D/L. 7.
July 11, 2023.
MNS.

WPA No. 15196 of 2023

Chandrakant Khemka
Vs.
The Union of India and others

Mr. Sankarsan Sarkar,
Mr. Aditya Kanodia

… for the petitioner.

Mr. Arjun Mookerjee,
Mr. Sourjya Roy

…for the UCO Bank.

Learned counsel appearing for the UCO Bank (hereinafter referred to as the 'Bank') files a copy of the communication purportedly made by the Bank to the respondent authorities for the purpose of issuance of Look Out Circular (LOC) against the petitioner.

Such communication is handed over in a sealed envelope.

On the request of the Court, the learned Advocate appearing for the Bank opens such seal and hands over the document contained therein to the Court.

Learned counsel for the Bank places reliance on a document annexed to the report, which is also filed in Court today by way of an affidavit, which is a communication issued by the Deputy Director, Ministry of Finance, Government of India, instructing the banks not to share LOCs issued by the BOI with anyone and further advising the banks that banks may furnish only the LOC request that they had sent to BOI upon being asked to do so by the Court; however, the same may not be shared with anyone except the Court. As such, it is submitted that the communication has been handed over in Court in a sealed envelope.

It is also argued by learned counsel for the Bank that, subsequent to the Issuance of the LOC, the petitioner was declared to be a willful defaulter. It is also added that the declaration of the account of the petitioner with the bank as NPA, which was the ground of the communication for issuance of LOC, still subsists, having taken place originally in the year 2012.

Heard learned counsel for the parties at length.

A perusal of the communication handed over in Court today contains nothing so secret that it should be suppressed from public knowledge.

It is seen from the communication of the Government, relied on by the Bank that the same pertains to non disclosure of LOCs issued by the BOI with anyone. In so far as the communication of the Bank is concerned, the MHA's request was forwarded by the Ministry of Finance to the banks "advising" that when asked by the Courts, the bank may furnish the LOC request that they had sent to the BOI. It was further observed in the said communication of the Ministry of Finance that the clients may only be informed through a separate letter that the bank has requested for LOC issuance against the client.

Even without breaching the covenants of such a communication, there is no bar to the Court referring to the communication made by the bank for the purpose of issuing LOCs in its order. The relevant part of the said communication is in Item No. IV, which relates to the reason for opening of LOC. The sole reason cited by the Bank is that the petitioner is a promoter and guarantor of a Non Performing Account of the respondent-Bank.

Apart from that, no other ground has been disclosed in the said communication, for issuance of LOC. Although learned counsel for the Bank has sought to make out a case before this Court that the limited space provided in the form does not accommodate elaborate reasons for such issuance, such excuse cannot be accepted, since the paucity of space in the proforma issued by the Government for such request, which is merely of representative nature, could not be a determinant of the grounds to be cited by the bank. The bank, if so willing, could always give more reasons in the space provided, even adhering to the format-in-question.

However, in the present case, it is seen that the LOC was issued mechanically by the concerned department of the Government on the premise of the communication of the bank, which only speaks about the petitioner being a promoter and guarantor of an NPA of the bank. Such reason, *per se*, cannot be a valid ground for taking the serious step of issuance of an LOC against a person, which interdicts and restrains the personal liberty of a citizen of India.

The Office Memorandum-in-question dated December 5, 2017, which has been sought to be relied on by the bank, specifies several grounds. The grounds which might have been relevant in the present context is only that the person concerned leaving India would be detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India and/or that such departure ought not to be permitted in the larger public interest at any given point in time.

Only in exceptional cases, LOCs can be issued without complete parameters and/or case details against CI suspects, terrorists and anti-national elements etc. in larger national interest.

Apart from the petitioner not falling within any of such exceptional cases, no exceptional case has been made out by any of the respondent authorities in the present case.

In so far as the petitioner leaving the country being to the detriment of the economic interest of India or being contrary to larger public interest is concerned, the said grounds are not satisfied at all in the present case.

The ground cited in the communication of the bank to the respondent authorities is extremely flimsy and does not justify the restraint of the petitioner's fundamental rights of life and freedom to move within and outside the country. Such rights, as enshrined in the Constitution, are implicit in the right to live of a citizen of India and cannot be restrained at the drop of a hat at the behest of the respondent authorities.

Moreover, as a note of caution, it is required to be observed that, as per the Government guidelines, the immigration authorities issuing LOCs can so issue, only upon being satisfied with the inputs being of such a nature, which establishes the grounds for which LOCs are issued.

However, we are seeing trends in recent times of Immigration Authorities issuing LOCs without an iota of satisfaction being disclosed, even in Court proceedings, as to whether sufficient inputs were received by them with the request for Issuance of LOCs by the originators of the request.

Hence, in such circumstances, it is expected that the respondent authorities shall be more cautious in future as regards issuance of LOCs, which is an extreme measure and cannot be utilized by banks and other authorities at their whims, merely as an alternative to recovery of dues, using the Government or the immigration authorities as tools.

Thus, in view of the above circumstances, the communication of the bank asking for issuance of LOC in respect of the petitioner as well as the consequential LOC issued by the respondent authorities cannot be sustained.

Accordingly, WPA No. 15196 of 2023 is allowed, thereby setting aside the communication made by the bank to the Immigration Authorities, dated August 6, 2021, a copy of which has been handed over in Court today, and the Look Out Circular (LOC) issued in terms thereof in respect of the petitioner.

All action which has been taken as a consequence to such issuance of LOC by the respondent authorities shall be reversed. Necessary communication in that regard shall be duly made by the respondent no. 3, that is, the Bureau of Immigration, to whichever authority which was informed with regard to the LOC being issued, and/or restraint order being passed in respect of the petitioner, to ensure that the reversal of the issuance of the LOC is duly communicated to all such authorities.

That apart, the respondent authorities shall remain restrained from preventing the petitioner in any manner from leaving India on the basis of the LOC issued against the petitioner, which has been set aside by this order.

Parties shall act on the server copy of this order, without insisting upon prior production of the certified copy, for the purpose of compliance of the same.

It is further clarified that nothing in this order shall preclude the bank from issuing a further communication for issuance of LOC, in accordance with law and with the relevant guidelines, and upon such ground of issuance of LOC actually arising, and/or preclude the respondent no. 3 from issuing a further LOC against the petitioner, in future, if the grounds stipulated in the governing Government circulars are satisfied.

There will be no order as to costs.

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.)