5th April, 2023
(D/L No.9)
(SKB)

W.P.A. 4488 of 2023

Shaleen Khemani
Versus
Union of India and others

Mr. Ranjan Bachawat,
Ms. Urmila Chakraborty,
Ms. Satyaki Mukherjee,
Ms. Susrea Mitra,
Mr. Raghunath Ghose,
Ms. Pritha Ghose,
Ms. S. Santra
... for the petitioner.

Mr. S. N. Dutta,
Ms. Runu Mukherjee
... for the respondent nos.1 to 3/UOI.

Mr. Anirban Pramanick,
Ms. Subhasree Dey
... for the respondent no.4.

The petitioner has asked for a direction on the respondents to withdraw and cancel a Lookout Circular (LOC) issued against him.

The petitioner's case is that the petitioner was off loaded from a flight on 15th January, 2023 when the petitioner was proposing to travel for a family wedding to Thailand. The case of the respondent/Bureau of Immigration is that the respondent Union of India was not the originator to the impugned Lookout Circular which was issued at the behest of the Chairman, State Bank of India.

By an order dated 15th March, 2023, learned counsel appearing for the Union of India was directed to produce the LOC. The LOC was produced before the court on 30th March, 2023. Counsel had also filed a letter dated 20th March, 2023 from the Foreigners' Regional Registration Office to the counsel stating that the Bureau of Immigration has no objection to withdrawal of LOC against the petitioner, if the Originator (Chairman, State Bank of India, Mumbai) requests or the concerned court directs the same.

The document produced by the Union of India described as the LOC only contains three of the four pages. However, the contents of the said document are significant. The first page of the document dated 8th March, 2021 reflects the name of the petitioner as one of the Promoters/Directors of the Company, M/s. Tantia Constructions Ltd. against who the State Bank of India made a request for issuance of LOC. Page 2 of the said document mentions the reason for opening of LOC against the petitioner who was a Director of the Company. The reason for opening of LOC is admittedly incorrect since the petitioner was an independent Director of the Company and resigned from the Company in 2016. The relevant document from the MCA Portal is on record.

Hence, as on the date of request for opening of the LOC against the petitioner on the ground that the petitioner is a Director of the Company is completely incorrect. The second page further records that the LOC Retention Date as per the Ministry of Home Affairs' Guidelines will remain valid for "at most one year". Since the request is of 8th March, 2021, the LOC would remain valid till 7th March, 2022. The respondents have not placed any document which would show further extension of the LOC. An earlier letter handed up by counsel appearing for the UOI dated 20th March, 2023 further refers to the request of 8th March, 2021 as the annual action taken by the Bank for opening of a LOC.

The document produced by the State Bank of India in court today is of 20th March, 2021 and is a letter from the Bureau of Immigration (Ministry of Home Affairs), Govt. of India to the Nodal Officer, State Bank of India, Mumbai. The last paragraph of the said letter records that LOCs opened shall remain in force until and unless deletion request is received by the Bureau of Immigration from the Originator, no LOC shall automatically be deleted. The said paragraph, however, also records that the Originating Agency, in this case, the State Bank of India, must keep reviewing the LOCs opened on a quarterly and annual basis and submit the proposals to delete the LOC immediately after such review. The State Bank of India has not produced any document to show that the State Bank of India has reviewed the LOC any time after 8th March, 2021.

Although, the document handed up today states that there shall be no automatic cancellation of a LOC, this court is of the view that the request of State Bank of India dated 8th March, 2021 makes it very clear that the State Bank of India should certainly have made a review of the said request after a year, i.e. on 7th March, 2022 when the LOC was due to come to an end, as the request was dated 8th March, 2021. No such review has been made and the State Bank of India has compelled the Bureau of Immigration to act on the request dated 8th March, 2021.

Second, the reason given in the request of 8th March, 2021 is patently incorrect. The petitioner was not a Director and had ceased to be a Director of the concerned Company from 2016 onwards whereas the request was issued on 8th March, 2021. Third, the petitioner was an independent Director. The Supreme Court has held that independent directors cannot be proceeded against on the ground of 'economic interest' or 'larger public interest' which are the usual reasons given for preventing travel of individuals for amounts due to public banks. Reference: *Brij Bhushan Kathuria Vs. Union of India and others* reported in *2021 SCC OnLine Del 2587*.

This court is also of the view that Lookout Circular cannot be used as a form of debt-collection mechanism and made to remain effective for times to come without periodic reviews by the Originator.

In the present case, the petitioner was prevented from travelling on 15th January, 2023, seven years after the petitioner resigned from the concerned Company that too as an independent Director. The stated position of the Bureau of Immigration is that the Bureau of Immigration has no objection if the LOC is withdrawn by the Originator.

There are several decisions passed by this court where Lookout Circulars have been quashed disregarding the quantum due to the Bank.

The above reasons persuade this court to allow and dispose of the writ petition with a direction on the concerned respondents to withdraw the Lookout Circular as against the petitioner which has been used by the respondents to prevent the petitioner from travelling outside India. It is made clear that the respondent shall not take any steps to prevent the petitioner from travelling outside India on the basis of the document shown to the court. The respondents shall take steps accordingly.

It is clarified that the order is passed only in relation to the petitioner as named in the document dated 8th March, 2021 and does not apply to the other persons named in the said document.

W.P.A.4488 of 2023 is disposed of in terms of the above.

(Moushumi Bhattacharya, J.)