

OD 8

WPO/1485/2023

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SANJAY PRAKASH BANSAL AND ANR.
VS
UCO BANK AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 21st August, 2023.

Appearance:

Mr. Suddhasatva Banerjee, Adv.

Mr. Abhishek Kabir, Adv.

...for the petitioners

Mr. Santosh Kr. Ray, Adv.

Mr. Shashwat Nayak, Adv.

Ms. Sonal Agarwal, Adv.

Ms. Antalina Guha, Adv.

...for the UCO Bank

The Court: Learned counsel for the petitioners has challenged the issuance of Look Out Circulars (LOC) against the petitioners. It is argued that such Look Out Circulars has been issued without any basis whatsoever.

Such contention is refuted by learned counsel for the respondent bank. It is submitted by the bank that the writ petition is not maintainable, since a single writ petition has been filed by the two writ petitioners, against two separate Look Out Circulars issued on the basis of separate requests by the bank. As such, it

is submitted that a single writ petition at the behest of both is not maintainable in law. Secondly, it is contended by the bank that the writ petitioner has suppressed several extremely relevant documents. It is submitted that the DIN (Director's Identification Number) of the petitioner no.1 has been cancelled. That apart, proceedings are pending under Section 95 of the Insolvency and Bankruptcy Code, 2016 against the petitioners, for invocation of personal guarantee as well as personal bankruptcy declaration.

Learned counsel for the respondent bank also relies on a Forensic Audit Report (FAR) which, it is contended, is incriminating against the petitioners as per their financial offences are concerned. As such, it is argued that the writ petition ought to be dismissed at the threshold.

Even on merits, it is contended by the bank that the petitioners are suffering from the pendency of several proceedings against them and, as such, the issuance of the Look Out Circulars were justified.

Learned counsel for the respondent bank hands over copies of the requests made by the respondent bank for the issuance of Look Out Circulars in a sealed envelope, on the specific direction of Court. The contents of the said requests, only in so far as they are not sensitive in any manner or do not disclose any source or can be harmless to the interest of State, are discussed here.

It is evident from both the said requests that in the clause regarding the reason for opening of LOC, in case of both the petitioners, the reason given is that they are Director and Guarantor of NPA account and that the bank has identified the borrowers as willful defaulter, the examination of which is under process.

The said requests were issued on September 28, 2020.

As such, it is clear from the requests themselves that no basis within the purview of the concerned Office Memorandum regarding issuance of Look Out Circulars has been satisfied in the present case. The Office Memorandum in question, dated December 5, 2017, provides for several grounds for issuance of Look Out Circulars; the only grounds, however, which might be relevant in the present context is that the fact that a person leaves in India would be detrimental to the strategic and/or economic interests of India and/or such departure ought not to be permitted in the larger public interest at any given point of time.

The expressions “economic interests of India” and “larger public interest” cannot be equated with the limited interest of a bank or financial institution to recover its alleged dues. For such narrow purpose, there are several legal avenues open to banks, such as recovery of such dues in due process of law. The alleged suppression of material facts, even if any, is not germane to the present case at all.

Although the petitioner disputes the cancellation of the Director’s Identification Number (DIN) of the petitioner no.1, the same, in any event, is not a material consideration within the purview of the concerned Office Memorandum. The pendency of a proceeding under Section 95 of the IBC is also not a germane consideration or a bar contemplated in the Office Memorandum sufficient to restrict the fundamental right of an Indian citizen to move about within the territory of India and to go abroad.

Learned counsel for the respondent bank also seeks to place reliance on a Forensic Audit Report, which might have been authored for the purpose of a

particular proceeding but does not have a binding effect at least for the purpose of issuance of LOC.

In so far as a single writ petition having been filed by two writ petitioners on separate causes of action, since the causes of action emanate from similar requests by the bank, which were exactly contemporaneous, such defect can be cured easily by permitting the writ petitioners to put in deficit court fees, equivalent to the court fees payable for filing of another writ petition.

That apart, the allegations and the pleadings made in the present writ petition would suffice to get a comprehensive idea of the challenge to both the LOCs. Relegating the petitioners two separate writ petitions now, even after hearing the matter on merits, would be a mere travesty of justice would serve no useful purpose.

In so far as the conduct of the respondent bank is concerned, it is being noticed that on several such occasions, banks are seeking to use the power conferred upon the banks and financial institutions to issue requests for issuance of Look Out Circulars as a parallel proceeding to coax alleged debtors to pay up the alleged dues.

Such parallel efforts on the part of the banks and the financial institutions have been deprecated time and again by different High Courts of the country as well as the Supreme Court of India, but has fallen on deaf ears.

Such conduct on the part of the respondent bank in the present case and/or banks and/or financial institutions in general, to abuse the authority conferred on them, based on the high pedestal of the economic interest of the

country and/or public interest at large, for their limited purpose of recovering their alleged dues, cannot be permitted to go on.

Hence, as a token gesture, the present respondent bank ought to be saddled with costs, to deter the bank from taking a similar course of action in future.

In view of the above observations, the issuance of LOC, which is blindly done by the Immigration Authorities, without further scrutiny, merely on being requested by the banks and the financial institutions, being *de hors* the Office Memorandum of the Government itself, cannot stand the scrutiny of legal enquiry.

Accordingly, WPO/1485/2023 is allowed, thereby setting aside the Look Out Circulars issued against the writ petitioners. The respondent shall communicate to all concerned authorities, to whom the issuance of LOC has been formally communicated, to ensure that the petitioners are not prevented from leaving the country in due course of law.

It is made clear that the respondents shall remain restrained from acting on the quashed Look Out Circulars for the purpose of restricting the petitioner from travelling abroad.

The respondent bank shall pay costs of Rs.50,000/- to the petitioners, being Rs.25,000/- to each of the writ petitioners, to compensate the harassment suffered by the writ petitioners due to the unjust and unlawful requests for issuance of Look Out Circulars made by the bank. Such costs shall be paid within thirty days from date.

Nothing in this order, however, shall preclude the respondent bank and/or the immigration authorities from taking steps for issuance of fresh Look Out Circulars against the petitioners in the event any of the criteria as stipulated in the concerned Office Memoranda of the Government governing the issuance of Look Out Circulars are met in future.

The request for issuance of Look Out Circulars, handed over in Court by the bank, be made part of the records.

(SABYASACHI BHATTACHARYYA, J.)