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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 27336 of 2023

Hemant Goenka

Vs.

Bureau of Immigrations, thorough
its Deputy Director & Ors.

Mr. Sabyasachi Choudhury,
Mr. P.P. Bishwal,
Mr. Kanishk Kejriwal,
Ms. Suranjana Chatterjee
...for the petitioner

Mr. Siddhartha Bhattacharyya,
Mr. Sailendra Tiwari
...for the respondent nos. 1 and 3

Mr. Arjun Mookerjee
Mr. Sourjya Roy
...for the Bank

1. Learned counsel for the respondent-Bank, as per previous direction of the Court, hands over a copy of the request made by the Bank for the purpose of issuance of Lookout Circular (LOC) to the petitioner. However, at the same time, learned counsel also hands over a copy of a Circular issued by the Government of India, Ministry of Finance, Department of Financial Services, dated April 08, 2022, which lends confidentiality to such documents.

2. In any event, for the ends of justice, as per direction of the Court, a copy thereof is handed over to learned counsel for the petitioner here and now.

3. The envelope in which the copy of the request handed over by the learned counsel for the Bank is enclosed is opened in open court. A perusal of the request indicates that the sole reason for opening of the LOC given by the Bank is that the petitioner is the promoter and guarantor of NPA account and that the Bank allegedly had declared him as wilful defaulter. However, from the materials presented before the Court, there is no indication that there has been a declaration of the petitioner as wilful defaulter in terms of the Master Circular governing wilful defaulters issued by the Reserve Bank of India. A subsequent declaration of the account of the petitioner as fraud has also been stayed by a competent Bench of this Court.

4. In any event, even if the petitioner was to be declared as wilful defaulter, the said declaration operates in a different field and is not a criminal proceeding or proceeding of such nature pending against the petitioner. The declaration of wilful defaulter pertains to the default committed by an entity within the periphery of the said Circular of the Reserve Bank of India, which is made for the purpose of alerting other people operating in the commercial community cannot be a basis of issuance of an LOC.

5. Upon perusal of the relevant Circular issued by the concerned Ministry of the Government of India, it transpires that the grounds which could be, perhaps, available to the Bank at best, boils down to the allegation that the petitioner, if permitted to leave India, would affect the strategic or economic interests of India or would be detrimental to larger public interest.

6. The allegations made in the request, however, do not qualify on the high pedestal so as to affect the economic interests of India as a whole or to be detrimental to larger public interest.

7. The alleged debts of the petitioner to the Bank, at best, furnish grounds for recovery proceedings to the Bank and the provision for issuance of LOC cannot be used as a coercive measure as an alternative to recovery proceedings.

8. In such view of the matter. W.P.A. No. 27336 of 2023 is allowed on contest, thereby setting aside the request of the respondent-Bank for issuance of LOC against the petitioner as well as the LOC issued against the petitioner on the basis of the said request.

9. Any action taken pursuant to the issuance of the LOC shall be reversed by the respondent-authorities at the earliest. In the event such issuance has been formally communicated to any

particular authority, it will be re-communicated by the respondent-authorities to the said authorities indicating the gist of this order and that the said LOC has been set aside.

10. There will be no order as to costs.

11. 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.)