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30.11.2023
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IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. No. 24924 of 2023

Amit Kumar Kejriwal
Vs.
Union of India & Ors.

Ms. Noella Banerjee,
Mr. Dipak Dey,
Mr. Dipanjan Dey,
Ms. Megha Das
...for the petitioner

Ms. Chandreyi Alam,
Ms. Runu Mukherjee
...for the Union of India

Mr. Bhaskar Prosad Banerjee,
Mr. Abhradip Maity
...for the Customs Authorities

Mr. Sailesh Mishra
...for the Bank

1. Affidavit-of-service filed in Court today be kept on record.
2. The present writ petition has been filed challenging a Look Out Circular (LOC) issued against the petitioner.
3. Learned counsel appearing for the petitioner contends that although in the month of April 2019 there was a review of the sanction limit and a fresh sanction was issued, allegedly on June 30, 2019 the

account of the petitioner was marked as a Non-Performing Asset (NPA) and a request was made thereafter by the respondent-Bank for issuance of a LOC. Pursuance to the said request, the impugned LOC has been issued.

4. It is argued that none of the relevant yardsticks necessary for issuance of LOCs have been satisfied in the present case.

5. Learned counsel appearing for the Immigration Authorities submits that the said Authorities are duty-bound under the Government Circulars to issue an LOC if such a request is made by the appropriate designated officer of the bank, which has been done in the present case.

6. Learned counsel appearing for the respondent-bank submits that at the relevant juncture, that is, on November 19, 2019, when the request for issuance of LOC was made, the reason for opening of LOC was shown to be that the petitioner is a promoter and guarantor of an NPA account. Subsequently, it is submitted, the account of the petitioner has been marked as a fraud account under the concerned Reserve Bank of India Master Direction.

7. Learned counsel for the Bank places reliance on a communication to the Secretary, Department of Financial Services, Ministry of Finance, Government of

India by the Joint Director of the Central Bureau of Investigation (CBI). In the said communication, it was inter alia observed by the CBI by way of a suggestion that once early warning signals prescribed by RBI are observed, banks should be on alert regarding some wrongdoings in the loan accounts, which may ultimately turn out to be fraudulent. Banks need to reduce the time-gap between occurrence of fraudulent act and declaration of the same as fraud.

8. That apart, it was suggested by the CBI that the appropriate officer of the bank is empowered to request for opening of LOCs against economic offender/defaulters at the same time when the account is being declared as fraud. Issuance of LOCs, as per the said suggestion, is governed by OM dated October 27, 2010 of the Ministry of Home Affairs, which lists out the authorities empowered to so request.

9. In view of the above, the CBI requested that the matter be taken up with the concerned authorities in the Ministry of Home Affairs to make appropriate changes in the OM dated October 27, 2010.

10. Learned counsel for the Bank also places reliance on an Office Memorandum issued by the Deputy Director, Department of Financial Services, Ministry of Finance, Government of India, dated

October 04, 2018, where the grounds for issuance of LOC have been enumerated.

11. Learned counsel next cites another Office Memorandum issued by the said Ministry dated February 22, 2021 in support of his contentions.

12. The copy of the request for LOC handed over by learned counsel for the respondent-Bank today is opened and taken up for perusal by the Court.

13. A consideration of the submissions of the parties leads us to the grounds of issuance of LOC, which primarily remain unaltered through several Office Memoranda.

14. In terms of the Office Memorandum dated October 04, 2018, the only grounds which could be applicable in the present case vis-à-vis the Bank are that the departure of a person is detrimental to the sovereignty or security or integrity of India or that the same 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 engage in acts of terrorism or offences against the State and/or such departure ought not be permitted in the *larger public interest* at any given point of time.

15. Insofar as the “request” by the CBI to the Secretary, Department of Financial Services, Ministry

of Finance is concerned, the same cannot be a binding rider for the Bank to take resort to for the purpose of issuing requests for LOC. The only relevant consideration regarding issuance of LOC is the concerned Office Memoranda issued by the Government of India. The CBI, being merely an investigating agency, does not have any authority or jurisdiction under the law to enumerate the grounds for issuance of LOCs.

16. In any event, the communication relied on by the Bank is a mere suggestion to the concerned Ministry of the Government of India from the end of the CBI to bring in modifications to the Office Memoranda. However, the suggested riders were not specifically introduced even in the subsequent Office Memoranda issued by the Ministry of Home Affairs.

17. In any event, irrespective of the suggestion of the CBI, merely the fact proceedings are going on against a particular defaulter cannot be sufficient reason for resorting to the high action of interdicting the personal liberty of the person to leave the country by issuance of LOC.

18. As far as the Office Memorandum dated October 04, 2018 is concerned, neither the request of the respondent-Bank nor the circumstances of the case justify a conclusion that if the petitioner left the

country the same would be detrimental to the economic interest of India or could not be permitted in larger public interest.

19. Merely because the petitioner, according to the Bank, is a defaulter, does not furnish sufficient justification for issuance of LOC. It has been held time and again by this Court and other High Courts that issuance of LOC cannot, at any point of time, be a substitute for recovery proceedings.

20. Inasmuch as the declaration of fraud is concerned, learned counsel for the petitioner has submitted that the said declaration with regard to the petitioner's account has been set aside by an order of this Court vide order dated July 18, 2023 passed in WPA No. 16291 of 2023, as affirmed by the judgment and order dated November 16, 2023 passed by a Division Bench of this Court in MAT 1769 of 2023. Even otherwise, supposing that a declaration of fraud was made under the concerned Master Direction against the petitioner and the same would have survived still today, the same *per se* does not furnish sufficient ground for coming to the conclusion that the petitioner's departure from the country would affect the economic interest of India or the larger public interest of the country.

21. The Master Directions in that regard issued by the RBI only pertain to issuance of warnings to other operators in the financial market regarding the credentials of a particular borrower/ guarantor/ director and do not, in any manner, acquire such a high pedestal so as to be of importance in the larger public interest or the economic interest of India as a whole.

22. The Office Memorandum dated February 22, 2021 does not bring about any major alteration to the grounds stipulated in the Office Memorandum dated October 04, 2018 which would be germane to the issue.

23. It also has to be noted that, as the reason for opening of LOC, the Bank had merely indicated that the petitioner is the promoter and guarantor of an NPA account, which by itself is not a valid ground of issuance of LOC from any perspective whatsoever.

24. In such view of the matter, the issuance of LOC on the basis of the invalid and unlawful request of the Bank, which does not satisfy the concerned Office Memoranda of the Government of India with regard to issuance of LOCs, cannot be sustained.

25. Accordingly, W.P.A. No. 24924 of 2023 is allowed on contest, thereby setting aside the LOC issued against the petitioner and directing the

respondent-authorities to take immediate steps for communicating the gist of this order to all authorities which were communicated about such issuance of LOC in the first place, within three weeks from date, to ensure that the petitioner is not restrained on the basis of the said quashed LOC from leaving the country in any manner whatsoever.

26. There will be no order as to costs.

27. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)