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

+ **W.P.(C) 10611/2017**

**JAGDISH TYTLER**

..... Petitioner

Through: Mr Arvind K. Nigam, Senior  
Advocate with Mr Arunabh  
Chowdhury, Mr Mikhil Sharda and  
Mr Vaibhav Tomar, Advocates.

versus

**REGIONAL PASSPORT OFFICE, DELHI**

..... Respondent

Through:

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**29.11.2017**

**CM No. 43441/2017**

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

**W.P.(C) 10611/2017 and CM No. 43440/2017**

3. The petitioner has impugned the show cause notice dated 14.11.2017 (hereafter 'the impugned SCN') claiming that the same amounts to reopening of the concluded issues. According to the petitioner, the issuance of the impugned SCN amounts to reviewing earlier decisions, which is impermissible.

4. Briefly stated, the relevant facts necessary to address the controversy are as under:

4.1 The petitioner is arrayed as an accused (accused no.2) in a criminal case - CC No.11 of 2013 (renumbered as CC No. 2/2015) captioned ***Central Bureau of Investigation v. Abhishek Verma & Ors.*** The said case is pending before the Learned Special Judge, Patiala House Courts, New Delhi

(hereafter ‘the Trial Court’). Concededly, the petitioner was granted bail on 30.09.2013 on the conditions that “(i) *he will not leave the country without prior permission of the court and (ii) he will not tamper with evidence in any manner, nor will contract with witnesses*”.

4.2 The petitioner claims that he has travelled overseas on a number of occasions after 30.09.2013 with due permission from the Trial Court. The petitioner further asserts that he has also complied with all conditions imposed by the Trial Court while granting him permission to travel overseas.

4.3 The petitioner states that he is the President of Kurash Association of India and holds the post of Vice President of International Kurash Association since 2010. The petitioner claims that he was required to visit Uzbekistan on invitation of the General Secretary of the International Kurash Association. Since the leaves of the petitioner’s passport were exhausted, his Personal Assistant applied for issuance of an additional booklet/re-issuance of passport. The said application was made online on 10.05.2017.

4.4 On 19.05.2017, the petitioner also filed two applications before the Trial Court; one seeking permission to travel abroad from 25.05.2017 to 02.06.2017 and the other seeking permission to apply for a passport. On 22.05.2017, the petitioner also visited the office of the Regional Passport Officer for completing further formalities.

4.5 On 22.05.2017, the petitioner was issued a passport bearing No.Z4269084, which is valid from 22.05.2017 till 21.05.2027.

4.6 On 23.05.2017, the applications made by the petitioner before the Trial Court were listed and on that date the petitioner’s advocate made an

oral request before the Trial Court to withdraw the petitioner's application seeking no objection from the Trial Court for re-issuance of the petitioner's passport. It appears that on being informed that a passport had been issued to the petitioner, the Trial Court directed the petitioner to file an affidavit to the effect that he had disclosed in his applications to the Passport Office that proceedings were pending before the Trial Court. The petitioner asserts that on a further enquiry, it was discovered that in the petitioner's online application for a passport, the petitioner's employee due to inadvertence, had chosen the option "No" against the column; "Have you ever been charged with criminal proceedings or any arrest warrant/summon pending before a Court of India".

4.7. The petitioner thereafter also filed an application on the same date (that is 23.05.2017) before the Trial Court seeking withdrawal of his applications for the renewal of his passport. The Trial Court assumed possession of the petitioner's passport as admittedly it had been obtained by not disclosing the pending proceedings. The order passed by the Trial Court on 23.05.2017 indicates the sequence of events on the particular day and is set out below for ready reference:-

"23/05/2017

Sh. Sunil Rana, Special Judge (PC Act) CBI-06, Patiala House Courts is on leave today.

Case has been taken up today as an application seeking permission to travel abroad from 25/05/2017 to 02/06/2017 has been moved on behalf of A-2 Jagdish Tytler. Another application has been moved on behalf of A-2 Jagdish Tytler seeking no objection from this Court for renewal of his passport.

At 03.50 pm.

Present: Ld. Senior PP Sh. P.K. Dogra, Ld. Senior PP Sh. A.P. Singh and Ld. DLA Sh. V.K. Sharma for CBI.

SP SH. P. Kannan and Pairvi Officer SI Sumit Gupta.

Applicant accused A-2 Jagdish Tytler with Counsels Sh. R.K. Wadhwa and Sh. Amit Sharma.

Written reply to the two applications has been filed by the CBI.

In the morning at about 10.25 two proxy Counsels Sh. Aditya Bhardwaj and Sh. Karma Dorji appeared along with accused/applicant Jagdish Tytler and stated that their application for seeking permission to travel abroad may only be considered and the intend to withdraw the other application seeking no objection for renewal of passport.

It was at this stage pointed by Reader of Court that the said two Counsels were proxy Counsels as they were not having their vakalatnama on record. The two proxy Counsels were also asked as to under what circumstances the passport of the accused Jagdish Tytler came to be renewed when the application for obtaining no objection from this court for renewal of passport was already pending consideration. Renewed passport of the accused was also produced before the Court. Proxy counsels however sought time to call main Counsel. They were also asked to submit an affidavit to the effect that no wrong information was submitted to the passport office while seeking renewal of the passport.

Subsequently at 12.30 pm, Ld. Counsel Sh. R.K. Wadhwa and Sh. Amit Sharma appeared and stated that there appears to be some bonafide mistake/confusion while seeking renewal of the passport. They however sought time to call the accused at 03.30 pm in person and thus sought a passover.

Pairvi Officer SI Sumit Gupta in the meantime was asked to verify the details of renewal of passport from the passport office.

Thereafter at 03.40 pm, accused Jagdish Tytler along with Counsels Sh. R.K. Wadhwa and Sh. Amit Sharma appeared. SP Sh. P. Kannan and Pairvi Officer SI Sumit Gupta from CBI are also present.

However, a written application has been moved by Ld. Counsel Sh. R.K. Wadhwa seeking withdrawal of the application dated 19/05/2017 seeking no objection of the court for renewal of the passport. During the course of arguments, it was also stated that accused Jagdish Tytler also prays for withdrawal of his other application seeking permission to travel abroad.

At this stage, Pairvi Officer SI Sumit Gupta submitted that he has procured all the necessary information from the passport office, R.K. Puram, New Delhi and it was found that in the application a wrong declaration has been made by the applicant accused stating that no criminal proceedings are pending against him. Information as sought from Passport Office has also been placed on record.

At this stage, Ld. Counsel Sh. R.K. Wadhwa submitted that inadvertently at the time of filing on-line application by an employee of accused Jagdish Tytler, the necessary box of "Yes" was inadvertently not checked and instead the box titled "No" was checked and as a result in the self declaration it came to the mentioned that no criminal proceedings are pending. It was further submitted that had there been any wrong Intention on the part of accused Jagdish Tytler then application seeking no objection of the court for renewal of the passport would not have been moved. It was also submitted that yesterday when accused went to the passport office to clarify as to whether any other formality are required to be completed or not then he was handed over the passport by passport office and in these circumstances, the application seeking no objection from this court for renewal of passport was sought to be withdrawn from this court in the morning.

I have carefully perused the record.

Be that as it may, the fact remains that the passport was got renewed by applicant/accused Jagdish Tytler by furnishing wrong information in his application for renewal of passport. However, at this stage, I do not feel it appropriate to opine anything as to whether the same was a result of bonafide mistake or not for the same is neither the jurisdiction of the present proceedings and nor it will be appropriate at this stage

to opine anything in this regard. However, keeping in view the over all facts and circumstances of the case, I deem it appropriate that while photocopy of the passport of accused Jagdish Tytler be retained on record and original thereof be handed over to SP P. Kannan for further necessary action as they deem appropriate as per law.

Applications thus stand disposed off accordingly.

In the over all facts and circumstance of the case, matter be adjourned to dates already fixed i.e. 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> July, 2017.

As prayed, copy of this order be given dasti to CBI.”

4.6 On 23.05.2017, subsequent to the passing of the above order, the petitioner was issued a show cause notice by the Passport Authority, *inter alia*, calling upon the petitioner to show cause as to why action should not be taken to impound his passport under Section 10 (3) (b) of the Passports Act, 1967 (hereafter ‘the Act’) and why action under Section 12 (1) (b) of the Act not be initiated against him. The petitioner’s passport was impounded on the same date.

4.7 Aggrieved by the order dated 23.05.2017 passed by respondent no.1, the petitioner filed an appeal under Section 11 of the Act before the Chief Passport Officer. The petitioner’s appeal was allowed by an order dated 04.09.2017 and respondent no.1 was directed to return the petitioner’s passport and to issue a fresh Show Cause Notice to the petitioner giving the petitioner 15 days time to submit his response.

4.8 Thereafter, respondent no.1 issued a fresh show cause notice dated 12.09.2017, which was similarly worded as the earlier show cause notices.

5. The petitioner responded to the aforesaid notice on 27.09.2017 and requested that the said show cause notice be discharged. The petitioner appeared before respondent no.1 for a personal hearing on 01.11.2017 and

also filed detailed written submissions in response to the show cause notice dated 12.09.2017.

6. Thereafter, on 14.11.2017, respondent no.1 issued the impugned SCN under cover of letter dated 14.11.2017 informing the petitioner that earlier show cause notices had been withdrawn as they did not clearly specify the details of the matter to provide sufficient opportunity to the petitioner to submit his explanation and, therefore, a fresh show cause notice was being issued to the petitioner.

7. Mr Arvind Nigam, learned Senior Counsel appearing for the petitioner, *inter alia*, contended that the impugned SCN was identical to the show cause notice dated 12.09.2017 and, therefore, amounted to reopening of a concluded case. He submitted that the earlier show cause notice had been “adjudicated” and the petitioner could not be vexed for the same grounds repeatedly.

8. This Court does not find any merit in the aforesaid contention. First of all, the contention that the show cause notice dated 12.09.2017 is identically worded as the impugned SCN, is incorrect. A plain reading of the impugned SCN indicates that in addition to calling upon the petitioner to show cause why his passport should not be impounded under Section 10 (3) (b) of the Act, the petitioner was also called upon to show cause as to why his passport should not be impounded under Section 10 (3) (c) & (e) of the Act.

9. The show cause notice dated 12.09.2017 is set out below for ready reference:

“Letter Reference No: SCN/309678682/17

Dated: 12/09/2017

To,  
JAGDISH TYTLER,

S/O JAMES DOUGLAS TYTLER, 12 B, SIR  
GANGA RAM HOSPITAL MARG, RAJENDER  
NAGAR, CENTRAL DELHI – 110060, DELHI,  
INDIA

Subject: Clarifications required regarding Issuance of  
Passport facilities to Shri/Smt/Kumari/Master  
JAGDISH TYTLER.

Dear Sir/Madam,

This is in reference to receipt of an adverse Police Verification report corresponding to your application for reissue, with file number DL 1071064259017, dated 22/05/2017.

You are therefore, called upon to provide a suitable explanation within 15 days and submit a fresh application with correct details. Please note that you are required to furnish a proper explanation regarding the circumstances under which you had suppressed the material information in your passport application and obtained the above said passport or you will have to risk getting your passport.

This Show Cause Notice is issued to you due to the reason mention below:-

Passport obtained by suppression/wrong information provided by the passport holder

Also state why action should not be taken to impound the passport number Z4269084 dated 22/05/2017, under Section 10 (3) (b), “Passport obtained by suppression/wrong information provided by the passport holder” of the Passports Act, 1967 and Section 12(1)(b) of the Passport Act, 1967 should not be initiated against you.

Please quote the reference number mentioned in the top block of this letter for further correspondence.

Yours Sincerely,

For Regional Passport Office, Delhi.

10. The impugned SCN reads as under:

Ref. No. 25/Misc./17/Pol.Gr.II/ DL1071064259017

Date: 14.11.2017

To,  
Mr. Jagdish Tytler,  
S/o James Douglas Tytler,  
R/o 12 B, Sir Ganga Ram Hospital Marg,  
Rajender Nagar, Central Delhi,  
Delhi – 110060.

**Subject: Show Cause Notice (SCN)**

You may recall that passport no. Z4269084 dated 22/05/2017 was issued to you on the basis of passport application form submitted by you. On 23.05.2017 a letter was received from CBI seeking information regarding disclosure of CBI Case No. RC AC1/2012/A0011/CBI New Delhi in your passport application form as you were one of the accused facing trial in this said case. During examination it was revealed that you had not disclosed the said case in your passport application. On 28.06.2017 a letter was again received from CBI alongwith your original passports and a copy of Hon'ble Court order dated 23.05.2017 regarding the CBI Case No. RC AC1/2012/A0011/CBI in which the Hon'ble Court has also accepted the fact that the passport got renewed by applicant/accused Jagdish Tytler by suppressing material information regarding criminal proceedings pending trial in your application for reissue of passport. Furthermore, an adverse police verification report was received with remarks "A case was registered against the applicant vide CC No. 11/13 RC No. AC-1/2012/A 0011-US 420/RW 511 IPC 1860 CBI New Delhi. The same was pending Trial" in your passport application as per local police authorities.

You are, therefore, directed to show cause **as to why your passport should not be impounded u/s 10 (3) (b), (c) & (e) of the Passports Act, 1967.** Your reply should reach

this office within 15 days of receipt of this letter, otherwise this office will presume that you have no reasons to dispute the proposed act and necessary action as deem fit in this regard will be taken u/s 12 (1) (b) of the Passports Act, 1967.

If you want to represent your case in person, you may call on the Senior Superintendent (Police) within 15 days of receipt of this letter to you on any working day between 10:00 AM to 01:00 PM.

Yours faithfully,

Senior Superintendent (Policy)  
Regional Passport Office, Delhi''

11. The contention that the earlier show cause notices had been “adjudicated” and discharged is also erroneous. A plain reading of the letter dated 14.11.2017 (under the cover of which the impugned SCN was forwarded) clearly indicated that the show cause notices were withdrawn as they did not clearly specify the details of the matter and thus, a fresh show cause notice was being issued to provide the petitioner an opportunity to submit his explanation. The contention that the impugned SCN amounts to reviewing the earlier order is also, plainly, bereft of any merit.

10. Mr Nigam had also contended that the petitioner had voluntarily disclosed that an inadvertent mistake had been made while filling the online application, is also incorrect. The order passed by the Trial Court on 23.05.2017, as is set out herein before, clearly indicates that an attempt was made by the petitioner’s counsel to withdraw the application before the Trial Court seeking No Objection for renewal of the passport. On such request being made, the Trial Court had called upon the counsel to explain the circumstances under which the passport of the petitioner came to be renewed

even though his application for obtaining No Objection was still pending consideration before the Court. The petitioner was also called upon to submit an affidavit to the effect that no wrong information had been submitted to the passport office while seeking renewal of the passport. It is only thereafter that the petitioner filed an application admitting that an incorrect statement had been made in his online application.

11. Insofar as the contention that the grounds for revocation or impounding of the passport are *ex facie* untenable, is concerned; clearly, the stage for considering the same has not arisen as the passport authority has yet to take a final decision in the matter. The matter is at a show cause stage and it would be for the passport authority to first consider the petitioner's contention whether any grounds for revoking/impounding the passport are established.

12. Mr Nigam had also contended that Senior Superintendent (Policy), Regional Passport Office is not a passport authority under Section 2(c) of the Act. This contention is also unmerited as Schedule I to the Passport Rules, 1980 (read with rule 3 of the said Rules) expressly includes Superintendent, Regional Passport Office Delhi (at serial no.3) as a passport authority.

13. The petitioner was granted 15 days time to respond to the impugned SCN which expired today. In the circumstances, it is apposite to direct that in the event the petitioner files his response within a period of one week from today, the same would be considered by respondent no.1 while passing the final order. It is also open for the petitioner to rely on the written submissions already submitted in response to the show cause notice dated 12.09.2017.

14. A considerable amount of judicial time was spent in hearing the present matter and this Court is of the view that this is a fit case where costs should be imposed. Accordingly, the petition and pending application are dismissed with costs quantified at ₹10,000/-. The costs shall be deposited with the Delhi High Court Legal Services Committee within a period of two weeks from today.

**VIBHU BAKHRU, J**

**NOVEMBER 29, 2017**

pkv