



W.P.No.36850 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2024

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.36850 of 2024
and W.M.P.No.39792 of 2024

M.Srinivasa Babji

... Petitioner

vs.

- 1.The Union of India,
Represented by its Secretary,
Ministry of Home Affairs,
New Delhi 110 001
- 2.The Bureau of Immigration
Represented by its Commissioner,
Shastri Bhawan, Haddow's Road,
Nungambakkam, Chennai 600 006
- 3.The Chairman & Managing Director,
Bank of Baroda,
Baroda Corporate Centre,
Plot No.C-26, Block G,
Bandra Kurla Complex,
Bandra (East), Mumbai 400 051
- 4.Chief Manager,
Bank of Baroda,
Stressed Assets Management Branch,
JBAS Building, 4th Floor,
No. 45, Moore Street,
Chennai – 600 001

... Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st and 2nd Respondent to withdraw the 'Look Out Circular' issued against the Petitioner on the basis of the request made by the 3rd and 4th Respondent and consequentially permit the Petitioner to travel abroad to the United States of America.

For Petitioner : Mr.P.S.Raman
for M/s.Abishek Jenasen

For R1 and R2 : Mr.S.Diwakar
Senior Panel Counsel

For R3 and R4 : M/s.Revathi Manivannan

ORDER

The Writ Petition is filed seeking issue of Writ of Mandamus, directing the respondents 1 and 2 to withdraw the 'Look Out Circular' issued against the petitioner on the basis of request made by the respondents 3 and 4.

2. It is the case of the petitioner that he was inducted as an Independent Director of Vijay Home Appliances based on his personal relationship with the Managing Director of the said Company. In the year 2009, the said Company approached the 3rd respondent-Bank for credit



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facilities amounting to Rs.13 crores to run its operations and said facility was extended to the said Company. The petitioner herein stood as a personal guarantor for proper repayment of the loan amount and executed a Deed of Memorandum of Deposit of Title Deeds in respect of certain immovable properties. The petitioner ceased to be a Director of the Company with effect from 03.12.2012. After the petitioner ceased to be Director of Company, a letter was addressed to the 3rd respondent-Bank to release the personal guarantee and collateral securities offered by the petitioner.

3. Subsequently, the Company was admitted into the Corporate Insolvency Resolution Process under the provisions of the Insolvency and Bankruptcy Code, 2016, the assets and liabilities of the Company were taken over by the Resolution Professional appointed by the NCLT. Thus, the Bank became a Financial Creditor and part of the Committee of Creditors constituted under the Act.

4. Subsequently, by order dated 09.01.2020, NCLT passed an order for liquidation of the Company. The properties offered by the petitioner as collateral securities were auctioned by the Bank and a sum of Rs.5 crores



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was recovered. The Fixed Deposit of the petitioner worth about Rs.50 lakhs was also encashed.

5. The 3rd respondent-Bank filed a petition under Section 95 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of insolvency resolution process against the petitioner in respect of personal guarantee offered by him. The petitioner wanted to visit his son and attend convocation function of his son on 13.12.2024 and to take medical check up for him. Therefore, the petitioner made arrangements to visit cities of San Francisco and Houston, USA. However, he was stopped by the Immigration Officer at the Immigration checkpoint in the Chennai International Airport. At that point of time, it came to the knowledge of the petitioner that a 'Look Out Circular' was issued by the respondents 1 and 2 on the request made by the 3rd respondent. However, the copy of the 'Look Out Circular' was not furnished to the petitioner. In these circumstances, seeking a direction to the respondents 1 and 2 to withdraw the 'Look Out Circular' issued by them, the petitioner has come before this Court.

6. The learned Senior Counsel appearing for the petitioner submits



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that the 3rd respondent-Public Sector Bank is not entitled to issue any 'Look Out Circular'. In support of his contention, he relied on the judgment of the Bombay High Court in ***Viraj Chetan Shah vs. Union of India and others*** reported in ***2024 SCC Online Bom 1195***, whereunder the relevant clause of the Office Memorandum issued by the 1st respondent, which enabled the Chairman/Managing Directors/Chief Executive Officers of all Public Sector Banks to make request for issuance of 'Look Out Circular' was quashed. Challenging the order passed by the Bombay High Court, the 1st respondent filed special leave appeal in S.L.P.(C).Nos.17194 to 17230 of 2024. In the said batch of SLPs, the Apex Court passed the following order:-

“Pending consideration of these Special Leave Petitions on the interim stay, the private respondents/writ petitioners before the High Court shall seek permission from the High Court in the event they wish to travel abroad.

It is needless to observe that if such an application is filed before the High Court in the disposed of writ petitions, the same shall be considered and disposed of expeditiously.”

7. The learned Senior Counsel further submits that the petitioner wants to visit two cities in United States namely Houston and San Francisco



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in connection with convocation ceremony of his son and his medical check up. The learned Senior Counsel further submits that the petitioner is ready to deposit his passport in Indian Embassy on his arrival in United States and to collect the same at the time of Departure. The said statement made by the learned Senior Counsel appearing for the petitioner is recorded.

8. The learned Senior Panel Counsel appearing for the Respondents 1 and 2, on written instructions from 2nd respondent dated 10.12.2024 in No.1/CC/FRRO/CH/2024(36850), submits that Bureau of Immigration has no objection in granting arrival/departure to the petitioner if the originator of the 'Look Out Circular' modifies or deletes it. The learned counsel appearing for the respondents 3 and 4/Originator would submit that since the interest of the Public Sector Bank is involved, the petitioner shall not be permitted to visit Foreign Country. The learned counsel by taking this Court to counter affidavit filed by respondents 3 and 4 would submit that 'Look Out Circular' was issued based on the Office Memorandum issued by 1st respondent and any permission to petitioner to travel abroad at this stage would jeopardize the progress of case initiated against the petitioner under Section 95 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of insolvency



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resolution process against the petitioner.

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9. The petitioner also filed an undertaking affidavit dated 11.12.2024, which reads as follows:-

“2. I submit that I have blocked tickets to the USA on Emirates Flight EK 547 departing Chennai at 21:40 Hrs on 11.12.2024 and EK 543 departing Chennai at 03:45 Hrs on 12.12.2024. I undertake to return to India on or before 20.01.2025.”

The undertaking by the petitioner is recorded.

10. The right to visit Foreign Country is an essential and fundamental right which is a part of personal liberty as held in **Maneka Gandhi vs. Union of India and Another reported in (1978) 1 SCC 248**. In the case on hand, there is no criminal case pending against the petitioner. In such circumstances, denying the right of the petitioner to visit abroad for the limited purpose of attending his son's convocation function and for taking medical check up for him, is highly inequitable. Infact, the Division Bench of Bombay High Court in the above mentioned decision, quashed the relevant portion of Office Memorandum issued by the 1st respondent which



enabled the Public Sector Banks issuing 'Look Out Circular'. The relevant observation of Bombay High Court in **Viraj Chetan Shah** case cited supra reads as follows:-

“149. Consequently, on the question of the Article 14 challenge in relation to impermissible or invalid classification by inclusion of only PSBs (through their Chairmen, Managing Directors and Chief Executive Officers) is ultra vires Article 14 as being an impermissible and invalid classification, and being manifestly arbitrary.

150. Clause 8(b)(xv) of 2010 amended OM (equivalent to Clause 6(B)(xv) of the 2021 consolidated OM) is struck down.

J. THE VALIDITY OF THE IMPUGNED LOCS

151. Once we have held that the inclusion of the PSBs is impermissible, every LOC issued must necessarily fail. But we have heard elaborate arguments on the footing that even if the inclusion of PSBs is valid, the LOCs themselves are liable to be quashed.

... ..

... ..

165. The fact that the public sector bank is directly concerned with the recovery of debt and is yet armed with this unilateral power only makes matters worse. As we have seen, in Rajesh Aggarwal, the Supreme Court specifically noted, inter alia, that the principles of audi alteram partem would be read



into any processual system that affected civil rights. But these are fundamental rights; and the right to Article 21 cannot be abrogated in this fashion. Here, the public sector bank becomes judge and executioner at once. The canon of nemo judex in causa sua is automatically violated.

... ..

... ..

195. Consequently:

- (a) Clause 8(b)(xv) of the 2010 amended OM (equivalent to Clause 6(B)(xv) of the 2021 consolidated OM) which includes the Chairmen, Managing Directors and Chief Executive Officers of all public sector banks as authorities who may request the issuance of a Look Out Circular is quashed.*
- (b) All the LOCs are quashed and set aside.*
- (c) The Bureau of Immigration will ignore and not act upon any LOCs issued by any public sector banks. All databases will be updated accordingly. We do not expect the public sector banks to do this, and therefore direct the Bureau of Immigration or MHA to do the needful.*
- (d) All authorities at all ports of embarkation will be informed and apprised accordingly.*

196. Further:

- (a) This order will not and does not affect any existing*



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restraint order issued by a competent authority, court, tribunal or investigative or enforcement agency, or in enforcement of any order of a court. Where, for instance, the DRT or a criminal court has issued a restraint order (even if this is at the instance of public sector bank), that order will continue to operate. The invalidation of the present LOCs cannot and will not affect such orders.

- (b) The banks are also always at liberty to apply to any court or tribunal under applicable law for an order against an individual borrower, guarantor or person indebted restraining such person from travelling overseas.*
- (c) In addition, the banks may invoke powers under the Fugitive Economic Offenders Act, 2018, where applicable, notwithstanding this judgment in regard to any LOC.*
- (d) This judgment cannot and will not prevent the Union of India from framing an appropriate law and establishing a procedure consistent with Article 21 of the Constitution of India.”*

11. Though the decision of the Bombay High Court was challenged by the 1st respondent before the Apex Court, no interim stay has been granted. However, the parties were permitted to approach the High Court in the case they wish to travel abroad.



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12. The Delhi High Court in *Ajay Mrig vs. Union of India and Others* reported in **2024 SCC Online Del 4800**, followed Bombay Division

Bench decision cited supra and held as follows:-

“21. A Division Bench of the High Court of Bombay in a batch of writ petitions vide Judgment dated 23.04.2024 in Viraj Chetan Shah v. Union of India, W.P.(C)719/2020 etc. has quashed Clause 8(b)(xv) of the Office Memorandum dated 27.10.2010 bearing O.M.23016/31/2010-Imm. equivalent to Clause 6(B)(xv) of the O.M. Dated 22.02.2021 bearing O.M. 25016/10/2017-Imm.(Pt.) whereby the Chairman/Managing Director/Chief Executives of all Public Sector Banks could request for opening of an LOC. The effect of the said judgment is that the Chairman/Managing Director/Chief Executives of the Public Sector Banks cannot make a request for issuance of LOC.

22. The issuance of lookout circular cannot be resorted to in every case of bank loan defaults or credit facilities availed for business and the Fundamental Right of a citizen of the country to travel abroad cannot be curtailed only because of failure to pay a bank loan more so when the person against whom the lookout circular is opened has not been even arrayed as an accused in any offence for misappropriation or siphoning off the loan amounts.

23. In view of the above, since there is no criminal case



pending against the Petitioner, this Court is of the opinion that the Lookout Circular issued against the Petitioner cannot be sustained and, therefore, the Lookout Circular issued against the Petitioner is hereby quashed.”

13. In the case on hand, no criminal proceeding is pending against the petitioner. In the light of the law laid down in the above mentioned cases, this Court is inclined to permit the petitioner to visit two cities of United States namely Houston and San Francisco during the period from 11.12.2024 to 20.01.2025. The petitioner shall deposit the passport in the Indian Embassy on his entry in United States and he shall collect the same at the time of departure. The respondents 1 and 2 are directed to suspend the 'Look Out Circular' issued against the petitioner from 11.12.2024 to 20.01.2025. The Petitioner on arrival in India on 20.01.2025, shall file a compliance affidavit before the Registrar (Judicial) of this Court on or before 22.01.2025.

14. With these directions, the Writ Petition stands disposed of. No costs. Consequently, the connected writ miscellaneous petition is closed.



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Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
dm

Note: Issue order copy on 12.12.2024.

To

1. The Secretary,
Union of India,
Ministry of Home Affairs,
New Delhi 110 001.

2. The Commissioner,
Bureau of Immigration
Shastri Bhawan, Haddow's Road,
Nungambakkam, Chennai 600 006.

Copy to

The Registrar (Judicial),
High Court, Madras.



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S.SOUNTHAR, J.

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