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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 376/2012
LALIT KUMAR MODI

..... Petitioner

Through: Mr. Mukul Rohtgi, Mr. U.U. Lalit,
Mr. Rakesh Tikku, Senior Advocates with
Mr. Ankur Chawla, Mr. Amit Nehra, Mr. Bhanu
Sood and Mr. Rahul Pratap, Advocates

versus

UOI AND ORS

..... Respondents

Through: Mr. A.S. Chandhiok, ASG with
Mr. Jatan Singh, CGSC

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

ORDER
18.01.2012

%

CM 804/2012 (exemption)

Allowed, subject to just exceptions.

W.P.(C) 376/2012

Issue notice.

Counsel for the respondents accepts notice. Counter affidavit be
filed within four weeks with a copy to the counsel for the petitioner,
who may file a rejoinder before the next date of hearing.

List on 13th March, 2012 before the Registrar for completion of
pleadings.

List in Court on 25th April, 2012.

HIMA KOHLI, J

JANUARY 18, 2012
rkb

Certified to be True Copy
[Signature]
Examiner Judicial Department
High Court of Delhi of
Authorised Under Section 70
Indian Evidence Act.



DIGITALLY SIGNED DATA
[Signature]
VERIFIED / TRUE COPY

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

IN THE MATTER OF

Lalit Kumar Modi

Petitioner

vs.

Chief Passport Officer and Ors.

Respondents

WRIT PETITION UNDER ARTICLES 226 OF THE
CONSTITUTION OF INDIA

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

Petitioner through Counsel

AMIT NEHRA
ADVOCATE
C-188, Defence Colony.
New Delhi 110 024

IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRAORDINARY WRIT JURISDICTION
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Petitioner through Counsel

AMIT NEHRA

ADVOCATE

C-188, Defence Colony

New Delhi 110 024

Date: January , 2012

Please note that Mr. Mukul Rohatagi, Senior Advocate would be appearing and arguing the matter on behalf of the Petitioner. Kindly not list the matter before the Hon'ble Mr. Justice Vipin Sanghi.

A

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

IN THE MATTER OF
Lalit Kumar Modi

Petitioner

vs.

Chief Passport Officer and Ors.

Respondents

To

The Deputy Registrar
High Court of Delhi
New Delhi

Dear Sir

Kindly treat the accompanying Writ Petition, as urgent under the High Court Rules and Procedure, for the reasons mentioned in the Writ Petition. It is stated that the Petitioner's passport has been revoked the Respondents. Hence, the Petitioner seeks urgent direction from this Hon'ble Court against the Respondents.

Thanking You,

Filed by:

AMIT NEHRA

Advocate

C-188, Defence Colony, New Delhi

Date: ____ . 11. 2011

B

NOTICE OF MOTION

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION NO. OF 2012

IN THE MATTER OF

Lalit Kumar Modi

...Petitioner

Versus

Chief Passport Officer and Ors.

...Respondents

Sir,

The enclosed Petition in the aforesaid matter as being filed on behalf of the Petitioner and is likely to be listed on 16.01.2012 or any date, thereafter.

Please take notice accordingly.

PETITIONER

Through

[AMIT NEHRA]

ADVOCATE FOR THE PETITIONER
C-188, DEFENCE COLONY,
NEW DELHI-110024

New Delhi

Dated: 12/01/2012

C

IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRAORDINARY WRIT JURISDICTION
(UNDER ARTICLES 226 OF THE CONSTITUTION)
WRIT PETITION (CIVIL) NO. OF 2012

MEMO OF PARTIES

LALIT KUMAR MODI

Citizen of India, Holding Passport No.
Z1784222 through his Constituted Attorney
Mehmood M. Abdi residing at A-901, Meera
Towers, Near Mega Mall, Oshiwara,
Andheri (West), Mumbai 400053
Maharashtra

Petitioner

vs.

1. UNION OF INDIA
Through Ministry of External Affairs
South Block, New Delhi
2. CHIEF PASSPORT OFFICER
Ministry of External Affairs, Room No.
8, 1st Floor, Patiala House Annexe, New
Delhi 110 001
3. REGIONAL PASSPORT OFFICER,
Mumbai, having his office at Manish
Commercial Centre, 216-A, Dr. Annie
Besant Road, Worli, Mumbai 400 030

Respondents

Petitioner through Counsel

AMIT NEHRA
ADVOCATE
C-188, Defence Colony
New Delhi 110 024

Date: __.01.2012

SYNOPSIS

By way of the present writ petition under Article 226 of the Constitution of India the Petitioner seeks judicial review of the findings / decisions of Rs.1 and 2 in revoking the passport of the Petitioner on the grounds of being irrational, illegal and procedural impropriety. It is submitted while arriving at the findings resulting in the impugned decisions; the respondents have eschewed from considerations relevant considerations and have considered facts which were totally outside the scope and jurisdiction of the Passport Act. That vide the instant Petition the Petitioner is seeking to invoke the writ jurisdiction seeking a writ of Certiorari to quash and set aside the order dated 3.3.2011 passed by Respondent No.3 and order dated 30.10.2011 passed by Respondent. Nops.1. That the Petitioner is assailing the orders/ decisions and the finding rendered therein on the grounds of a) Question of legality; b) to whether the decision making authority exceeded its powers; c) committed an error of law; d) committed breach of rules of principles of natural justice; and e) reached a decision which no reasonable tribunal would have reached.

I. Question of legality:-

- a. That the impugned orders are totally illegal as the same are in teeth of constitutional rights guaranteed under Articles 14, 19 and 21 of the Constitution of India, violations of human rights, violations of principle of natural justice and on the principles of proportionality.
- b. It is submitted that the grounds disclosed in the orders impugned, even if accepted in totality cannot constitute reasonable restrictions for interference with the right to travel of the Petitioner.

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- c. That on a request for impounding of passport an order revoking the passport of a citizen cannot be passed for the reason that in the eyes of law the word revoke and impound are not synonyms and both the words have their distinct meaning, connotation, effect and consequences.
 - d. It is submitted that the requirement of Petitioner for investigation into alleged infractions of Foreign Exchange Management Act cannot be a ground for revocation of Passport by exercise of Section 10 (3) c of Passport Act as violations of provisions of F.E.M.A does not entail any criminal liability and itself provides representation through lawyers.
 - e. It is submitted that the fundamental right to travel cannot be restricted to enforce presence of a person for the purpose of investigations.
 - f. That the action of revocation of the Passport on a representation made by Enforcement Directorate is illegal as it is admitted position that Enforcement Directorate applied for impounding and not revocation.

II. Whether the decision making authority exceeded its powers:-

- a) It is submitted that Respondent No.2 exceeded its powers while passing the order dated 3.3.2011 as no notice seeking explanation *"why passport should not be revoked"* was ever issued but a notice dated 15.10.2010 only seeks explanation *"why proceedings under Section 10 (3) (c) of Passport Act"* should not be issued on the basis of communication received from Enforcement Directorate.
- b) In any event if the show cause notice was issued by the Assistant Passport officer and if assistant passport officer was dealing with the issue, which is evident from the correspondences exchanged between the parties from 15th October 2011 to 17th November 2011 then the respondent no 2 could not have assumed

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jurisdiction mid way and for the first time in the hearing dated 18th November 2011, more so for the reason that in terms of rule 3 read with schedule I of the passport, rules 1980, assistant passport officer is one of the passport authorities

- c) That it is submitted for an alleged violation of summons issued by an authority for investigation of an offence which entails only civil liability, the constitutional right guaranteed by Article 19 and 21 cannot be curtailed as it would fail the test of reasonable restriction. It is submitted that failure to appear in compliance of summons can only lead to a negative inference been drawn and nothing more.
- d) That the complaint does not disclose any ground to substantiate allegations of willful and deliberate disobedience of summons for the Enforcement Directorate to have initiated proceedings for impounding of the passport of the Petitioner thus curtailing his constitutional rights guaranteed by Article 21.

III. Committed an error of law:-

- a. That there was no independent application of mind by Respondents and the passport has been revoked on mere recommendation/ application of some statutory authority.
- b. It is submitted that application of mind and independent decision based on proper appreciation of law and fact is a sine qua non of judicial process and the orders under challenge make mockery of such salutary provisions.
- c. That in absence of Directorate of Enforcement prosecuting its application coupled with the fact that the Directorate of Enforcement had only sought for impounding of the Passport, the order of Respondent No. 2 revoking the passport became an order passed suo moto. It is submitted that Section. 10 (3) of the Passport Act, 1967 clearly prohibits any order to be passed suo

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moto and provides that no order Section 10 cannot be passed without prior sanction of the Central Government.

- d. The Order dated 3.3.2011 has been passed in purported exercise of jurisdiction and powers under Section 10(3) (c) of the Act. It is respectfully submitted that Section 10 (3), (c) of the Act has no application whatsoever to the present case. The present case does not involve anything which affects or offends "interest of the sovereignty and integrity of India"; "the security of India"; "friendly relations of India with any foreign country"; and "in the interest of general public".

IV. Committed breach of rules of principals of natural justice:-

- a. That there was gross violation of principals of natural justice as even the copy of the applications dated 4th October, 2010 and 15th October, 2010 filed by Directorate of Enforcement which formed basis of the order of revocation was not supplied to the Petitioner.
- b. That the prayer of the Petitioner to issue notice to Enforcement Directorate and for cross examination of the officer of the ED was rejected without assigning any reasons.
- c. The statutory authorities (Respondents) revoked passport on basis of an alleged application filed by Directorate of Enforcement which has never been shown to the Petitioner while disclosing under the Right to Information Act that the Passport has been revoked on directions of Economic Wing of Mumbai Police which does not form basis of the orders vide which the Passport has been revoked. Transparency is another facet of principals of natural justice and the proceedings before the respondents were conducted in haste and without supply of relevant material or even inspection of the same.
- d. That the legitimate request of the solicitors of the petitioner to inspect the file / records, summoning of records from other

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government department, an opportunity to cross examine the officials of the ED were neither considered nor decided.

V. Reached a decision which no reasonable tribunal would have reached:-

- a. That the impugned order falls foul of "WEDNESBURY PRINCIPAL" as settled by the KING'S BENCH DIVISION in the case of "ASSOCIATED PROVINCIAL PICTURE HOUSE LIMITED v. WEDNESBURY CORPORATION" where the concept of "unreasonable" has been explained in the following terms-

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

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

- b. That in the instant case the respondents have categorically refused to apply independent mind to the facts placed on record and have on the contrary held that the opinion formed by the investigation officer is binding and that the Passport Officer is bound to act in furtherance of the same.
- c. That the impugned order is also unreasonable as it is in violation of principles of proportionality. It is submitted that right to life is a fundamental right as guaranteed under Article 21 of the Constitution of India. It is submitted that while deciding the need of the investigating agency of investigate the alleged offences

purportedly committed by the petitioner it was incumbent upon the Adjudication Authority to have balanced it when the threat perception faced by the Petitioner and his family from the underworld as the same was also confirmed by the premier investigating agency of the country.

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

- e. That any reasonable tribunal would have appreciated that the Investigating Officer of Enforcement Directorate by its absence in the proceedings has decided not to prosecute the application and that the presence of the Petitioner is not required for the purpose of investigation.
- f. That the findings rendered by the Res.1 in the impugned order dated 31st October, 2011 of the Appellate Authority are not only incorrect but contrary to the records of the case available with the Authority. It seems that the Authority has considered the facts and documents which did not form part of the record or were not made available to the Petitioner.
- g. The Petitioner prays, inter alia, for a writ of certiorari for quashing the order dated 31st October 2011 passed by the Chief Passport Officer (Respondent No.2), and the order dated 3rd March, 2011 passed by Regional Passport Officer, Mumbai whereby (Respondent No.3) has revoked the passport of the Petitioner and Respondent No.3 has upheld the decision passed by Respondent No. 1.

Hence, the present writ petition under Articles 226 of the Constitution of India.

LIST OF DATES

2008 Petitioner is a citizen of India and was appointed as the Chairman/ Commissioner of the Indian Premier League (IPL), a sub-committee of the Board for Control of Cricket in India (BCCI) sometime in the year 2008, as he had conceptualized the format of the IPL. The IPL conducted three seasons being IPL-1 (2008), IPL-2 (2009) and IPL-1 (2010) under the aegis of the petitioner. In and around the year 2009 the law enforcement/intelligence agencies came to learn that there was serious threat to the life of the

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petitioner and his family and therefore Petitioner and his family were provided round the clock security cover.

25.04.2010 On the night of conclusion of IPL-3 i.e. on 25th April 2010 the petitioner was served with a show cause notice by BCCI alleging misconduct under the BCCI Regulations and to show cause why disciplinary action should not be taken against him. Simultaneously, petitioner was also suspended as the Commissioner of IPL. The trigger point of the whole controversy were the issues in respect of the bidding process involving the Kochi team which became a political controversy and led to the resignation of Mr. ShashiTharoor who was then the Minister of State for External Affairs.

14.05.2010 Petitioner apprehending serious threat to his life and his family's life and due to the fact that the security cover was reduced/ withdrawn by the Mumbai Police left for United Kingdom.

15.10.2010 The Regional Passport office Mumbai, under the signature of Assistant Passport officer (Policy) issued a Show cause notice wherein, *inter alia*, it was stated as under :-

"It is informed by the Directorate of Enforcement, Mumbai that a complaint dated 16.09.2010 under section 13 of FEMA, 1999 has been filed against you and a Show Cause Notice has been issued to you on 20.09.2010 for non-compliance of Summons issued by them.

"In view of this, you are called upon to explain as to why action under Section 10(3)(c) of the Passports Act, 1967 should not be initiated against you."

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26.10.2010 In response to the letter dated 15.10.2010, Solicitor's of the petitioner submitted an interim reply and an application to the assistant passport officer, seeking Supply of all information, communications and documents (Materials) referred to and or relied upon in the letter dated 15.10.2010. Petitioner's Solicitors' also sought time of two weeks to reply to the show cause after supply of the materials as sought for by them. As is evident from the letter dated 15.10.2010, it was a show cause seeking a response as to why the proceedings under Section 10 (3)(c) of the passport Act 1967, be not initiated, petitioner in this very interim reply submitted and explained the reasons why the contemplated proceedings should not be initiated.

28.10.2011 When the Assistant Passport officer did not respond to the letter dated 26.10.2011 and as the dead line for filing the reply was approaching and there was apprehension that an ex parte order may be passed against the petitioner therefore Petitioner's Solicitors were constrained to address three letters interalia seeking a response in writing to the letter dated 26.11. 2010, supply of documents and an opportunity of oral hearing.

29.10.2011 Petitioner's Solicitors were constrained to address another letter for the fifth time seeking a response in writing to their repeated requests.

30.10.2011 When the aforesaid request were not even responded to by the Assistant Passport officer, petitioner apprehending an ex parte order filed his second interim reply interalia explaining therein, that in absence of the materials relied upon for the issuance of Show cause notice petitioner is not in a position to file an effective reply, however petitioner

(7)

fully and completely explained his position with regard to the issuance of summons by the enforcement directorate, petitioner informed, the Assistant passport officer Policy that he has fully co-operated with the request made by the enforcement directorate, provided all the documents, he has not willfully avoided any summons, and he has offered to be examined via video link and or commission or by any other method as envisaged in Section 131 of Income Tax act. Petitioner also explained that there is no basis for initiating proceedings under Section 10 (3) (C) of Passport Act 1967.

01.11.2010 The Assistant Passport officer issued a communication/notice dated 01.11.2010 wherein it was recorded that it had received two communications from the Directorate of Enforcement dated 04.10.2010 and 15.10.2010. However, it was stated that the same were confidential in nature and constitute correspondences between two government departments, the copies of these letter cannot be supplied. In the same letter certain portion of the communication which was relevant according to the Regional Passport Office was reproduced and through the letter dated 01.11.2010 it transpired that the ED has made a request for the impounding of the passport of the petitioner. By the same letter the Assistant Passport officer specifically recorded *"An additional time of ten days is being granted from the date of this notice to file his reply. If no reply is received within the stipulated period, necessary action under Section 10 (3) (C) of the Passport Act will be initiated by this office."* Petitioner submits that the above four lines are extremely important they show that it was the Assistant Passport officer who had issued first Show

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cause notice dated 15.10.2010, it was the Assistant Passport officer who had taken the decision whether and to what extent supply the relied upon materials and the scope of the Show cause notice was the same that whether the proceedings under Section 10 (3) (c) of the Passport Act should be initiated or not. In other words petitioner was never put on notice that his passport is going to be revoked and therefore this notice could have at the most culminated in a decision to initiate proceedings under Section 10 (3) (c) but could not have resulted in a final order revoking the passport of the solicitors of the petitioner.

10.11.2010 As is evident from the letter dated 1.11.2010 that it is completely ambiguous on the aspect of supply of relied upon materials and documents, therefore petitioner's Solicitors were constrained to address another letter interalia reiterating their request for supply of documents and relied upon materials. By the same letter petitioner also sought the following clarifications :-

- "...a. Could you please specify what the "letter information and documents" referred to, at the top of page 2 of your letter are:*
- b. Could you please clearly specify what material has been supplied to your and/or is available with or has been made available to you, in connection with the present inquiry AND provide us with copies of the same.*
- c. Could you please clearly identify who has made what available.*
- d. Could you please identify which parts of your letter are your views and which parts are information from other sources; and*

- e. *Could you please confirm that besides what is and/or will be supplied to us, no other information or material has been imparted or supplied to you."*

A request was also made for an opportunity to take inspection of the file and a date for personal hearing and extension of time to file the detailed reply.

11.11.2010 As no reply was received to the letter dated 10.11.2010, petitioner's Solicitors again addressed a letter to the Assistant Passport officer Policy interalia requesting a response to the request made in letter dated 10.11.2010.

15.11.2010 The Assistant Passport officer responded to the letter dated 10.11.2010 and 11.10.2010 the contents of this letter are extremely important and therefore quoted as hereunder :-

"In view of your letter dated 10.10.2010 and 11.11.2010 regarding request for inspection of the material documents, opportunity for personal hearing and information regarding proposed action to impound/revoke passport of ShriLalit Kumar Modi.

As requested, a personal hearing in this matter is fixed on 16.11.2010 at 16.00 hrs in the chamber of Regional Passport Officer at Regional Passport Office, Manish Commercial Centre, Dr. A.B.Road, Worli, Mumbai 400 030."

It is clear from the above that the purpose of the hearing Scheduled on 15.11.2011 was to take a decision on whether to grant the request for inspection of documents and materials and request for personal hearing or not.

15.11.2010 On the same day petitioner's Solicitors requested that as the notice is too short and the counsels are busy therefore the proceedings should be deferred to the next working day that is 18th November 2010.

16.11.2010 That by the letter dated 16th November 2010 the Assistant Passport officer deferred the proceedings to 18th November 2010 however in Para 1 of this letter it was stated as under:-

"Please refer to your above mentioned letters requesting for postponement of the date of personal hearing scheduled at 16.00 hrs. on 16.11.2010 regarding proposed action to impound/revoke passport of Shri Lalit Kumar Modi."

18.11.2010 • Petitioner's Solicitors responded to the letter dated 16th November 2010 and clarified that the hearing to be held on 18.11.2011 can not be for the purpose to determine action to impound/revoke the passport of the petitioner, as is clear from the letter dated 15th November 2010 it is only for the adjudication on the requests made in the letter dated 10th November 2011 and 11th November 2011. It was further clarified that revocation/ impounding of petitioner's passport is not even in contemplation at this stage as is evident from the correspondence exchanged between the parties. In the same letter petitioner also stated as under:-

"5. We lastly wish to submit that the in the personal hearing, we will, in addition to our submissions that the documents and

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information called for be granted and an opportunity granted to respond to the same, also be seeking the following directions:

- a. That your good self call for all relevant records from the Enforcement Directorate and the Mumbai Police.
- b. Your good self may provide us Inspection and copy of all documents and records and information which form the basis for issuance of your notice under reply.
- c. Your good self may provide us the records and information which are referred to in your letter dated 1.11.2010 and if not the basis on which you claim that you cannot provide the same and in the context we repeat and reiterate what is stated in our letter dated 10.11.201.
- d. That your good self may fix a mutually convenient date for a personal hearing on all the aforesaid and any other connected issues when you may remain present and make our submission.
- e. Your good self may extend the time for filing our clients reply until their request set out above are fulfilled."

18.11.2010 The proceedings/ oral hearing was held in the office of the Regional Passport officer(Respondent No.3), wherein the assistant Passport officer, who had issued the Show cause notice and all correspondences was also present. Petitioner's Counsels objected to the proceedings on the ground that Assistant Passport officer had issued the show cause notice and therefore he can not act under the

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directions and instructions of regional Passport officer, regional passport officer can not participate in the proceedings and requested that their objections this regard may be recorded. On the same very day they addressed the letter dated 18.11.2011 recording their objections.

19.11.2010 In continuation of the letter dated 18.11.2010, petitioner's Solicitors addressed another letter detailing therein the events that had transpired during the course of hearing on 18.11.2010 and also seeking the order which has been passed on the objection of the petitioner.

22.11.2010 As the letter dated 19.11.2010 was not responded to, solicitors of the petitioner addressed another communication seeking a copy of the order declining inspection of records and the certified copies of the Roznama and order sheet of the proceedings held so far.

23.11.2010 Petitioner or his solicitors were never supplied with the copy of the ordersheet, Rozanama, they were also not given any order in writing deciding their objections but by letter dated 23.11.2010 petitioner was informed that during the proceedings he has been advised that *"passport authority Mumbai is headed by the Regional Passport officer, Mumbai who can call upon any official or staff of regional passport office Mumbai to assist him and can also delegate the work to subordinate officials for the smooth functioning of the office."* By this letter petitioner was also informed that the petitioner has been granted ample opportunity and the final hearing would be held by the respondent No.3 on 26.11.2010.

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26.11.2010 As the solicitors of the petitioner was neither being supplied with the materials on the basis of which the Show cause notice was issued nor the request for the solicitors of the petitioner to inspect the records was being granted therefore they addressed a communication to the Assistant Passport officer and reiterated their previous requests and also sought for an opportunity to cross examine the officers of the Enforcement Directorate who had made the allegations against the petitioner. They also requested that this application should be decided before commencing the hearing on merits.

26.11.2010 By another letter dated 26th November 2011 petitioner's solicitors informed the assistant passport officer that the proceedings initiated by him were misconceived, were being held in contravention of principles of natural justice, that there was no substance in the allegations being leveled by the enforcement directorate. Along with this letter petitioner's Solicitors submitted a series of documents which clearly establish that petitioner had never willfully or deliberately avoided any summons.

26.11.2010 When the counsels for the petitioner were in midst of the arguments hearing was halted by the respondent No -2.

29.11.2010 Petitioner's solicitors requested that a next date of hearing may kindly be fixed for completion of arguments. Representative of the solicitors of the petitioner visited the office of the Respondent No.3 and was informed that written intimation would be sent.

1.12.2010 Petitioner's Solicitors again requested for information regarding the next date of hearing.

6.11.2010 Petitioner's Solicitors apprehending that the proceedings may be treated as closed filed a summary of the arguments advanced so far and also stated that on a host of other issues counsels for the petitioner has not been able to conclude the arguments and therefore this letter dated 6th December 2011 may not be taken as a substitute for oral arguments.

10.12.2010 Assistant passport officer responded to the letters dated 29.11.2010, 1.12.2010 and 6.12.2010 and stated that two lengthy hearings have already been granted, petitioner was also informed that oral arguments, and replies / submissions and documents annexures therewith are under examination and the decision in the matter will be intimated in due course.

3.3.2011 An order was passed under the signature of the Respondent No.3 whereby the passport of the petitioner was revoked.

01.04.2011 Petitioner preferred an appeal under Section 11 of the Passport Act, 1967 against the order dated 03.03.2011 passed by the Regional passport Officer, Mumbai (Respondent No.3) before the Chief Passport Officer, Delhi (Respondent No.2)

14.4.2011 Petitioner addressed a communication to Respondent No. 2 seeking early hearing of his appeal or in the alternative a hearing on interim stay.

14.07.2011 Appeal of the petitioner was heard for the first time, in this hearing counsels for petitioner were given to understand

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that instead of deciding the stay application the entire appeal would be heard and decided as expeditiously as possible.

01.08.2011 Appeal of the petitioner was again heard and it was decided that in the interest of expeditious disposal of the Appeal petitioner may file his written submissions covering the arguments made in the hearing as well as on the additional points which remained to be argued.

08.08.2011 The General counsel and constituted Attorney of the petitioner received a communication from Shri Paramjeet Singh, AO (PV-II), MEA, New Delhi whereby he was informed and wherein it was recorded that - "... On conclusion of the hearing on 1.8.2011, it was mutually agreed that you may give a written submission, covering the arguments made in the hearing, as well as any additional points that you may wish to make. You may send your submission addressed to the Joint Secretary (PSP) & CPO at an early date to enable the Chief Passport Officer to take a decision on the appeal."

17.08.2011 Counsels for the petitioner submitted their written Submissions in accordance with the letter dated 8.8.2011.

17.08.2011 The Power of Attorney of Petitioner files an application under Right to Information Act before Regional Passport Officer.

25.08.2011 The Power of Attorney holder of the Petitioner filed another application under Right to Information Act before Regional Passport Officer.

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03.10.2011 Petitioner applied to the Deputy Director, Directorate of Enforcement for dropping of proceeding initiated in pursuance of the show cause notice dated 20.09.2010.

10.10.2011 Petitioner addressed the letter dated 10.10.2011 to the Chief Passport Officer (Respondent No.2) requesting therein that the judgment in the case may kindly be pronounced at the earliest possible convenience or in the alternative the petitioner may be granted an opportunity of hearing for stay of the order passed by the Regional Passport Officer.

12.10.2011 Regional Passport Officer (Respondent No. 3) in reply to application filed under Right to Information Act states that the Passport of the Petitioner has been revoked on directions of the Economic Offences Wing of Mumbai Police.

19.10.2011 Petitioner again issued a communication/reminder to the Respondent No.2 reiterating his request made in letter dated 10.10.2011.

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

02.11.2011 The Petition was served on Respondents.

03.11.2011 The General Counsel and Power of Attorney holder of the petitioner received a call in the afternoon from one Mr. Paramjit Singh stating that the order has been passed. The impugned order was communicated to the petitioner's power of attorney by email on 3rd November at 15.13 pm by Mr. Paramjit Singh (sopv3@mea.gov.in). That vide the

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impugned order which is dated 31st October, 2011, the Respondent No.2 has not allowed the Appeal of the petitioner.

04.11.2011 The petitioner withdrew the aforesaid writ petition in view of the fact the order was passed.

15.11.2011 Hence, the present Writ Petition assailing the orders dated 31.10.2011 passed by Respondent No.2 and communicated to the petitioner on 3.11.2011 and order dated 3.3.2011 passed by Respondent No.3.

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

In the matter of a petition under Articles 226 of the
Constitution of India

And

In the matter of Articles 14, 19 and 21 of the
Constitution of India

And

In the matter of The Passports Act, 1967 and Rules
framed thereunder

And

In the matter of illegal revocation of Passport No.
Z1784222

And

In the matter of:

Lalit Kumar Modi

Citizen of India, Holding Passport No. Z1784222 through his
Constituted Attorney Mehmood M. Abdi residing at A-901, Meera
Towers, Near Mega Mall, Oshiwara, Andheri (West), Mumbai
400053 Maharashtra

....Petitioner

vs.

1. Union of India
Through Ministry of External Affairs,
South Block, New Delhi
2. Chief Passport Officer
Ministry of External Affairs, Room No. 8, 1st Floor,
Patiala House Annexe, New Delhi 110001

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3. Regional Passport Officer, Mumbai, having his office at
Manish Commercial Centre, 216-A, Dr. Annie Besant
Road, Worli, Mumbai 400030

...Respondents

To,

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

*The humble Petition of the petitioner above-
named*

MOST RESPECTFULLY SHEWETH:

1) That the petitioner is a citizen of India and is filing the present Writ Petition under Article 226 of the Constitution of India through his Constituted Attorney Mehmood M. Abdi whose address is given above. By way of the instant Petition, petitioner inter alia prays that this Hon'ble Court may graciously be pleased to :-

- A) Issue a Writ of certiorari or any other appropriate Writ Order or direction in the nature of certiorari calling for the records of the proceedings relating to and leading to the impugned orders dated 31.10.2011 and 03.03.2011 and quash the impugned order dated 31.10.2011 passed by the Respondent No.2 and impugned order dated 03.03.2011 passed by the Respondent No -3. A true copy of the order dated 31.10 2011 and 03.03.2011 are enclosed herewith and marked as "ANNEXURE P- 1" and "ANNEXURE P- 2" respectively.
- B) Issue and ex parte ad interim order of stay of the impugned orders dated 31.10.2011 and 3.3.2011 and after hearing the parties confirm the same.
- C) And / Or Pass any other order / orders as your lordships may deem fit in the facts and circumstances of the case.

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2) That Respondent No. 2 is the Chief Passport Officer, which is a statutory Appellate authority under the Passports Act, 1967 discharging, *inter alia*, quasi-judicial functions. Respondent No. 3 is the Regional Passport Officer, Mumbai which is also a statutory authority under the Passports Act, 1967 and also discharges quasi-judicial functions in addition to administrative functions and the respondent no 1 and 2 have passed the impugned orders in discharge of their quasi judicial functions.

3) That the brief facts of the case are as under:

- i. That the petitioner was appointed as the Chairman/ Commissioner of the Indian Premier League (IPL), a sub-committee of the Board for Control of Cricket in India (BCCI) sometime in the year 2008, as he had conceptualized the format of the IPL. The IPL conducted three seasons being IPL-1 (2008), IPL-2 (2009) and IPL-1 (2010) under the aegis of the petitioner. In and around the year 2009 the law enforcement/intelligence agencies came to learn that there was serious threat to the life of the petitioner and his family and therefore Petitioner and his family were provided round the clock security cover. Petitioner is not filing the entire set of documents on this issue along with the present writ petition. However, if so required by this Hon'ble Court the petitioner would place on record the documents relating to the threat to his life and the life of his family members and also the documents relating to his security cover and its subsequent reduction and withdrawal in a sealed cover along with an additional affidavit for the kind perusal of this Hon'ble Court.
- ii. That on the night of conclusion of IPL-3 i.e. on 25th April 2010 petitioner was served with a show cause notice, by BCCI alleging misconduct under the BCCI Regulations and to show cause why disciplinary action should not be taken against him. Simultaneously, the petitioner was also suspended as the

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Commissioner of IPL. The trigger point of the whole controversy were the issues in respect of the bidding process involving the Kochi team which became a political controversy and led to the resignation of Mr. Shashi Tharoor who was then the Minister of State for External Affairs. That subsequently two further show cause notices were issued by the BCCI and presently the Disciplinary Committee of the BCCI is examining the allegations of the show cause notice and the reply of the petitioner to such show cause notices.

- iii. That on 14.05.2010 the petitioner apprehending serious threat to his life and his family's life and due to the fact that after his suspension as the chairman /commissioner of IPL the security cover given to him and his family members was reduced/ withdrawn by the Mumbai Police left for United Kingdom.
- iv. That on 15.10.2010 the Regional Passport office Mumbai, under the signature of Assistant Passport officer (Policy) issued a Show cause notice wherein, *inter alia*, it was stated as under :-

"It is informed by the Directorate of Enforcement, Mumbai that a complaint dated 16.09.2010 under section 13 of FEMA, 1999 has been filed against you and a Show Cause Notice has been issued to you on 20.09.2010 for non-compliance of Summons issued by them.

In view of this, you are called upon to explain as to why action under Section 10(3)(c) of the Passports Act, 1967 should not be initiated against you."

It is submitted that this show cause noticed dated 15.10.2010 was a limited show cause notice and had a very narrow scope. This show cause notice could have culminated at the most in a decision to initiate proceedings under Section 10 (3) (c) of the Passport Act, 1967 but could not have culminated in a final decision either revoking or impounding the passport of the petitioner. At this very stage it is important to clarify that till

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date the complaint dated 16.9.2010 and show cause notice dated 20.9.2010 have not been adjudicated upon by the concerned adjudicating officer of the Enforcement Directorate, Not even a preliminary decision to initiate proceedings has been taken till date , Petitioner also submits that such complaint and Show cause notice is not maintainable. A copy of the show cause notice dated 15.10.2010 is annexed herewith and marked as ANNEXURE P-3.

- v. That on 26.10.2010 in response to the letter dated 15.10.2010 petitioner's Solicitors submitted an interim reply and an application to the assistant passport officer, seeking Supply of all information, communications and documents (Materials) referred to and or relied upon in the letter dated 15.10.2010. They also sought a time of two weeks to reply to the show cause after supply of the materials as sought for by them. As is evident from the letter dated 15.10.2010, it was a show cause seeking a response as to why the proceedings under Section 10 (3)(c) of the passport Act 1967, be not initiated, petitioner in this very interim reply submitted and explained the reasons why the contemplated proceedings should not be initiated. A copy of the interim reply/application dated 26.10.2010 is annexed herewith and marked as "ANNEXURE P-4".
- vi. That on 28.10.2011 when the Assistant Passport officer did not respond to the letter dated 26.10.2011 and as the dead line for filing the reply was approaching and there was apprehension that an ex parte order may be passed against the petitioner therefore Petitioner's Solicitors were constrained to address three letters, interalia, seeking a response in writing to the letter dated 26.11.2010, supply of documents and an opportunity of oral hearing. A copy of the letters dated 28.10.2011 is annexed herewith and marked as "ANNEXURE P-5".
- vii. That on 29.10.2010 Petitioner was constrained to address another letter for the fifth time seeking a response in writing to

his repeated requests. A copy of the letter dated 29.10.2010 is annexed herewith and marked as "ANNEXURE P-6".

viii. That on 30.10.2010 when the aforesaid requests were not even responded to by the Assistant Passport officer, petitioner apprehending an ex parte order filed his second interim reply interalia explaining therein that in absence of the materials relied upon for the issuance of Show cause notice petitioner is not in a position to file an effective reply, however petitioner fully and completely explained his position with regard to the issuance of summons by the enforcement directorate, petitioner informed the Assistant passport officer Policy that he has fully co-operated with the request made by the enforcement directorate, provided all the documents, he has not wilfully avoided any summons, and he has offered to be examined via video link and or commission or by any other method as envisaged in Section 131 of Income Tax Act. Petitioner also explained that there is no basis for initiating proceedings under Section 10 (3) (C) of Passport Act 1967. A copy of the letter dated 30.10.2010 is annexed herewith and marked as "ANNEXURE P-7".

ix. That the Assistant Passport officer issued a communication/notice dated 01.11.2010 wherein it was recorded that it had received two communications from the Directorate of Enforcement dated 04.10.2010 and 15.10.2010. However, it was stated that the same were confidential in nature and constitute correspondences between two government departments, the copies of these letter cannot be supplied. In the same letter certain portion of the communication which was relevant according to the Regional Passport Office was reproduced and through the letter dated 01.11.2010 it transpired that the ED has made a request for the impounding of the passport of the petitioner. By the same letter the Assistant Passport officer specifically recorded *"An additional time of ten days is being granted from the date of this notice to file his reply. If no reply is received within the stipulated period, necessary action under*