In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No.9007 of 2022

Suchita Dinodiya

Vs.

The Union of India and others

For the petitioner	:	Mr. Debasish Roy, Mr. Phiroze Edulji, Mr. Kaushik Kundu, Ms. Mrinalini Majumdar
For the respondent nos. 2 and 3	:	Mr. Ayanabha Raha
For the respondent nos. 4 and 5	:	Mr. Avishek Guha, Ms. Akansha Chopra
Hearing concluded on	:	16.09.2022
Judgment on	:	07.11.2022

Sabyasachi Bhattacharyya, J:-

1. The writ petition has been preferred against a Look Out Circular (LOC) issued against the petitioner by the respondent-authorities at the behest of respondent no.4. The petitioner was scheduled to travel from Kolkata to Maldives on December 23, 2020 when she was restrained on the ground that the impugned LOC had been issued in her name. On April 14, 2021, the petitioner wrote a representation to the respondent no.4, that is, the Bank of Baroda, seeking an explanation as to why she had been barred from travelling abroad. Respondent no.5, that is, the Bank of Baroda, Stressed Asset Recovery Branch replied to the representation stating that it had been presumed that the petitioner would evade due process of law, for which the LOC had been issued against her. Again, on May 11, 2022, the petitioner wrote to the respondent no.4 seeking permission to accompany her daughter for visiting college/university campus in Dubai for her higher education. However, no response was received thereto by the petitioner, which was the immediate cause of action for the writ petition.

2. *Vide* order dated May 20, 2022, this Court had passed an interim order granting a relaxation to the petitioner in respect of the LOC insofar as the petitioner was permitted to leave India between May 23 and May 31, 2022, upon furnishing a prior affidavit before the Immigration Bureau indicating flight details of the petitioner, including her specific destination(s) and contact number on which she would be available during the entire period when she was abroad. It was made clear, however, that the same was an ad hoc arrangement without prejudice to the rights and contentions of the parties in the writ petition.

3. Learned counsel appearing for the writ petitioner submits that under similar circumstances, the petition's brother-in-law had also suffered a Look Out Circular, which was challenged in WPA No.11243 of 2021. A co-ordinate bench of this Court, *vide* order dated February 24, 2022, had disposed of the said writ petition by setting aside the LOC.

4. An appeal was preferred before the Division Bench against the said order of the learned Single Judge, bearing MAT 388 of 2022, which was dismissed on April 07, 2022.

5. It is submitted that the petitioner is a house-wife with two minor children studying in schools in the City of Kolkata and is a permanent resident of 5, Gokhale Road, Post Office – Elgin Road, Police Station -- Bhawanipore, Kolkata -- 700 020.

6. It is contended that the petitioner is one of the guarantors to one credit facility availed from Vijaya Bank, Brabourne Road Branch by M/s. Rythm Overseas Trade Limited (earlier known as M/s. R. Piyarelall Import & Export Ltd.), having office at 85, Ballygunge Garden, Kolkata – 700 019. On January 7, 2014, the Vijaya Bank issued a notice to the borrowing company and the guarantors (including the petitioner) under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests (SARFAESI) Act, 2002, calling upon them to repay the alleged outstanding amount of Rs.56,51,80,992.48p, failing which the Vijaya Bank would take possession of the secured assets and take over the management of the borrowing company. The borrowing company and its guarantors were prohibited under Section 13(13) of the SARFAESI Act from transferring any of the secured assets without the permission of the Vijaya Bank.

7. A proceeding, bearing OA No.355 of 2014, was initiated by the Vijaya Bank before the Kolkata Debts Recovery Tribunal No.1 against the borrowing company and others, including the petitioner for recovery of Rs.69,17,40,388.48p. Summons was issued in the said proceeding under Section 19(4) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 on September 19, 2014 upon the defendants, including the petitioner.

8. Subsequently, with effect from April 01, 2019, the Vijaya Bank merged with the Bank of Baroda, upon which Vijaya Bank was substituted by the present respondent no.4, that is, the Bank of Baroda in the said proceedings.

9. The petitioner never received any information, it is submitted, as to why she was debarred from travelling abroad.

10. It is submitted that, apparently, the loan account of the borrowing company had been classified as "wilful defaulter" and it was intimated on May 17, 2021, in reply to the writ petitioner's representation dated April 14, 2021, that it was apprehended that the Directors of the guarantors of the borrowing company may leave the country in order to escape from the liability, which would allegedly hamper the respondents' attempts to recover the money. Allegedly, on such ground, the bank had requested the Bureau of Immigration to issue LOCs against the Directors and guarantors of the borrowing company, including the petitioner.

11. It is submitted that the petitioner had never been intimated previously that she had been debarred from travelling abroad and, as such, did not have any occasion whatsoever to inform the Debts Recovery Tribunal about her travel abroad.

12. It is contended that the petitioner's daughter Ms. Aadya Dinodiya, currently a student of the La Martiniere for Girls, Kolkata, topped the ICSE Board Examinations from her school and is inclined to pursue her graduation abroad.

13. As such, the petitioner sought to leave the country in order to accompany her daughter in pursuance of the latter's educational pursuit. The said daughter of the petitioner has applied for admission in the University of Wollongong, Dubai, UAE, Hult International Business School, Dubai and the University of Birmingham, Dubai Campus.

14. It is submitted that, since the petitioner has two minor children studying in Kolkata and is permanently settled with her family in Kolkata, there is no question of the petitioner evading any process of law. The petitioner also has her parents and in-laws residing in Kolkata. It is submitted that the impugned LOC was issued against the petitioner merely on the basis of conjecture *de hors* the law and ought to be set aside. It is further contended that previously an LOC issued against her brother-in-law had also been challenged before this Court and set aside by a co-ordinate bench, which was affirmed by the Division Bench.

15. It is submitted that the LOC issued against the petitioner should also be set aside.

16. Apart from denying the petitioner's involvement in the default committed by the company, learned counsel for the petitioner cites the judgments of several High Courts in support of his arguments.

17. Apart from citing the judgment setting aside the LOC issued to the petitioner's brother-in-law, as referred to above, the learned counsel for the petitioner also cites a Single Bench decision of this Court dated August 22, 2022 delivered in *WPA No.18655 of 2022*, whereby an LOC issued on similar grounds against the sister-in-law of the petitioner, that is, the wife of Vinod Dinodiya, had also been set aside, stipulating that the petitioner therein would intimate the respondent-bank regarding her dates of travel, place of proposed residence when abroad and that the petitioner would intimate the fact of her return to India immediately upon such return to the respondent-bank.

18. Learned counsel for the petitioner also cites another Single Judge decision in *Vishambhar Saran Vs. Bureau of Immigration and others*, reported at *2021 SCC OnLine Cal 3074*, whereby three writ petitions were allowed, thereby setting aside LOCs issued against the petitioners therein, inter alia, on the ground that no objective parameter were found for the issuance of LOCs against the petitioners. Nothing detrimental to the economic interest of India or exceptional was established in the said case, it was held.

19. Learned counsel for the petitioner further cites a Delhi High Court judgment rendered in *Vikram Sharma and others Vs. Union of India and others* in *W.P.(C) 10180 of 2009*. It was held in the said judgment that the Ministry of Home Affairs (MHA) should issue further clarificatory circulars or office memoranda clearly stating that the request for issuance of LOCs cannot 'emanate' from statutory bodies like the NCW.

20. Learned counsel next places reliance on a Division Bench Judgment of this Court in *Mritunjay Singh Vs. Union of India and others [MAT 406 of 2022]*, wherein the Division Bench modified the order of a Single Judge by maintaining the order to stay the LOC to the extent that the appellant therein would file an affidavit of undertaking before the Registrar General of this Court. It was, *inter alia*, observed that the name of the appellant therein did not appear in the charge-sheet.

21. Learned counsel for the petitioner also cites several judgments of the Delhi and Bombay High Courts in support of his proposition that LOCs may be issued only in certain limited cases, primarily if penal action or criminal case is initiated against the person concerned.

22. Learned counsel for the respondent-Bank cites a judgment of a learned Single Judge of the Karnataka High Court in *Dr. Bavaguthu Raghuram Shetty Vs. Bureau of Immigration and others*, as well as another Karnataka High Court Judgment in *Mrs. Leena Rakesh Vs. Bureau of Immigration and others* and the judgment of a learned Single Judge of the Bombay High Court in *Shri Subrato Trivedi Vs. Union of India and another.*

23. It is contended that there was sufficient justification in issuing the LOC against the writ petitioner, since the petitioner was a guarantor in respect of the defaulting loan. In *Vishambhar Saran*'s case (supra), it is argued by the Bank, the Office Memorandum dated October 4, 2018 (Annexure E at page 140 of the Bank's affidavit-in-opposition in the present writ petition), was not considered.

24. It is, thus, submitted that in most of the cases cited by the parties, stringent conditions were imposed on the person against whom the LOC had been issued. In *Mrs. Leena Rakesh*'s case (supra), the Karnataka High Court held, *inter alia*, that the Bank has to take a conscious decision by examining as to whether the petitioner's case falls within the ambit of fraud or default which would affect economic interest of the country. By placing reliance on the annexures to the said affidavit-in-opposition, learned counsel for the respondent-Bank contends that as per the several Office Memoranda issued by the Government of India, Ministry of Finance, the economic interest of India and larger public interest shall also be considered while issuing LOCs. It is submitted that the

Chairman/Managing Director/Chief Executives of all Public Sector Banks are now authorised to approve the request for opening of LOC.

25. It is, thus, submitted that in the present case, the LOC was rightly issued against the petitioner, since the petitioner is a guarantor in respect of a loan of huge amount due to the bank, which would directly affect the economic interest of the country and larger public interest.

26. An examination of the relevant circulars reveals that, with regard to Public Sector Banks, the minimum rank of the authority approving the request for opening of LOC includes the Chairman/Managing Directors/Chief Executives of all Public Sector Banks. In the present case, recovery proceedings are pending before the Debts Recovery Tribunal at the behest of the respondent-Bank (Bank of Baroda) for recovery of an amount of Rs.27,94,56,355.31p. In the event the said quantum, involving several crores of rupees, is not secured by restraining the petitioner, being one of the guarantors, from leaving the country, it is argued, the economic interest of the country could be adversely affected.

27. However, let us consider the present circumstances of the petitioner and her antecedents to examine whether there was sufficient justification behind issuing an LOC in respect of the petitioner, thereby restraining the freedom of movement of the petitioner outside the country, which is a part of life as guaranteed under Article 21 of the Constitution of India.

28. The petitioner herein is one of the guarantors to a credit facility availed from Vijaya Bank, Brabourne Road Branch by one M/s. Rythm Overseas Trade Limited (earlier known as M/s. R. Piyarelall Import & Export Ltd.). Subsequently, Vijaya Bank initiated a proceeding under Section 13(2) of the

SARFAESI Act calling upon the borrower bank and its guarantors, including the present petitioner, to repay the outstanding amount of Rs.56,51,80,992.48p, failing which Vijaya Bank was to take possession of the secured assets of the borrowing company and take over management of the same. The borrowing company and its guarantors were prohibited under Section 13(13) of the SARFAESI Act from transferring any of the secured assets without the permission of the Bank. The Vijaya Bank also initiated another proceeding against M/s. R. Piyarelall Import & Export Ltd. for recovery of Rs.69,17,40,388.48p, in connection with which summons was issued under Section 19(4) of the Recovery of Debts Tribunal due to Banks and Financial Institutions Act, 1993 on the borrowers and the guarantors, including the petitioner.

29. With effect from April 1, 2019, Vijaya Bank merged with the Bank of Baroda, which is the respondent no.4 herein.

30. It is seen from the chart provided in paragraph no.25 of the writ petition, which has not been denied by the respondent-authorities, that the petitioner has, between October 10, 2013 and October 5, 2019, travelled extensively to different countries, including Thailand, United Kingdom (UK), Italy, Malaysia, Demark, Maldives, UK, Croatia and Italy.

31. As such, there is nothing in the antecedents of the petitioner to justify any apprehension that she would flee the country in a bid to avoid her liability as a guarantor of the debts, in respect of which proceedings have been initiated before the Debts Recovery Tribunal, Kolkata.

32. The respective Original Applications (OAs) were initiated in or around the year 2014. As indicated from her travel records, the petitioner travelled regularly thereafter, at least on twenty occasions, to different countries outside India and has returned every time without any past history of recalcitrance.

33. Hence, there is no basis for apprehending all on a sudden that the petitioner would flee the country to avoid repaying the debts in respect of which she is a guarantor.

34. In similar circumstances, other guarantors of the loans, that is, her brother-in-law and sister-in-law had suffered LOCs, which were cancelled by this court.

35. In the present case, the total claim is apparently around Rs.73 crores. The Office Memorandum dated November 22, 2018, annexed at page 141 of the Bank's affidavit-in-opposition, indicates that the list of persons authorized to approve the request for opening of LOC includes the Chairman, Managing Directors and Chief Executives of all Public Sector Banks. In the present case, as is apparent from Annexure 'H' at page 144 of the Bank's affidavit-in-opposition, the request for issuance of LOC was issued under the signature of Sanjiv Chadha, a Managing Director and Chief Executive Officer of the Bank of Baroda. Hence, there was no discrepancy regarding the authority for the issuance of the said LOC.

36. The reason for opening the LOC, as indicated in the request for issuance of LOC, is primarily that the petitioner Suchita Dinodiya is one of the guarantors of the Company M/s. Rythm Overseas Trade Limited, whose account turned NPA (Non Performing Asset) on March 31, 2014 and is having outstanding balance of Rs.73.81 crore. The borrowers and

Directors, as per the said request, have been declared as wilful defaulters on February 28, 2017.

37. However, there is nothing on record to indicate that the petitioner was ever declared to be a wilful defaulter. Even, assuming that the liability of a guarantor is co-extensive with the borrower, there is no basis for the Bank's apprehension that the petitioner would abscond or escape/leave the country to defraud the Bank. Even if the prerogative is assumed to be of the Bank to take a conscious decision by examining as to whether the petitioner's case falls within the ambit of fraud or default which would affect economic interest of the country, there is no reflection in the request for opening LOC of any ground for such apprehension. Neither the economic interest of India nor larger public interest has been shown demonstratively to be hampered if the petitioner is allowed to leave India.

38. The petitioner is not subject to any criminal case, nor is the sovereignty or security or integrity of India to suffer *ex facie* if the petitioner leaves India.

39. Proceedings are duly pending in respect of recovery of the loan before the Tribunal, in which finality has not yet been reached. As such, there arises no question at this juncture to restrict the rights of travel of the petitioner, who is an Indian citizen, being guaranteed all the fundamental rights including the right to life under Article 21 of the Constitution of India, on the mere baseless apprehension of a future award which may be passed in the Tribunal proceeding. Moreover, there is nothing on record even to indicate that the assets of the company and/or of the guarantors is insufficient to cover the amount recoverable by the Bank.

40. Inasmuch as the petitioner is concerned, the petitioner has, pursuant to the interim order of this Court in the present writ petition, already travelled to Dubai and back. There is no allegation whatsoever of the petitioner attempting to flee justice in India or elsewhere and/or to have committed any offence, economic or otherwise, during such visit abroad.

41. In the absence of any award against the petitioner by any competent court or tribunal, it is premature to anticipate that the petitioner, one of the guarantors, would attempt to evade the process of law by fleeing the country; more so, since the petitioner has her permanent residence in Kolkata and her family, including two minor daughters, her parents and in-laws in the city.

42. In any event, the assets of the borrower company are already secured by way of an order under Section 13 (13) of the SARFAESI Act.

43. The mere quantum of the loan recoverable, that is, Rs.73 cores, by itself, cannot be sufficient to tag the claim to be "for larger public interest" and/or deemed to affect "the economic interest of the country as a whole". In fact, the petitioner has disclosed her travel details etc., to the respondent-authorities before her departure in terms of the interim order of this Court and has returned to India without any iota of attempt to defeat justice.

44. Moreover, in similar circumstances, the brother-in-law and sister-in-law of the petitioner were also handed LOCs, which were set aside by Court.

45. Since the said LOCs were also issued in connection with the same loan and the petitioner is in the same footing as the persons in respect of whom the said LOCs were issued, there is no justifiable reason to discriminate against the petitioner and keep the LOC alive against the petitioner without any material to satisfy any of the grounds for issuance of LOC as against the petitioner. At this premature stage, the liberty of the petitioner cannot be curtailed merely on the whims of the Bank, without any material to show that the issuance of the LOC at this juncture is justified at all.

46. The present petitioner has recently left the country for the purpose of higher education of her daughter and has safely returned to the country. Hence, there is no justifiable reason, at least at this stage, to issue the impugned LOC to the petitioner.

47. In the light of the above discussions, the LOC issued in respect of the petitioner cannot stand the scrutiny of law and is patently violative of Article 21 of the Constitution of India, since it interdicts with the right of the petitioner to travel freely out of the country without any present cogent cause for so restricting.

48. Accordingly, W.P.A. No.9007 of 2022 is allowed, thereby setting aside the impugned LOC issued against the petitioner. The respondent-authorities shall circulate the gist of this order to all concerned to ensure that the petitioner is not unnecessarily harassed or restrained on the basis of such quashed LOC.

49. There will be no order as to costs.

50. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)