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

\+ W.P.(C) 9247/2019, CM APPL. 38133/2019

SH. ARVIND SRIVASTAVA .....Petitioner

Through: Mr. Saurabh Kirpal, Senior Advocate with Ms. Neena Nagpal, Mr. Malak Bhatt, Mr. Vishvendra Tomar and Ms. Supriya Julka, Advocates.

versus

UNION OF INDIA AND ORS. .....Respondents

Through: Mr. Kunal Tandon, Advocate for Indian Overseas Bank.
Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Mr. Ranjeev Khatana, Mr. Maulik Khurana and Mr. Varun Pratap Singh, Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **20.08.2024**

1. The present petition seeks quashing of the Look Out Circular[1] issued at the instance of Respondent No. 4/ Indian Overseas Bank against the Petitioner.

2. Mr. Saurabh Kirpal, Senior counsel for the Petitioner, puts forth the following contentions:

2.1. The Petitioner is a reputable professional who has worked with various Corporates over the last 40 years of his professional career including

[1] "LOC/ Impugned LOC"

Hyderabad Industries Ltd.; HMV; and Super Cassettes Ltd. The Petitioner has earned a credible reputation as a professional for himself through the years, which is now in jeopardy because of the Impugned LOC.

2.2. The Petitioner is married and has three grown children, each of whom live abroad. The Petitioner was scheduled to travel to Canada on 21st August, 2019 late night/22nd August, 2019. After checking in at the Delhi International Airport, the Petitioner was stopped at Immigration and was informed of the said LOC which had been issued against him and the immigration stamp was cancelled 'without prejudice' on the Petitioner's passport. Petitioner thereafter learnt that Respondent No.4/Respondent Bank had sought issuance of LOC against him *vide* letters dated 9th October, 2018 and 27th December, 2018 in relation to the financial default of M/s Frost International Limited[2] and its group companies, Globiz Exim Pvt Ltd and Olympic Oil Industries Ltd.

2.3. The Petitioner has been employed with FIL as the President of HR & Administration since December 2007 and has held the position of President-Administration since 2014. The Petitioner is neither a Director of FIL nor a shareholder of FIL. Although the Petitioner holds a minority shareholding of 50,000 shares in M/s Olympic Oil Industries Ltd, the Petitioner bears no responsibility for the Non-Performing Assets[3] status of the accounts of FIL, Globiz Exim Pvt Ltd, or Olympic Oil Industries Ltd. Furthermore, the Petitioner is not a guarantor for any of these entities. The Petitioner served merely as an Independent Director for Globiz Exim Pvt Ltd and Olympic Oil Industries Ltd, a fact duly communicated to the Respondent Bank. Thus,

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[2] "FIL"

[3] "NPA"

there is no basis in law for issuance of LOC against the Petitioner. The same is violative of the Petitioner's fundamental right under article 14, 19(1)(g) and 19 of the Constitution of India,[4] which includes the right to have a passport, the right to travel, the right to reputation and the right to carry on in his profession.

3. *Per contra*, counsel for Respondent No. 4 contends as follows:

3.1 It is not as if FIL alone enjoyed credit facilities from Respondent Bank. Globiz Exim Pvt and Olympic Oil and Industries Limited, group companies of FIL, were also involved; they availed credit facilities, and defaulted leading to their accounts being declared as NPAs. In these group companies, the Petitioner serves as an independent director and is also a shareholder. The Bank has filed recovery applications before the Debts Recovery Tribunal, Allahabad, seeking over INR 1000 crore, with the total debt owed by the Petitioner and its allies exceeding INR 4000 crore. The Respondent Bank has also initiated recovery proceedings under the SARFAESI Act, 2002, against the companies, individual guarantors, and corporate guarantors. Notably, both entities where the Petitioner serves as a director have provided corporate guarantees for FIL's loan account. Apart from Respondent Bank, the aforesaid companies also availed various credit facilities from other 14 banks under the consortium financing. The Bank of India has also initiated proceedings against the afore noted entities before Debts Recovery Tribunal, Allahabad and National Company Law Tribunal. The total outstanding dues owed by the companies to all consortium member banks exceed INR 4,000 crore, which has been fraudulently misappropriated and diverted by the companies' directors, as revealed by the forensic audit

[4] "Constitution"

report. FIL has challenged the NCLT proceedings before the Hon'ble Supreme Court through Writ Petition No. 1316 of 2018. Additionally, FIL's challenge against the Banks' declaration of FIL's account as fraudulent was dismissed by this Hon'ble Court on the first hearing, per the order dated 26th July, 2019.

3.2. The account of FIL, where the Petitioner serves as President of HR & Administration, was found non-compliant with the operational norms of the Respondent Bank, which are aligned with RBI guidelines. As a result, a forensic audit was conducted. This audit uncovered fund diversions and other significant irregularities within FIL. In response to these findings, a formal complaint/FIR was lodged with the CBI, and Lookout Circulars (LOCs) were issued targeting individuals closely associated with FIL and its affiliated entities.

3.3 All the companies are controlled by the same group of people, with individuals holding management roles across different entities. Notably, the accounts of all these entities have been declared as NPAs, with the same securities and guarantors. The entities are interconnected, and a review of their balance sheets reveals that funds have been transferred between them, often diverted from their intended purposes or siphoned off.

3.4 The Petitioner has played an active role in these defaulting companies by siphoning off funds and in fact is a personal guarantor as well as a corporate guarantor.

3.5 Apprehending that the individuals involved may flee the country to avoid repayment of huge public money, the Respondent bank *vide* letter dated 27th December, 2018, requested for issuance of LOC against various individuals connected with the defaulting entities including the Petitioner.

3.6 It's worth noting that the Petitioner admits all his children are settled abroad, which strongly suggests he might leave the country and not return, especially considering he owes over INR 4000 Crore.

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

5. It is to be noted that during the pendency of the present proceedings, through interim application, Petitioner has been permitted to travel abroad as has been recorded in the order dated 1st November, 2019 and the Petitioner has come back and duly complied with the conditions imposed.

6. Furthermore, there are two pending FIRs in which the Petitioner has been named as an accused, details whereof, are as follows:

i. FIR bearing No. RC0062022A0004 dated 30th January 2022, registered at CBI, ACB, Lucknow.

ii. FIR bearing No. RC4E/2020/CBI/SCB/LKO dated 11th June, 2020 registered at CBI SCB, Lucknow.

A charge sheet has been filed in the FIR bearing no. RC0062022A0004 and the court has taken cognizance in the said case. The Petitioner has in fact furnished bond under section 88 of the Code of Criminal Procedure, 1978, which stands accepted without any conditions or restrictions on travel. Furthermore, no LOC has been issued by the CBI with respect to the said FIR. As regards the FIR bearing No. RC4E/2020/CBI/SCB/LKO, no charge sheet has been filed till date and no LOC has been issued with respect to the said FIR.

7. Thus, there is no LOC issued by the CBI with respect to these aforenoted FIRs and there are no other pending criminal proceedings in respect of which an LOC has been issued against the Petitioner. The present proceedings pertain to LOC which has originated from the bank and is

active at least since 21st August, 2019. However, there is no material placed before the Court to demonstrate the Petitioner's criminal culpability that could suggest his intention to abscond. The fact that the Petitioners has travelled abroad and returned also minimizes the flight risk. Therefore, the merely because recoveries have to be effected cannot be a basis for opening an indefinite LOC against him. Such indefinite restrictions on the Petitioner's movement infringe upon his fundamental right to travel abroad, a right protected under Article 21 of the Constitution of India., as observed in the landmark judgments of ***Maneka Gandhi v. Union of India***[5] and ***Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer and Ors.***[6]

8. 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.

9. The Ministry of Home Affairs[7], 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***

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[5] (1978) 1 SCC 248
[6] AIR 1967 SC 1836
[7] "MHA"

"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."

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."

10. 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**.”*

[Emphasis Supplied]

11. The above makes it clear that only in exceptional cases can an 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.

12. Furthermore, as has been held by the Coordinate Bench of this Court in ***Prateek Chitkara v. Union of India***[8], 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."*

13. 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 liability, cannot be a reason to take away the fundament right to

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[8] 2023 SCC OnLine Del 6104

travel guaranteed under Article 21 of the Constitution of India. Reliance in this regard is placed on decision in W.P.(C) 14837/2022.[9]

14. That apart, the Court is cognizant of the fact that even though the Impugned LOC has not arisen out of any criminal proceedings, there are two pending FIRs against the Petitioner. Even if the aforenoted FIRs were to be taken into consideration, it emerges that in FIR bearing no. RC0062022A0004, the trial court has taken cognizance and bail bond has furnished by the Petitioner has been accepted. Pertinently, the trial court has not imposed any conditions/restrictions on the Petitioner's travel. As regards FIR bearing No. RC4E/2020/CBI/SCB/LKO no charge sheet has been filed and no LOC has been issued against the Petitioner with respect to this FIR.

15. As noted above, the Petitioner is not accused in any cognizable offence, in respect of which the LOC has been issued. In such circumstances, there is no material on record which can justify Respondent No. 4 insisting that the Petitioner's right to travel should be restricted and he should not be allowed to depart from the country.

16. Thus, having regard to the aforenoted facts and the judgments referred to above, in the opinion of the Court, the Impugned LOC issued against Petitioner cannot be sustained. Accordingly, the same is quashed.

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

SANJEEV NARULA, J

AUGUST 20, 2024/*nk*

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