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Section 10 (3) (C) of the Passport Act will be initiated by this office." Petitioner submits that the above four lines are extremely important they show that it was the Assistant Passport officer who had issued first Show cause notice dated 15.10.2010, it was the Assistant Passport officer who had taken the decision whether and to what extent supply the relied upon materials and the scope of the second Show cause notice was the same that whether the proceedings under Section 10 (3) (c) of the Passport Act should be initiated or not. In other words petitioner was never put on notice that his passport is going to be revoked and therefore this notice also could have at the most culminated in a decision to initiate proceedings under Section 10 (3) (c) but could not have resulted in a final order revoking the passport of the petitioner. A copy of the communication/notice dated 01.11.2010 is annexed herewith and marked as "ANNEXURE P-8".

x. As is evident from the letter dated 1.11.2010 that it is completely ambiguous on the aspect of supply of relied upon materials and documents, petitioner's Solicitors were constrained to address another letter dated 10.11.2011 interalia reiterating their request for supply of documents and relied upon materials. By the same letter petitioner 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 clearly 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



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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."*

xi. A request was also made for an opportunity to take inspection of the file and a date for personal hearing and extension of time to file the detailed reply. A copy of the letter dated 10.11.2010 is annexed herewith and marked as "ANNEXURE P-9".

xii. That as no reply was received to the letter dated 10.11.2010, petitioner's solicitors again addressed a letter dated 11.11.2010 to the Assistant Passport officer Policy interalia requesting a response to the request made in letter dated 10.11.2010. A copy of the letter dated 11.11.2010 is annexed herewith and marked as "ANNEXURE P-10".

xiii. That on 15.11.2010 the Assistant Passport officer responded to the letter dated 10.11.2010 and 11.11.2010 the contents of this letter are extremely important and therefore quoted as hereunder :-

*"In view of your letter dated 10.11.2010 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 ShriLalit 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. A true copy of letter dated



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15.11.2010 of the Assistant Passport officer is annexed herewith and marked as "ANNEXURE P-11".

xiv. That on 15.11.2010 i.e. on the same day the solicitors of the petitioner requested that as the notice is too short and the counsels are busy therefore the proceedings should be deferred to the next working day that is 18<sup>th</sup> November 2011. A true copy of letter dated 15.11.2010 is annexed herewith and marked as "ANNEXURE P-12".

xv. That by the letter dated 16<sup>th</sup> November 2011 the Assistant Passport officer deferred the proceedings to 18<sup>th</sup> November 2011 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."*

A true copy of the letter dated 16.11.2011 of the Assistant Passport Officer is annexed herewith and marked as "ANNEXURE P-13".

xvi. That the solicitors of the Petitioner responded to the letter dated 16<sup>th</sup> November 2010 and clarified that the hearing to be held on 18.11.2010 cannot be for the purpose to determine action to impound/revoke the passport of the petitioner, as is clear from the letter dated 15<sup>th</sup> November 201 it is only for the adjudication on the requests made in the letter dated 10<sup>th</sup> November 2010 and 11<sup>th</sup> November 2010. It was further clarified that revocation/impounding of petitioner's passport is not even in contemplation at this stage as is evident from the correspondence exchanged between the parties. In the same letter they also stated as under:-



"5. We lastly wish to submit that the 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 the stated in our letter dated 10.11.2010.
- 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."

A true copy of the letter dated 18.11.2010 of the solicitors of the petitioner is annexed herewith and marked as "ANNEXURE P-14".

xvii. That on 18.11.2010 the proceedings/ oral hearing was held in the office of the Regional Passport officer( Respondent No.3), wherein the Assistant Passport officer, who had issued the Show cause notice and all correspondences was also present. The counsels for the Petitioner objected to the proceedings on the ground that Assistant Passport officer had issued the show cause notice and



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therefore he cannot act under the directions and instructions of regional Passport officer, regional passport officer cannot participate in the proceedings and requested that the objections of counsels for the petitioner in this regard may be recorded. On the same very day they addressed the letter dated 18.11.2010 recording their objections. A true copy of the letter dated 18.11.2010 is annexed herewith and marked as "ANNEXURE P-15".

xviii. That on 19.11.2010 in continuation of the letter dated 18.11.2010, the solicitors of the petitioner addressed another letter detailing therein the events that had transpired during the course of hearing on 18.11.2010 and also seeking the order which has been passed on the objection of the counsels for the petitioner. A true copy of the letter dated 19.11.2010 is annexed herewith and marked as "ANNEXURE P-16".

xix. That on 22.11.2010 as the letter dated 19.11.2010 was not responded to, the solicitors of the petitioner 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. A true copy of the letter dated 22.11.2010 is annexed herewith and marked as "ANNEXURE P-17".

xx. That the solicitors of the Petitioner were never supplied with the copy of the order sheet, Rozanama, the solicitors of the petitioner were also not handed over any order in writing deciding their objections but by letter dated 23.11.2010 they were informed that during the proceedings they have been advised that "*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.*" By this letter petitioner was also informed that petitioner has been granted ample opportunity and the final hearing would



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be held by the respondent No - 3 on 26.11.2010. A true copy of the letter dated 23.11.2010 is annexed herewith and marked as "ANNEXURE P-18".

xxi. It is respectfully submitted that a patently incorrect statement was made in this letter dated 23.11.2010 as would be clear from the definition of the word Passport Authority as given in rule 3 of Passport Rule read with Schedule I of the Passport Rule, it is submitted that in terms of these rules Assistant Passport Officer is also a Passport Authority.

xxii. That as the solicitors of the petitioner were neither being supplied with the materials on the basis of which the Show cause notice was issued nor the request for the solicitors of the petitioner to inspect the records was being granted therefore they addressed a communication dated 26.11.2010 to the Assistant Passport officer and reiterated their previous requests and also sought for an opportunity to cross examine the officers of the Enforcement Directorate who had made the allegations against the petitioner. Petitioner also requested that this application should be decided before commencing the hearing on merits. A true copy of the letter dated 26.11.2010 is annexed herewith and marked as "ANNEXURE P-19".

xxiii. That by another letter dated 26<sup>th</sup> November 2011 the solicitors of the petitioner informed the Assistant Passport Officer that the proceedings initiated by him were misconceived, were being held in contravention of principles of natural justice, that there was no substance in the allegations being leveled by the enforcement directorate. Along with this letter petitioner submitted a series of documents which clearly establish that petitioner had never willfully or deliberately avoided any summons. A true copy of the letter dated 26.11.2010 is annexed herewith and marked as "ANNEXURE P-20".

xxiv. That on 26.11.2010 when the counsels for the petitioner were in midst of the arguments hearing was halted by the respondent no



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copy of the letter dated 10.12.2010 is annexed herewith and marked as ANNEXURE P-24.

xxviii. That on 3.3.2011 an order was passed under the signature of the Respondent No - 3 whereby the passport of the petitioner was revoked. It is respectfully submitted that the facts and circumstances enumerated hereinabove clearly demonstrate that the order dated 03.03.2011 which is impugned herein and marked as Annexure P-2 was passed in gross violation of the principle of natural justice and a summary of such violation of principle of natural justice are as hereunder:

- a. the letter dated 01.11.2010 clearly records that the ED had made the request for impounding of the passport of the petitioner. Such request is not contemplated in section 10 3 (c) of the Passport Act. In any event on a request for impounding of passport neither a Show Cause Notice nor an order for the revocation of the passport can either be issued or passed.
- b. In any event the Assistant Passport Officer who is a passport authority within the meaning of rule 3 of Passport Rules read with schedule -I of Passport Rule 1980 had issued the show cause notice dated 15.10.2010 seeking a limited explanation that why should the proceeding under Section 10(3) (c) of the Passport Act be not initiated. It is reiterated that under no circumstances this show cause notice could have culminated in order of revocation of passport. At the most this show cause notice could have resulted in initiation of proceedings under Section 10 (3) (c) of the Passport Act.



- c. That as the show cause notice was issued by the Assistant Passport Officer all communications till 18.11.2010 were issued by the Assistant Passport Officer including the second show cause notice dated 01.11.2010 and the decision whether to provide the relied upon materials or not and to what extent disclose the relied upon material was taken by the Assistant Passport Officer therefore, the Respondent No.3 could not have assumed jurisdiction mid-way and conducted the proceedings and taken the decision dated 03.03.2011.
- d. It is evident from the exchange of the communication that petitioner was neither granted the relied upon documents and materials, nor was petitioner granted inspection of the records of the case nor the petitioner was granted an opportunity to cross examine the concerned officer of Enforcement Directorate who had made the request for initiating proceedings under Section 10(3)(c) of the passport Act nor the petitioner was granted an adequate opportunity to present his case. On top of that even the simple request for grant of certified copies of the orders and roznama was not hidden to.
- xxix. That in such facts and circumstances on 01.04.2011 petitioner preferred an appeal under Section 11 of the Passport Act, 1967 against the order dated 03.03.2011 passed by the Regional passport Officer, Mumbai (Respondent No -3 ) before the Chief Passport Officer, Delhi (Respondent No -2). That the petitioner craves leave to place before this Hon'ble Court the entire memo of appeal along with the documents relied upon in the appeal by way of separate volume as the same are voluminous.
- xxx. That on 14.4.2011 the petitioner addressed a communication to Respondent No. 2 seeking early hearing of his appeal or in the alternative a hearing on interim stay. A true copy of letter dated



14.04.2011 is annexed herewith and marked as ANNEXURE P-25.

- xxxi. That on 14.07.2011 the appeal of the petitioner was heard for the first time, in this hearing counsels for petitioner were given to understand that instead of deciding the stay application the entire appeal would be heard and decided as expeditiously as possible.
- xxxii. That on 01.08.2011 the appeal of the petitioner was again heard and it was decided that in the interest of expeditious disposal of the Appeal petitioner may file his written submissions covering the arguments made in the hearing as well as on the additional points which remained to be argued.
- xxxiii. That on 08.08.2011 the General Counsel and constituted Attorney of the petitioner received a communication from Shri Paramjeet Singh, AO (PV-II), MEA, New Delhi whereby he was informed and wherein it was recorded that - *"... 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."*

A true copy of letter dated 08.08.2011 is annexed herewith and marked as ANNEXURE P-26.

- xxxiv. That on 17.08.2011 Counsels for the petitioner submitted their written Submissions in accordance with the letter dated 8.8.2011. A true copy of written submissions dated 17.08.2011 is annexed herewith and marked as "ANNEXURE P-27". It is submitted that the grounds urged and the submissions made in the accompanying written submission are not repeated herein and the same may kindly be treated as part and parcel of the instant petition.



xxxv. That the Power of Attorney holder of the Petitioner files an application under Right to Information Act before Regional Passport Officer on 17.8.2011 and 25.8.2011. The copies of the applications filed before the Regional Passport Officer are annexed hereto and marked as "ANNEXURE-28 COLLY".

xxxvi. That on 03.10.2011 Petitioner applied to the Deputy Director, Directorate of Enforcement for dropping of proceeding initiated in pursuance of the show cause notice dated 20.09.2010. A true copy of letter dated 03.10.2011 is annexed herewith and marked as "ANNEXURE P-29".

xxxvii. That on 10.10.2011 the Petitioner addressed a letter dated 10.10.2011 to the Chief Passport Officer (Respondent No -2 ) requesting therein that the judgment in the case may kindly be pronounced at the earliest possible convenience or in the alternative the petitioner may be granted an opportunity of hearing for stay of the order passed by the Regional Passport Office. A true copy of the letter dated 10.10.2011 is annexed herewith and marked as "ANNEXURE P-30".

xxxviii. That on 12.10.2011 Regional Passport Officer (Respondent No. 3) in reply to application filed under Right to Information Act states that the Passport of the Petitioner has been revoked on directions of the Economic Offences Wing of Mumbai Police. The copy of the communication dated 12.10.2011 received from the office of the Regional Passport Office is annexed hereto and marked as "ANNEXURE P-31".

xxxix. That on 19.10.2011 the Petitioner again addressed a communication/ reminder to the respondent No 1 reiterating his request made in letter dated 10.10.2011. A true copy of the letter dated 10.10.2011 is annexed herewith and marked as ANNEXURE P-32.

xl. That on 01.11.2011 as no order was being passed on the appeal Petitioner filed a writ Petition seeking a direction that the Respondent No. 2 be directed to forthwith decide the Appeal filed and pending final decision before it.



- xli. That on 02.11.2011 The Petition was served on Respondents.
- xlii. That on 03.11.2011, the General Counsel and Power of Attorney holder of the petitioner received a call in the afternoon from one Mr. Paramjit Singh stating that the order has been passed. The impugned order was communicated to the petitioner's power of attorney by email on 3<sup>rd</sup> November at 15.13 pm by Mr. Paramjit Singh (sopv3@mea.gov.in). That vide the impugned order which is dated 31<sup>st</sup> October, 2011, the Respondent No. 2 has not allowed the Appeal of the petitioner.
- xliii. That on 04.11.2011, the counsels of the petitioner withdrew the aforesaid writ petition in view of the fact the order was passed. A true copy of the order dated 04.11.2011 is annexed herewith and marked as ANNEXURE P-33.
- xliv. That the Petitioner had also filed enough evidence before the Respondents to corroborate the factum of threat to his life and none of the said evidence has been considered by the Answering Respondents. The copy of the documents cited as evidence before the answering respondents is being filed herewith and marked as "ANNEXURE-P-34".
- xlv. That being aggrieved by and dissatisfied by the order dated 31.10.2011 (annexure P-1) passed by the passed by Respondent No 2 and communicated to the petitioner on 3.11.2011 and order dated 3.3.2011 (Annexure P-2) passed by Respondent No.3, the petitioner seeks to file the present writ petition, inter alia, on the following amongst other grounds:-

#### GROUNDS

- A. FOR THAT in the fact and circumstances of the case it is evident that the impugned order dated 03.03.2011 was passed in violation of principle of natural justice and therefore, ought to have been set aside by the Respondent No.2 (appellate authority). However, the Respondent No.2 without appreciating the facts and circumstances of the case, has passed the impugned order dated 31.10.2011 and the table given herein under would show



that every finding recorded by the appellate authority (Respondent No -2) is incorrect, contrary to the records and beyond the materials on record:-

FINDING- 1 OF PARA 6	ERROR-
<p>Entertaining such a request by the Regional Passport Office, Mumbai in respect of the Appellant is in accordance with the established procedure and the Regional Passport Office, Mumbai was not expected to undertake any independent enquiries in this regard other than those already conducted by the Directorate of Enforcement, which is the Government Agency professionally equipped to conduct such investigations.</p>	<p>1) That Passport cannot be revoked/ impounded either on the basis of recommendation or directions. Grant, impounding and revocation of Passport is a subject matter of Passport Act and rules, it cannot be a matter of procedure established in an office, while exercising powers under Section 10 (30) (c) of the Act, the passport authority performs a quasi judicial function and therefore he is duty bound to undertake an independent inquiry.</p> <p>2) That the issue relating to alleged deliberate avoidance of summons by Petitioner is an issue which is directly matter of adjudication in the Show Cause Notice dated 20.9.2010 and pending adjudication, hence a finding that enquiry has already been conducted is incorrect.</p>
FINDING- 2- PARA-6	ERROR
<p>In the process leading to the issue of order dated 3.3.2011 by Regional Passport Office, Mumbai there was no violation of</p>	<p>1) Bare perusal of notice dated 15<sup>th</sup> October 2011 shows that notice was on basis of recommendations made by Directorate of</p>



<p>principals of natural justice because the Appellant was informed of the proposed action and was given sufficient and additional time to explain his side.....</p>	<p>Enforcement and only explanation sought was as to why action under section 10 (3) (c) of the Passport Act be not initiated.</p> <p>2) The bare perusal of the notice dated 15<sup>th</sup> October, 2010 shows that the same was issued on basis of the complaint dated 16.9.2010 and show cause dated 20.9.2010 but without disclosing the reply filed by the petitioner to show cause dated 20.10.2010 and the letter received by the Directorate from the Additional Commissioner of Police on 16.9.2010 confirming the threat to the life of the solicitors of the petitioner from Dawood Ibrahim.</p> <p>3) It is also evident from the facts and circumstances enumerated herein above that none of the principles of natural justice were followed.</p>
<p><b>FINDING 3 PARA-6</b></p>	<p><b>ERROR</b></p>
<p>It is well known that ShriLalit Kumar Modi was acting as the Chairman &amp; Commissioner of the Governing Council for the Indian Premier League of the Board of Control for Cricket in India and was primarily responsible for conduct of the IPL. The</p>	<p>1) Finding that ShriLalit Kumar Modi was primarily responsible for the conduct of IPL is incorrect, which is even beyond the allegation made by the Directorate of Enforcement. It is submitted that the petitioner was Chairman of the Governing Council of IPL</p>



<p>authorities investigating the case have reasons to believe that ShriLalit Kumar Modi, in his capacity as IPL Chairman &amp; Commissioner, has committed gross irregularities in the conduct of the IPL tournament and in award of various contracts by the BCCI with various parties in India and abroad. Through his fraudulent acts, ShriLalit Kumar Modi appears to have committed contravention of provisions of Foreign Exchange Management Act, 1999 (FEMA) to the extent of hundreds of crores of rupees and also appears to have gained personal benefits by acquiring huge amounts of money which he is suspected to have parked outside India in contravention of the provisions of FEMA.</p>	<p>which is only a sub committee of BCCI. All the decisions of the GC were taken by majority and were then approved/ ratified by the General Body of BCCI.</p> <p>2) That ShriLalit Kumar Modi had no financial powers or even the authority to sign any agreement..</p> <p>3) That even in the show cause notice dated 20.7.2011, issued by E.D Petitioner has only been roped in by aid of Section 42 of FEMA and no substantive allegation or offence has been alleged against him.</p> <p>3) That Petitioner opened no bank accounts in India or abroad on behalf of BCCI is a fact known to both the Enforcement Directorate and the Passport office.</p>
FINDING 6 PARA 6	ERROR.
<p>That threat to personal safety perceived by ShriModi was adequately considered by the authorities concerned. It is noted that the claimed security threat persisted even when Shri Modi was in India and it did not prevent him from attending day to day functions which involved his presence in huge public gatherings</p>	<p>That findings on this issue are completely incorrect, and if so required petitioner would submit all the relevant documents in this regard in a sealed envelope, along with an additional affidavit which would show that there is a real threat to the life of the petitioner and his family member, security cover given to them was reduced</p>



<p>and travel all over India. The police authorities have all along offered protection to Shri Modi as and when required by him, and have assured that the protection would continue once he is back from his trip abroad. In these circumstances his refusal to make himself available in India for personal interrogation by the investigating authorities on the alleged lack of adequate protection in India can only be construed as an action intended to avoid the process of law and non compliance of a legal process. It is pertinent to mention that there are hundreds of prominent individuals / dignitaries who are provided security protection by the law enforcement agencies of the Government of India and the State Government, and we have hardly come across a case in which affected individuals go abroad on account of this, where the cost of arranging such security is prohibitively high.</p>	<p>and subsequently withdrawn.</p>
<p>FINDING 7 OF PARA 7</p>	<p>ERROR</p>
<p>That the alternative procedure for his examination through video conferencing, questionnaire,</p>	<p>It is submitted that repeated request of the Petitioner to be examined by any other mode as</p>



interrogatories etc. was considered by the concerned authorities, but it was found that no meaningful investigation was possible except by his examination in person since the Appellant was required to be confronted with a number of documents and his evidence is required to be recorded on many issues. It was also noted that the modality for interrogation in such cases has to be decided primarily by the investigating agency, and individual conveniences need not take precedence while arriving at a decision. In the circumstances, insistence of the physical presence of the Appellant in India by the Enforcement Directorate is considered justified.	provided for in Section 131 of Income tax Act is pending decision. No decision on such request has been communicated to the petitioner till date.
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## FINDING 8 OF PARA 6

## ERROR

That 'revoking' the passport of the Appellant by the RPO, Mumbai was in order. As per procedure, impounding is resorted to when the passport is in the temporary custody of the Passport Authority or is surrendered to them. Revocation is resorted to when the passport is not in the custody of the Passport Authority and it is unlikely that the passport would

This finding is legally unsustainable firstly for the reason that the words revoke and impound are not synonyms, they have different legal meaning and effect, merely because it is not possible to impound passport revocation cannot be resorted to. Secondly there is no procedure that if it is not possible to impound a passport it should necessarily be



<p>be presented to a PIA for temporary custody. In the instant case, the passport is still in the custody of the Appellant, it was not surrendered to the PIA and hence revocation was resorted to by the Regional Passport Office, Mumbai.</p>	<p>revoked.</p>
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B. Because neither the Respondent No.3 nor the Respondent No.2 had appreciated the scope of the Section 10 (30 (c) ) of the Passport Act and the provisions of FEMA which is evident from the following:

(i) The Respondent No.3 in his impugned order dated 03.03.2011, has referred to the petitioner as an accused and appears to have proceeded on the premises as if a person against whom investigation under FEMA are under taken can be equated with an accused in a criminal case. It is submitted that such is not the position of law. FEMA has only civil consequences and even in cases where a show cause notice has been issued to a person for substantive violations of the provisions of FEMA, he cannot be equated with an accused in a criminal case.

(ii) the respondent also failed to appreciate the provision under FEMA relating to filing of complaint and issuance of show cause notice. It is submitted that Section 16 (6) of FEMA provides as under:

*"16 (6) Every Adjudicating Authority shall deal with the complaint under sub-section (2) as expeditiously as possible and endeavor 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."*

And rule 4(1) to 4(4) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 provide as under:

*"4 Holding of Inquiry:*

*(1) For the purpose of adjudicating under section 13 of the Act whether any person has committed any contravention as specified in that section of the Act, the Adjudicating Authority shall, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than the days from the date of service thereof) why an inquiry should not be held against him.*

*(2) Every notice under sub-rule (1) of any such person shall indicate the nature of contravention alleged to have been committed by him.*

*(3) After considering the cause, if any, shown by such person, the Adjudicating Authority is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his legal practitioner or a chartered accountant duly authorised by him.*

*(4) On the date fixed, the Adjudicating Authority shall explain to the person proceeded against or his legal practitioner or the chartered accountant, as the case may be, the contravention, alleged to have been committed by such person indicating the provisions of the Act or of rules, regulations, notifications, direction or orders or any condition subject to which an authorization is issued by the*



*Reserve Bank of India in respect of which contravention is alleged to have taken place."*

In view of the aforesaid provisions of the FEMA and Rules framed there under it is submitted that every complaint under FEMA should be dealt with expeditiously and where the complaint is not disposed of within a year the adjudicating authority shall record reasons in writing for not disposing of the complaint in the said period, it is further contemplated that a complaint and show cause notice have two stages of adjudication. First stage is the one envisaged in rule 4 (3) i.e. the decision to hold an enquiry. It is submitted that the respondents have failed to appreciate that on the complaint dated 16.09.2010 and the show cause notice dated 20.09.2010 even after a lapse of one year not even a preliminary decision whether to hold the proceedings or not to hold the proceedings has been taken by the adjudicating authority of FEMA. In such circumstances the factum of filing of complaint dated 16.09.2010 and issuance of show cause notice dated 20.09.2010 can neither be the basis of issuance of show cause notice dated 15.10.2010 nor on the basis of such facts the order dated 03.03.2011 could have been passed nor on the basis of such facts the order dated 03.03.2011 could have been sustained by the appellate authority. Further the respondents have failed to appreciate that the aforesaid provisions of FEMA do not contemplate any custodial interrogation.

C. Because the respondents have failed to appreciate the submissions made before them and without even recording the submissions made respondents have mis-directed themselves in passing the impugned orders.

D. That because the impugned order falls foul of the "WEDNESBURY PRINCIPLE" as settled by the KING'S BENCH DIVISION in the case of "ASSOCIATED PROVINCIAL PICTURE HOUSE, LIMITED v. WEDNESBURY



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CORPORATION" where the concept of "unreasonable" has been explained in the following terms:

*"For instance, a person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider".*

*"Similarly, there may be something so absurd that no sensible person could ever dream that it lay within power of authority."*

That in the instant case the respondents have categorically refused to apply independent mind to the facts placed on record and have on the contrary held that the opinion formed by the investigation officer is binding and that the Passport Officer is bound to act in furtherance of the same. That any reasonable tribunal would have appreciated that the Investigating Officer of Enforcement Directorate by its absence in the proceedings has decided not to prosecute the application and that the presence of the Petitioner is not required for the purpose of investigation.

E. Because the impugned order is also unreasonable as it is in violation of principles of proportionality. It is submitted that right to life is a fundamental right as guaranteed under Article 21 of the Constitution of India. It is submitted that while deciding the need of the investigating agency of investigate the alleged offences purportedly committed by the petitioner it was incumbent upon the Adjudication Authority to have balanced it when the threat perception faced by the Petitioner and his family from the underworld as the same was also confirmed by the premier investigating agency of the country.

F. Because the impugned order suffers from illegality and is also in teeth of principles of proportionality as it is an admitted position that the alleged offences investigated by the investigating



authority have civil consequences for which the Petitioner cannot be arrested during the course of investigation. Most importantly, FEMA itself provides that after culmination of investigation and filing of complaint before the Special Director, and, issuance of show cause the Petitioner is entitled to appear through legal representative or Chartered Accountant. In view of this legal position when an accused cannot be apprehended or put to custodial interrogation during investigation coupled with the fact that after completion of investigation has a statutory right to be represented through lawyer / chartered accountant then the finding in the impugned order that "...insistence of the physical presence of the Appellant in India by the Enforcement Directorate is considered justified" is illegal. It is submitted that lack of power to apprehend offences having civil consequences and right to be represented through lawyer after completion of investigation, coupled with the fact that there was a threat perception to the life of the Petitioner and his family members in India, the Appellate Authority / Respondents were bound to apply the principles of proportionality while passing the impugned order and could not have passed the impugned order with an intent to induce the Petitioner's presence in India because as an alternative method for investigating / interrogation as provided by statutory Section 131.(1) of the Income Tax Act and which could have served the same purpose.

- G. Because in any event the Respondent No.2 ought to have allowed the appeal filed by the appellant against the order dated 03.03.2011 because the same was passed in violation of the principle of natural justice. Petitioner was not supplied with the material /documents relied upon for the purpose of issuance of show cause notice, Petitioner was not granted opportunity to even inspect the file, Petitioner was not given a copy of the order passed on various request, application of the petitioner for cross examination of the officers of the ED was not even considered and



the hearing of the proceedings was closed in the midst of arguments.

H. Because in Maneka Gandhi's case had read down the phrase general public interest and limited it to the interest of public order, decency and morality. It is submitted that the impugned orders have not been passed on the grounds of public order, decency or morality and neither of the authorities below have either discussed or decided if there was any question of public order, decency or morality involved. Petitioner further submits that the petitioner and his family have fundamental right to life and liberty, such right includes a right to life without any unnecessary fear and anxiety of their well being and includes a right to preserve one's own life and the life of his family members therefore in such circumstances the order revoking passport of the petitioner would also fall foul of the Article 21 of the Constitution of India.

I. Because the Supreme Court also in Maneka Gandhi's judgment stated in para 82 that if the restrictions 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. Because after the judgment in case of Maneka Gandhi, India acceded to International Covenant on Civil and Political rights, 1966. Article 12 of Covenant of Civil and Political rights provides as under:-

- "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 on India having acceded to the aforesaid Covenant the same would become automatically applicable to exercise of powers under section 10 (3) (C) of the Passport Act and powers under section 10 (3) (C) of the passport Act cannot be exercised in contravention of Article 12.

- G. Because the International Covenant on Civil and Political Rights 1966 was acceded to by India on 10.4.1979. 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

- J. Because the rights under Article 12 of the above covenant includes 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 person's 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.

- K. Because there was gross violation of principles of natural justice as even the copy of the purported requests filed by Directorate of Enforcement which allegedly formed basis of the order of revocation was not supplied to the petitioner.
- L. Because whether there was a deliberate and willful disobedience and non-compliance of summons of personal appearance issued by the Enforcement Directorate is an issue directly pending adjudication before the Special Director, Enforcement Directorate 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 the petitioner on 12.10.2010 and in spite of several reminders the Show cause has not been decided till date of filing of the present petition. It is submitted that the impugned order virtually passes a judgment of conviction against the solicitors of the petitioner in the Show Cause proceedings which are pending adjudication and clearly outside the jurisdiction and domain of the Passport Officer.
- M. Because the Order dated 03.03.2011 has been passed in purported exercise of jurisdiction and powers under Section 10(3)(c) of the Act. It is respectfully submitted that Section 10 (3), (c) of the Act has no application whatsoever to the present case. The present case does not involve anything which affects or offends "interest of the sovereignty and integrity of India"; "the security of India"; "friendly relations of India with any foreign country"; and "in the interest of general public". The assumption of jurisdiction by the Respondent was therefore, plainly illegal and the exercise of powers by the Respondent was ex-facie, without jurisdiction and the authority of law. The Impugned Order is therefore ex-facie, without jurisdiction, illegal and null and void ab initio. The same is a nullity in the eyes of law.



- N. Because the impugned orders seek to justify the action of revocation of the Petitioner's passport on the ground "*in the interest of the general public*". It is respectfully submitted that there is nothing, in the facts of the present case and/or in the findings in the impugned orders, which can even remotely be described as justifying the revocation of the Petitioner's passport as being, in the interest of the general public. The view taken by the Respondents is plainly perverse and an impossible view.
- O. Because in any case the investigations against the petitioner is under the provisions of F.E.M.A especially under Section 13 which only entails civil consequences and the offence, if any, is compoundable in nature as per Section 15 of the Act.
- P. Because the petitioner could not appear in person as he faced a real threat to his life by elements from the Underworld which is a fact substantiated by reports of Mumbai Police. The threat to the Petitioner's life was communicated to ED by Mumbai Police. However ED suppressed the same while filling the alleged applications to Respondent No. 3. It is the case of the petitioner that a letter addressed by Joint Commissioner of Police, Mumbai was available with the Directorate of Enforcement at the time of filling of the applications dated 4th October, 2010 and 15<sup>th</sup> October, 2010.
- Q. Because the respondents have failed to appreciate that the petitioner under Article 21 of the constitution of India has right to life and liberty, such right includes a life of dignity without unnecessary fear and anxiety and the right to preserve once life and the life of the family or his family members. In such circumstances, on an alleged non-appearance or non compliance to the summons of Enforcement Directorate, an extreme step of revocation of passport could not have been taken specially in view of fact that the law itself provides for alternate methods of participation in such proceedings, petitioner has expressed his willingness to participate in such proceedings through any alternative method of law no express decision was ever taken or



communicated to the petitioner on use of such alternative methods.

- R. Because the petitioner had never avoided any summons and on the contrary there have been occasions where the authorized representative of the petitioner had visited the office of the Enforcement Directorate to collect summons.
- S. Because each and every information / documents sought for by the investigating officer were immediately provided and in any case provided within the time prescribed by the investigating officer.
- T. Because the petitioner has never ever refused to appear before the investigating officer but has sought an accommodation that the investigating officer may kindly exercise jurisdiction vested in it by virtue of Section 131 (1) of the Income Tax Act and issue a commission to question the petitioner either by video conference or by personally questioning him in London, UK.
- U. Because the purported exercise of power under Section 10 (3) (c) of the Passport Act, 1967 by the Respondent No.3 is totally without jurisdiction as no case was made out by Directorate of Enforcement to show that non-appearance of the petitioner before the investigating officer would affect the interest of the sovereignty and integrity of the country or the interest of general public.
- V. Because even otherwise the non-appearance of the petitioner before the investigating officer of Directorate of Enforcement is allegedly in defiance of the summons dated 2.8.2010 and 24.8.2010 the investigation stands completed as a complaint dated 20.7.2011 has been filed by the investigating officer itself in which it is an admitted position that the petitioner had no financial power in regard to the affairs of BCCI / IPL and allegations against the petitioner are based upon Section 42 of FEMA.
- W. Because without prejudice to the aforesaid it is submitted that the respondents have without applying their mind to the material



on record and submissions, advanced, disregarded the serious threat to the life of the petitioner which prompted the petitioner to leave the country. The petitioner left the country several months prior to the commencement of the investigation by Directorate of Enforcement, the reasons for which were set out in greater detail in his reply dated November 26, 2010 and in the written submissions dated 6<sup>th</sup> December 2010.

X. Because the fundamental basis of the impugned orders is erroneous and misconceived. The proceedings leading to the passing of the Order passed by Respondent No. 3 were commenced by a communications dated 4<sup>th</sup> October, 2010 and 15<sup>th</sup> October 2010. This communication forms the foundation and the genesis of the action which culminated in the passing of the Order passed by Respondent No. 3. The allegation made in the communication dated 4<sup>th</sup> October, 2010 and 15<sup>th</sup> October 2010 was that:-

- i. the Enforcement Directorate had informed the Passport Authorities that the complaint dated 16<sup>th</sup> September, 2010, under Section 13 of the FEMA had been filed against the petitioner and
- ii. the show cause notice dated 20<sup>th</sup> September, 2010, alleging non-compliance of the summons issued by the Enforcement Directorate, had been issued to the petitioner.

On this limited basis, the petitioner was called upon to explain why action under Section 10(3)(c) of the Act should not be initiated against him. The complaint and the show cause notice issued by the Enforcement Directorate was, therefore, the only basis for seeking to exercise of jurisdiction under Section 10(3)(c) of the Act. A bare perusal of the complaint and the show cause notice issued by the Enforcement Directorate clearly indicates that the petitioner had been, thereby, called upon to explain whether his failure to appear before the officials of the Enforcement Directorate, pursuant to summons issued by them.



could be said to be deliberate and/or willful. Inherent therein was the fact that there was still to be a determination of the issue of whether the failure of the petitioner to appear before the Enforcement Directorate, pursuant to their summons, was willful or deliberate. It is respectfully submitted that the jurisdiction under Section 10(3)(c) of the Act cannot be exercised, let alone a citizen's passport revoked, merely because a show cause notice has been issued by an Investigating Agency, seeking an explanation from a citizen on whether his failure to attend pursuant to a summons, can be regarded as willful or deliberate.

Y. Because the Respondent No. 3, whilst passing the Order and purporting to assume and/or exercise jurisdiction under section 10(3)(c) of the Act, has completely failed to appreciate that the central issue (and jurisdictional precondition) on which the present proceedings have been founded was yet to be decided by the officials of the Enforcement Directorate. The Enforcement Directorate had not found the explanation to the Show Cause Notice dated 20.09.2010 unsatisfactory. In this view of the matter, the least that could be said was that the issue of whether the petitioner had deliberately and/or willfully refused to comply with the summons issued by the Enforcement Directorate, was still at large and remained to be decided. As the Enforcement Directorate was yet to decide on this, it was completely illegal, wholly impermissible and against all known principles of fairness and justice, for the Respondent No. 3 to assume and exercise jurisdiction under Section 10(3)(c) of the Act and revoke the petitioner's passport.

Z. 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 life. 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 inviolate-able right to self-preservation as part of Article 21.

- AA. Because if the Orders passed by Respondents are not set aside, serious and startling consequences will follow, occasioning great miscarriage of justice. In all cases where a mere show cause notice has been issued to a citizen calling upon him to explain whether the failure to response to a summons was willful or deliberate, the Authorities under the Passports Act, could even before the Authority / Agency issuing the show cause notice had adjudicated thereupon, exercised jurisdiction to revoke a citizen's passport. Such a scenario would be abhorrent to the rule of law and could never be described as "due process".
- BB. Because there has been a gross violation of principles of natural justice in the manner in which the Respondent No. 3 sought to assume jurisdiction midway to the proceedings. It is a matter of record the proceedings were commenced by a communication dated 15<sup>th</sup> October, 2010 (which the Respondent No. 3 has described as a show cause notice / this communication / show cause notice was addressed by the Assistant Passport Officer, Policy, and called upon the petitioner to furnish his explanation before the Assistant Passport Officer. Thereafter, a large number of communications were addressed to and responded by the Assistant Passport Officer, Policy. The record, therefore, clearly records and reflects that the Assistant Passport Officer, Policy, was to be the adjudicating authority. In this view of the matter,



the decision of the Respondent No. 3 to introduce himself midway through an adjudicatory process and take over the same can only be described as shocking and one which militated against all known principles of natural justice. When this was objected to, the Assistant Passport Officer and the Respondent No. 3 sought to persist with this illegality. It is respectfully submitted that the entire case put forth that the hearing was to be conducted by the passport office and that the Respondent No. 3, as the head of the passport office, could attend the hearing is completely illegal. The said explanation is contrary to the provisions of the Act and the Rules.

CC. It was pointed out at the time of arguments and in the written communications addressed that this contention was contrary to the plain words of the statute. The statute clearly prescribed that the adjudication would be before one adjudicating authority (Passport Officer) and not before a Passport Office. The Respondent No. 3 could not therefore take over the proceedings midway.

DD. Because the observation that the Show Cause Notice was issued by the Assistant Passport Officer (Policy) as a delegate is false and contrary to the Notice itself, which clearly indicates that the Assistant Passport Officer (Policy) was acting in his own right. This is further corroborated by his subsequent actions. The case of him acting as a delegate and finding that the petitioner deliberately absented himself is an afterthought.

EE. Because the complete absurdity of the impugned action will be underscored by simple illustration. It is possible that the Enforcement Directorate, which had issued the show cause notice to the petitioner and which was deliberating upon the petitioner's response thereto, could be satisfied by the explanation offered by the petitioner and accept the said explanation and not to take any action pursuant to the show cause notice issued to him. Despite this, the Respondent No. 3, in the interregnum, would



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have revoked the petitioner's passport, without even waiting for the proceedings initiated by the Enforcement Directorate to conclude.

FF. Because without prejudice to the above and the petitioner's contention that the Respondent No. 3 had no jurisdiction to exercise powers under Section 10(3)(c) of the Act, it is respectfully submitted; that at the very least the assumption of jurisdiction by the Respondent No. 3, was premature. The Respondent No. 3, at the very least, ought to have awaited the decision of the Enforcement Directorate on the show cause notice issued by them, to which the petitioner had duly responded and show cause.

GG. The manner, in which the Respondent No. 3 has proceeded, despite the Enforcement Directorate not having decided on the said show cause notice, is clearly reflective of the perversity of the actions of the Respondent No. 3.

HH. Because the Orders passed by Respondents do not even consider the aforesaid submissions, which were made, both in the replies / responses filed by the petitioner's Advocates and reiterated at the time of the personal hearing. It is respectfully submitted that the failure of the Respondents to deal with (or even properly note), in the Orders passed, the submissions made by the petitioner's Advocates, in this behalf, clearly establishes that the Order passed by Respondents have been passed with a predetermined mind.

II. Without prejudice to the above and in the alternative, it is respectfully submitted that, at the very least, this indicates total non-application of mind. That such an approach has been adopted by a statutory functionary discharging draconian powers under Section 10(3)(c) of the Act and purporting to revoke a citizen's passport, as more particularly set out below, is shocking to say the least. There is a patent irregularity in the exercise of powers is manifest from the face of the records.



- JJ. Because the Respondent No. 2 has failed to appreciate and/or deliberately ignored the fact that what the Respondent No. 3 has done is not only to illegally assume jurisdiction and powers under Section 10(3)(c) of the Act; but to act as an Adjudicating Officer under the provisions of the FEMA. Such a course of action is unknown to any civilized system of law and/or jurisprudence.
- KK. The Respondent No. 3 ought to have appreciated that his powers were circumscribed by the Act and the Respondent No. 3 could not enter upon any enquiry or render any decision on whether the refusal or the failure of the petitioner, pursuant to the summons issued by the Enforcement Directorate, was willful or deliberate. This was clearly within the domain of the Enforcement Directorate and the fact, which the Adjudicating Authority under the FEMA was seized off. A reading of the Order passed by Respondent No. 3, clearly indicates that the Respondent No. 3 has decided this issue.
- LL. Because without prejudice to the above and the primary submission that the Respondent No. 3 could not have entered upon any enquiry into whether the failure of the petitioner to appear in response to the summons issued by the Enforcement Directorate, it is respectfully submitted that in any event the finding of the Respondent No. 3 that the petitioner deliberately absented himself from appearing before the Enforcement Directorate and the related findings given in this behalf are all unsustainable and perverse. The Respondent No. 3 has firstly erroneously concluded that the petitioner wilfully and/or deliberately absented himself from appearing before the Enforcement Directorate. Whilst arriving at this finding, the Respondent No. 3 has completely ignored the overwhelming material on record, which clearly established that there was a serious risk to the petitioner's life and elevated threat perceptions insofar as the petitioner is concerned. The



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petitioner's Advocates had in the replies filed by them extensively adverted to cogent and unimpeachable material which establishes the existence of such a threat and/or threat perception. The entirety of this material has been summarily disregarded by the Respondent No. 3 and that too without affording any reasons for doing so. On this ground alone, the findings in the Order passed by Respondent No. 3 must fail and the Order passed by Respondent No. 3 is required to be set aside.

MM. Because in any event, it is respectfully submitted that the Passport Officer, exercising powers under the Act, cannot abrogate to himself the jurisdiction of deciding of whether an elevated threat perception and/or threat to life existed or not. This could only be determined by the Police Agencies. In addition to placing material on record, petitioner's Advocates had, in their communications to the Respondent No.3 / Passport Officer Assistant Passport Officer (Policy) repeatedly requested that the existence of such a threat and/or risk could be ascertained from the concerned agencies (Enforcement Directorate and/or Mumbai Police) and that therefore, these agencies be involved and/or their views sought. The Respondent No. 3 was requested to call for the records of these agencies. These requests were ignored. The factum that such requests were made has also not been stated in the Order passed by Respondent No. 3.

NN. Because the finding, in the Order passed by Respondent No. 3 that the petitioner was absenting himself in order to scuttle / hamper the investigations, is equally unsustainable. The petitioner's Advocates had in their communications to the Respondent No. 3 and during the course of the personal hearing, completely demolished any suggestion that the petitioner was seeking to scuttle and/or hamper the investigations. The record clearly demonstrated that the petitioner had, at every available opportunity, offered to fully cooperate with the Enforcement Directorate. More particularly, the petitioner had offered to submit a written response to any requisitions submitted to him by the Enforcement Directorate, answer questions put to him by the Enforcement Directorate by video link and had even agreed to appear before the officials of the Enforcement Directorate, in London. To show his *bona fides*, the petitioner had even offered to make arrangements for the travel and stay of the officials of the Enforcement Directorate to London.



- OO. Because the Order passed by Respondent No. 3 adverts to "loss of foreign exchange running into hundreds of crores". In the first instance, there was no material whatsoever on record to draw any inference of any loss of foreign exchange as admittedly investigation is still pending. The show cause notice did not make any allegations about this and the petitioner was not called upon to meet the same.
- PP. Because the finding in the Order passed by Respondent No. 3 that the reasons given by the petitioner for not presenting himself and the grounds raised in this behalf were hollow and not deterrent enough to prevent his presence, are ex facie erroneous and contrary to the record. The petitioner wishes to point out that extensive reference was made to this threat perception in the reply dated 26<sup>th</sup> November, 2010 addressed by the petitioner's Advocates. Paragraph 16 of this reply sets out in minute detail clear and cogent material to show that the elevated threat perception was real and serious and not imaginary or exaggerated. Along with the reply, the petitioner had filed a compilation of documents which reaffirmed this risk. In light thereof, the finding that the petitioner was deliberately absenting himself and the security concerns raised by him were hollow and unjustified is unsustainable. Equally unsustainable is the finding that *"no evidence has been placed on record that the security threat perception to Shri. Lalit Kumar Modi has increased since the time the first summons had been issued by the Directorate of Enforcement"*.
- QQ. Because the Orders passed by the Respondents completely ignore the arguments of the petitioner that admittedly the Enforcement Directorate was enquiring into alleged violations of the FEMA. It is an admitted position that FEMA is a statute, whose violation involves civil consequences. In FEMA there is no scope for custodial interrogation and hence the insistence that the petitioner appear before the Enforcement Directorate in Mumbai was completely unnecessary and/or misconceived. If the Enforcement Directorate had any questions which they wished to put to the petitioner and/or any information which they require from the petitioner, this could have been obtained by considering the various options suggested by the petitioner. The Enforcement Directorate had the power to issue a commission for questioning the petitioner and the petitioner had clearly indicated his willingness to appear before the



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officials of the Enforcement Directorate in London and had even offered to make arrangements for their stay and travel.

- RR. Because without prejudice to the above and in any event, it is respectfully submitted that the Order passed by Respondent No. 3 fails to take note of fact viz., that the Enforcement Directorate had not issued any show cause notice even alleging any substantive violation of the provisions of FEMA. The show cause notice issued by the Enforcement Directorate was not a substantive show cause notice alleging violation of any substantive provision of FEMA but a notice which called upon the petitioner to explain whether his failure to appear before the officials of the Enforcement Directorate in Mumbai, pursuant to a summons issued to him, was deliberate and/or willful.
- SS. Because the Order passed by Respondent No. 3, in terms, prescribes the stated basis for revoking the passport of the petitioner as "*necessary action to be taken to induce the presence of the petitioner*". That such finding is 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.
- TT. Because the Order passed by Respondent No. 3 contains a finding that the insistence of the Enforcement Directorate that the petitioner present himself before the Enforcement Directorate at Mumbai was not high handed or mala fide. It is respectfully submitted that this finding is plainly erroneous for more than one reason. Firstly, it was jurisdictionally not open for the Respondent No. 3 to have rendered any such finding. The question of whether the insistence by the Enforcement Directorate official that the petitioner attend the office of the Enforcement Directorate at Mumbai, notwithstanding the serious security concerns and the threat to his life, was a question which was to be decided by the Enforcement Directorate itself. This question was expressly open and in issue, as a part of the adjudicatory process before the adjudicatory authority under FEMA. It was wholly improper on the part of the Respondent No. 3 to have taken upon himself the role of adjudicating upon an issue, which was,



being considered by an adjudicating authority under FEMA. The jurisdiction under Section 19 (3) of the Act does not and cannot extend to adjudicating upon matters under FEMA, more so, when an adjudicatory body, constituted under FEMA, is already considering the same. In doing so, the Respondent No. 3 has patently and clearly travelled beyond his jurisdiction. Secondly, the Respondent No. 3 ought to have at the very least awaited the decision of the adjudicating authority under FEMA. By entering into the fray and adjudicating upon a matter which was in the exclusive domain of the Enforcement Directorate, the Respondent No. 3 has not only interfered with an adjudication process under FEMA but has sought to foreclose the same. What makes it even more irregular and improper is the fact that the Respondent No. 3 has done so without even inviting the Enforcement Directorate (which was a party to the lis before the Respondent No. 3) for a hearing.

- UU. Because the orders passed by the Respondents are even otherwise contrary to the facts on record and settled law.
- VV. Because the reasons adumbrated above clearly show that the impugned orders are ex facie perverse, illegal, and unconstitutional, and jurisdictional excess, and were passed in a perfunctory and mechanical manner without following the principles of natural justice and for that the impugned orders deserve to be quashed and set aside.
- 4. That the petitioner craves leave of this Hon'ble Court to add, alter or amend any of the above grounds, if so advised.
- 5. That based on the foregoing, the petitioner respectfully submits that the writs and / or reliefs as prayed for should be granted.
- 6. That the petitioner has no other adequate, alternative or equally efficacious remedy available to him and the reliefs prayed for herein if granted, will be complete.
- 7. That the petitioner has not filed any other Petition before this Hon'ble Court or in the Hon'ble Supreme Court of India or before any other High Court with regard to the subject matter of the present Petition.
- 8. That this Hon'ble Court has the jurisdiction to entertain, try and issue necessary writs, orders or directions as the appellate order has been passed by the Respondent No. 2 who has his offices within the jurisdiction



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of this Hon'ble Court and also because part of the cause of action has arisen within the jurisdiction of this Hon'ble Court.

PRAYER

In the facts and circumstances of the case it is most humbly and respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- a. That this Hon'ble Court may be pleased to Issue a Writ of certiorari or any other appropriate Writ/Order or direction in the nature of certiorari calling for the records of the proceedings relating to and leading to the impugned orders dated 31.10.2011 and 03.03.2011 and after perusing the same may be pleased to quash/ set aside the impugned order dated 31.10.2011 passed by the Respondent No. 2 and impugned order dated 03.03.2011 passed by the respondent No -3.
- b. Issue a writ of prohibition or any other appropriate writ/order or direction in the nature of prohibition thereby prohibiting Respondents their employees, agents or people working with or on behalf of the Respondents from giving effect to in any manner the orders dated 3.3.2011 and 31.10.2011 passed by the Respondent No.2 & 3.
- c. That this Hon'ble Court may be pleased to Issue and ex- parte ad interim order of stay of the impugned orders dated 31.10.2011 and 3.3.2011 and after hearing the parties confirm the same.
- d. And / Or Pass any other order / orders as your lordships may deem fit in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IS DUTY BOUND SHALL EVER PRAY.

Place: New Delhi

Dated: January , 2012

*Petitioner through Counsel*

Settled by:

Mr. Mukul Rohatgi,  
Senior Advocate

AMIT NEHRA  
ADVOCATE

C-188, Defence Colony  
New Delhi 110 024



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IN THE HIGH COURT OF DELHI AT NEW DELHI  
EXTRAORDINARY WRIT JURISDICTION  
(UNDER ARTICLES 226 OF THE CONSTITUTION)  
WRIT PETITION (CIVIL) NO. . . . . OF 2011

IN THE MATTER OF  
Lalit Kumar Modi

*Petitioner*

vs.

Chief Passport Officer and Ors.

*Respondents*

AFFIDAVIT

I, Mehmood M Abdi son of Late Shri M.N. Abdi aged about 50 years, r/o A-901, Meera Towers, Near Mega Mall, Oshiwara Andheri (W), Mumbai, at present at New Delhi do hereby solemnly affirm and state as under:

1. That I am the constituted attorney of the Petitioner in the present Writ Petition and am conversant with the facts of the case and competent to swear and affirm by way of the present affidavit.
2. That the accompanying Writ Petition under Article 226 of the Constitution of India has been prepared under my instructions, content of which are true and correct to the best of my knowledge and belief. The legal submissions made are also believed to be true and correct by me.
3. That the Annexures annexed to the Petition are true copies of their respective originals.

  
DEPONENT

VERIFICATION:

Verified at New Delhi on this . . . day of October, 2011 that the contents of paragraph 1 to 3 of the above affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therefrom.

  
DEPONENT



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IN THE HIGH COURT OF DELHI AT NEW DELHI  
EXTRAORDINARY WRIT JURISDICTION  
(UNDER ARTICLES 226 OF THE CONSTITUTION)  
C.M. NO. OF 2011

IN  
WRIT PETITION (CIVIL) NO.. OF 2011

IN THE MATTER OF  
Lalit Kumar Modi

*Petitioner*

vs.

Chief Passport Officer and Ors.

*Respondents*

Application under Article 226 of the Constitution of India read with section 151 of the Code of Civil Procedure, 1908 for exemption from filing clear copies/ certified copies of the annexures and orders filed with the Writ Petition

To,

The Hon'ble the Chief Justice and his  
Companion Justices of the Hon'ble High  
Court of Delhi at New Delhi

The humble Application of the  
Applicant above named

**MOST RESPECTFULLY SHEWETH:**

1. That the Applicant has filed the accompanying Writ Petition under Article 226 of the Constitution thereby seeking enforcement of his fundamental rights guaranteed and protected under Article 14, 19 and 21 of the Constitution of India.
2. That the Applicant craves leave of this Hon'ble Court to refer to and rely upon the contents of the accompanying Writ Petition at the time of hearing and the same may be read as part and parcel of the present Application. The contents of the same are not being repeated herein for the sake of brevity and prolixity.



3. That the present Writ Petition is being filed in haste and the Applicant would rely on certain documents which may be dim or of which uncertified copies have been filed. The Applicant is, therefore, filing the present Application seeking exemption from filing the clear, legible and certified documents with an undertaking to replace the said documents with the clear typed version thereof if called upon to do so.
4. That this Application is made bona fide and in the interest of justice.

PRAYER

WHEREFORE, premises considered, the Applicant prays that your Lordships may be pleased to

- a) exempt the Applicant from filing clear, legible and certified copies of the documents/annexures which are dim and the Applicant undertakes to replace the same within the time granted by this Hon'ble Court, and
- b) pass such further order or orders as the Hon'ble Court may deem fit to grant in the interest of justice, equity, fair play and good conscience,

and your Applicant, as in duty bound, will ever pray.

Place: New Delhi

Dated: October 31, 2011

*Applicant through Counsel*

**AMIT NEHRA**

**ADVOCATE**

C-188, Defence Colony

New Delhi 110 024



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IN THE HIGH COURT OF DELHI AT NEW DELHI  
EXTRAORDINARY WRIT JURISDICTION  
(UNDER ARTICLES 226 OF THE CONSTITUTION)  
C.M. NO. OF 2011

IN  
WRIT PETITION (CIVIL) NO. OF 2011

IN THE MATTER OF  
Lalit Kumar Modi

*Petitioner*

vs.

Chief Passport Officer and Ors.

*Respondents*

AFFIDAVIT

I, Mehmood M Abdi son of Late Shri M.N. Abdi aged about 50 years, r/o A-901, Meera Towers, Near Mega Mall, Oshiwara Andheri (W), Mumbai, at present at New Delhi do hereby solemnly affirm and state as under:

1. That I am the constituted attorney of the Petitioner in the Writ Petition and am conversant with the facts of the case and competent to swear and affirm by way of the present affidavit.
2. That the accompanying application under Section 151 of the CPC has been prepared under my instructions, content of which are true and correct to the best my knowledge and belief.

  
DEPONENT

**VERIFICATION:**

Verified at New Delhi on this      day of October, 2011 that the contents of paragraph 1 to 2 of the above affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therefrom.

  
DEPONENT



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IN THE HIGH COURT OF DELHI AT NEW DELHI  
EXTRAORDINARY WRIT JURISDICTION  
(UNDER ARTICLES 226 OF THE CONSTITUTION)  
C.M. NO. OF 2011

IN  
WRIT PETITION (CIVIL) NO. OF 2012

IN THE MATTER OF  
Lalit Kumar Modi

*Petitioner/Applicant*

vs.

Union of India and Anr.

*Respondents*

Application under Article 226 of the  
Constitution of India read with section 151 of  
the Code of Civil Procedure, 1908 for Stay

To,

The Hon'ble the Chief Justice and his  
Companion Justices of the Hon'ble High  
Court of Delhi at New Delhi

The humble Application of the  
Applicant above-named

**MOST RESPECTFULLY SHEWETH:**

1. That the Applicant has filed the accompanying Writ Petition under Article 226 of the Constitution thereby seeking enforcement of his fundamental rights guaranteed and protected under Article 14, 19 and 21 of the Constitution of India.
2. That the Applicant craves leave of this Hon'ble Court to refer to and rely upon the contents of the accompanying Writ Petition at the time of hearing and the same may be read as part and parcel of the present Application. The contents of the same are not being repeated herein for the sake of brevity and prolixity.
3. The illegal act of revocation of passport of the Petitioner by Respondents has impinged on the right to travel, which is a right guaranteed by the constitution of India and hence cannot be trampled with as matter of course.



4. That it is the settled position of law that any order that is in violation of or impinges on the fundamental right of a citizen cannot be allowed to be operate even for a day. It is submitted that the impugned order are not only are in gross violation of principals of natural justice as even the copy of the application filed by Directorate of Enforcement which formed basis of the order of revocation was not supplied to the Petitioner and the order was passed by the Respondent No. 3 without Directorate of Enforcement even once appearing and prosecuting its alleged application seeking impounding of passport but also run contra the constitutional guarantees provided by fundamental rights.
5. In absence of Directorate of Enforcement, prosecuting its application coupled with the fact that the Respondent No. 3 had only sought for impounding of the Passport, the order of Respondent No. 3 revoking the passport became an order passed suo moto. It is submitted that Section. 10 (3) of the Passport Act, 1967 clearly prohibits any order to be passed suo moto and provides that no order Section 10 cannot be passed without prior sanction of the Central Government.
6. The Order dated 3.3.2011 has been passed in purported exercise of jurisdiction and powers under Section 10(3)(c) of the Act. It is respectfully submitted that Section 10 (3), (c) of the Act has no application whatsoever to the present case. The present case does not involve anything which affects or offends "interest of the sovereignty and integrity of India"; "the security of India"; "friendly relations of India with any foreign country"; and "in the interest of general public". The assumption of jurisdiction by the Respondent was therefore, plainly illegal and the exercise of powers by the Respondent was ex-facie, without jurisdiction and the authority of law. The Impugned Order is therefore ex-facie, without jurisdiction, illegal and null and void ab initio. The same is a nullity in the eyes of law.
7. That the Petitioner could not appear in person and appeared through his authorized representative because he faced a real



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threat to his life by elements from the Underworld which is a fact substantiated by reports of Mumbai Police. The same were and are available with the investigating Officer (Enforcement Directorate) and were suppressed while filling the alleged applications to Respondent No. 3. It is the case of the Petitioner that a letter addressed by Joint Commissioner of Police, Mumbai was available with the Directorate of Enforcement at the time of filling of the applications dated 3rd October, 2010 and 15th October, 2010.

8. The Petitioner had never avoided any summons and on the contrary there have been occasions where the authorized representative of the Petitioner had visited the office of the Enforcement Directorate to collect summons and that the Petitioner has never ever refused to appear before the investigating officer but has sought an accommodation that the investigating officer may kindly exercise jurisdiction vested in it by virtue of Section 131 (1) of the Income Tax Act and issue a commission to question the Petitioner either by video conference or by personally questioning him in London, UK.
9. Each and every information / documents sought for by the investigating officer were immediately provided and in any case provided within the time prescribed by the investigating officer.
10. In any event, the complaint does not disclose any ground to substantiate allegations of willful and deliberate disobedience of summons for the Enforcement Directorate to have initiated proceedings for impounding of the passport of the Petitioner thus curtailing his constitutional rights guaranteed by Article 21.
11. The purported exercise of power under Section 10 (c) of the Passport Act, 1967 by the Respondent No. 3 is totally without jurisdiction as no case was made out by the Enforcement Directorate to show that non-appearance of the Petitioner before the investigating officer would affect the interest of the sovereignty and integrity of the country or the interest of general public.



12. The order dated 3.3.2011 came to be passed after five months of hearing without even recording that whether the Enforcement directorate still desires or requires the presence of the Petitioner for the purposes of investigation especially in view of the fact that for the last more than 1 years not even a single summon has been issued.
13. The Petitioner has a good prima facie case as the impugned orders are ex facie perverse, illegal, unconstitutional, and passed in a perfunctory and mechanical manner without following the principles of natural justice. Balance of convenience is completely in the Petitioner's favor inasmuch as the Petitioner has a constitutional right to travel and carry a passport, which he has held for so many years. Irreparable harm will be caused to the Petitioner if the interim relief as prayed for is not granted and on the other hand the Respondents will not be prejudiced in any manner if that is so done.
14. This Application is made bona fide and in interest of justice.

PRAYER

WHEREFORE, premises considered, the Applicant prays that your Lordships may be pleased to:

- a) order and direct that pending hearing and final disposal of the present writ petition, the operation and effect of impugned orders dated 03.03.2011 and 31.10.2011 be stayed;
- b) pass such further order or orders as the Hon'ble Court may deem fit to grant in the interest of justice and equity;

and your Applicant, as in duty bound, shall ever pray.

Place: New Delhi

Dated: January , 2012

*Applicant through Counsel*

**AMIT NEHRA**

ADVOCATE

C-188, Defence Colony

New Delhi 110 024



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EXTRAORDINARY WRIT JURISDICTION  
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IN THE MATTER OF  
Lalit Kumar Modi

*Petitioner*

vs.

Chief Passport Officer and Ors.

*Respondents*

AFFIDAVIT

I, Mehmood M Abdi son of Late Shri M.N. Abdi aged about 50 years, r/o A-901, Meera Towers, Near Mega Mall, Oshiwara Andheri (W), Mumbai, at present at New Delhi do hereby solemnly affirm and state as under:

1. That I am the constituted attorney of the Petitioner in the Writ Petition and am conversant with the facts of the case and competent to swear and affirm by way of the present affidavit.
2. That the accompanying application under Section 151 of the CPC seeking stay has been prepared under my instructions, content of which are true and correct to the best my knowledge and belief.

  
DEPONENT

VERIFICATION:

Verified at New Delhi on this      day of October, 2011 that the contents of paragraph 1 to 2 of the above affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therefrom.

  
DEPONENT