D/L. 18.
September 5, 2023.
MNS.

WPA No. 5778 of 2023

Sri Sandeep Kabra and others
Vs.
Bureau of Immigrations and others

Mr. Sabyasachi Chowdhury,
Mr. Rajarshi Dutta,
Mr. Avishek Guha,
Ms. Akansha Chopra

… for the petitioners.

Mr. Billwadal Bhattacharya,
Mr. Narendra prasad Gupta

…for the Union of India.

Mr. Shiv Mangal Singh,
Ms. Jahan Ara Kulsum,
Ms. Moriam Sanfui

…for the respondent-bank.

1. Learned counsel for the petitioners contends that the Look Out Circular (LOC) issued against the petitioners is *de hors* the law, having been issued on the ground of the petitioners' being declared to be willful defaulters, which is beyond the grounds envisaged in the concerned Office Memoranda.
2. Learned counsel appearing for the respondent no. 2-bank places reliance on a communication dated November 22, 2018,

issued by the Deputy Director (BOII), Government of India, Ministry of Finance, where it was mentioned that the heads of the Public Sector Banks were empowered to issue requests for opening of LOC, which may be strictly complied with henceforth, so that all persons who are covered under the said amended OM of MHA, including fraudsters and persons who wish to take loans and willfully default or launder money and then escape to foreign jurisdictions to avoid paying back, are restricted from escaping from the country.

3. Learned counsel appearing for the bank makes an impassioned plea on behalf of common citizens of India who have their money in Public Sector Banks but suffer due to not repayment of loans taken by defaulters who seek to flee the country to avoid such recovery.

4. Learned counsel for the bank also places reliance on a judgment of a co-ordinate Bench passed in WPO 193 of 2023 and argues that a similar challenge was turned down by the learned Single Judge.

5. Learned counsel appearing for the Immigration Authorities contends that the role of the Immigration Authorities is limited and the liability primarily is on the originator regarding the request for issuance of LOC.
6. Learned counsel for the Immigration Authorities further submits that the Government of India, through Ministry of Finance, is not a party to the present writ petition. That apart, acts detrimental to the economic interest of India also furnish valid grounds for issuance of LOC.
7. Heard learned counsel for the parties.
8. The reliance placed by learned counsel for the bank on the co-ordinate Bench judgment in WPO 193 of 2023 is misplaced in the present context, since the same was in the context of a challenge against the show-cause notice issued for declaration of willful defaulter and the subsequent order declaring the petitioners to be willful defaulters. The learned Single Judge proceeded on the premise that the petitioners woke up from their slumber after five years only by reason of the issuance of the LOC against them and challenged the

show-cause notice and the willful default declaration.

9. On such ground of delay, the writ petition of the petitioners was rejected. Against such dismissal, an appeal has been preferred, which is now pending. However, the petitioners failed to obtain any interim order therein, also primarily on the ground that the petitioners had occasioned a huge delay in preferring the challenge.

10. The present challenge, in contrast to the other writ, is against the issuance of LOC, on the request of the originator-bank, apparently on the basis of such declaration of willful defaulter against the petitioners.

11. Since the petitioners' previous writ petition stands rejected as on date and is sub judice before the appellate Bench, this Court cannot and does not intend to go into the merits of such willful defaulter declaration, since as of today, the willful defaulter declaration stands against the petitioners.

12. Thus, proceeding on the premise that the petitioners are, as of today, willful defaulters under the relevant Circular of the Reserve

Bank of India, the present adjudication is taken up.

13. Even a first glance at the communication handed up by learned counsel for the petitioners indicates that the same is not an Office Memorandum but a communication dated November 22, 2018, by the concerned Official of the Ministry of Finance, Government of India. The said communication was, in fact, referred to in a subsequent communication dated April 8, 2022, which is handed up by learned counsel for the petitioners and reiterates the contents of the 2018 communication.

14. However, from both the communications, it is evident that the expression "willfully default" was an expression loosely used by the Ministry of Finance, in its communication, but has not been specifically stipulated as a ground for issuance of LOC. Apart from existence of a cognizable offence against the person concerned, there are certain other grounds in exceptional cases, which are stipulated in the concerned Office Memorandum and can govern the present case at best.

15. The only grounds therein, which might have arguably applied to the petitioners, are that the departure of the petitioners would be detrimental to the strategic and/or economic interest of India and if such departure is permitted, the same would be contrary to larger public interest at any given point of time.
16. The declaration of willful defaulter is not envisaged as one of the grounds for issuance of LOC in the Office Memoranda governing the field. The said declaration is a means adopted by the Reserve Bank of India, in exercise of its statutory functions, to give sufficient notice regarding the antecedents of particular borrowers to all concerned in the commercial sphere.
17. The said Circular operates in its own field and cannot be imported as a ground in the Office Memoranda issued from time to time by the Government of India for the purpose of issuance of LOC. Willful default declaration has a limited connotation, pertaining to the economic activities of the person concerned and is not relevant for issuing LOC.

18. Insofar as the strategic and/or economic interests of India and/or larger public interest is concerned, there is nothing in the materials on record to indicate that those grounds were mentioned by the bank in its request for issuance of LOC or otherwise made out. The only admitted ground for the request was that the petitioners have been declared to be willful defaulters under the relevant Circular of Reserve Bank of India, which is not a valid ground for issuance of LOC.

19. Hence, within the limited conspectus of the present writ petition, I find that none of the grounds depicted in the Office Memoranda for issuance of LOC is satisfied with regard to the petitioners. Hence, the issuance of LOC against the petitioners is vitiated in law and *de hors* the Office Memorandum of the Government of India itself.

20. Accordingly, WPA No. 5778 of 2023 is allowed, thereby setting aside the LOC issued against the petitioners. The respondent-authorities shall ensure that the petitioners are not restrained from leaving the country on the premise of the impugned LOC in future and to ensure that the concerned authorities who

were intimated about the issuance of LOC against the petitioners are informed as to the quashing of the same at the earliest, preferably within three weeks from date.

21. There will be no order as to costs.

22. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)