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Estd. 1883

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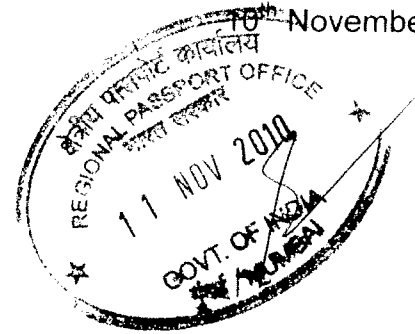
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BY E-mail/Fax/Hand Delivery

DJM/HC/10082/9240/10

The Assistant Passport Officer (Policy)

Regional Passport Office,
Manish Commercial Centre,
216 – A, Dr. Annie Besant Road,
Worli, Mumbai – 400 030.



10th November, 2010

Re :- Your letter dated 01/11/2010 bearing Ref No : F7(5) 10-D-4399/10-572-Pool-I

Sir,

We refer to our previous communications to you, being (1) letter dated 26/10/10 bearing No: DJM-HC-10082/8951/10; (2) letter dated 28/10/10 bearing No: DJM-HC-10082/8994/10; (3) letter dated 28/10/10 bearing No: DJM-HC-10082/8997/10; (4) letter dated 28/10/10 bearing No: DJM-HC-10082/9002/10; (5) letter dated 29/10/10 bearing DJM-HC-10082/9027/10; and (5) letter dated 30/10/10 bearing No: DJM-HC-10082/9075/10 ("**our letters**") and (1) your letter dated 1st November, 2010, bearing Reference No. F 7(5) 10-D-4399/10-572-Pool-I ("**your letter**"); and (2) your letter dated 15/10/10 bearing No: F 7(5) 10-D-4399/10 – 572-Pool-I ("**your letter under reference**")

Your letter, in its last paragraph, states that "in the interest of natural justice and fairness" an additional time of 10 days has been granted to our client to file his Reply. However, you have not furnished inspection and / or copies of documents that were requested in earlier correspondence. Your letter seems to suggest that you have only two documents on the basis of which your notice dated 15th Oct 2010 was issued i.e. letters dated 4th October 2010 and 15th October 2010. We would request you to please confirm if our understanding is correct.

BRANCHES :

AHMEDABAD : WADIA GHANDY & CO. (AHMEDABAD) 1ST FLOOR, CHANDAN HOUSE, NEAR MAYOR'S BUNGLOW, LAW GARDEN, AHMEDABAD (380006) TEL: 91-79-265647/04800 FAX: 91-79-26164000
BANGALORE : WADIA GHANDY & CO. (SOUTH) 9TH FLOOR, VAYUDOOTI CHAMBERS, 15-16 M. G. ROAD, BANGALORE-560001 TEL: 91-80-41231127/28 FAX: 91-80-41231129
CHENNAI : WADIA GHANDY & CO. (SOUTH) B2, SPRINGFIELD, OLD NO. 9, NEW NO. 22, JAGANATHAN ROAD, NUNGAMBAKKAM, CHENNAI-600034 TEL: 91-44-43596858/6868 FAX: 91-44-43596838
PUNE : WADIA GHANDY & CO. (PUNE) OFFICE No. 12, SALAR ARCADE, 416 FERGLISSION COLLEGE ROAD, DECCAN GYMKHANA, PUNE-411004 TEL: 91-20-25319950 FAX: 25520578

Our client however once again reiterates that he be furnished with:-

- (a) all information, material, communications and documents referred to and/or relied upon in your letter under reference ; and
- (b) any other relevant material available with you, not referred to and/or relied upon in the letter under reference, including but not limited to the letters dated 05/10/10 and 15/10/10 .

After having referred to these letters for the first time, your letter declines to supply us with copies of the letters dated 04/10/2010 and 15/10/2010 from the Directorate of Enforcement, on the ground that they are "confidential in nature and constitute correspondence between the two Government Departments".

We trust that you are cognizant of the fact that you are not acting as an official in an administrative capacity of a Government Department but discharging an important quasi-judicial function/duty, under the Passport Act, 1967. You are therefore acting as a judge in an adversarial lis where the contesting parties are said to be, the Enforcement Directorate and our client.

Whilst you seem to recognize that "natural justice and fairness" are fundamental requirements to these proceedings, you fail to appreciate the concomitant and requirements of "natural justice, and fairness" It is a cardinal, basic and minimal requirement of the "interest of natural justice and fairness" that our client be supplied with the material which is proposed to be relied upon and/or used against him. In the present case, this material will include the letters dated 04/10/2010 and 15/10/2010. It is therefore incumbent that our client be supplied with copies of these letters. For ready reference we quote a recent decision of the Hon'ble Supreme Court in Kothari Filaments Case in this regard.

14. In the event of finding as regards violation of the provisions of the Act is arrived at, several steps resulting in civil or evil consequences may be taken. The principles of natural justice, therefore, were required to be complied with.

15. *The Act does not prohibit application of the principles of natural justice. The Commissioner of Customs either could not have passed the order on the basis of the materials which were known only to them, copies whereof were not supplied or inspection thereto had not been given. He, thus, could not have adverted to the report of the overseas enquiries. A person charged with misdeclaration is entitled to know the ground on the basis whereof he would be penalized. He may have an answer to the charges or may not have. But there cannot be any doubt whatsoever that in law he is entitled to a proper hearing which would include supply of the documents. "Only on knowing the contents of the documents, he could furnish an effective reply."*

You must also be aware that even in proceedings under the Official Secrets Act, courts have consistently taken the view that an accused is entitled to copies of all documents relied upon against him and following the concept of 'procedure' as interpreted in Maneka Gandhi's case (a case under the Passport Act, 1967) any interpretation to withhold the same would be violative of Articles 14 and 21 of the Constitution of India. You will appreciate that the proceedings being threatened against our client also entail serious inroads into his constitutional rights.

The withholding thereof, on the ground that "the same is confidential in nature and constitutes correspondence between two Government Departments" is totally specious and un-tenable for several reasons and violates all principles of natural justice and fairness. Our client joins issue with the assertion about its confidentiality. These letters are not mere inter-departmental correspondence. They are communications on the basis of which it is being urged that proceedings under the Passport Act, 1967 be instituted. The ultimate result of such proceedings (if instituted and if adverse to our client) can entail very serious consequences on our client's liberty and the enjoyment, by him, of his fundamental rights. Furthermore there is no principle of law that mere correspondence between two Government Departments can be withheld from an opposing party during the course of a lis. Also merely because such correspondence is (said to be) "confidential" is no ground for it being withheld. Your letter does not give any valid reason or justification for withholding the documents from our clients. Especially so, after you have purportedly quoted from the said letter. In a day and age when the State has enacted and is promoting the Right to Information Act, 2005, (which

gives wide ranging right to information to any citizen) the withholding of such important material, by a Government official, discharging a quasi-judicial function under a statute, from a contestant in a lis, would not only be manifestly un-fair but completely retrograde. In any event, a decision on whether any material should be withheld itself involves a request by a contesting party ; a response thereto; and an adjudication thereof. It cannot (and in any event ought not to) be taken unilaterally or sua-sponte, in the manner done.

Please note that the exercise of supplying our client with (what you regard as) relevant content of the letters dated 04/10/10 and 15/10/10 is not acceptable and wholly unfair and misconceived. With very great respect and deference, it is submitted that it is for our client and us to decide what is relevant. The approach adopted in your letter will result in a serious miscarriage of justice.

Without prejudice to the above and in any event it is submitted that the content as extracted in your letter is very ambiguous and a cause for confusion. On page 2 of your letter there is an inverted comma, which closes on page 4. A perusal thereof, indicates that , the content is totally disjointed and vital intervening links are missing. This underlines the un-satisfactory nature of the course adopted. It is not indicated from which letter it has been taken.

In these circumstances, it would be in the interest of justice that the following concerns of our client be clearly and expeditiously responded to before taking any action against our client.

- a. Could you please specify what the "letters 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 you 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.

In addition to the above, we reiterate the requests made in our letters and trust that copies of the letters dated 04/10/10 and 15/10/10 and all other material requested will be supplied to us at the earliest and a short period of time thereafter be given to submit our client's Reply. You will appreciate that the matter in hand relates to our client liberty and fundamental right and our client hopes that no precipitative or hasty action be taken against him without complying with due process.

In view thereof we would request you (a) to fix a time to take inspection and provide copies of the material, documents and information as referred to in our earlier letters and this letter; (b) extend time to file a further and detailed reply; and (c) fix a mutually convenient time for a personal hearing in the matter.

Considering the importance of these proceedings for our client; their sensitive nature; the facts and events set out in our earlier communications, we would request that there be no ambiguity whatsoever on (i) whether and when the material requested by our client will be supplied to him; and (ii) the deadline within which you require our client to submit his Reply. May we request that you send us your confirmation, by e-mail and/or by fax, by 12 pm tomorrow, so that there are no surprises.

Thanking you,

Yours truly,
For Wadia Ghandy & Co.


Partner