Minister's Office, within 30 (thirty) working days of such order and the Secretary, Prime Minister's Office, shall be deemed to be the appellate authority: Provided that the appellate authority shall extend the time limit for preferring an appeal by a maximum of 15 (fifteen) working days, on an application by the applicant in case the applicant fails to prefer an appeal within the stipulated time of 30 (thirty) working days on a reasonable grounds. (2) An appeal under sub section (1) shall be disposed off within 30 (thirty) working days from the date of admission or receipt of the appeal. (3) The appellate authority shall uphold, annul or revise any orders given by the Bureau. (4) Decision given under sub section (3) shall be deemed as final.

of enforced disappearances and extra-judicial killings in response to NGO Affairs Bureau's request to provide the same.

4. The Appellate Authority considered the following five points to deduce its conclusion vis-à-vis NGOAB's appropriateness of its refusal to renew the registration of Odhikar :

A. 'Applicability of the 'Foreign Donations (Voluntary Activities) Regulation Act, 2016':

Odhikar argued that, since renewal of registration was sought on 25 September 2014 as per the *Foreign Donations (Voluntary Activities) Regulation Ordinance 1978*, the matter was to be disposed of on basis the 1978 **Ordinance**, whereas NGOAB applied the Foreign Donation Regulation Act 2016 instead. Therefore, the Appellate Authority needed to check the appropriateness of the applicability of the Act,2016 in this case.

The Act 2016, *Section 21 (Repeals and Savings)* states that-

(1) Foreign Donations (Voluntary Activities) Regulation Ordinance 1978 (Ordinance No XLVI of 1978) and Foreign Contributions (Regulation) Ordinance 1982 (Ordinance No XXXI of 1982) are hereby repealed.

(2) In spite of such repeal under sub section (1), under the two repealed Ordinances-

(a) any act or action or any rule made or order issued, circular or notification or any notice served or any allegation instituted or petition filed subject to be in conformity with the provisions of this Act, shall be deemed to be made, issued, notified, given, instituted and submitted under this Act;

(b) any ongoing proceedings, subject to be in conformity with the provisions of this Act, shall be ongoing and uninterrupted in such a manner that the same have been adopted under this Act.

In view of the above, the Appellate Authority concluded that although the renewal of registration was sought under the Foreign Donation Regulation Ordinance 1978, the applicability of the Act 2016 was appropriate to deliver on the ongoing proceeding, as per the Section 21 (1)/(2)a/b of the Act 2016.

B. Whether the submission of application for renewal of registration was as per law :

Odhikar claimed that their submission of the application with the signature of its President (instead of the Chief Executive) was permissible as per law. However, upon examination of both the Ordinance 1978 and the Act 2016, it was found that it required the signature of the Chief Executive of Odhikar on each page of the Application/Declaration. According to the Article 8(ii)e of the approved constitution of Odhikar, 'Secretary' (not President) will be the Chief Executive of the NGO.

- The Prime Minister's Office circular dated 12 April 2012 required joint signature of both the Secretary and the President underneath the list of the Executive Committee, which Odhikar did not do.
- Also, the Right to Information Act 2009 required the NGO to furnish information about the designated 'Information Officer' which Odhikar chose to not provide.

Therefore, the Appellate Authority concluded that the renewal application itself was procedurally flawed.

C. Whether the DG (NGOAB)'s refusal to accept the 8 Audit Reports of 'Odhikar' was appropriate.

Odhikar claimed that it responded to all the queries of the NGOAB in relation to the Audit Reports. It also mentioned that it lost possession of important documents during the law enforcer's campaign into its office on 11 August 2013, as a result of which it could not furnish the documents when sought later.

The Appellate Authority found that Odhikar did not provide the reports with the essential documents as were required by the prescribed ToR of the Audit firms, eg. *Approval of the Bureau for expenditure beyond the sanctioned budget, Certificate of the Local Administration, VAT/TAX payment slip etc.*

The Appellate Authority also found that Audit Reports of most of the 8 (eight) foreign funded projects were sought much before the Law Enforcer's alleged raid on 11 August 2013, i.e. on 07.07.2011, 28.11.2011, 14.05.2012, 25.03.2013, 01.08.2013, 30.11.2014, 22.09.2016. This satisfies that Odhikar chose not to provide the essential documents along with its Audit Reports. Hence, the replies from Odhikar was not found acceptable.

The Appellate Authority therefore concluded that NGOAB's refusal to accept the Audit Reports of Odhikar was appropriate.

D. Whether the allegations of gross financial irregularities against Odhikar were appropriate.

As per the law, transfer of fund related to the foreign funded project is required to be done from the Organization's Mother account to the concerned Project Account. Upon examination of replies from the NGOAB as well as a report of the Anti-Corruption Commission, it was found that Odhikar opened 10 bank accounts against the name of the Organization. However, out of the 10, only one was used as a Project Account. The fund was also transferred to the joint account [REDACTED] of Mr. [REDACTED] and Mr. Adilur Rahman (Secretary), as well as to the FDR account (no. 91051412002/Standard Chartered Bank). The foreign fund of the donors was proved to have been misappropriated and misused.

As per the Act 2016, section 13(2)& 14, the Appellate Authority conclude that the allegation of gross financial irregularities brought against Odhikar by the NGOAB was correct.

E. Whether the allegations of anti-Bangladesh propaganda through the organization website www.odhikar.org of "Odhikar" is factual.

Odhikar uses its official website (www.odhikar.org) to spread its information and feed to many international human rights organizations as well as the United Nations human rights mechanisms.

On 7 February 2022, the NGOAB sought particulars of the reported victims from Odhikar, as it published in its website reports on situation of human rights in Bangladesh (2009-2021) with allegations of hundreds of extra-judicial killing and enforced disappearance. Odhikar, in the pretext of the ongoing writ petition (no. -5402/2019) in the court, refused to provide any information on the allegations it made. The Appellate Authority found that the court didn't have any embargo on Odhikar furnishing of the information/particulars sought, and regarded their response as a failure to substantiate the allegations of human rights violations. The Appellate authority concluded that the unfounded reports made public through Odhikar's official website was extremely damaging and image-tarnishing for the country. Hence it regarded the NGO's

activities as anti-Bangladesh propaganda, and considered it as a crime committed as per section 14 of the Foreign Donation Regulation Act 2016.

In view of the above, the Appellate Authority concluded that Odhikar's lack of transparency and non-compliance with the law, as was evident from its failure to submit the documents and meet the procedural requirements, is deliberate, and is aimed to secure political gain instead of contributing to the protection and promotion of human rights for which the organization was accorded registration in 1995.

5. The Appellate Authority therefore rejected the appeal petition of Odhikar and upheld the NGOAB's decision of disapproving the renewal of registration on 5 June 2022, in accordance with the Foreign Donation (Voluntaries Activities) Regulation Act 2016².

² **Offences.-** If any NGOs or Individual violates any provision of this Act or any rules or orders promulgated hereunder, Or pass any malicious and indecent (Derogatory and reproachful) comments regarding the constitution of Bangladesh or any constitutional institutions or engage it in any anti state activities or in financing, patronizing or supporting militancy and terrorist activities or having involvement with women and children trafficking or smuggling of narcotics and arms then it shall be treated to be an offence under the law for the time being in force.

²**Registration and renewal of registration-(5)** If the application under Sub Section (4) and the information furnished therewith appears to be correct and the activities of the applicant in the previous 10 (ten) years appears to be satisfactory, The Director General shall issue a registration renewal certificate in favor of the applicant for a further period of 10 (Ten) years.