IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-13050-2022 (O&M)
Reserved on:14.09.2022
Date of Decision:28.09.2022

Neha Bedi

. . . . Petitioner

Vs.

Indian Bank and others

. . . . Respondents

****

CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR JUSTICE HARKESH MANUJA

****

Present: - Mr.N.K. Setia and Mr. Yashpal Marken, Advocates
for the petitioner.

Mr.Chetan Mittal, Senior Advocate, assisted by
Mr.Gaurav Goel and Mr.Mayank Aggarwal, Advocates,
for respondent No.1-Bank.

Mr.Satya Pal Jain, Additional Solicitor General of India with
Ms.Shweta Nahata, Advocate,
for respondents No.2 & 3.

****

M.S. RAMACHANDRA RAO, J.

In this Writ Petition, the petitioner is challenging LOC issued against her on 08.03.2022 by respondent No.3 pursuant to the request dt.04.03.2022 made by respondent No.1 for issuance of the same.

The background facts

The petitioner is a guarantor for the loan facilities availed by M/s Puneet Fashions Private Limited whose loan account was declared as an NPA and a notice dt.03.10.2012 was issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short 'the SARFAESI Act, 2002'] by the erstwhile Allahabad Bank, predecessor of respondent No.1/Bank, demanding ₹120,05,71,911.09 as on 31.08.2012 within 60 days. Since the said amount was not paid by the said company, notice dt.13.02.2013 was also issued under Section 13(4) of the SARFAESI Act, 2002 to the borrower, petitioner and other guarantors.

The petitioner is also proprietor of M/s Neha Export Inc, a proprietory concern. The said concern had availed loan facilities of ₹14 crore from the Allahabad Bank and the petitioner was also guarantor for the said loan. The said loan account became NPA and a notice dt.03.10.2012 was issued under Section 13(2) of the SARFAESI Act, 2002 to her asking her to clear the outstanding dues of ₹18,40,57,501/- as on 31.08.2012.

The contentions of the petitioner

According to the petitioner, she was to travel from Delhi to Vancouver in Canada on 31.05.2022 along with her minor children and she along with them had arrived at Indira Gandhi International Airport at New Delhi on 30.05.2022, but they were not allowed to board the flight to Vancouver. She was informed by the officials of respondent No.3 that she was being restrained from travelling outside the country on account of a communication (LOC) which has been sent by respondent No.1/Bank with immigration authorities. Petitioner alleges that the copy of the LOC issued by respondent No.3 or copy of request made by respondent No.1 to respondent No.3 to issue LOC was not furnished to her.

Petitioner states that though there was an order passed on 08.08.2013 by Debt Recovery Tribunal, Chandigarh in OA-306-2013 tilted as *Allahabad Bank Vs. Puneet Fashions Private Limited* restraining her and other defendants therein from travelling abroad and the same was renumbered as OA-1959-2017, the said OA-1959-2017 was disposed of on 23.01.2018; and so the order dt.08.08.2013 restraining her and other defendants from leaving

India without permission stood vacated automatically and this was recorded in an order dt.24.02.2020 in MA-416-2019 in OA-1959-2017 by the DRT-III, Chandigarh. She contends that there is no other order passed by any other Court or tribunal in Country restraining the petitioner from travelling abroad. Petitioner alleges that restraining her from travelling abroad is a violation of her fundamental right of travelling abroad guarnteed by Art.21 of the Constitution of India and also violative of principle of natural justice.

The stand of respondent no.1 Bank

In the reply filed by the respondent No.1/Bank, reference is made to the defaults committed by the company M/s Puneet Fashions Private Limited and also M/s Neha Export Inc, the proprietory concern of the loan facilities granted to the said entities by the erstwhile Allahabad Bank, the declaration of the said loan accounts as NPA, and initiation of proceedings under the SARFAESI Act, 2002 mentioned above.

It is pleaded that the petitioner was declared as a *Willful Defaulter* on 31.12.2012 and a letter dt.01.01.2013 regarding such declaration as a *Willful Defaulter* was also issued to the petitioner.

It is alleged that if the petitioner was to emigrate abroad, then the process of recovering defaulted money would be stalled and delayed till the defaulter is extradited.

It is contended that the Union of India had issued instructions on 22.11.2018, empowering and permitting banks to seek LOCs even in those cases which were not covered by guidelines in larger public interest and the economic interest of India; and so there is no infirmity in it's action in seeking issuance of an LOC against the petitioner or in action of respondent no.3 in issuing the same.

It is also contended that the OA filed by the Bank against the petitioner i.e. OA-306-2013 (now OA-1959-2017) was in fact decreed by DRT-III, Chandigarh and a recovery certificate was issued for ₹118,76,80,674/- in the loan account of M/s Puneet Fashions Private Limited and another recovery certificate No.324/2018 was issued in the loan account of M/s Neha Export Inc for ₹18,19,56,380/-. It is stated that recovery proceedings are still pending before the Recovery Officer, DRT-III, Chandigarh.

It is also contended that insolvency proceedings were initiated by the petitioner before the NCLT, Chandigarh and the said Tribunal had reserved orders on 04.07.2022. *However, no order passed by the NCLT is placed on record.*

According to respondent No.1, the total dues in the account of M/s Puneet Fashions Private Limited is ₹98.48 crore and in the account of M/s Neha Export Inc is ₹9.6 crore as on 06.07.2022.

It is denied that there was any illegality or arbitrariness in the action of respondent No.1 against the petitioner and it is alleged that respondent No.1 had acted as per law. It is also contended that even if the petitioner is not permitted to travel, her children could have travelled to Canada subject to the travelling protocol of the airlines concerned. It is denied that there is any fundamental right of the petitioner which is violated.

The stand of respondent no.2 and 3

Respondents No.2 & 3 have filed a short affidavit contending that a person, who is subject of LOC, cannot be given any prior opportunity of hearing before issuance of the LOC. It is stated that LOC would be issued by various law enforcement agencies and respondent No.3

only acts upon such requests as per the guidelines framed by the Ministry of Home Affairs contained in Office Memorandum dt.27.10.2010 and subsequent amendments.

It is stated that the legal liability for the action taken by respondent No.3 in pursuance of the LOC rests with the originating agency i.e. respondent No.1-Bank.

It is contended that LOC cannot be modified/deleted/withdrawn by the Bureau of Immigration only on the specific request of the authorised originator on whose request the LOC was issued by respondent No.3. It is stated that officials not below the rank of Chairman/MD/Chief Executive of any Public Sector Bank can also seek issuance of LOC against a person.

Mr.Satya Pal Jain, Additional Solicitor General of India appearing on behalf of respondent No.2&3 has produced before us the request dt.04.03.2022 made by respondent No.1 to respondent No.3 for issuing the LOC against the petitioner and others; and on the basis of the same, the impugned LOC dt.08.03.2022 was issued against the petitioner by respondent No.3.

The consideration by the Court

Heard counsel for the parties.

Counsels reiterated their stand of their respective parties.

In the request dt.4.3.2022 made by respondent No.1/Bank to respondent no.3 produced before us, no reason is mentioned as to why such LOC is being sought against her.

The right to travel abroad has been recognized by the Supreme Court of India in the case of **Maneka Gandhi Vs. Union of India**[1] and **Satish**

[1] (1978) 1 SCC 248

Chandra Verma Vs. **Union of India**[2], as falling within the scope of personal liberty enshrined under Article 21 of the Constitution of India. Thus, to deny a person such a right requires a very high threshold.

The issuance of the LOCs in respect of the Indian citizens and foreigners was initially governed by an Office Memorandum No.25016/31/ 2010-Imm dt.27.10.2010. In this Office Memorandum reference is made to certain judgments of the Delhi High Court and it stated *inter alia* as under:

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.
b) The Investigation Officer shall make a written request for LOC to the officer as notified by the circular of Ministry of Home Affairs, giving details & reasons for seeking LOC. The competent officer along shall give directions for opening LOC by passing an order in this respect.
c) The person against whom LOC is issued must join investigation by appearing before IO or should surrender before the court concerned or should satisfy the Court that LOC was wrongly issued against him. He may also approach the officer who ordered issuance of LOC and explain that LOC was wrongly issued against him. LOC can be withdrawn by the authority that issued and can also be rescinded by the trial court where case is pending or having jurisdiction over concerned police station on an application by the person concerned.
d) LOC is a coercive measure to make a person surrender to the Investigating agency or Court of law. The subordinate Courts jurisdiction in affirming or cancelling LOC is commensurate

[2] 2019 SCC online SC 2048

with the jurisdiction of cancellation of NBWs or affirming NBWs.

The said Office Memorandum mentioned a list of Officers of various Departments of the Government who can make a request for opening of the LOCs.

Clause (h) of the above circular is relevant. It states:

> *"(h) In cases where there is no cognizable offence under IPC or other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The originating agency can only request that they be informed about the arrival/departure of the subject in such cases."*

Thus, LOCs were permitted to be opened essentially against persons involved in cognizable offences and who were evading arrest and not appearing in the trial Court despite NBWs or other coercive measures and there was a likelihood that they would leave the country to evade trial/arrest. It was intended as a coercive measure to make a person surrender to the investigating agency or Court of law.

But where the subject of the LOC is not involved in any cognizable offence, he cannot be detained/arrested or prevented from leaving the country. The originating agency can only request that they be informed about the arrival/departure of the subject in such cases.

The Office Memorandum stated that the LOC would be valid for a period of one year from the date of issue.

There were subsequently amendments made to the Office Memorandum from time to time.

Paragraph 8(j) was inserted in the office memorandum dt. 27.10.2010 through another Office Memorandum dt. 05.12.2017 which states:

"Para 8(j):

> *..... 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 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 be permitted in the* ***larger public interest*** *at any given point of time."*

Initially, Managing Directors and Chief Executive Officers of the Public Sector Banks were not authorized to make requests for opening of LOCs, but later an Office Memorandum dt.04.10.2018 was issued to include them also in the list of authorities who can seek LOCs. This was done in view of Paragraph 8(j) being inserted in the Office Memorandum dt. 27.10.2010 to enable LOCs to be issued against the persons who are fraudsters/persons who wish to take loans, willfully default/launder money and then escape to foreign jurisdictions, since such actions would not be in the economic interests of India, or in the larger public interest.

But the amount of the default by a person which would not be in the economic interests of India, or in the larger public interest, for which an LOC can be sought and issued, is not mentioned in the said Office Memorandum.

However taking advantage of the said Office Memoranda, requests for LOCs are being made by Public Sector Banks against persons defaulting in payment of loan dues to them like in the instant case.

It may be that M/s Puneet Fashion Private Ltd. and M/s Neha Exports INC of which the petitioner is a guarantor owe more than ₹100 crores to respondent No.1-Bank and the latter had obtained recovery certificates from the Debt Recovery Tribunal –III, Chandigarh which are pending before the Recovery Officer of the said Tribunal.

But there is no FIR registered against the petitioner for commission of any cognizable offence in India. There is also no declaration that the loan accounts are “fraud” by the respondent No.1-Bank, though the petitioner was declared as a “willful defaulter” by the Bank.

Can it seek an LOC against the petitioner from respondent No.3 in these circumstances?

The contention of the respondent No.1/Bank that economic interests of India are affected by the non-payment of dues by the petitioner to it cannot be accepted because businesses may fail for various reasons such as non-availability of raw material, cheaper goods being available in the market, labour disputes and pandemics such as Covid-19 etc.. It cannot be said that if a business fails, it is only on account of some fraud committed by the borrower.

As pointed out above, the amount of the loan default by a person which would not be in the economic interests of India, or in the larger public interest is not mentioned in the said Office Memorandums issued by the Ministry of Home Affairs.

When they do not themselves draw any line about the quantum of default by a borrower to a financial institution which would be considered detrimental to the economic interests of India (assuming for the sake of argument without conceding that it is affected at all) *and* a quantum of default which would not fall in the said category, the fundamental right to travel abroad guaranteed by Article 21 of the Constitution of India cannot be curtailed by the respondent No.1 by seeking issuance of an LOC from respondent No.3.

Merely because the word ‘public’ is used in the exception clause in the OM, it does not elevate a mere default to an exceptional plane. It cannot be said that the departure of the petitioner from the country would adversely impact the economy of the *‘country as a whole’* and destabilize the ‘entire economy’ of the country.

Since the right to travel abroad flows from Article 21 of the Constitution of India, a very high threshold is mandated by the Office Memorandums themselves to deny such a right to an Indian citizen. Such a threshold is not met in the instant case.

We have already noticed that *in the request dt.4.3.2022 made by respondent No.1/Bank to respondent no.3 produced before us, no reason is mentioned as to why such LOC is being sought against her*.

It also appears that respondent No.3 has not applied its mind to the request for issuance of LOC made by respondent No.1 and did not consider whether grounds are disclosed therein which fall within the four corners of the OMs issued in that regard, though it may not be able to go into the merits/demerits of the allegations made against the petitioners by the said entities. It appears that mechanically the respondent No.3 had issued the LOCs at the instance of respondent No.1.

Similar views have been expressed by this Court in ***Poonam Paul Vs. Union of India***[3] and in ***Noor Paul Vs. Union of India***[4]. It was

[3] 2022 SCC Online P&H 1176 (DB)

further held in those decisions that non supply of the LOC to the subjects of the LOC at the time of issuance of the same and denial of opportunity to the subjects of the LOC, a *post-decisional hearing* to explain why such LOC issued against them should be withdrawn/cancelled by the Bureau of Immigration (respondent No.3), is arbitrary and illegal, and it cannot be said to have followed fair, just and reasonable procedure to deprive the subject of the LOC of his or her fundamental right to travel abroad.

We follow the said decisions rendered by the Division Benches of this Court and hold that respondent No.1 cannot make a request for issuance of LOC to respondent No.3 in respect of dues owed by petitioner to it as per the Office Memorandums issued by the Ministry of Home Affairs from time to time.

Therefore the LOC issued and extended by respondent No.3 at the instance of respondent No.1 cannot be sustained.

Admittedly, Office Memorandum dt.27.10.2010 issued by the respondent No.1, LOC can be issued by the Respondent No.1 (amongst other authorities) for cognizable offences under the Indian Penal Code, 1860 or any other penal laws, where the accused deliberately evades arrest or does not appear before the trail courts despite non-bailable warrants or there is likelihood of the accused to leave the country to evade trial/arrest. It is not the case of the respondents that the petitioner is accused of having committed a cognizable offence in India.

As per Clause (h) of the Office Memorandum dt.27.10.2010 extracted above (clause (I) of the latest Office Memorandum No.25016/10/2017-IMM dt.22.02.2021), *in cases where there is no*

---

[4] CWP-5492-2022 dt.05.4.2022 (DB)

cognizable offence under IPC and other Penal laws, the LOC subject ***cannot be detained/arrested or prevented from leaving the country.*** The originating agency can only request that they be informed about the arrival/departure of the subject in such cases.

In the instant case, when the petitioner is not alleged to have committed any cognizable offence, she could not have been prevented from leaving the country by respondents by issuing LOCs and such action is clearly violative of the Office Memorandums dt.27.10.2010 and dt.22.02.2021.

In view of the above reasoning, the LOC issued against the petitioner at the instance of respondent No.1 by respondent No.3 is set aside; respondent No.1 shall communicate this order to respondent No.3; and officials/employees of respondents No. 1 & 3 are restrained from preventing the petitioner from travelling abroad. Writ Petition is allowed accordingly. No costs.

Pending application(s), if any, shall stands disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

28.09.2022 **(HARKESH MANUJA)**
Vivek/Ess Kay **JUDGE**

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No