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

\+ **<u>W.P.(C) 6269/2022 & CM APPL. 18907/2022</u>**

SHRI SUBRATO TRIVEDI .....Petitioner

Through: Mr. L. K. Singh, Mr. Raj Kumar and Ms. Saira Parveen, Advocates.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Anil Soni, CGSC with Mr. Kamal, GP for UOI.
Mr. Arun Aggarwal, Mr. Shivam Saini and Mr. Praful Rawat, Advocates for Bank of Baroda.

\+ **<u>W.P.(C) 11056/2022 & CM APPL. 32379/2022</u>**

RANGARAO GUMMALLA .....Petitioner

Through: Mr. L. K. Singh, Mr. Raj Kumar and Ms. Saira Parveen, Advocates.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Anil Soni, CGSC with Mr. Kamal, GP for UOI.
Mr. Arun Aggarwal, Mr. Shivam Saini and Mr. Praful Rawat, Advocates for Bank of Baroda.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **29.10.2024**

1. The Petitioners, both erstwhile directors of M/s Visa Power Limited[1], have filed the instant writ petitions assailing the Look Out Circular[2] issued against them by Respondent No. 1 - Bureau of Immigration[3] at the request of Respondent No. 2 – Bank of Baroda[4].

2. Through interim orders issued during the pendency of the present proceedings, the Petitioners, on multiple occasions, have been permitted to travel abroad, subject to certain conditions. They have complied with these directions, travelled, and returned to the country as required. The Petitioners now seek directions for the quashing of the LOC. This request, however, faces strong opposition from the Respondents, particularly Mr. Arun Aggarwal, counsel for the Bank of Baroda, the originating bank.

3. In this context, Mr. Aggarwal contends that the allegations in the writ petitions are unfounded and incorrect. He emphasizes that VPL availed loan facilities amounting to INR 145 crores from BOB and subsequently defaulted on the repayment, leading to its classification as a Non-Performing Asset[5] on 30th September, 2015. Due to the NPA status, proceedings under Section 7 of Insolvency and Bankruptcy Code, 2016[6] were initiated against VPL at the behest of the Bank of Maharashtra before the NCLT, Kolkata Bench, resulting in the appointment of an Interim Resolution Professional[7]. Mr. Aggarwal further points out that the Petitioners, Shri Subrato Trivedi and Shri Rangarao Gummalla, were Directors of VPL at the relevant time.

4. At present, VPL owes a total of INR 1,964 crores to a consortium of

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[1] "VPL"
[2] "LOCs"
[3] "BOI"
[4] "BOB"
[5] "NPA"
[6] "IBC"

banks, with the share of BOB share amounting to INR 145 crores. He submits that in August, 2020, one of the consortium members – Punjab National Bank lodged a complaint with the Central Bureau of Investigation to register an FIR against the Directors of VPL, including the Petitioners herein for causing loss of public money to the tune of more than INR 1,964 Crores. Thereafter, BOB issued Show Cause Notices to VPL and the Petitioners, seeking explanations as to why they would not be declared as 'Wilful Defaulters'. Although the Petitioners responded to the said notices, they failed to appear before the Committee of Wilful Defaulters when summoned. Consequently, the adjudication on their status as wilful defaulters remains pending, prompting BOB to request the issuance of an LOC against the Petitioners.

5. Mr. Aggarwal argues that the Petitioners cannot be absolved from the outstanding liabilities of VPL, which was incurred during their tenure in key managerial positions. In this regard, he relies on a Forensic Audit Report dated 24th August, 2018, to urge that both the Company as well as the Directors, including the Petitioners herein, are responsible for the defaults made by the Company. In these circumstances, Mr. Aggarwal argues that BOB was well justified under law in requesting the issuance of LOC, as per Office Memorandums published by the Ministry of Finance in this regard.

6. The Court has considered the objections raised by the Respondents but remains unpersuaded. The pleadings reveal that BOB as well as the consortium of Banks have already initiated proceedings under the IBC against VPL, resulting in a liquidation order dated 11th October, 2018. During these proceedings, the Forensic Audit Report relied upon by BOB

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[7] "IRP"

was submitted to the NCLT by the Liquidator to highlight alleged fraudulent transactions of the Company. However, the report was not given sufficient credence and accordingly, *vide* order dated 25th July, 2019, NCLT rejected the application holding that the evidence on record was insufficient to infer that the Respondents (before NCLT) engaged in preferential, undervalued, or fraudulent transactions. This decision was subsequently upheld on appeal by the NCLAT, New Delhi, *vide* order dated 30th September, 2019.

7. It has been further brought to notice of the Court that one of the LOC issued against Shri Vishambhar Saran, the Chairman and Promoter of VPL was challenged before Calcutta High Court in W.P.(C) 10241 of 2020. The said proceedings were allowed *vide* order dated 24th December, 2021 resulting in quashing of LOC by the Court noting that the Respondents had failed to demonstrate an 'exceptional case' which justified the issuance of LOC.

8. In the present case, it is pertinent to note that no criminal proceedings have been initiated against the Petitioners. Their role, as described, is limited to holding directorial or key managerial positions during the period when VPL was classified as NPA. They were neither guarantors nor borrowers and their involvement in the affairs of the company at the time when the loan facilities were availed, is also a highly contested question of fact, which cannot be adjudicated by this Court in exercise of its writ jurisdiction.

9. The purpose for issuing an LOC is to restrict a person from crossing international borders and going beyond the jurisdiction of domestic Indian authorities, in case there are reasonable and cogent grounds to believe that such a person has committed a serious transgression and is a flight risk. The Impugned LOC against the Petitioners have been in effect since 29th

November, 2021. However, there is no cogent evidence before the Court at this stage to establish the Petitioners' personal liability or criminal culpability, nor any indication that they intend to abscond. Therefore, the mere apprehension of being declared willful defaulters cannot be a basis for opening an indefinite LOC against them, thereby restricting the movement of citizens who have a right to travel abroad, which is acknowledged to be a fundamental right under Article 21 of the Constitution of India, 1950, as observed in the landmark judgments of ***Maneka Gandhi v. Union of India***[8] and ***Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer and Ors.***[9]

10. The Ministry of Home Affairs[10], which is the nodal ministry responsible for issuing guidelines for international travel, has noted that an LOC can be issued in cases of cognizable offences under the Indian Penal Code and other penal laws and only in exceptional circumstances, can its scope be expanded. At this juncture, it would be apposite to reproduce Clause 'J' of the Office Memorandum dated 27th October, 2010 and the amended Clause in Office Memorandum dated 05th December, 2017, which reads as follows:

> *"**Office Memorandum dated 27th October, 2010***
>
> *"g) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed proforma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.*
> *h) In cases where there is no cognizable offence under IPC or other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The originating agency can only request that they be informed about the arrival/departure of the subject in such cases.*

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[8] (1978) 1 SCC 248
[9] AIR 1967 SC 1836
[10] "MHA"

xx ... xx ... xx

j) In exceptional cases, LOCs can be issued without complete parameters and/or case details against CI suspects, terrorists, anti/national elements etc. in larger national interest."

Office Memorandum dated 27th October, 2010, as amended on 5th December, 2017

"Amendment-

"In exceptional cases, LOCs can be issued even in such cases, as would not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (b) of the above-referred OM, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of Indian or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point in time.

Instead of:

"In exceptional cases, LOCs can be issued without complete parameters and/or case details against CI suspects, terrorists, anti/national elements etc. in larger national interest."

11. Thereafter, MHA released Office Memorandum bearing No. 25016/10/2017-Imm (Pt.) dated 22nd February, 2021 which consolidates the existing LOC guidelines as follows:

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 suppression 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:-

xx ... xx ... xx

(H) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.

(I) In cases where there is no cognizable offence under IPC and other penal laws, the LOC subject cannot be detained/arrested or prevented from

leaving the country. The Originating Agency can only request that they be informed about the arrival/departure of the subject in such cases.

(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.

(K) On many occasions, persons against whom LOCs are issued, obtain Orders regarding LOC deletion/ quashing/ suspension from Courts and approach ICPs for LOC deletion and seek their departure. Since ICPs have no means of verifying genuineness of the Court Order, in all such cases, orders for deletion/ quashing/ suspension etc. of LOC, must be communicated to the BoI through the same Originator who requested for opening of LOC. Hon'ble Courts may be requested by the Law Enforcement Agency concerned to endorse-/convey orders regarding LOC suspension/ deletion/ quashing etc. to the same law enforcement agency through which LOC was opened.

(L) In exceptional cases, LOCs can be issued even in such cases, as may not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (B) above, if it appears to such authority based on inputs received that the departure of such 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 interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point in time."

12. The above makes it clear that only in exceptional cases can an LOC be issued without fulfilling the parameters. This is because right of a person to travel freely is an expression of their fundamental right to personal liberty enshrined under Article 21 of the Constitution. Therefore, such a right can only be restricted under strict parameters and in accordance with the procedure established by law.

13. Furthermore, as has been held by the Coordinate Bench of this Court in ***Prateek Chitkara v. Union of India***[11], the scope of the term 'detrimental to the economic interest of India', as mentioned in Clause 'L' of the Office Memorandum dated 22nd February, 2021, must be narrowly construed. The relevant extracts of the judgement are as follows:

> ***"82.*** *The term "detrimental to economic interest" used in the Office Memorandum is not defined. Some cases may require the issuance of a look-out circular, if it is found that the conduct of the individuals concerned affects public interest as a whole or has an adverse impact on the economy. Squandering of public money, siphoning off amounts taken as loans from banks, defrauding depositors, indulging in hawala transactions may have a greater impact as a whole which may justify the issuance of look-out circulars. However, issuance of look-out circulars cannot be resorted to in each and every case of bank loan defaults or credit facilities availed of for business, etc. Citizens ought not to be harassed and deprived of their liberty to travel, merely due to their participation in a business, whether in a professional or a non-executive capacity. The circumstances have to reveal a higher gravity and a larger impact on the country."*

14. It is also well settled in law, as has been held in multiple judgements by this Court, that mere inability to repay dues to a Bank without there being any criminal penalty, cannot be a reason to take away the fundament right to travel guaranteed under Article 21 of the Constitution of India. Reliance in this regard is placed on W.P.(C) 14837/2022[12].

15. As noted above, LOC have been issued against the Petitioners is based on the fact that the company where they served as directors failed to repay its debts and was classified as an NPA. The Petitioners themselves are not an accused of any cognizable offence, nor are there any criminal proceedings pending against them. It must also be noted that the consortium of Banks has already initiated the requisite steps under the IBC against the

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[11] 2023 SCC OnLine Del 6104

defaulting company – VPL, wherein the proceedings are ongoing. The argument of BOB, that the LOC issued against the Petitioners are necessary since they were not participating in the proceedings before the Committee of Willful Defaulters, is unconvincing. Such alleged non-appearance cannot be a ground for indefinitely restricting the Petitioners' right to travel under Article 21 of the Constitution. Moreover, this argument overlooks the fact that the Petitioners have already submitted replies to the show cause notices. Thus, it cannot be said that the Petitioners are not participating in the said proceedings. In such circumstances, there is no material on record which can justify BOB to insist that the Petitioners' right to travel should be restricted and that they should not be allowed to depart from the country[13].

16. Thus, having regard to the aforenoted facts and the judgments referred above, the Court is of the opinion that LOC dated 29th November, 2021 issued against Petitioners is unsustainable. Accordingly, the same is hereby quashed.

17. In light of the above, the instant writ petitions are allowed and disposed of, along with pending applications.

SANJEEV NARULA, J

OCTOBER 29, 2024
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[12] *titled* Vikas Goel v. Union of India
[13] See also: *Rajesh Kumar Mehta v. Union of India*, 2024:DHC:4548