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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 2nd May, 2023

\+ **W.P.(C) 11045/2022 and CM APPL. 2849/2023**

RAJENDRA KASHYAP & ORS. ..... Petitioners

Through: Mr. Vaibhav Mahajan and Mr. Nikhil Aswani, Advocates (M-8884636139)

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Ajay Digpaul, CGSC alongwith Mr. Kamal R Digpaul and Ms. Swati Kwatra, Adv. for UOI.
Mr. Nishchaya Nigam, Advocate for R-2. (M- 7838214305)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioners- Mr. Rajendra Kashyap, Mr. Anand Kashyap, and Ms. Anita Monnee Kashyap seeking the quashing of the Look-Out Circulars (LOCs) issued against them as also seeking a declaration to the effect that the Office Memorandum dated 27th October, 2010 and all its revised versions, issued by the Respondent No. 1- Ministry of Home Affairs are *ultra vires* the Constitution of India.

3. The Petitioners were running a well-established business called *'Kashyap Motors'*, which was incorporated in the year 1997. It is the contention of the Petitioners that when on 8th May, 2005, Petitioner No. 1- Mr. Rajendra Kashyap had reached the airport for travelling to Dubai, he was stopped at the airport. At that stage, it was realized that LOCs were issued against them.

4. The case of the Petitioners is that they had availed of certain loan facilities from the Respondent No. 4- Bank of Baroda in three loan accounts. In respect of two loan accounts, a one-time settlement (OTS) has already been entered into. As per the said one time settlement, the Petitioners have paid a sum of Rs.11.90 crores in instalments which were agreed upon by the Bank. No-dues certificate has been issued by the Bank on 31st January, 2022.

5. Insofar as the third loan account is concerned, the submission of ld. Counsel for the Petitioners is that in the said loan account, a total amount of Rs.21.67 crores was claimed by the Bank. The Bank has already realized Rs.10.63 crores by sale of an immovable property. All the assets of the Petitioners have been attached. The Bank has also proceeded with CIRP proceedings before the NCLT, recovery petitions before the DRT and three separate personal insolvency petitions under Section 95 of the Insolvency and Bankruptcy Code, 2016 have been filed. It is also the claim of the Petitioners that they have no further assets. In light of the recoveries and the insolvency proceedings, it is the overall submission that the Petitioners cannot be declared as wilful defaulters, considering a substantial amount of loans have already been settled/cleared.

6. Notice was issued in this matter on 25th July, 2022, on which date, Bank of Baroda was asked to obtain instructions. Reply was also directed to be filed on 8th August, 2022. However, no reply has been filed till date. An application was filed seeking permission to travel, which was considered by this Court on 24th August, 2022 and permission was granted to the Petitioner No.1. Thereafter, the Bank has either been erratic in its appearance or has chosen not to file a reply. No FIR or criminal case is

pending against the Petitioners and there is no allegation of any cognizable offence having been committed by the Petitioners. Vide order dated 8th December, 2022, permission was again given to Petitioner No.2 to travel abroad. Despite repeated adjournments, the Bank has chosen not to file a reply. The matter continues to remain pending.

7. The Union of India has filed a short affidavit through Mr. Ajay Digpaul, ld. CGSC who has stated that the Union of India has no objection in withdrawal of the LOCs if the concerned Court or the originator i.e., the Bank of Baroda gives permission. The stand of the Union of India is that the LOC was issued in terms of the e-mail received from the Bank of Baroda dated 18th December, 2021. The relevant paragraphs of Union of India's affidavit are set out below:

> *"4.That the answering respondents respectfully submit that as per record, LOC was issued against the petitioner at the behest of MD & CEO, Bank of Baroda, New Delhi vide E-mail cited 18.12.2021 with the action "Prevent subject from leaving India and inform the originator'. A copy of the said E-mail dated 18.12.2021 is annexed herewith as Annexure R-1.*
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> *5. That it is further submitted that the respondent no. 3/BoI issues LOCs on the basis and in terms of guidelines issued by the respondent no. 1 vide OM. No. 25016/10/2017-Imm dated 22.02.2021. It is further submitted that as per para 6(G) of the revised LOC guidelines dated 22.02.2021, the legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency and not with the Bureau of Immigration*
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> *6. That it is further submitted that the opening/issuing the LOC being an executive function, it is very much in domain of UOI to issue such guidelines for ensuring effective and smooth discharge of various Government Functions. It is further submitted that answering*

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By:DHIRENDER KUMAR
Signing Date:04.05.2023
12:07:00

> *respondent no.3/BoI is only the custodian of LOC who maintains LOCs and takes action against LOC subjects at Immigration Check Posts (ICPs) at the behest of originating agency.*
> *7. That it is submitted that answering respondents have no objection in withdrawal of LOC against the petitioner, if the concerned court and above originator directs to do so."*

8. A perusal of the reply which has been filed shows that the LOC has been issued at the instance of Mr. A.S. Chakma, Assistant General Manager, Stressed Asset Management Vertical. Apart from this, there is no other response by the Bank or any of the other authorities.

9. The Court has considered the office memorandum dated 27th October, 2010 and all its revised versions, which as per paragraphs 6(F) and 6(J) of the Office Memorandum issued on 22nd February, 2021 requires a periodic review of the LOC. The said Clauses of the Office Memorandum issued on 22nd February, 2021 has also been considered by this Court in judgement dated 23rd March, 2023 in ***Manavi Anusha v. Union of India & Anr., 2023:DHC:2214***. In the said judgement, this Court had quashed the LOC. The relevant extract of the said judgement is extracted as under:

> *"9. The question that arises in this petition is whether the LOC ought to be continued. A perusal of the Office Memorandum issued by Respondent No. 1, dated 22nd February, 2021 under which LOCs are issued, shows that under paragraph 6(F) and 6(J) of the Office Memorandum, though the LOC remains in force unless a deletion request is given by the Originator itself, **the LOC is required to be reviewed on a quarterly and annual basis by the Originating Agency**. The said Office Memorandum also records in paragraph 4(a) that recourse to LOC is to be taken by the investigating agency, only in cognizable offences under the IPC or*

other penal laws where the accused was deliberately evading arrest or not appearing in the Trial Court despite non-bailable warrants being issued. The said clauses of the Office Memorandum are set out below:

> *"6. The existing guidelines with regard to issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners have been reviewed by this Ministry. After due deliberations in consultation with various stakeholders and in supersession of all the existing guidelines issued vide this Ministry's letters/ O.M. referred to in para 1 above, it has been decided with the approval of the competent authority that the following consolidated guidelines shall be followed henceforth by all concerned for the purpose of issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners:-*
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> *.....*
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> *(F) Care must be taken by the Originating Agency to ensure that complete identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma mentioned above. It should be noted that an LOC cannot be opened unless a minimum of three identifying parameters viz. name & parentage, passport number or Date of Birth are available. However, LoC can also be issued if name and passport particulars of the person concerned are available.* ***It is the responsibility of the originator to constantly review the LOC requests and proactively provide additional parameters to minimize harassment to genuine passengers.*** *Details of Government identity cards like PAN Card, Driving License, Aadhaar Card, Voter Card etc. may also be included in the request for opening LOC.*
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> *(J) the LOC opened shall remain in force until and unless a deletion request is received by BoI from the Originator itself. No LOC shall be deleted*

> *automatically.* ***Originating Agency must keep reviewing the LOCs opened at its behest on quarterly and annual basis and submit the proposals to delete the LOC, if any, immediately after such a review****. The BOI should contact the LOC Originators through normal channels as well as through the online portal. In all cases where the person against whom LOC has been opened is no longer wanted by the Originating Agency or by Competent Court, the LOC deletion request must be conveyed to BoI immediately so that liberty of the individual is not jeopardized."*

10. Clearly, the facts of the present case do not show that the Petitioners are wilful defaulters. Therefore, this is clearly not a case which is covered under any of the clauses of the LOC nor is it a case where the economic interests of India are affected which would justify the issuance of LOCs. The Bank already having availed of its legal remedies in accordance with law, the LOCs are not sustainable and are accordingly quashed.

11. The Petitioners are free to travel abroad. However, upon travelling, if the Respondents wish that intimation ought to be given in terms of paragraph 6-(I) of the Office Memorandum dated 22nd February, 2023, the Bureau of Immigration is free to give information to the Bank of Baroda.

12. The Union of India shall today, give intimation to the Bureau of Immigration of the order passed today so that no impediment is caused to the travel of the Petitioners.

13. The petition is allowed in the above terms. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

MAY 2, 2023
Rahul/AM