IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19018-2022
Reserved on: 28.09.2022
Date of Decision: 17.10.2022

Raman Kumar Mehta . . . . Petitioner

Vs.

Union of India and others . . . . Respondents

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

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Present: Mr.Lokesh Sinhal, Advocate, for the petitioner.

Mr.Satya Pal Jain, Additional Solicitor General of India with Mr.Dheeraj Jain, Advocate, for respondents No.1 & 3/UOI.

Mr.Umang K. Khosla, Advocate, for respondent No.2.

Mr.Ashutosh Verma, Advocate, for respondent No.4.

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M.S. RAMACHANDRA RAO, J.

Background of the case

The petitioner has challenged in this Writ Petition a Look Out Circular [for short 'LOC'] issued against him by the Bureau of Immigration, New Delhi (Respondent No.3) on the basis of which petitioner was prevented from travelling abroad on 11.08.2022 to Canada.

Petitioner is a personal guarantor to a loan availed by respondent No.4 Company from respondent No.2 Bank and had executed an equitable mortgage of the residential property belonging to him.

Subsequently, respondent No.4 had substituted some other property also in addition to the properties already mortgaged by it and the property for which the petitioner had executed an equitable mortgage as personal guarantor was released by respondent No.2. A letter dt.01.01.2018 (P4) sent by respondent No.2 to the Secretary Municipal Council, Naraingarh, District Ambala to make necessary entries in that regard has also been filed.

Respondent No.4 defaulted in repayment of loan to respondent No.2 and respondent No.2 then filed OA-1541-2021 before the Debt Recovery Tribunal-II, Chandigarh for recovery of ₹6.93 crore.

Petitioner's two children are living in Canada and the petitioner intended to visit them. So he secured a visitor visa from the Canadian Government and also booked a ticket on an Air India Flight to Toronto, Canada for himself and his wife for 11.08.2022, but the petitioner was not allowed to board the flight on the ground that LOC was issued against him by respondent No.3.

Petitioner's wife was, however, allowed to board the flight and go to Canada and thus three members of the petitioner family are in Canada, but the petitioner is not being allowed to travel to Canada.

Petitioner contends that copy of the LOC was not provided to him. Petitioner alleges that the said LOC was issued by respondent No.3 since he was a guarantor for a loan advanced to respondent No.4 by respondent No.2 which had been defaulted by respondent No.4. He also contends that an endorsement was made on his passport called *"cancelled stamp"*.

Petitioner also contends that on 22.12.2021 an order was also granted in favour of respondent No.2/Bank in OA-1541-2021 restraining the defendants in OA from alienating the secured assets to any third party till the disposal of the OA.

Petitioner contends that he has a constitutional right to go abroad and such a right cannot be prevented from being exercised without due process of law and without observing principles of natural justice.

He contends that he is not accused in any criminal case nor is he evading the process of law and no criminal case was registered against him. According to him, there was no declaration that he had committed any *fraud* or that he is a *willful defaulter* by any competent authority as per law and so no LOC could have been issued against him.

Petitioner also contends that principles of natural justice require that LOC issued against him should also be furnished to him. In any event, since the petitioner's property has already been released by respondent No.2 Bank, merely because respondent No.2 was wrongly impleaded as a party in the OA filed by the Bank, respondent No.2 Bank could not have sought for issuance of LOC from respondent No.3.

Stand of respondents No.1&3

Mr.Satya Pal Jain, Additional Solicitor General of India appearing for respondents No.1 & 3 has placed before us the request made on 09.07.2021 by respondent No.2/Bank seeking LOC against the petitioner, and also LOC No.2021413444 issued against the petitioner by respondent No.3.

A reading of the request made by respondent No.2 Bank to respondent No.3 on 09.07.2021 merely reveals that such a request for opening of an LOC was made against the petitioner on the ground that the loan account of respondent No.4 had become an NPA, and that the petitioner is one of the guarantors to the said loan by relying on a letter dt.22.11.2018 issued by the Department of Financial Services empowering the Chairmen/Managing

Directors/Chief Executives of all public sector undertakings to issue requests for opening LOC against persons covered under the office memorandum dt.27.10.2010 issued by respondent No.1.

Mr.Satya Pal Jain, Additional Solicitor General of India appearing for respondents No.1 & 3 further contended that the petitioner is not entitled to be given a copy of the LOC and on request of respondent No.2, LOC was issued against him and it is for respondent No.2 to defend the issuance of the LOC.

Stand of respondent No.2

Respondent No.2 filed a reply contending that the petitioner stood as a guarantor to the loan granted to respondent No.4 and had executed a guarantee agreement on 10.03.2017; that he also mortgaged his property in order to secure the repayment of loan facilities granted to respondent No.4; that loan account of respondent No.4 was declared as an NPA on 27.01.2019 and then the process under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short 'the SARFAESI Act, 2002'] was initiated by serving notice dt.03.04.2019 under Section 13(2) of the SARFAESI Act, 2002 for recovery of ₹6.28 crores. It is also alleged that inspite of receipt of the said notice, petitioner did not clear the outstanding dues and respondent No.2 then filed OA-1541-2021 by impleading the petitioner as defendant No.6.

It is contended that the respondent No.4 was declared as *'willful defaulter'* on 26.03.2021 and this was communicated to the RBI.

It is asserted that respondent No.2 approached respondent No.3 for issuance of LOC and a letter dt.08.07.2021 was issued on the basis of which the impugned LOC was issued.

It is alleged that respondent No.2 had acted in accordance with the Rules and it had not acted in a *mala fide* or biased manner against the petitioner.

Reliance is placed on the letter dt.22.11.2018 issued by the Ministry of Finance referred to above permitting financial institutions and banks also to seek issuance of LOCs in cases which are not covered by the guidelines in *larger public interest* and *economic interest* of India.

It is contended that even if the property of the petitioner was released by respondent No.2/Bank, the petitioner's guarantee continues.

It is also contended that petitioner intends to flee the country and if the LOC is not there, there is a possibility that he would keep himself away from the reach of the Bank. It is stated that the presence of the petitioner is required for respondent No.2/Bank to take steps to recover their dues.

Consideration of the Court

We have noted the contentions of the parties.

The questions to be considered are thus:

(i) Whether the LOC issued by respondent No.3, at the instance of respondent No.2, against the petitioner can be sustained in law or not?

(ii) Whether merely on the ground that the petitioner is a guarantor for the loan taken by the respondent No.4, and there is a default by the said Company, can the petitioner be prevented from travelling abroad and his fundamental right under Article 21 of the Constitution of India be curtailed?

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 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

[1] (1978) 1 SCC 248
[2] 2019 SCC online SC 2048

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 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 or she 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):*
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> *..... 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.

The contention of the respondent No.2-Bank that economic interests of India are affected by the non-payment of dues of respondent No.4 by the petitioner to it cannot be accepted since 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.2 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 to deny such a right to an Indian citizen. Such a threshold is not met in the instant case.

The request dt.08/09.07.2021 made by the respondent no.2/Bank to respondent No.3 produced before us, shows no reason as to why such LOC is being sought against petitioner.

So it appears that respondent No.3 has not applied its mind to the request for issuance of LOC made by respondent No.2 and did not consider whether grounds disclosed therein 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 petitioner by the respondent No.2. It appears that mechanically the respondent No.3 had issued the LOCs at the instance of respondent No.2.

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 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

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[3] 2022 SCC Online P&H 1176 (DB)
[4] CWP-5492-2022 dt.05.4.2022 (DB)

should not 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.2 Bank 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 LOCs issued and extended by respondent No.3 at the instance of respondent No.2 Bank cannot be sustained.

Admittedly, Office Memorandum dt.27.10.2010 issued by the respondent No.1, LOC can be issued by the Respondent No.3 (amongst other authorities) for committing 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 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, he could not have been prevented from leaving the country by respondents by issuing LOC and such action is clearly violative of the Office Memorandums dt.27.10.2010 and dt.22.02.2021.

Accordingly the Writ Petition is allowed; the LOC issued against the petitioner at the instance of respondent No.2 by respondent No.3 is set aside and the petitioner is permitted to travel abroad; the stamp/endorsement "Cancelled" put on his passport is quashed; respondents No.1 & 3 shall expunge any remarks/endorsement/entry that might have been made in the record/passport of the petitioner with respect to the aforesaid LOC; respondent No.2 shall communicate this order to respondent No.3; and officials/employees of respondent Nos. 1 &3 are restrained from preventing the petitioner from travelling abroad. The respondent No.2 shall also pay costs of ₹20,000/- to the petitioner within four weeks from the date of receipt of copy of this order.

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

(M.S. RAMACHANDRA RAO)
JUDGE

17.10.2022
Vivek

(HARKESH MANUJA)
JUDGE

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