IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.10.2019

DELIVERED ON: 06.11.2019

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. No.19743 of 2019 and W.M.P. Nos.19257, 19262, 19264 and 19266 of 2019

C. Sivasankaran
S/o R. Chinnakannan
Anse Royal, Mahe, Seychelles
Temporarily at Room No.901, Leela Palace Hotel
MRC Nagar
Chennai 600 028 Petitioner

vs.

1 Foreigner Regional Registration Officer (FRRO)
Bureau of Immigration
Ministry of Home Affairs
Government of India
No.26, Haddows Road
Chennai 600 006

2 The Secretary
Ministry of Home Affairs
Government of India
South Block, New Delhi 110 001

3 The Deputy Superintendent of Police
Central Bureau of Investigation (CBI)
Bank Securities and Frauds Branch
No.36, Bellary Road
Ganga Nagar
Bangalore 32

4 The Deputy Superintendent of Police
Central Bureau of Investigation (CBI)
Plot No.5-B, CGO Complex
Lodhi Road
New Delhi - 110 003

5 The Central Vigilance Commissioner
Satarkata Bhavan
"A" Block
GPO Complex
INA, New Delhi 110 023

6 The Assistant Foreigners Regional Registration Officer
Bureau of Immigration
Anna International Airport
Meenambakkam Airport
Chennai 600 027

7 The Director
Directorate of Enforcement
VI Floor
Lok Nayak Bhavan
Khan Market
New Delhi 110 003

8 The Joint Director
Directorate of Enforcement
Ministry of Finance
Department of Revenue
II & III Floor, "C" Block
Murugesa Naicker Complex
84 Greams Road
Thousand Lights
Chennai 600 006 Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of declaration declaring that the Look Out Circular issued by the first respondent in purported exercise of the powers conferred under Section 10B of the Passports Act, 1967 in the case of the petitioner is an arbitrary exercise of power, abuse of authority, vitiated by mala fides, ultra vires and without jurisdiction and consequently, direct the first respondent to recall the Look Out Circular issued by the first respondent naming the petitioner.

For petitioner	Mr. Satish Parasaran, Sr. Counsel for M/s. Vijayan Subramanian
For RR 3 & 4	Mr. K. Srinivasan Special Public Prosecutor for CBI
For RR 7 & 8	Mr. N. Ramesh Spl. Public Prosecutor for Enforcement Directorate

For RR 1,2 & 6 Mr. G. Rajagopalan,
Addl. Sol. Gen. of India
assisted by Mr. K. Srinivasa Murthy

ORDER

This writ petition seeks a writ of declaration to declare that the Look Out Circular issued by the first respondent, in purported exercise of its powers under Section 10-B of the Passports Act, 1967, is an arbitrary exercise of power, abuse of authority, vitiated by mala fides, ultra vires and is without jurisdiction, and to consequently direct the first respondent to recall the Look Out Circular issued by the first respondent.

2 The facts in issue lie in a narrow compass. The nub is, whether this Court ought to quash the Look Out Circular and permit the petitioner to go abroad.

3 Concededly, the petitioner is not an Indian citizen, but, a Seychelles national, who claims himself to be an Ambassador at large of the Republic of Seychelles and as such, is a holder of diplomatic passport issued by the Republic of Seychelles. He entered India via Chennai International Airport on 06.08.2018 and at the Immigration counter, he was informed that a Look Out Circular has been issued against him and ergo, he cannot leave India. Hence, he addressed a representation dated 01.09.2018 to the C.B.I. seeking to withdraw the Look Out Circular and accordingly, the same was withdrawn. Pursuant thereto, he left for the U.K. on 03.09.2018. Besides the U.K., he also went to other countries. While so, the C.B.I. issued summons for him to appear and accordingly, he appeared on 09.09.2018, 24.09.2018 and 12.11.2018 and cooperated in the enquiry that was conducted by the C.B.I. in connection with the case under investigation.

4 The petitioner, in paragraph no.14 of his affidavit filed in support of the writ petition, has stated that the Enforcement Directorate had registered a case against him and searches were made under the Prevention of Money Laundering Act (for short "the PMLA"). It is his further contention that he appeared before the Enquiry Officer on 24.08.2018, 31.08.2018 and 21.11.2018 on summons and gave statements.

5 While that being so, on 27.01.2019, when he was about to leave India via the Chennai International Airport, he was prevented on the ground that a Look Out Circular has been issued against him. Hence, he addressed a representation dated 23.02.2019 to the C.B.I. and an advocate's notice dated 09.02.2019 to the Enforcement Directorate followed by a

representation dated 06.03.2019 to the Joint Director of Enforcement, New Delhi, requesting them to withdraw the Look Out Circular and to permit him to go abroad. Since the Look Out Circular was not withdrawn, he has filed the instant writ petition.

6 On notice, the C.B.I. and Enforcement Directorate have filed their counter affidavits setting out the cases against the petitioner and justifying the issuance of the Look Out Circular.

7 Heard Mr. Satish Parasaran, learned Senior Counsel representing Mr.Vijayan Subramanian, learned counsel on record for the petitioner, Mr.G.Rajagopalan, learned Additional Solicitor General appearing for the Union of India, Mr. K. Srinivasan, learned Special Public Prosecutor for CBI Cases and Mr. N. Ramesh, Special Public Prosecutor for the Enforcement Directorate.

8 The C.B.I. and the Enforcement Directorate have not denied the averments in paragraph no.12 of the petitioner's affidavit filed in support of the writ petition, wherein, the petitioner has stated that pursuant to the Look Out Circular, he was detained at the Chennai International Airport on 06.08.2018 and hence, he addressed a representation dated 01.09.2018, after which, the Look Out Circular was withdrawn, pursuant to which, he left for the UK on 03.09.2018 and travelled to several countries. Thus, the present Look Out Circular has been issued subsequently by the Bureau of Immigration on the request of the C.B.I. and the Enforcement Directorate.

9 What then is the case that has been registered against the petitioner by the C.B.I. and the Enforcement Directorate? The answer to the question lies in the counter affidavit dated 22.07.2019 filed by the C.B.I., wherein, the entire details of the case against the petitioner have been set out threadbare. A precis of the allegations reads thus:

9.1 The petitioner is one of the Promoters-Directors of Siva Group of Companies. One M/s. Win Wind Oy (WWO), Finland, in which, S. Saravanan, son of the petitioner, is one of the Directors, was sanctioned a sum of Rs.322.40 crores by IDBI Bank and the loan became a Non Performing Asset (NPA).

9.2 Knowing full well about the poor financial plight of the Siva Group of Companies, the top officials of the IDBI Bank, in collusion with the petitioner, had abused their official position and extended further credit facilities to a tune of Rs.523 crores in favour of Axcel Sunshine Ltd., a company based in the British Virgin Islands and an associate company of the

Siva Group of Companies, to use the same for repaying other loans of other associate companies of the group, in total violation of the rules.

10 On the aforesaid allegation, the C.B.I., Bangalore, registered a case in Cr. No. RC-09(E)/2018 against Axcel Sunshine Ltd. and 38 other accused, including public servants and the petitioner under Section 120-B read with Sections 409 and 420 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, based on the direction issued by the Central Vigilance Commission, New Delhi, vide Office Memorandum dated 27.10.2010 for causing wrongful loss of more than Rs.600 crores to IDBI Bank and corresponding wrongful gain to themselves.

11 After registering the aforesaid case, the C.B.I. informed the Enforcement Directorate, pursuant to which, the Enforcement Directorate, Chennai, has registered a separate case under the PMLA against the Siva Group of Companies. The investigation is said to be in progress. In fact, the Enforcement Directorate has attached properties worth Rs.224.6 crores and adjudication under the PMLA is pending.

12 Apart from the aforesaid two cases, the Enforcement Directorate, Mumbai, registered a case in ECIR/MBZO-I/02/2019 under the PMLA and a complaint bearing no.6 of 2019 has been filed before the Special Court for PMLA Cases under Sections 44 and 45 of the PMLA against the petitioner and others in the Designated Court for PMLA Cases, Greater Mumbai. This information has been provided by the Enforcement Directorate in their additional affidavit dated 20.09.2019. Coming to know of this prosecution, the petitioner appeared before the Special Court for PMLA Cases, Mumbai and has been released on bail on 01.10.2019. The operative portion of the bail order reads as under:

"ORDER

Accused No.7 C. Sivasankaran be released on bail on his executing PR bond in the sum of Rs.1 lakh with one or more sureties in the like amount.

Accused No.7 shall not tamper with the prosecution evidence in any manner.

Accused No.7 shall attend the office of complainant/ED as and when required by the complainant.

Accused No.7 shall not leave India without prior permission of this Court.

Accused No.7 shall not directly or indirectly make an inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the complainant.

Accused No.7 shall furnish his detailed residential address and mobile number to the complainant." (emphasis supplied)

13 The first submission of Mr. Satish Parasaran, learned Senior Counsel is that the petitioner is a diplomatic passport holder and therefore, he is immune from any prosecution in the light of the Vienna Convention on Diplomatic Relations, 1961 (for brevity "the Vienna Convention"). This submission cannot be countenanced, in view of Article 31 therein, which reads as under:

"Article 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under sub-paragraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the

measures concerned can be taken without infringing the inviolability of his person or of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State."
(Emphasis supplied)

14 The petitioner is not accredited to India. He claims himself to be a diplomat of the Seychelles Republic. He is not the Ambassador of the Seychelles Republic in India. Article 31 of the Vienna Convention will apply only to a diplomatic agent in the receiving State. A diplomatic agent is defined under Article 1(e) of the Vienna Convention in the following terms:

"(e) A "diplomatic agent" is the head of the mission or a member of the diplomatic staff of the mission. (emphasis supplied)"

A close reading of the aforesaid definition would indicate that the petitioner does not fall under either of the categories set out in Article 1(e). Hence, Article 31 of the Vienna Convention has no application to the case of the petitioner. Article 31, ibid, will not apply even in respect of a diplomatic agent in the receiving State, if he were to indulge in any professional or commercial activity outside his official functions. It is no part of the official functions of the petitioner to take loans from the IDBI Bank and then engage in money laundering.

15 It is fairly well settled that the issuance and withdrawal of a Look Out Circular is guided by the Office Memorandum dated 27.10.2010 issued by the Government of India, accepting the suggestions made by the Delhi High Court in Sumer Singh Salkan vs. Assistant Director and Others[1]. This Office Memorandum has been amended from time to time.

16 Mr. Satish Parasaran contended that paragraph 7(a) of the said Office Memorandum dated 27.10.2010 stipulates the conditions under which a Look Out Circular can be issued and that the case at hand does not pass muster the said conditions. To appreciate this contention, it may be apposite to extract paragraph 7(a) of the Office Memorandum dated 27.10.2010:

"7. The High Court has answered these questions in its judgment dated 11.08.2010 which are reproduced below for guidance of all concerned agencies:

1 W.P. (Crl.) No.1315 of 2008 decided on 11.08.2010

"a) Recourse to LOC can be taken by investigating agency in cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial Court despite NBWs and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest. (emphasis supplied)

Mr. Satish Parasaran built up his arguments by submitting that the petitioner had appeared before the C.B.I. and the Enforcement Directorate on many an occasion and there is no material to show that he was deliberately evading arrest or not appearing before the trial Court despite non-bailable warrants and other coercive measures and in the absence of the petitioner's case falling within the first portion of paragraph 7(a), the Look Out Circular cannot be issued based on the second portion of the said paragraph. He laid much emphasis on the conjunction "and" in the said paragraph.

17 In the opinion of this Court, paragraph 7(a) referred to above, merely extracts the answers to the questions under reference before Sumer Singh Salkan (supra). Thereafter, the guidelines begin from paragraph 8, which read as under:

"8. In accordance with the order dated 26.07.2010 of the High Court of Delhi, the matter has been discussed with the concerned agencies and the following guidelines are hereby laid down regarding issuance of LOCs in respect of Indian citizens and foreigners"
(emphasis supplied)

Therefore, the guidelines in the Office Memorandum dated 27.10.2010 is not a statute, but, merely a guideline for the officers to follow while making a request to the Central Government for the issuance of a Look Out circular. At this juncture, it may be apropos to extract paragraph 8(j) of the Office Memorandum dated 27.10.2010:

"(j) In exceptional cases, LOCs can be issued without complete parameters and / or case details against CI suspects, terrorists, anti-national elements, etc. in larger national interest."

18 Interestingly, this Court also noticed a subsequent amendment made to paragraph 8(j) of the Office Memorandum dated 27.10.2010, that was issued vide Office Memorandum dated 05.12.2017 which reads as under:

> "In continuation to this Ministry OM No.25016/31/2010-Imm dated 27.10.2010 and as approved by the Competent Authority, the following amendment is hereby issued:
>
> Amendment-
>
> Read as:
>
> "In exceptional cases, LOCs can be issued even in such cases, as would not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (b) of the above referred OM, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and / or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and / or that such departure ought not to be permitted in the larger public interest at any given point in time."
>
> (emphasis supplied)
>
> Instead of:
>
> In exceptional cases, LOCs can be issued without complete parameters and / or case details against CI suspects, terrorists, anti-national elements, etc. in larger national interest."

It is, thus, manifestly clear that the amended paragraph 8(j) of the Office Memorandum enables the issuance of a Look Out Circular if the same is necessary in larger public interest. Hence, paragraph 7(a) of the Office Memorandum dated 27.10.2010 relied upon by Mr. Satish Parasaran stands eclipsed by the new paragraph 8(j) which is overarching and wide.

19 On facts, it is glaring and apparent that the investigating agencies are conducting investigation in connection with a huge financial scam in which the involvement of this petitioner is suspected and public interest will

undoubtedly be in peril if the petitioner is permitted to leave India. It needs no reiteration that economic offences affect the fibre of the country's economic structure and have serious repercussion on the development of the country as a whole (See Nimmagadda Prasad vs. Central Bureau of Investigation[2]).

20 Mr. Satish Parasaran placed strong reliance on the following judgments in support of his contention that the petitioner has a fundamental right to travel under Article 21 of the Constitution of India, which cannot be stifled via a Look Out Circular.

i judgment of a Division Bench of this Court in Karti P. Chidambaram vs. Bureau of Immigration, Ministry of Home Affairs, New Delhi and 3 others[3];

ii judgment of the Delhi High Court in Priya Parameswaran Pillai vs. Union of India and Others[4];

iii judgment of this Court in Cheruvathur Chakkutty Thampi vs. Union of India[5];

iv judgment of this Court in E.V. Perumal Samy Reddy and others vs. State represented by the Deputy Commissioner of Police and another[6];

v judgment of this Court in M. Natarajan vs. The Regional Passport Officer, Chennai - 6 and another[7]; and

vi judgment of this Court in Aravindh Narayanasamy vs. Deputy Commissioner of Police and others[8].

21 All the judgments relied upon by Mr. Satish Parasaran pertain to cases, where, the petitioners therein were Indians who had strong roots in India. For example, in Karti P.

2 (2013) 7 SCC 466

3 W.P. Nos.21305 & 20798 of 2017 decided on 23.07.2018

4 2015 SCC Online Del 7987

5 2017 SCC Online Mad 5960

6 2013-2-LW (Crl.) 628

7 2012 (4) CTC 709

8 2017 SCC Online Mad 36732

Chidambaram (supra), the C.B.I. had issued a notice dated 15.06.2017 under Section 41-A(1) and 41(1)(b), Cr.P.C. calling upon him (Karti P. Chidambaram) to appear on 29.06.2017 at 10.30 a.m. and on the very next day itself, i.e. on 16.06.2017 itself, the Look Out Circular impugned therein was issued. Bearing in mind the fact that the petitioner therein was an Indian with roots in India, the Division Bench of this Court held that the Look Out Circular was issued hurriedly and on that ground, quashed the same. In this case, the petitioner is not an Indian citizen, but, a citizen of Seychelles and is also a diplomat of that State, as claimed by him. It is true that he had appeared before the C.B.I. and the Enforcement Directorate whenever he was summoned, despite which, both the said agencies had not chosen to arrest him though they have the power. Be it noted that the decision to arrest or not to arrest, falls within the exclusive domain of the investigating agency and there can be no interference by the Court. Had the petitioner been arrested, then, his very movement within India would have been in jeopardy.

22 As alluded to above, permitting the petitioner to go abroad while a serious investigation is pending by the C.B.I. and Enforcement Directorate would be against public interest is one of the criteria enumerated in the amended paragraph 8(j) (supra). In a similar circumstance, where, a foreigner was involved, a learned single Judge of this Court, in N.Saravanapavan vs. The Chief Immigration Officer, Bureau of Immigration and others[9], after a threadbare analysis of various legal provisions governing the field, has ultimately held as under:

> "17. If this is the right which is available to the Indian citizen, it is unthinkable the petitioner who is admittedly a foreigner seeks to set aside the LOC issued against him especially in the context in which the respondents have started LOC against him...."

23 In paragraph 13.2 of the counter affidavit filed by the C.B.I., it has been stated as under:

> "13.2 The respondent most respectfully submits that the averments made in "paras B to G" in the petition filed by the accused petitioner are not correct. The petitioner accused is a high profile businessman having international links. If Look Out Circular is removed against him, he may flee to foreign country and may not be available for investigation, thereby delaying investigation process.

9 2012 0 Supreme (Mad) 2943

Moreover he is having Seychelles citizenship. Once after leaving India, if he does not come back, it will be very difficult to bring him back to India for the purpose of investigation, as it involves diplomatic deliberations at highest level involving sovereign governments."

24 This Court cannot sit in judgment over the request made by the Investigating Agencies to the Union Government for issuance of a Look Out Circular unless it is shown, like in Karti P.Chidambaram (supra), that there was no reasonable ground for the request. At this juncture, it is relevant to extract paragraph no.65 of Karti P.Chidambaram (supra):

> "65. Pursuant to the directions of this Court, the respondents have filed their counter affidavit. The counter affidavit does not disclose the reasons for making a request for issuance of an LOC. The impugned LOC is liable to be set aside on that ground alone."

25 In the instant case, the C.B.I. and the Enforcement Directorate have placed copious materials to show that there is an active investigation of a gargantuan economic offence in progress. Sufficiency or otherwise of such materials for the issuance of a Look Out Circular is clearly outside the ken of judicial review under Article 226 of the Constitution of India. In this context, useful reference can be made to the following passage from the judgment of the Supreme Court in H.B.Gandhi, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons[10].

> "8. .... Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

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10 1992 Supp (2) SCC 312

26 To permit the petitioner to leave India by lifting the Look Out Circular just because he has, so far, been co-operating with the Investigating Agencies, is tantamount to locking the stable after the horse has bolted. It will defy all credulity if this Court were to believe that the petitioner will return to India obediently and submit himself to legal process in strict adherence to his undertaking affidavit dated 12.08.2019 submitted to this Court.

27 Coming to the contention of Mr. Satish Parasaran qua the petitioner's fundamental right guaranteed under Article 21 of the Constitution of India to go abroad, be it noted that, the right is not absolute, but, is subject to valid restrictions.

In the result, this writ petition stands dismissed as being devoid of merits. Costs made easy. Connected W.M.Ps. are closed.

s/d-

Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

To

1 The Foreigner Regional Registration Officer (FRRO)
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Ministry of Home Affairs
Government of India
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+2 Ccs to Mr. Vijayan Subramanian, Advocate sr 92642.

W.P. No.19743 of 2019

KK(CO)
SP(25/11/2019)