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

+ LPA 538/2017 & CAV No.714/2017, C.M. Nos.28766-28767/2017

UNION OF INDIA & ANR

..... Appellants

Through: Mr.Sanjay Jain, Addl. Solicitor
General with Mr.Rajesh Gogna, Adv.

versus

SIKARDAR KHAN

..... Respondent

Through: Mr.Pradeep Dahiya, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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11.08.2017

CAV No.714/2017

1. Learned counsel for respondent has appeared. The caveat stands discharged.

C.M. No.28767/2017

2. Exemption allowed, subject to just exceptions.

LPA No.538/2017

3. The Union of India has preferred the present Letters Patent Appeal to assail the order dated 6th July, 2017 passed by the learned Single Judge in WP (C) No.5315/2017, preferred by the respondent herein. The said writ petition has been allowed by the learned Single Judge. The learned Single Judge has quashed the orders dated 20th September, 2016 passed by the Central Government under Section

10A of the Passports Act, 1967 (hereinafter referred to and as “Act”) whereby the passport of the respondent was suspended and order dated 18th October, 2016 whereby the suspension of the respondent’s passport was extended on the ground that proceedings under Section 10 for impounding/revocation of his passport, were pending. The learned Single Judge has, after examining the entire matter, also quashed the show cause notice dated 12th October, 2016 issued to the respondent under Section 10 of the Act, on a finding that the said show cause notice does not contain the necessary ingredients for invocation of the provisions of Section 10 of the Act in relation to the respondent’s passport. The said show cause notice had invoked Section 10(3)(c) of the Passports Act, which empowers the impounding of passport *“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;”*.

4. Since the respondent had also made allegations of personal malafide against the local political leaders, State and Union Ministers, the learned Single Judge has also observed in the impugned order that *“Given the cavalier manner in which the orders (orders dated 20.09.2016 and 18.10.2016) and show cause notice have been issued, the allegations of malafide as made in the petition, prima facie, appear to be merited. However, it is not necessary for this Court to examine the same as, ex facie, the impugned order cannot be sustained”*.

5. The submissions of Mr.Jain, learned Addl. Solicitor General are

that, firstly, the writ petition preferred by the respondent was not maintainable since he had an alternative efficacious remedy by way of appeal under Section 11 of the Passports Act, to assail the order passed under Section 10A thereof. We do not find any merit in this submission for the reason, that the impugned order was passed by the Central Government and proviso to Section 11 of the Act specifically provides that no appeal shall lie against any order made by the Central Government .

6. The next submission advanced by Mr.Jain is that the learned Single Judge has not only quashed the orders dated 20th September, 2016 and 18th October, 2016 passed under Section 10A of the said Act, but has also proceeded to quash the show cause notice dated 12th October, 2016 issued under Section 10 of the said Act, even though there was no prayer made by the respondent for quashing of the said show cause notice. He submits that the response of the respondent had been received to the said show cause notice, and the said show cause notice was pending adjudication. The show cause notice had been issued proposing revocation of the respondent's passport and no revocation order had been passed when the notice was quashed. The relief granted by the learned Single Judge was, therefore, highly premature, apart from the fact that no such relief had been sought in the petition.

7. We do not find any merit in the submission of Mr.Jain for the reason that a perusal of the impugned order shows that while examining the legality of the orders passed under Section 10A, the learned Single Judge necessarily had to look into the show cause

notice dated 20th October, 2016 issued under Section 10(3)(c) of the Act which was the basis for passing the orders of suspension of the passport, and upon doing so, it transpired that the show cause notice itself was completely bereft of any material. The learned Single Judge found that the show cause notice merely recited that the respondent had been indulging in unlawful activities against Indian emigrants working in Saudi Arabia, which is not even a ground available under Section 10(3)(c) of the Act..

8. Once it came to the notice of the Court, while examining the validity of the orders dated 20th September, 2016 and 18th October, 2016, that the show cause notice issued under Section 10(3)(c) of the Act was without any substance, the Court was well within its jurisdiction to quash the same. The Court, while exercising jurisdiction under Article 226 of the Constitution of India, is vested with the power to mould the relief. It is not the appellants' case that the appellants did not have adequate opportunity to defend its position qua the show cause notice issued under Section 10(3)(c) of the Act.

9. The third and the final submission advanced by Mr.Jain is that the learned Single Judge, without any basis, has observed in para 25 of the impugned order that the allegations of malafide as made in the writ petition, prima facie, appear to be merited. He submits that the persons against whom allegations of malafide have been made in paras 10 & 11 of the writ petition, were not even made parties to the writ proceedings. He contends that behind their back, even prima facie findings could not have been recorded by the learned Single Judge.

10. To this limited extent, we are of the view that the observations made by the learned Single Judge may not have been called for. It appears from para 25 of the impugned order, that the observations have been made in the passing. However, since those persons were not parties before Court, we are inclined to accept the prayer of learned Additional Solicitor General on this aspect.

11. To the aforesaid limited extent, the appeal is allowed and the observations made in para 25 of the impugned order are expunged.

C.M. No.28766/2017 (for stay)

12. In view of the order passed in the appeal, this application is rendered infructuous and is dismissed as such.

VIPIN SANGHI, J

REKHA PALLI, J

AUGUST 11, 2017/aa