(2006) 04 DEL CK 0005

In the Delhi High Court

Case No : Writ Petition (C) 1212 of 2006

Suman Sehgal APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 18-04-2006

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 10, 100, 104, 165, 165(1)
Foreign Exchange Management Act, 1999 — Section 10, 10(3), 12, 13, 14
Income Tax Act, 1961 — Section 131, 131(1A), 131(3), 132(1)
Passports Act, 1967 — Section 10, 23, 3

Citation : AIR 2006 Delhi 216 : (2007) 138 CompCas 988 : (2006) 203 CTR 129 : (2006) 88 DRJ 721 : (2006) 3 RCR(Civil) 320 : (2007) 73 SCL 286 : (2006) 154 TAXMAN 195

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Rajiv Sawhney and Vineet Jhanji Adv, for the Appellant; P.P. Malhotra A.C. Singh and Rajdipa, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The writ petitioner in these proceedings under Article 226 of the Constitution claims directions to the respondents, for the release of his passport. When he preferred this writ petition, he had been issued with a summons under Sections 37(1)(3) of the Foreign Exchange Management Act, 1999 (hereinafter called ''FEMA'') read with Section 131 of the Income Tax Act, 1961 (hereafter called the ''IT Act'') on 6.11.2006 and 11.11.2006 and asked to produce, inter alia, his passport and two other documents.

2. The facts required for determination of the points involved in this case are largely undisputed. The petitioner claims to be a Consultant of long standing, having advised various companies such as Godfrey Phillips India Ltd., India Tobacco Company Ltd., Tata Tea etc. for the export of cigarettes, tobacco, Tea and other commodities to Russia. It is averred that he set up his own business

sometime in 1992, for export of such commodities. The Petitioner claims to have been appointed as Consultant to a Russian Company, called ENERGIA which specializes in construction of Hydro and Thermal Power Stations. It is stated that he continues in the capacity as such a Consultant. In October, 2005, the Media and various Newspapers carried reports relating to the Volcker Report, which had named several persons as recipients of favors, for facilitating in the Iraqi ''Oil for Food'' Programme. The petitioner''s son Mr. Andleeb Sehgal and his concern, Hamden Export were also named.

3. The second respondents (hereinafter refereed to as ''Directorate'') caused two notices to be pasted on 6.11.2005, one outside his house and the other outside the house of Andleeb Sehgal, requiring them to appear in its Offices. The same day apparently raids were conducted in the office of the petitioner and his son. It is claimed that Andleeb Sehgal was required, to and appeared on several subsequent occasions before the Directorate in connection with investigations into the Volcker Report.

4. On 11.11.2005 the Directorate issued summons under Sections 37(3) of FEMA read with Section 131 of the IT Act, requiring the petitioner''s appearance on 16.11.2005; he was asked to produce inter alias his passport, Income Tax Pan Card and Driving License. The Petitioner complied with the summons and appeared before the Directorate on 16.11.2005 when he was asked to surrender his passport. It is alleged that he was made to sign a statement that he was voluntarily surrendering his passport for investigation. The petitioner alleges that in November, 2005 he was appointed as Consultant in India by another Russian Company namely, Ural Mining and Metallurgical Company (UMMC), who are stated to be major suppliers of Non Ferrus and Ferrus Metals around the world. The petitioner relies upon a letter dated 3.1.2006, issued by the First Secretary of the Embassy of the Russian Federation of India asking him to confirm his availability in Russia between 18-25 January 2006, in connection with business Meetings with UMMC. The petitioner requested for release of his passport by the second respondent on 5.1.2006. He also enclosed a copy of the letter dated 3.1.2006 received from the Russian Embassy. He again sent another request on 19.1.2006 claiming that the meetings were rescheduled 5-10th February, 2006 and seeking release of his passport.

5. On 10.2.2006, the Directorate issued an order impounding the petitioner''s passport along with that of four others. That order reads as follows :

DIRECTORATE OF ENFORCEMENT

FOREIGN EXCHANGE MANAGEMENT ACT

GOVERNMENT OF INDIA

6th Floor, Lok Nayak Bhawan,

Khan Market, New Delhi-110 003

F.No.:T-1/HQ/305/05(Court) Pt.11 Date: 10.02.2006

ORDER FOR IMPUNDING OF PASSPORTS u/s 37 OF FEMA, 1999 READ WITH SECTION 131(3) OF THE INCOME TAX ACT, 1961

Consequent to the Volcker Committee Report on Oil-For-Food Programme of the United Nations in Iraq, investigations have been initiated by the Directorate of Enforcement under the provisions of the Foreign Exchange Management Act (FEMA), 1999. During the course of investigation, passports of the following persons were summoned by the Directorate, as detailed below, for the purposes of investigation:

SL.No. PASSPORT No. NAME OF THE HOLDER

1. Z 1378210 and cancelled Shri Suman Sehgal passport No. B 5079866

2. Z 1378677 Shri Zamil Ajmal Saidi

3. E 1927688 Shri Vijay Dhar

4. Z 1175514 Shri Mohammad Asad Khan

5. D 1106465 and cancelled Kanwar Jagat Singh passport No. B 5151256

The investigations in the matter are at a very crucial stage and the Directorate is in the process of collection of evidence and recording of statements for which these persons are required in the country. There is also need to ensure that evidence abroad is not tampered with.

In view of the foregoing reasons and considering the sensitive nature of the matter and in exercise of the powers conferred upon me u/s 37 of FEMA, 1999 read with Section 131(3) of the Income Tax Act, 1961, I, hereby impound and retain the above-mentioned passports for the purposes of investigation in the above case.

Sd/-

(S.K. Panda)

Special Director

6. The petitioner impugns the retention and impounding of his passport as vocative of his fundamental rights under Articles 19(1)(d) and 19(1)(g) read with Article 21 of the Constitution of India. He also alleges that in the absence of being named or in any way connected with the Iraqi ''Food for oil'' Programme or implicated in the Volcker Report, the respondents could not have issued the order impounding his passport. It is also claimed that the withholding of his passport and its impounding is contrary to law and provisions of FEMA; it has an adverse impact on the petitioner''s livelihood and right to life, which include the right to travel abroad.

7. The respondents aver that investigations for violation of FEMA were initiated in

November 2005 on the basis of Volcker Committee Report regarding purchase of oil , in violation of UN arrangement that certain Indian individuals/concerns under the Oil for Food Programme of United Nations. It is also alleged that investigations are at a crucial stage; the Directorate is in the process of collecting evidence regarding the allegations including from sources outside India. The petitioner''s son Andleeb Sehgal is named in the Volcker Committee Report as a person who handled transactions involving payments, in violations of provisions of FEMA. He is one of the co-directors in the Company along with the petitioner.

8. The Directorate also avers that the flow of money trail outside India is being investigated and it is likely to take time before the process is completed. It is alleged that there is a need to ensure that evidence abroad is not tampered with. The Directorate has averred its apprehension about the petitioner trying to hamper its on going investigations and further trying to tamper with evidence, likely to be collected if his passport is released. It is also alleged that the petitioner may be required for further examination at a short notice and that his passport would be required to verify details of his visits abroad during the relevant period. The passport, it is stated, has been impounded by the Directorate under provisions of Sections 37 of FEMA read with provisions of Income Tax Act.

9. Mr. Rajiv Sawhney, learned senior counsel submits that the retention or withholding of the petitioner''s passport is opposed to law. It is submitted that Section 37 of the FEMA merely confers investigative powers and by analogy counsel submitted that the reference to provisions of the Income Tax Act were only indicative of the power to search and seize documents; however they could never be read as extending to impounding a passport. In the absence of a specific power to impound passports, the recourse to Section 37 was impermissible and illegal.

10. Learned counsel urged that the decisions in Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others, , and Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, to say that the right to hold a passport and travel abroad can be only curtailed by reasonable regulations, though valid legislation. The procedure adopted by the respondents was contrary to express provisions of law, and Therefore vocative of Articles 19(1)(d)(g) and Article 21 of the Constitution of India.

11. The passport could have been impounded only u/s 10 of the Passports Act and subject to the conditions stated therein. Section 10 has not been complied with. It was submitted that a passport though a ''document'' cannot be impounded u/s 37 FEMA read with Section 131 Income Tax Act during the course of investigations. Counsel submitted that Section 37(3) FEMA states that officers referred to in Sub-section (1) shall exercise the like powers which are conferred on Income Tax authorities under the Income Tax Act ''and shall exercise such powers, subject to such limitations as laid down under that Act.

12. It was then urged that Section 131 of the Income Tax Act has three sub sections. Sub-section (1) confers powers as are vested in a Court under the CPC when trying a suit. Sub-section (1) applies only when proceedings are pending. Sub-section (1A) applies where no proceedings are pending and gives the officers concerned the powers referred to in Sub-section (1) for purposes of making any inquiry or investigation. Sub-section (3) alone confers powers to impound any documents but such power can be exercised only when some proceedings are pending. Admittedly no proceedings are pending against the Petitioner and the same is confirmed by the counter affidavit filed by the Respondents.

13. Mr. Sawhney urged that the Income Tax Act (Section 131) and FEMA (Section 37) are not procedures prescribed by law for denying/depriving a citizen of his Constitutional Right under Article 21 of the Constitution.

14. It was lastly submitted that the petitioner''s present passport, No. Z 1378210 was issued in the year 2005. The Volcker Committee Report refers to contracts and transactions that were alleged to have taken place in the year 2001. The petitioner''s passport issued in the year 2005 has no relevance in connection with those matters. Reliance was placed on the decision of this High Court in K.T. Advani''s case 1989 66 Comp. Cas 886. It was urged that the mere circumstance that the petitioner''s son was linked with the Volcker report, could not lead to inference that the petitioner was involved in those transactions. He relied upon balance sheets of the only concern, where the petitioner was a co- director with Andleeb Sehgal, to say that there were practically no inter se transactions; though the relationship could not be denied, yet, there were no close business or financial transactions warranting the detention of the petitioner''s passport. The order impounding the petitioner''s passport did not disclose any cogent, much less convincing reasons or grounds.

15. Mr. P.P. Malhotra, learned Additional Solicitor General, submitted on behalf of the respondents that the right to hold a passport and travel abroad is not an absolute or unqualified one; it is subject to regulation. He submitted that though the Passports Act was enacted to regulate the issuance and revocation of passports, that was by no means the only statute which empowered executive authorities to detain or impound passports. It was submitted that the Passport Officer''s authority to impound passports u/s 10(3) was not exhaustive; on the contrary if there were other statutes or provisions enabling exercise of similar or analogous powers, akin to impounding or detaining passports, those powers had to be seen in the context of their setting.

16. It was submitted that the mandate of Article 21, which extended to the right hold passports, and travel abroad, was that a person could not be deprived of his liberty or life without complying to a fair procedure, in accordance with law. The provisions of Section 37(3) of FEMA and Section 131 IT Act could not be called as instances of unfair procedure; the petitioner has in fact not challenged them.

17. The learned Additional Solicitor General next submitted that passport was a ''document'' falling within the expression u/s 131 of the IT Act, which could be impounded, u/s 37 of FEMA. He also submitted that the respondents had validly exercised their independent powers u/s 37, as investigations in the matter are at a crucial stage and the Directorate is in the process of collection of evidence and recording of statements for which these persons are required in the country. It was also submitted that there was a need to ensure that evidence abroad is not tampered with. In view of all these considerations, and the sensitive nature of the matter, the Directorate was of the opinion that the petitioner''s passport had to be impounded, since the authorities were on the trail of the foreign exchange; the need to secure evidence also extended to an apprehension that the petitioner, if left free to travel, could hamper the investigation, or destroy the evidence. The very nature of the evidence and its sensitivity was such that its disclosure would imperil the investigation, and render the ultimate apprehension of the culprits, impossible.

18. It was also submitted on behalf of the respondents that the qualification or restriction in Section 131(3) relating to existence of proceedings, applied having regard to the objectives of that enactment, and could not automatically attach as restrictive conditions to exercise of power u/s 37(3) FEMA, which had entirely different objectives. The reference to IT Act, u/s 37 was primarily for conferment of power. It was also urged that in any case, the investigation into the oil for food programme, and the Volcker Report constituted a ''proceeding''; that expression had to derive colour from the contextual setting of FEMA, and could not be given a narrow meaning.

19. The question which requires consideration, in these proceedings, Therefore, is whether the impounding of passport, effected by the respondents, is in accordance with law, and whether the order is vitiated for lack of materials.

20. The main thrust of submissions on behalf of the petitioner was that the Passports Act, 1967 (hereafter ''the 1967 Act'') constitutes a complete code, regulating the issuance, impounding and revocation of passports. Therefore, Parliament having chosen to legislate a special law, viz the Act, it is not competent for any authority to bye-pass the procedure, prescribed under the Act, and exercise powers independently, howsoever wide they might be. It was the submission of the petitioner that Section 37(3) of FEMA and Section 131 of the IT Act must be read as empowering authorities to seize or deal with classes of documents, other than passports. Adjunct to this line of argument was the contention that reasonable restrictions upon the exercise of the freedom of movement, and right to life, both contained in Part III of the Constitution of India, were enacted in the provisions of the Passports Act, and recourse to any other power, under the guise of exercising independent statutory authority, amounted to an impermissible, unreasonable restriction, upon such rights.

21. ``Passport''` is defined u/s 3 of the 1967 Act in following terms : ``3. Passport or travel document for departure from India :- No person shall depart

from, or attempt to depart, India unless he holds in this behalf a valid passport or travel document.

Explanation :- For the purpose of this Section -

(a) ``passport''` includes a passport which having been issued by or under the authority of the Government of a foreign country satisfied the conditions prescribed under the Passport (Entry into India) Act, 1920 (34 of 1920), in respect of the class of passports to which it belongs;

(b) xxxx xxxx xxxx xxxx''`.

Section 10 of the Act deals with variation, impounding and revocation of passports and travel documents. It reads:

10. Variation, impounding and revocation of passports and travel documents :- (1) The passport authority may, having regard to the provisions of sub-section

(1) of Section 6 or any notification u/s 19, vary or cancel the endorsements on a passport or travel document or may, with the previous approval of the Central Government, vary or cancel the conditions (other than the prescribed conditions) subject to which a passport or travel document has been issued and may, for that purpose, require the holder of a passport or travel document, by notice in writing, to deliver up the passport or travel document to it within such time as may be specified in the notice and the holder shall comply with such notice.

(2) xxxxx xxxxx xxxxx xxxxx

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document, -

(a) xxxxx xxxxx xxxxx xxxxx

(b) xxxxx xxxxx xxxxx xxxxx

(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;

(d) xxxxx xxxxx xxxxx

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal Court in India;

(f) xxxxx xxxxx xxxxx

(g) if the holder of the passport or travel document has failed to comply with a notice under Sub-section (1) requiring him to deliver up the same;

xxxxxxxxxx xxxxx. .. .

Violation of the provisions of the passport is punishable u/s 12 of the Act. Section

13 of the Act gives the power to arrest any person violating the provisions of the Act. Section 14 of the Act empowers seizure of the passport by the authorities. Section 14 reads:

14. Power of search and seizure:

(1) Any officer of customs empowered by a general or special order of the Central Government in this behalf and any officer of police not below the rank of a sub-inspector may search any place and seize any passport or travel document from any person against whom a reasonable suspicion exists that he has committed any offence punishable u/s 12.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizures shall, so far as may be, apply to searches and seizures under this section.

13. Learned counsel for the petitioner submits that any action against the holder of a passport for violating the conditions for grant of passport or for impounding or seizure of the passport should be taken only under the provisions of Section 10, 12, 13 and 14 of the Act and not otherwise. It is also submitted that the police have no power to seize the passport or take action against the holder of a passport under any other Act or otherwise than under the provisions of Sections 12, 13 and 14 of the Act. It is contended by the learned Counsel for the petitioner that as the petitioner has not committed any offence or violated the conditions for grant of passport, the seizure of the passport of the petitioner effected by the respondents, is illegal.

22. Relevant provisions of FEMA, cited in these proceedings, are extracted below:

13 PENALTIES.

(1) If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

(2) Any Adjudicating Authority adjudging any contravention under Sub-section (1), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any of the brought back into India or shall be retained outside India in accordance with the directions made in this behalf. Explanation : For the purposes of this sub-section, ``property''` in respect of which contravention has taken place, shall

include -

(a) deposits in a bank, where the said property is converted into such deposits;

(b) Indian currency, where the said property is converted into that currency; and

(c) any other property which has resulted out of the conversion of that property.

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37 POWER OF SEARCH, SEIZURE, ETC.

(1) The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in Section 13.

(2) without prejudice to the provisions of Sub-section (1), the Central Government may also, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in Section 13.

(3) The officers referred to in Sub-section (1) shall exercise the like powers which are conferred on Income Tax authorities under the Income Tax Act, 1961 and shall exercise such powers, subject to such limitations laid down under that Act.

23. Section 131 of the IT Act reads as follows:

131 POWER REGARDING DISCOVERY, PRODUCTION OF EVIDENCE, ETC.

(1) The Assessing Officer, Deputy Commissioner (Appeals), Deputy Commissioner, Commissioner (Appeals) and Chief Commissioner or Commissioner shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely:

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(c) compelling the production of books of account and other documents; and

(d) issuing commissions.

(1A) If the Director General or Director or Joint Director or Assistant Director, or Deputy Director or the authorised officer referred to in Sub-section (1) of Section 132 before he takes action under clauses (i) to (v) of that sub-section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purpose of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under Sub-section (1) on the Income Tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other Income Tax authority.

(2) * * * * *

(3) Subject to any rules made in this behalf, any authority referred to in Sub-section (1) or Sub-section (1A) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act :

Provided that an Assessing Officer or an Assistant Director shall not -

(a) impound any books of account or other documents without recording his reasons for so doing, or

(b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director General or Commissioner or Director Therefore, as the case may be.

24. In Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , the Supreme Court had stated that the procedure regulating issuance and impounding of passports was to be found in the 1967 Act; the Court held that:

It will be seen at once from the language of Article 21 that the protection it secures is a limited one. It safeguards the right to go abroad against executive interference which is not supported by law; and law here means ''enacted law'' or A.K. Gopalan Vs. The State of Madras, Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. It was for this reason, in order to comply with the requirement of Article 21, that Parliament enacted the Passports Act, 1967 for regulating the right to go abroad. It is clear from the provisions of the Passports Act. 1967 that it lays down the circumstances under which a passport may be issued or refused or cancelled or impounded and also prescribes a procedure for doing so, but the question whether that is sufficient compliance with Article 21. Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements'' Obviously, the procedure cannot be arbitrary, unfair or unreasonable.

25. Earlier, in a Constitution Bench ruling in Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others, the Supreme Court had held that under Article 21 of the Constitution no person can be deprived of his right to travel except according to procedure established by law. The court had also noticed that there existed no law regulating issuance, and denial of passports. As a sequel to this decision,

Parliament enacted the Passports Act, 1967. The validity of the enactment, as also the challenge to an order of impounding were examined in Maneka Gandhi''s case. The court held that the procedure prescribed in the 1967 Act was not arbitrary.

26. The above decisions, however are not dispositive of the issues raised in these proceedings. The question which is raised here is whether the respondents could have taken recourse to provisions in other enactments when the Passports Act regulated the issuance, impounding, and revocation of passports. The petitioner relied upon the circumstance that the Passports Act constituted a special legislation, and was a complete code on the subject. In the absence of any condition spelt out u/s 10(3) of that Act, and an order by the competent authoirty, the respondents could not have ``detained''` or ``seized''` the passport; it in effect amounted to exercise of power that did not vest with them.

27. Somewhat similar questions had arisen before the Gujarat, Andhra Pradesh, and Madras High Courts. In the decision of the Gujarat High Court, reported as Abdul Kader Mahomed Jhaveri Vs. Union of India and Others, , a Division Bench had occasion to consider whether a similar power under the (now repealed) Foreign Exchange Regulation Act, (Section 38) empowered the authorities to impound a passport. The court held as follows:

Section 38 indicates that the concerned document or the thing seized under S. 38 should be relevant to the investigation or proceedings under the Act or in connection therewith any infraction of the Act or Rules or Order should have been committed. It stands to reason that the custody of the seized document or thing as a relevant or useful document or thing atleast would be conterminous with the concerned investigation or proceedings during the pendency of which such seizure is effected on the ground that the seized article is useful or relevant pending such investigation or proceedings. In the present case, the seizure of the passport is being upheld u/s 38 read with Sections 51, 50 and 29(1) of the Act. The competent authority has seized the passport on the ground that it is relevant for the adjudication proceedings pending before at in connection with the alleged infraction of Section 29(1) of the Act by the petitioner, Therefore, the said seizure cannot continue indefinitely beyond the currency of the adjudication proceedings.

The above reasoning of the Gujarat High Court, was approved and accepted by the Madras High Court in S. Mohanraj v. Deputy Director, Enforcement Directorate 1995 (101) CRI LJ 3018. There too, the court had to interpret whether the authorities had power to impound a passport, u/s 38 of FERA.

28. In Mrs. Hamida Habib Jeelani Alias Hamida Begum, v. The Secretary To Government 1996 (102) CRI LJ 1086, the Andhra Pradesh High Court rejected the submission, similar to those made in these proceedings. The court was called upon to decide whether the police authorities, in exercise of powers under Sections 10 and 165 of the Code of Criminal Procedure, could not detain or

impound a passport, since the power to impound, and the conditions regulating impounding of passports, were spelt out under the 1967 Act. The court noticed that the Code did not specifically empower the police to impound passports; it however, held that:

15. A reading of Sub-section (1) of Section 165, Cr.P.C. makes it abundantly clear that the investigating officer can seize any property, belonging to any person, believed by him to be necessary for the purpose of investigation into the commission of any offence. No doubt, the police officer seizing the property of any person has to record the grounds for doing so in writing and also follow the provisions laid down u/s 100, Cr.P.C. which apply to the general provisions as searches. Therefore, it follows that the police officer under the provisions of Section 165, Cr.P.C. has got the power to seize the passport if in his opinion it is necessary to control the movement of the person alleged to have committed an offence and to secure his/her presence whenever necessary for the purpose of investigation. Once a passport is seized during the course of investigation by a police officer, under Sub-section (5) of Section 165, Cr.P.C. the police officer has to send the passport to the nearest Magistrate empowered to take cognizance of the offence and for impounding the same if necessary he has to intimate the passport authority through the concerned Magistrate.

29. Section 38 of the repealed FERA, which was replaced by FEMA, reads as follows:

38 POWER TO SEIZE DOCUMENTS, ETC.

Without prejudice to the provisions of Section 34 or Section 36 or Section 37, if any officer of Enforcement authorised in this behalf by the Central Government, by general or special order, has reason to believe that any document or thing will be useful for, or relevant to, any investigation or proceeding under this Act or in respect of which a contravention of any of the provisions of this Act or of any rule, direction or order there under has taken place, he may seize such document or thing.

30. I see no reason to differ with the views expressed by the Gujarat and Madras High Court. Though the 1967 Act was designed to deal with issues relating to passports, and in a sense is a complete code, in respect of issuance, conditions under which the passport can be granted, impounded or revoked, the enactment cannot be considered the last word on all issues. The objectives of the 1967 Act no doubt are for enactment of a comprehensive law dealing with the conditions under which passports can be issued, revoked and impounded. Nevertheless, they cannot be overriding or detracting from the provisions contained in other enactments conferring independent powers upon other authorities to impound Passports and documents, in exercise of their jurisdiction. The 1967 Act does not contain any provision which seeks to override or nullify such independent powers. Secondly, such provisions like Section 38 of the now repealed FERA, Section 165 of the Cr.P.C. (which empowers a Police Officer to seize a

documents) Sections 104 and 165 of the Cr.P.C. Which empower the Court and Police powers to impound and/or seize documents and Section 37 of FEMA were all enacted after the 1967 Act. In fact, Section 23 of the Passport Act indicates in clear terms that the provisions of 1967 Act are in addition to and not in derogation of other enactments including FERA and laws relating to foreigners and foreign exchange. Sections 23 reads as follows:

23. Act to be in addition to certain enactments. - The provisions of this Act shall be in addition to and not in derogation of the provisions of the Passport (Entry into India) Act, 1920 (34 of 1920) (the Emigration Act, 1983), the Registration of Foreigners Act, 1939 (16 of 1939), the Foreigners Act, 1946 (31 of 1946), the Trading with the Enemy (Continuance of Emergency Provisions) Act, 1947 (16 of 1947), the Foreigners Law (Application and Amendment) Act, 1962 (42 of 1962), (the Foreign Exchange Regulation Act, 1973 (46 of 1973) and other enactments relating to foreigners and foreign exchange.

FEMA is a special law relating to foreign exchange.

31. I am, Therefore, of the opinion that the power to seize a documents u/s 10(3) of the 1967 Act is not exhaustive and does not in any manner control or limit provisions in other laws which empower other authorities to independently impound or detain passports in furtherance of the specified objectives of such enactments. Therefore, the respondents acted within their power u/s 37(3) of FEMA read with Section 131 of the I.D. Act.

32. The reference to ''proceedings'' u/s 131, of the I.T Act too would not make the position any different. Section 131 as it originally stood, talked only of proceedings. However, Sub-section (1-A) was inserted by way of an amendment. That provision makes a specific reference to ''enquiry'' or ''investigation''. Sub-section (3) makes a specific reference to Sub-section (1- A) while explicitly empowering the authority to impound and retain inter alia, documents produced before it in any proceedings. At first blush, the arguments about a conscious distinction being made between proceeding and investigation, no doubt, appear to be attractive. However, if the overall context of Section 131 were to be kept in mind what emerges is that its primary concern is with conferral of powers regarding discovery, production of evidence etc. Section 131(1) makes specific reference to four situations; however it makes no reference to proceedings or investigations. Section 131(1-A) makes a specific reference to investigation and enquiry. The subsequent, specific power of impounding is expressly subject to rules framed u/s 131(1) or Section 131(1-A). This, in my opinion, is indicative of the width of the power. Parliament intended the power to impound to be adjunct, or concomitant to, the express powers indicated in the preceding Sub-sections. If these perspectives are kept in mind, the distinction between an investigation and proceeding, sought to be made out on behalf of the petitioner, is ill founded and without basis.

33. Seen from another perspective, even an investigation or enquiry is, in broad

terms, a preceding. Although an investigation or enquiry may not have the formal overtions of judicial or statutory proceedings, nevertheless the authority to call upon a person through notice to produce documents and if necessary answer to questioning itself is in the nature of a proceeding. This power to compel a person to appear before, and examine him under oath is no-less a ''proceeding''. Section 37(3) of FEMA does not restrict the power of the authority or officers concerned to Section 131(3). For that matter, Section 37(3) does not refer to any express provision of the Income Tax Act. The only conclusion which can be Therefore logically read is that there is no pre-condition that any ''proceeding'' ought to be pending against a particular or specified individual nor is the pre- requisite for exercise of such power dependent upon existing judicial proceeding. As long as there are certain matters under the investigation of the concerned authority, it can invoke the power u/s 37(3). As far as question of other conditions pertaining to impounding of documents contained in Section 131(3) are concerned, they limit powers of assessing officers or Assistant Directors, I am of the view that those limitations strictly apply to authorities under the Income Tax Act. The relevant provisions in this regard, as far as the rationale for impounding passports/documents and their retention in custody, as well as its duration would be Section 37(1)(2) and of FEMA. In this case, the impugned order was issued by a Special Director who is admittedly superior in rank and position to a Assistant Director (referred to in Section 37(1)). Therefore, he clearly had the power to issue the order impounding the petitioner''s passport.

34. That brings me to the last facet of the issues raised in these proceedings, namely, whether the reasons mentioned are adequate and whether the petitioner could be at all said to be involved or linked with the transactions in the Volcker Committee Report. The impugned order re-cites fours reasons, (1) investigations being at a crucial stage; (2) The Directorate being involved in the process of collection of evidence; (3) recording of statements of 5 persons including the petitioner being undertaken by the Directorate for which their presence was required in the country; (4) the opinion of the Directorate that there was need to ensure that the evidence abroad is not tempered to.

35. The impugned order also states that the nature of the mater is sensitive and keeping in mind all the four considerations, the passport of the petitioner, was being impounded. The petitioner has not seriously disputed that the process of investigation into the Volcker Committee Report on Oil for Food Programmes of the United Nations in Iraq are under way. In that report, names of several persons were indicated. The petitioner''s son Andleeb Sehgal and his associates were named as persons who handled transactions. Although the petitioner strongly endeavored to state that he had no connection with his sons transaction and that there was only one entry in the balance sheet of Aviv Export House (Private) Limited in which he and his son are co-Directors, the respondents rely on the close relationship of the petitioner and his son and also the fact that the petitioner is now seeking release of his passport to sign a consultancy contract,

which was entered into in November 2005 after the Volcker Committee Report became public. These facts were cited as grounds to voice the authorities'' apprehensions about his true intentions.

36. Inherent in the nature of such enquiries, is the need to preserve evidence because unlike normal crimes or misdemeanours if an alleged offender or his associate is permitted to go abroad, the money trail might be lost. Equally the severity of penalty (the petitioner''s counsel had urged that u/s 13 the maximum penalty could be only Rs. 2 lakhs) cannot be a consideration for holding that the investigation is based upon no material. Although, the penalty in case of unquantifiable amounts can be up to Rs. 2 lakhs, however, where quantification is possible, the penalty can be up to three times the sum involved in the contravention and in addition, it is subject to confiscation. Therefore, even on that score the petitioner''s submissions are unmerited. The respondents are within their rights to state that at this stage it would un-wise and imprudent to disclose further material and that in the interests of investigation and enquiry, it would be necessary to impound the petitioner''s passport.

37. The impugned order does not indicate any time frame within which the petitioner''s passport can be released. As noticed by the Gujarat High Court in its judgment in Abdul Kader''s case an order impounding a passport under similar circumstances cannot have indefinite life as it would then adversely impact upon the rights of citizen to travel abroad and carry on his business activities. Therefore, the respondents ought to review the entire issue and pass specific orders within a period of four months from the date of issuance of the order impounding the petitioner''s passport, namely, 10.2.2006.

38. In view of the above findings, the petitioner is not entitled to the reliefs claimed by him. The petition is accordingly dismissed subject to the direction to the respondents to review the order dated 10.2.2006 within a period of four months from its issuance and communicate such orders directly to the petitioner. No costs.

