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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2109/2017 & CM 9225/2017**

FAIZAL IBRAHIM

..... Petitioner

Through: Mr K. Varghese, Mr abin Phukan, Mr
V. Shyamohan, Mr Suya Prakash, Mr
Harnain Kaur Alag, Mr Gurpreet
Hora, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr Nivesh Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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12.09.2017

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying that respondent no.2 be directed to release his passport (Passport No. Z2150289).

2. Briefly stated, the relevant facts necessary to address the controversy involved in this petition are as under:-

2.1 The petitioner is a citizen of India and states that he has been a resident of United Arab Emirates (hereafter 'the UAE') for almost his entire life. The petitioner owns a trading company in Ajman, UAE. It is stated that the said company was established by his father and now the petitioner handles the day-to-day operations of the said company. The said company is mainly involved in the trading of tyres and lubricants and assorted

automobile accessories. The petitioner states that for business purposes he is required to travel extensively to other countries including India.

2.2 The petitioner was travelling along with his family from Delhi to United Kingdom on 14.02.2017 when he was restrained by the Immigration Officials at the airport who seized his passport. The petitioner's family was permitted to proceed to UK but the petitioner was restrained in India. The seizure memo dated 14.02.2017 which was handed over to the petitioner indicates that a Look Out Circular (LOC) had been issued against the petitioner and his passport had been suspended for four weeks with effect from 02.02.2017.

2.3 Subsequent, thereto the petitioner was issued a show cause notice by the Consulate General of India (CGI) at Dubai.

“No. Duba/Cons/405/10/2017 19th February, 2017

To,

Mr Faizal Ibrahim

s/o Ibrahim Aliyaru Kunju

Address 1. PO Box No. 20796,

New Industrial Area, Ajman,

UAE

Address 2: A1 Faisal tyres Trading Naya

Sanya, Ajman, UAE Contact no: 0506712905

Subject: Show Cause Notice u/s 10(3)(c) of the
Passport Act, 1967.

Sir,

You may recall that a Passport no. Z2150289 dated 11.05.2011 was issued to you by Consulate General of India, Dubai.

It is brought to the notice that you are involved in the activities prejudicial to the interests of the sovereignty

and integrity of India, the security of India, friendly relations of India with any foreign country.

You are hereby directed to furnish your explanation within one week from the date of receipt of this notice failing which it will be presumed that you have nothing to explain in writing and necessary action will be initiated for the revocation of the Passport no. Z2150289 as contemplated under the provisions of the Section 10(3)(c) of the Passport Act, 1967.

Yours sincerely
Sd/-
CGI, Dubai.”

2.4 The counter affidavit filed by the respondent indicates that a complaint had been received from one Sh Sukhdev Singh alleging that the petitioner (who was the authorized signatory of M/s A1 Faisal Tyres Trading in Ajman, UAE) had absconded from UAE after a cheque for a value of AED 4,60,350/- issued by him was dishonoured. Sukhdev Singh had requested the CGI to locate the petitioner and take appropriate action against him for recovery of money. The respondent confirmed that pursuant to the said complaint, CGI at Dubai had issued a letter dated 28.11.2016 and also informed the Superintendent of Police, District Thiruvananthapuram about the said complaint.

2.5 The respondents have affirmed that the said matter was examined by the officials of Ministry of External Affairs (MEA) and after approval of the competent authority, a decision was taken to suspend the petitioner's passport for a period of four weeks and a suspension order dated 02.02.2017 was passed. Simultaneously, the CGI, Dubai also issued a show cause notice to the Passport Holder (the petitioner) to show cause as to why his suspended passport should not be revoked under Section 10 (3)(c) of the

Passports Act, 1967 and pursuant thereto the CGI, Dubai had issued the show cause notice, which is referred to above.

3. The learned counsel appearing for the respondents submitted that order of suspension was further extended by an order dated 01.03.2017 till the conclusion of the proceedings relating to the revocation of the petitioner's passport. The order suspending the petitioner's passport dated 02.02.2017 is not on record. However, the learned counsel for the respondent has handed over a copy of the same.

4. The said order is set out below:-

**" Patiala House Annxe, New Delhi,
the 01st March, 2017**

ORDER

WHEREAS, the Central Government on the basis of information available with it has the sufficient reasons to believe that provisions of clause (c) of sub-section (3) of Section 10 of the Passports Act, 1967 may be invoked against Shri Faizal Ibrahim s/o Ibrahim Aliyaru Kunju.

NOW THEREFORE, the Central Government, has decided to suspend the Passport No. Z-2150289 of Shri Faizal Ibrahim S/o Ibrahim Aliyaru Kunju under the provisions of Section 10-A of the Passports Act, 1967, for a period of four weeks from the date of issue of this order.

(Arun Kumar Chatterjee)
Joint Secretary (PSP) &
Chief Passport Officer
Ph. 011-23387013
E-mail-jscpo@mea.gov.in"

5. The order dated 01.03.2017 extending the suspension order is set out below:-

**“Patiala House Annxe, New Delhi,
the 01st March, 2017**

ORDER

WHEREAS, the Central Government on the basis of information available with it had sufficient reasons to believe that provisions of clause (c) of sub-section(3) of Section 10 of the Passports Act, 1967 may be invoked against Mr. Faizal Ibrahim s/o Ibrahim Aliyaru Kunju, suspended his passport No. Z-2150289 under the provisions of Section 10-A of the said Act, for a period of four weeks from the date of issue of an order in this regard.

NOW, the Central Government keeping in view the fact that the Consulate General of India, Dubai being the respective Passport Authority in the instant case, has issued the Show Cause Notice to be holder of passport to cause to show as to why his suspended passport should not be impounded/revoked under Section 10(3) (C) of the Passports Act, 1967, in terms of the statutory provisions of Section 10-A of the said Act, has decided to extend the period of suspension of Passport No. Z-2150289 of Mr. Faizal Ibrahim, till the proceedings relating to impounding/revocation of his passport under Section 10 of the said Act are concluded by the Consulate General of India, Dubai.

(Arun Kumar Chatterjee)
Joint Secretary (PSP) &
Chief Passport Officer
Ph. 011-23387013
E-mail-jscpo@mea.gov.in”

6. It is apparent from the plain reading of the above order dated 02.02.2017, suspending the petitioner’s passport that no reasons for

initiating such action is indicated therein. The order dated 01.03.2017 further extending the period of suspension of the petitioner's passport, is also bereft of any reasons.

7. Before proceeding further, it would also be relevant to refer to the show cause notice dated 19.02.2017 issued by CGI at Dubai.

“No. Duba/Cons/405/10/2017 19th February, 2017

To,
Mr Faizal Ibrahim
s/o Ibrahim Aliyaru Kunju
Address 1. PO Box No. 20796,
New Industrial Area, Ajman,
UAE
Address 2: A1 Faisal tyres Trading Naya
Sanya, Ajman, UAI Contact no: 0506712905

Subject: Show Cause Notice u/s 10(3)(c) of the Passport Act, 1967.

Sir,
You may recall that a Passport no. Z2150289 dated 11.05.2011 was issued to you by Consulate General of India, Dubai.

It is brought to the notice that you are involved in the activities prejudicial to the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country.

You are hereby directed to furnish your explanation within one week from the date of receipt of this notice failing which it will be presumed that you have nothing to explain in writing and necessary action will be initiated for the revocation of the Passport no. Z2150289 as contemplated under the provisions of the Section 10(3)(c)

of the Passport Act, 1967.

Yours sincerely
Sd/-
CGI, Dubai.”

8. It is also plainly evident from the aforesaid show cause notice that the same also does not give any real clue as to why the petitioner's passport is proposed to be revoked.

9. At this stage it is necessary to refer to Section 10A of the Passports Act, 1967 (hereafter 'the Act'), which reads as under:

“10A. Suspension of passports or travel documents in certain cases.—

(1) Without prejudice to the generality of the provisions contained in section 10, if the Central Government or any designated officer is satisfied that the passport or travel document is likely to be impounded or caused to be impounded or revoked under clause (c) of sub-section (3) of section 10 and it is necessary in the public interest so to do, it or he may,—

1[10A. Suspension of passports or travel documents in certain cases.—(1) Without prejudice to the generality of the provisions contained in section 10, if the Central Government or any designated officer is satisfied that the passport or travel document is likely to be impounded or caused to be impounded or revoked under clause (c) of sub-section (3) of section 10 and it is necessary in the public interest so to do, it or he may,—

(a) by order, suspend, with immediate effect, any passport or travel document;

(b) pass such other appropriate order which may have the effect of rendering any passport or travel document invalid, for a period not exceeding four weeks:”

10. It is apparent from the plain reading of Section 10A of the that an

order for suspension of passport can be issued only if the Central Government or the designated officer is satisfied that the passport or travel document is likely to be impounded or revoked under clause (c) of sub-section (3) of Section 10 of the Act and it is necessary in the public interest to do so. The orders passed by the respondent do not indicate any reasons whatsoever for impounding the passport. Section 10(3)(c) of the Act reads as under:-

“10(3)(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;”

11. It is apparent from the above that a passport can be impounded only if it is necessary to do so in the interests of the sovereignty and integrity of India, the security of India, interests of the general public.

12. The order passed on 02.02.2017 and 01.03.2017 do not indicate as to which of the aforesaid reasons weighed with the respondent for suspending the petitioner's passport.

13. The show cause notice dated 19.07.2017 issued by the CGI (which is stated to have been issued at the instance of the Passport Authority in Delhi) is also completely silent as to the reasons for impounding the petitioner's passport. The only allegation made in the said show cause notice is that the petitioner is involved in *“activities prejudicial to the interests of the sovereignty and integrity, security of India, friendly relations of India with any foreign country.”* It is not the respondent's case - even before this Court

- that the petitioner is involved in any activity which is prejudicial to the interests of sovereignty of India or the security of India. This court is also unable to appreciate as to how friendly relations with any foreign country are put to risk by the petitioner holding a passport or are supported by revoking the petitioner's passport.

14. It is at once clear that the show cause notice has been issued without application of mind and merely by quoting the provisions of Section 10(3)(c) of the Act, without even taking the effort to point out which particular clause (reason) is sought to be applied in the petitioner's case.

15. It is well settled that a show cause notice should contain the particulars to enable the noticee to address the allegations made against him. In the present case, the said necessary ingredient is absent.

16. The question whether a complaint regarding bouncing of a cheque in a foreign country falls within the provision of Section 10(3)(c) is also very doubtful. However, this Court is refraining from addressing the said issue at this stage as the respondents are required to do so in the first instance. Clearly, the implication of the same would be that any citizen of India who is accused of any offence overseas would be visited with the consequences of cancellation of its passport and it will be necessary for the respondents to bear this in mind before taking a final decision in the matter.

17. The order of impounding/suspending the passport or travel document under Section 10A of the Passports Act are available with the Central Government. However, the said provision must be resorted to where there is an urgent necessity to do so and only for the reasons as provided in section

10(3)(c) of the Act.

18. Further, in terms of the provisions of Section 10A of the Act, the passport cannot be impounded/suspended for a period of more than four weeks. The power to extend the initial order of suspension is on precondition that reasons for the same be recorded in writing. This is a vital safeguard against extending the suspension of a citizen's passport whimsically or arbitrarily. In the present case, not only the initial order dated 02.02.2017 (which the petitioner states was never communicated to him) as well as order dated 01.03.2017 are - as pointed out earlier - are bereft of any reasons. In this view, the Court is not persuaded to accept that the order dated 01.03.2017 extending the period of suspension of the petitioner's passport is sustainable. The safeguard of recording reasons cannot be defeated by mechanically passing an order extending the period of suspension/impounding.

19. In view of the above, the order dated 01.03.2017 is set aside.

20. The show cause notice dated 19.02.2017 also cannot be sustained for the reason that (a) it is plainly without application of mind as discussed earlier; and (b) it falls short of the standards required of a show cause notice, that is, it must contain the facts and the allegations that the petitioner is required to meet. Thus the show cause dated 19.02.2017 is also set aside; however this will not preclude the concerned authority from issuing a show cause notice setting out the complete details of the matter which is required to be met by the petitioner. The petitioner would be given adequate opportunity to respond to the show cause notice and the concerned authority

may take an informed decision in accordance with law.

21. The respondents are directed to release the petitioner's passport immediately. However, the petitioner shall not travel outside this country for a further period of four weeks to enable the respondents to take the necessary action, if they so desire.

22. The petition and the pending application are disposed of with the aforesaid directions. The parties are left to bear their own costs.

23. Order *dasti*.

SEPTEMBER 12, 2017

pkv

VIBHU BAKHRU, J

