AD-07
Ct No.09
19.10.2023
TN

WPA No. 24837 of 2023

Niharika Dinodiya
Vs.
The Union of India and others

Mr. Debashish Roy,
Mr. Phiroze Edulji,
Mr. Koushik Kundu,
Ms. Mrinalini Majumdar
.... for the petitioner

Mr. Sahasrangshu Bhattacharjee,
Ms. Amrita Pandey
.... for the UOI

Mr. Ashish Shah
.... for the respondent nos.4, 5, 6 & 7

1. Learned counsel for the respondent-Bank at the outset seeks to file an affidavit-in-opposition. However, such prayer is refused, since the Bank does not seek to furnish any further documents which are not already annexed to the writ petition. The question involved in the writ petition hinges on the veracity of a Look Out Circular (LOC) issued on the petitioner, which can be decided on the materials annexed.

2. The petitioner alleges that the LOC was issued against her at the behest of the respondent-Bank, that is, the Bank of Baroda by the respondent-authorities.

3. It is contended that the request of the Bank which was the genesis of the same does not satisfy the concerned Circular of the Government of India.

4. Learned counsel for the Bank places specific reliance on a communication dated April 08, 2022 issued by the Government of India, Ministry of Finance, Department of Financial Services to all Public Sector Banks (PSBs).

5. It is pointed out that in paragraph no.2 of the same, willful defaulters have also been included within the parameters of issuance of LOCs. Since the Bank, being a public sector bank, falls under the aegis of the Government of India, Ministry of Finance, the Bank duly complied with such communication by issuance of request for LOC.

6. A perusal of the format of request by the respondent-Bank for the purpose of issuance of LOC is interesting.

7. In serial no. 31, which pertains to justification/reasons for opening of LOC, the Bank wrote that they apprehend that M/s R. Piyarelall Group may leave the country. "LOC may help to prevent his travelling abroad", it was further admitted by the Bank, which openly disclosed that the LOC may put the entity under pressure since his name is disclosed to the public as defaulter. He may be under pressure, according to the Bank, because “his image will be tarnished before his business groups”. The Bank went on to say that it apprehends that the entity may defraud other banks. The bank also observed that the LOC “may create fear in the mind of the concerned person and help to find out an absconded person”. It is further recorded at the end of such request that there is no formal information available.

8. It is utterly surprising and disgusting as to how such apprehension and premise of the Bank could find its place in a formal request for an LOC. The purpose and reason for opening an LOC given by the Bank in its request is a case study in what it should not be in terms of the concerned Circular. The Bank openly admits in its request that the purpose of the LOC is *inter alia* to put the person concerned under pressure, by way of disclosure to the public of the person as defaulter and for the purpose of tarnishing the image of the person before his business groups. The Bank assumes that it apprehends that the petitioner may defraud other banks. Not only that, the LOC, as per the Bank, may create fear in the mind of the concerned person and helps to find out an absconded person. Thus, the bank has the gumption to say that its request for LOC is a pressure tactic.

9. The *crème de la crème* of the request is the last sentence which says that there is “no formal information available”, which hits at the root of the request.

10. No criminal proceeding against the petitioner is disclosed in the entire purview of the request. Although learned counsel for the Bank has contended that the petitioner has been declared to be a willful defaulter, unfortunately for the Bank, declaration of a willful defaulter does not find place in the grounds for issuance of LOC as disclosed in the concerned Office Memoranda of the Government. The Ministry of Finance, Government of India, by its circulation among public sector banks dated April 08, 2022, cannot override the Circular or introduce additional grounds to the concerned Circular of the Government of India itself, which is the only authority which could issue any Circular regarding issuance of LOCs.

11. Moreover, paragraph no. 2 of the letter dated April 08, 2022 does not say that mere declaration of willful defaulter is a valid ground for issuance of LOC. What the letter does is that, merely by way of an example, it refers to all persons who are covered under the guidelines, “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”.

12. However, the Circular itself, at best, provides that an LOC can be issued in the event the escape of a person is a threat to the sovereignty or security or integrity of India or is detrimental to the bilateral relations with any country or to the strategic and/or economic interest of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offence against the State and/or that such departure ought not to be permitted in the larger public interest at any given point of time.

13. The Bank has failed to establish that there is any serious fraud committed by the petitioner which tantamounts to adversely affecting the economic interest of the country if the petitioner leaves India or may affect larger public interest, which is on a much higher pedestal than the mere allegation of the Bank that the petitioner has defaulted in payment of a loan.

14. In any event, the remedy of the Bank on such score lies in a recovery proceeding which has been duly initiated by the Bank.

15. A clarification might be put in here to the effect that several Banks, it is noticed, are proceeding on the premise that a declaration of willful defaulter itself is sufficient to request issuance of an LOC, which is not sanctioned by the concerned Office Memoranda of the Government. Declaration of willful defaulter operates in a particular field, to give a warning to other persons in the commercial community of the country before having transactions with the declared willful defaulter. However, such declaration does not replace a recovery proceeding or provide sufficient grounds for taking the extreme step of issuance of an LOC.

16. In such view of the matter, WPA No. 24837 of 2023 is allowed on contest, thereby setting aside and quashing the Look Out Circular issued against the petitioner by the respondent-authorities. The respondent-authorities shall ensure that the petitioner is not restricted from leaving the country on the basis of the said quashed LOC any further. The respondents shall also ensure that proper and due communications are made reversing the issuance of the LOC to all authorities which might have been intimated by the respondents about the issuance of the Look Out Circular in the first place.

17. The parties shall act on a server copy of this order for the purpose of compliance without insisting upon prior production of a certified copy thereof.

18. 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.)