



GOVERNMENT OF INDIA
MINISTRY OF EXTERNAL AFFAIRS
REGIONAL PASSPORT OFFICE

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Ref. No : F7(5)10-D-4399/10-572-Pool-I

Date : 03.03.2011

O R D E R

WHEREAS Mr. Lalit Kumar Modi R/o of Anand, 41, Gandhi Gram Road, Mumbai 400 049 (hereinafter also referred to as "the Noticee") had applied for issue of passport in the year 2008 and was accordingly issued passport bearing No Z-1784222 dated 30.07.2008.

And it was reported by the Directorate of Enforcement, Mumbai vide letter No T-3/47//B/2010/AD(DKS)/5826 dated 04.10.2010 received by this Office on 05.10.2010 stating that a complaint dated 16.09.2010 u/s 16(3) of FEMA Act, 1999 has been filed against Shri Lalit Kumar Modi and a Show Cause Notice has been issued to him on 20.09.2010 for non compliance of summons issued by them on 02.08.2010 and 24.08.2010 and requested to take suitable action of revocation of passport of Shri Lalit Kumar Modi u/S. 10(3)(c) of the Passports Act, 1967 in the public interest.

Accordingly, a Show Cause Notice vide No F7(5)10-D-4399/10-572-Pool-I dated 13.10.2010 was issued u/s. 10(3)(c) with specific direction to Shri Lalit Kumar Modi to appear before the Assistant Passport Officer (Policy) along with passport bearing No Z-1784222 dated 30.07.2008 to represent his case in person within fifteen days from the date of issue of the letter. The said notice was sent to the address mentioned in the passport application i.e. Anand, 41, Gandhi Gram Road, Juhu, Mumbai 400 049.

The Directorate of Enforcement, Mumbai forwarded another letter No. T/3/47/B/2010/AD (DKS) dated 15.10.2010 informing another address available with them of Shri Lalit Kumar Modi i.e. Nirlon House, A. B. Road, Mumbai. Accordingly, 2nd show cause notice dated 15.10.2010 was issued with specific directions to Shri Lalit Kumar Modi to appear along with passport bearing No Z-1784222 dated 30.07.2008 and represent his case in person within fifteen days from the date of issue of the letter.

And the Advocates, of Shri Lalit Kumar Modi viz. M/s Wadia Ghandy & Co. vide their letter No DJM/SC/10082/8951/10 dated 26.10.2010 acknowledged the notice issued at Nirlon House, A. B. Road, Worli, Mumbai on 19.10.2010 which

was received by the security staff on duty at that address. The said Advocates further requested to provide the following information in order to file their reply.

- (a) All Information, material, communications and documents referred to and/or relied upon in the letter under reference;
- (b) Any other relevant material available with you, not referred to and/or relied upon in the letter under reference, including but not limited to the letters dated 05.10.2010 and 15.10.2010;
- (c) Grant of a reasonable time of two weeks, from the date of supply of the information, materials, communications and documents mentioned in para (i) and (ii) above, to submit a Reply.

The said Advocates of Shri Lalit Kumar Modi also submitted some preliminary response/reply to this Office's Show Cause Notice and also intimated that they will submit Vakalatnama and requested that all future communications in the matter should be addressed to them and also asked for further extension of ten days time to submit a reply and on 28.10.2010, vide letter dated DJM/SC/10082/8993/10 a Vakalatnama was filed by the said Advocates on behalf of Shri Lalit Kumar Modi.

And vide this Office letter No. F7(5)10-D-4399/10-572-Pool-I dated 01.11.2010, Shri Lalit Kumar Modi was informed in detailed regarding the contents of the communications received by the Enforcement Directorate on 04.10.2010 and 15.10.2010. The letter dated 01.11.2010 was also endorsed to the advocates M/s Wadia Ghandy & Co. They were also granted further extension of ten days to file the reply and informed that in case no reply was received within stipulated period action would be initiated against Shri Lalit Kumar Modi u/s 10(3)(c) of the Passports Act, 1967.

It is revealed that the Show Cause Notice dated 13.10.2010 sent to Shri Lalit Kumar Modi at the Juhu, Mumbai address was returned undelivered on 11.11.2010.

The advocates of Shri Lalit Kumar Modi vide their letter No DJM/SC/10082/9240/10 dated 10.11.2010 had re-iterated their request for supply and inspection of documents/ communication received from the Directorate of Enforcement and had also asked for a further extension of time for a detailed reply and also sought an appointment for personal hearing.

Considering the reply and request of the Advocates of Shri Lalit Kumar Modi and in the interest of natural justice and fairness, before initiating action u/S. 10(3)(c), this Office vide their letter 15.11.2010 communicated to the Advocates of Shri Lalit Kumar Modi that a personal hearing had been fixed on 16.11.2010 at 16.00 hrs in this Office. However, the said Advocates requested for a postponement of the personal hearing to 18.11.2010 due to being preoccupied with prior court commitments.

And accordingly, this Office deferred the personal hearing to 18.11.2010 at 16.00 hrs and informed the same to the Advocates of Shri Lalit Kumar Modi vide letter dated 16.11.2010.

And whereas the personal hearing was held on 18.11.2010 in the chamber of the Regional Passport Officer, before the Regional Passport Officer and the Assistant Passport Officer (Policy). The hearing started late i.e. at 16.30 hrs due to delay of the Advocates of Shri Lalit Kumar Modi. During the hearing, the Advocates of Shri Lalit Kumar Modi recorded their objection in the manner in which the hearing was conducted before Regional Passport Officer as the Show Cause Notice was signed by the Assistant Passport Officer (Policy) and this being a quasi-judicial hearing, it was the Assistant Passport Officer (Policy) only who should have presided and not the Regional Passport Officer.

At the time when the objection was raised by the Advocates of Shri Lalit Kumar Modi, the Assistant Passport Officer (Policy) had informed Noticee's Advocates that Shri Lalit Kumar Modi was called upon to attend the Office of the Regional Passport Office, Mumbai in person with his passport bearing No Z-1784222 dated 30.07.2008. As the Noticee, Shri Lalit Kumar Modi failed to do so; the matter was referred to the Regional Passport Officer as Head of Office. The head of the Regional Passport Office is the Regional Passport Officer and therefore he is the prime adjudicating authority in respect of the present matter although the Show Cause Notice was issued by a subordinate Officer in the course of duty delegated by the Regional Passport Officer.

It was also informed to the said advocates of the Noticee, Shri Lalit Kumar Modi that as defined in Section 2 (c) of the Passports Act, 1967, 'passport authority means an Officer or authority empowered under the rules made under the said act to issue passport or travel document'. Under Rule 3 Schedule I, the Passport Authority includes the Regional Passport Officer, Assistant Passport Officer, Public Relations Officer, Superintendent etc. Further, advocates of Shri Lalit Kumar Modi were informed that being a Head of the Office, Regional Passport Officer can delegate powers to his various subordinates in the Passport Office for carrying out various duties, i.e. in this case, issuing Show Cause Notice.

In spite of the aforesaid technical objection raised by the Advocates of Shri Lalit Kumar Modi, the hearing of the matter was conducted and the Advocates of the Noticee, Shri Lalit Kumar Modi were given a full and proper hearing which continued from 16.30 hrs to 20.30 hrs. During the course of this hearing the Advocates of Shri Lalit Kumar Modi submitted letter No. DJM/SC/10082/9460/10 dated 18.11.2010 reiterating their reservations about the hearing being held in the chamber of the Regional Passport Officer and also requested for a further hearing on the matter.

The advocates of Shri Lalit Kumar Modi were informed vide letter dated 23.11.2010 that the final date of personal hearing was fixed on 26.11.2010 between 14.30 hrs and 16.00 hrs before and in the chamber of Regional Passport Officer, Mumbai. The said Advocates were also called upon to file their written submission before or during the hearing.

During the personal hearing held on 26.11.2010, once again time was extended upto 19.25 hrs to the Advocates of Shri Lalit Kumar Modi to enable them to canvass and represent all the issues raised by them. During the said hearing, the Advocates of Shri Lalit Kumar Modi also submitted their letters No. DJM/SC/10082/9604-9605-9606/10 dated 26.11.2010 along with annexures

containing 438 pages. After hearing the Advocates for a considerable period of time, the Regional Passport Officer concluded the hearing.

In spite of granting sufficient and even additional time during the personal hearings held on 18.11.2010 and 26.11.2010, the advocates of Shri Lalit Kumar Modi asked for one more hearing to represent their case.

And whereas in view of the detailed hearing afforded to the said Advocates for Shri Lalit Kumar Modi and the voluminous submissions already tendered by them, it was felt that no further hearing was necessary.

The Advocates of Shri Lalit Kumar Modi had submitted a letter on 06.12.2010 setting out all their oral arguments in the matter over the course of the past two hearings. This Office, vide letter dated 10.12.2010 informed the Advocates of Shri Lalit Kumar Modi that two lengthy hearings had been given to them and further informed that all their replies / submissions were under examination / consideration and decision in the matter would be informed in due course.

And whereas this Office has in the light of the aforesaid considered the objections raised by the Noticee to the Show Cause Notice as under.

The advocates of the noticee has raised objections that Section.10 (3) (c) of the Passports Act, 1967 does not apply in the present case since none of the pre-conditions required for exercise of jurisdiction u/s.10 (3) (c) have been prima facie satisfied and that the proceedings are an abuse of legal process.

In this connection it may be stated that as informed to the Advocates of Shri Lalit Kumar Modi in the communication by this Office, there are various allegations of irregularities by Shri Lalit Kumar Modi in his capacity as IPL Commissioner who is alleged to have been involved in the contravention of the provisions of FEMA to the extent of hundreds of crores of rupees. Moreover there is a reasonable suspicion that Shri Lalit Kumar Modi has acquired huge amounts of money which have been parked outside India by him, also in contravention of the provisions of FEMA. Moreover, gross irregularities have been found in the conduct of the IPL tournaments. For these purposes, a thorough investigation is required on a massive scale in the public interest. Shri Lalit Kumar Modi is very well aware of the various accusations that have/are in the process of being leveled against him and is therefore no stranger to the true nature of the investigations to be conducted against him. Shri Lalit Kumar Modi has, based on preliminary investigations, acted beyond the public interest and is repeatedly making himself unavailable to the concerned authorities to aid and further the ongoing investigations on frivolous and untenable pretexts.

Therefore it cannot be said that the proceedings u/s.10 (3) (c) do not lie in the present case since none of the pre-conditions required for the exercise of jurisdiction thereunder have been prima facie satisfied. Given the serious nature of the allegations that have been made against the Noticee, and his deliberate refusal to appear before the relevant statutory authorities which are investigating into the matter, without any tenable justification, the interest of the general public would be sub served by initiation of action u/s.10 (3) (c) of the Passports Act, 1967. It therefore cannot be said that this office has acted without any jurisdiction

or beyond the scope of the mandate confirmed by the aforesaid Act nor would it be correct that the conditions laid down therein are not attracted as alleged.

It was further alleged by the advocates of the Noticee that merely on the basis of information by the Directorate of Enforcement that a Complaint dated 16.09.2010 has been filed and that a Show Cause Notice has been issued, the proceedings u/s.10 (3) (c) cannot be initiated.

The Regional Passport Office, formed under the provisions of the Passports Act, 1967 has limited powers and functions, in so much as they can act only in relation to all matters pertaining to passports and other legal travel documents. This Office is not conferred with the jurisdiction to sit in judgment on other matters and issues and cannot therefore act beyond the scope of its jurisdiction.

This Office has received official confidential communication from the Directorate of Enforcement that in view of the magnitude of the fraud and the irregularities and violations of law committed by Shri Lalit Kumar Modi, his presence for the purpose of investigation is imperative and therefore a request for revocation of the passport of Shri Lalit Kumar Modi has been made. This Authority is not concerned therefore, as to whether or not, at the end of the day, Shri Lalit Kumar Modi is successful in meeting the charges of the Directorate of Enforcement or getting the charges vacated. Suffice it to say that at the present stage that this Office has ascertained all the facts. This Office is therefore satisfied that public interest requires that Shri Lalit Kumar Modi make himself available for investigation, but Shri Lalit Kumar Modi is deliberately absenting himself from the authorities, in order to scuttle/ hamper the investigations, into a matter which is significantly important in the interest of the general public. The loss of Foreign Exchange running into hundreds of crores is a matter of vital public importance and a thorough investigation into the same is clearly warranted. Being satisfied in the basis thereof, it cannot be sustained that the action by this Office is unwarranted and there is no merit in the aforementioned contentions/objection of the Noticee.

The advocates of the noticee further raised the issue of a real and serious threat perception to the life of Shri Lalit Kumar Modi and that of his family which prevents him from returning to India to appear before the Directorate of Enforcement. They further contended that Shri Lalit Kumar Modi has never refused to appear before any statutory authority and has suggested that his interrogation take place either through video-link from London, where he currently resides, or that a team from the Directorate of Enforcement conduct the interrogation in London.

It is not difficult to make out that Shri Lalit Kumar Modi is refusing to present himself on the pretext that there is a serious deterrent to his presence in India. The said deterrent, i.e. an alleged security threat to his life and that of his family, has been admittedly subsisting for an extended period of time, from April 2009. The Mumbai Police have assured protection to Shri Lalit Kumar Modi who has from time to time availed of their protection cover. Moreover, as informed by the Advocates of Shri Lalit Kumar Modi, a posse of security agencies has been privately hired by Shri Lalit Kumar Modi for the protection of his self and his family. It is further noteworthy that this security threat, as stated above persisted even

when Shri Lalit Kumar Modi was in India. However, it did not prevent him from attending day to day functions which involved his presence in huge public gatherings, visits to public places and unrestrained travel throughout India. 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 has been issued by the Directorate of Enforcement.

The suggestions by Shri Lalit Kumar Modi for alternative procedures for his interrogation are not within the purview of this Office to consider. However, it may not be out of place to state that no right is vested in an accused to decide the time and manner and mode of his investigation. An accused is required to be interrogated in accordance with the provisions of law as may be suitable to the interrogating agency and special privileges, if any requested for by an accused cannot be acceded to and therefore it is necessary that Shri Lalit Kumar Modi present himself before the authorities within the territorial limits of India.

In this view of the matter, I find no merit in the objection raised by the advocates of the Noticee.

The Advocates for the Noticee raised a further contention that there is no merit in the communication addressed by the Directorate of Enforcement since they have not indicated or specified what violation of FEMA has been committed by Shri Lalit Kumar Modi and have not even issued a Show Cause Notice. Therefore the request of the Directorate of Enforcement to the Regional Passport Office reveals high-handedness and malafides.

The Directorate of Enforcement has stated repeatedly that they are in the preliminary stages of investigation into the colossal fraud orchestrated by Shri Lalit Kumar Modi. For the investigation to proceed further, the presence of Shri Lalit Kumar Modi is fundamental. Having satisfied myself that there is a genuine need and no justifiable reason for the Noticee absenting himself, and that the grounds raised by him are hollow and not deterrent enough to prevent his presence in India, it is therefore necessary that necessary action be taken to induce his presence. Accordingly, it is clear to this Office that the presence of Shri Lalit Kumar Modi before the Directorate of Enforcement was essential and such a request is not high-handed and malafide.

It was further alleged / claimed by the advocate of the noticee that the adjudication conducted by this Office was without jurisdiction since the Regional Passport Officer assumed the jurisdiction midway, which was improper and that The Regional Passport Office has committed a gross violation of the principles of natural justice by failing to provide the Advocates of Shri Lalit Kumar Modi with the communications exchanged between the Directorate of Enforcement and this Office by claiming that the same is confidential in nature. Additionally, the Noticee was not given a sufficient hearing to present their case and the proceedings were an exercise in formality.

At the outset it is necessary to state that this technical ground raised by the Advocates of Shri Lalit Kumar Modi is an inconsequential technicality, raised with the specific agenda to derail/ waylay the process of the revocation of the passport of Shri Lalit Kumar Modi u/S.10(3)(c). The Regional Passport Officer heads the

Passport Authority, Mumbai and it is within his duties to be able to call upon any Official from his staff to assist him in the performance of his duties under the Passports, Act, 1967. This Office is competent to issue the Show Cause Notice; accordingly, this Office has issued the Show Cause Notice. This Office is competent to hear the matter before them. The important element here is that it is not important who issued the Show Cause Notice. What is important is that the Official who hears the matter must be the Official who passes the order. The Show Cause Notice is issued as a matter of procedure. This Office has acted in consonance with the principles of natural justice and have provided Shri Lalit Kumar Modi an opportunity for reasonably presenting his case and has therefore followed the principle of "*audi alteram partem*". Shri Lalit Kumar Modi has been afforded a genuine hearing on more than one occasion. However, the concept of *audi alteram partem* is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. Therefore considering the circumstances of the present case, this Office has provided Shri Lalit Kumar Modi with ample opportunity to present his case and have patiently put up with all the actions of the Advocates for Shri Lalit Kumar Modi from the inception.


With reference to the confidentiality of the communication between the departments which was not disclosed to the Advocates of Shri Lalit Kumar Modi, it may be noted that the disclosures by the Directorate of Enforcement were conveyed to this Office in a departmental capacity on the basis of which this Office was requested to take independent proceedings u/S.10(3)(c). In any case, the contents of the communication between the departments was conveyed to the Advocates of Shri Lalit Kumar Modi. In any case, during the pendency of a high-level inquiry as the one undertaken as above, the Directorate of Enforcement is within their right to withhold information until concrete assertions can be made.

In conclusion, the subjective satisfaction that has to be seen in the present matter is only one, i.e. is there a demand which is made which makes out some public interest which necessitates the impounding/ revocation of the passport? The public interest which is inherent in the present case is (a) investigations into a multi-crore scam, (b) diversion of foreign exchange and violation of foreign exchange regulations, (c) loss of revenue (d) repeated summons issued by the Directorate of Enforcement, which have been consistently flouted. The statutory authorities investigating into the above illegal affair have decided that for the purpose of discharging their statutory functions the presence of Shri Lalit Kumar Modi is necessary. However, Shri Lalit Kumar Modi is deliberately absenting himself. The fact that he is deliberately absenting himself is borne out from the specious defense put forward by him. The bogey of a security threat is virtually non-existent by virtue of the fact that the Mumbai Police have offered him police protection in addition to the security agencies who are already at his continuous service. Additionally, this threat existed even prior to the time the summonses by the Directorate of Enforcement were issued. However that did not stop Shri Lalit Kumar Modi from travelling around the country. Therefore it is abundantly clear that Shri Lalit Kumar Modi is deliberately hampering the investigations. It is in the interest of the general public that the law of the land operates effectively and no person is allowed to subvert the legal provisions by avoiding legal processes like summons on one pretext or another. The scam in respect of the IPL has brought the sport of cricket in particular to disrepute apart from the foreign exchange losses to the nation. It is in the interest of the game of cricket and of the public in

general that the case is properly investigated for which the interrogation of Shri Lalit Kumar Modi is required.

After examination of all the aspects of the matter and submission of the Advocates of Shri Lalit Kumar Modi and requests made by the Directorate of Enforcement, and for the reasons stated aforesaid, I, Vinoy Kumar Choubey, Regional Passport Officer, therefore, do hereby pass an order to **REVOKE** the passport No. Z-1784222 dated 30.07.2008 issued by Regional Passport Office, Mumbai in favour of Shri Lalit Kumar Modi under Section 10 (3) (c) of the Passports Act, 1967 in the interests of general public.

Inform all the authorities concerned about the action taken and update the Office records accordingly. Copy of this order may be issued to Shri Lalit Kumar Modi at the known addresses and his advocates with liberty to appeal before the Appellate Authority i.e. Joint Secretary (PSP), and Chief Passport Officer, CPV Division, Ministry of External Affairs, Patiala House Annexe, Tilak Marg, New Delhi 110 001 against the order passed, if he so desires.


(VINOY KUMAR CHOUBEY)
Regional Passport Officer,
Mumbai.

To

1. Mr. Lalit Kumar Modi,
Anand, 41, Gandhi Gram Road,
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