IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 20067 of 2022 (O&M)
Reserved on:20.09.2022
Date of Decision: 30 .09.2022

RITU SALUJA

. . . . 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 HARMINDER SINGH MADAAN

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Present: - Mr. Anand Chhibbar, Senior Advocate assisted by
Mr. Shikhar Sarin, Advocate for the petitioner.

Mr.Satya Pal Jain, Addl. Solicitor General of India assisted by
Mr.Arvind Seth, Advocate,
for respondents No.1 to 3.

Mr. Gaurav Goel, Advocate,
for respondent No.10.

Mr. Umang Khosla, Advocate,
for respondent No.13-Bank of Baroda.

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M.S. RAMACHANDRA RAO, J.

In this Writ Petition, the petitioner seeks a writ in the nature of *Certiorari* for quashing of the LOCs issued against her by the Bureau of Immigration (respondent no.2) at the instance of respondent No.s 10 and 13 Banks.

The petitioner is a guarantor to the loans granted by various Banks to M/s. SEL Manufacturing Company Ltd. and M/s. SEL Textiles Ltd as set out in Para 3 (c) of the Writ Petition. For both these Companies, the petitioner's husband and brother are the promoters.

Though several creditors were initially impleaded in the Writ Petition, it became known during the hearing of the case on 07.09.2022 that only the Indian Bank, Ludhiana, Punjab (respondent No.10) and the Bank of Baroda, Vadodara, Gujarat (respondent No.13) have made requests for issuance of LOC against the petitioner and LOCs had been issued by the respondent No.2. So the Writ Petition was dismissed against the other financial creditors.

The background facts

M/s. SEL Manufacturing Company Ltd. could not repay the loans taken by it from its lenders and the State Bank of India (for short 'SBI') initiated the proceedings under the Insolvency and Bankruptcy Code, 2016 ('the Code') before the National Company Law Tribunal, Chandigarh.

vide order dt. 11.04.2018, the Company was admitted into Corporate Insolvency Resolution Process (CIRP), and as part of the said process, various lenders submitted their claims against it before the Resolution Professional which were also accepted by the Resolution Professional.

The said M/s. SEL Manufacturing Company Ltd. had also given corporate guarantees to various Banks for securing the credit facilities granted to M/s. SEL Textiles Ltd. These guarantees were invoked by the Banks and the said amounts were also claimed by them in the CIRP of M/s. SEL Manufacturing Company Ltd. These amounts were admitted by the Resolution Professional and included in the total claims by all the financial creditors.

The resolution plan submitted by a consortium of ARR ESS Industries Private Ltd. and Leading Edge Commercial FZE was accepted by the Resolution Professional on 19.08.2020, and the Committee of Creditors approved it on 29.08.2020.

Subsequently, the National Company Law Appellate Tribunal, New Delhi (NCLAT) passed an order on 18.09.2020 and directed reconsideration of the same, and as per the revised voting, by 96.90% vote, the Committee of Creditors approved it.

Subsequently, an application was filed under Section 30(6) of the Code for approval of the resolution plan by the NCLT and the same was also approved, and necessary sanctions were granted by the NCLT vide order dt.10.02.2021 (Annexure P-2).

Thus, in respect of any claims with regard to M/s. SEL Manufacturing Company Ltd. it is highly doubtful that the petitioner has no role or connection on account of the above events.

As regards M/s. SEL Textiles Ltd., on the ground that there was a default of repayment of the amounts by the said Company, the Banks which had lend monies to it, initiated recovery actions before the DRT. The petitioner, as a guarantor, is respondent No.4 in the OAs filed by the Banks.

The petitioner's mother-in-law namely Smt. Sneh Lata Saluja was prevented from travelling abroad by issuance of a Look Out Circular (LOC) against her at the instance of Indian Bank and Bank of Baroda. She approached this Court and filed CWP No. 15711 of 2022, and vide an interim order dt.09.08.2022, this Court permitted her to travel abroad for two months subject to her depositing a sum of ₹50 Lakhs with the Registrar (Judicial) of this Court in the form of an FDR by placing reliance on the decisions of this Court in **Poonam Pal Vs. Union of India**[1] and **Noor Paul Vs. Union of**

[1] 2022 SCC P&H 1176

India[2]**.** It was stated that as and when she returns to India, she should produce her Passport before the Registrar (Judicial) who shall then return the said FDR to her. The said Writ Petition is still pending in this Court because the pleadings are not complete as Bank of Baroda which was a party in the said Writ Petition had not filed its reply by the date of the said order, and there was urgency pleaded by the petitioner therein to go abroad.

Contentions of petitioner

The petitioner in this Writ Petition is the daughter-in-law of Smt. Sneh Lata Saluja and intends to go to Singapore contending that her niece, who lives in Singapore, is expecting a child in October, 2022 and her assistance is necessary to be provided to her niece.

She contends that she has not been provided copy of the LOCs and she was not informed on whose behest it was issued. She contends that her right to travel abroad is a facet of Article 21 of the Constitution of India as held in **Maneka Gandhi Vs. Union of India**[3] and **Satish Chandra Verma** Vs. **Union of India**[4]**,** is violated.

The petitioner asserts that she is not involved in any criminal prosecution nor is she named as an accused in any FIR and she is merely a guarantor for the loan availed by the 2 Companies named above and is not even a principal borrower, and she cannot be prevented from travelling abroad. It is also contended that the petitioner was denied a hearing before issuing the LOCs and thus, there is also a violation of the principles of natural justice.

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[2] CWP-5492-2022 dt.05.4.2022 (B)
[3] (1978) 1 SCC 248
[4] 2019 SCC online SC 2048

The stand of respondents no.1 to 3

Mr. Satya Pal Jain, Additional Solicitor General of India appearing on behalf of respondent No.1 to 3 has produced before us the request dt.07.12.2021 made by the Indian Bank-respondent No.10 to respondent No.2 for issuing the LOC against the petitioner and others; and a copy of LOC bearing No. 2021423351 issued by respondent No.2 against the petitioner on 08/09.03.2020.

Similarly, on 29.11.2020, Bank of Baroda had made a request for opening of LOC against the petitioner. On the basis of the said request, LOC bearing No.2021423351 was issued by respondent No.2.

It is his contention that the Banks and the financial institutions are also entitled to seek opening of LOCs against the persons who have defaulted in repaying loans to them as per the Office Memorandum dt.22.11.2018 issued by the Ministry of Home Affairs, and LOCs can be issued against the persons who are fraudsters/willful defaulters to restrain them from escaping to foreign jurisdictions thereby affecting the economic interests of India.

He contended 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.2 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.2 in pursuance of the LOC rests with the originating agency i.e. respondent No.10 and 13 Banks.

It is contended that LOC cannot be modified/deleted/withdrawn by the Bureau of Immigration only on the specific request of the authorized 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.

The stand of respondent No.10-Indian Bank

It is the stand of respondent No.10-Indian Bank that the petitioner is a guarantor in both the loan accounts of M/s. SEL Manufacturing Company Ltd. and M/s. SEL Textiles Ltd.; that she has also mortgaged her various properties in order to secure the repayment of the above facilities granted to those companies; that the account of M/s. SEL Manufacturing Company Ltd. was declared as *fraud* by the Indian Bank on 16.07.2019, and it was also communicated to the Reserve Bank of India.

It is contended that the competent authority of the Indian Bank had granted permission to the SBI, which is the lead Bank for filing of an FIR with the Central Bureau of Investigation. It is contended that the SBI had given a letter on 04.06.2022 for registration of a complaint regarding fraud, cheating and other offences committed by the Directors/Promoters of M/s. SEL Manufacturing Company Ltd, but no FIR was registered till date.

It is also contended that after a forensic audit of M/s. SEL Textiles Ltd. was got conducted by the Central Bank of India (which was its lead Bank), the loan account of the said company was also declared as a *fraud* on 31.03.2020, and the same was also communicated to the RBI, and the Central Bank of India was also permitted to file an FIR with the CBI, and a letter was written by it on 29.07.2020 for registration of a complaint regarding fraud, cheating and other offences committed by the Directors/Promoters of the said Company.

It is stated that the Indian Bank had also filed an OA No.2609 of 2019 before the DRT, Chandigarh against M/s. SEL Manufacturing Company Ltd. for recovery of outstanding dues and that the matter is pending for 01.05.2023.

It is also contended that the Indian Bank had filed another OA No.3122 of 2019 before the DRT-III, Chandigarh against M/s. SEL Textiles Ltd., its Directors, Guarantors and the petitioner for recovery of dues.

It is stated that instructions were issued by the Ministry of Finance on 22.11.2018 empowering and permitting respondent No.1 to issue LOCs even in those cases which was not covered by the guidelines in larger public interest and the economic interests of India. It is contended that the Indian Bank had acted in a *bona fide* manner in terms of the protecting the public money by adopting due process of law.

It is stated that the petitioner may flee to some other country on some or the other pretext in order to keep away from the reach of the lending Banks and so the Writ Petition should be rejected as her presence is very much required to take steps to recover the dues of the above named Companies.

The stand of respondent No.13- Bank of Baroda

Similar stand is taken by the respondent No.13-Bank of Baroda. It is admitted that Corporate Insolvency Resolution Process of the debt of M/s. SEL Manufacturing Company Ltd. was approved by the NCLT, Chandigarh.

However, it is stated that there was an apprehension that the Directors/Guarantors might leave the country thereby defeating efforts of the said Bank to recover the amount owed to it by the above entities.

It is stated that if the petitioner is allowed to travel abroad without joining investigation and without repaying the pending debts, the whole purpose of issuance of LOC would be defeated.

According to the Bank, the quantum of the loan taken by the petitioner is huge and if the petitioner were to leave India, there shall be substantial dent to the economic interests of the country as well.

The consideration by the Court

We have noted the contentions of all the parties.

The stand taken by respondent No.13-Bank of Baroda that the petitioner had borrowed a huge loan is factual incorrect because the amounts were admittedly granted to the 2 Companies promoted by the petitioner's husband and his brother, and the petitioner was a mere guarantor to the said loans.

Also in the reply filed by the respondent No.10-Indian Bank, it had not mentioned the debt owed by M/s. SEL Manufacturing Company Ltd. having been resolved by the CIRP which ought to have been mentioned by it.

Be that as it may, the debt owed by M/s. SEL Manufacturing Company Ltd. having been resolved by the CIRP under the Code and the debts of the lenders Bank having been admitted in the said process, it is highly doubtful if the petitioner can be proceeded against by the said Banks because in it's books of account, the debt would have to be shown as NIL.

Also there is no FIR registered against the petitioner as on date alleging that the petitioner has committed any cognizable offence there is no question of the petitioner joining any investigation , though the loan account of the two Companies might have been declared a fraud by the lead Banks of the respective companies.

The petitioner had infact mentioned about initiation of the recovery actions against the above named two Companies in her pleading, but in the reply filed by the Indian Bank it is incorrectly stated that she had suppressed the same.

Merely on the ground that the petitioner is a guarantor for the above loans taken by the two entities, and there is a default by the said Companies, can the petitioner be prevented from travelling abroad and her 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**[5] and **Satish Chandra Verma** Vs. **Union of India**[6], 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/

[5] (1978) 1 SCC 248

[6] 2019 SCC online SC 2048

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 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*

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> *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.10 and 13 Banks that economic interests of India are affected by the non-payment of dues 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.1 by seeking issuance of an LOC from respondent No.2.

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 has to be is mandated to deny such a right to an Indian citizen. Such a threshold is not met in the instant case.

The request dt.29.11.2021made by the Bank of Baroda (respondent no.13) and the request made on 7.12.2021 by the India bank (respondent no.10) to respondent No.2 produced before us, show no reason as to why such LOC is being sought against petitioner.

So it appears that respondent No.2 has not applied its mind to the request for issuance of LOC made by respondent No.10 and 13 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.2 had issued the LOCs at the instance of respondent No.10 and 13 Banks.

Similar views have been expressed by this Court in ***Poonam Paul (1 supra)*** and in ***Noor Paul (2 supra)***. 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 should be withdrawn/cancelled by the Bureau of Immigration (respondent No.2), 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.10 and 13 Banks cannot make a request for issuance of LOC to respondent No.2 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.2 at the instance of respondent No.10 and 13 Banks cannot be sustained.

Admittedly, Office Memorandum dt.27.10.2010 issued by the respondent No.1, LOC can be issued by the Respondent No.10 and 13 (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 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.

Accordingly the Writ Petition is allowed; the petitioner is permitted to travel abroad for two months subject to her depositing a sum of ₹50 Lakhs with the Registrar (General) of this Court in the form of an FDR. This condition is being imposed as the loan accounts of the 2 Companies for which she is a guarantor had been declared a 'fraud' as mentioned above. As and when she returns to India, she should produce her Passport before the Registrar (General) who shall then return the said FDR to her.

Subject to the above, the LOC issued against the petitioner at the instance of respondent No.1 by respondent No.2 is set aside; respondent No.1 shall communicate this order to respondent No.2; and officials/employees of respondent Nos. 1 to 3 are restrained from preventing the petitioner from travelling abroad.

No costs.

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

(M.S. RAMACHANDRA RAO)
JUDGE

30.09.2022 **(HARMINDER SINGH MADAAAN)**
Ess Kay **JUDGE**

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