$~15

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

\+ W.P.(C) 7769/2022

ASHUTOSH SHARMA .....Petitioner

Through: Mr. Manohar Malik, Mr. Prateek Chauhan and Ms. Astha Gumber, Advocates.

versus

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

Through: Mr. Arun Aggarwal, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **26.07.2024**

1. The present petition seeks quashing of: a) Look Out Circular[1] issued at the instance of Respondent No. 2/ Bank of Baroda and b) Office Memorandum No. 25016/10/2017-Imm (Pt.) dated 22nd February, 2021 issued by Respondent No. 1/ Bureau of Immigration, Ministry of Home Affairs, Union of India.

2. Counsel for the Petitioner puts forth the following case:

2.1. Petitioner is Director and shareholder of Asian Star Pvt. Ltd,[2] which was incorporated in Hong Kong and was availing the credit facility from Hong Kong branch of Bank of Baroda amounting to USD $2 million and also deposited collateral amounting to USD $7,11,318 at the time of such sanction.

---

[1] "LOC/ Impugned LOC"
[2] "the Company"

2.2. In 2017, the Company was classified as a Non-Performing Asset owing to the non-payment of dues by clients of the Company.

2.3. Consequently, on 30th November 2019, Respondent No. 2 issued an LOC against the Petitioner and the Petitioner was informed of the said LOC when he was restrained by Respondent No. 1 on 17th May, 2022 from leaving the country upon his travel to Dubai.

2.4. On an earlier occasion, the Income Tax Department had issued LOC against the Petitioner, however, this order was rescinded through order dated 31st May, 2019 as passed by the Additional Chief Metropolitan Magistrate, Central District, Tis Hazari Courts.

2.5. Therefore, the issuance of LOC by Respondent No. 2 is arbitrary as there is no event to show that the Petitioner is a flight risk. Considering that the Petitioner is not even a borrower to Respondent No.2's bank in India, Respondent No.2 is merely trying to put pressure on the Petitioner.

2.6. Further, the Petitioner has previously been allowed to travel abroad after the opening of the LOC against him on two occasions pursuant to the directions of this Court.

3. *Per contra*, Counsel for Respondent No. 2 argues the following:

3.1. The total dues recoverable from the Petitioner amount to INR 16,18,25,536 as on 31st July, 2022 along with future rate of interest @ 8.5% as per final judgment dated 28th December, 2017 as delivered by the High Court of Hong Kong Special Administrative Region, out of which nothing has been recovered.

3.2. As there has been a violation of the terms and conditions of the credit facilities as availed by the Petitioner, his liability towards repayment in respect of the credit facilities cannot be absolved even if he has been declared as an NPA.

3.3. Since the Petitioner is an Indian permanent resident, merely because he has availed credit facilities from the Respondent No. 2's bank in another country, does not preclude the said Respondent from issuing an LOC against the Petitioner.

4. The Court has considered the afore-noted contentions of the parties.

5. At the outset, it must be noted that the Petitioner has, during the pendency of the present proceedings, through interim applications, been permitted to travel abroad on two occasions as has been recorded in the orders of this Court dated 19th May, 2022 and 29th August, 2022 and on both such occasions, the Petitioner has come back and duly complied with the conditions imposed.

6. It is also to be noted that there are no complaint/criminal proceedings pending against the Petitioner.

7. Since 30th November 2019, the Impugned LOC against the Petitioner has been in place. The rationale behind issuing the instant LOC is to effectively monitor the entry or exit of the Petitioner from the country.

8. However, there is no material placed before the Court which can ascertain the Petitioner's liability or criminal culpability at this juncture which could indicate that he is intending to abscond. Therefore, the mere apprehension of default cannot be a basis for opening an indefinite LOC against him, thereby restricting the movement of a citizen who has 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***[3] and ***Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer and Ors.***[4]

9. The idea behind 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.

10. The Ministry of Home Affairs[5], 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.*
>
> *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."*

---

[3] (1978) 1 SCC 248
[4] AIR 1967 SC 1836
[5] "MHA"

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 a LOC be issued without fulfilling the parameters. This is because a person's right 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***[6], 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.[7]

15. Lastly, the Court must also take note of the judgment passed by the

---

[6] 2023 SCC OnLine Del 6104

[7] *titled* Vikas Goel v. Union of India

Division Bench of High Court of Bombay, in a batch of writ petitions,[8] wherein Clause 8(b)(xv) of the Office Memorandum dated 27th October, 2010 bearing no. O.M. 23016/31/2010-Imm, which is equivalent to Clause 6(B)(xv) of the O.M. dated 22nd February, 2021 bearing No. O.M. 25016/10/2017-Imm (Pt.) was quashed. The effect of this judgement is that Chairman/ Managing Director/ Chief Executives of the Public Sector Banks will not be considered as competent authorities under Clause 'L' of the Office Memorandum dated 22nd February, 2021 and, therefore, Public Sector Banks would not be eligible to make a request for issuance of LOC.

16. As noted above, the Petitioner is not an accused in any cognizable offence and since there are no criminal proceedings pending against the Petitioner. Even, as on date, Petitioner has neither been named as an accused, nor have any charges been brought against him. In such circumstances, there is no material on record which can justify Respondent No. 2 to insist that the Petitioner's right to travel should be restricted and he should not be allowed to depart from the country.

17. Thus, having regard to the aforenoted facts and the judgments referred above, in the opinion of the Court, LOC dated 30th November 2019 issued against Petitioner cannot be sustained. Accordingly, the same is quashed.

18. In light of the above, the writ petition is allowed and disposed of, along with pending applications.

SANJEEV NARULA, J

JULY 26, 2024/*nk*

---

[8] Judgment dated 23rd April, 2024 *titled* Viraj Chetan Shah v. Union of India & Anr.