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Estd. 1883

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DJM/HC/10082/ 9460/10

19th November, 2010

The Assistant Passport Officer (Policy)
Regional Passport Office,
Manish Commercial Centre,
216 – A, Dr. Annie Besant Road,
Worli, Mumbai – 400 030.

Re :- **Hearing held at Regional Passport office on 18th November, 2010-11-19**

-and-

Our letter dated 18th November, 2010 bearing Ref No.DJM/HC/10082/9417/10

Sir,

1. We refer to our letter of yesterday (18/11/2010) bearing Ref No.DJM/HC/10082/9417/10 sent by fax and/or E-mail to you at 17:33 hours.
2. In continuation, thereof, we would like to very briefly place on record, what we regard, as disquieting (if not disturbing) developments about the manner in which the proceedings against our client are being conducted.
3. These proceedings commenced with the issuance of a letter dated 15/10/2010. This letter was issued by you [in the name of the Assistant Passport Officer (Policy)] and signed by you. This letter stated:-

"if you wish, you may appear before the Assistant Passport Officer (Policy) to represent your case in person, within 15 days from the date of issue of this letter along with the Passport bearing No. Z-1784222 dated 30.07.2008"

BRANCHES :

AHMEDABAD : WADIA GHANDY & CO. (AHMEDABAD) 1ST FLOOR, CHANDAN HOUSE, NEAR MAYOR'S BUNGLOW, LAW GARDEN, AHMEDABAD 380 006. TEL.: 91-79-26564700/4800 FAX: 91-79-26564300
BANGALORE : WADIA GHANDY & CO. (SOUTH) 9TH FLOOR, VAYUDOOCH CHAMBERS, 15-16 M. G. ROAD, BENGALURU 560 001. TEL.: 91-80-41233127/28 FAX: 91-80-41233129
CHENNAI : WADIA GHANDY & CO. (SOUTH) B2, SPRINGFIELD, OLD NO. 9, NEW NO. 22, JAGANATHAN ROAD, NUNGAMBAKKAM, CHENNAI 600 034. TEL.: 91-44-43596858 /6868 FAX: 91-44-43596838
PUNE : WADIA GHANDY & CO. (PUNE) OFFICE No. 12, SAGAR ARCADE, 616 FERGUSSON COLLEGE ROAD, DECCAN GYMKHANA, PUNE 411 004. TEL.: 91-20-25539950 FAX: 25520578

4. On 16th November 2010 we received your letter under the signature of the Assistant Passport Officer (Policy) inviting us for a personal hearing in “the Chambers of the Regional Passport Officer at Regional Passport Office.....” In view of your letter dated 15th October 2010 read with your letter dated 16th November 2010 we along with our Counsels Mr. Venkatesh Dhond and Mr. Swadeep Hora attended the personal hearing which was to be conducted by you [Assistant Passport Officer (Policy)] as stated in your letter of 15th October 2010. It is in the context of the events that took place at this hearing that we are writing this letter.

5. It is pertinent to note that all correspondence between 15th October 2010 and 17th November 2010 were addressed by us on behalf of our client to you [Assistant Passport Officer (Policy)], as the Adjudicating Authority in the matter. In view of your Notice dated 15th October 2010 we were entitled to and did in fact believe that you would be the Adjudicating Authority in respect of the Notice.

6. When we entered the Chambers of the Regional Passport Officer, we noticed that the Regional Passport Officer was present in his Chamber with yourself sitting on the left hand side of the table. The Regional Passport Officer requested us to commence our submissions. We obviously were puzzled by this request since the proceeding in question was not an administrative proceeding but a quasi judicial proceeding subject to appeal and other legal remedies and consequently were to be conducted bearing in mind the well settled principles in respect of the conduct of such quasi judicial proceedings. We were surprised to find that you, in your capacity as a quasi judicial officer, were sitting in the Chambers of your superior who was the Regional Passport Officer and were allowing adjudication proceedings to be conducted by your superior instead of yourself. Our Counsels immediately raised an objection regarding this procedure and pointed out that this was contrary to law and militated against our client’s right to a fair and impartial hearing in the matter. Briefly, the events that transpired thereupon in relation to this adjudication are as under:
 - a) It was pointed out that the personal hearing was to be held before you [i.e Assistant Passport Officer (Policy)] and that your superior (i.e the Regional Passport Officer himself) could not participate. This was a quasi-judicial hearing – not a departmental administrative meeting. This objection, despite the legal position being explained and the despite the record being shown, was brushed aside.



- b) We were informed by you that the Regional Passport Officer was the head of the Regional Passport Office at Mumbai and as such departmental head had every right to participate AND would participate.
- c) We therefore requested that if such an unusual course was being adopted, then our objections may be recorded and an order passed thereon.
- d) At this juncture we were told that this request would be deliberated upon and we should wait outside. Whilst waiting outside, a letter was hastily dictated from the venue and this was faxed/e-mailed to you at 17:33 hours, recording these facts.
- e) On the hearing resuming, the fact of the recording letter was duly communicated and the request for a decision was reiterated. Once again we were informed that we should proceed with the hearing.
- f) It was therefore requested that it be clarified that who would be conducting the hearing, since there could be only one adjudicating authority and there needed to be clarity on who would be doing the adjudication and who would decide, since the arguments needed to be addressed to the said person. It was therefore requested that at the very least a decision on this be given on this.
- g) The response to this was that it was the "Passport Office" which was doing the adjudication and that both the Regional Passport Officer and you [i.e Assistant Passport Officer (Policy)] were part of the Passport Office in Mumbai and you both would therefore adjudicate. It was therefore pointed out that the explanations that were being put forth to justify the presence and active participation of the Regional Passport Officer were getting more curious by the hour. What was going on was anathema and abhorrent to all known principles of fair adjudication. The adjudication was to be one person, not a Panel of two or three (depending on whether the third person present was to be counted or not). It was once again pointed out that these were not departmental administrative proceedings where all could sit as a collective and decide : these were quasi-judicial proceedings.

AM

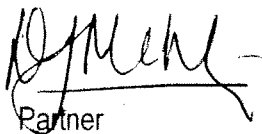
- h) You [i.e Assistant Passport Officer (Policy)] responded by saying that this could be done and drew our reference to the provisions of the Passport Rules, 1980 and Rule 3 and Schedule I thereto, to say that all the officers stated therein were notified. This response was endorsed by the Regional Passport Officer.
 - i) In response, it was pointed out that this was completely erroneous. The powers under Section 10(3) of the Act were to be exercised by the "Passport Authority". "Passport Authority" was defined under Section 2(c) to mean an officer or authority empowered under the Rules. Rule 3 clearly prescribed that the Passport Authority was, in addition to the Central Government, the officers specified in Schedule I. Hence, for the purposes of Section 10(3), the Passport Authority was an "officer" NOT "an Office". It was also pointed out that if what you were saying were to be accepted there could be a large number of officers who would fit the description given in the Rules and there would be an absurdity inasmuch as the hearing could be before one or many or all of them. This violated the basic principles of fair adjudication.
 - j) Once again, our request that our objections to this unusual and strange course being followed be recorded and a ruling be given was brushed aside. Once again there was a short recess.
 - k) On reconvening, the response was that an order would be passed on the same and that we should not waste time and start with the hearing. However, no order was passed in our presence on this issue and we were requested by your superior the Regional Passport Officer to continue with the hearing in the matter. Without prejudice to these contentions and in order not to create a mis-perception, our Counsel felt compelled to make submissions on the various applications and requests made by our client from time to time. Whilst, the Notice for the hearing was to appear at 4 p.m., the hearings commenced at about 4.30 p.m.. The aforementioned preliminary issue was argued for more than an hour and thereafter around 6 p.m. we were asked to continue with the hearing which went on till about 8.30 p.m. well after office hours.
7. We are recording the aforesaid events as we have not yet received the order that was passed on our aforesaid objections.

RPM

8. Our client submits that the procedure of personal hearing adopted by yourself and your office is in violation of the provisions of the Passports Act, 1967 and of our client's fundamental rights to due process and a procedure which is fair and reasonable and in accordance with law.
9. We are, therefore, requesting that before any further hearings are fixed in the matter your good self may apprise us of the order that has been passed on the issues mentioned above, since it is submitted that the hearing that took place yesterday cannot be considered to be a "personal hearing" as contemplated by law and by the rules of fair play and fairness in quasi judicial proceedings.
10. We may also add that we were given to understand by you in the course of hearing yesterday that the Enforcement Directorate had not furnished to you all the relevant records which would have formed the basis for your Notice. In this context it was suggested on your side that the Enforcement Directorate may be contacted by you later to ascertain full particulars in the matter. Our client submits that now that the personal hearing in the matter is in progress, any such attempt, can only take place in our and in our Counsels' presence and we would request you to ensure that this procedure is also followed. Any attempt to deal with issues which are relevant to your Notice under adjudication with the Enforcement Directorate behind our back would also violate the norms of a fair play and fairness of proceedings.

Thanking you,

Yours truly,
For Wadia Ghandy & Co


Partner