IN THE HIGH COURT OF DELHI AT NEW DELHI

LETTER PATENT APPEAL NO._____ OF 2013

IN THE MATTER OF :-

Lalit Kumar Modi
Citizen of India, through his
Constituted Attorney
Mehmood M. Abdi residing at
A-901, Meera Towers,
Near Mega Mall, Oshiwara,
Andheri (West),
Mumbai -400053, Maharashtra …Appellant

Versus

1. UNION OF INDIA
Through Ministry of External Affairs
South Block, New Delhi

2. CHIEF PASSPORT OFFICER
Ministry of External Affairs, Room No.8,
1st Floor, Patiala House Annexe,
New Delhi – 110 001

3. REGIONAL PASSPORT OFFICER,
Mumbai, having his office at Manish
Commercial Centre, 216-Arbitration
Dr.Annie Besant Road, Worli,
Mumbai – 400 030 …Respondents

LETTERS PATENT APPEAL UNDER CLAUSE X OF THE LETTERS PATENT ACT READ WITH PROVISIONS OF THE DELHI HIGH COURT RULES AGAINST THE IMPUGNED ORDER DATED 16.1.2013 PASSED BY THE LEARNED SINGLE JUDGE IN WRIT PETITION NO. 376 OF 2012

MOST RESPECTFULLY SHOWETH:

1. The present appeal is being filed challenging the order dated 16.1.2013, whereby the Learned Single Judge has erroneously dismissed the writ petition filed by the Appellant being W.P. No. 376 of 2012 without appreciating the facts and the grounds stated

therein. By the above order the Learned Single Judge has upheld the orders dated 31.10.2011 and 3.3.2011 passed by Respondent Nos. 2 & 3 whereby the passport of the Appellant was erroneously revoked. The effect of the impugned order passed by the Learned Single Judge is that the fundamental rights of the Appellant have been brazenly abridged and violated. A copy of the impugned order dated 16.1.2013 passed by the Learned Single Judge in W.P. No. 376 of 2012 is annexed and marked as **ANNEXURE – A1**.

BRIEF FACTS OF THE CASE ARE AS FOLLOWS:

2. That the brief facts of the case are as follows –

I. The Appellant, is a citizen of India and a businessman with several roles, positions and responsibilities in various companies in India. His work involves lot of travel in and out of India. Appellant was appointed as the Chairman/ Commissioner of the Indian Premier League (IPL), a sub-committee of the Board for Control of Cricket in India (BCCI) sometime in the year 2008, as he had conceptualized the format of the IPL. The IPL conducted three seasons being IPL-1 (2008), IPL-2 (2009) and IPL-1 (2010) under the chairmanship of the Appellant.

Security Concerns from April 2009

II. In April 2009, whilst the Appellant was in South Africa organising the second season of the Indian Premier League ("IPL"), he received a call from Mr Devan Bharti, one of the

Additional Commissioners of the Mumbai Police, who told him that they had received credible information that there was a plot by Dawood Ibrahim and Chhota Shakeel to have the Appellant assassinated.

III. The Appellant was told by Mr Bharti that the police had been informed that hired assassins had been watching over the Appellant's house and office and were known to have maps and security information concerning the Appellant's house and office. Mr Bharti urged the Appellant to maintain sufficient security whilst he was in South Africa and he also asked the Appellant to get in touch with the Mumbai Police upon his return.

IV. As a result of this information and the heightened security risk to the Appellant and his family, the Mumbai Police placed the Appellant's family under 24 hour security whilst the Appellant was away in South Africa.

V. The Appellant himself hired South African security experts, Nicholls Steyn and Associates ("NSA") and they were entrusted with his security in South Africa during IPL Season 2 in April 2009. Further, the South African Government provided the Appellant with 24 hour armed security – he was provided with bullet proof armoured vehicles and was constantly guarded by personnel trained in providing close protection security. His movements were

also restricted and were only undertaken upon clearance by his security advisors.

VI. In the summer of 2009, the Appellant also hired leading Israeli Security Specialist, Joseph Draznin, to advise him on safety measures to be undertaken both in South Africa and India. Both NSA and Mr Draznin indentified the areas in which the Appellant's and his family's security had to be upgraded. As a result, the requisite applications were made to the relevant authorities. In the end, the Maharashtra State government and Mumbai Police objected to the retention of an Israeli security expert. Further, the Mumbai Police and Maharashtra Government denied NSA licence permitting them to carry arms in Mumbai and also arms licences for weapons of close protection to the private security.

VII. As a result of the threat perception, from the conclusion of the IPL in South Africa at the beginning of June 2009 until the end of the year, the Appellant only travelled to India for very short periods.

VIII. Notwithstanding all these measures, the threat to the Appellant's life continued to escalate. On 14 October 2009 the Appellant received an e-mail in which he was threatened with assassination.

IX. In early 2010, the Appellant started returning to India for longer periods. On 23 February 2010 the Appellant was asked to visit Mumbai police where the Joint Commissioner of the Mumbai Police, informed him that the Mumbai Police had intercepted communications which indicated the existence of a plan, by operatives of the Mumbai underworld, to assassinate him. It later transpired that there had actually been an attempt on the Appellant's life while he was in Thailand in December 2009, but which was luckily thwarted due to a last minute decision by the Appellant to depart a day earlier. Thereafter the Mumbai Police provided him with a heavy armed security cordon of policemen. He was also advised to take further precautions on his own, which he did.

X. As a result, the Appellant was given additional high-level security in Mumbai as well as in other states in India which he visited during IPL matches. The Mumbai Police also upgraded their security. The small firearms that the Mumbai Police personnel had been carrying when providing the Appellant's security were replaced by sub-machine guns. The 32nd floor of the Four Seasons Hotel in Mumbai where the Appellant was staying was almost completely sealed with access heavily restricted. Additionally, the Appellant again retained the services of NSA to provide him with close protection security , though without firearms in India.

XI. Also around this time the Appellant decided to engage the services of leading security firm Page & Co. from the UK. Their experts came to India to assess the security situation and advise on the precautions which were required to be taken. Besides advising on various precautions, they suggested that applications be made for at least six licenses for weapons for the private security guards engaged by the Appellant. They also suggested that applications be made for permitting automatic hand guns necessary for close protection, as sub-machine guns were completely inappropriate for close protection. The Appellant therefore submitted applications to the Maharashtra Government for permission to import enhanced security equipment. However these permissions were not granted, creating doubts about the efficacy and adequacy of the security arrangements then in place.

IPL Auction of March 2010

XII. On or around 22 March 2010 there was an auction, following a tender, for two new IPL team franchises (one for Kochi and one for Pune) to take part in the fourth IPL season due to be held in 2011. Given the roaring success of the IPL, the right to acquire new teams was highly coveted. One of the successful bidders for the Kochi franchise was an entity known as Rendezvous Sports World. After the auction was closed the Appellant became

aware that there was, within the Kochi winning Rendezvous Sports World bid, a hidden 25% 'sweat equity' stake which had been given without any actual capital investment being made, but rather in recognition of effort put into the bid. On 11 April 2010, the Appellant in a Twitter revelation exposed the fact that the holder of the 25% stake was one Ms Sunanda Pushkar. Ms Pushkar had no experience in cricket related activities, but that she was a close friend of Mr Shashi Tharoor, then India's Minister of State for External Affairs. Mr Tharoor had been a prominent figure in the bidding process, but had always batted away media rumours that he held a secret stake in the bid. His riposte to such rumours had always been that as a member of Parliament for the state of Kerala (where the city of Kochi is located), he was promoting Kochi's bid in the interests of that city's development.

XIII. The revelation of the ownership of that stake appeared, in the eyes of the media and public, more in the nature of a kickback to a government minister rather than a reward for effort made by Mr Tharoor. The revelation created a huge media and political controversy. Under intense pressure from the opposition and media Mr Tharoor resigned as Minister of State for External Affairs.

XIV. Just four days after the Appellant's 'Tweet', officers from the Income Tax Department searched the Appellant's offices in the BCCI and questioned him.

Suspension from BCCI and withdrawal of police protection

XV. On 25 April 2010, the third season of the IPL finished against the backdrop of the political events outlined above. Immediately after the close of the tournament the Appellant was suspended by the BCCI as Chairman of the IPL. The following day, 26 April 2010, the BCCI issued a Show Cause Notice to the Appellant asking him to respond to a range of charges about his conduct whilst he was Chairman of the IPL.

XVI. The IPL premises and also the premises of the Appellant as the Commissioner of the IPL came to be searched and voluminous records relating to the activities of the IPL were taken charge of by the Income Tax Department. In the first week of May 2010 the Appellant was summoned and questioned by the Income Tax department on several occasions. The Appellant appeared on each and every date as required by the officers of Income Tax and fully co-operated with their inquiry and investigation.

XVII. Appellant had handed over to the BCCI all the original records of the IPL which were in his custody, as the Commissioner, sometime in May 2010. Thus, all the

records relating to the IPL from its inception were in possession, custody and control of the BCCI and the Income Tax department by May 2010.

XVIII. The Appellant then spent the next two weeks with his lawyers working on his response to the BCCI Show Cause Notice. As stated above he also participated in the Income Tax proceedings initiated by the IT Department.

XIX. On 11 May 2010 there was a sudden reduction in the level of protection provided to the Appellant by the Mumbai police, with all armed police being withdrawn from his security detail. The Appellant returned to Mumbai from Goa on 13 May 2010 to find only two unarmed policemen to provide security. The Appellant was not given any forewarning about this drastic scaling back of his security cover, nor was he given any reasons for this action. Further, on 11 May 2010, the Mumbai police scaled back the protection provided to the Appellant's son Ruchir from 24 hours a day to 12 hours a day.

XX. With no armed protection in India, but no reduction in the ongoing level of threat to his life, the Appellant was advised by his security advisors to leave India until the level of threat against him fell to an acceptable level. The Appellant left India on 14 May 2010 and travelled to London**.**

XXI. The Appellant's family remained in India where unarmed personnel of both the Mumbai Police and NSA continued to provide them with security cover. However, in a letter dated 20 May 2010 the Mumbai police communicated to the Appellant that they would be completely withdrawing all security cover for his son , daughter and impliedly wife from 21 May 2010. On the same day, whilst his son was travelling in the Appellant's car, he was tailed by a Scorpio vehicle. On 22 May 2010 Appellant's son found himself in a compromising situation with unidentified persons (indicated to belong to underworld) in a restaurant in Colaba in Mumbai. These two suspicious incidents made the Appellant and his family particularly nervous.

XXII. The security advisors to the Appellant and his family strongly advised that the Appellant's family should leave the country immediately which they did. Infact towards end of May 2010 the Appellant's son was to appear in his final examination in American school in Mumbai but had to be shifted to London where as a special case he was allowed to give examination from American School in London because of security concerns.

XXIII. In August 2010, Page & Co. were instructed by the Appellant to conduct an assessment of the security situation in India. They were of the view that the security threat had not subsided and that it remained real and imminent. In

October 2010 the advisors from Page & Co. went to India and Pakistan and provided a report outlining the security situation with reference to the Appellant. The report concluded the existence of an ongoing threat to the Appellant, with the result that the Appellant instructed Page & Co. to provide security cover for him and his family in London. The copy of report would be kept ready at the time of arguments for perusal of Hon'ble Court.

XXIV. As of today's date the Appellant continues to retain private security cover for himself and his family in London.

Summons issued by ED

XXV. On 2 August 2010 a summons was issued to the Appellant by the Assistant Director of the ED, exercising his powers under FEMA, seeking copies of various documents including all contracts executed by the BCCI in connection with the IPL, minutes of the IPL Governing Council, and details of the Appellant's bank account. These documents were duly supplied by the Appellant in a letter dated 7 August 2010 in which he apologized for not being able to appear in person due to the threat to his life in India, but in which he stated that his General Counsel and Constituted Attorney, would attend on his behalf and provide all the necessary documentation and assistance.

XXVI. On 16 August 2010 the ED wrote to the Appellant asking him to provide evidence as to the threat to his life. On 23 August 2010 the Appellant duly responded, providing all the relevant evidence in this regard, including correspondence between him and the relevant authorities and media articles reporting the existence of the threat. The Appellant also suggested that if further corroboration of the existence of the threat was required, the same could be verified by the Mumbai Police.

XXVII. On 24 August 2010, notwithstanding the Appellant's letter of 23 August 2010, the ED served another summons requesting that he appear in person before the Assistant Director on 7 September 2010. In a letter of 7 September 2010 The Appellant wrote to the Assistant Director of the ED reiterating the contents of his letter of 23 August 2010 and offered to answer the ED's questions in writing or make himself available for questioning either by video-link or by personal attendance before ED officers in London.

XXVIII. Subsequently, a further Show Cause Notice dated 20 September 2010 was issued by the Deputy Director of the ED to the Appellant. The Deputy Director issued the notice upon consideration of a Complaint filed by the Assistant Director of the ED, asking the Appellant to show cause as to why adjudication proceedings under FEMA should not be held against him, and requiring him to appear either in

person or through a lawyer or chartered accountant to explain and produce relevant documents or evidence. The Complaint by the Deputy Director, dated 16 September 2010, was enclosed with the Show Cause Notice. That Complaint asserted that the Appellant had failed to provide evidence showing the existence of a threat perception to his life, that he was avoiding the process of law and wilfully avoiding examination under oath under the pretext of security concerns and that as a consequence, adjudication proceedings under FEMA should be proceeded with against him.

XXIX. The Appellant also wrote a letter on 9th October, 2010 to the Director, Deputy Director and the Assistant Director of the ED, asserting that he had always extended the fullest co-operation to the ED, that all the documents that they had requested had been supplied and that the ED had been informed of the reason why he was not able to attend in person, namely due to a serious threat to his life and safety. The Appellant reiterated his earlier offer to answer all questions/requisitions that the ED may desire him to answer, either orally or in writing. The Appellant further reiterated his willingness to answer any questions by video conferencing or by attending the Indian High Commission in London. Finally, in order to completely obviate any suggestions of him avoiding questioning, the Appellant

expressed his willingness to have the concerned officers of the ED flown in London, at his own cost, and to appear before them and answer any questions that they may wish to put to him.

XXX. The Appellant replied to the show cause notice dated 12.10.2010. It is important to point out that Section 16(6) of FEMA provides as under:

> ***"(6) Every Adjudicating Authority shall deal with the complaint under sub-section (2) as expeditiously as possible and endeavour shall be made to dispose of the complaint finally within one year from the date of receipt of the complaint:***
>
> ***Provided that where the complaint cannot be disposed of within the said period, the Adjudicating Authority shall record periodically the reasons in writing for not disposing of the complaint within the said period."***

XXXI. It is further important to point out that on the show cause notice dated 20.09.2010, not even preliminary decision of initiating proceeding as contemplated in Rule 4 (4) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rule, 2000 has been taken till date.

XXXII. In a written communication dated 17 December 2010, from the Senior Inspector of Police (Protection Branch) to the Appellant, he was informed that the police protection that he

was provided with was stopped with effect from 22 November 2010 following an order of the Commissioner of Police for Greater Mumbai. This letter was the written confirmation of the protection that the Appellant had in fact been lost as far back as May 2010.

XXXIII. It has subsequently transpired that at the time that the ED served the Show Cause Notice it had in fact sought and received information from the Mumbai Police as to the existence of a security threat to the Appellant. It therefore appeared that the repeated issuing of the summons was designed to harass the Appellant rather than to further the aims of the investigation. This was learnt following an application made under the Right to Information Act 2005 in which the constituted attorney of the Appellant sought details of any communications between the Mumbai Police and the ED in relation to the Appellant's security. As a result of the disclosures provided, it was revealed that in response to a reference from the ED dated 23 August 2010, the Additional Commissioner of the Mumbai Police had, in separate, confidential letter dated 16 September 2010, written to the Deputy Director of the ED admitting that the Appellant had been provided with police protection on the basis of intelligence received from Central Agencies about the threats to his life from gangster Dawood Ibrahim and his associates. Though the communication made by Mumbai

Police did suggest that security would continue to be provided to the Appellant when he returned, this was in fact wholly inconsistent with the action taken by the Mumbai Police on 11 May 2010 when they deliberately downgraded the Appellant's security thereby leaving him exposed to an unacceptable level of risk. Further, on 20 May 2010, Mumbai Police expressly wrote a letter to the Appellant saying that they would be withdrawing all security to his son from 21 May 2011. In those premises, the observation by the Mumbai Police as to the continuance of security for the Appellant was only made because they did not want to be on record, in official interdepartmental communication, as ignoring a real and present threat to a citizen.

The powers of the ED

XXXIV. The ED has purportedly been investigating alleged violations under FEMA relating to BCCI contracts in connection with the IPL. It is significant to note that there is not a shred of evidence which even remotely suggests that the Appellant was responsible for any contravention of FEMA or has committed any foreign exchange violation whilst being an administrator within the BCCI. The truth of the matter is that the Appellant was never involved in any monetary transactions involving either the BCCI or the IPL. He did not have any authority in respect of the operation of the BCCI's bank accounts in respect of withdrawals or the

making of payments, either domestically or in respect of foreign exchange as those powers are vested in the Treasurer and Secretary of BCCI.

XXXV. It is also important to note that the proceedings under FEMA are civil in nature. The proceedings do not contemplate any criminal liability or proceedings, nor do they contemplate any custodial interrogation. Any violation of the provisions of FEMA cannot equate or amount to a criminal offence. The penalties provided under FEMA are merely in the nature of a civil penalty. Further under Section 16(4) of FEMA, a person against whom an ED adjudication may take place is entitled to either appear in person or be represented by a legal practitioner or a chartered accountant of his choice. Thus there is no requirement for a personal appearance before the ED for the purposes of an adjudication. Indeed, even for the purposes of cooperating with an investigation which precedes any adjudication, the statute provides for evidence to be taken by way of commission– there is no mandatory requirement for a personal appearance at the ED's offices.

Passport Revocation

XXXVI. Whilst the ED had repeatedly failed to adequately adjudicate upon the reasons for The Appellant's non-appearance before the ED as a consequence of the ongoing security threats to his life and though it was aware

of the communication dated 16th September,2010 given by Mumbai Police confirming the security threat to the Appellant yet, suppressing the said matter, it sent two communications dated 4th October 2010 and 14th October 2010 to the Regional Passport Office ("RPO"), Mumbai annexing copies of the Show Cause Notice issued to the Appellant and seeking the impounding of the Appellant's passport on account of his alleged avoidance of the ED's summons .

XXXVII. The APO of the Regional Passport Office in Mumbai, based on the ED's request, issued a Show Cause Notice to the Appellant on 15 October 2010 inviting him to appear before the APO within 15 days to explain why action under section 10(3)(c) of the Passport Act 1967 should not be initiated against him. The notice stated as under:

> *"It is informed by the Directorate of Enforcement, Mumbai that a complaint dated 16.09.2010 under section 13 of FEMA, 1999 has been filed against you and a Show Cause Notice has been issued to you on 20.09.2010 for non-compliance of Summons issued by them. In view of this, you are called upon to explain as to why action under Section 10(3)© of the passports Act, 1967should not be initiated against you,"*

XXXVIII. However, before expiry of the 15 day period, the Foreign Secretary, Ms Nirupama Rao, who is the top civil servant in the Ministry of External Affairs, held a media briefing on 22

October 2010. A prominent news agency, Associated News of India, reported that Ms Rao had threatened to cancel the Appellant's passport if he did not respond to corruption charges. This media briefing from the highest levels within the Ministry of External Affairs established beyond doubt that the outcome of the passport proceedings had already been pre-determined.

XXXIX. Nonetheless, the Appellant participated in the proceedings initiated by the APO. So that he could make an effective reply, the Appellant sought, on no less than five occasions, copies of the communications sent by the ED to the RPO in writing. Despite repeated requests Appellant was not provided with the materials on the basis of which the show cause notice was issued. Despite requests the Appellant was not even granted an inspection of the file relating to the case. The copies of these communications were never supplied– instead, on 1st November 2010, only an extract of those communications was supplied on the basis that these were confidential communications between government departments. These extracts did not disclose the nature of the basis of the ED's request for action to be taken under the Passport Act 1967. Instead, in bland and generalised terms, the ED stated to the APO that:

> "It would be in public interest in general and in the interest of a thorough investigation into the grave

irregularities committed by Shri Lalit Kumar Modi in particular, that his passport is impounded so that his attendance in compliance of the Summons could be enforced."

XL. The Appellant responded to the letter dated 01.11.2010 and raised certain queries but the same were not responded to.

XLI. Thereafter, Appellant made various applications in accordance with the principle of natural justice including application for cross examination of the officials of the ED.

XLII. The APO thereafter failed to respond to a number of requests for further disclosure of the nature and contents of the ED's request and other documentation relied upon. Despite the absence of any particularised and specific case as to why the Appellant's passport should be impounded, the Appellant gave an interim reply to the APO's Show Cause Notice and participated in the passport proceedings.

XLIII. The APO set a hearing date of 18 November 2010 for an oral hearing before him. However the oral hearing on that date was taken over by the Regional Passport Officer of Mumbai, who is a superior officer to the APO. This was clearly impermissible. The same was protested against in writing and orally, but it was to no avail.

XLIV. On at least three occasions during the course of proceedings on that day submissions were interrupted and the Appellant's counsel were asked to leave the room so that the Regional Passport Officer and APO could confer amongst themselves and presumably make telephone calls to their seniors in Delhi. Further, it was blatantly obvious that the multi member tribunal purportedly listening to and considering submissions was also taking instructions from outside.

XLV. The manner in which the hearing was conducted clearly demonstrated that the hearing was merely a formality. It was in fact a charade. It appeared that the minds of the passport officers were closed to anything that was being said to them and that they had already reached their decision. It was apparent that the hearing was granted on the basis that the passport officers had to be seen to be giving a hearing. What they were in fact doing was simply ‘going through the motions’. The hearing was cut short, long before submissions had been completed and so a protest note seeking further hearing time was submitted.

XLVI. The RPO granted a further hearing on 28 November 2010. However, that hearing was also cut short. The Appellant’s counsel at that hearing was only able to complete a small fraction of his submissions. At the conclusion of hearing, a request was made for a further hearing so that the

Appellant's case could be fully put to the passport officers but the same was declined.

XLVII. Though the counsel of the Appellant had not concluded his submissions, however, the Regional Passport Office closed the hearing of the case and despite repeated requests including vide letters dated 29.11.2010 and 01.12.2010 made to the regional Passport office no further date granting further opportunity of hearing was fixed.

XLVIII. In such circumstances, by the letter dated 06.12.2010 further opportunity of hearing was sought for and written arguments were submitted.

XLIX. The Regional Passport Office issued a letter wherein the request for further hearing was rejected.

L. Notwithstanding the fact that the passport officers gave the impression that there was a degree of urgency justifying the early conclusion of the above-mentioned hearings, a decision on the passport proceedings was not forthcoming until 3 March 2011. On that date, the RPO issued an order revoking the Appellant's passport on the basis that:

a. The Appellant had repeatedly made himself unavailable to the ED in order to hamper their investigations, thereby acting contrary to the public interest;

b. The fact the Appellant had deliberately absented himself was borne out by the specious defence put forward by him;

c. The “pretext” or “bogey” of a security threat was virtually non-existent by virtue of the fact that the Mumbai Police had offered him police protection in addition to the security agencies who were at his continuous service;

d. It was in the interests of the game of cricket and of the public in general that the allegations against the Appellant were properly investigated, for which The Appellant’s interrogation was required.

LI. The basis of the RPO’s order was manifestly perverse, was based on pure speculation and ignored vital facts, most notably that security cover was withdrawn from the Appellant on 13 May 2010 and that none of the Appellant’s privately hired security personnel were ever permitted to carry arms.

LII. The gap of over three months between the last hearing and the date of the order indicated that there was no pressing urgency in curtailing the Appellant’s lawyers' submissions and thereby failing to grant him an adequate hearing.

LIII. It is also important to note that the ED's investigations could have been quite properly and adequately conducted without the physical presence of the Appellant in front of the investigators of the ED at their offices in Mumbai. The RPO ignored the fact that the ED had various other powers under the relevant statute to record the Appellant's statement, none of which were invoked before they attempted to instigate grossly disproportionate action against the Appellant's passport. Such action should have been an absolute last resort considering the seriousness of its consequences. There was no explanation as to why the other powers under the relevant statute were not exercised before the commencement of action against the passport of the Appellant.

LIV. It was irrelevant that the Appellant was not physically present in the office of the ED. His questioning could have taken place either by way of a questionnaire, by video link at the Indian High Commission or even by the attendance of officers of the ED in person in London. These would have all been permissible methods of investigation under FEMA. The RPO also lost sight of the fact that whatever documentation had been available to the Appellant had been provided in pursuance of the ED's summonses. In reality, there was never any explanation by the ED as to why they were specifically insisting on the Appellant's

personal physical appearance at the offices of the ED in Mumbai.

LV. In all the circumstances, the revocation of the Appellant's passport was a grotesquely disproportionate measure. The effect of it is to essentially deny the Appellant one of the key benefits of his Indian nationality. It appears that the true purpose of the revocation of the Appellant's passport is punishment which has been meted out to him for extraneous reasons. Such a purpose is wholly impermissible in the context of section 10(3)(c) of the Passport Act 1967.

LVI. The Passport Act 1967 provides for a statutory right of appeal to the Chief Passport Officer ("CPO") (who is a civil servant at the level of Joint Secretary) in the Ministry of External Affairs. The appeal was filed by the Appellant on 1 April 2011. An application for a stay of the order of revocation was also made.

LVII. Since no date was fixed for hearing the Appellant vide his letter dated 14.4.2011 addressed to Respondent No. 1 sought an early hearing or a hearing on interim relief.

LVIII. The hearings of the appeal to the CPO were on 14 July 2011 and 1 August 2011. As with the first instance hearings, the Appellant's advocates were cut short with a direction that written submissions be filed. Those

submissions were filed on 17 August 2011. During the hearings the CPO repeatedly sought to undermine the Appellant's security concerns. He also rhetorically asked what was so special about the Appellant that he could not sit at a table before an officer of the ED in Mumbai. These particularly un-judge like comments of the CPO characterised the atmosphere of unfairness in which the hearings were conducted.

LIX. In the meantime, Appellant applied to the Deputy Director of the ED, vide letter dated 4.10.2011 for dropping of proceeding initiated in pursuance of the show cause notice dated 20.09.2010.

LX. Appellant addressed a letter dated 10.10.2011 to the CPO (Respondent No 1) requesting therein that the judgment in the case may kindly be pronounced at the earliest possible convenience or in the alternative the Appellant may be granted an opportunity of hearing for stay of the order passed by the Regional Passport Office. The Appellant again issued a communication/reminder to the Respondent No 1 reiterating his request made in letter dated 19.10.2011. The Respondent No.1 neither decided the appeal nor any date of hearing on the stay application of the Appellant was fixed nor the Appellant received any response to the letters dated 10.10.2011 and 19.10.2011.

LXI. That after lapse of two months from the filing of the written submissions when no order was passed the Appellant was constrained to file a writ petition before this Honourable Court seeking a writ , order , direction in the nature of mandamus for a direction to the CPO to decide the appeal expeditiously. The said writ petition was filed on 1.11.2011 and a copy thereof was also served on the CPO by way of an advance notice on 2.11.2011. That immediately after the said notice was served the on CPO the Constituted Attorney of the Appellant was vide email communication dated 3.11.2011 informed by the office of the CPO that order has been passed on the passport appeal filed by the Appellant on 31.10.2011. In these circumstances on 04.11.2011 the Appellant withdrew the aforesaid writ petition as having become infructuous.

LXII. The ED has purportedly been investigating alleged violations under FEMA. These allegedly relates to BCCI contracts in respect of Conduct of IPL. Though out of rivalry emanating out of Sports Administration, the President and Secretary BCCI have instituted an enquiry against the Appellant, it is significant to note that nothing in the entire enquiry even remotely suggests that Appellant has been responsible for any contravention of FEMA or have committed any foreign exchange violation while being an administrator in the BCCI.

LXIII. In almost all contracts of the BCCI, pertaining to IPL there has been an inward flow of foreign exchange: not the other way round. Thus when there has been income through foreign exchange, it cannot be said to be against the interest of nation or general public. Further all of these contracts were signed or entered into by BCCI as an institution and were approved and ratified by Governing Council of IPL as well as General Body of BCCI. Those actions are in the nature of collective actions and undertaken by BCCI as a collective body and cannot be termed as an individual action.

LXIV. In the few contracts where there was outgoing payment of foreign exchange, these contracts were executed by the BCCI as a collective body and were ratified and approved by the President and Secretary and the Governing Council of IPL and General Body of BCCI.

LXV. It would not be out of place to mention here that the Appellant was not in any manner ever involved in any monetary transactions concerning BCCI or IPL . He did not have any authority in respect of Bank Accounts of BCCI or their operations or in respect of withdrawal or payment of any amount from them even domestically what to speak of foreign exchange.

LXVI. Even the ED has not pointed out as to what specifically is the alleged contravention under FEMA committed by Appellant.

ED Show Cause Notices

LXVII. ED has issued show cause notices essentially on four complaints alleging violation of FEMA besides the complaint dated 16.9.2010 alleging non compliance of summon by the Appellant. These show cause notices were issued

a) On 20.7.2011 pertaining to hiring of services of IMG by BCCI for conduct of IPL Tournaments without RBI approval on complaint dated 13.7.2011.

b) On 25.11.2011 (11 notices) pertaining to conduct of IPL Season-2 in South Africa by BCCI without RBI approval, based on single complaint dated 16.11.2011.

c) On 21.2.2012 pertaining to hiring of foreign players in IPL by BCCI without RBI approval based on complaint dated 16.2.2012.

d) On 23.8.2012 (2 notices) pertaining to accepting performance deposit from foreign bidders by BCCI without RBI approval on complaint dated 22.8.2012.

LXVIII. More than two years since the first SCN was issued and despite repeated requests, the ED has failed even to set a timetable for the adjudication of the first SCN. Additionally, the ED has failed to engage with Appellant's requests for

proper disclosure in respect of any of the SCNs. A SCN is issued on completion of an investigation. The FEMA adjudication rules state that the adjudication of a SCN must be carried out within a year, yet there is not even a timetable set for the adjudication of any of the SCNs in Appellant's case. Two points flow from this: one is that the completion of investigations erodes the authorities' argument that Appellant is needed in India for questioning. The second is that having SCNs raised but not adjudicated keeps in place a reason for the passport revocation- this is the most likely reason for the authorities' unusual failure to advance the SCNs. Furthermore, these SCNs do not accuse Appellant personally – i.e. they do not accuse him of having personally acted in any particular way. The allegations by the ED reflect collective responsibilities rather than personal allegations. There is nothing in the entire enquiry that suggests that Appellant has personally been responsible for any contravention of FEMA or has personally committed any foreign exchange violation while being an administrator in the BCCI. Instead, the reference are all to acts or decisions of BCCI/IPL bodies acting collectively and in accordance with their official duties. All such actions or decisions are duly documented. It is important to state that Appellant was not in any manner, ever involved in any monetary transactions concerning the BCCI or the IPL. He was not mandated to carry out

financial transactions, did not do so, and is not accused of having done so. If a BCCI/IPL body acted outside its authority or outside the law (which is certainly not agreed), then liability and accountability would rest with that body collectively and not Appellant personally. This is indisputable and manifest. The alleged defaults raised are not substantive, meaning the conduct referred to was not impermissible per se, but allegedly involved technical irregularities of not having obtained RBI approval. Further, responsibility for them lay not with Appellant, but with others. Appellant was not even vicariously liable.

IMG ISSUE

LXIX. For the purposes of implementing IPL, BCCI had taken services of IMG (UK) Ltd., which is a renowned agency in the field of media and sports. The BCCI Working Committee meeting held on 21st August, 2007 authorized Appellant to work out modalities for appointment of IMG as Consultants. Consequently with approval of President BCCI signed an MOU with IMG on 13.9.2007. This MOU was approved in Governing Council Meeting held on 17.11.2007. Subsequently Shri N. Srinivasan signed two long form contracts with IMG on 24.9.2009 and 18.1.2010. Thus appointment of IMG was a collective decision of the BCCI. In the year 2008, 2009 and 2010 remittances in pursuance of agreements were made to IMG by the BCCI. Each and

every of the remittance was made by either Shri N. Srinivasan or Shri M.P. Pandove. All these facts are well documented and capable of being easily verified. Thus Appellant personally had no role in the payment made to IMG.

LXX. The ED issued show cause notices to BCCI and its other office bearers as also to the Appellant. The Appellant has duly replied to the show cause notices. The Appellant submits that no violation as per the reply of the Appellant of provisions of FEMA is made out and further he had no role at all to play in financial or FEMA related matters and was not even vicariously liable.

LXXI. It is even more pertinent to point out that BCCI has given detailed reply to the ED show cause notice referred above denying any infraction or violation of FEMA. This all the more shows that there is no personal misdemeanour of the Appellant herein.

South African Tournament

LXXII. It is submitted that the said Tournament of IPL was conducted in South Africa in April-May, 2009. The said tournament was widely telecasted in India and entire affairs regarding the same were in public domain and knowledge. The Appellant, as Commissioner-IPL, was only dealing with organizational and administrative issues, but had no

financial or monetary powers and was not in any way involved in any foreign exchange transactions.

LXXIII. The decision to shift the IPL Season 2 to South Africa was a BCCI Working Committee decision and not the decision of the Appellant. The Working Committee of BCCI headed by the President of BCCI Shri Shashank Manohar on 22nd March 2009 resolved to take the tournament out of country. There was an agreement dated 30.03.2009 between BCCI and Cricket South Africa (CSA) for conducting the tournament in South Africa. This agreement was entered on behalf of BCCI by the Secretary of BCCI Shri N. Srinivasan. In terms of that agreement money was transferred by BCCI to CSA by the Treasurer BCCI Shri M.P. Pandov with the approval of the Secretary BCCI. Shri N. Srinivasan and Shri M.P.Pandov had travelled to South Africa around 25th March 2009 to sign these agreements; open bank accounts; and transfer necessary funds. In these matters the Appellant was not even involved and was not even present when the agreement between BCCI and CSA was signed. The Appellant was only in South Africa to execute the mandate of Working Committee of BCCI for conducting the tournament. The Appellant was not involved in any foreign exchange transfer or operation of any bank account or sanction / disbursement of any funds in respect of any contract entered in South Africa by the BCCI. The entire

budget for shifting IPL to South Africa was approved by Shri N. Srinivasan, the Secretary of BCCI upon which the Treasurer of BCCI Shri M.P. Pandov released the payment. In fact, there are lot of contemporaneous mails which clearly show that payments under the South African contracts were all approved by Shri N. Srinivasan. Thus Appellant had no role to play at all in any payments whatsoever made or sanctioned for South African tournament. All the contracts entered in respect of shifting of IPL-2 to South Africa were approved by the President BCCI and were ratified by Governing Council of IPL in its meeting dated 11th August 2009. Thus the decision in respect of shifting IPL tournament to South Africa was clearly a BCCI collective decision.

LXXIV. The Appellant did not make remittance of funds in respect of expenses incurred in South Africa. He had no power to do so. He had no power relating to money/forex transfer or operation of any bank account either of BCCI or in South Africa. All operations of Bank account and transfers and payments were remitted and approved for remittance by the Secretary and the Treasurer of the BCCI. All contracts that were entered with authorisation of President BCCI and subsequently approved by Governing Council of BCCI.

LXXV. Each and every head of expenditure in South Africa was approved personally by Shri N. Srinivasan in which

Appellant was merely copied on various emails only by way of information.

LXXVI. The ED issued show cause notices to BCCI and its other office bearers as also to the Appellant. The Appellant has duly replied to the show cause notices. The Appellant submits that no violation of FEMA is made out against him and further he had no role at all to play in financial or FEMA related matters and was not even vicariously liable

LXXVII. It is even more pertinent to point out that BCCI has given detailed reply to the ED show cause notice referred above denying any infraction or violation of FEMA. This all the more shows that there is no personal misdemeanour of the Appellant herein.

Issue of Foreign Players

LXXVIII. The other contracts where foreign exchange outgoings were involved were contracts with foreign players entered into by BCCI who had to be taken in a pool so that the Franchisees forming part of the league can bid for them and create their own team. It is pertinent to point out that the decision to take foreign players in the pool was a BCCI institutional decision so that the best players in the world could be a part of Indian Premier League. In September/October 2007, the Governing Council of IPL

took a decision that players may be contracted to be part of Indian Premier League.

LXXIX. All correspondence with players and other agents were handled by the then Treasurer of BCCI Shri N. Srinivasan. The agreements with the players were drafted by BCCI Corporate Lawyers namely, IMG. This entire system was put in place by resolutions passed on collective basis by BCCI.

LXXX. The price at which players were contracted were sanctioned by the then Treasurer Shri N. Srinivasan. All payments made to the players was also made by the Treasurer BCCI.

LXXXI. When the players auction took place 8 Franchisees of IPL made bids for most of the players in the pool and contracted them and therefore BCCI was ultimately not put to any liability to pay most of these players .Only some of the players who could not be taken up by Franchisees were paid for by BCCI. The fraction of payments made by BCCI to foreign players was less than 1% of the payments made by the Franchisees to the foreign players purchased by them.

LXXXII. The ED issued show cause notices to BCCI and its other office bearers as also to the Appellant. The Appellant has duly replied to the show cause notices. The payment made to foreign players were not in the form of a guarantee as

alleged in the show cause notice. The Appellant submits that no violation of FEMA is made out and further he had no role at all to play in financial or FEMA related matters and was not even vicariously liable.

LXXXIII. It is even more pertinent to point out that BCCI has given detailed reply to the ED show cause notice referred above denying any infraction or violation of FEMA. This all the more shows that there is no personal misdemeanour of the Appellant herein.

BCCI Contracts Performance Deposit

LXXXIV. Various BCCI tenders required bidders to deposit earnest money termed as performance deposit under the tender documents. The BCCI tender were global tenders in as much as they permitted national and international bidders to participate. These tenders were drafted by BCCI and were approved by the Governing Council of IPL and Finance Committee of BCCI and subsequently the General Body. The earnest money/performance deposit by successful bidder was set off against the contractual payments while earnest money/performance deposit by unsuccessful bidder was returned back. In case of two foreign bidders performance deposit which was taken was subsequently adjusted against contractual payment. These were deposit by Emerging Media (IPL) UK Ltd. and MSM Satellite, PTE Ltd., Singapore.

LXXXV. The ED issued show cause notices to BCCI and its other office bearers as also to the Appellant. The performance deposit being a misnomer was only earnest money under the terms of the contract and not “Deposits” under FEM (Deposits) Regulations 2000 as alleged in the show cause notice. The Appellant submits that no violation of FEMA is made out and further he had no role at all to play in financial or FEMA related matters and was not even vicariously liable.

LXXXVI. The Appellant submit that be it in the case of South Africa contracts, player contracts, IMG Contract or performance deposits it was the job of the Treasurer and the Secretary who controlled the financial matters to obtain all regulatory approvals including from RBI. All payments were made by Board and cheques were signed/remittances were approved by the Treasurer and the Secretary and it was their responsibility to obtain all regulatory approvals in respect of foreign exchange.

LXXXVII. It is even more pertinent to point out that BCCI has given detailed reply to the ED show cause notice referred above denying any infraction or violation of FEMA. This all the more shows that there is no personal misdemeanour of the Appellant herein.

LXXXVIII. The brief tabular form of various Show Cause Notices issued by ED, are set out hereunder:

Sr. No.	Complaint upon which the show cause notice was based	Show cause notice	Role of the Appellant	Whether response filed	Status
1.	A complaint was filed on 16.9.2000 alleging wilful non compliance of summons dated 2.8.2010 and 24.8.2010 issued by ED to the Appellant	Upon the compliant dated a show cause notice was issued on 20.9.2010 to the Appellant	Appellant was the only noticee named in the show cause notice.	The Appellant filed his response to the show cause notice and maintained that there was no wilful non compliance of summons by him.	Pending adjudication.
2.	A complaint was filed on 13.7.2011 alleging that BCCI had hired IMG , an international sports marketing agency as	Based on this complaint show cause notice dated 20.7.2011 was issued to BCCI, Mr. N. Srinivasan, the Secretary BCCI, Mr. MP Pandove,	The Appellant has been issued notice only under Section 42 (1) of FEMA which provides for vicarious	The BCCI has filed a detailed response to the show cause notice denying the allegations	Pending adjudication

	consultant for IPL and this was done without approval of RBI.	Treasurer BCCI and the Appellant	liability.	made therein. The Appellant had separately filed a reply denying the allegations and that Section 42 (1) does not apply to him.	
3.	A complaint was filed on 17.11.2011 alleging that BCCI held the 2nd season of IPL in South Africa and this was done without approval of RBI.	11 show cause notices dated 25.11.2011 were issued against the BCCI on a single complaint pertaining to each forex transaction in South Africa, Mr. Shashank Manohar, the President BCCI, Mr. N. Srinivasan, the Secy. BCCI,	The notice has been issued to the Appellant under Section 42 (1) of FEMA providing for vicarious liability	The BCCI has filed a detailed response to the show cause notice denying the allegations made therein. The Appellant had separately filed a	Pending adjudication

		Mr. M.P. Pandove, the Treasurer, Mr. Ratnakar Shetty, CEO, BCCI, Mr. Prassanna Kanan, the Manager, Business and Commercial Services, IPL, Mr. Sunder Raman, COO, IPL and the Appellant are co-noticees.		reply stating that he had no role at all to play in the forex transaction s and that Section 42 (1) does not apply to him.	
4.	A complaint was filed on 16.2.2012 alleging that BCCI gave guarantees to foreign players participating in IPL without permission of RBI.	A show cause notice was issued on 21.2.2012 to the BCCI, Shri Niranjan Shah, the then Secretary and the Appellant.	The notice has been issued to the Appellant under Section 42 (1) of FEMA providing for vicarious liability	The BCCI has filed a detailed response to the show cause notice denying the allegations made therein. The Appellant had separately	Pending adjudicatio n

				filed a reply denying the allegations and that Section 42 (1) does not apply to him.	
5.	A complaint dated 22.8.2012 was filed that BCCI while awarding contracts to foreign bidders accepted performance deposit/ earnest money in foreign currency without seeking RBI approval.	On 23.8.2012 two show cause notices were issued to the BCCI, Mr. N. Srinivasan, Mr. Niranjan Shah and the Appellant based on a single complaint	The notice has been issued to the Appellant under Section 42 (1) of FEMA providing for vicarious liability	The BCCI and the Appellant are yet to file reply.	Pending adjudicatio n.

LXXXIX. The aforesaid show cause notices clearly show that what has been alleged by ED are all violations / contraventions

pertaining to BCCI and not any personal misconduct of the Appellant herein.

XC. While on the one hand none of the ED summons or show cause notices indicated any personal misconduct of the Appellant , yet mischievously the ED communication to the Passport Authorities alleged "fraudulent conduct" on part of the Appellant and alleged that he had "parked money outside India" in contravention of FEMA. This allegation besides being incorrect was wholly vague and incapable of meeting in absence of particulars. Possibly it was an innuendo on the Sony WSG deal on the IPL Media Rights issue. The Appellant had no role in the interse agreements of Sony and WSG.

Media Rights Issue

XCI. The issue of media rights pertained to purchase of Indian territory rights by Sony from WSG which had initially won the bid for IPL Media rights on global basis for year 1 to 10 in the year 2008. The short chronology of events leading to grant of media rights to Sony is set out below

(i) WSG initially had won the bid for IPL Media rights on a global basis for year 1 to 10 in the year 2007.

(ii) The bid of WSG was , however, conditional on full money being paid if a minimum TV viewership rating (TAM) of 5.0 was achieved. Otherwise the amounts

which WSG would have paid BCCI would have been reduced by US$ 35 Million in year 1.

(iii) WSG, in its bid, had indicated that its broadcast partner for India would be MSM (Sony). As it turned out the TAM clause was put in the WSG bid on account of Sony's insistence , which as per its internal agreement with WSG was to be the sub-licensee for India.

(iv) During these discussions, WSG suggested that they and Sony have reached an understanding and they wanted that the original sub license arrangement contemplated between WSG and Sony should be substituted by a direct license between BCCI and Sony for the Indian territory for year 1 to 5.

(v) WSG would continue to hold the India rights for year 6 to 10 and Rest of World rights for year 1 to 10. Sony had an option to renew the agreement for another 5 years, provided WSG India executed an extension notice.

(vi) WSG agreed that if Sony made any deductions on account of TAM rating, WSG would pay that amount up to USD 35 Million to the BCCI at the end of year 5. This clearly indicated that there was a separate

internal arrangement between Sony and WSG which was confidential.

(vii) Sony issued a press release on 23rd April '10 by which it was made known that for exercising the option for India rights for year 6 to 10 Sony was paying WSG US$25 Million as option fees plus up to US $35 Million on account of TAM related payments. Thus Sony even under its agreement with WSG was paying up to $ 60 Million to WSG for taking year 6 to 10 rights from them.

(viii) In the first year, IPL became a huge success, however unfortunately the TAM rating of the event was around 4.9 , less than the contractually stipulated minimum of 5.

(ix) Sony therefore insisted on deducting US$ 10 million from the payments to be made to BCCI. Since contractually Sony could do so, BCCI raised various other issues of Sony's performance and live telecast to put pressure upon it to pay the deducted TAM amount. Additionally BCCI looking to the success of the event had introduced provision of Time Outs during which advertisements could be run and wanted a revenue of Rs 75 Crore for year 2 to 5 and

Rs 150 Crore for year 6 to 10 on the same. Sony was not prepared to pay these amounts .

(x) Since BCCI and Sony could not reach consensus therefore, BCCI terminated this agreement by addressing a letter dated 14th March '09.

(xi) As WSG was the original successful bidder, BCCI , having terminated Sony, was required under its contract with WSG to agree with WSG as to with which of the parties and on what basis Indian sub-continent rights would be exploited. During the negotiations between BCCI and WSG India, WSG (India) agreed to pay the amounts asked for by BCCI which Sony was not prepared to pay.

(xii) WSG (India) wanted BCCI to enter into agreement with WSG (Mauritius) a WSG group company. The choice of the Mauritius based company was made because WSG felt a Mauritius based company would offer significant legal advantages in the action which Sony had notified it was commencing. Being a distinct corporate entity it would be in a better position to claim immunity of third party rights as compared to WSG India which had prior to bid entered into agreement with Sony for media rights of Indian Sub-Continent.

(xiii) The agreement with WSG (Mauritius) for Indian Sub-Continent was on far more lucrative and beneficial terms for BCCI than the original Sony agreement of 21st January 2008. The agreement with WSG (Mauritius) dated 15th March '09 brought to the BCCI an additional benefit of Rs.1705.49 crores. This agreement was thus clearly in the interest of BCCI and allowed BCCI to leverage its media rights in an unprecedented manner with resultant windfall gains.

(xiv) The BCCI strategy to pass on the rights to WSG (Mauritius) proved judicious when the Bombay High Court delivered its judgment on 23rd March 2009 dismissing the injunction application filed by Sony on account that BCCI had already transferred its rights.

(xv) Realizing that it may lose the Indian sub continent media rights, Sony pursued its negotiations with WSG (Mauritius) for taking Sub-License rights for Indian Sub-Continent. During these discussions Sony again insisted that it would like to have previous arrangement of direct license rights from BCCI. In essence it meant that WSG Mauritius would have assigned its rights for India Sub-Continent in favour of Sony.

(xvi) Accordingly, WSG (Mauritius) agreed to give up and/or cede its Indian sub continent rights. It appears from the media release issued by Sony on 23rd April '10 that in this deal to take back rights from WSG (Mauritius), Sony agreed to pay WSG an amount of US$ 80 million over a period of 9 years - the contentious 'facilitation fee' .

(xvii) WSG is a marketing agency and therefore would have marketed its rights in any case to a third party in usual course of business and earned a commission out of such sale and therefore such amount was earned by it in usual course of business. The Appellant had absolutely nothing to do with the said amount.

(xviii) WSG has appeared before the ED and clarified that the amount paid to them USD 20 million as part of facilitation fees has been appropriated by them and Appellant had absolutely nothing to do with it. WSG is a wholly owned subsidiary of the French conglomerate, the Lagardere Group and the Appellant has no connection whatsoever with them.

XCII. The fact that there was nothing untoward was also *prima facie* held by the Bombay High Court in its order dated 23.02.2011 in WSG's litigation with BCCI. The Supreme Court in appeal against the said judgment passed order on

24.4.2011 with consent of BCCI and WSG to protect equity of both parties leaving parties to adjudicate their controversies before the Arbitral Tribunal.

XCIII. The Bombay High Court on perusal of the material before it came to the conclusion that the entire transaction had BCCI approval and that the then Secretary BCCI had filed affidavit on oath having gone through the BCCI- Sony agreement in court proceedings. The fact that no decision or action of the Appellant was unilateral is also evident from Competition Commission of India's order dated 08.02.2013 wherein the commission noted the Director General (CCI) had found that all the decisions taken by the Appellant in his capacity of Chairman/ Commissioner of IPL were with the consent and approval of Governing Council of IPl and General Body and all his actions were regularly reported to BCCI and were approved/ ratified. The Director General (CCI) further found that all acts were collective rather than unauthorised individual acts..

XCIV. There is no FEMA element involved in the payment of the Facilitation Fee by MSM Singapore Pte to WSG Mauritius. It is an admitted position that both are foreign companies and the remittance was done abroad. The transaction was an off-shore transaction between two off shore entities.

XCV. That the ED has completed its enquiries both with MSM and WSG and have found nothing untoward in this regard or anything which even remotely connects the Appellant with payment of fees by Sony to WSG or the Appellant in any manner being any beneficiary to the said Facilitation Fee..

Other Franchisees Issues

XCVI. That the ED had been investigating certain violation of FEMA by some Franchisees of IPL. However, the Appellant was not involved in those Franchisees and though ED after concluding its investigations issued show cause notices to the Franchisees and the Appellant is not even a noticee therein

RTI Applications to Passport Authorities

XCVII. The Appellant was led to believe that the passport of the Appellant was sought to be revoked on an alleged complaint/ application filed by the ED for alleged violation of provisions of FEMA but when the Constituted Attorney of the Appellant made an application under Right to Information Act. It has been informed vide letter dated 12.10.2011 bearing number- F-7(9) 11-D-3902/11-232-POOL 1 issued by the Regional Passport office (Respondent No. 2) that the Passport of the Appellant was revoked on the directions of Economic Offences Wing of Mumbai Police. It is submitted that there is not a single

complaint filed and pending investigation before the Economic Offences Wing of Mumbai Police. Thus the passport of the Appellant has been revoked on wholly extraneous grounds and it was the reason that the ED never appeared and prosecuted its alleged application**.** The constituted attorney of the Appellant thereafter made applications under RTI to Mumbai Police which in its reply dated 18.11.2011 and 22.3.2012 clarified that there was no case pending against the Appellant.

XCVIII. That the stated basis for impugned orders was non-compliance on the part of the Appellant to summons issued by the ED. Throughout the proceedings the Appellant had raised the plea that there was a threat to his life and life of his family members in India and that Mumbai Police which was providing security to him was fully aware of the extent and magnitude of such threat.

XCIX. In fact by an application dated 18.11.2010 the Appellant had prayed the APO to summon the record of Mumbai Police and the ED relating to security threat to his and his family members life but no such record was ever called for/summoned from the Mumbai Police and resultantly in the orders passed by Respondent No.2 and 3 the issue of threat to the life of Appellant and his family members was lightly brushed aside.

C. In fact based on intelligence inputs received from Central Agencies that Mumbai Underworld has been bent upon assassinating the Appellant , the Mumbai Police had been providing round the clock armed security to the Appellant and his family members from 27th March, 2009 onwards. However, the Appellant while he was Chairman of IPL which is a sub committee of BCCI had made an expose on his twitter account on 11.4.2010 indicating that holder of 25% stake in the Kochi franchise of IPL was a close associate of none other than Mr. Shashi Tharoor the then Minister of State for Foreign Affairs, Government of India. This stake which was in the nature of sweat equity appeared in the eyes of public more in the nature of kick back. After days of furore the said Minister was forced to resign from the Government. Immediately thereafter Income Tax Department questioned the Appellant and the Appellant duly gave his replies and documents as sought for. Amidst this process, without any notices or intimation to the appellant, on 11.5.2010 the armed security cover given to the Appellant by the Mumbai Police was completely withdrawn leaving him completely vulnerable to threats from the underworld.

CI. The manner in which the security cover was withdrawn left no doubt in the mind of the Appellant that his life was in danger and his security can no longer be trusted with

security agencies in India who are open to political interference. In these circumstances on advise of his security advisors the Appellant left the country for UK.

RTI Applications to Mumbai Police

CII. While the Appellant's plea of calling for records from Mumbai Police was not acceded to by the Respondent No.2 and 3 and the Passport authorities made light of it , in these circumstances, the Appellant was forced to adopt the remedy provided under Right to Information Act and an application for supply of information and documents related to security threat was filed with public information office of Mumbai Police on 3.12.2010. The Public Information Office vide order dated 13.12.2010 refused to supply the information. Consequently an appeal was filed by the authorized representative of the Appellant. The appeal was allowed vide order dated 31.1.2011. However, the order of the Appellate Authority was not complied with in its entirety and only copy of two letters was provided without allowing inspection of the file. On 24.2.2011 the Appellant's representative again made an application with a copy marked to Appellate Authority seeking compliance of the Appellate Authority's order. Further clarifications and inputs were also sought. On 7.3.2011 the Public Information Office, Mumbai Police disallowed this application. Thereafter a complaint came to be filed before the CIC. An

appeal was also filed before the Appellate Authority. On 8.6.2011 the Appellate Authority however set aside its own earlier order and agreed that information could not be given to the Appellant. A further appeal was carried to the CIC. The CIC vide order dated 7.9.2011 allowed the Complaint and ordered that within 8 days all the documents be provided. On 19.10.2012 when the Appeal against order dated 8.6.2011 came up for hearing the CIC came heavily on Mumbai Police for not complying with his order and filed a complaint under Section 18 of the RTI Act. It was only thereafter that on 29.10.202 the Appellant was supplied with some documents relating to threat to his life.

CIII. The Appellant submits that the judgment in the writ petition was reserved on 18.10.2012 and it was only thereafter on 29.10.2012 the appellant was supplied with documents pertaining to security threat therefore the same could not be filed before the learned Single Judge and are now being filed with a separate application to take documents on record.

CIV. Surprisingly, the documents concerning withdrawal of security were still not supplied forcing the Appellant's representative to move an application under RTI on 18.11.2012.

CV. The Documents supplied by the Mumbai Police unequivocally corroborated the assertion of the Appellant

and revealed that confidential information was received on 26.3.2009 from central intelligence to Mumbai Police that underworld elements are out to target the Appellant and consequently Mumbai Police provided round the clock armed security to the Appellant and his family. Copy of the inter departmental communications in this regard are being filed.

CVI. The documents also revealed that that as late as June 2010 (two months after the Appellant left the country) identified elements of underworld were out to target the Appellant's life. Copy of note sheets of Mumbai Police in this regard are being filed**.** There was never any explanation of the incomprehensible action taken by Mumbai Police when it removed all armed security on 11.5.2010 leaving the Appellant exposed to unacceptable level of risk.

CVII. That the documents also showed that the information was sought by ED from Mumbai Police regarding security threat to the appellant which was confirmed to them by Mumbai Police vide its letter dated 16.09. 2010 but the ED while it moved the Passport Authority completely suppressed the information of security threat confirmed to them by Mumbai Police. This letter was supplied pursuant to order of appellate authority under RTI and resupplied on 29.10.2012. The Mumbai Police confirmed threat to Appellant's life and suggested that security would be

provided upon return of the Appellant but such suggestion was inconsistent with their withdrawing security suddenly and appeared more as a formality as Mumbai police could not have officially gone on record in an inter- departmental ignoring real and present threat to the Appellant.

CVIII. The APO did not summon security related records from the Mumbai Police. Had such record been summoned, it would have been crystal clear that there was serious threat to the Appellant's life . The Respondent No 3 in all possibility would not have used the words “bogey of security threat " as he did in the order dated 3.3.2011. In fact, it is the submission of the Appellant that non-summoning of the record from the Mumbai Police vitiated the decision making process as the passport authority completely underestimated the level of security threat to the Appellant.

CIX. The aforesaid facts demonstrate that the actions which have resulted in the commencement of proceedings against the Appellant and the consequent order are arbitrary, capricious, malafide and based on complete non-application of mind and acting in a mechanical fashion on extraneous consideration. The Appellant contends that the entire proceedings are vitiated and void as being violative of Articles 14, 19 and 21 of the Constitution of India.

3. That being aggrieved by the dissatisfied by the order dated 31.10.2011 passed by the Respondent No.2 and communicated to the Appellant on 3.11.2011 and order dated 3.3.2011 passed by Respondent No.3, the Appellant preferred writ petition No.376/2012. The Respondents filed their reply and the Appellant also filed a Rejoinder. The Appellant is filing the complete paper book of Writ Petition alongwith reply, rejoinder and all annexures as **ANNEXURE A-2(COLLY)** which may be read as part and parcel of the present appeal.

4. On 16.1.2013 the Learned Single Judge dismissed the writ petition filed by the Appellant and upheld the order of Respondent No.2 dated 3.3.2011 and of Respondent No.3 dated 31.10.2011 revoking the passport of the Appellant under Section 10 (3) (c) of the Passport Act. The Appellant submits that the High Court erred in not appreciating that passport is one of the key attributes of citizenship of a person. Taking away / revoking of the passport is therefore a very drastic step. The power to revoke passport has to be used in rare cases and not as a matter of course. The Appellant submits that by way of the impugned order the Learned Single Judge has held (in paras 45.2, 45.3 and 45.4) that so long as the material provided to passport authority is actionable, which may not even be a final adjudication, the passport authority would be well within its rights to take necessary steps for revocation and/or impounding the passport of an individual and they were not required to evaluate the merits of the material. It is submitted that

this approach directly runs counter to the test put forth in *Maneka Gandhi Vs. Union of India* 1978 (1) SCC 248.

5. Being aggrieved by the impugned judgment and order dated 16.1.2013 the Appellant is filing the present Letters Patent Appeal on the following amongst other grounds;

GROUNDS

A) Because it is submitted that passport is one of the key attributes of citizenship of a person. Taking away / revoking of the passport is therefore a very drastic step. The power to revoke passport has to be used in rare cases and not as a matter of course.

B) Because personal liberty under Article 21 includes the right to travel abroad and no one can be deprived of that right except according to procedure established by law. (*Maneka Gandhi* v. *Union of India,* (1978) 1 SCC 248 at page 323, para 48). The Passports Act, 1967 prescribes the procedure by which a application for a passport may be granted, or a passport once granted, may revoked or impounded. That procedure prescribed by law in order to satisfy Article 21 must be "*fair, just and reasonable, not fanciful, oppressive or arbitrary*". The revocation of the Appellant's passport violates his right to travel abroad. The procedure utilized to revoke his passport is fanciful, oppressive and arbitrary.

C) Because the Honourable Supreme Court has recognized and held that not only must revocation of passports comply with Article 21, but the procedure prescribed by law must also satisfy possible challenges under other constitutional provisions like Articles 14 and 19.

D) Because the revocation of the Appellant's passport violates his constitutional rights under Articles 19(1)(a) and (g) of the Constitution. In *Maneka Gandhi* v. *Union of India,* (1978) 1 SCC 248 at para 16, the Honourable Supreme Court held, that the impounding of a passport under Section 10(3)(c) under the Passports Act must be justified "*in the interests of the general public*" (as per Article 19(5) of the Constitution). 'In the interests of the general public' has been interpreted by the Honourable Court in *Maneka Gandhi* to be akin in the case of 10(3)(c) to the interests of public order, decency or morality. If the order cannot be shown to be made in the interests of public order, decency or morality, it would contravene Article 19(1)(a) and would also be outside the authority conferred by Section 10(3)(c). The revocation of the Appellant's passport cannot be shown to be made in the interests of public order, decency and morality.

E) Because the Honourable Supreme Court has said that "*the Passport Authority is required to record in writing a brief statement of reasons for impounding a passport and such statement of reasons are also required to be conveyed to*

the person affected". The alleged reasons of the passport authorities – loss of foreign exchange, investigations into a multi-crore scam, loss of revenue, consistent flouting of summonses issued by the ED and disrepute brought to the game of cricket, which were ascribed by the passport authorities to revoke (not merely impound) the passport of the Appellant, are not, by any standard, in the interests of public order, decency or morality.

F) Because the conception of 'public order' has been held to be synonymous with 'public safety and tranquility' (*Romesh Thapar* v. *State of Madras,* AIR 1950 SC 124). Such public disorder is usually of 'local significance': for instance, attempting to throw a bomb at the police, (*Bablu Mitra* v*. State of West Bengal*, (1973 3 SCC 193), and in respect of the use of sound amplifiers in public places (*State of Rajasthan* v, *Chabla,* AIR 1959 SC 554). Assuming, *arguendo*, that the Appellant was in fact responsible for violations of foreign exchange regulations this did not ipso facto and no such satisfaction was ever reached qualify as hurting the interests of public order. A bench of seven judges of the Honourable Supreme Court, in *Madhu Limaye* v. *Sub-Divisional Magistrate, Monghyr,* (1970) 3 SCC 746 has held that, "*In our judgment, the expression 'in the interest of public order' in the Constitution is capable of taking within itself not only those acts which disturb the*

security of the state or act within ordre publique as described but also certain acts which disturb public tranquillity, or are breaches of the peace." (Para 20). Therefore, it is submitted that acts that do not disturb security of the state, public tranquillity, *ordre publique* or amount to a breach of peace, do not amount to public disorder. In the Appellant's case, these requirements are not fulfilled, and therefore action in the interests of the general public is not warranted.

G) Because the Honourable Supreme Court has interpreted the restrictions on free speech of 'decency or morality' to control (1) obscenity *(Ranjit D Udeshi* v. *State of Maharashtra* AIR 1965 SC 881); (2) sexual acts in books (*Chandrakant Kalyandas Kadokar* v. *State of Maharashtra*, (1969 2 SCC 68) and (3) the use of sex designed to play a commercial role (*KA Abbas v. Union of India*¸1970 2 SCC 80). Alleged violations of FEMA cannot possibly be held to contravene decency or morality as is understood by the Honourable Supreme Court. Therefore, the right to expression and occupation of the Appellant are violated by the revocation of his passport. In conclusion, such actions of the passport authorities cannot be sustained since they do not fall within the understanding of 'interests of the general public', 'decency or morality' under Section 10(3)(c). (*Maneka Gandhi* v. *Union of India*, para 35)

H) Because the Passport Authorities had requested the presence of the Appellant's counsels on 16.11.2010 for a hearing on whether to grant inspection of documents and a personal hearing, and not to decide the issue of whether the Appellant's passport should be impounded/revoked. However, the Passport Authorities, *suo motu*, converted this hearing, which was originally to assess whether documents could be inspected, to a hearing on the revocation of the Appellant's passport. The Appellant's preliminary objections to the proceedings as well as his application for inspection of documents, were summarily dismissed. This violates the requirements of fair procedure and compliance with natural justice, under Article 21 of the Constitution.

I) Because the ED, allegedly in an extract provided by the RPO in a letter dated 01.11.2010, recommended impounding of the Appellant's passports, so as to ensure compliance with summons. Yet the order dated 03.03.2011 of the Regional Passport Office misrepresents the suggestion of the ED in their communication dated 04.10.2010, as asking for revocation of passport of the Appellant. This order accordingly revoked the Appellant's passport. It may be noted that the Regional Passport Officer via letter dated 01.11.2010, quoting the ED, states that "*it would be in public interest in general and in the interests of a thorough investigation into the grave irregularities*

committed by Shri Lalit Kumar Modi in particular, that his passport is ***impounded*** *so that his attendance in compliance of the summons could be enforced*." (emphasis supplied)

J) Because the Chief Passport Officer relying on this misrepresentation of the action suggested by the ED, revoked the Appellant's passport. The Chief Passport Officer upheld the revocation of the Appellant's passport on three counts: firstly, that the ED suggested revocation; secondly, that there was no violation of the principle of natural justice in the process leading to the order dated 03.03.2011 by the RPO, and finally, that the serious allegations of 'fraudulent acts in contravention of FEMA' by the Appellant somehow impacts "*the huge public sentiment attached to cricket, the most popular sport in India*". According to him, since the game of cricket is "*brought to disrepute, and this is an issue in which the general public and the community at large has some interest and the rights or liabilities of the general public are affected*" therefore the matter falls within Section 10(3)(c) of the Passport Act. This reliance on the misrepresentation in the RPO's order renders the CPO's order illegal and *non est*.

K) Because the CPO in his order dated 31.10.2011 declares incorrectly that "*in the process leading to the issue of order dated 03.03.2011 by Regional Passport Office, Mumbai,*

there was no violation of the principles of natural justice because the Appellant was informed of the proposed action and was given sufficient and even additional time to explain his side of the matter". The Chief Passport Officer has failed to take into account that there were at least six instances of non-compliance with the principles of natural justice in the proceedings before the RPO. These instances include, *inter alia*, the following:

(1) The Appellant was not permitted to cross examine the officials of ED which was essential to substantiate the case of the Appellant thereby causing immense prejudice to the case of the Appellant. This lack of opportunity to cross examine officers of the ED is critical in this case, since the RPO misrepresented the ED's recommendations. Without the opportunity to cross examine officials of the ED, the Appellant, was not able defend himself in respect of the core of the case against him.

(2) Notice was issued to the Appellant only to initiate proceedings and not for revocation. The RPO should have heard the Appellant's objections on preliminary grounds instead of proceeding directly with revocation.

(3) Vital documents, relied upon by the RPO, were not disclosed. Only a limited extract of the ED's

recommendations were provided in a communication from the RPO. The Appellant could not, therefore, make an effective defence.

(4) The Appellant's application for inspection of the RPO's files was not allowed, and the proceedings carried out almost in secrecy.

(5) The Appellant's request to submit records from the Mumbai Police to demonstrate the threat to his personal safety was not permitted. The ED itself was neither empowered nor able to determine whether such threat existed or not. It acted on incomplete information to abrogate the Appellant's rights.

(6) The Appellant's counsels were not permitted to represent the Appellant fully before the RPO. Their arguments were cut short before completion, and the written arguments submitted by them were not considered in the RPO's order.

These grounds separately and jointly violate the Appellant's right to a fair trial and also vitiate his right to natural justice. It further reinforced the many procedural improprieties perpetrated by the State.

L) Because the Honourable Supreme Court, in *Rameshwar Prasad (VI)* v. *Union of India*¸ (2006) 2 SCC 1, in a

constitution bench decision, declares that procedural impropriety mandates judicial review, quoting Lord Diplock in *Council of Civil Service Unions* v. *Minister for Civil Service*, 1984 3 All ER 935. Therefore these procedural improprieties that violate the right to fair trial and natural justice warrant that review by this Honourable Court of the decisions to revoke the Appellant's passport.

M) Because the actions taken by the Passport authorities were apparently not in contemplation by the ED and this is demonstrated by summonses that the ED issued to the Appellant. The initial summons dated 02.08.2010 issued to the Appellant required the Appellant to appear and produce certain documents. All the documents were in fact provided. The summons stated that if the Appellant were to default in appearing then he would be liable to action under "*Section 13 of FEMA and / or Section 32 of the CPC, 1908*". Neither of these two statutory provisions contemplates the actions of a Passport Officer to revoke a passport nor of the ED to suggest such revocation. The second summons issued dated 24.08.2010 also relied on the same statutory provisions, namely Section 13 of FEMA and / or Section 32 of the CPC, 1908, and the final summons dated 01.10.2010, was an exact replica in terms of the statutory provisions relied on. Clearly the ED which sought to elicit

appearance of the Appellant had not contemplated revocation of the passport.

N) Because the test for determining whether a passport may be revoked under Section 10(3)(c) of the Passports Act is whether such revocation is excessive, wide and disproportionate to the mischief which is the alleged basis of such revocation. (*Maneka Gandhi* v. *Union of India,* (1978) 1 SCC 248 at para 36) In the present instance, the Appellant's passport has been revoked by an order that is wide, excessive and disproportionate to the alleged mischief caused, i.e. his non-appearance before the ED due to security concerns.

O) Because the Supreme Court has held that whereas a passport authority may seize/impound a passport under Section 10(3) of PA, for such action, given that impounding a passport has civil consequences the Passport Authority must "give an opportunity of hearing to the person concerned before impounding his passport" (*Suresh Nanda* v. *CBI*, (2008) 3 SCC 674 at para 16) Because even the aforementioned statement of law, however, extends to mere impounding of passports and not to revocation, which amounts a permanent disability to the exercise of the Appellant's rights. This Honourable Court in *Aditya Khanna* v. *The Regional Passport Officer,* 156 (2009) DLT 172 at paragraphs 24-26 highlighted this distinction between

impounding and revocation of a passport. The Court held, "*It is evident that as a result of impounding the passport does not cease to exist. Only its possession and custody changes hands and it is placed in the hands of the authorities stipulated under the statute. So far as revocation is concerned, its effect is as if the document had not been granted or issued and it rendered non est.*" The act of impounding is to place the property in the custody of the police or court often with the understanding that it will be returned intact at the end of the proceeding (Black's Law Dictionary, 9th edition). The act of revocation is an annulment, cancellation, or reversal of an act or power. (Black's Law Dictionary, 9th edition). Therefore the act of revocation of the Appellant's passport, without fair hearing, in violation of natural justice, on the basis of misrepresentation of reasons by the investigating agency, is disproportionate, wide and excessive.

P) Because the Honourable Supreme Court has held by a constitution bench, that it is of the essence of fair and objective administration of law, that a quasi judicial authority must be absolutely unfettered by extraneous guidance from the executive or administrative wings of the state, and that the existence of any such fetters would render the exercise of quasi judicial authority inconsistent with well-accepted notions of judicial process. (*Rajagopala Naidu* v. *State*

Transport Appellate Tribunal, AIR 1964 SC 1573). Yet, the Learned Single Judge in the impugned judgment (at paras 45.2 ,45.3 and 45.4) has erred in holding that so long as the material provided to passport authority is actionable the passport authority would be well within its rights to take necessary steps for revocation and/or impounding and they were not required to evaluate the merits of the material.

Q) Because the Honourable Supreme Court has held that in the exercise of power, a quasi judicial authority (such as the passport authorities in the instant case) must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party (in this case, the Appellant), and importantly, must not allow its judgment to be influenced by matters not disclosed to the aggrieved party or by the dictation of another authority. (*Sirpur Paper Mills* v. *Commissioner of Wealth Tax, Hyderabad*, (1970) 1 SCC 795). The Supreme Court has gone so far as to say that if a quasi judicial authority were to permit its decision to be influenced by the dictation of others (such as, in the instant case, the ED), then it would amount to an abdication and surrender of its discretion (*State of UP* v. *Maharaja Dharmander Prasad Singh*, (1989) 2 SCC 505). The acts of the passport authorities in proceeding entirely on the basis of the ED's recommendations, without independent application of mind, would be plainly contrary to the nature

of power conferred on the passport authorities. (*Maneka Gandhi* v. *Union of India,* (1978) 1 SCC 248 para 13.) Yet, the Learned Single Judge failed to consider that the passport authorities, while revoking/ impounding the passport acted as an administrative authority merely working on inputs from other government agencies instead of acting as an independent quasi judicial authority. The satisfaction of the passport authority under Section 10(3)(c) of the Passports Act should have been reached on objective consideration of the material against the Appellant, and not solely on the basis of a misrepresentation of the ED's recommendations.

R) Because the Honourable Supreme Court, when discussing a fair hearing has declared that a person must know the case that he is to meet, and he must have an adequate opportunity of meeting the case. (*Mazaharul Islam Hashmi* v. *State of UP* (1979) 4 SCC 537). In *Managing Director, ECIL,, Hyderabad* v. *B Karunakar*, (1993) 4 SCC 727, the Supreme Court held through a constitution bench that a person facing an quasi judicial proceeding is entitled to know to know the findings, the reasons in support thereof and the nature of the recommendations of penalty. He would then be able to point out all the factual or legal errors committed by the quasi judicial authority. He might then also persuade the disciplinary authority that the finding is

based on no evidence or the relevant material evidence was not considered or overlooked by the quasi judicial authority. Therefore, the ED's recommendation of impounding the Appellant's passport was likely to affect the mind of the passport authorities, in their concluding the guilt or penalty to be imposed. The Appellant was entitled therefore to meet the reasoning and controvert the conclusions reached by the passport authorities, and should have been provided with the documents that they relied upon, including communications from the ED. The failure to provide these documents constitutes a breach of the principles of natural justice and would vitiate the entire proceedings.

S) Because the Learned Single Judge failed to appreciate that while acting as quasi judicial authority all the concomitants including judicious scrutiny of material, judicial and fair approach, compliance of natural justice and reasonableness and proportionality were required to be complied with. The passport authorities were through a judicial process required to arrive at a satisfaction that it is necessary to revoke/ impound the passport

T) Because the test propounded by the Learned Single Judge in the impugned judgment for revoking the passport is not the correct test. In fact, if such a test were to be applied it would make impounding / revocation of the passport most

achievable and easy remedy in hands of government agencies and would nullify the principle that more drastic the consequences more circumspect should be the use of the power.

U) Because the legal position set out in the impugned judgment would give the passport authorities a license to act and invoke this drastic power based on inputs without they being required to satisfy themselves about the correction or sufficient of inputs for revoking a passport. In fact, the impugned order countenances action of exercise of power of revocation of passport in a mechanical manner without the application of mind by the passport authority. This approach also negates the adherence to principles of natural justice which are relegated to an empty formality.

V) Because the Learned Single Judge though noticed the contentions of the Appellant in para 39 of the judgment failed to engage and sufficiently deal with any of the contentions. Instead the Learned Single Judge limited his determination to two issues namely were jurisdictional facts available with Respondent no. 2 and 3 and whether Respondent no. 2 and 3 had exercised their powers in interest of general public. On the issue of jurisdictional facts having held that passport authority can act on some inputs from other agencies, the Learned Single Judge found that passport authorities had jurisdictional facts before them

to revoke / impound the Appellant's passport. On the issue of whether interest of general public were involved the Learned Single Judge relying on the preamble of FEMA (para 46) held that summons under FEMA were therefore in public weal and as such interest of general public were involved. In taking this rather limited approach the Learned Single Judge then brushed aside the various contentions of considerable legal importance raised before him. Some of them are highlighted herein under. The Learned Single Judge mischaracterized the restrictions allowable on the right to travel abroad, and the right to expression, which are provided by Articles 19 and 21 of the Constitution. Such restrictions can only be on grounds of public order, decency and morality (*Maneka Gandhi* v. *Union of India,* (1978) 1 SCC 248) Therefore, the upholding of the revocation by the Learned Single Judge is legally unfounded.

W) Because no notice to revoke the passport was given to the Appellant. The order in original dated 3.3.2011 had been passed in pursuance of the Show Cause Notice dated 15.10.2010 issued by Assistant Passport Officer. This Show Cause Notice was a preliminary Show Cause Notice whereby the Appellant had been called upon to Show Cause “why action under Section 10(3)(c) of the Passport Act, 1967 should not be initiated against you”. The Appellant submits that this Show Cause Notice could have

at most resulted into initiation of proceedings against him but could not have resulted into revocation of his passport.

X) Because the Learned Single Judge erred in holding that there was nothing in Passports Act which provided such a two stage proceeding (para 44.1) . It is trite law that passport authority was required to confirm to the standards they had set for themselves while issuing show cause notice. There was nothing under the Passport Act which barred such a mechanism. In fact, such a mechanism had statutory precedent in terms of FEM (Adjudication Proceedings and Appeal) Rules. Thus, the Learned Single Judge was in error in holding that according to the notice if the appellant failed to satisfy the concerned officer the action under Passport Act of revocation /impounding would have followed in terms of the notice.

Y) Because the Learned. Single Judge erred in relying on the Passports Act to hold that the disregard for the rules of natural justice in the proceedings before the RPO was not a material defect constituting grounds to set aside the RPO's order. The Supreme Court has categorically held in *Maneka Gandhi* v. *Union of India* that proceedings for revocation/impounding under Section 10(3)(c) of the Passports Act must be held in compliance with the principles of natural justice. The Learned Single Judge failed to note that the APO himself instructed the

Appellant's counsels that they were to appear before him for the purpose of deciding whether or not they could inspect the APO's files in this matter. Instead of permitting this, the APO instead held a hearing on whether the passport should be revoked. Thus the failure to comply with principles of natural justice occurs on two grounds: firstly, that the Appellant did not receive adequate notice of the hearing and secondly, that the Appellant was not provided with the materials that the APO relied upon to abridge his rights.

Z) Because the Learned Single Judge failed to consider that passport proceedings were wholly premature. The basis for issuing the Show Cause Notice by the APO was a Show Cause Notice dated 20.9.2010 based on a complaint dated 16.9.2010 by the ED for non-compliance of summons issued by them. It is significant to point out that within the time stipulated in the Show Cause Notice issued by ED the Appellant had filed a detailed reply on 12.10.2010 denying that there had been any non-compliance of summons. Summons had been issued by the ED on 2.8.2010 and 24.8.2010 seeking various documents from the Appellant and also requiring his personal presence. The Appellant had supplied all the documents as sought for in the summons; however he could not appear in person as he had been out of country since 14.5.2010 on account of

grave security concerns to his life. Thus in his reply the Appellant submitted that he had in substance complied with the summons and no case for issuing Show Cause Notice by the ED was made out. To obviate any impression that Appellant was not co-operating, offer was made by the Appellant that he is prepared to answer any question sent by way of questionnaire, by appearing on a video link or by personal examination in Indian High Commission at London. It appears that the ED had sent two communications dated 4.10.2010 and 14.10.2010 to the Regional Passport Office, Mumbai the copies of which despite request of the Appellant were never supplied to him. However, even while sending communication dated 14.10.2010 the fact that Appellant had replied to the show cause notice dated 20.9.2010 was not brought to the notice of the Regional Passport Office. The Appellant submits that without the ED show cause notice having been adjudicated by them there was no occasion for the passport authorities to issue a show cause notice alleging non-compliance of summons of the ED. Thus, the notice by APO was wholly pre-mature.

AA) Because the Learned Single Judge failed to consider that ED show cause was merely a ruse under Section 16(6) of FEMA the ED Adjudicating Authority has to dispose of the show cause finally within one year. The FEM (Adjudication

proceedings and Appeal) Rules, 2000 provide that adjudication on a show cause notice issued by the ED is a two stage process and under Rule 4(3) after considering the cause shown the notice can either be discharged or an enquiry could be held. Significantly the Show Cause Notice issued by ED was never adjudicated. The Appellant had on 4.10.2011 moved an application for early disposal of the show cause notice but the same was kept pending without disposing the same by the ED. In fact no proceedings were ever drawn, no date of adjudication was ever given. It appears that the said show cause notice was issued merely to prepare a ground to move passport authorities. The passport proceedings were thus initiated on extraneous grounds and the purported reason for initiation of those proceedings was more of a ruse.

BB) Because the Learned Single Judge failed to consider that revocation of passport of Appellant was a pre-determined result. Even before the expiry of the 15 day period, given in the Passport Show Cause Notice dated 15.10.2010 the then Foreign Secretary, held a media briefing on 22.10.2010 .Associated News of India, a prominent news agency reported that Ms Rao had threatened to cancel Appellant's passport if he did not respond to charges against him. This media briefing from the highest levels within the Ministry of External Affairs established beyond doubt that the outcome of the passport proceedings had

already been pre-determined and proceedings before the Respondents were more of an exercise in public relation and going through motions to ostensibly comply with principles of Natural Justice.

CC) Because the Learned Single Judge failed to consider that there was no independent application of mind by Respondent No.2 or 3 while passing orders dated 3.3.2011 and 31.10.2011. In fact, the counter affidavit filed by the Respondents indicated that they are of the view that they were not required to apply their mind to come to an independent conclusion but had to merely act on the basis of the recommendations made by the ED. It is submitted that while acting as quasi-judicial authorities the Respondent no.2 and 3 were required to take independent and objective view of the matter. They could not have abdicated their discretion to any other authority or fettered it on satisfaction of some other authority.

DD) Because the Learned Single Judge failed to consider that Section 10 (3)(c) starts with words "if the passport authority deems it necessary so to do…." which in itself indicates that, unlike other sub clauses of Section 10(3), independent application of mind of the Passport Authority is pre-requisite. The Respondents did not apply their mind to the nature of enquiries contemplated from the Appellant or to the question of whether the non compliance of summon as

alleged was wilful or even about the exact nature of alleged contravention by the Appellant of FEMA, being investigated by the ED

EE) Because the Learned Single Judge failed to consider the scheme of Foreign Exchange Management Act which provides only for civil proceedings and penalty in the nature of civil liability. There is no criminal proceeding contemplated under FEMA . FEMA provides for a completely new regime and a position which is completely distinct from that obtaining under FERA. The violation of summons under FEMA as per provisions of FEMA was required to be dealt with under Section 272 (A) (1) of Income Tax Act which only provides for penalty. There is difference between provisions of FEMA and other revenue enactments like Customs Act which stand on a different pedestal. The Ld. Single Judge failed to appreciate that in a matter which provided only for civil liability and proceedings under which were in the nature of civil action could not have led to revocation of the passport.

FF) Because the Learned Single Judge failed to consider the following five aspects.

First,

a) the notice above was issued only to initiate proceedings and not that the Appellant's passport would be revoked. The notice was only a preliminary

notice and if the reply given by the Appellant was unsatisfactory the APO could have initiated proceedings under Section 10(3)(c) but could not have straightaway revoked the passport of the Appellant.

b) *Secondly*, there was non disclosures of documents. Only an extract of the communications sent by the ED to Passport authorities was supplied vide letter dated 1.11.2010 of the APO to the Appellant. There was failure to disclose the full material. There was more material which was withheld from the Appellant but relied upon by the Respondents. The Respondent No. 2 recorded in the order dated 31.10.2011 that alternative procedure for examination of the Appellant through video conferencing, questionnaire, interrogatories was considered by concerned Authorities (ED) but it was found that no meaningful investigation was possible except examining him in person. This rejection by the ED of the Appellant's request for video conferencing, questionnaire etc. was never communicated to the Appellant either by the ED or the passport authorities and is a striking example of communications by ED which was relied upon by the Respondents but did not disclosed to the Appellant. Thus, documents existed which influenced the decision making of the

Respondents but were not disclosed to the Appellant. In these circumstances, the entire decision making process stood vitiated.

c) *Thirdly*, applications for inspection of files or providing copies of record were not allowed and the quasi judicial proceedings were carried out as if in secret.

d) *Fourthly*, summoning record of security threat from Mumbai Police and for cross examining the officials of ED which were essential to substantiate the case of the Appellant were not considered at all thereby causing immense prejudice to the case of the Appellant.

e) *Lastly*, the proceedings before the Respondent No. 3 were cut short though Appellant's counsels could not conclude their submissions. Even the voluminous written arguments that were submitted before the Respondent No. 2 and 3 were neither considered nor dealt with.

GG) Because the Learned Single Judge erred in holding that natural justice was complied with because the Appellant was granted opportunity of making oral submissions twice and that Appellant had submitted written submission running into 438 pages. It is submitted that APO /RPO went through the motions as a formality and did not deal with the contentions raised in oral/ written submissions. In

fact, their actions were more exercises in public relation rather than substantial compliance with natural justice.

HH) Because the Learned Single Judge also failed to consider that there was no attempt to evade any summons issued by ED to the Appellant. The entire documents sought were supplied and offers to answer any question through video link, by questionnaire or on a commission or through personal presence in London were made not once but many times. All these modes were permissible under FEMA which gives the ED same power of investigation as available under the Income Tax Act. However no order was passed by the ED on such requests. These applications/ requests were neither accepted nor expressly rejected but were simply not considered. There is nothing in the entire scheme of FEMA which provides for custodial interrogation. There has never been any answer as to why the course suggested by the Appellant could not be adopted. The conduct of the Appellant showed that summonses were substantially complied with.

II) Because the Learned Single Judge failed to consider that the Respondents singularly failed to engage with the exact nature of contravention of FEMA by the Appellant. The Appellant did not enjoy any cheque signing power or any financial power within the BCCI and was not at all involved in payment or withdrawal of foreign exchange. The

Appellant was merely arrayed as co-noticee with BCCI and its other office bearers with the aid of Section 42(1) of FEMA which provides of vicarious liability. No personal misdemeanour of the Appellant was alleged in any of the Show Cause Notices issued by the ED.

JJ) Because the Learned Single Judge failed to appreciate that passport authorities did not summon security related record from Mumbai Police. Had such record been summoned, it would have been clear that there were serious threats to the Appellant's life. In fact, it is the submission of the Appellant that non-summoning of the record from the Mumbai Police vitiated the decision making process as the passport authorities completely underestimated the level of security threat to the Appellant. Further, the evaluation of security threats should have been made by the passport authorities after consulting the Mumbai Police. By not doing so, and without basis, describing the threat as "bogey" threats, by orders dated 03.03.2011 and 31.10.2011 the passport authorities showed lack of application of mind. Because the Learned Single Judge failed to appreciate that based on intelligence inputs received from Central Agencies that Mumbai Underworld has been bent upon assassinating the Appellant, the Mumbai Police had been providing round the clock armed security to the Appellant and his family members from 27.03.2009 onwards and suddenly without

any notices or intimation to the Appellant, on 11.5.2010 the armed security cover given to the Appellant by the Mumbai Police was completely withdrawn leaving him completely vulnerable to threats from the underworld. The manner in which the security cover was withdrawn left no doubt in the mind of the Appellant that his life was in danger and his security can no longer be trusted with security agencies in India who are open to political interference. In these circumstances on advice of his security advisors the Appellant left the country for the UK.

KK) The Learned Single Judge completely failed to apply the test of proportionality. Alternate methods of investigation available under Section 131 of Income Tax Act read with Section 37 of FEMA coupled with the security threat to the Appellant required a balance to be struck by the passport authorities.

LL) Because the Supreme Court, through a three judge bench decision in *Teri Oats* v. *Union Territory of Chandigarh,* (2004) 2 SCC 130, applied the test of proportionality to assess the validity of legislative and administrative authority. The Supreme Court had said that "*By proportionality it is meant that the question whether regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the*

objection of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority 'maintain a proper balance between the adverse effects, which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve.'" (**Para 46**) This was further affirmed by the Supreme Court in *Patel Engineering* v. *Union of India,* (2012) 11 SCC 257. In the instant case, a proper balance between the adverse effects that the order of revocation of passports has on the rights, liberties and interests of the Appellant was not maintained keeping in mind the purpose that the revocation may have intended to serve. By revoking the Appellant's passport, his constitutional rights of speech, expression, occupation and life were irreversibly curtailed. The alleged objective of this order which may have been to gather information and collect documentation from the Appellant could well have been achieved through interrogation via videoconferencing, or a team questioning the Appellant in London. Given the well-documented threat to the Appellant's life, his presence in India would have endangered his and his family's well being. Further given that all documentation sought has been meticulously provided by the Appellant to the ED and the Passport Authorities, the investigation has not suffered

in any form. The proper balance between the rights of the Appellant and the interests of the investigation could have been achieved by the authorities recognizing that the Appellant has made himself available for interrogation outside India and has offered to bear the costs of such interrogation himself, and to be available at the High Commission of India at London, for the investigation. Given the nature of the rights that have been irreversibly affected by the disproportionate nature of the order of a revocation, renders the actions of the Passport authorities legally untenable. A proportionate response may well have been interrogation of the Appellant outside the country at the expense of the Appellant, suspension of the passport, eliciting responses through representatives within the country, amongst others.

MM) Because exercise of power of impounding/revocation without there being jurisdiction or a reasonable ground, would be struck down by the Courts. Further, any revocation/ impounding of a passport has to have a rational nexus with the objective to be achieved by such revocation and cannot be for extraneous reasons. In the present case, the Respondents have exercised the powers under the Passport Act for an extraneous reason of compelling the attendance of the Appellant before the ED. The Respondents have sought compulsory presence of the

Appellant in India for summons issued under FEMA which do not entail arrest, custodial interrogation or imprisonment.

NN) Because the purpose that was sought to be achieved by revoking the passport of the Appellant was that the attendance of the Appellant in compliance to the summons be enforced. It is stated that there is absolutely no nexus between the aforesaid purpose sought to be achieved and the impugned action of the revocation of the passport of the Appellant. ED had issued summons to the appellant in exercise of powers Under Section 37 r/w Section 131 of Income tax Act 1961 and Section 30 of C.P.C. Under Section 37 of FEMA the authorities specified therein can exercise the like powers as are conferred on Income Tax Authorities under the Income Tax Act 1961. Appellant submits that under the scheme of Income Tax Act 1961 the Income Tax authorities have no coercive powers to enforce the attendance of a person in compliance to the summons issued by them.

OO) Because section 37 of FEMA only empowers the officers of the Enforcement Directorate to “search and seize”. Section 37 (3) of FEMA, however, allows the officers to exercise like powers which are conferred on an Income Tax Authority under the Income Tax Act subject to such limitation laid down under that Act. The only provision relatable to “search and seizure” under the Income Tax Act is Section 132 of the said Act. This Hon’ble Court in the

judgment of L.R. Gupta Vs. UOI 194 ITR 32 (Delhi) has held that there is no power of arrest with the Income Tax Authorities while considering the provisions of the Income Tax Act.

PP) Because the Respondents have however erroneously sought to rely upon Section 131 of the Income Tax Act, which has no concern with "search or seizure" and cannot relate back to Section 37 of FEMA. In any case, Section 131 of the Income Tax Act is also of limited operation, and default by a person against such exercise of such power under Section 131 does not allow either the Income tax Authority to resort to the penal provisions of the Code of Civil Procedure like Section 32.

QQ) Because assuming that powers under Section 131 of Income Tax Act are available to ED then also under Section 131 (1) of the Income Tax Act 1961 the authorities mentioned therein are vested with the same power as a civil court while trying a suit in respect of the matters mentioned therein which includes the purpose of the enforcing the attendance of any person. Such power cannot be stretched to include the power to issue a warrant for arrest for the reason that the power of civil court to summon a person are provided for in Section 27 and Section 30 of C.P.C. Section 32 of the C.P.C is the penalty for default and therefore there being a distinction between the power to summon a person and the power to punish for non-compliance of summons

the Income tax authorities cannot invoke the powers under Section 32 of C.P.C and issue a warrant for non-compliance of the summons or in order to enforce the attendance of a person. This is further evident form the scheme of the Income Tax Act under Section 131 (1) of the Income Tax Act an officer interalia can enforce the attendance of a person and also compel the production of books and accounts and other documents. If a person fails to produce the documents or books of accounts he can be proceeded against under Section 132 (1) (a) (i) of the Income tax Act. Form No 45 A of the Income Tax rules provides for warrant of authorisation in this regard. Similarly when section 222 of the Income Tax Act provides for recovery of taxes and provides for arrest the Act itself in Schedule II provides for detailed rules in this regard. It is submitted that if it was envisaged or ever contemplated in the Income Tax Act to issue a warrant for arrest of a person in case of non – compliance of summons or to issue a warrant in order to enforce his attendance the legislature would not have left a vacuum with regard to the manner in which such power was to be exercised and the conditions and the rules such subject to which such power was to be exercised would have been provided for either in the Act or the Rules. It is submitted that the consequences for non – compliance with the summons is provided for in section 272 A (1) (c) and therefore neither the Income Tax authorities

nor the ED official have the power to take coercive steps to enforce the attendance of a person. This intention of the legislature is further manifest from Section 136 of the Income Tax Act 1961 which superficially provides that the Income tax Authorities shall be deemed to be a Civil Court for the purposes of Section 195 Cr.P.C. but not for the purposes of Chapter XXVI of the Code of Criminal Procedure 1973. It is submitted that Chapter XXVI of Cr.P.C also contains Section 349 and 350 of Cr.P.C which provide for Imprisonment or committal of person refusing to answer or produce documents and summary procedure for punishment for non-attendance by a witness in obedience to summons.

RR) Because the revocation of passport of the Appellant has no nexus to the purpose sough to be achieved that is to enforce his attendance in compliance with the summons. It is further submitted that the Income Tax Act envisages alternative mode of examination of witnesses and /or any other person since the very inception the appellant had offered to co- operate with the investigation and supplied all the documents that were asked for and were in his possession and has consistently expressed his willingness to be examined on commission or via video link however such request has not been considered or adjudicated upon in such circumstances the Appellant submits that not only is there no nexus between the purpose sought to be

achieved by the revocation of the passport of the Appellant but also there was no material for the passport authorities to have arrived at the conclusion that the revocation of the passport of the appellant was necessary or was in the interest of general public.

SS) Because the Appellant submits that without their being any power to arrest, with the Income Tax Authorities and there being a limitation on such authorities in this regard, a power to arrest could not have been read into Section 37 of FEMA by the Learned Single Judge. By such erroneous importation, the Learned Single Judge has reached a wrong conclusion that a power of arrest is also existing with the Enforcement Directorate and has wrongly approved the revocation of the Appellant's passport.

TT) Because it is submitted that unlike FERA, FEMA provides only for a civil liability and no criminal proceedings are even contemplated under the act. FEMA prescribes a procedural code in itself and the consequences of failure to attend in answer to summons by the ED may at best attract a penalty or fine as a punitive measure. No coercive action to compel an attendance is envisaged under FEMA. It is submitted that Section 37 of FEMA adopts and confers powers available to Income tax authorities non-compliance whereof attracts a penalty of Rs 10,000/- as provided in terms of

section 272 (A) 1 (C) of that Act and therefore. Since the provisions of Income Tax Act specifically envisage only a penalty for non –appearance, therefore no other coercive measure to compel attendance of a notice is provided and/or permissible under the law. The High Court has erroneously held, in paragraph 47.3 that Section 131 of the Income Tax Act, and consequently Section 37 of FEMA, permits these quasi judicial authorities to exercise the powers under Section 32 of the Code of Civil Procedure.

UU) Because the actions of the Passport Authorities' in the instant case clearly amount to a fraud on power. It is submitted that since that attendance of the appellant could not be lawfully compelled under provisions of FEMA, therefore as subterfuge and in a blatant abuse of powers, provisions of section 10 (3) (C) of the Passports Act are being employed to indirectly coerce the appearance of the appellant. The same is impermissible in law.

VV) Because it is the respectful submission of the appellant that though civil court can compel appearance of a witness it can not compel appearance of a defendant. The position of the appellant in the instant case is of a noticee and therefore he must be treated to be summoned in the capacity of only a defendant. Since a defendant cannot be compelled to appear and answer to summons under the

CPC, therefore the presence of the appellant cannot be compelled in the capacity of a noticee before the ED.

WW) Because since the scheme of FEMA does not provide for a coercive compelled attendance of a noticee, therefore as subterfuge resort was sought to be had by the powers by resorting to the provisions of Passport act . The actions of the authorities in the instant case is an indefensible demonstration of a fraud on power.

XX) Because the Learned Single Judge's holding in para 46, "*it is quite possible that during the course of Appellant's examination he may be confronted with material that may be in possession of concerned officers of DOE*", itself indicates that there was no cogent material available on record as to why the investigation of ED could not be competed with alternate modes suggested by the Appellant and which were all permissible under law. It appears that the revocation of passport of the Appellant has been countenanced merely based on surmises and conjectures that the Appellant may be confronted with material which may be in possession of the ED.

YY) Because the Learned Single Judge failed to interpret the provisions of Section 10(3)(c) of the Passports Act in consonance with Article 12 of the International Covenant on Civil and Political Rights (**"ICCPR"**), to which India is a

signatory. Article 12 thereof provides that everyone shall be free to leave a country including his own and shall not be subjected to any restriction except national security, public order, public health or moral and right and freedom of others. The Learned Single Judge held in para 51 of the impugned judgment that the ICCPR cannot be considered as municipal law on the given subject i.e. 10(3)(c) occupies the field. It is submitted that the phrase "in the interest of general public" had to be read and interpreted in view of Article 12 (3) of the ICCPR. The courts were required to interpret municipal law in a manner which was not in conflict with India's adherence to International Law. The Learned Single judge therefore failed to interpret and apply Section 10(3)(c) in its proper perspective.

ZZ) Because the Learned Single Judge appears to have been swayed by the bland, omnibus and vague allegations made in the communication dated 1.11.2010 (all of which were incorrect and were made without any basis) (again at para 51) that the Appellant appeared to have committed gross irregularity in conduct of IPL tournaments and in award of various contracts by BCCI and that through his fraudulent activity he appeared to have been involved in contravention of FEMA to the extent of hundreds of crores of rupees and that he has acquired huge amount which he is suspected to have parked outside India. It is submitted that no summon

issued to the Appellant ever indicated any allegation of personal misdemeanour, fraud or having parked huge amounts outside the country. Even in the various show cause notices issued to the Appellant there is nothing at all to indicate any fraudulent activity by the Appellant or acquisition of huge amount by him suspected to have been parked outside India. In fact, the allegations in letter dated 1.11.2010 did not particularize any irregularity, did not show how Appellant's conduct was fraudulent or on what basis he was suspected that amount is parked outside India. The said allegation is, in fact, so wholly vague that it is not capable of being answered with any definitive reply at all . In fact, the assertion of the Appellant that he was not charged with any financial powers and had no role in FEMA violations, if any, by BCCI was not controverted by the Respondents. Further, the stand of the Appellant was fortified by the vicarious show cause notices issued by ED which were essentially issued against BCCI and in which besides the President , the Secretary , the Treasurer and other BCCI officers, the Appellant was only arrayed as a co-noticee with the aid of Section 42 of FEMA providing for vicarious liability and no financial withdrawal or payment of forex was at all alleged qua the Appellant.

AAA) Because Learned Single Judge also erred in holding that in an institutional hearing one officer may hear and another

may decide the matter (para 49.2). The issue in the case in hand was entirely different. The case of the Respondent No. 3 was that APO was acting as his delegate. The APO decided various applications including applications for disclosure, cross examination, summoning of record etc. which all had substantial bearing on matters of natural justice. There could have been no delegation of quasi judicial functions.

BBB) Because Learned Single Judge erred when he notes in para 49.3 that "the Appellant was well aware of the charge against him" .It is submitted that the communication dated 1.11.2010 as stated above was wholly vague and did not disclose any particular fact which could have been controverted by the Appellant .In fact as stated above none of the show cause notices made any allegation of personal misdemeanour on the Appellant.

CCC) Because the Learned Single Judge failed to appreciate that while the ED had sought merely impounding of passport, the passport authorities revoked the passport of the Appellant. Revocation of passport could not have been done when prayer of ED was only for impounding which was a lesser prayer .As a result of impounding, the passport does not cease to exist. Only its possession and custody changes hand and it is placed in the hands of the authorities stipulated under the Statute. So far as revocation

is concerned, its effect is as if the document had not been granted or issued and it is rendered non est.

DDD) Because the Learned Single Judge further failed to consider that the conclusions of a Respondents No. 2 and 3 were wrong. As an example, Respondent No. 2 concluded that the revocation of the passport was in general public interest because cricket is a very popular game in the country which was a wholly irrelevant comment. The Respondent No. 2 equated the Appellant's position to that of an accused facing criminal investigation ignoring that the FEMA investigation was not in respect of a criminal offence but for determining civil penalty. When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. The reasons set out in the orders of Respondents no. 2 and 3 were based on irrelevant and extraneous considerations and reach conclusions which are wholly incorrect.

EEE) Because the Learned Single Judge failed to deal with the response to the Application made under Right to Information Act by Appellant's constituted attorney to which the Respondent No. 3 had replied that the passport of the Appellant was revoked because of investigations by the Economic Offences Wing of the Mumbai Police. The fact

that no such investigation is pending, is evident from response of Mumbai Police to another RTI application. The RTI response had a presumption of correctness attached to it. This presumption was not even addressed in the counter affidavit filed under oath by the Respondents. Thus it is evident that the Appellant's passport has been revoked on extraneous grounds and considerations. However the Learned Single Judge erroneously held that the response to the Appellant's RTI application cannot be given any weight, merely on the ground that Respondents have sought to justify orders of revocation on the other grounds set out by them. (para 52).

FFF) Because the Learned Single Judge failed to consider that in the instant case summons and warrant had not been issued by any Court and only when summons and warrants are issued by any Court u/s 10(3) (h) of Passport Act can the passport be impounded or revoked.

GGG) Because the Learned Single Judge also failed to consider that under the provisions of FEMA, any party in adjudication proceedings is entitled to appear through its representatives, be it a lawyer or chartered accountant, and in adjudication proceedings, no personal presence is required. In the instant case fourteen show cause notices had been issued and the Appellant was represented and participating in proceedings through his lawyers .

HHH) Because the Learned Single Judge failed to appreciate that the stage of investigation was thus over and adjudication had commenced. The personal presence of the Appellant was thus obviated .Thus there was substantial change in circumstances post 20.09.2010 .The Respondents did not point out as to after issuance of Show Cause Notice and after start of adjudication why ,if at all , the personal presence of Appellant was required..

III) Because the Learned Single Judge failed to consider that there was gross violation of principles of natural justice as even the copy of the purported application filed by the ED which allegedly formed the basis of the order of revocation was not supplied to the Appellant. Further full opportunity of hearing was not provided, and the opportunity to cross examine was denied. The passport authorities only went through the motions of conducting a fair hearing. .

JJJ) Because the Learned Single Judge failed to consider that a Show Cause Notice has to indicate not only the allegations that a noticee is required to meet but also the action that may be taken on the basis of those allegations against him. At no point of time was any notice given to the Appellant to the effect that his passport may be revoked. The notice dated 15.10.2010 was merely to determine whether action should be initiated under the Passports Act. The agency at

whose behest the passport has been revoked had only sought a mere impounding of the passport of the Appellant and not its revocation. While impounding is physical possession for the time being of a passport, revocation is permanent termination/ cancellation of the passport and was therefore a far graver consequence. The Appellant ought to have been put to notice that his passport was being sought to be revoked.

KKK) Because the Learned Single Judge failed to consider that in the instant case, the entire proceedings, were undertaken at the hands of APO, but the final decision was rendered by the RPO. The show cause notice was issued by the APO, and all the replies on merits were also made to him. The opportunity of personal hearing was also requested of the APO and was granted by him vide letter dated 15.11., 2010. However when the hearing started, it was done jointly by RPO and the APO. It bears no doubt that APO was duly authorized and had jurisdiction under the Passport Act to issue notice and undertake proceedings against the Appellant. However, while acting in quasi judicial capacity, he could not have acted under dictation or instructions of his superior officer namely the RPO. He could not also have allowed the RPO on the plea of his being “the head of office” to pass an order revoking the passport of the Appellant. It is a basic rule of administrative law that where

two superior authorities could exercise the same power, if a matter has been heard by one authority, the other could not have exercised the power. While the entire proceedings were conducted by the APO, the other authority namely the RPO could not have taken over the jurisdiction midway and along with the APO proceeded to hear the submissions and therefore acting in his capacity as “head of office” revoked the passport of the Appellant.

LLL) Because the Learned Single Judge failed to consider that the records of the case clearly demonstrate and reflect that the show cause / letter dated 15.10.2010 issued by the APO was for a limited purpose of deciding whether to initiate or not to initiate proceedings under Section 10 (3)(c) of the Passport Act, 1967. The APO was mindful of the fact that the scope of the proceedings was limited and the same could not culminate into a decision either to impound or revoke the passport of the Appellant. In these circumstances, the proceedings being decided by the RPO whereas all other steps were taken by the APO has caused grave prejudice to the Appellant for the reason the RPO without appreciating the scope of the proceedings has passed an order for the revocation of the passport of the Appellant which was never contemplated in the show cause notice.

MMM) Because the Learned Single Judge failed to consider in the instant case, hearings were held on 18.11.2010 and 26.11.2010 by the RPO and APO. However, the hearings had remained inconclusive. Two requests were sent on 29th November, 2010 and 1st December, 2010 requesting that as oral submissions had remained inconclusive the next date of the hearing may be fixed. In response to these letters, the APO replied vide letter dated 10.12.2010 that the decision in the matter will be intimated in due course. However, despite lapse of around three months no opportunity of hearing was afforded to the Appellant. Suddenly on 03.03.2011 after a gap of 94 days from the last hearing an order was passed revoking the passport. The gap between the last hearing when the request for further time was made and the date of revocation of the passport order indicated that there was no pressing urgency in curtailing the submissions midway and not granting adequate opportunity of hearing by APO/RPO. Thus, there has been violation of principles of natural justice. In quasi-judicial actions the principles of natural justice were required to be complied with and opportunity of hearing could not have been denied when civil or evil consequences would have followed.

NNN) Because the Learned Single Judge failed to consider that on the one hand while the ED has not adjudicated upon the

Show Cause Notice in respect of alleged non compliance of Appellant on account of security threats on his life and has not held that his alleged non compliance was willful or deliberate, it sent two communications dated 04.10.2010 and 15.10.2010 annexing copies of the show cause notice and annexed complaint to the Passport Office, Mumbai to impound the passport of the Appellant. The Appellant submits that the ED was not at all justified in seeking impounding of passport on the alleged ground of non compliance when the adjudication proceedings are pending before the ED no such adjudication that non compliance of Appellant was willful or deliberate has taken place before the authorized officers of the ED so far.

OOO) Because the Learned Single Judge failed to consider that the proceedings under FEMA are civil in nature. The proceedings do not contemplate any criminal liability or proceedings, nor do they contemplate any custodial interrogation. The violation of provisions of FEMA does not tantamount to any criminal offence. The penalties provided in Chapter IV are merely in the nature of civil penalty. Further under Section 16 (4) of FEMA, the person against whom adjudication is done may appear either in person or take the assistance of a legal practitioner or a chartered accountant of his choice. Thus, there is no requirement even in adjudication of personal compliance. In these

circumstances, assuming that there was a non appearance of the Appellant, the same could not have been a ground for revoking his passport at all. The adjudication if at all against the Appellant would only have entailed civil consequences.

PPP) Because the Learned Single Judge failed to consider that FEMA proceedings are essentially recovery proceedings which are civil in nature it would be wholly disproportionate to exercise the power of revocation / impounding of a passport.

QQQ) Because the Learned Single Judge failed to consider that the Appellant had offered to answer any questionnaire sent by the ED. He had also offered to be questioned in person in the Indian High Commission in London. He had also volunteered to answer all questions through video conferencing. He had submitted all documents/material called for by ED in his possession. He had extended all cooperation and complied with the summons of the ED in all respects other than personal appearance which he had explained with cogent material was due to grave security concern and threat to his life. In these circumstances there was clearly no basis or justification for any proceedings to be instituted at the instance of ED.

RRR) Because the CPO/RPO should have applied the test of reasonableness of a restriction which would have required

examining the nature and extent, the purport and content of the right, nature of the evil sought to be remedied by the statute, the ratio of harm caused to the citizen and the benefit to be conferred on the person or the community, urgency of the evil and necessity to rectify the same. In short, a just and reasonable balance keeping in mind principles of proportionality had to be struck. The CPO/RPO was therefore required to see as to what alternatives existed with ED and whether they should have exhausted those alternatives first before revoking the passport of the Appellant.

SSS) Because the International Covenant of Civil and Political Rights 1966 was ratified by India on 10.4.1979. Article 12 of the same is reproduced as under:-

"Article 12

1. *Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*
2. *Everyone shall be free to leave any country, including his own.*
3. *The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (order public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.*
4. *No one shall be arbitrarily deprived of the right to enter his own country."*

It is submitted that after India acceded to the said Covenant, the conditions mentioned in Article 12(3) of the Covenant become automatically applicable to Section 10(3) (c) of Passport Act and therefore, the powers Section 10(3) (c) would be circumscribed by following conditions –

(a) That such action should be to protect National Security or

(b) To protect public order or

(c) To protect public health or morals or

(d) The rights and freedoms of others

TTT) Because the rights under Article 12 of the above Covenant include the right to obtain and maintain the necessary transfer documents, in particular a passport. The impounding or revocation of the passport would directly impinge upon a persons right to leave any country or travel elsewhere. It is submitted that only in the exceptional circumstances mentioned in Article 12(3) can the rights provided under Article 12(2) be restricted. Therefore, to be permissible the restriction should confirm to Article 12(3). If the restrictions are not in conformity with requirement of Article 12(3), they would violate the right guaranteed under Article 12(2) of the Covenant.

UUU) Because the Supreme Court also in *Maneka Gandhi* v. *Union of India,* (1978) 1 SCC 248 stated in para 82 that if

the restriction imposed by an order u/s 10 (3) (c) is so wide, excessive or disproportionate to the evil sought to be averted that it may be considered unreasonable and in that event if the consequence is to abridge the fundamental right, it would not be saved by Article 19(2) or 19(6). Thus, the principle of proportionality in regard to impounding of passport was expounded in the said judgment itself. Besides the principle of proportionality, there is also a requirement to supply the reasons for application of restrictions which ought to be based upon Article 12(3).

VVV) Because it is submitted that orders of the RPO/CPO carries various findings, which are unsubstantiated, based on speculations and are completely perverse. The findings were based on complete speculation and ignored vital facts that the security cover was withdrawn from the Appellant on 11th May, 2010 and on 18th December, 2010 there was a written confirmation from the Mumbai Police that the security cover to him and his family has been completely withdrawn, which made his remaining in India untenable. It is pertinent to note that though the Appellant had hired private security even in India they were refused issued licenses which correspondences were made available on record. It is also relevant to mention that the security concern have to be viewed from the stand point of the

Appellant and his perception about his safety and his right to preserve his life.

WWW) Because the RPO/CPO avoided the issue of ED itself not deciding upon whether the non presence of Appellant is justified on the grounds that they were not conferred with the jurisdiction to sit in judgment on other matters and issues and cannot therefore act beyond the scope of its jurisdiction. It is submitted that a quasi judicial authority was required to apply his mind to all attending circumstances as also the fact whether the explanation given by the Appellant was correct. However, passport authorities acted as if it would take the ED's allegation of non appearance as a gospel truth and not independently apply its mind to the relevant material before passing the order.

XXX) Because it is submitted that the test for revocation of the passport had to be objective however the Passport Authorities without culling out facts which can show any objective satisfaction has only on subjective satisfaction by using clichéd phrases and *ipse dixit* revoked the passport of the Appellant.

YYY) Because whether there was a deliberate and willful disobedience and non-compliance of summons of personal appearance issued by the ED is an issue pending adjudication before the Special Director of the ED in

complaint proceedings initiated by the Investigating officer vide his complaint dated 16.9.2010 and on which Show Cause was issued on 20.09.2010 and reply was filed by the Appellant on 12.10.2010 and in spite of several reminders the Show cause has not been decide till date of filling of the present petition. It is submitted that the impugned order virtually passes a judgment of conviction against the Appellant in the Show Cause proceedings which are pending adjudication and clearly outside the jurisdiction and domain of the Passport Officer.

ZZZ) Because the Appellant's Advocates had, during the course of the hearing before RPO/CPO, placed on record material, which established that the Police Authorities themselves considered that there existed a serious risk to the life of the Appellant. In addition to placing this material on record, the Appellant's Advocates had, in their communications to the authorities repeatedly requested that the existence of such a threat and/or risk could be ascertained from the concerned agencies including Mumbai Police. The Respondent No. 3 was requested to call for the records of these agencies. These requests were ignored. Worse, the fact that such requests were made has also not been stated in the Order passed by Respondent No. 3. It is respectfully submitted that the only reason for the Respondent No.3 to have acted as he did in the present case was that the

Respondent No. 3 had predetermined that the passport of the Appellant was to be revoked, and the Respondent No. 3 was, therefore, not desirous of taking any steps, which would establish facts contrary to what his predetermined agenda was.

AAAA) Because the Order passed by Respondent No. 2 and 3 adverts to "*loss of foreign exchange running into hundreds of crores*". It is respectfully submitted that this is yet another indication of the fact that the Order passed by Respondent No. 2 and 3 has been passed, on the dictation of others and with a predetermined mind. In the first instance, there was no material whatsoever on record to draw any inference of any loss of foreign exchange. The show cause notice did not make any allegations about this and the Appellant was not called upon to meet the same. Notwithstanding this, the Appellant had, in his replies filed by his Advocates adverted to the fact that there had been no loss of foreign exchange, let alone running into hundreds of crores, insofar as the Appellant was concerned. Even the BCCI has not so alleged. In light thereof, for the Respondent No. 2 & 3 to have adverted to "loss of foreign exchange running into hundreds of crores" was highly improper and an irregular and improper exercise of jurisdiction. What makes this even more gross is the fact that the Respondent No. 2 & 3 have conveniently, in the Order passed by them avoided

deciding issues where the findings could only be in the Appellant's favour, by observing that the Passport Office was not conferred with the jurisdiction to sit in the judgment in some other matters and issues and could not, therefore, act beyond the scope of its jurisdiction. Not only is the Order passed by Respondent No. 2 & 3 are therefore, without jurisdiction and/or manifest and irregular and/or improper exercise of jurisdiction, but the findings of the Respondent No. 2 & 3 are unsustainable and/or perverse and/or indicate complete or total non application of mind.

BBBB) Because the orders passed by Respondent No. 2 and 3, in terms, prescribes the stated basis for revoking the passport of the Appellant as *"necessary action to be taken to induce the presence of the Appellant"*. It is respectfully submitted that this is plainly illegal and misconceived. This is also ex facie without jurisdiction and null and void. The powers under Section 10(3) of the Act are extreme in nature and involve a serious curtailment of the personal liberty, constitutionally guaranteed fundamental rights and freedom of a citizen. The power to revoke a passport cannot be exercised to induce the presence of a citizen, pursuant to a summons issued by another authority or agent. This is all the more so, when the concerned authority has yet to determine whether the failure to remain present pursuant to a summons was deliberate or willful or could be justified

and/or explained. This is also more particularly the case since FEMA is a statute, which involves civil consequences, there is no power of custodial interrogation conferred upon the authorities under FEMA.

CCCC) Because the Orders passed by Respondent No. 2 and 3 and the procedure followed by the Respondent No. 2 and 3 violated all norms and canons of fairness and natural justice. This violation started from the very threshold of the enquiry. It is the fundamental principle of natural justice that a person must be provided with the material which is sought to be relied upon and/or used against him. In the present case, this requirement was totally absent. The proceedings commenced by the Respondents were pursuant to a request made by the ED. To start with, the Appellant was not provided either with the requests or its contents. After extensive correspondence pointing out that this material was required to be made available, the Appellant was provided with a sanitized extract of the two communications addressed by the ED. The entirety of the record made available by the ED to the passport authorities was not made available. As a result thereof, the Appellant was wholly unaware of the case, which he had to meet. Furthermore, the Appellant admittedly did not have available with him the material, which was made available to the passport office by the ED. This was a serious

violation of the principles of natural justice. The Appellant is not required in law to establish, that this violation occasioned a miscarriage of justice. Be that as it may, the Appellant submits that it is only to be expected that this material, which was made available to the passport office by the ED and withheld from the Appellant, would have consciously or subconsciously affected the decision of the Respondent No. 2 and 3. In any event, this withholding of material clearly vitiated the adjudicatory process. In any event, it is respectfully submitted that the Respondent No. 2 and 3 has in functioning in the manner alleged, not only ensured that justice is not done but it is clearly evident that to the Appellant (or any reasonable person similarly situated) justice would not appear to have been done. That the Respondent No. 2 and 3 completely chose to ignore the fact that they could not privately have access to information and material from the ED, without supplying the Appellant with the same, is clearly suggestive of apparent *mala fides*.

DDDD) Because there has been a further violation of the principles of natural justice and the principles of fair adjudication in the manner in which the enquiry has been conducted. The passport office has deliberately refused to take cognizance of any material, which if looked at would have supported the case of the Appellant. The passport office was requested to call for the records from the ED and the Mumbai Police. As

this would have established the case of the Appellant, this was consciously not done.

EEEE) Because the orders passed by Respondent No. 2 and 3 also makes no reference to the role of the Foreign Secretary of the Govt. of India. This was not only set out in the communications sent by the Appellant's Advocates (which is reiterated) but also at the time of the hearing. Despite the same, the orders passed by Respondent No. 2 and 3 are completely silent on this score.

FFFF) Because the observation that the Show Cause Notice was issued by the APO as a delegate is false and contrary to the Notice itself, which clearly indicates that the APO was acting in his own right.

GGGG) Because it is well settled that right to self preservation is the basic human right of all mankind and also the facet of right to live. In *Surjeet Singh* v. *State of Punjab*, 1996 (2) SCC 336, the Hon'ble Supreme Court held:

> *"11. It is otherwise important to bear in mind that self preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self defence in criminal law. Centuries ago thinkers of this Great Land conceived of such right and recognised it.*

Thus, Article 21 of the Constitution embodies, as part of the right to life, the sacred and precious and inviolable right to self-preservation as part of Article 21. The circumstances indicate that despite adducing credible evidence to a threat to his life, the Mumbai Police's protection was withdrawn . Given the state's unwillingness to take the threat to the Appellant's life seriously by (1) not providing adequate state protection, and (2) by refusing to enable the private security hired by the Appellant to be able to be adequately armed, the appellant had no choice but to take the step of leaving the country.

HHHH) Because it is submitted that whilst determining the question of self preservation what needs to be considered on a totality of the fact is the state of mind and fear of the citizen and not the platitude of the State expressing willingness to provide security. It is for every citizen to determine whether the State is providing adequate protection to the security of life of its citizen. If, on a totality of the facts, there is serious, reasonable or justified apprehension in the mind of the citizen that such protection is either not available or is insufficient to the self preservation of the individual or his family members, in such an event, such a person, as a concomitant of his right to life, is entitled to take adequate and justifiable steps to protect his and his family's life.

IIII) Because the Passport Authorities while not attempting to verify any of the aforesaid facts, and also without verifying the falsity of the contents of the Complaint dated 16.09.10, blindly and without any basis in facts and law, rejected the Appellant's contention and directed the revocation of his passport "*to induce his presence".* The Mumbai Police's contention that they were willing to provide protection was never communicated to the Appellant and does not address the fact that unilaterally post-suspension of the Appellant as IPL Commissioner, the security cover was reduced, the armed guard were withdrawn on 11.05.2010, and on 21.05.2010 the protection to his family was entirely withdrawn.

JJJJ) Because the Learned Single Judge failed to consider that in the context it is also relevant to note that considering the doctrine of proportionality and the test of reasonableness, the investigations by the ED could have been conducted without being affected in any manner even in the absence of the physical presence of the Appellant in the office of the ED. The CPO/RPO ignored the fact that the ED had various other powers under the statute to record the statement of the Appellant, none of which were invoked before attempting and taking the draconian action against the Appellant's passport. Action against the Appellant's passport should have been a matter of last resort

considering the extremely serious nature of the action. There is no explanation as to why the other powers under statute were not exercised before the commencement of action against the passport of the Appellant.

KKKK) Because in the context of the doctrine of proportionality and the observation of the Supreme Court in *Maneka Gandhi*'s case, it was essential and necessary for the Passport authorities to have ensured that their order was not excessive or disproportionate to the mischief or evil that was sought to be averted. If the RPO believed that the interrogation of the Appellant was necessary, the RPO should have noticed that the Appellant was always willing to submit to interrogation. The only issue was the venue. The Appellant, for reasons briefly referred to above and set out in greater details hereinafter had expressed his willingness to submit to interrogation in any of the aforementioned methods. However, the RPO, in the context of the threat to the Appellant's life, did not balance the needs of the Appellant's right to self preservation with the needs of the investigating agency and conclude that there were adequate alternative methods of interrogation available to the ED and therefore in the context of the threat to the Appellant's life the alternative methods of interrogation could have been adopted without affecting the efficacy and integrity of the investigation. The RPO lost sight of the fact

that there was no scope for custodial interrogation and that it was not imperative and critical for the investigations of the ED that the Appellant should have been physically present in the office of the ED.

LLLL) Because other grounds would be taken up at the time of argument of the case.

4. The present appeal is within limitation.

5. No new fact has been pleaded in the present appeal.

6. The appellant has paid the requisite court fees for filing the present appeal.

PRAYER

It is therefore most humbly and respectfully prayed that this Honourable Court may be pleased to :

a. Set aside the judgment & order dated 16.1.2013 passed by the Learned Single Judge in Writ Petition No. 376 of 2012;

b. Stay the effect and the operation of the impugned judgment & order dated 16.1.2013 passed by the Learned Single Judge in Writ Petition No.376 of 2012

c. Set aside the order dated 31.10.2011 passed by the Respondent No.2 and order dated 3.3.2011 passed by Respondent No.3.

d. Stay the effect and operation of the order dated 31.10.2011 passed by the Respondent No.2 and order dated 3.3.2011 passed by Respondent No.3.

e. Pass such other and further order as this Honourable Court may deem fit and proper in the circumstances of the case.

FILED BY

(RISHI AGRAWALA)
ADVOCATE FOR THE APPELLANT
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET
NEW DELHI-110 001

NEW DELHI
DATED:

IN THE HIGH COURT OF DELHI AT NEW DELHI

LETTER PATENT APPEAL NO. _____OF 2013
(Arising out of the impugned order dated 16.1.2013 passed by the Hon'ble high Court of Delhi in Writ Petition No. 376 of 2012)

IN THE MATTER OF:

Lalit Kumar Modi …Appellant

Versus

Union of India & Ors. ...Respondents

IN THE HIGH COURT OF DELHI AT NEW DELHI

LETTER PATENT APPEAL NO. _____OF 2013

IN THE MATTER OF:

Lalit Kumar Modi …Appellant

Versus

Union of India & Ors. ...Respondents

CERTIFICATE

Certified that the appellant is filing the complete set of the Writ Petition alongwith all its Annexures and no other additional documents have been filed alongwith the Letters Patent Appeal.

FILED BY

(RISHI AGRAWALA)
ADVOCATE FOR THE APPELLANT
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET
NEW DELHI

NEW DELHI

DATED:

IN THE HIGH COURT OF DELHI AT NEW DELHI

C.M.NO. OF 2013

IN

LPA NO. _____OF 2013

IN THE MATTER OF:

Lalit Kumar Modi …Appellant

Versus

Union of India & Ors. ...Respondents

AN APPLICATION FOR EXEMPTION FROM FILING TYPED/ DIM COPY OF ANNEXURES

MOST RESPECTFULLY SHOWETH:

1. The accompanying Appeal has filed by the Appellant against the Respondents. Detailed facts leading to the filing of the Appeal are mentioned in accompanying Appeal and the same are not repeated herein for the sake of brevity. The Appellant however craves leave to refer to and rely upon the contents of the Appeal for the purpose of adjudication the present application.

2. The Appellant submits that legible copies of the annexures are being filed with the Appeal and no inconvenience would be caused to the Their Lordships while going through the same. However, the Appellants undertakes to file the typed/dim copy of the annexures if so required by this Hon'ble Court.

3. The present Application has been made *bona fide* and in the interest of justice. The balance of convenience is in favour of the Appellant and against the Respondent. In case the present

application is not allowed, the Appellant will suffer irreparable loss and injury.

PRAYER

In view of facts stated and submissions made hereinabove, it is respectfully prayed that this Hon'ble Court may be pleased to:-

a) exempt the Appellant from filing the typed/ dim copy of the annexures annexed to the Appeal;

b) pass any other order/direction that this Hon’ble Court may deem fit and proper in the facts of the present case may be passed in favour of the Appellant.

FILED BY

(RISHI AGRAWALA)
ADVOCATE FOR THE APPELLANT
AGARWAL LAW ASSOCIATES
19, BABAR ROAD,
BENGALI MARKET,
NEW DELHI.
Ph: 30406000

NEW DELHI

FILED ON:

IN THE HIGH COURT OF DELHI AT NEW DELHI

C.M.NO. OF 2013

IN

LPA NO. _____OF 2013

IN THE MATTER OF:

Lalit Kumar Modi …Appellant

Versus

Union of India & Ors. ...Respondents

AN APPLICATION FOR EXEMPTION FROM FILING CERTIFIED/ ORIGINAL COPY OF ANNEXURES

MOST RESPECTFULLY SHOWETH:

1. The accompanying Appeal has filed by the Appellant against the Respondents. Detailed facts leading to the filing of the Appeal are mentioned in accompanying Appeal and the same are not repeated herein for the sake of brevity. The Appellant however craves leave to refer to and rely upon the contents of the Appeal for the purpose of adjudication the present application.

2. The Appellant submits that certified / original copy of the annexures annexed to the present Appeal are readily not available with the Appellant. The Appellant submits that the annexures annexed with the Appeal are true copies of their respective originals. However, in any case, the Appellant undertakes to file the original/ certified copies of the annexures if so required by this Hon'ble Court.

3. The present Application has been made *bona fide* and in the interest of justice. The balance of convenience is in favour of the Appellant and against the Respondent. In case the present application is not allowed, the Appellant will suffer irreparable loss and injury.

PRAYER

In view of facts stated and submissions made hereinabove, it is respectfully prayed that this Hon'ble Court may be pleased to:-

a) exempt the Appellant from filing the certified/original copy of the annexures annexed to the Appeal;

b) pass any other order/direction that this Hon'ble Court may deem fit and proper in the facts of the present case may be passed in favour of the Appellant.

FILED BY

(RISHI AGRAWALA)
ADVOCATE FOR THE APPELLANT
AGARWAL LAW ASSOCIATES
19, BABAR ROAD,
BENGALI MARKET,
NEW DELHI.

NEW DELHI

FILED ON:

IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA No. _____OF 2013

IN THE MATTER OF:

Lalit Kumar Modi …Appellant

Versus

Union of India & Ors. ...Respondents

URGENT APPLICATION

To

The Registrar
High Court of Delhi
New Delhi.

Dear Sir,

Kindly treat the accompanying Letters Patent Appeal on an urgent basis and the grounds of urgency are mentioned in the Appeal.

Yours faithfully,

(Rishi Agrawala)
Advocate for the Appellant
For Agarwal Law Associates
19, Babar Road, Bengali Market
New Delhi

New Delhi

Dated:

IN THE HIGH COURT OF DELHI AT NEW DELHI

C.M.NO. OF 2013

IN

LPA NO. _____OF 2013

IN THE MATTER OF:

Lalit Kumar Modi …Appellant

Versus

Union of India & Ors. ...Respondents

APPLICATION UNDER SECTION 151 OF CPC

FOR AD INTERIM EX-PARTE STAY

MOST RESPECTFULLY SHOWETH:

1. The accompanying Appeal has filed by the Appellant against the Respondents. Detailed facts leading to the filing of the Appeal are mentioned in accompanying Appeal and the same are not repeated herein for the sake of brevity. The Appellant however craves leave to refer to and rely upon the contents of the accompanying Appeal for the purpose of adjudication the present application.

2. The Appellant submits that the provisions of Section 10(3)(c) of the Passports Act must be interpret in consonance with Article 12 of Covenant on Civil and Political Right ("CCPR") . India is a signatory to CCPR Article 12 whereof provides that everyone shall be free to leave a country including his own and shall not be subjected to any restriction except national security, public order, public health or moral and right and freedom of others.

The Appellant submits that CCPR cannot be considered as municipal law on the given subject i.e. 10(3)(c) occupies the field (para 51). It is submitted that the phrase "in the interest of general public" had to be read and interpreted in view of Article 12 (3) of CCPR. The courts were required to interpret municipal law in a manner which was not in conflict with India's adherence to International Law. The Learned Single judge therefore failed to interpret and apply Section 10(3)(c) in its proper perspective.

3. It is submitted that no summon issued to the Appellant ever indicated any allegation of personal misdemeanor , fraud or having parked huge amounts outside the country. Even in the various show cause notices issued to the Appellant there is nothing at all to indicate any fraudulent activity by the Appellant or acquisition of huge amount by him suspected to have been parked outside India. The Appellant submits that the allegations in letter dated 1.11.2010 did not particularize any irregularity, did not show how Appellant's conduct was fraudulent or on what basis he was suspected that amount is parked outside India. The said allegation is, in fact, so wholly vague that it was not capable of being answered with any definitive reply at all.

4. The Appellant submits that that he was not charged with any financial powers and had no role in FEMA violations, if any, by BCCI was not controverted by the Respondents. Further, the stand of the Appellant was fortified by the vicarious show cause

notices issued by ED which were essentially issued against BCCI and in which besides the President, the Secretary, the Treasurer and other BCCI officers, the Appellant was only arrayed as a co-noticee with the aid of Section 42 of FEMA providing for vicarious liability and no financial withdrawal or payment of forex was at all alleged qua the Appellant.

5. The Appellant submits that the issue in the case in hand was entirely different. The case of the Respondent No. 3 was that APO was acting as his delegatee. The APO decided various applications including applications for disclosure, cross examination, summoning of record etc. which all had substantial bearing on matters of natural justice. There could have been no delegation of quasi judicial function.

6. It is submitted that the communication dated 1.11.2010 as stated above was wholly vague and did not disclose any particular fact which could have been controverted by the Appellant .In fact as stated above none of the show cause notices made any allegation of personal misdemeanor on the Appellant.

7. The Appellant submits that while the ED had sought merely impounding of passport, the passport authorities revoked the passport of the Appellant. Revocation of passport could not have been done when prayer of ED was only for impounding which was a lesser prayer. As a result of impounding, the passport does not cease to exist. Only its possession and custody changes hand

and it is placed in the hands of the authorities stipulated under the Statute. So far as revocation is concerned, its effect is as if the document had not been granted or issued and it is rendered non est.

8. The Appellant submits that the Respondent No. 2 equated the Appellant's position as that of an accused facing criminal investigation ignoring that the FEMA investigation was not in respect of a criminal offence but for determining civil penalty. When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. The reasons set out in the orders of Respondent no. 2 and 3 were based on irrelevant and extraneous considerations and reach conclusions which are wholly incorrect.

9. The Appellant submits that in the instant case summons and warrant had not been issued by any Court and only when summons and warrants are issued by any Court u/s 10(3) (h) of Passport Act can the passport be impounded or revoked.

PRAYER

In view of facts stated and submissions made hereinabove, it is respectfully prayed that this Hon'ble Court may be pleased to:-

a) Set aside and stay the effect of the operation of the impugned judgment & order dated 16.1.2013 passed by the Learned Single Judge in Writ Petition No.376 of 2012

b) Set aside and stay the effect and operation of the order dated 31.10.2011 passed by the Respondent No.2 and communicated to the Appellant on 3.11.2011 and order dated 3.3.2011 passed by Respondent No.3.

c) Pass such other and further order as this Hon'ble Court may deem fit and proper in the circumstances of the case.

FILED BY

(RISHI AGRAWALA)
ADVOCATE FOR THE APPELLANT
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET
NEW DELHI

NEW DELHI

DATED:

IN THE HIGH COURT OF DELHI AT NEW DELHI

LETTER PATENT APPEAL NO._____ OF 2013

(Arising out of the impugned order dated 16.1.2013 passed by the Hon'ble high Court of Delhi in Writ Petition No. 376 of 2012)

IN THE MATTER OF:

Lalit Kumar Modi …Appellant

Versus

Union of India & Ors. ...Respondents

MEMO OF PARTIES

Lalit Kumar Modi
Citizen of India, through his
Constituted Attorney
Mehmood M. Abdi residing at
A-901, Meera Towers,
Near Mega Mall, Oshiwara,
Andheri (West),
Mumbai -400053, Maharashtra …Appellant

Versus

1. UNION OF INDIA
Through Ministry of External Affairs
South Block, New Delhi

2. CHIEF PASSPORT OFFICER
Ministry of External Affairs, Room No.8,
1st Floor, Patiala House Annexe,
New Delhi – 110 001

3. REGIONAL PASSPORT OFFICER,
Mumbai, having his office at Manish
Commercial Centre, 216-Arbitration
Dr.Annie Besant Road, Worli,
Mumbai – 400 030 …Respondents

FILED BY

(RISHI AGRAWALA)
ADVOCATE FOR THE APPELLANT
FOR AGARWAL LAW ASSOCIATES

19, BABAR ROAD, BENGALI MARKET
NEW DELHI-110 001

NEW DELHI

DATED:

NOTICE OF MOTION

IN THE HIGH COURT OF DELHI AT NEW DELHI

NO._____

SHRI _____

Advocate

IN THE MATTER OF:

Lalit Kumar Modi …Appellant

Versus

Union of India & Ors. ...Respondents

Sir,

The enclosed LPA in the aforesaid matter is being filed on behalf of the Appellant and the same is likely to be listed on _____ or any date, thereafter. Please take notice accordingly.

FILED BY

(RISHI AGRAWALA)
ADVOCATE FOR THE APPELLANT
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET
NEW DELHI

NEW DELHI

DATED:

SYNOPSIS & LIST OF DATES

1. By way of the present appeal, the Appellant is assailing the judgment and order dated 16.1.2013 passed in WP (C) No. 376 of 2012. The present appeal raises certain important questions of law namely:

   (a) Whether the right to personal liberty, occupation, freedom of expression and travel can be curtailed by the revocation of a citizen's passport without following fair, just and reasonable procedure established by law;

   (b) Whether such revocation can be done if the interests of the general public are not served by it;

   (c) Whether the passport authorities while revoking a passport act as quasi-judicial authorities and hence are required to be objectively satisfied and apply an independent mind, or whether they can fetter exercise of their power to the dictates of a separate governmental agency;

   (d) Whether absent a show cause notice which specifically pertains to revocation of a passport, such action can be taken by the authorities given that the requesting agency had not sought any revocation but merely impounding of passport ;

   (e) Whether the orders of revocation of the passport authorities are required to comply with the well-established legal principles of reasonableness and proportionality;

(f) Whether when substantial compliance with summons issued by another agency was done, is revocation of passport justified when passport holder has otherwise co-operated with them

(g) Whether the right to life includes right to self preservation and whether non appearance in pursuance to a summons would not constitute a willfull avoidance where serious threat to life of passport holder was coupled with withdrwal of state protection;

(h) Whether the quasi judicial proceedings of the passport authority are required to satisfy principles of natural justice and fair hearing.

(i) Whether the passport authority was justified in revoking the passport to coerce /secure appearance of the Appellant before the FEMA authorities when under FEMA no power of arrest, detention, custodial investigation and no coercive action to compel attendance is envisaged.

2. The Appellant submits that a passport is one of the key attributes of citizenship of a person. The Honourable Supreme Court in *Satwant Singh Sawhney* v. *D. Ramarathnam* (AIR 1967 SC 1836), has crystallised the principle that correlates nationality to passports. The Honourable Court said,, "*it is a document of identity, it is prima facie evidence of nationality, in modern times it not only controls exit from the State to which one belongs, but*

without it, with a few exceptions, it is not possible to enter another State. It has become a condition for free travel." (para 26) Thus, revoking a passport, being an irreversible action, amounts to a permanent impediment of exercise of innumerable constitutional rights.

3. By way of the impugned order the Learned Single Judge has upheld the order of Respondent No. 2, the Regional Passport Officer, Mumbai, dated 03.03.2011 and of Respondent No.3, the Chief Passport Officer, dated 31.10.2011, revoking the passport of the Appellant under Section 10(3)(c) of the Passport Act, 1967. The orders of revocation by the passport authorities were challenged by the Appellant by way of a Writ Petition (Civil) numbered 376 of 2012 before the Learned Single Judge. The Learned Single Judge erroneously upheld the findings of Respondents No. 2 and 3, permitting the Appellant's passport to be revoked in the face of substantial breaches of natural justice and fair hearing.

4. The Appellant submits that that not only must revocation of passports under the Passports Act, 1967 comply with the requirements under Article 21 of the Constitution, but the procedure prescribed by law for revocation must also satisfy possible challenges under other constitutional provisions, like Articles 14 and 19 of the Constitution. In *Maneka Gandhi* v. *Union of India,* (1978) 1 SCC 248, the Honourable Supreme Court held that the impounding of a passport under Section 10(3)(c) of the

Passports Act must be justified "*in the interests of the general public*" . This was held to be akin to the interests of public order, decency or morality (as per Article 19(5) of the Constitution. The revocation of the Appellant's passport in this case cannot be shown to be made in the interests of public order, decency and morality. The Appellant submits that revocation of his passport without establishing that such revocation was in fact in the interests of the general public amounts to an infringement of his constitutional rights under Articles 14, 19 and 21, and more specifically, under Articles 19(1) (a) and (g). The Appellant submits further that such revocation has been done in a manner that is fanciful, arbitrary and oppressive, and is in violation of the procedure prescribed by law.

5. The following principles can be culled down from the Maneka Gandhi's judgment-

(i) That the power to revoke or impound a passport is a drastic power that interfered with basic human rights, and hence it was expected that it would be used sparingly and with great care and circumspection;

(ii) That the exercise of the power required strict compliance with the established principles of natural justice;

(iii) The passport authorities had to be objectively satisfied that sufficient grounds for the exercise of the power in fact existed;

(iv) That the power could not be exercised in a way which went beyond the reasonable restrictions on the exercise of fundamental rights as enshrined in the Indian Constitution or otherwise violated the principles of proportionality.

By way of the impugned order the Learned Single Judge has held (in paras 45.2 ,45.3 and 45.4) held that so long as the material provided to passport authority is actionable, which may not even be a final adjudication, the passport authority would be well within its rights to take necessary steps for revocation and/or impounding the passport of an individual and they were not required to evaluate the merits of the material. It is submitted that this approach directly runs counter to the test put forth in Maneka Gandhi. The passport authority while revoking/ impounding the passport does not act as an administrative authority merely working on inputs from other government agencies but acts as a quasi judicial authority. The satisfaction of the passport authority under Section 10(3)(c) of the Passports Act has to be reached on an objective consideration of the material and it is not that every input or receipt of actionable material which would clothe it with right to revoke or impound a passport. Thus, the test propounded by the Learned Single Judge is not the correct test. In fact, if such a test were to be applied it would make impounding / revocation of the passport most achievable and easy remedy in hands of government agencies and would nullify the principle that more

drastic the consequences more circumspect should be the use of the power.

6. The Appellant submits that by way of the impugned order the Learned Single Judge failed to consider the scheme of FEMA which provides only for civil proceedings and penalty in the nature of civil liability. There is no criminal proceeding contemplated under FEMA and thus in a matter which provided only for civil liability and proceedings under which were in the nature of civil action could not have led to revocation of the passport.

7. The Appellant submits that the Directorate of Enforcement (hereafter, "**ED**") which sought to elicit the appearance of the Appellant had not contemplated revocation of the passport. In fact, the ED had only recommended that the Appellant's passport be impounded. This fact was misrepresented in the order of the Regional Passport Officer (hereafter, "**RPO**"), and the misrepresentation was sustained in the orders of the Chief Passport Officer (hereafter, "**CPO**") and the Learned Single Judge, to uphold revocation of the Appellant's passport. The initial summons from the ED dated 02.08.2010 issued to the Appellant asked him to appear and produce certain documents. All these documents were in fact provided. The summons stated that if the Appellant were to default in appearing then he would be liable to action under "Section 13 of the Foreign Exchange Management Act, 1999 (hereafter "**FEMA**") and / or Section 32 of the CPC, 1908". Neither of these two statutory provisions contemplates the

actions of a Passport Officer to revoke a passport nor of the ED to suggest such revocation. Clearly revocation was not contemplated.

8. The Appellant submits that the passport authorities, being quasi-judicial authorities must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party (in this case, the Appellant), and importantly, must not allow their judgment to be influenced by matters not disclosed to the aggrieved party or by the dictation of another authority, such as the ED. Instead, in the present case, the passport authorities and Learned Single Judge, relying on a recommendation from the ED, took disproportionate and excessive action and revoked / upheld revocation, of the Appellant's passport.

9. The Appellant submits that there was no independent application of mind by either Respondent No.2 or 3 while passing their orders dated 3.3.2011 and 31.10.2011. In fact, the counter affidavit filed by the Respondents indicated that they were of the view that they were not required to apply their mind or to come to an independent conclusion. Instead, they had to merely act on the basis of the recommendations made by the ED. It is submitted that while acting as quasi-judicial authorities the respondent no.2 and 3 were required to take an independent and objective view of the matter. They could not have abdicated their decision to any other authority or based it on the satisfaction of some other authority. In the proceedings before the passport authority there

was gross violation of principles of natural justice inasmuch as no show cause notice was given to the effect that appellant's passport could be revoked. Further, there was non-disclosure of documents. Applications for inspection of files and providing copies of record were not allowed. Applications for summoning the record of the security threat documented by the Mumbai Police to be used to cross-examine the officials of the ED were consistently not allowed.

10. The Appellant submits further that he was not provided the materials i.e. communications from the ED to the RPO that allegedly formed the basis for revocation of his passport. As such, the Appellant was denied any opportunity of defending himself against the RPO's allegations. Hence, his right to fair procedure was infringed upon. The Appellant was not given an adequate opportunity to meet the case against him. Further, his counsels were not permitted to complete their arguments before the RPO. The CPO and Single Judge failed to take into consideration these factors.

11. The Appellant submits that the entire procedure adopted by the passport authorities was against the basic principles of natural justice and is therefore legally untenable. There were several grave instances of non-compliance with the principles of natural justice and the requirements for a fair hearing. For instance, key documents relied upon by the passport authorities were not provided to the Appellant, nor was he provided an opportunity to

cross examine the ED officials. This was especially crucial since the ED officials, in fact, did not suggest revocation but only impounding of the passport. The notice on the revocation hearing was not specific and appeared to indicate only that the passport authorities intended to decide preliminary applications for inspection of documents. These grounds, detailed herein, separately and jointly violate the Appellant's right to a fair hearing and also vitiate his right to natural justice. They further reinforce the many procedural improprieties perpetrated by the State.

12. The Appellant submits that the procedural improprieties pertaining to the revocation of his passport warrant judicial review. Such review must also extend to the order of revocation upheld by this Court. These procedural improprieties violate the Appellant's right to fair hearing and are in contradiction to principles of natural justice.

13. The Appellant submits that the only reason that he could not be personally present before the ED or Passport Office was because there were grave security threats to his life and that of his family members. These threats have been systematically documented and made available to all authorities including, the Mumbai Police. Concerns over these threats prevented the Appellant from travelling to India. However this has been lightly brushed aside by way of the impugned order. The revocation of his passport is an act that is wide, excessive and disproportionate to the alleged mischief committed by the Appellant.

14. Under Section 37 of FEMA the authorities specified therein can exercise the like powers as are conferred on Income Tax Authorities under the Income Tax Act 1961. Appellant submits that under the Scheme of Income Tax Act 1961 the Income Tax authorities have no coercive powers to enforce the attendance of a person in compliance to the summons issued by them.

15. Section 37 of FEMA only empowers the officers of the ED to “search and seize”. Section 37 (3) of FEMA, however, allows the officers to exercise like powers which are conferred on an Income Tax Authority under the Income Tax Act subject to such limitation laid down under that Act. The only provision relatable to “search and seizure” under the Income Tax Act is Section 132 of the said Act. There is no power of arrest with the Income Tax Authorities while considering Section 132 of the Income Tax Act.

16. Assuming powers u/s Section 131 of Income Tax Act were available to the ED then also the consequence for non compliance with the summons u/s 131 of Income Tax Act is provided under Section 272A (1) (c) which provides for penalty of a monetary sum and therefore, neither the Income Tax

Authorities nor the ED officials have the powers to take coercive steps to enforce attendance of a person. When specific provision for penalty for non compliance of summon is provided under the Income Tax Act itself it would not be open for the Income Tax Authorities/ED officials to take recourse to penalty provided under Section 32 CPC and therefore, the Learned Single Judge fell in error in holding that power u/s 32 CPC was available to the ED officials.

17. The Appellant submits that the impugned order is incorrectly premised on the assumption that the Appellant along with other BCCI officials appeared to have committed gross irregularities in the conduct of IPL tournaments and in the award of various contracts by BCCI, and that through his fraudulent activity the Appellant appeared to have been involved in contraventions of FEMA. In fact, the assertion of the Appellant that he was not charged with any financial powers and had no role in FEMA violations, if any, by BCCI was not controverted by the Respondents.

18. Further, the stand of the Appellant was fortified by the various show cause notices issued by the ED. These notices were issued against the BCCI – and functionaries like the President, the Secretary, the Treasurer and other officers. The Appellant was only arrayed as a co-noticee with the aid of Section 42 of FEMA providing for vicarious liability. No financial withdrawal or payment of foreign exchange was at all alleged qua the Appellant.

19. On account of the aforesaid infirmities in the impugned judgment and order of the Learned Single Judge the same is required to be set aside. Hence the present appeal.

LIST OF DATES

2008	The Appellant, Mr. Lalit K Modi is a citizen of India and a businessman with several roles, positions and responsibilities in companies in India involving lot of travel in and out of India.The Appellant was appointed as the Chairman/ Commissioner of the Indian Premier League (hereafter **"IPL"**), a sub-committee of the Board of Control of Cricket in India (hereafter **"BCCI"**) in the year 2008, as he had conceptualized the format of the IPL. BCCI, even as it controls and regulates the game of cricket in India is also a club of India's poltical elite. During his tenure as IPL Chairman / Commissioner the Appellant rubbed many a political shoulders wrong way. As an example Appellant's spat with the then India's Home Minister over shifting of IPL season 2 to South Africa is well documented in contamporaneous media / newspaper reports. During his tenure as the Chairman three seasons of IPL were conducted, being IPL-1 (2008), IPL-2 (2009) and IPL-3 (2010).

30.07.2008	The Appellant was issued an Indian passport bearing the number Z-17884222 by the Regional Passport Office, Mumbai.
26.03.2009	The Mumbai Police recieved credible inputs from Central Intelligence Agencies that a powerful and feared underworld gang is out to assasinate the Appellant.
April 2009	Appellant who was in South Africa was informed by Addl Commssioner Mumbai Police about Central Intelligence Agencies' information. The South African security agencies also got in touch with Mumbai Police and realising the seriousness of situation provided the Appellant with round the clock armed security. The Mumbai Police also provided the Appellant's wife, son and daughter with 24 hours armed security. Additionally the Appellant hired services of NSA a renowned South African security agency to provide him with security cover. On his return to India the Appellant hired an Isreali security specialist who advised the Appellant on various security arrangements that should be put in place. As per advise the Appellant applied for arms licenses for his private security for carrying automatic/ semi automatic weapons. However these were not

	granted by Mumbai Police . Mumbai Police however itself provided armed security . This was the only armed security available to the Appellant and his family members .
14.10.2009	The Appellant himself recieved death threats . These threats were promptly reported to the Mumbai Police.For instance, the Appellant received an email on 14.10.2009 from a person claiming to be from the 'underworld', threatening the Appellant and his family with death.
December 2009	There was an attempt to assassinate the Appellant while he was in Thailand . The Appellant had close escape when hired assailants missed him due to his last minute change of travel plan.
23.02.2010	Appellant was called by Joint Commissioner of the Mumbai Police, who informed him that they had intercepted communications which indicated the renewed efforts by operatives of the Mumbai underworld, to assassinate him. Consequently added security cover was provided to Appellant and his family . The Mumbai police cordoned off the 32nd floor of Four Seasons Hotel in Mumbai where the Appellant and his family were staying. Additionally police personnels armed with carbines are provided to form a security ring around the Appellant and his

	family members.
22.3.2010	The auction was held for two new IPL franchises. The winning bids come for Kochi made by Rendezvous Sports World and for Pune by Sahara group.
11.4.2010	The Appellant revealed on Twitter that Mr. Shashi Tharoor's close friend and now wife, was a holder of the 25% sweat equity stake in the successful Kochi bid. Mr. Shashi Tharoor was then the Minister of State for Foreign Affairs and a rising star within the Congress party. The Opposition parties immediately demanded Mr. Tharoor's resignation. The Congress party however backed Mr Tharoor.
15.04.2010	The Income Tax authorities raided BCCI offices and questioned the Appellant. The Appellant participated and co-operated in Income Tax proceedings and gave his statements.
25.04.2010	On the night of conclusion of IPL-3 i.e. on 25th April 2010 the Appellant was served with a show cause notice by BCCI alleging misconduct under the BCCI Regulations and to show cause why disciplinary action should not be taken against him. Simultaneously, Appellant was also suspended as the Commissioner of IPL. It was apparent that the trigger point was twitter

	revelations by the Appellant which led to the resignation of Mr.Shashi Tharoor . The Appellant intending to contest the BCCI proceedings prepared his reply to the BCCI Show Cause Notice.
11/ 13 .05.2010	The Appellant left for Goa on work on 11.05.2010. In Goa he was provided security cover by the Goa police. On 13.05.2010 when the Appellant returned to Mumbai from Goa he found that entire armed security cover had been withdrawn and instead two unarmed constables had been sent on duty to protect the Appellant. This withdrwal of armed security was abrupt, and without any prior notice, the Appellant found himself completely vulnerable to security threats facing him. The only armed security cover he had was one provided by the Mumbai Police
14.05.2010	The Appellant, now deeply distrustful of the intentions of Mumbai Police and efficacy of the security arrangements in place and apprehending serious threats to his life, and acting on the advice of his private security advisors left for United Kingdom in early hours of 14.05.2010. The departure was prompted by the fact that his security cover from the Mumbai Police was abruptly withdrawn.
21.5.2010	The Police protection, inadequate as it was, was

	completely withdrawn from the family of the Appellant . On 21.5.2010 after withdrawal of security, the car of Appellant's son was tailed by unidentified elements and on 22.5.2010 there was an incident where his security was threatened by elements said to belong to underworld. The Appellant post these incidents on humanitarian grounds wrote to Mumbai Police on 23.05.2010 to reinstate 24 hours armed security protection to the family members . However Mumbai Police chose to provide one constable armed with handgun for 12 hours only. The request for 24 hours protection with constables armed with automatic weapons/ carbines was not allowed.
May 2010	The Appellant's son and shortly thereafter his wife also shifted to United Kingdom on the security advise given to them. The Appellant's son at the end of May 2010 was to give his exams from American School Mumbai but looking to inadequate security systems in place he had to be pulled out and as a special case was permitted to sit in his exams from American School in London.
02.08.2010	A summons was issued to the Appellant by Assistant Director of the ED, requiring the Appellant to appear in

	person before the ED on 10.08.2010, and seeking copies of various documents including the Appellant's passport in original for verification, the details of his bank accounts in India and abroad and various agreements, minutes and communications in relation to the BCCI and the IPL Governing Council. The summons was issued under Section 37(1) of FEMA, and indicated that non compliance would be met with action under Section 13 of FEMA read with Section 32 of the Code of Civil Procedure, 1908.
07.08.2010	The Appellant replied to the ED's summons, dated 02.08.2010, by a letter, indicating that could not appear in person due to the threats to his life in India, but also indicating that his constituted Attorney would appear and provide all necessary documents and assistance. The documents that the ED had demanded were sent along with this letter, including a photocopy of the Appellant's passport. The Appellant assured the ED of his full co-operation in their investigations.
16.08.2010	The ED wrote a letter to the Appellant asking him to provide evidence threats to his life in India, within 7 days of receipt of this letter.
23.08.2010	The Appellant duly responded to the letter of the ED dated 16.08.2010 and provided the evidence that had

	been called for, in regard to the threats to his life. He also suggested that if corroborated existence of threat was required, the same could be verified from Mumbai Police, and specifically from the Joint Commissioner of Police (Crime Branch), Mumbai.
24.08.2010	Despite the above communications, the ED served another summons on the Appellant, asking him to appear in person as well as to provide copies of all agreements in respect of IPL held in South Africa as well as certain other agreements and his original passport for identification.
07.09.2010	The Appellant replied to the Assistant Director, ED, indicating that all the documents sought were duly supplied. The Appellant reiterated that he could not appear because of threats to his life. The Appellant also made an offer to appear before the ED by video link, whenever required, and further offered to personally appear before the ED's officials at the Indian High Commission in London, where he was residing. He further assured the ED that his constituted attorney would remain available to them, and that he himself would co-operate fully with the investigation.
16.09.2010	On a query from ED, the Mumbai Police wrote a letter confirming that there was a threat to the life of

	appellant received from Central Agencies from gangsters of Dawood Ibrahim and his associates.(This document came in notice of the Appellant much later when copy of the same was supplied by the Mumbai police under Right to Information Act.)
20.09.2010	A show cause notice was issued by Deputy Director of ED to the appellant based on a complaint by Assistant Director, ED dated 16.09.2010. The complaint asserted that the Appellant had failed to provide evidence showing existence of threat perceptions and that he was deliberately avoiding the summons. No mention was made of the communication dated 16.09.2010 recieved from the Mumbai Police to the ED confirming the threat to life of the Appellant.
01.10.2010	The ED sent another summons dated 01.10.2010, requiring the Appellant to appear in person before the ED on 12.10.2010, and to produce documents, including copies of agreements signed by the Appellant on behalf of Cricket South Africa / IPL South Africa and certain other contracts. The summons stated that failure to appear in person would be punished by appropriate action under Section 32 of the Civil Procedure Code 1908 read with Section 13 of FEMA.
04.10.2010	The ED sent a communication to the Passport

	Authorities, Mumbai (a copy of this letter was not supplied to the Appellant despite his request for the same). However, it appears that the letter sent by Mumbai Police confirming the threat for life of the appellant was withheld.
09.10.2010	A 'Blue Corner' notice was reported to have been issued by the ED against the Appellant, in various media sources. However, this was not officially notified to the Appellant. The Appellant accordingly wrote to the ED, seeking information on this notice, and assuring the ED of his full co-operation. He reiterated his willingness to appear in person at the Indian embassy in London, to fly ED officials to London at his expense for the investigation or to appear through video-conferencing.
12.10.2010	The Appellant replied to the Summons from the ED dated 01.10.2010, through his counsels. This letter indicated that identical summons dated 24.08.2010 had been issued to the Appellant, and that the Appellant had replied to the same already. The Appellant indicated that he could not appear personally owing to the threats to his life in India, and that he was willing to co-operate fully with the ED through any other form. He also indicated that his constituted attorney was fully available to the ED.

12.10.2010	The Appellant also addressed a separate reply to the Show Cause Notice issued to the Appellant by the ED, through his counsels. This reply submitted, *inter alia*, that the ED under FEMA was not qualified to assess threat perceptions to the Appellant's life and therefore could not come to any conclusions on the validity of the same. The Appellant further indicated that he was willing to co-operate fully with the ED and even to fly officers of the ED to London at his own expense so that they may examine him in the Indian High Commission at London. The Appellant noted that the appropriate provisions, including Section 131(1) of the Income Tax Act, 1961 invoked by Section 27 of FEMA, permitted the use of 'issuing commissions' which could examine him outside India.
14.10.2010	Another letter was sent by ED to the passport authorities, Mumbai (a copy of this letter was also not supplied to the Appellant despite his seeking the same).
15.10.2010	The Assistant Passport Officer (Policy) ("hereafter, **APO**") from the Regional Passport Office, Mumbai, issued a Show cause notice to the Appellant. This Notice stated, *inter alia*: "*It is informed by the Directorate of Enforcement, Mumbai that a complaint dated 16.09.2010 under Section 13 of FEMA, 1999*

	has been filed against you and a Show Cause Notice has been issued to you on 20.09.2010 for non-compliance of Summons issued by them. *In view of this, you are called upon to explain as to why action under Section 10(3)(c) of the Passports Act, 1967 should not be initiated against you.*" The Appellant was given fifteen days from the date of issue of this letter to make such reply, failing which action would be initiated against him under the Passports Act, 1967.
26.10.2010	In response to the letter of the APO dated 15.10.2010, the Appellant's counsels submitted an interim reply briefly explaining, *inter alia*, that Section 10(3)(c) of the Passports Act was not attracted, and that mere non compliance with the ED's summons could not be a ground for revocation of passport. Additionally, the Appellant through his counsels made an application to the APO, seeking supply of all information, communications and documents referred to or relied upon in the letter dated 15.10.2010. The Appellant's Counsels' also sought an extension of two weeks to reply to the show cause after supply of materials that they had requested.
28.10.2010	As the APO did not respond to the Appellant's letter dated 26.10.2010, and with the deadline for response

	to his show cause notice approaching, the Appellant through his counsels wrote another letter to the APO, seeking the same information requested previously and an extension of time. As there was no response to this letter as well, the Appellant through his counsels had telephonic conversations with the Passport Officer and sent two further letters on the same date, seeking confirmation on the above points. However, no reply was made by the Passport Office.
29.10.2010	The Appellant's counsels were constrained to address another letter (this being the fifth such communication) to the APO, seeking a response in writing to their repeated requests.
30.10.2010	Despite the Appellant's repeated requests by telephone and by letter to the APO, the documents requested by him were not supplied, and no response was made. In apprehension of an *ex parte* decision being taken, the Appellant through his counsels filed an additional reply to the show cause notice dated 15.10.2010, explaining that in absence of the necessary materials relied upon by the passport authorities, the Appellant could not make an effective response. Nevertheless, the Appellant also addressed a full reply on merits of the show cause notice to the APO.

	In this reply, the Appellant informed the APO of the following matters, amongst others: 1. That the Appellant had fully co-operated with the requests made by the ED, had provided all the documents, and had not wilfully avoided any summons, 2. That the Appellant had offered to be examined via video link and or commission or by any other method as envisaged in Section 131 of the Income Tax act. 3. That there was no basis for initiating proceedings under Section 10 (3)(c) of Passport Act, 1967.
01.11.2010	The APO issued a communication/ notice dated 01.11.2010 wherein it was recorded that he had received two communications from the ED dated 04.10.2010 and 15.10.2010. However, he stated that these letters were confidential in nature and constituted correspondence between two government departments. Therefore, the APO stated, copies of these letters could not be supplied to the Appellant. In the same letter, a limited portion of the communications, which the APO felt was relevant, was reproduced. This limited extract, taken out of context and reproduced, indicated *prima facie*, that

	the ED had made a request for the impounding of the passport of the Appellant. In addition to this, the APO noted "*an additional time of ten days is being granted from the date of this notice to file his reply. If no reply is received with in the stipulated period, necessary action under Section 10 (3)(c) of the Passport Act will be initiated by this office.*" Significantly, this letter indicated only that the initiation of proceedings was contemplated, and not complete and immediate revocation without hearing out the Appellant's arguments and applications in full.
10.11.2010	Since the prior letter from the APO, dated 1.11.2010 was not clear on whether the documents requested by the Appellant would be supplied, the Appellant through his counsels was constrained to address another letter, reiterating, *inter alia,* the request for supply of documents and materials relied upon. By the same letter Appellant also sought the following clarifications:- "*..a. Could you please specify what the "letter information and documents" referred to, at the top of page 2 of your letter are*: *b. Could you please clearly specify what material has been supplied to your and/ or is available with or has been made available to you, in connection with the present inquiry AND provide us with copies of the same.* *c. Could you please identify who has made what*

	available. d. *Could you please identify which parts of your letter are your views and which parts are information from other sources; and* e. *Could you please confirm that besides what is and/or will be supplied to us, no other information or material has been imparted or supplied to you.*" A request was also made for an opportunity to take inspection of the file, for a date for personal hearing and for extension of time to file the detailed reply.
11.11.2010	As no reply was received to the Appellant's letter dated 10.11.2010, the Appellant's counsels again addressed a letter to the APO requesting, *inter alia*, a response to the requests made in letter dated 10.11.2010.
15.11.2010	The APO responded to the letter dated 10.11.2010 and 11.10.2010 the contents of this letter as hereunder:- "*In view of your letter dated 10.10.2010 and 11.11.2010 regarding request for inspection of the material documents, opportunity for personal hearing and information regarding proposed action to impound/ revoke passport of Shri. Lalit Kumar Modi.* *As requested, a personal hearing in this matter is fixed on 16.11.2010 at 16.00 hrs in the chamber of Regional Passport Officer at Regional Passport Office, Manish Commercial Centre, Dr.A.B.Road. Worli, Mumbai – 400*

	030." It is clear from the above that the purpose of the hearing scheduled on 15.11.2011 was to take a decision on whether to grant the request for inspection of documents and materials and request for personal hearing or not.
15.11.2010	On the same day Appellant's counsels made a request for deferral of the proceedings to the next working day, i.e. 18.11.2010, as the notice was too short, and they could not be available on the specified date.
16.11.2010	By the letter dated 16.11.2010 the APO deferred the proceedings to 18.11.2010. However in Para 1 of this letter it was stated as under:- "*Please refer to your above mentioned letters requesting for postponement of the date of personal hearing scheduled at 16.00 hrs. on 16.11.2010 regarding proposed action to impound/ revoke passport of Shri. Lalit Kumar Modi.*"
18.11.2010	The Appellant's counsels responded to the letter dated 16.11.2010 and clarified that the hearing to be held on 18.11.2011 could not be for the purpose to determine action to impound/ revoke the passport of the Appellant. As was clear from the letter dated 15.11.2010, they submitted, the hearing was to be only for adjudication on the requests made in the letter

	dated 10.11.2011 and 11.11.2011. It was further clarified that revocation/ impounding of Appellant's passport was not even in contemplation at this stage, as was evident from the correspondence exchanged between the parties. In the same letter Appellant also stated as under:- "*5. We lastly wish to submit that in the personal hearing, we will, in addition to our submissions that the documents and information called for be granted and an opportunity granted to respond to the same, also be seeking the following directions:* *a. That your good self call for all relevant records from the Enforcement Directorate and the Mumbai Police.* *b. Your good self may provide us Inspection and copy of all documents and records and information which form the basis for issuance of your notice under reply.* *c. Your good self may provide us the records and information which are referred to in your letter dated 1.11.2010 and if not the basis on which you claim that you cannot provide the same and in the context we repeat and reiterate what is stated in our letter dated 10.11.2011.* *d. That your good self may fix a mutually convenient date for a personal hearing on all the aforesaid and any other connected issues when you may remain present and make our submission.* *e. Your good self may extend the time for filing our clients reply until their request set out above are*

	fulfilled."
18.11.2010	The proceedings/ oral hearing were held in the office of the Regional Passport Officer (Respondent No.3 herein, and hereinafter, the "**RPO**"). In these proceedings, the APO who had issued the Show cause notice and all correspondence relating to it, was also present. The Appellant's counsels objected to the proceedings on the ground that APO had issued the show cause notice. It was submitted that the APO could not, therefore act under the directions and instructions of the RPO. They further submitted that the RPO could not participate in the proceedings and requested that their objections this regard be recorded. On the same very day they addressed the letter dated 18.11.2011 recording their objections.
19.11.2010	In continuation of the letter dated 18.11.2010, Appellant's counsels addressed another letter detailing therein the events that had transpired during the course of hearing on 18.11.2010 and also seeking a copy of the order which has been passed on the objection of the Appellant.
22.11.2010	As the letter dated 19.11.2010 was not replied to, the Appellant's counsels addressed another communication seeking a copy of the order declining inspection of records and the certified copies of the

	Roznama and order sheet of the proceedings held so far.
23.11.2010	The Appellant or his counsels were never supplied with the copy of the order sheet and Roznama. They were also not given any order in writing, deciding their objections. Despite this, by letter dated 23.11.2010, the Appellant through his counsels was informed that a final hearing would be conducted on 26.11.2010. The Appellant was further informed that his objections to the manner in which the proceedings were being conducted would not be accepted. The APO took the stance that the Appellant had been granted "sufficient time and ample opportunity" to provide the passport authorities with an explanation in response to their show cause notices. The APO overruled the Appellant's reservations on the presence of the RPO as "*the Passport Authority, Mumbai is headed by the Regional Passport Officer, Mumbai who can call upon any official or staff of Regional Passport Office, Mumbai to assist him and can also delegate the work to subordinate officials for the smooth functioning of the office.*" The APO further alleged that the Appellant had not, thus far, made any substantive response to the show cause notice, but had only made procedural objections.

26.11.2010	The Appellant's counsels had not yet been supplied with the materials on the basis of which the show cause notice was issued. In addition, their request for the inspection of the records had not being granted. Therefore, they addressed another communication to the APO, reiterating their previous requests and also sought for an opportunity to cross examine the officers of the ED who had made allegations against the Appellant. They also requested that this application be decided before commencing the hearing on merits.
26.11.2010	By another letter dated 26.11.2010, the Appellant's counsels once again wrote to the APO, submitting that the proceedings initiated by him were misconceived. They further submitted that these proceedings were being held in contravention of principles of natural justice, and that there was no substance in the allegations being levelled by the ED. Along with this letter the Appellant's counsels submitted a series of documents which clearly established that Appellant had, at no point, wilfully or deliberately avoided any summonses.
26.11.2010	The Appellant's counsels appeared before the RPO, while continuing to sustain their objections against the proceedings. Unfortunately, and in complete contravention of the principles of natural justice, the

	Appellant's counsels were halted in the middle of their submissions by Respondent No. 2, and were not allowed to continue further.
29.11.2010	The Appellant's counsels requested that another date of hearing be fixed for completion of arguments. They further visited the office of the RPO and were informed that a written intimation would be sent in response to their request. The Passport Office did not respond, however, and consequently, the Appellant's counsels were constrained to once again request another date of hearing on 01.12.2010.
03.12.2010	While the appellant's plea of calling for records from Mumbai Police was not acceded to by Respondents no.2 and 3 and the Passport Authorities made light of it, in these circumstances, the appellant was forced to adopt the remedy provided under Right to Information Act and an application for supply of information and documents related to security threat was filed with public information office of Mumbai.
6.12.2010	Apprehending that the RPO might treat the proceedings as closed despite the Appellant's objections, the Appellant's counsels filed a summary of the arguments advanced so far, with the Regional Passport Office. They also stated that the Appellant wished to present a number of additional facts and

	grounds in his defence,.
10.12.2010	The APO responded to the letters dated 29.11.2010, 1.12.2010 and 6.12.2010 and stated that two lengthy hearings have already been granted, Appellant was also informed that oral arguments, and replies/ submissions and documents annexures therewith were under examination and the decision in the matter would be intimated in due course.
13.12.2010	In response to the Appellant's application under the Right to Information Act, 2005, the concerned Public Information Officer refused to supply the information that he sought.
31.01.2011	Consequently an appeal was filed under provisions of RTI Act by the Appellant's attorney. The appeal was allowed vide order dated 31.01.2011.
24.02.2011	The Appellant's representative again under RTI Act made an application with a copy marked to Appellate Authority seeking compliance of the Appellate Authority's order. Further clarifications and inputs were also sought.
03.03.2011	An order was passed under the signature of the RPO whereby the passport of the Appellant was revoked.
07.03.2011	The Public Information Officer, Mumbai disallowed this application filed before it. Thereafter, the Appellant's constituted attorney filed a complaint

	before Chief Information Commissioner (hereafter, "**the CIC**").
01.04.2011	The Appellant preferred an appeal under Section 11 of the Passport Act, 1967 against the order dated 03.03.2011 passed by the RPO (Respondent No.3) before the CPO (Respondent No.2).
14.4.2011	The Appellant addressed a communication to Respondent No.2 seeking early hearing of his appeal, or in the alternative, a hearing on an order of interim stay.
08.06.2011	The Appellate Authority under Right to Information Act set aside its own earlier order and agreed that information could not be given to the appellant. A further appeal was carried to the CIC.
14.07.2011	The Appeal of the Appellant to the CPO was heard for the first time. In this hearing, the counsels for Appellant were given to understand that instead of deciding the stay application the entire appeal would be heard and decided as expeditiously as possible.
01.08.2011	The Appeal of the Appellant to the CPO was again heard but could not be completed and it was decided that in the interest of expeditious disposal of the Appeal, the Appellant may file his written submission covering the arguments made in the hearing as well as on the additional points which remained to be

	argued.
08.08.2011	The General Counsel and constituted Attorney of the Appellant received a communication from Shri. Paramjeet Singh, AO (PV-II), MEA, New Delhi whereby he was informed of the following: "*…On conclusion of the hearing on 1.8.2011, it was mutually agreed that you may give a written submission, covering the arguments made in the hearing, as well as any additional points that you may wish to make. You may send your submission addressed to the Joint Secretary (PSP) & CPO at an early date to enable the Chief Passport Officer to take a decision on the appeal.*"
17.08.2011	Counsels for the Appellant submitted their written submissions in accordance with the letter dated 8.8.2011.
17.08.2011	The Constituted Attorney of Appellant filed an application under Right to Information Act before the RPO.
03.10.2011	Appellant applied to the Deputy Director, Directorate of Enforcement for dropping of proceedings initiated in pursuance of the show cause notice dated 20.09.2010.
10.10.2011	Appellant addressed the letter dated 10.10.2011 to the CPO (Respondent No.2) requesting that the judgment in the case may be pronounced at the earliest possible convenience, or that in the alternative

	the Appellant be granted an opportunity of hearing for stay of the order passed by the RPO.
12.10.2011	The RPO in reply to the application filed under Right to Information Act stated that the Passport of the Appellant has been revoked on directions of the Economic Offences Wing of Mumbai Police.
19.10.2011	The Appellant again issued a communication/ reminder to the CPO reiterating his request made in letter dated 10.10.2011.
01.11.2011	As no order was being passed on the appeal, the Appellant filed a Writ Petition seeking a direction that the Respondent No.2, the CPO, be directed to forthwith decide the Appeal filed by the Appellant, which was pending final decision before it.
01.11.2011	The Constituted Attorney of the Appellant made an application to the public information officer of the Economic Offences Wing of the Mumbai Police seeking information whether any compliant was registered/any preliminary enquiry/FIR or any investigation against the Appellant was received/initiated by the Economic Offcenes Wing of the Mumbai Police.
02.11.2011	The writ petition was served on Respondents.
03.11.2011	The General Counsel and Power of Attorney holder of the Appellant received a call in the afternoon from one

	Mr. Paramjit Singh informing him that the order on the Appellant's appeal to the CPO had been passed. The impugned order was communicated to the Appellant's power of attorney by email on 3rd November at 15.13 pm by Mr. Paramjit Singh (sopv3@mea.gov.in). Vide the impugned order dated 31.10.2011, the Respondent No.2 did not allow the Appeal of the Appellant, and upheld revocation of the Appellant's passport.
04.11.2011	The Appellant withdrew the aforesaid writ petition in view of the fact that the order was passed.
15.11.2011	The Appellant filed another Writ Petition being WP No.376 of 2011, assailing the orders dated 31.10.2011 passed by Respondent No.2 and communicated to the Appellant on 3.11.2011 and order dated 3.3.2011 passed by Respondent No.3.
18.11.2011	In response to the RTI application of the Constituted Attorney of the Appellant dated 1.11.2011 the Economic Offences Wing of Mumbai Police informed that nothing was pending against the Appellant.
23.2.2012	The Constuted Attorney of the Appellant filed an application under RTI with the public information officer of the Economic Offences Wing of Mumbai Police seeking information whether there was any request/recommendation or direction made by the

	Economic Offences Wing to the Regional Passport Officer, Mumbai for impounding/revocation of passport of the Appellant.
22.3.2012	In response to the above RTI the Economic Offences Wing of Mumbai Police stated that no information was available regarding the seizure of the passport of the appellant as no objectionable entires were found against the Appellant. As such the report was verified as nil.
09.04.2012	Counter was filed by the Respondents
23.04.2012	Rejoinder was filed by the Appellant.
07.09.2012	The CIC vide order dated 07.09.2011 allowed the Appellant's complaint and ordered that within 8 days all the documents be provided under RTI Act.
18.10.2012	The judgment was reserved in the Writ Petition
19.10.2012	When the appeal under RTI against order dated 08.06.2011 came up for hearing, the CIC passed strictures against the Mumbai Police for not complying with his order and filed a complaint under Section 18 of the RTI Act.
29.10.2012	The Appellant was supplied with some documents relating to threat to his life. While the judgment in the writ petition was reserved on 18.10.2012, it was only thereafter on 29.10.2012 that the Appellant was supplied with documents pertaining to security threat.

	Accordingly, being unable to file these papers before the Learned Single Judge, the Appellant is now filing them via this appeal, by a separate application to take documents on record.
18.11.2012	Surprisingly, the documents concerning withdrawal of security were still not supplied forcing the appellant's representative to move another application under RTI.
16.1.2013	The Learned Single Judge erroneously dismissed the writ Petition confirming the orders passed by the Respondent No.2 and 3.
	Hence the present Letters Patent Appeal.

IN THE HIGH COURT OF DELHI AT NEW DELHI

LETTER PATENT APPEAL NO. _____OF 2013

(Arising out of the impugned order dated 16.1.2013 passed by the Hon'ble high Court of Delhi in Writ Petition No. 376 of 2012)

IN THE MATTER OF:

Lalit Kumar Modi …Appellant

Versus

Union of India & Ors. ...Respondents

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13.	**Annexure A-12:** Copy of summons dated 2.8.2010 sent by ED to the Appellant .This was submitted during course of oral submissions before the Learned Single Judge and was part of record before the Respondent no. 2.	
14.	**Annexure A-13:**Copy of reply to summons dated 7.8.2010 sent to ED by the Appellant .This was submitted during course of oral submissions before the Learned Single Judge and was part of record before the Respondent no. 2.	
15.	**Annexure A-14:** Copy of Letter of ED dated 16.8.2010 to the Appellant . This was part of record before the Respondent no. 2.	
16.	**Annexure A-15:** Copy of Appellant's letter to ED dated 23.8.2010. This was part of record before the Respondent no. 2.	
17.	**Annexure A-16:** Copy of summons dated 24.8.2010 sent by ED to the Appellant .This was submitted during course of oral submissions before the Learned Single Judge and was part of record before the Respondent no.2.	
18.	**Annexure A-17:**Copy of reply to summons dated 7.9.2010 sent to ED by the Appellant .This was submitted during course of oral submissions before the Learned Single Judge and was part of record before the Respondent no. 2.	
19.	**Annexure A-18:**Copy of ANI report dated 22.10.2010 on Foreign Secretary's briefing on passport matter. This was part of record before the	

	Respondent no. 2.	
20.	**Annexure A-19:** Copy of ED's SCN on IMG issue dated 20.07.2011. The copy of SCN was on record of Learned Single Judge now full SCN along with enclosed complaint is sought to be brought on record.	
21.	**Annexure A-20:**Copy of Reply of Appellant on SCN on IMG issue.	
22.	**Annexure A-21:**Copy of ED's SCN on SA issue dated 25.11.2011. The copy of SCN was on record of Learned Single Judge now full SCNs along with enclosed complaint is sought to be brought on record.	
23.	**Annexure A-22:** Copy of Reply of Appellant on SCNs on SA issue.	
24.	**Annexure A-23:** Copy of ED's SCN on Players issue dated 21.02.2012. The copy of SCN was received after filing of writ petition , however the Learned Single Judge during submissions was informed of this SCN and the same is sought to be brought on record.	
25.	**Annexure A-24**: Copy of Reply of Appellant on SCN on Players issue.	
26.	**Annexure A-25:** Copy of ED's SCN on Performance Deposit issue dated 21.02.2012. The copy of SCN was received after filing of writ petition , however the Learned Single Judge during submissions was informed of this SCN and the same is sought to be brought on record.	
27.	**Annexure A-26:** Copy of Reply of Appellant on SCN on Performance Deposit issue.	
28.	**Annexure A-27:**Copy of Sony media release dated 23.4.2010. This was part of record before the Respondent no. 2.	

FILED BY

(RISHI AGRAWALA)
ADVOCATE FOR THE APPELLANT
AGARWAL LAW ASSOCIATES
19, BABAR ROAD,
BENGALI MARKET,
NEW DELHI.

NEW DELHI
FILED ON:

IN THE HIGH COURT OF DELHI AT NEW DELHI

C.M.NO._____ OF 2013
IN
LPA NO. _____OF 2013

IN THE MATTER OF:

Lalit Kumar Modi …Appellant

Versus

Union of India & Ors. ...Respondents

AFFIDAVIT

I, Mehmood M. Abdi, son of Late Shri M.N. Abdi, age about 52 years r/o. A-901, Meera Towers, Near Mega Mall, Oshiwara Andheri(W), Mumbai-400053, presently at New Delhi, do hereby solemnly affirm and state as under:

1. That I am the Constituted Attorney of the Appellant in the aforesaid matter and I am acquainted with all the facts and circumstances of the case and as such I am duly authorised to swear this affidavit.

2. That I say that I have read and understood the contents of the accompanying application and say that the facts stated therein are true and correct to my information as derived from the records of the case of the Appellant.
3. I say that the annexures annexed to the application are true copies of their respective originals.

DEPONENT

VERIFICATION:

I, the above named deponent do hereby verify at New Delhi on this ___ day of February, 2013 that the facts stated therein above are true and correct to my knowledge and no part of it is false and nothing material has been concealed therefrom.

DEPONENT

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5.	Court fees	
6.	Synopsis and list of dates	
7.	Letters Patent Appeal under Clause X of the Letters Patent Act read with Provisions of the Delhi High Court Rules alongwith Affidavit.	
8.	**ANNEXURE-A1**: A copy of the impugned order dated 16.1.2013 passed by the Learned Single Judge in W.P. No. 376 of 2012.	
9.	**ANNEXURE-A2**: A copy of the complete paper book of Writ Petition alongwith reply, rejoinder and all annexures filed by the Appellant.	
10.	**C.M.No __ of 2013:** An application under Section 151 of CPC for ad-interim ex-parte stay alongwith Affidavit.	
11.	**C.M.No __ of 2013:** An application for exemption from filing certified/ original copy of annexures alongwith Affidavit.	
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13.	Writ Petition under Article 226 of the Constitution of India with affidavit.	
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16.	Annexure-P/1: True copy of the order dated 31.10.2011 passed by the Chie Passport Officer.	
17.	Annexure-P/2: True copy of the order dated 3.3.2011 passed by the Regional Passport Officer.	
18.	Annexure-P/3: Copy of the show cause notice dated 15.10.2010 issued by the Respondent No.3.	
19.	Annexure-P/4: Copy of the interim reply/ application dated 26.10.2010 addressed by the Appellant to Assistant Passport Officer.	
20.	Annexure-P/5: Copy of the letter dated 28.10.2011 addressed by Appellant to the Assistant Passport Officer.	
21.	Annexure-P/6: A copy of the letter dated 29.10.2010 addressed by the Appellant to the APO.	
22.	Annexure-P/7: Coy of the letter dated 30.10.2010 addressed by the Appellant to APO.	
23.	Annexure-P/8:Copy of the communication/ notice dated 1.11.2010 sent by APO to the Appellant.	
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41.	Annexure-P/25: Copy of letter dated 14.4.2011 addressed by Appellant to Respondent No.3.	
42.	Annexure-P/26: Copy of letter dated 8.8.2011 issued by AO (PV-II), MEA, New Delhi to Appellant.	
43.	Annexure-P/27: Copy of written submissions dated 17.8.2011 addressed by Appellant to the Joint Secretary (PSP) and CPO.	
44.	Annexure-P/28 (Colly.) Copies of the applications filed by the Appellant before the Regional Passport Officer under RTI Act dated 17.8.2011.	
45.	Annexure-P/29: Copy of letter dated 4.10.2011 addressed by Appellant to the Deputy Director, Directorate of Enforcement.	
46.	Annexure-P/30: Copy of the lettr dated 10.10.2011 addressed by Appellant to the Respondent No.3 requesting therein that the judgment in the case may kindly be pronounced.	
47.	Annexure-P/31: Copy of the communicating dated 12.10.2011 received from the office of the Regional Passport Office.	
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48.	Annexure-P/32:Copy o the letter dated 19.10.2011 addressed by Appellant to Respondent No.3.	
49.	Annexure-P/33: copy of the order dated 4.11.2011.	
50.	Annexure-P34(Colly.): Copy of the documents cited as evidence corroborating the factum of threat to the Appellant his life filed before the answering respondents.	

51.	Counter filed by the Respondent to the Writ Petition.	
52.	Rejoinder filed by Appellant.	

FILED BY

NEW DELHI

DATED

(RISHI AGRAWALA)
ADVOCATE FOR THE APPELLANT
FOR AGARWAL LAW ASSOCIATES
19, BABAR ROAD, BENGALI MARKET
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