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Estd. 1883

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DJM/HC/10082/9634/10

29th November, 2010

BY HAND/ BY EMAIL/ BY FAX/

To,
The Assistant Passport Officer (Policy)
Regional Passport Office,
Mumbai

Reference: Hearing held at your office on 26th November, 2010.

Sir,

We act for Mr. Lalit K. Modi in the captioned matter and under his instructions we have to write to you as under:

1. We thank you for having given us a hearing on 26th November, 2010 when Mr. Amit Desai, Sr. Adv; Mr. V. Dhond. Adv; and Mr. S. S. Mendon, Adv instructed by us appeared.
2. At the very outset, I wish to place on record the oral submission made at the time of hearing, that we are proceeding with the hearing without prejudice to our contention that the Regional Passport Officer was not the adjudicating authority appointed to hear this matter and that the adjudicating authority has been changed, mid stream, from the Assistance Passport Officer (Policy) to the Regional Passport Officer.
3. As you are aware, at the time when the proceedings were halted, Senior Advocate Mr. Amit Desai was in the midst of making his submissions.
4. He had, at that time, brought to your notice that several important factual and legal issues remained to be addressed. These included, the critical issue of the power and jurisdiction under Section 10(3) of the Passports Act. Equally important were arguments on the factual material to establish the total lack of merit in the alleged FEMA violations. This would have covered explaining the BCCI contracts; division of powers and functions; the WSG Facilitation Fee allegations etc. This would have demonstrated that there was no infraction by our client so as to merit any action under the Passport Act. A lot of law also remained to be shown. He had therefore requested that a further date of hearing be fixed

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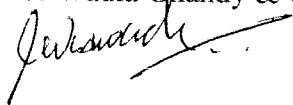
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to enable him to complete his submissions. That arguments could not be completed and a further hearing date be fixed, was also endorsed by us on the attendance sheet.

5. You will appreciate that as a Quasi Judicial Authority, you are entitled to continue the hearing since this personal hearing is a part of the process of natural justice. The length of the hearing would always depend upon the facts and circumstances of each case. You would have appreciated that the case in hand is unique and unusual and there are serious issue of fact, mala-fides and law as also jurisdictional issues that need to be explained and placed before you. Despite every endeavor being made to compress arguments, considering the complexity of the matter and voluminous record, it was physically impossible to do so on 26th November, 2010.
6. May we therefore request that a further hearing date be fixed for us to complete our arguments. This matter is, in many ways, both unique and unusual and will be a water shed case, on the exercise of powers under the Passports Act. The record is voluminous and there are several complex factual and legal issues involved. Arguments, in these circumstances, will take time. Further more, there is no real urgency or emergency situation which requires that action on your notice be taken immediately in as much as you yourself and all Governmental Agencies are aware, from May, 2010, that our client is not in India and is not in a position to return immediately on account of the serious threat perception against him. Even an adverse order cannot change the ED's request for impounding our client's Passport, as the same is with our client in London. Also mere impounding cannot achieve the ED's stated objective i.e., "so that his attendance in compliance of the summons could be enforced." This is apart from the fact that S.10(3)(C) cannot be invoked for such a purpose.
7. You will appreciate that despite every effort made by Senior Advocate Mr. Desai to compress arguments and cite only few cases, arguments could not be completed.
8. We therefore trust that our request that a further date of hearing be fixed, will be acceded to. We reiterate (what was urged on Friday) that the time to be allocated for a personal hearing, must be decided with reference to the complexities of each case and the issues involved therein and no rigid hard and fast norms be applied. If this yard stick is applied to the present case, you will surely agree that a further date of hearing is necessary. This can be fixed at an early date, at your convenience.
9. We also reiterate (what had been pointed out when the hearing was halted) that:-
 - a. the mere use of the words "final hearing" in your letters does not mean that the case has to be closed for orders, despite arguments not having been completed and despite several important issues remaining to be argued;
 - b. there is a clear and well settled distinction between "final hearing" and "final date of hearing";
 - c. there is no embargo against a "final hearing" extending beyond one hearing;
 - d. there is nothing un-alterable even if the notice alludes to a "final date of hearing" (which is not so in this case). An adjudicating authority also has the power to fix a further date;

- e. the over riding concern, in such cases is (and ought to be) the interest of justice. In this case. they require that a further date of hearing be fixed;
 - f. there is no need for any emergent exercise of adjudication or for closing the case and declining our request;
10. May we therefore request that a further date of hearing be fixed. This will further the cause of justice, in a case which is both individually important to our client and affects his civil liberties as also generally important on account of the issues arising.
11. If despite the above, our request is not going to be acceded to, please be kind enough to inform us about the same at the earliest and defer your decision so that our client can consider his options.
12. Our client reserves his rights.

Yours truly,
For Wadia Ghandy & Co.



Partner