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

\+ W.P.(C) 17670/2022 & CM APPL. 58102/2023, CM APPL. 28627/2024

ACHIN KUMAR ROY .....Petitioner

Through: Mr. Mahip Singh and Mr. Krihan Kumar, Advocates.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Anurag Ahluwalia, CGSC with Ms. Aveshreya Pratap Singh Rudy, Advocate and Mr. Aakash Meena, GP, Advocate for R-1 & 2.
Mr. Nishcaya Nigam and Ms. Vagmi Singh, Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 19.07.2024

1. The instant writ petition under Article 226 of the Constitution of India seeks quashing of Look Out Circular[1] dated 17th May, 2022 issued against the Petitioner, at the instance of Respondent No. 3 – Bank of Baroda.

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

2.1 Petitioner was employed with Llyod Electric and Engineering Limited[3] from the year 1996 to 2018 and was inducted in the Board of Directors in the year 2007 as an Employee Whole Time Director[4], in

[1] "LOC"
[3] "Company"
[4] "WTD"

addition to his primary role of managing the Original Equipment Manufacturer Segment of the Company. During his tenure of 22 years at LEEL, he was entrusted with the task of supervision and management of the manufacturing (Original Equipment Manufacturing) segments of two units of the Company located in the states of Himachal Pradesh and Uttarakhand. As a WTD, the Petitioner did not intervene in the functioning of the Company and was nowhere involved in any financial dealings of the Company.

2.2 On 19th December, 2018, the Company was classified as a Non-Performing Asset[5]. Thereafter, on 8th January 2019, Petitioner was relieved of his roles and responsibilities as a WTD and since then, he has not been in contact with the Company.

2.3 On 31st December, 2021, the Central Bureau of Investigation[6] registered an FIR bearing no. RCBD1/2021/E/0011 against LEEL, alleging discrepancy in the books of account and diversion of funds.

2.4 Subsequently, on 07th January, 2022, the Petitioner received a Show Cause Notice[7] from Respondent No. 3, i.e., Bank of Baroda[8] stating that the Company and its Directors (including the Petitioner) were 'wilful defaulters' of the Bank as per RBI guidelines[9] and sought certain clarifications and documents from Petitioner. Pertinently, the SCN, although addressed to Petitioner, does not make any specific allegation against Petitioner.

2.5. On 22nd August, 2022, a response to the SCN was furnished by the Petitioner, wherein the Petitioner requested BOB to give him a personal

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[5] "NPA"
[6] "CBI"
[7] "SCN"
[8] "BOB"

hearing in the matter. However, BOB proceeded to issue the Impugned LOC against the Petitioner.

2.6. Thereafter, in terms of the ongoing investigation by the CBI, on 06th May, 2022, the Petitioner filed a reply to the notice issued under Section 91 of the Code of Criminal Procedure, 1973 and cooperated in the ongoing investigation. Since then, Petitioner has never been called upon by the CBI again.

2.7. Petitioner had resigned from the Company in January 2019 and since then he was not, at any time, operating as key managerial personnel and was not responsible for day-to-day affairs of the Company. The LOC issued against him severely effects his right to travel as part of his right to life and personal liberty as well as freedom of speech and expression under Articles 21 and 19(1)(a) of the Constitution, respectively.

2.8. In light of the above, the Petitioner seeks quashing of the LOC issued against him at the instance of BOB. The Petitioner places reliance on the decision dated 17th August, 2023[10], passed by a coordinate Bench of this Court, wherein this Court quashed a LOC issued against Mr. Nipun Singhal, who was also a Director of the Company in question.

3. Counsel for BOB has strongly opposed the present petition and places reliance on their short counter affidavit dated 10th January, 2023.

3.1 It is argued that Petitioner was a WTD of the Company and was responsible for the financial activities of the Company. Therefore, the Petitioner cannot argue that he was not a key managerial person of the Company. His participation in the affairs of the Company is evident from

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[9] Master Circular on Wilful Defaulters dated 1st July, 2015 issued by RBI.

[10] W.P.(C) 9841/2022 *titled* Nipun Singhal v. Union of India & Ors.

the fact that he attended Board Meetings wherein the financials of the Company were approved. The Company has subsequently been declared to be a 'NPA' on 19th December, 2018 by BOB, when they failed to fulfil their obligations as per the Consortium Lending whereby BOB sanctioned credit facilities to the Company.

3.2 A Forensic Audit has been carried out for a period of two years from 01st January, 2017 to 31st December, 2018, which indicates diversion of funds by booking fake procurement of plant and machinery. Therefore, there is a strong case of diversion of funds to other group companies or related parties, by effecting purchases and other transactions, which indicates the wrongdoings on the part of the Company.

3.3 Officials from the office of Regional Director, Ministry of Corporate Affairs[11] also inspected the books of account of the Company and submitted a report on 22nd June, 2020, pointing out serious lapses in the affairs of the Company. Based on the findings of the Forensic Audit and the inspection of books by MCA, the Fraud Identification Committee of SBI lodged an FIR dated 31st December, 2021 against the Company and its directors. It is also argued that the Petitioner's response to the SCN issued by BOB was vague and evasive.

3.4 Further, as per the records of BOB, there is an outstanding amount of INR 29.85 crores due against the Company, for which the Petitioner, as an erstwhile WTD, is liable for being involved in the fraudulent activities of the Company.

4. The Court has considered the aforenoted 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 and on both such occasion, the Petitioner has come back and duly complied with the conditions imposed.

6. Further, the Petitioner has participated in ongoing investigation in terms of the FIR registered by CBI for which he was last summoned by the authorities in 2022. The current stage of the CBI investigation is not known to the Petitioner. Notably, counsel for BOB is also unaware whether any chargesheet has been filed in the said investigation which has been ongoing since December, 2021. Be that as it may, the Petitioner has not been summoned as an accused.

7. Since May 2022, the Impugned LOC against the Petitioner has been in place. The rationale behind issuing the instant LOC is to ensure the presence of the Petitioner within the country, based on allegations of embezzlement of funds. However, there is no material placed before the Court which can ascertain the Petitioner's liability at this juncture. Therefore, the mere possibility/probability that a person might ultimately be charged for an offence, 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, as observed in the landmark judgments of ***Maneka Gandhi v. Union of India***[12] and ***Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer and Ors.***[13].

8. The idea behind issuing an LOC is to restrict a person from crossing international borders and going beyond the jurisdiction of domestic Indian

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[11] "MCA"
[12] (1978) 1 SCC 248

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[14], 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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> *"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.*
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> *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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> *xx ... xx ... xx*
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> *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."*
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> ***Office Memorandum dated 27th October, 2010, as amended on 5th December, 2017***
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> *"Amendment-*
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> *"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*

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[13] AIR 1967 SC 1836
[14] "MHA"

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."

11. 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.

12. Furthermore, as has been held by the Coordinate Bench of this Court

in ***Prateek Chitkara v. Union of India***[15], 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 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**.**[16]

14. Lastly, the Court must also take note of the judgment passed by the Division Bench of High Court of Bombay, in a batch of writ petitions,[17] 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.

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[15] 2023 SCC OnLine Del 6104
[16] *titled* Vikas Goel v. Union of India
[17] Judgment dated 23rd April, 2024 *titled* Viraj Chetan Shah v. Union of India & Anr.

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.

15. Coming to the particular facts of the instant case, as noted above, the Petitioner is not an accused in any cognizable offence. In fact, the material on record does not show that the arrest of the person was ever contemplated by CBI. 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 BOB to insist 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 above, in the opinion of the Court, LOC dated 17th May, 2022 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

JULY 19, 2024

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