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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 18.10.2012

Judgment delivered on:16.01.2013

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WP(C) 376/2012

LALIT KUMAR MODI

.....PETITIONER

Vs

UNION OF INDIA AND ORS.

.....RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner: Mr. U.U. Lalit, Sr. Advocate with Mr. Swadeep Hora, Ms. Bansuri Swaraj, Ms. Sangeeta Mandal, Ms. Mama Tiwari, Ms. Taruna A. Prasad, Mr. Mohit Garg, Mr. Sangram Singh and Mr. Abhishek Singh, Advocates

For the Respondents: Mr. Rajeeve Mehra, learned ASG with Mr. Jatan Singh, CGSC, Mr. Ashish Virmani and Mr. Tushar Singh, Advocates

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. The challenge in the captioned writ petition has been laid to the order dated 03.03.2011 passed by the Regional Passport Officer i.e., Respondent no.3 (hereinafter referred to as the RPO) and the order-in-appeal dated 31.10.2011 passed by the Chief Passport Officer (hereinafter referred to as the CPO).

2. The order-in-original, referred to above, which is passed by the RPO, is based on a communication received by his office from the Directorate of Enforcement, Mumbai (in short DOE) vide letter dated 04.10.2010 stating therein that a complaint had been filed under section 16(3) of : The Foreign Exchange and Management Act, 1999 (in short FEMA) against the petitioner in view of his failure to comply with the summons issued under section 37, on 02.08.2010 and 24.08.2010, qua proceedings proposed to be taken out against him under section 13 of the FEMA. This communication apparently, also informed the RPO, that notice on the said complaint had been issued on 20.09.2010.

3. The petitioner has challenged, the aforementioned impugned orders, on various grounds, which I will refer to and deal with in the latter part of my judgment. For the moment, it may be relevant to refer to the material and relevant facts which have led to the institution of the present writ petition under Article 226 of the Constitution of India.

4. As indicated above, on 02.08.2010 summons were issued under section 37 of the FEMA, to the petitioner, in respect of investigations being carried out against him for violation of the provisions of FEMA. The petitioner was required to appear before the Assistant Director, on 10.08.2010. It appears that on 08.08.2010, a letter was received through the petitioner's General Counsel and Constituted Attorney, that the petitioner had not made himself available before the concerned officer, due to security concerns, which is why, he was stationed outside the country.

5. The concerned officer, apparently not convinced, with the reasons given in the aforementioned communication regarding the petitioner's apprehension of threat to his life, issued a second communication dated 13.08.2010. By this communication, the petitioner was required to, inter

alia, provide evidence of threat to his life, and the details, if any, of complaints he had made to Government authorities in that behalf. The petitioner was also asked to supply names of persons who had advised him to stay outside the country.

5.1 The petitioner by a return communication dated 23.08.2010, evidently indicated that, on 14.10.2009, he had received an Email from an unknown source threatening him with dire consequences. This communication apparently was intercepted by the Mumbai Police, which assessed the same, according to the petitioner, as a threat from the underworld , to liquidate the petitioner. The petitioner thus, claimed that it is because of this threat perception, that he and his family were provided protection by the Mumbai Police.

6. The concerned officer having deliberated upon the material produced by the petitioner, came to the conclusion that, the threat of assassination was made as far back as on 14.10.2009, and thereafter, the petitioner had been organizing and participating in various public and private functions, and therefore, the reason given for not appearing before him, was a ruse to avoid the process of law.

7. Accordingly, fresh summons were issued on 24.08.2010 , requiring the petitioner to appear before the concerned officer, on 07.09.2010, to tender evidence and produce documents mentioned in the schedule annexed to the said summons.

8. Admittedly, the petitioner did not appear before the concerned officer, and once again, through his General Counsel and Constituted Attorney gave his reasons for non appearance vide communication dated 07.09.2010. The reasons set out in the said communication were broadly the same, i.e., that he

apprehended threat to his life from the underworld and hence had been advised not to travel to India.

8.1 The concerned officer having examined the documents submitted by the petitioner came to the conclusion that the petitioner had participated and made appearances in connection with the third (3rd) edition of the IPL tournament and therefore, the reason trotted out was a bogey, created to avoid his examination under oath, under the provisions of section 37 of FEMA.

9. Since, the officer concerned was of the view that, the petitioner had willfully avoided the summons issued to him, under section 37 of FEMA read with the provisions of section 131 and section 272(A)(i) of the Income Tax Act, 1961, to stall investigation, he decided to institute a complaint for levying penalty on the petitioner under section 13 of FEMA.

9.1. Consequently, a complaint under section 16(3) of FEMA was filed on 16.09.2010.

10. In the said complaint, a notice was issued to the petitioner on 20.09.2010.

11. It appears that on 04.10.2010, the DOE issued a communication which was received by the Assistant Passport Officer (in short APO), on 05.10.2010 informing him with regard to the aforesaid development, with a request that action be taken in public interest for revocation of passport of the petitioner under section 10(3)(c) of the Passports Act, 1967 (in short the Passports Act).

12. On 12.10.2010, the petitioner through his solicitor had sent a reply to the notice dated 20.09.2010 issued in the aforementioned complaint, filed under section 16(3) of FEMA.

13. It appears, based on the information received by the APO, a show cause notice dated 13.10.2010 was issued to the petitioner at the address mentioned in his passport application, which is, Anand 41, Gandhi Gram Road, Juhu, Mumbai-400049. This show cause notice was, evidently, returned unserved; though this may have come to light later.

13.1 On 15.10.2010, a second show cause notice was issued by the APO, at the other address available with him, which was, Nirlon House, AB Road, Mumbai. By virtue of the said show cause notices issued by the APO, the petitioner was directed to appear before the APO alongwith his passport bearing no.Z-1784222 dated 30.07.2008.

13.2 The show cause notice issued not only directed the petitioner to appear but also to represent his case in person within 15 days from the date of issuance of the show cause notice. Since the first show cause notice was returned unserved, one would presume that the 15 day period would commence from the date of receipt of the second show cause notice dated 15.10.2010.

14. On 26.10.2010, a reply was received from the petitioner's solicitor which was, an interim reply. The solicitor of the petitioner, evidently sought two weeks to file a detailed reply, after they were supplied with the material which formed the basis for issuing the said show cause notice.

15. Since, no reply was received from the APO, the petitioner wrote three letters of even date 28.10.2010, followed by a letter dated 29.10.2010. There was apparently no reply to the said communications, whereupon the petitioner filed a second reply, with the APO, dated 30.10.2010. The reply filed on behalf of the petitioner was also termed as an interim reply. The position taken in the said reply was that the petitioner had fully cooperated with the DOE and provided all documents sought for. It was also stated that

the petitioner was not wilfully avoiding appearance as alleged, and that, he was amenable to his examination being carried out via video-link and / or a commission or any other method as envisaged under section 131 of the Income Tax Act.

16. The APO by a letter dated 01.11.2010 responded to the petitioner's letters of 26.10.2010 and the three letters of even date i.e., 28.10.2010 sent to him, in response to the show cause notices issued to the petitioner. By this communication, the APO indicated to the petitioner that, the communication received from the DOE vide letter dated 04.10.2010 and 15.10.2010, were confidential and constituted correspondence exchanged between two government departments which, could not be supplied to him. However, certain extracts from the said letters as also information gleaned from other documents, which had formed the basis, for issuance of the show cause notices were set out, and thus, made available to the petitioner. The extracts set out in the communication dated 01.11.2010, adverted broadly, to the following:-

(i). The DOE investigation had revealed that the petitioner as the Chairman of the Governing Council of the IPL of the Board of Control for Cricket in India (in short BCCI), had committed gross irregularities in the conduct of the IPL tournaments, and in the award of contracts by the BCCI to various parties in India and abroad.

(ii). The fraudulent activities of the petitioner, which were in violation of FEMA, had led to the siphoning of funds to the extent of hundreds of crores of rupees; which apparently he was suspected to have parked outside India.

(iii). The petitioner, despite, summons issued by the DOE, on 02.08.2010 and 24.08.2010, had not appeared before the concerned officer.

(iv). The petitioner had made himself scarce when, investigations against him had been intensified by various governmental agencies, and therefore, his failure to appear before the concerned authority, despite summons amounted to non-compliance with the legal process. In this connection, the reply submitted by Sh. Modi to DOE wherein he had stated that he was advised to stay outside the country was apparently also considered.

(v). A light blue alert notice no.01/2010 had been issued against the petitioner by the Directorate of Revenue Intelligence, New Delhi (in short DRI), on 01.10.2010.

(vi). It was, in public interest, in general as also in the interest of the investigation, and having regard to the grave irregularities committed by the petitioner, that his passport be "*impounded*", so that his attendance in compliance with the summons issued, be enforced.

(vii). A reference was also made to the show cause notice dated 20.09.2010 issued in the complaint dated 16.09.2010, under section 16(3) of the FEMA.

17. The APO's communication of 01.11.2010 concluded by stating that in the interest of natural justice and fairness before, "initiating action" under section 10(3)(c) of the Passports Act, additional time of ten (10) days was being granted, to enable, the petitioner to file a reply.

18. The petitioner's solicitor apparently issued a communication dated 10.11.2010, on behalf of the petitioner, seeking once again, documents and the material relied upon. Certain clarifications were also sought as to who and what material had been supplied to the APO. The said letter was followed by yet another letter, issued by the petitioner's solicitor, dated 11.11.2010.

19. By a communication dated 15.11.2010, the APO indicated to the petitioner's solicitor that a date had been fixed for a personal hearing, on

16.11.2010 at 1600 hours at the designated address, to deliberate upon the action proposed, which is, whether the passport of the petitioner ought to be impounded or revoked.

20. By a return communication of the same date i.e., 15.11.2010, a request was made to postpone the date of hearing to 18.11.2010. As requested, the hearing was postponed to 18.11.2010; and information in that behalf was conveyed through letter dated 16.11.2010.

20.1 The petitioner's solicitor in their letter of 18.11.2010 had sought to take the stand that the hearing of 18.11.2010, could not be held to consider aspects related to impounding or revocation of the petitioner's passport as, the show cause notice was issued only to adjudicate upon as to: whether or not proceedings under section 10(3)(c) had to be "*initiated*".

20.2 This stand was reiterated at the hearing held on 18.11.2010. Apart from the above, an objection was also taken to the matter being heard by the RPO, as the show cause notice was issued by the APO.

20.3 The hearing of 18.11.2010 was followed by two letters dated 19.11.2010 and 22.11.2010. In the first letter, an order was sought on the objection taken by the counsel for the petitioner to the matter being heard by the RPO, and by the second letter, a copy of the order was sought whereby, their request for inspection of records, certified copies of the Rojnama and ordersheets, had been declined.

21. The above propelled the RPO to convey to the counsel for the petitioner vide communication dated 23.11.2010 that the Passport Authority at Mumbai was headed by the RPO, Mumbai, who could call upon any officer or staff of his office to assist him and could also delegate the work assigned to him, to subordinate officials, for smooth functioning of his office. It was also communicated to the counsel for the petitioner that, they

were taking such like objections only to prolong the matter, and that, final hearing in the matter would be held, on 26.11.2010, between 14.30 hours to 1700 hours.

22. On 26.11.2010, a communication was served on the APO that the petitioner's counsel should be supplied with : the documents furnished by DOE; permission be granted to inspect the official files; records of DOE be summoned and notice of hearing be issued to the DOE.

22.1 Furthermore, it was indicated that in the event, the aforesaid request was not acceded to, requisite orders be passed. A request was also made to grant permission to cross-examine the officers of the DOE.

23. The RPO, however, concluded the hearing in the matter on, 26.11.2010.

24. Undeterred the counsel for the petitioner, issued two letters dated 29.11.2010 and 01.12.2010, requesting for intimation of, the next date of hearing as, according to them, hearing on 26.11.2010, was abruptly concluded.

25. On 06.12.2010, a summary of arguments advanced, was filed on behalf of the petitioner.

26. On 10.12.2010, the APO responded to the letters dated 29.11.2010, 01.12.2010 and 06.12.2010 issued on behalf of the petitioner. The APO, communicated to the counsel for the petitioner that they had been given lengthy hearings on two dates i.e., 18.11.2010 and 26.11.2010, whereafter they were also advised to file their written replies, if any. He also communicated that though the hearing on 26.11.2010, was slotted from 1430 hours to 1700 hours, it actually ended at 1930 hours. Reference was also made to the fact that the previous date i.e., 18.11.2010, hearing was conducted between 1630 hours to 2030 hours; and thus, having regard to the

fact that written submissions had been submitted which ran into 438 pages followed by a written statement dated 06.12.2010, no further hearing in the matter was considered necessary.

27. It is in this background that on 03.03.2011, the first impugned order was passed by the RPO.

28. Being aggrieved, the petitioner, filed an appeal on 01.04.2011, under the provisions of section 11 of the Passports Act. The petitioner's counsel in support of the said appeal was heard on 14.07.2011 and 01.08.2011.

28.1 An opportunity was also granted to file written submissions vide communication dated 08.08.2011. In this communication, it was conveyed that hearings in the appeal had been granted on 14.07.2011, between 1500 hours and 1730 hours, while on 01.08.2011, hearing was granted between 1400 hours and 1800 hours. Furthermore, it was conveyed that since, on 01.08.2011, it was mutually agreed that, written submissions as well as additional points which the counsels were required to make, could be filed – there was need for the same to be filed at an early date, so as to enable the CPO, to take a decision in the appeal.

29. Accordingly, on 17.08.2011, written submissions were filed on behalf of the petitioner.

30. Almost simultaneously, it appears, the petitioner through his General Counsel and Constituted Attorney filed three applications of even date i.e., 17.08.2011, under the Right to Information Act, 2005 (in short the RTI Act) with : the Public Information Officer of the Ministry of Home Affairs, Govt. of India; the office of the RPO, Mumbai; and the CPIO, Dy. Passports Officer, CPV Division of Ministry of External Affairs.

31. On 12.10.2011, the RPO's office inter alia conveyed to the querist that since information pertains to a third party, it could not be disclosed to him,

as there were cases which were being pursued against the petitioner and, as per the directions of the Economic Offences Wing of the Mumbai Police, his passport had been revoked. It was further communicated that information sought for, if disclosed, would affect the economic interest of the state. An exemption was thus sought under section 8(1)(a),8(1)(j) as also under section 8(1)(h) of the RTI Act, on the ground that it would impede pending investigation, apprehension and prosecution of the offenders.

32. It appears that, in the meanwhile, on 04.10.2011, the petitioner had written to the concerned officer of the DOE to drop the show cause notice dated 20.09.2010 issued on a complaint filed under section 16(3), on the ground that, it had been pending adjudication for more than one year and, in case, it was proposed to continue with the adjudication, they should be granted a personal hearing.

33. The petitioner's counsel, by a letter dated 19.10.2011, requested the CPO to pronounce judgment in the appeal or, in the alternative, stay the impugned order of the RPO, as requested in their earlier letter dated 10.10.2011. This request was reiterated by the petitioner's counsel vide their letter dated 01.11.2011.

34. On 01.11.2011, a writ petition was filed in this court, which was numbered as: WP (C) No.7846/2011, to seek directions qua the CPO in the pending appeal.

35. Evidently, on 03.11.2011, at about 1513 hours, the petitioner's Constituted Attorney received a communication that, the CPO had disposed of the appeal vide order dated 31.10.2011.

36. Consequently, the aforementioned writ i.e., WP(C) 7846/2011 was withdrawn.

37. It is the background of the aforesaid facts and circumstances that, the captioned writ petition has been filed.

SUBMISSIONS OF COUNSELS

38. On behalf of the petitioner, arguments were advanced by Mr. U.U. Lalit, Sr. Advocate, while on behalf of the respondents, arguments were advanced by Mr. Rajeev Mehra, the learned ASG.

39. The arguments advanced on behalf of the petitioner briefly went as follows :-

(i). the show cause notice dated 15.10.2010 was issued to initiate action under section 10(3)(c) of the Passports Act and not for culmination of proceedings under the said provision i.e., for revocation of the petitioner's passport. In other words, the impugned orders went beyond what was proposed in the show cause notice.

(ii). The proceedings before the Passport Authorities were initiated based on the alleged failure of the petitioner to respond to the two summons issued by the DOE dated 02.08.2010 and 24.08.2010 under section 37 of the FEMA. These summons thus, formed the basis for institution of a complaint by the DOE under section 16(3) of the FEMA, on which, notice had been issued, on 20.09.2010. The RPO and the CPO failed to take into account the fact that a detailed reply had been filed, on 12.10.2010, on behalf of the petitioner, stating therein, that he could not appear in person, on account of threat to his life.

(iii). There has been no adjudication in the complaint filed under section 16(3) of FEMA, in which, notice has been issued on 20.09.2010. This was so, despite, a reminder being sent on behalf of the petitioner, on 04.10.2011. The provisions of section 16(6) of FEMA require the adjudicating authority to complete adjudication within a period of one year from the date of receipt

of the complaint and failure to dispose of the complaint within the stipulated period is required to be backed by definitive reasons. The pendency of those proceedings cannot, therefore, form the basis of the impugned orders.

(iv). Under FEMA, any violation can lead to only a civil liability as contemplated under section 13 of the said Act. The DOE, has no power of arrest or to seek the presence of a person for custodial interrogation. The powers of the officers of DOE are akin to those available under section 131 of the Income Tax Act, which invest an officer with the same powers, which are vested in a civil court. In this behalf reference was made to Sections 30(b), 31 and 32 of the Code of Civil Procedure, 1908 (in short the CPC). The argument being that: while a court could in a given case exercise coercive powers vis-à-vis a witness, a defendant in a suit cannot be coerced to give his testimony.

(v). The DOE's communications dated 04.10.2010 and 15.10.2010, which formed the basis of the APO's show cause notice of 15.10.2010, was issued in ignorance of the reply that had been filed with the DOE on 12.10.2010.

(vi). The action by the APO in issuing a show cause notice was pre-mature as no adjudication had taken place before the concerned authority vis-à-vis the complaint filed under section 16(3) of the FEMA.

(vii). At the hearing held on 18.11.2010, not only was the APO present but also the RPO. The show cause notice and all previous correspondence had been exchanged with the APO. Therefore, the impugned order of the RPO was bad in law as it was the APO who ought to have, if at all, passed the impugned order. The APO was the competent passport authority within the meaning of Rule 3 read with Schedule 1 of the Passports Act.

(viii). There was a violation of the principles of Natural Justice as the documents sought for were : not supplied; inspection of files was not given; and no opportunity was given to cross-examine the officials of the DOE.

(ix). The impugned proceedings were filed in violation of principles of Natural Justice as after the first hearing granted on 18.11.2010, at the next date of hearing i.e., on 26.11.2010, the proceedings were abruptly terminated. Despite, a request for further hearing, no further opportunity was granted; thus, breaching the principles of Natural Justice.

(x). The order of the CPO was bad in law as it was pronounced after a gap of over three months .

(xi). The DOE, in its request to the Passport Authorities, had only sought impounding of the petitioner's passport, while the impugned orders proceed to revoke the petitioner's passport. Revocation is a permanent cancellation of the petitioner's passport, while impounding would have led to a mere temporary custody of the passport.

(xii). Given the threat to the petitioner's life, he had offered to answer any questionnaire that was submitted to him or, answer questions through video-link or, even answer to a commissioner, if so appointed by the DOE. The complete disregard to the alternative modes available, was illegal. The order of revocation of the petitioner's passport in these circumstances was a draconian measure, which failed to satisfy the test of proportionality.

(xiii). The two show cause notices issued by the DOE, were mainly directed against the officials of the BCCI which included the President and the Secretary, in respect of, IPL tournament conducted in South Africa, and the issue related to hiring of services of an entity by the name of IMG, for conduct of the said tournament. The petitioner was included as a noticee based on the provisions of section 42 of FEMA, which were pivoted on the

petitioner's alleged vicarious liability. The show cause notice did not indicate any personal misdemeanour on the part of the petitioner.

(xiv). The RTI applications moved by the Constituted Attorney of the petitioner revealed that the petitioner's passport had been revoked as per the directions of the Economic Offences Wing of the Mumbai Police. A subsequent RTI application moved by the very same Constituted Attorney with the Economic Offences Wing of the Mumbai Police, revealed that no case was pending against the petitioner. Therefore, the impugned orders, had been passed for extraneous reasons.

(xv). The provisions of section 10(3)(c) of the Passports Act, could not be invoked in the present case, as none of the contingencies mentioned therein were fulfilled. In this regard, reliance was also placed on Article 12 of the Covenant on Civil and Political Rights (in short CCPR). It was sought to be argued that the expression "in the interest of general public" appearing in section 10(3)(c) of the Passports Act had to be construed, in accordance with, Article 12 of the CCPR.

(xvi). The impugned orders were passed in ignorance of the fact that under the provisions of the FEMA, in the adjudication proceedings, pending before it, the petitioner was entitled to be represented by a lawyer or a chartered accountant, and therefore, the personal presence of the petitioner was uncalled for.

(xvii). The CPO and the RPO failed to take into account that, in this case, no summons or warrants had been issued by any court, and it is only when, the summons and the warrants were issued by a court under section 10(3)(h) of the Passports Act that, a passport can be impounded or revoked.

(xviii). The RPO and the CPO had failed to independently apply their minds to the matter in issue. They had acted on the recommendations of the DOE,

as if, it was binding on them and in that sense, completely abdicated their role as quasi-judicial authorities.

(xix). With regard to the preliminary objection taken by the respondents qua the territorial jurisdiction of this court to entertain and adjudicate upon the captioned writ petition, it was argued that the order of the CPO was passed at Delhi which, conferred jurisdiction of the court. It was submitted that the order of the CPO, which is impugned in the present proceedings, supplied a cause of action to approach this court under the provisions of Article 226 of the Constitution of India.

39.1. In support of their arguments, the petitioner has relied upon the following judgments:- *Maneka Gandhi Vs. Union of India (1978) 1 SCC 248*; *AdityaKhanna Vs. The Regional Passport Officer 156(2009) DLT 17* and *Canon Steels (P) Ltd. Vs. Commissioner of Customs, (2007) 14 SCC 464 and 2*.

40. On the other hand, on behalf of the respondents, the following submissions were made, beginning with a preliminary objection.

(i). The preliminary objection taken was, to this court's jurisdiction to entertain and adjudicate upon the present petition. In this regard, it was submitted that the petitioner was a resident of Mumbai and had applied for passport at Mumbai. A major part of the cause of action had arisen in Mumbai including the fact that the first impugned order, which was passed by the RPO, was passed at Mumbai. The only reason that the petitioner had chosen to approach this court, was on account of the order passed by the CPO, in the appeal, preferred by him, under section 11 of the Passports Act.

(ii). The impugned order of the RPO, was based on material made available to him, by the DOE. In this regard, a reference was made to the communication dated 04.10.2010 issued by the DOE, wherein a reference

had been made to the complaint dated 16.09.2010, filed against the petitioner, under section 16(3) of the FEMA, and the issuance of a subsequent notice on the said complaint, on 20.09.2010.

(iii). The action under section 10(3)(c) was taken in public interest.

(iv). The petitioner was given adequate opportunities, both by way of personal hearing and by allowing the petitioner's counsel to file written submissions. As a matter of fact, even extracts of relevant information were supplied by the APO vide communication dated 01.11.2010.

(v). It was contended that this court was concerned, while exercising powers under Article 226 of the Constitution of India, with the availability of the material, based on which, the impugned action had been taken and not with the sufficiency and adequacy of the material. The court could not sit in judicial review qua the satisfaction arrived at by the Passport Authority, under section 10 of the Passports Act. The court under Article 226 could interfere, only if, the reasons contained in the impugned order are found to be extraneous or, are held to have, no relevance, to the interest of the general public or, the impugned orders failed to reflect, the argument made, that they had been passed in the interest of general public.

(vi). Lastly the petitioner had failed to disclose that 14 show cause notices had been issued to the petitioner.

40.1. In support of their arguments, the respondents relied upon the following judgments:- *Maneka Gandhi Vs. Union of India (1978) 1 SCC 248*; *State of Madras Vs. A.R. Srinivasan, AIR 1966 SC 1827*; *Rajiv Tayal Vs. Union of India and Ors. (2005) 85 DRJ 146 (DB)* and *Syed Abdul Gani Syed Abdul Kader Vs. The Regional Passport Officer and Ors., 1997 (1) CTC 180*.

REASONS

41. The core issue which thus arises for consideration is: whether the direction contained in the impugned orders of the RPO and the CPO to revoke the petitioner's passport has been exercised validly, in accordance with law. The examination of this issue, in my view, would require examination of two underlying issues. First, whether the necessary jurisdictional facts were present to enable the RPO to exercise the power of revocation? Second, whether in the given circumstances, the RPO had exercised his powers in the interest of general public? In other words, was there a case, as alleged by the petitioner, of material irregularity displayed by the RPO and the CPO, in exercising their jurisdiction.

42. A careful perusal of the facts, which have emerged from the record, would show that the impugned orders came to be passed in the background of the following events.

42.1 The petitioner was issued a summon under Section 37 of the FEMA on 02.08.2010. It was followed by yet another summon, once again, issued under Section 37 of the said Act, on 24.08.2010. The summons, admittedly, required personal appearance of the petitioner before the concerned officer. The summons were indicative of the fact that the DOE, proposed to take action against the petitioner under Section 13 of FEMA.

42.2 In response to the first summon, issued on 02.08.2010, it was sought to be conveyed on behalf of the petitioner vide communication dated 07.08.2010, which was delivered on 09.08.2010, that there was an apprehension of threat to the petitioner's life. The concerned authority not being convinced, sought further details, from the petitioner vide communication dated 13.08.2010. It is at this stage that the petitioner referred to the threat assessment made by the Mumbai Police, with regard to

the petitioner's safety, and the provision made for his security, while he was in Mumbai. The concerned authority, not being persuaded, by the material supplied and the reasons put forth, issued a second summon to the petitioner under Section 37 of the Act, on 24.08.2010, requiring the petitioner to appear before him, on 07.09.2010.

42.3 Admittedly, the petitioner did not appear before the concerned authority, and trotted out the same reasons, i.e., threat to his life. It is at this stage that a complaint under Section 16(3) of the FEMA was filed, on 16.09.2010. Notice in this complaint was issued on 20.09.2010.

42.4 The DOE, in the background of these facts, issued a communication to the APO, which was received by him on 05.10.2010, to take action for revocation of the petitioner's passport under Section 10(3)(c) of the Passports Act.

42.5 In the meanwhile, the petitioner filed his reply on 12.10.2010, to the complaint filed under Section 16(3) of FEMA.

42.6 It is in the background of these circumstances that the focus qua the petitioner shifted to the authority constituted under the Passports Act. The APO, admittedly, based on the request of the DOE, issued show cause notices dated 13.10.2010 and 15.10.2010, to the petitioner, seeking his explanation/response as to why action under Section 10(3)(c) of the Passports Act, ought not to be taken against him.

43. The argument put forth on behalf of the petitioner on this aspect is: Firstly, that the show cause notice contemplated only "*initiation*" of action under Section 10(3)(c) of the Passports Act. There was no indication in the show cause notice with regard to revocation of the petitioner's passport. Second, the authorities constituted under the Passport Act abdicated its power as they acted on the dictation of the DOE. In this regard, it was

argued that the complaint filed under Section 16(3), has not been adjudicated upon despite protestation made in this regard on behalf of the petitioner. It was contended as a matter of fact, a request was made to drop the said proceedings. There are other supplementary arguments, which I would deal with by the way, in the course of my judgment.

43.1 As indicated hereinabove, the petitioner claims that he received only the second show cause notice issued by the APO which is dated 15.10.2010. I would assume that to be the correct position for the moment. A perusal of the show cause notice would show that it required the petitioner to appear before the APO, in person, within 15 days from the date of issuance of the notice alongwith his passport. The notice also indicated that if no reply is received within the stipulated period, necessary action under the Passports Act would be initiated against him.

43.2 The brief reason adverted to in the show cause notice of 15.10.2010 was that the complaint filed by the DOE dated 16.09.2010 (on which notice had been issued for non-compliance of the directions contained in summons issued to the petitioner), had been received. The non-compliance is, in substance, related to non-appearance in person by the petitioner, as directed.

43.3 Therefore, an explanation was sought, as to why, action ought not to be initiated under Section 10(3)(c) of the Passports Act. Admittedly, the petitioner did not present himself either in response to the summons issued by the DOE, to which I have made a reference above, nor in response to the show cause notice dated 15.10.2010. Replies were filed, however, on behalf of the petitioner on 12.10.2010, followed by several other communications demanding the material on the basis on which the passport authorities were proceeding to take action in the matter.

44. By virtue of the impugned order, the passport authority, in their

wisdom, came to the conclusion that the reply did not answer the main charge made against the petitioner, which is, his failure to present himself in person, in response to the summons issued under Section 37 of FEMA. The copies of the summons issued under Section 37 of FEMA, and the complaint filed under Section 16(1) of FEMA were admittedly available with the petitioner. Therefore, the action of the RPO under the Passport Act, which invested upon him, amongst others, the power to impound/ revoke the passport, was clearly within the scope of the show cause notice dated 15.10.2010.

44.1 The argument of the petitioner, if accepted, would tantamount to dividing the proceedings before the passport authorities into two halves. The first halve would therefore relate to seeking an explanation on the aspect as to whether a proceeding should be initiated under Section 10(3)(c) of the Passports Act, while the second part would relate to determination of the consequences of the failure to satisfy the concerned authority with respect to the tenability of the reasons supplied qua the first aspect. The Passport Act does not contemplate a division of proceedings before the Passport authorities into two halves, as was sought to be contended before me. In any event, the show cause notice in my view, clearly put the petitioner to notice that if he failed to satisfy the concerned officer, with regard to the tenability of his defence to the charge made against him, action under the Passport Act would follow. The words 'no reply', contained in the show cause notice would have to be construed in that light.

44.2 In any event, even if one were to accept for a moment, the argument made on behalf of the petitioner that, in the notice dated 15.10.2010, no such indication was made, it cannot be argued on his behalf that he had no notice of the possibility of such an action being taken as, by a letter dated

15.10.2010 the APO adverted to the fact that a personal hearing was fixed at 1600 hours on 16.11.2010 "*regarding proposed action to impound/revoke*" the passport of the petitioner. It is on account of this communication of the APO, that on behalf of the petitioner, a return communication dated 18.11.2010 was issued, inter alia, to the effect, that the show cause notice of 15.10.2010, did not advert to this aspect. It is, therefore, quite clear, at least prior to the adjudication of the show cause notice dated 15.10.2010, that the petitioner had been put to notice of the possible consequences of the failure to give a satisfactory explanation to the concerned officer. The test which the Supreme Court applied in the context of a suit where one party claimed, inter alia, that no relief could be given as a specific issue was not struck – was: did parties know that the matter in question was involved in the trial. [see observations in *Bhagwati Prasad vs Chandramaul AIR 1966 SC 735* at para 10 to 13]. If the same test is applied, this objection cannot sustain. Therefore, the argument made in this behalf, is without merit.

45. The other argument that the passport authorities had abdicated their power, in as much as, they had acted on the dictation of the DOE, is premised on a submission that the said authorities ought to have examined the validity and veracity of the charge qua which the petitioner was called upon to give evidence by way of the two summons, referred to above, issued under Section 37 of FEMA. It was contended that since the petitioner had not entered into any contract and was only the Chairman of the Governing Council of the IPL tournament, and in that sense, had no direct liability in respect of the aspects which were subject matter of the summons issued under Section 37 and the complaint filed under Section 16(3) of the FEMA – these aspects should have been examined by the Passport authorities i.e., the RPO/CPO before coming to the conclusion, as contained in the impugned

orders.

45.1 In my view, this argument is completely fallacious. For this purpose, one has to only briefly peruse the provisions of Section 10(3) clauses (a) to (h) of the Passports Act. Clauses (a) to (h) of Sub-Section 3 of Section 10 of the Passport Act provides for various eventualities under which a passport authority has been invested with the power to impound or cause to be impounded or revoke a passport or a travel document. Some of these powers pertain to circumstances which require either direct determination by the passport authorities of the fact situation and / or require the passport authority to seek or receive inputs from other statutory authorities with regard to the eventuality referred to the clause in issue. For example clause (a) pertains to a case of identity theft, i.e., where the holder of the passport or travel document is not the person who ought to hold the document in issue. Clause (b) provides for a situation where the passport or the travel document is obtained by suppressing material information or on the basis of wrong or incorrect information by the holder of the passport or travel document himself or any other person on his behalf. Clause (c) provides for a situation where the sovereignty and integrity or security of the country or its relationship with a foreign country or, as in this case, the interest of general public, are involved.

45.2 Intrinsically clauses (a) to (c) of Sub-Section (3) of Section 10 of the Passports Act, contemplate a situation where a determination would have to be made either based on information available with the passport authority or, on the inputs of other statutory authorities. For example, if it is a case of identity theft under clause (a) or, under clause (b) where some information has been suppressed or incorrectly provided, say for example, with regard to the address or details of parentage, are wrongly supplied, inputs of other

departments may have to be taken into account. Similarly, as to whether sovereignty and integrity or, the security of the country is endangered or, the effect on country's relationship with other countries is in issue - necessarily would require reliance to be placed on inputs provided by other wings of the Government of India. The inputs provided may not have the quality of a final determination; however, as long as the material provided is actionable, the passport authority would be well within its right to take the necessary steps for revocation and/or impounding.

45.3 If the aforesaid test is applied to the situations discussed above, I do not see how it cannot apply to the last limb of clause (c) of Sub-Section (3) of Section 10, which invests in the passport authority the power to revoke or impound a passport in the interest of general public - as long as the inputs provided by statutory authorities and other wings of the government, are in the nature of actionable material, no fault can be found with Passport authorities taking recourse to under the said provision.

45.4 The argument of the petitioner that since, the passport authority did not evaluate the merit of the allegation made by the DOE or, the reply sent by the petitioner on 12.10.2010 qua the allegation made against him; resulted in their abdicating their power, is completely without merit, as indicated above.

45.5 This view gets only fortified if one were to examine other clauses of Sub-Section (3) of Section 10. Clause (d) of Sub-Section (3) of Section 10 adverts to a situation where a person has been convicted of an offence involving moral turpitude and sentenced, in respect thereof, for not less than for two years. Clause (e) refers to a situation where proceedings in respect to an offence are pending before a criminal court in India. Clause (h) refers to a situation where a warrant or a summon for appearance or, a warrant for

arrest has been issued by a court or, if an order has been passed prohibiting departure from India, and the passport authority is satisfied, as to issuance of such a warrant or summon or an order.

45.6 In the situations, adverted to in clause (d), (e) and (h) of sub-section (3) of Section 10, it is quite obvious that the determination is of another authority, i.e., the courts. While under clause (d) the determination is final with regard to the offence, clause (e) and (h) envisage a situation where the determination is not final but an actionable information in the form of pendency of proceedings or issuance of a warrant or a summon or a prohibitory order is made available to the passport authority. It cannot be argued, in my opinion, that the passport authority would have to independently assess the quality of the material put before it. This is not the scheme of the provision in issue. The scheme which runs through clauses (a) to (h) of Sub-Section (3) of Section 10 are situations where either the passport authority has the material before it or receives actionable material from other wings of the government for taking action under the provisions of Section 10(3) of the Passport Act. Clause (f) and (g) exemplify the said construction of section 10(3)(c).

45.7 Therefore, having regard to the fact that the APO received information on 04.10.2010, which was actionable, in my view, provided the necessary jurisdictional facts to exercise power under Section 10(3)(c) of the Passports Act.

46. This brings me to the question whether the power has been exercised by the passport authorities in the interest of general public. There is no gainsaying that FEMA has been enacted by the Parliament to protect the economic interest of the country. The preamble to FEMA makes this aspect quite clear when it refers to the fact that it is an Act made to consolidate and

amend the law relating to foreign exchange, with the objective of facilitating external trade and payments, and for promoting the orderly development and maintenance of foreign exchange market in India. It cannot, therefore, be said that summons issued under FEMA for unraveling details with regard to transactions referred to therein are not in public weal. The summons issued under Section 37, required the petitioner to appear before the concerned authority, in person, to tender evidence in respect of various agreements executed by the BCCI /IPL. It is quite possible that during the course of the petitioner's examination he may have to be confronted with material that may be in possession of the concerned officers of DOE. Therefore, in my opinion, it cannot be said that there was no element of public interest in the passport authorities exercising powers under Section 10(3)(c) of the Passports Act.

46.1 Mr Lalit, learned senior counsel sought to argue that the petitioner had offered to cooperate with the concerned officer of the DOE by offering to be examined by video link or by a commissioner, in United Kingdom at the venue of the choice of the respondents including the High Commission of India in London. In this connection, it was submitted that the proceedings under Section 13 of FEMA, were in the nature of civil proceedings and failure to comply with the summons of the DOE could only lead to imposition of penalty. It was Mr Lalit's submission that the provisions of the Passports Act had been triggered to coerce the physical appearance of the petitioner disregarding the concerns about his personal security. It was argued that the officers of the DOE, had no powers under FEMA, to seek the personal appearance of the petitioner. In this behalf my attention was drawn to Section 131(1)(b) read with Section 272A(1)(c) of the Income Tax Act. It was contended that the only power which the officers of the DOE were

conferred with, under the said provisions was that of the civil court, which is contained in Section 30 read with Section 32 of the CPC. Therefore, it was contended that there was no power to force the personal appearance of the petitioner even by the officers, who sought to exercise the powers under FEMA.

47. It is quite clear that the power which is conferred on DOE for investigation of the alleged contravention of the Provisions of Section 13 of FEMA, is vested under Section 37 of the FEMA. Under sub-section (3) of Section 37 of the FEMA, the concerned officer is invested with the powers which are available to an income tax authority under the Income Tax Act, in respect of, search and seizure. Under the Income Tax Act this power is contained in Section 131, which invests the officer concerned under the Income Tax Act, which are vested in a court under CPC, when trying a suit which *inter alia* includes the power to enforce the attendance of “*any*” person as also examine such person on oath.

47.1 The power of the civil court is thus contained in Section 30 of the CPC, which empowers a court at any time either on its own motion or on the application of any party to *inter alia* issue summons to persons whose attendance is required either to give evidence or to produce documents or such other objects, as aforesaid. The coercive power of the court to compel attendance of any person to whom summons have been issued under Section 30 of the CPC are provided in Section 32 of the CPC. The coercive power includes the power to : issue warrant of arrest; order attachment and sale of the delinquents’ properties; impose fine not exceeding Rs.5000; and order for furnishing security for his appearance, and in default, commit him to the civil prison.

47.2 It is, therefore, contended that this power was available only vis-a-vis

a witness and not vis-a-vis a person against whom the proceedings have been initiated. The example given was that of proceedings in a civil suit where, on the failure of a defendant to appear in a proceedings initiated in a civil court, would only result in him being proceeded ex-parte, and not being subjected to the penalties, provided in Section 32 of the CPC. It was submitted that Section 31 which precedes Section 32 of the CPC makes this aspect quite obvious.

47.3 In my view, this submission is again misconceived for the reason that Section 37 is a provision which invest power of investigation for contravention of provisions of Section 13 of FEMA, which necessarily implies that the investigation is directed against the noticee. To aid the officer's investigation under Sub-section (1) of Section 37 powers under the Income Tax Act have been conferred by virtue of sub-section (3) of Section 37. Section 131 of the Income Tax Act, which is a precursor to Section 132 of the Income Tax Act, empowers an Income Tax Officer, and thus by implication an officer of the DOE, to enforce the attendance of the persons who have violated the provisions of the Income Tax Act, and by necessary implication the provisions of FEMA, and are therefore necessarily the noticees in the said proceedings. The statute quite clearly, thus empowers the officers of the DOE exercising powers under Section 37 to take recourse to the provisions of Section 32 of the CPC, even against the noticee, like the petitioner, and not just the witnesses.

47.4 The above apart, this argument of the learned senior counsel for the petitioner overlooks the fact that limitation, if any, on the power of the officer of the DOE in the FEMA, cannot circumscribe the power of the authority constituted under the Passports Act. As long as the authority concerned is in seisin of the requisite jurisdictional and actionable material,

it can exercise the power conferred on it, as it has done in the present case. If, the impact of the exercise of the power by the authority constituted under the Passports Act, results in legal coercion, that cannot in law, result in the declaration of the exercise of that power, as illegal.

48. The submission made on behalf of the petitioner that the pendency of the complaint under Section 16(3) of FEMA should have been factored in by the passport authorities, while making a determination, is in a sense putting the cart before the horse. The petitioner chooses not to appear in response to the summons issued by the DOE under Section 37 of FEMA. It is because of this that a complaint had to be filed under Section 16(3) of FEMA. On the date when the communication was sent in that regard to the passport authorities, under the cover of the letter dated 04.10.2010, the position remained the same vis-a-vis the personal appearance of the petitioner. This position obtained even when the show cause notices were issued by the passport authorities. The position was no different when the impugned order was passed. Thus, it cannot be said that the pendency of the complaint under Section 16(3) of FEMA ought to have influenced the decision of the passport authorities; a situation for which, the petitioner is himself responsible. This would also answer the submission made on behalf of the petitioner that, issuance of show cause notices by the APO was premature.

49. On behalf of the petitioner an elaborate argument has been raised with regard to breach of principle of natural justice. In this regard broadly four submissions were made. First, the proceedings before the RPO were abruptly terminated on 26.11.2010. Second, that the show cause notices were issued by the APO, while the impugned order dated 03.03.2011 was passed by the RPO. Third, the material on which the show cause notice was issued to the petitioner was not supplied to the petitioner. Fourth, no

opportunity was granted to cross-examine the officers of DOE. As regards the first submission, it may be noted that the material on record suggests that lengthy hearings were held both on 18.11.2010 and 26.11.2010. In the hearing held on 18.11.2010 time was granted to the petitioner between 1630 hours and 2030 hours. Similarly, while time for hearing on 26.11.2010 was slotted between 1430 hours to 1700 hours, the proceedings actually terminated at 1930 hours. This was followed by permission granted to the petitioner to file his written submissions. Written submissions ran into 438 pages, which was in addition to the written statement filed on his behalf. These aspects have been duly recorded by the APO in his communication dated 10.12.2010. In my view, the right to have interminable hearings, as demanded by the petitioner, cannot be a ground to lay challenge to the impugned order on the ground of breach of principles of natural justice.

49.1 The second limb of this argument which pertains to the aspect that show cause notice was issued by one authority i.e., the APO while the impugned order dated 03.03.2011 was passed by the another i.e., the RPO and hence breached the principles of natural justice, is once again misconceived. This ground is invoked by the learned counsel for the petitioner by referring to the definition of the passport authority contained in Section 2(c) read with Rule 3 column (2) of schedule I of the Passports Act. It was contended that since the term 'passport authority' found in Section 10(3)(c) includes an APO, the said officer was competent to, not only issue a show cause notice but also pass the impugned order.

49.2 It is seen that against item no. 7A(a) of Schedule I the RPO (Mumbai) is also described as a passport authority alongwith the APO. Therefore, it is not as if the RPO does not have the necessary power invested in him in Section 10(3)(c) of the Act. This is not a case where a hearing was held by

the APO and the impugned order was passed by the RPO. This is a case where show cause notices were issued by the APO, while hearing in the matter was held by a superior officer, i.e., the RPO. Therefore, this argument is also not tenable. I may only note that even in a case where a hearing is held by one officer and an order is passed by another officer, there is an authority for the proposition that, in an institutional hearing, that is, in a case involving the government or institution, where the government or institution is not in lis, with aggrieved party, such an order of the Government or institution will not get impacted on this ground, as the contours of natural justice will vary with the nature of the inquiry. See observations in *Local Government Board vs Alridge, 1915 AC 120; Ridge vs Baldwin 1964 AC 40; Regina vs Race Relations Board, Ex parte Selvarajan (1975) 1 WLR 1686* and in *de Smiths Judicial Review of Administrative Action (4th edn., pp. 219-220)*. Also see observations in *Ossein and Gelatine Manufacturers' Association of India vs Modi Alkalies & Chemicals Limited & Anr. (1989) 4 SCC 264* at page 268 para 6, which has noticed the said authorities. However, I have not been called upon to deal with such a situation. The submission of the learned counsel for the petitioner on this score is therefore rejected.

49.3 The third limb of this argument which is that the relevant material which formed the basis for issuing the show cause notice was not supplied, is also not quite correct. The APO vide letter dated 01.11.2010, admittedly had given extracts of the material, which was supplied by the DOE to him. The receipt of the said letter is not denied by the petitioner. It is also not denied by the petitioner that he was made available the complaint filed by the DOE under Section 16(3) of FEMA. The petitioner was well aware of the charge against him and the material which formed the basis of the

charge, and therefore, cannot be heard to plead that he had not been supplied with the requisite material to answer the charge.

49.4 The fourth submission made that no right was given to cross-examine officers of DOE, is also untenable for two reasons. First, that there is no inalienable right to cross-examine, it is not unknown to law that proceedings can be decided based on documents; especially documents which form the basis of the decision are not in dispute. Second, while the petitioner chooses to keep himself from his investigators, he seeks to subject his investigators to cross-examination; a request if granted would really turn the situation on its head.

50. The other submission made on behalf of the petitioner that the impugned order is draconian in nature, in as much as, there were other modes available for tendering evidence by the petitioner. In my view, this argument is untenable for the reason that the petitioner cannot choose the manner in which he would tender evidence before statutory authorities constituted under a validly enacted law. The statutory authorities should have the opportunity to confront the petitioner with material in a face-to-face examination. The reason trotted out by the petitioner that his coming to the country would endanger his life, could be taken care of by putting in place relevant measures for his security based on the assessment of the police authorities, once he had conveyed his decision in that regard to the respondents.

50.1 In this regard the argument made that, the petitioner was only vicariously liable qua the transactions in respect of which fault had been found by the DOE, in my view, is irrelevant. As a matter of fact, it has been argued on behalf of the respondents that fourteen (14) show cause notices have been issued to the petitioner. Learned senior counsel for the petitioner

did try to submit in this behalf that the fourteen (14) show cause notices were relatable to only two transactions. Apart from the fact that this aspect was not disclosed with complete candour by the petitioner, the fact of the matter remains that, there are aspects, in respect of which, information is sought by the DOE, which can best, perhaps be obtained by securing the personal presence of the petitioner.

51. The argument made on behalf of the petitioner that the expression 'in the interest of general public' appearing in Section 10(3)(c) of the Passport Act should take its colour from a similar provision appearing in Article 12 of the CCPR, does not impress me for the following reason: Firstly, as indicated above, the action taken by the DOE to protect the economic interest of the country in respect of which the allegation is that money to the tune of hundreds of crores has been parked by the petitioner outside the country, would require examination. Secondly, there is no scope for invoking the provisions of Article 12 of the CCPR once the municipal law on a given subject occupies the field. See observations of the Supreme court in *Vishakha and Ors. Vs. State of Rajasthan and Ors.*, AIR 1997 SC 3011 at page 298 para 7 and *Jolly George Varghese & Anr. vs The Bank of Cochin (1980) 2 SCC 360* at page 364 para 6. It is not the case of the petitioner before me, that there is any doubt with regard to the interpretation to be given to the expression "in the interest of the general public", appearing in Section 10(3)(c) of the Passports Act. Therefore, this submission of the petitioner is also without merit and is, accordingly, rejected.

52. The last argument made on behalf of the petitioner that in response to the RTI application dated 23.02.2012 moved by the Constituted Attorney of the petitioner had revealed that no case was pending before the Economic

Offences Wing (in short EOW) of the Mumbai Police, is also without merit.

52.1 It is noticed that the application dated 23.02.2012 was filed with the Assistant Commissioner of Police (Administration), EOW, Mumbai. The information sought was whether any request, recommendation or directions had been made by the EOW, Mumbai Police to the RPO for impounding / revocation of the passport of the petitioner. In response to the same, a letter was apparently issued dated 22.03.2012 wherein the EOW, Mumbai Police informed the querist that no information was available regarding seizure of the passport of the petitioner. It further went on to say that no objectionable entries were found against the petitioner and hence, a “nil” report was being submitted. Based on the aforesaid, it is sought to be argued that the DOE had not recommended revocation of the passport. There is no such stand taken by the respondents in their affidavit. In fact, they have apposed the petition and as a matter of fact quite vehemently, supported the impugned orders. I thus fail to understand, as to how, the response of the EOW of the Mumbai Police to a RTI application made to it, would support the petitioner’s case. The impugned orders of the RPO and the CPO, are based on the request of the DOE.

53. This brings me to the two cases cited on behalf of the petitioner. As far as the Menaka Gandhi case is concerned, both parties have relied upon the said case. The said case essentially decided that it was an inalienable right of a person to insist on adherence to principles of natural justice; where actions of the State entail serious civil consequences. In that case, a post decisional hearing was accorded to the petitioner since an order to impound her passport had been passed without prior notice or hearing. In this case, as discussed above, hearing was granted to the petitioner prior to the RPO passing the impugned order. As a matter of fact, hearing was also accorded

at the appellate stage by the CPO.

54. As regards the other judgment on which reliance is placed by the petitioner i.e., in case of Aditya Khanna, it is distinguishable on facts. In the said case, the petitioner came to the court on the ground that his passport had been revoked without issuance of the show cause notice and grant of an opportunity to represent his case before the Passport authorities. It is noticed that, the court recorded in that case that, in the affidavit of the Central Bureau of Investigation, there was “not a single allegation that the petitioner had not appeared in the past to make an appearance”. In fact, it is in those circumstances that, the court directed the passport authorities to hand over the petitioner’s passport in that case as the principles of natural justice had been breached. There is no such situation obtaining in the present case.

55. As regards the submissions made on behalf of the respondents to jurisdiction of the court to entertain the writ petition on the ground that the jurisdiction of this court is invoked based only on the ground that the order of appellate authority, i.e., CPO has been passed in Delhi, in my opinion, may perhaps have enabled me to employ my discretion and relegate the petitioner to the appropriate court based on the principle of *forum non conveniens*. See observations in ***Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Anr., (2004) 6 SCC 254*** and ***Sterling Agro Industries Ltd. Vs. Union of India and Ors., 181(2011) DLT 658***. However, having regard to the fact that it is only a discretion that a court may or may not employ in a given case, and given the fact that the petitioner has been seeking a decision in regard to his case for a period of time, it was deemed fair and just to hear the petition and decide the same one way or other. Therefore, this objection of the respondent is rejected. The learned counsel for the petitioner in passing made a reference to the fact that the CPO passed

the impugned order after nearly three months of the conclusion of the hearing before him. Having regard to the voluminous record produced before the CPO including the original documents, I am of the view that the orders cannot be set aside on this ground.

56. The argument that DOE has only asked for impounding and not revocation of the petitioner's passport is belied by the fact, that the petitioner has refused to surrender the passport. Therefore, in the absence of the passport being available with the authorities concerned, the only order which could have been passed in the given circumstances was of revocation.

57. For the reasons given hereinabove, I find no merit in the petition. The writ petition is, accordingly, dismissed. The parties, however, shall bear their own cost.

RAJIV SHAKDHER, J

JANUARY 16, 2013

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