S.B. SINHA

Former Judge, Supreme Court of India

OPINION

Querist : Sh. Lalit Kumar Modi, *Ex parte*
Through : Sh. Abhishek Singh, Advocate and
Sh. Samir Ali Khan, Advocate

1. The questions of law raised in the "Case for Opinion" by the Querist are as under:

> "(i) Whether Section 10(3)(c) of the Passport Act, 1967 (hereinafter called as 1967 Act), so far as it provides for revocation of passport of a citizen of India who has left the country in accordance with Section 3 of the 1967 Act is *ultra vires* Article 21, 14 and 19 of the Constitution of India?
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> (ii) Whether the Power of revocation as provided in Section 10(3)(c) of the 1967 Act is inconsistent with and can not be reconciled with the observation of the Court as contained in Para 38 of the judgment in case of Maneka Gandhi?
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> (iii) Whether all observations in the Maneka Gandhi's case (1978) 1 SCC 248 relating to revocation of Passport are obiter and any finding given in the judgment relating to revocation of passport is inconsistent and cannot be reconciled with the Majority view recorded in para 38 of the judgment where court had observed that impounding of passport for an indefinite length of time would clearly constitute an unreasonable restriction and further that in future also whenever passport of any person is impounded under Section 10(3)(c) the impounding would be for a specified period of time which is not unduly long?
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> IN THE ALTERNATIVE
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> Whether the order passed by the RPO and CPO are contrary to the purpose of Act and also violate the rights of LKM provide under Articles 14 and 21 of the Constitution of India and therefore unsustainable?"

2. The factual matrix involved in the matter lies in a very narrow compass.

3. The Querist was appointed as a Commissioner of IPL by the BCCI.

4. As he faced threats on his life from some quarters some time in October 2009, he was provided with the adequate police protection by the Mumbai Police.

Delhi : Flat No.205, 2ND Floor, Aradhana Apartments, Aradhana Enclave, R.K.Puram, Sector-13, New Delhi-110066,
Tel. No.011-24100350, 011-23320050. 011-41020050 Email: sinha1944@gmail.com
Ranchi : 2, Burdwan Compound, Ranchi-834001, Ph: 0651-2562034

5. He left India in 2010 and has since been living at London.

6. The Directorate of Enforcement ("**DoE**"), Mumbai initiated a proceeding against the Querist in terms of the provisions of the Foreign Exchange Management Act, 1999 (the "**1999 Act**").

7. On or about 2 August 2010, a summons was issued to the Querist under Section 37 of the 1999 Act asking him to produce certain documents and appear in person on 10 August 2010.

8. The Querist vide a letter issued by his General Counsel and Constituted Attorney dated 8 August 2010 sought exemption from personal appearance due to security concerns stating that in that view of the matter only he was stationed outside the country.

9. The Appropriate Authority under the 1999 Act supposedly being not convinced with the said explanation issued another communication on 13 August 2010, whereby the Querist was required to provide evidence as regards threat to his life and the details, if any, of the complaints he had made to the Governmental authorities in that behalf.

The Querist was also asked to supply names of persons who had advised him to stay outside the country.

10. The Querist by reason of a communication dated 23 August 2010 intimated to the said authority that he had received an email from an unknown person on 14 October 2009 threatening him with dire consequences, which was intercepted by the Mumbai police, and the Querist perceived the same to be a threat from the underworld to liquidate him.

11. Inter alia, on the premise that the threat of assassination was made as far as back on 14 October 2009 whereafter also the Querist was seen in various public and private functions, the DOE opined that the reasons for his non-appearance before the said authority, was a ruse, which was allegedly resorted to avoid the process of law.

A fresh summons was issued on 24 August 2010.

The Querist did not appear before the said authority and once again assigned the same reasons for his non-appearance by way of a letter dated 7 September 2010 through his General Counsel and Constituted Attorney.

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12. It appears that at a later stage the Querist had also agreed to get himself examined through video conferencing and furthermore agreed to bear the requisite costs therefor.

13. Two different actions were initiated by the said authority against the Querist viz:

(i) A complaint petition under Section 16(3) of 1999 Act filed on 16 September 2009 was filed; and

(ii) A communication was issued to Assistant, Passport Officer ("**APO**") on 4 October 2010 requesting the later to take action in public interest for revocation of the passport of the Querist under Section 10(3)(c) of the Passports Act, 1967 (the "**Act**").

14. In the first proceeding, a summons was again issued to the Querist asking him to appear in person with his passport.

15. The APO issued a show cause notice on or about 13 October 2010 why a proceeding under Section 10(3)(c) of the Act should not be initiated against him to which two interim replies were filed by the Querist *inter alia* contending that he had fully cooperated with the DOE and provided all the documents which were asked for and 'he had not been avoiding to appear before the said authority willfully and furthermore was amenable to his examination being carried out via video link and / or Commission or any other method as envisaged under Section 131 of the Income Tax Act, 1961.'

16. By a communication dated 1 November 2010, it was, *inter alia*, stated by the APO:

> "(i) The DOE investigation had revealed that the petitioner as the Chairman of the Governing Council of the IPL of the Board of Control for Cricket in India (in short BCCI), had committed gross irregularities in the conduct of the IPL tournaments and in the award of contracts by the BCCI to various parties in India and abroad.
>
> (ii) The fraudulent activities of the petitioner, which were in violation of FEMA had led to the siphoning of funds to the extent of hundreds of crores of rupees; which apparently he was suspected to have parked outside India.
>
> (iii) The petitioner, despite, summons issued by the DOE, on 2.8.2010 and 24.8.2010, had not appeared before the concerned officer.

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

(v) A light blue alert notice no.01/2010 had been issued against the petitioner by the Directorate of Revenue Intelligence, New Delhi (in short DRI), on 1.10.2010.

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

(vii) A reference was also made to the show cause notice dated 20.9.2010 issued in the complaint dated 16.9.2010 under Section 16(3) of the FEMA."

It was concluded that 10 days' additional time was being granted to the Querist to enable him to file a reply in the interest of natural justice and fairness before initiating action under Section 10(3)(c) of the Act.

Certain documents and clarifications were again sought by the Querist from the APO in terms of two letters issued by his Solicitor on 10 November 2010 and 11 November 2010.

17. The matter was heard on 18 November 2010 and 26 November 2010 by the Regional Passport Officer ("**RPO**").

A written submission was also filed on behalf of the Querist.

18. The RPO passed an order on 3 March 2011 *inter alia* opining:

> "Therefore, it is abundantly clear that Sh. 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

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properly investigated for which the interrogation of Sh. Lalit Kumar Modi is required.

After examination of all the aspects of the matter and submission of the Advocates of Sh. 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.2-1784222 dated 30.7.2008 issued by Regional Passport Office, Mumbai in favour of Sh. Lalit Kumar Modi under Section 10(3)(c) of the Passports Act, 1967 in the interests of general public."

19. An appeal thereagainst was preferred by the Querist before the Chief Passport Officer ("**CPO**") and by an order dated 31 October 2011, the said appeal was dismissed, stating:

"(v) That, in view of the position explained above, it is established beyond doubt that this is a matter which falls under Section 10(3)(c) of the Passports Act, 1967.

(vi) The threat to personal safety perceived by Sh. Modi was adequately considered by the authorities concerned. It is noted that the claimed security threat persisted even when Sh. Modi was in India and it did not prevent him from attending day to day functions which involved his presence in huge public gatherings and travel all over India. The police authorities have all along offered protection to Sh. 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 Governments, 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.

(vii) That the alternative procedure for his examination through video conferencing, questionnaire, 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

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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.

(viii) 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 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."

20. Aggrieved by and dissatisfied with the said orders of the RPO and CPO, the Querist filed a writ petition in the High Court of Delhi at New Delhi, which was marked as WP (C) No.376 of 2012.

21. By a judgment and order dated 16 January 2013, the said writ petition has been dismissed.

22. An intra court appeal has been filed by the Querist, which is pending consideration before a Division Bench of the High Court.

23. In the aforementioned factual context, the questions posed for my opinion will have to be answered.

24. The Act was enacted in the light of the decision of the Supreme Court of India in the case of Satwant Singh Sawhney (AIR 1967 SC 1836), wherein *inter alia* Hidaytullah, J in his minority opinion stated that in terms of Passport Act, 1920, passport was not necessary for going outside India, in the following terms:

"32. .....Whether the right to travel is part of personal liberty or not within the meaning of Article 21 of the Constitution, such an arbitrary prevention of a person from travelling abroad will certainly affect him prejudicially. A person may like to go abroad for many reasons. He may like to see the world, to study abroad, to undergo medical treatment that is not available in our country, to collaborate in scientific research, to develop his mental horizon in different fields and such others. An executive arbitrariness can prevent one from doing so and permit another to travel merely for pleasure.

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> While in the case of enacted law one knows where he stands, in the case of unchannelled arbitrary discretion, discrimination is writ large on the face of it. Such a discretion patently violates the doctrine of equality, for the difference in the treatment of persons rests solely on the arbitrary selection of the executive. The argument that the said discretionary power of the State is a political or a diplomatic one does not make it anytheless an executive power. We, therefore, hold that the order refusing to issue the passport to the petitioner offends Article 14 of the Constitution."

The Act was enacted, *inter alia*, to meet the said exigency.

25. The preamble of the Act suggests that the same was enacted to provide for the issue of passports and travel documents, to regulate the departure from India of the citizen of India and others and for matters incidental or ancillary thereto.

26. The term 'passport' has been defined in Section 2(b) to mean a passport issued or deemed to have been issued under the Act.

Section 3 prohibits a person to depart from or attempt to depart from India unless he holds in this behalf a valid passport or a travel document.

Sections 5 to 9 provide for the mode and manner in which the applications for grant of passports are to be filed, the issuance or refusal thereof, duration, extension, conditions thereof and forms of passport etc.

27. Section 10 provides for variation, impounding and revocation of passport and travel documents; Clauses (c) and (h) of Sub-Section 3 of Section 10, which are relevant for our purpose, read as under:

> "10. Variation, impounding and revocation of passports and travel documents:
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> (3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,-
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> (c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;
>
> (h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has

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> been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made."

28. Perusal of the judgment of the Learned Single Judge of the Delhi High Court would show that no contention was raised before it that Section 10(3)(c) of the Act is *ultra vires* Articles 21, 14 and 19, as is being sought to be done now.

In the event, the Querist intends to challenge the constitutionality of the said provision, an appropriate application is required to be filed for grant of leave of the Court so as to enable him to urge the said questions by way of additional grounds.

29. In BV Rajwansi v. State of UP and others (1988) 2 SCC 415, such additional grounds were permitted to be raised and the provisions of Section 6(4) UP Industrial Disputes Act, 1947 was held to be *ultra vires* Article 14 of the Constitution of India, by the Apex Court, on the ground that it conferred unguided and unrestricted power on the State Government.

30. It is true that no guidelines have been framed nor has any rule been framed with regard to the mode and manner in which jurisdiction is to be exercised by the RPO and CPO on the question in which case a passport is merely to be impounded and in which it is to be revoked.

31. In the instant case, the CPO has opined that revocation has to be resorted to as the passport of the Querist was not in the temporary custody of the Authorities. The said opinioned of the CPO is not legally correct.

32. My attention has been drawn to the observations made by the US Supreme Court in Yick WoVs Hopkins US 356 (1886), wherein it has been held:

> "11. ..... Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution. This principle of interpretation has been sanctioned by this court in *Henderson* v. *Mayor of New York*, 92 U. S. 259; *ChyLuny* v. *Delaware*, 103 U.S. 370; and *Soon Hing* v. *Crowley*, 113 U. S. 703; S. C. 5 Sup. Ct. Rep. 730."

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33. My attention has further been drawn to Shri Ram Krishna Dalmia v. Justice S.R. Tendolkar AIR 1958 SC 538, wherein the validity of the concerned statute has been considered applying the test whether the classification contained therein was reasonable being based on some differentia which distinguished such persons or things put together from those left out from the group and whether such differentia has reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only in relation to class of person or things.

34. The third category / classification so as to enable a court to consider the question of validity of a statute in terms of Article 14 of the Constitution of India was stated to be as under:

> "(*iii*) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the court will strike down both the law as well as the executive action taken under such law, as it did in *State of West Bengal* v. *Anwar Ali Sarkar* [(1952) SCR 284] *Dwarka Prasad Laxmi Narain* v. *State of Uttar Pradesh* [(1954) SCR 803] and *Dhirendra Krishna Mandal* v. *Superintendent and Remembrancer of Legal Affairs* [(1955) 1 SCR 224]"

35. In Ombalika Das Vs. Hulisa Shaw, (2002) 4 SCC 539, however, the constitutionality of Section 29B of West Bengal Premises Tenancy Act vis-à-vis Section 13 (i)(ff) thereof was upheld despite the fact that the word 'relation' only has been mentioned therein, stating:

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> "11. It is well settled that classification for the purpose of legislation cannot be done with mathematical precision. The Legislature enjoys considerable latitude while exercising its wisdom taking into consideration myriad circumstances, enriched by its experience and strengthened by people's will. So long as the classification can withstand the test of Article 14 of Constitution, it cannot be questioned why one subject was included and the other left out and why one was given more benefit than the other."

36. In my opinion, the said decisions have no direct bearing to the point at issue as the Apex Court therein were dealing with different types of statutes.

37. It may furthermore be noticed that in Lala Hari Chand Sarda vs Mizo District Council & Anr. reported in AIR 1967 SC 829 at page 832 it has been held as under:

> "11. ....The Sixth Schedule to the Constitution lays down the policy for the administration of the tribal areas in the State of Assam. Paragraph 10 is an integral part of this Schedule. This paragraph is not violative of Arts. 14 and 19(1)(g) nor is it so contended. Section 3 of the Regulation is in strict conformity with this paragraph. If paragraph 10 of the Sixth Schedule cannot be regarded as violative of any provision in the Constitution, it is impossible to say that s. 3 of the Regulation which is in strict conformity with paragraph 10 is violative of Arts. 14 and 19(1)(g) of the Constitution. This conclusion is sufficient to dispose of the argument based on Arts. 14 and 19(1)(g)."

38. It is true that any arbitrary power granted on a statutory authority would attract the wrath of Article 14 of the Constitution of India ,which in Nagraj M v. Union of India (2006) 8 SCC 212 has been held to be a basic feature of the Constitution of India.

39. In a case of this nature, however, I am of the considered opinion that such a plea on the part of the Querist may not be accepted by the High Court *inter alia* having regard to the principle that ordinarily, a power to 'grant' would include power to 'revoke'.

40. The passport authorities have not only a power to revoke a passport but also a power to impound and / or suspend the same.

41. In the situational context, as would be discussed in details a little later, such a wide power conferred on the passport authorities may be held to be justified.

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42. The authorities under the Act, moreover, have the power to regulate the departure of the citizens of India from the country. They have wide powers in this behalf.

43. The purpose and object for which the Act was enacted, the passport authorities could have been given such discretionary powers, which would come within the purview of 'reasonable restrictions' as envisaged under Clause 2 of Article 19 of the Constitution of India.

44. In *K. Ramanathan* v. *State of Tamilnadu* reported in (1985) 2 SCC 116, the law was stated as under:

> "18. The word "regulation" cannot have any rigid or inflexible meaning as to exclude "prohibition". The word "regulate" is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning, and is very comprehensive in scope. There is a diversity of opinion as to its meaning and its application to a particular state of facts, some courts giving to the term a somewhat restricted, and others giving to it a liberal, construction. The different shades of meaning are brought out in Corpus Juris Secundum, Vol. 76 at p. 611:
>
> > 'Regulate' is variously defined as meaning to adjust; to adjust, order, or govern by rule, method, or established mode; to adjust or control by rule, method, or established mode, or governing principles or laws; to govern; to govern by rule; to govern by, or subject to, certain rules or restrictions; to govern or direct according to rule; to control, govern, or direct by rule or regulations. 'Regulate' is also defined as meaning to direct; to direct by rule or restriction; to direct or manage according to certain standards, laws, or rules; to rule; to conduct; to fix or establish; to restrain; to restrict.
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> See also: Webster's Third New International Dictionary, Vol. II, p. 1913 and Shorter Oxford Dictionary, Vol. II, 3rd Edn., p. 1784."

45. In UP Power Corporation Ltd. vs. National Thermal Power Corporation Ltd. & Ors. (2009) 6 SCC 235, the Apex Court held as under:

> "47. There cannot be any doubt whatsoever that the word 'regulation' in some quarters is considered to be unruly horse. In Bank of New South Wales v. Commonwealth [(1948) 76 CLR 1] Dixon, J. observed that the word "control" is an unfortunate word of such wide and ambiguous import that it has been taken to mean something weaker than "restraint", something equivalent to "regulation". But, indisputably, the regulatory provisions are required to be applied having regard

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to the nature, textual context and situational context of each statute and case concerned.

48. The power to regulate may include the power to grant or refuse to grant the licence or to require taking out a licence and may also include the power to tax or exempt from taxation. It implies a power to prescribe and enforce all such proper and reasonable rules and regulations as may be deemed necessary to conduct the business in a proper and orderly 31 manner. It also includes the authority to prescribe the reasonable rules, regulations or conditions subject to which the business may be permitted or may be conducted. [See Deepak Theatre v. State of Punjab 1992 Supp (1) SCC 684, SCC at p.68, para 3].

49. Even otherwise the power of regulation conferred upon an authority with the obligations and functions that go with it and are incidental to it are not spent or exhausted with the grant of permission. [See State of U.P. v. Maharaja Dharmender Prasad Singh (1989) 2 SCC 505 at SCC p.522, para 52]. In that sense, the power of Central Commission stricto sensu is not a judicial power."

46. The question relating to constitutionality of an Act enacted by the Parliament would depend upon the text and context thereof.

47. Although there are, as noticed heretobefore, judgments to show that any arbitrary power conferred on a statutory authority may itself be held to be un-justified, the possibility of arbitrariness by an authority, upon whom the discretionary powers have been conferred, has been held to be constitutional in the following cases:

(i) In Re: Kerala Education Bill AIR 1957 SC 1958
(ii) PUCL vs. Union of India (2004) 9 SCC 580 at page 598

48. The question whether a statute shall be declared unconstitutional or not would, thus, depend upon the text and context thereof.

49. The superior courts in exercise of their power of judicial review of legislation would start with a presumption that the statute in question is valid, unless it is found to be wholly irrational and arbitrary. It is also not a case, where the statute is vague or uncertain like the case of Hamdard Dawakhana vs. Union of India reported in AIR 1960 SC 554.

50. The courts would also take into consideration the question with regard to purpose and object, the Act seeks to achieve.

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51. It is a well settled principle of law that a statute has to be read as a whole, chapter by chapter, section by section and then word by word.

52. In *Chairman, Indore Vikas Pradhikaran* v. *Pure Industrial Coke and Chemicals. Ltd. and Ors.* reported in (2007) 8 SCC 705, the Supreme Court of India noticed the decision of the *Reserve Bank of India* (supra), in the following terms:

> "85. In Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. [1987] 2 SCR 1 this Court stated:
>
> > ...If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act".

53. In *Head Master, Lawrence School Lovedale* v. *Jayanthi Raghu and Anr.* reported in AIR 2012 SC 1571, the Apex Court while following *Reserve Bank* (supra) held as under:

> "20. Having so observed, we are only required to analyse what the words "if confirmed" in their contextual use would convey. The Division Bench of the High Court has associated the said words with the entitlement of the age of superannuation. In our considered opinion, the interpretation placed by the High Court is unacceptable. The words have to be understood in the context they are used. Rule 4.9 has to be read as a whole to understand the purport and what the Rule conveys and means."

54. In *Deewan Singh and Ors.* v. *Rajendra Pd. Ardevi and Ors.* reported in AIR 2007 SC 767, the law has been laid down in the following terms:

> "27. Although golden rule of interpretation, viz., literal rule should be given effect to, if it is to be held that the Devasthan Commissioner appointed under Section 7 of the Act would be an agency of the State, the same would lead to an absurdity or anomaly. It is a well-known principle of law that where literal interpretation shall give rise to an anomaly or absurdity, the same should be avoided. [See Ashok Lanka v. Rishi Dixit AIR 2005 SC 2821 and M.P. Gopalakrishnan Nair v. State of Kerala AIR 2005 SC 2053] It is also well-settled that the entire statute must be first read as a whole

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Ranchi : 2, Burdwan Compound, Ranchi-834001, Ph: 0651-2562034

> then section by section, clause by clause, phrase by phrase and word by word. [See Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and Ors. [1987] 2 SCR 1]. The relevant provisions of the statute must, thus, be read harmoniously. [See Bombay Dyeing (supra) and Secretary, Department of Excise & Commercial Taxes and Ors. v. Sun Bright Marketing (P) Ltd., Chhattisgarh and Anr. (2004) 3 SCC 185. It would, therefore, not be possible to give literal interpretation to Section 77 of the Act".

55. In *Zameer Ahmed Latifur Rehman Sheikh* v. *State of Maharashtra and Ors.* and *Abrar Ahmed Gulam Ahmed* v. *State of Maharashtra*, AIR 2010 SC 2633, the law was stated in the following terms:

> "59. Before we proceed to analyze the provisions of the two statutes in order to ascertain whether they are repugnant or not, we may note that it is well settled that no provision or word in a statute is to be read in isolation. In fact, the statute has to be read as a whole and in its entirety."

56. Passports are issued so as to enable a citizen of India to travel abroad and return to India. Passports may be issued also for a temporary period.

57. An application for grant of passport may be refused on any of the grounds specified in Section 6 of the Act including the one that a warrant or summons or warrant of arrest of the holder of passport has been issued by a Court under any law for the time being in force and that the issue of a passport will not be in the public interest.

58. Even in a case where a passport is issued for a shorter period than the period prescribed in Section 7 of the Act, it may or may not be extended; of course therefor, reasons are required to be recorded in writing.

59. Issuance of a passport may also be conditional.

60. Sub-section 1 of Section 10 of the Act lays down the contingencies under which a holder of the passport may be asked to deliver up his passport.

61. *Inter alia*, in the aforementioned context, constitutionality of sub-section 3 of Section 10 would be considered by a court of law.

62. The court shall also consider the consequences, if the provision to impound a passport or revoke the same is declared unconstitutional. It may be held that the Parliament did not want to create a vacuum where under no circumstances, a passport can be revoked.

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63. It must also be borne in mind that if Section 10(3) is declared unconstitutional, a passport can never be impounded or revoked, which will give rise to a piquant situation, which evidently was not contemplated by Parliament and also be against the interest of the country besides being not in the interest of the general public.

In the aforementioned situation, it is possible for a court of law to read down Section 10(3) of the Act.

For the aforementioned purpose; (a) Section 10 (3) of the Act would require strict construction, (b) doctrine of proportionality will have to be applied; and (c) a case has to be made out that a harsher order is required to be passed.

64. While saying so, I am not oblivious of the fact that in certain decisions the Apex Court opined that a statute should not be read down to uphold the constitutional validity of a Parliamentary Act.

65. But there are decisions, where the Supreme Court of India applied the principle of reading down a statute to uphold its validity.

66. Recently in Namit Sharma vs. Union of India reported in (2013) 1 SCC 745, it has been held:

> "56. Having noticed the presence of the element of discrimination and arbitrariness in the provisions of Section 12(6) of the Act, we now have to examine whether this Court should declare this provision ultra vires the Constitution or read it down to give it its possible effect, despite the drawbacks noted above. We have already noticed that the Court will normally adopt an approach which is tilted in favour of constitutionality and would prefer reading down the provision, if necessary, by adding some words rather than declaring it unconstitutional. Thus, we would prefer to interpret the provisions of Section 12(6) as applicable post appointment rather than pre-appointment of the Chief Information Commissioner and Information Commissioners. In other words, these disqualifications will only come into play once a person is appointed as Chief Information Commissioner/ Information Commissioner at any level and he will cease to hold any office of profit or carry any business or pursue any profession that he did prior to such appointment. It is thus implicit in this provision that a person cannot hold any of the posts specified in sub-section (6) of Section 12 simultaneous to his appointment as Chief Information Commissioner or Information Commissioner. In fact, cessation of his previous appointment, business or profession is a condition precedent to

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the commencement of his appointment as Chief Information Commissioner or Information Commissioner.

61. It is a settled principle of law, as stated earlier, that courts would generally adopt an interpretation which is favourable to and tilts towards the constitutionality of a statute, with the aid of the principles like 'reading into' and/or 'reading down' the relevant provisions, as opposed to declaring a provision unconstitutional. The courts can also bridge the gaps that have been left by the legislature inadvertently. We are of the considered view that both these principles have to be applied while interpreting section 12(5). It is the application of these principles that would render the provision constitutional and not opposed to the doctrine of equality. Rather the application of the provision would become more effective."

In the said decision, it has furthermore been held :

"48. In order to examine the constitutionality of these provisions, let us state the parameters which would finally help the Court in determining such questions.

48.1 Whether the law under challenge lacks legislative competence?

48.2 Whether it violates any Article of Part III of the Constitution, particularly, Article 14?

48.3 Whether the prescribed criteria and classification resulting therefrom is discriminatory, arbitrary and has no nexus to the object of the Act?

48.4 Lastly, whether it a legislative exercise of power which is not in consonance with the constitutional guarantees and does not provide adequate guidance to make the law just, fair and reasonable?

50. To examine constitutionality of a statute in its correct perspective, we have to bear in mind certain fundamental principles as afore-recorded. There is presumption of constitutionality in favour of legislation. The Legislature has the power to carve out a classification which is based upon intelligible differentia and has rational nexus to the object of the Act. The burden to prove that the enacted law offends any of the Articles under Part III of the Constitution is on the one who questions the constitutionality and shows that despite such

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presumption in favour of the legislation, it is unfair, unjust and unreasonable.

51. Another most significant canon of determination of constitutionality is that the courts would be reluctant to declare a law invalid or ultra vires on account of unconstitutionality. The courts would accept an interpretation which would be in favour of the constitutionality, than an approach which would render the law unconstitutional. Declaring the law unconstitutional is one of the last resorts taken by the courts. The courts would preferably put into service the principle of 'reading down' or 'reading into' the provision to make it effective, workable and ensure the attainment of the object of the Act. These are the principles which clearly emerge from the consistent view taken by this court in its various pronouncements."

(See also Kesar Enterprises Ltd. v. State of U.P (2011) 13 SCC 733)

67. Some of the reasons why the Act may not be held to be *ultra vires* Article 14 of the Constitution of India by the Hon'ble High Court are as under:

(i) Validity of an Act has to be judged, regard being had to the fact whether it would be practical to do so.

(ii) The Union of India cannot be pushed to an irretrievable situation where it cannot take an action although the holder of the passport has abused his position and / or has acted against the interest of the country.

(iii) The Passport Authority must assign reasons in support of its order, which would enable the Appellate Authority as also the superior Courts to consider the correctness / legality thereof

(iv) The satisfaction to be arrived at by the Passport Authority and consequently by the Appellate Authority are to be based on objective criteria and not subjective ones. Such an order is not to be passed on whims and caprice of the authorities under the Act.

(v) An order under Section 10(3)(c) of the Act has to be passed upon taking into considerations that right to travel is a fundamental right as has been held by the Apex Court in Mrs. Maneka Gandhi vs. UOI (1978) 1 SCC 248 and Sri-la-Sri Arunagirinathar Sri Gnanananda Desika Paramachariya Swamigal, Madurai vs. State of Tamil Nadu and Anr. AIR 1989 Madras 3.

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(vi) In a given case, even a terrorist who has obtained a passport can misuse the same and, thus, it may became necessary to confer a power of impounding or revocation thereof on the authorities under the Act.

(vii) If Section 10(3) is construed reasonably, the same would uphold the interest of the concerned person in view of the following:

(a) The decision would be based on objective criteria;
(b) Principles of natural justice are required to be fully complied with, which in a given situation would include a right of personal hearing;
(c) The ingredients of the statute are required to be scrupulously complied with;
(d) The holder of a passport is also required to be heard on the issuewhether the passport should be impounded or revoked.
(e) The Passport authority must determine the issue only on the basis of the materials which are brought on record including the foundational facts to support such a decision;
(f) The decision of the RPO is subject to appeal and that of the decision of the CPO would be subject to the Judicial Review, which fully protects the interest of the holder of the passport.

68. Section 10(3)(c) of the Act, however, must be construed reasonably.

Whereas sub-section 1 of section 10 of the Act uses the word 'having regard to' the provisions of sub-section 1 of Section 6 or the notification issued under Section 19 meaning thereby the conditions precedent mentioned therein, the scope of sub-section 3 of Section 10 prima facie appears to be wider.

69. The jurisdiction of the Passport Officer, however, are circumscribed by several factors including:

(i) The authority has a discretion in the matter. Such discretion cannot be exercised on his whims or caprice and must be based on objective criteria;

(ii) The terms 'deems it necessary so to do' are of great significance; particularly having regard to the factors enumerated therein namely sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interest of general public;

(iii) In Maneka Gandhi (supra), the Apex Court while considering the question of validity of Section 10(3) of the Act, stated as under:

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"16. ..... The discretion vested in the Passport Authority, and particularly in the Central Government, is thus unfettered and unrestricted and this is plainly in violation of Article 14. Now, the law is well settled that when a statute vests unguided and unrestricted power in an authority to affect the rights of a person without laying down any policy or principle which is to guide the authority in exercise of this power, it would be affected by the vice of discrimination since it would leave it open to the Authority to discriminate between persons and things similarly situated. But here it is difficult to say that the discretion conferred on the Passport Authority is arbitrary or unfettered. There are four grounds set out in section 10(3) (c) which would justify the making of an order impounding a passport. We are concerned only with the last ground denoted by the words "in the interests of the general public", for that is the ground which is attacked as vague and indefinite. We fail to see how this ground can, by any stretch of argument, be characterised as vague or undefined. The words "in the interests of the general public" have a clearly well defined meaning and the courts have often been called upon to decide whether a particular action is "in the interests of the general public" or in "public interest" and no difficulty has been experienced by the Courts in carrying out this exercise:....."

It was furthermore held:

"35. But that does not mean that an order made under section 10 (3) (c) may not violate Article 19(1) (a) or (g). While discussing the constitutional validity of the impugned order impounding the passport of the petitioner, we shall have occasion to point out that even where a statutory provision empowering an authority to take action is constitutionally valid, action taken under it may offend a fundamental right and in that event, though the statutory provision is valid, the action may be void. Therefore, even though section 10(3) (c) is valid, the question would always remain whether an order made under it is invalid as contravening a fundamental right. The direct and inevitable effect of an order impounding a passport may, in a given case, be to abridge or take away freedom of speech and expression or the right to carry on a profession and

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where such is the case, the order would be invalid, unless saved by Article 19(2) or Article 19(6).

The first three categories are the same as those in Article 19 (2) and each of them, though separately mentioned, is a species within the broad genus of "interests of the general public". The expression "interests of the, general public" is a wide expression which covers within its broad sweep all kinds of interests of the general public including interests of the sovereignty and integrity of India, security of India and friendly relations of India with foreign States. Therefore, when an order is made under section 10(3) (c), which is in conformity with the terms of that provision, it would be in the interests of the general public and even if it restricts freedom to carry on a profession, it would be protected by Article 19(6). But if an order made under section 10(3) (c) restricts freedom of speech and expression, it would not be enough that it is made in the interests of the general public. It must fall within the terms of Article 19(2) in order to earn the protection of that Article. If it is made in the interests of the, sovereignty and integrity of India or, in the interests of the security of India or in the interests of friendly relations of. India with any foreign country, it would satisfy the requirement of Article 19(2). But if it is made for any other interests of the, general public save the interests of "public order, decency or morality", it would not enjoy the protection of Article 19(2). There can be no doubt that the interests of public order, decency or morality are "interests of the general public" and they would be covered by section 10(3) (c), but the expression "interests of the general public" is, as already pointed out, a much wider expression and, therefore, in order that an order made under section 10(3) (c) restricting freedom of speech and expression, may not fall foul of Article 19(1) (a), it is necessary that in relation to such order,, the expression "interests of the general public" in section 10(3) (c) must be read down so as to be limited to interests of public order, decency or morality. If an order made under section 10(3) (c) restricts freedom of speech and expression, it must be made not in the interests of the general public in a wider sense, but in the interests of public order, decency or morality, apart from the other three categories, namely, interests of the sovereignty and integrity of India, the security of India and friendly relations of India with any foreign country.

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Ranchi : 2, Burdwan Compound, Ranchi-834001, Ph: 0651-2562034

> If the order cannot be shown to have been made in the interests of public order, decency or morality, it would not only contravene Article 19 (1) (a), but would also be outside the authority conferred by section 10(3) (c)."

(iv) Right to travel abroad is also a fundamental right under Article 21 of the Constitution of India.

(v) Such a valuable right can be curtailed only when the passport authority on proper application of mind arrives at a decision that revocation of passport only is imperative in the interest of general public as has been explained in Maneka Gandhi (supra) and not an order impounding the same.

(vi) Such determination of the issue must be based on objective criteria wherefor even the jurisdictional facts are required to be established.

(vii) In a given case, the Judicial Review Court may also enter into the question of fact.

(viii) An order passed by a passport authority may be set aside if the same is: (a) malafide (b) it is based on no evidence or (c) it is arbitrary and is otherwise wholly disproportionate.

(ix) In determining the issue, the Passport Authorities act as quasi judicial authorities as has been held by the Supreme Court in Namit Sharma (supra), stating:

> "73. In the case of Indian National Congress (I) v. Institute of Social Welfare & Ors. [(2002) 5 SCC 685], the Court explained that where there are two or more parties contesting each other's claim and the statutory authority is required to adjudicate the rival claims between the parties, such a statutory authority can be held to be quasi-judicial and the decision rendered by it as a quasi judicial order. Thus, where there is a lis between the two contesting parties and the statutory authority is required to decide such a dispute, in absence of any other attributes of a quasi-judicial authority, such a statutory authority is a quasi judicial authority. The legal principles which emerge from the various judgments laying down when an act of a statutory authority would be a quasi-judicial act are that where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the

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subject (c) although there is no lis or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.

74. In other words, an authority is described as quasi judicial when it has some attributes or trappings of judicial provisions but not all. In the matter before us, there is a lis. The request of a party seeking information is allowed or disallowed by the authorities below and is contested by both parties before the Commission. There may also be cases where a third party is prejudicially affected by disclosure of the information requested for. It is clear that the concerned authorities particularly the Information Commission, possess the essential attributes and trappings of a Court. Its powers and functions, as defined under the Act of 2005 also sufficiently indicate that it has adjudicatory powers quite akin to the Court system. They adjudicate matters of serious consequences. The Commission may be called upon to decide how far the right to information is affected where information sought for is denied or whether the information asked for is 'exempted' or impinges upon the 'right to privacy' or where it falls in the 'no go area' of applicability of the Act. It is not mandatory for the authorities to allow all requests for information in a routine manner. The Act of 2005 imposes an obligation upon the authorities to examine each matter seriously being fully cautious of its consequences and effects on the rights of others. It may be a simple query for information but can have far reaching consequences upon the right of a third party or an individual with regard to whom such information is sought. Undue inroad into the right to privacy of an individual which is protected under Article 21 of the Constitution of India or any other law in force would not be permissible. In Gobind v. State of Madhya Pradesh & Anr. [(1975) 2 SCC 148] this Court held that:

> "22. .... privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior."

In Ram Jethmalani & Ors. v. Union of India [(2011) 8 SCC 1] this Court has observed that the right to privacy

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Ranchi : 2, Burdwan Compound, Ranchi-834001, Ph: 0651-2562034

> is an integral part of the right to life. Thus, the decision making process by these authorities is not merely of an administrative nature. The functions of these authorities are more aligned towards the judicial functions of the courts rather than mere administrative acts of the State authority."

70. The meaning of the word 'revocation' vis-à-vis 'impounding' has been considered by the Supreme Court in Ibrahim Bachu Bafan vs. State of Gujrat & ors. (1985) 2 SCC 24 stating:

> "9. This leads us to examine the tenability of the submission of Mr. Jethmalani as to the true meaning of the word "revocation." "Revoke" is the verb and "revocation" is its noun. These words have no statutory definition and, therefore, would take the commonsense meaning available for these words. Black's Law Dictionary gives the meaning of the word "revoke" to be "the recall of some authority or thing granted or a destroying or making void of some deed that had existence until the act of revocation made it void". Wharton's Law Lexicon gives the meaning to be "the undoing of a thing granted or a destroying or making void of some deed that had existence until the act of revocation made it void". The Shorter Oxford English Dictionary gives the meaning of the word "revocation" to be "the action of recalling; recall of persons; a call or summons to return; the action of rescinding or annulling, withdrawing...". The meaning of the word "revoke" has been given as "to recall, bring back, to restore, to retract, to withdraw, recant, to take back to oneself". The true meaning of the verb "revoke" and its noun, therefore, seem to signify that revocation is a process of recall of what had been done. According to the Webster's Third New International Dictionary, the word means — "an act of recalling or calling back, the act by which one having the right annuls something previously done". According to the Corpus Juris Secundum, 1952 Edn., Vol. 77, the word "revoke" carries with it "the idea of cancellation by the same power which originally acted and not to setting aside of an original order by higher forum of power or jurisdiction. It does not mean repudiation."

71. The passport has been revoked inter alia on the premise that the Querist has not appeared in person before the DOE.

72. The said finding is assailable inter alia on the following grounds besides those which have been raised before the Hon'ble Delhi High Court:

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Ranchi : 2, Burdwan Compound, Ranchi-834001, Ph: 0651-2562034

(i) The Querist has produced all the documents sought by the authorities under 1999 Act. Upon consideration of the said documents, they could have sought other or further documents or any clarification or explanation in relation thereto.

(ii) No reason has been assigned as to why the physical presence of the Querist was imperative.

The impugned orders do not and could not have proceeded on the basis that the Querist was an accused and custodial interrogation was necessary.

(iii) The Querist offered to examine himself through video conferencing. Examination of a person through video conferencing is permissible in law. [See State of Maharashtra vs Prafful B. Desai (2003) 4 SCC 601 and Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav (2005) 3 SCC 284]

(iv) The RPO ought not to have considered that the Querist is guilty of commission of any illegality in IPL while he had been acting as its Chairman as the same was not within the jurisdiction of either of the DOE, on the one hand, and the RPO and CPO, on the other.

(v) The said authority acted illegally and without jurisdiction in so far as he failed to take into consideration that (a) he must act within the four corners of the statute, which in this case would mean that he could take a decision, when the procedee was served with a summons by an authority under 1999 Act; (b) he has deliberately and willfully failed to appear before the said authority without any valid or cogent reason; and (c) by reason thereof a case has been made out for exercise of his jurisdiction under Section 10 (3) (c) of the Act.

(vi) The RPO therefor could not have taken into consideration extraneous factors as has been done in the instant case namely: (a) the Querist is an accused and in the said capacity he could not have suggested alternative procedure for his interrogation; (b) no right is vested in an accused to decide the time and manner and mode of his investigation in doing so and thus he has converted a civil proceeding into a criminal proceeding and applied the provisions of the Code of Criminal procedure 1973; (c) even under the said Code, the investigating officer has the requisite jurisdiction to record the statement of an accused or witness at a

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time and place which is convenient to both of them and for the said purpose even alternative procedures namely recording of statement through video conferencing is permissible in law.

(vii) The RPO in making the said observations misdirected himself in law in so far as he failed to take into consideration that such alternative procedure must be read in the 1999 Act. In any event even under Section 131 of Income Tax Act 1961, which is incorporated by reference in Section 37 of 1999 Act, examination of a proceedee/ witness by appointing a commissioner is legally permissible.

(viii) The CPO also committed a manifest error of law in so far as he opined "that the alternative procedure for his examination through video conferencing, questionnaire, 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."; the same being not borne out from the records.

(ix) In forming such an opinion, the statutory authorities having gone beyond the record as no such findings have been arrived at by the DOE in the proceedings under FEMA, the impugned orders are unsustainable.

(x) In any event such an alternative procedure has been held to be permissible and valid in law by the Apex Court in Prafful B. Desai (supra)..

(xi) The authorities under the Act, as quasi-judicial authorities, were bound by the law of the land laid down under Article 141 of the Constitution of India.

(xii) The DOE and consequently the RPO and CPO must be held to have misinterpreted and misconstrued the aforementioned provisions of the Income Tax Act and the 1999 Act which required a creative interpretation having regard to the development in science and change in technology as has been held in State of Punjab v Amritsar Beverages Ltd (2006) 7 SCC 607, Suresh Jindal versus BSES Rajdhani Power Ltd. (2008) 1 SCC 341 and Narayan Dutt Tiwari v. Rohit Shekhar (2012) 12 SCC 554.

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Ranchi : 2, Burdwan Compound, Ranchi-834001, Ph: 0651-2562034

(xiii) Both the RPO and the CPO have exceeded their jurisdiction in so far as they entered into the culpability or otherwise of the Querist which could not have been a subject matter of the proceedings under Section 10 (3) (c) of the Act.

(xiv) A proceeding arising out of the complaint petition is pending before the FEMA authorities themselves and, thus, without the same being taken to its logical conclusion, the proceeding under Section 10(3)(c) of the Act should have been stayed.

(xv) Opinion formed by the said authorities clearly demonstrates that they were biased against the Querist and/or otherwise prejudiced.

(xvi) Close perusal of the communication dated 1 November 2010 would show that the RPO and consequently the CPO have taken into consideration irrelevant facts and failed to take into consideration the relevant ones.

(xvii) Sub-para 6 of para 16 of the judgment of the learned Single Judge would furthermore show that at one point of time, the passport of the Querist was sought to be impounded only and no good reason far less any convincing or satisfactory reason has been assigned to show why the same should be revoked.

(xviii) The impugned notices issued by the CPO proceeded on the basis that the Querist was to show cause why a proceeding under Section 10(3) of the Act would not be initiated and cause having been shown thereto, the RPO could not have passed a final order in so far as it was obligated to only initiate a proceeding.

(xix) The FEMA authorities having filed a complaint in terms of section 16 of the Act, ought not to have, having regard to the doctrine of proportionality, informed the Passport Authority to initiate a proceeding under Section 10(3) of the Act.

(See the judgment of TDSAT in Cellular Operators Association of India vs. Union of India, Petition No.252 of 2011 paragraphs 289 to 393).

(xx) Doctrine of proportionality envisages that a proceedee would be treated fairly and reasonably. Moreover, in a case where by reason of an administrative action a proceedee is deprived of his fundamental right, the judicial review courts shall apply the

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Ranchi : 2, Burdwan Compound, Ranchi-834001, Ph: 0651-2562034

'strict scrutiny' principle and in that view of the matter the burden shifts towards the Respondent to justify it's decision to evade these rights.

(xxi) In this case, it would be appropriate for the Division Bench of the High Court to ask the RPO and CPO to justify their decisions as they have failed to consider the questions relating to balance, necessity and suitability to arrive at their conclusion.

(xxii) The RPO and the CPO ought to have held that FEMA authorities being not Courts, although they have all the trappings of a court, issuance of summons by it may not be a sufficient ground to initiate a proceeding.

(xxiii) In Bharat Bank Ltd. vs. the Employees of Bharat Bank Ltd. (AIR 1950 SC 188, which has been followed in State of Gujarat vs. Gujarat Revenue Tribunal Bar Association (2012) 10 SCC 353), it has been held that although a Labour Court has all the trappings of a court, but it is not a court.

(xxiv) The provisions of the Act do not deal with any contingency as regards consequence of failure on the part of holder of passport to appear pursuant to any summons issued by a Quasi Judicial authority and in that view of the matter it is not a case where the provision of Section 10(3) of the Act could be invoked.

(xxv) Clause (c) of sub-section 3 of Section 10 of the Act should be read with Clause (h) thereof and so read it would appear that the Parliament never contemplated that a drastic action like revocation of a passport held by a responsible citizen of India should be resorted to only because the holder thereof has not appeared before a statutory authority.

(xxvi) Failure to appear before a Quasi Judicial authority by no means would come within the purview of the terms 'in the interest of general public'.

A distinction must be made between the terms 'public interest' and 'interest in the general public' as has been observed in Maneka Gandhi (Supra) in the light of the decisions of the Supreme Court of India in Baldev Raj, Ex-Constable vs. State of Punjab & Ors. (1984) Supp SCC 221 and Jaipur Development Authority v. Vijay Kumar Data (2011) 12 SCC 94 that public interest is an unruly horse.

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(xxvii) The findings of the learned Single Judge in paragraph 44 of his judgment are even not factually correct. Had the said authority applied the correct facts, he could have arrived at a different conclusion.

In the instant case, the power to revoke a passport imposed a higher responsibility on the authority, he was entitled to issue notice directing a holder of a passport to show cause as to why:

(a) a proceeding under Section 10(3) shall not be initiated; and

(b) Why the passport shall not be impounded as contradistinguished for revocation thereof.

(xxviii) The learned Single Judge wrongly relied upon the decision of the Supreme Court in Bhagwati Prasad vs. Chandramaul AIR 1966 SC 735 as the civil courts have the requisite jurisdiction to alter the relief in terms of Order VII Rule 7 of the Code of Civil Procedure.

However, even such reliefs cannot be granted if it is beyond the scope of the suit or the general relief granted therein in consistent with the reliefs prayed for.

(xxix) The Passport Authorities ought to have applied their minds on the question whether the actions on the part of the FEMA authorities were necessary and / or otherwise disproportionate.

(xxx) The finding of the learned Single Judge in paragraph 45 of the order suffer from a legal infirmity in so far as he failed to take into consideration that although inputs of a statutory authority may be placed on record, if the contents whereof are not questioned; a statutory authority could not have based its decision on the dictate / advise of another authority who has no statutory role to play.

(See Commissioner of Police, Bombay vs. Gordhandas Bhanji AIR 1952 SC 16, Mohinder Singh Gill vs. The Chief Election Commissioner AIR 1978 SC 851)

(xxxi) The learned Single Judge has also posed unto himself a wrong question in observing:

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"it cannot be argued, in my opinion, that the passport authority would have to independently assess the quality of the material put before it. This is not the scheme or the provision in issue."; and, thus, misdirected himself in law.

In Uttamrao Shivdas Jankar vs. Ranjitsinh Vijaysinh Mohite Patil (2009) 13 SCC 131, it has been held:

"31. Section 100 of the Act provides for the grounds for declaring election to be void inter alia in a case where a nomination has been improperly rejected. Improper rejection of a nomination, on a plain reading of the provision, would not mean that for the said purpose an election petitioner can only show an error in the decision making process by a Returning Officer but also the correctness of the said decision.

32. Indisputably, there exists a distinction between a decision making process adopted by a statutory authority and the merit of the decision. Whereas in the former, the court would apply the standard of judicial review, in the latter, it may enter into the merit of the matter. Even in applying the standard of judicial review, the scope thereof having been expanded in recent times, viz., other than, illegality, irrationality and procedural impropriety, an error of fact touching the merit of the decision vis-a-vis the decision making process would also come within the purview of the power of judicial review.

33. In Cholan Roadways Ltd. v. G. Thirugnanasambandam this Court observed: (SCC p. 253 paras 34-35):

"34. ..... It is now well-settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, further more, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of Res ipsa loquitur which was relevant for the purpose of this case and, thus, failed to take into

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consideration a relevant factor and furthermore took into consideration an irrelevant fact not garmane for determining the issue, namely, the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which in "preponderance of probability" and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out.

35. Errors of fact can also be a subject-matter of judicial review. (See E. vs. Secretary of State for the Home Department (2004 Vol.2 Weekly Law Report page 1351). Reference in this connection may also be made to an interesting article by Paul P. Craig Q.C. titled 'Judicial Review, Appeal and Factual Error' published in 2004 Public Law Page 788."

34. In S.N. Chandrashekar vs. State of Karnataka, this Court observed: (SCC p. 221 paras 33-34)

"33. It is now well-known that the concept of error of law includes the giving of reasons that are bad in law or (where there is a duty to give reason) inconsistent, unintelligible or substantially inadequate. [See De Smith's Judicial Review of Administrative Action, 5th Edn. p. 286]

34. The Authority, therefore, posed unto itself a wrong question. What, therefore, was necessary to be considered by the BDA was whether the ingredients contained in Section 14-A of the Act were fulfilled and whether the requirements of the proviso appended thereto are satisfied. If the same had not been satisfied, the requirements of the law must be held to have not been

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> satisfied. If there had been no proper application of mind as regard the requirements of law, the State and the Planning Authority must be held to have misdirected themselves in law which would vitiate the impugned judgment."

[See also MSK Projects India (JV) Ltd. v. State of Rajasthan (2011) 10 SCC 573 and S. Sethuraman v. R. Venkataraman (2007) 6 SCC 382]

(xxxii) It is well settled that a statutory authority must act within the four corners of the statute. (See Deewan Singh vs. Rajendra Prasad Ardevi (2007) 10 SCC 528, Kurmanchal Institute of Degree & Diploma & Ors. vs. Chancellor, MJP Rohilkhand University & Ors. (2007) 6 SCC 35, B.M.Malini vs Commissioner of Income Tax and another (2008) 10 SC 617 para 19 and Industries Development Corporation Ltd. & Ors. v. J.D. Pharmaceuticals & Anr (2005) 13 SCC 19]

(xxxiii) Moreover, the procedures laid down in the statute must also be fully complied with.

In Association of Management vs. AICTE (2013) 6 JT 277 it has been held:

> "The position of law is well settled by this Court that if the Statute prescribes a particular procedure to do an act in a particular way, that act must be done in that manner, otherwise it is not at all done. In the case of Babu Verghese v. Bar Council of Kerala[7], after referring to this Court's earlier decisions and Privy Council and Chancellor's Court, it was held as under:
>
> > "31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under.

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Ranchi : 2, Burdwan Compound, Ranchi-834001, Ph: 0651-2562034

> 32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of V.P. and again in Deep Chand v. State of Rajasthan. These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh and the rule laid down in Nazir Ahmad case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.

In view of the above said decision, not placing the amended Regulations on the floor of the Houses of Parliament as required under Section 24 of the AICTE Act vitiates the amended Regulations in law and hence the submissions made on behalf of the appellants in this regard deserve to be accepted. Accordingly, point Nos. 4 and 5 are answered in favour of the appellants."

(see also Shiv Kumar Chadha vs. UOI (1993) 3 SCC 16.)

(xxxiv) In M.P. State Co-operative Dairy Federation Ltd. And another v. Rajnesh Kumar Jamindar and others (2009) 15 SCC 221, it has been held:

> "43. It is now a well-settled principle of law that the employer would be bound by the rule of game. It must follow the standard laid down by itself. If procedures have been laid down for 33 arriving at some kinds of decisions, the same should substantially be complied with even if the same are directory in nature. This rule was enunciated by Mr. Justice Frankfurter in Vitarelli v. Seaton [359 US 535], wherein the learned Judge said:
>
> > 'An executive agency must be rigorously held to the standards by which it professes its action to be judged. ... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. ... This judicially evolved rule

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> of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword.' "
>
> [See also H.V. Nirmala v. Karnataka State Financial Corporation (2008) 7 SCC 639]"

[See also Swaran Singh Chand Vs. Punjab State Electricity Board and others (2009) 13 SCC 758]

(xxxv) In B.M. Malani v. CIT (2008) 10 SCC 617, it has been held:

> "16. The term 'genuine' as per the New Collins Concise English Dictionary is defined as under:
>
> > "'Genuine' means not fake or counterfeit, real, not pretending (not bogus or merely a ruse);"
>
> 18. The ingredients of genuine hardship must be determined keeping in view the dictionary meaning thereof and the legal conspectus attending thereto. For the said purpose, another well--known principle, namely, a person cannot take advantage of his own wrong, may also have to be borne in mind. The said principle, it is conceded, has not been applied by the courts below in this case, but we may take note of a few precedents operating in the field to highlight the aforementioned proposition of law. [See Priyanka Overseas Pvt. Ltd. & Anr. v. Union of India & ors. 1991 Suppl. (1) SCC 102, para 39, Union of India & ors. v. Major General Madan Lal Yadav (Retd.) (1996) 4 SCC 127 at 142, paras 28 and 29, Ashok Kapil v. Sana Ullah (dead) & ors. (1996) 6 SCC 342 at 345, para 7, Sushil Kumar v. Rakesh Kumar (2003) 8 SCC 673 at 692, para 65, first sentence, Kusheshwar Prasad Singh v. State of Bihar & ors. (2007) 11 SCC 447, paras 13, 14 and 16)."

(xxxvi) Error of law will include taking into consideration irrelevant facts and not considering the relevant facts.

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[See Ajanta Transports (P) Ltd., Coimbatore vs. TVK Transports, Pulampatti, Coimbatore District (1975) 1 SCC 55, Uttamrao Shivdas Jankar vs. Ranjitsinh Vijaysinh Mohite Patil (2009) 13 SCC 131]

(xxxvii) The order passed by the RPO is premised on the request/communication made by the ED authorities. The ED authorities can investigate only the violations of FEMA. However it is apparent from order of the RPO that he, while passing the order of revocation had taken into consideration three facts which were communicated to him by the ED Authorities :-

a) There are various allegations of irregularities by Shri Modi in his capacity as IPL Commissioner who is alleged to have been involved in the contravention of FEMA to the extent of hundreds of crores of Rupees.

b) There is reasonable suspicion Shri Lalit Kumar Modi has huge amounts of money which have been parked outside India by him also in contravention of FEMA.

c) Gross irregularities have been found in the conduct of the IPL tournament.

(xxxviii) That the fact mentioned in Para (c) above was irrelevant in the context of the proceedings initiated in pursuance of the request made by the ED.

In law, ED did not have the jurisdiction to investigate this fact and therefore could not have made the request for revocation of the passport of the Querist premised on such request and the passport authorities could not have taken into consideration such fact for revoking the passport of the Querist, yet his passport was revoked premised on such fact. If an administrative authority takes into consideration even a single irrelevant fact the same would vitiate the entire order.

(xxxix) Having regard to the huge civil consequences, a holder of a passport will face in the event his passport is revoked; Section 10(3)(c) should receive strict construction.

In *Krishi Utpadan Mandi Samiti & Ors.* v. *Pilibhit Pantnagar Beej Ltd. & Anr.* (2004) 1 SCC 391, regulatory or penal statute has been held to deserve strict construction.

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73. For the reasons aforementioned, my answer to the questions aforementioned are as under:

Re: Question No.(i)
Section 10(3)(c) of the Passport Act is constitutional.

Re: Question Nos.(ii) and (iii)
In view of answer to Question No.(i), they need not be answered.

Re: Question No.(iv)
The impugned orders are susceptible to challenge on the grounds stated heretobefore.

74. I have nothing further to add.

New Delhi
Dated: 23 November 2013

(S.B. SINHA)

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