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

\+ W.P.(C) 15990/2023 & CM APPL. 64327/2023

SMT. LAKSHMI SINGHAL .....Petitioner

Through: Mr. Ravi Sikri, Senior Advocate with Mr. Deepank Yadav, Ms. Kanak Grover, Advocates.

versus

UNION OF INDIA THROUGH MINISTRY OF HOME AFFAIRS & ORS. .....Respondents

Through: Ms. Manisha Aggarwal Narain, CGSC with Mr. Chandan Deep Singh, Mr. Sandeep Singh, Mr. Akhil Gupta, Advocates with Mr. Rahul Kumar Sharma, for R-1 to 3 and R-5
Mr. Arun Aggarwal, Mr. Shivam Saini & Mr. Praful Rawat, Advocates for R-4/Bank of Baroda

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **08.08.2024**

1. The instant writ petition seeks *inter-alia* quashing of a Look Out Circular[1] issued against the Petitioner at the instance of Respondent No. 4 - Bank of Baroda[2].

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

2.1. The Petitioner is a law-abiding citizen of India and resident of Delhi.

[1] "LOC/ Impugned LOC"

The Petitioner, along with her family members, has been carrying on business and trade in India for the past several years. The Petitioner holds an Indian Passport bearing No. S2445872, issued from Delhi and which is valid up to 1st August, 2028.

2.2. In 2013, the Petitioner and several others executed a Deed of Guarantee in respect of certain loan facilities availed by the company - Mahesh Timber Private Limited[3] from a Consortium of Banks including Respondent No. 4 - BOB. The Petitioner is neither a Director/Shareholder in MTPL nor the Beneficiary of the loan facilities availed by it.

2.3. In 2015-16, MTPL defaulted in repayment of the loans availed by it on account of purported business/trade losses. In view of such loan defaults, Respondent No. 4 – BOB initiated action against MTPL before the Debt Recovery Tribunal – I in Chandigarh by filing Original Application No. 1465 of 2016. The same is yet to be adjudicated. The Central Bureau of Investigation[4] has registered an FIR against MTPL for the banking frauds committed by them and a chargesheet has also been filed in the matter, however, the Petitioner is not an accused in the said proceedings.

2.4. Consequently, BOB also initiated action against the Petitioner by issuing a notice dated 17th January, 2017 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002[5]. Thereafter, the Petitioner has been contesting the claims of BOB regarding invocation of the Deed of Guarantee before the Debt Recovery Tribunal - I, Chandigarh and it is highlighted that no orders

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[2] "BOB"
[3] "MTPL"
[4] "CBI"
[5] "SARFAESI Act"

have been passed by any Court/Tribunal restraining or imposing any conditions on the Petitioner's travel within India or abroad.

2.5. In 2021-2022, the Petitioner received information that her son, Mr. Deepal Singhal (also a guarantor for the loan availed by MTPL from BOB) has been prevented from travelling abroad due to a LOC having been issued against him at the instance of BOB, due to loan defaults of MTPL.

2.6. Thereafter, the Petitioner and her family have been engaging in discussions with BOB for a One Time Settlement and discharge of the Personal Guarantees, in terms of the loan facilities availed by MTPL. During such discussions, on being queried by the Petitioner, BOB confirmed that an LOC had also been opened by them against the Petitioner as well. On receipt of such information, the Petitioner submitted to the BOB that such issuance of LOC against her amounts to harassment to compel the Petitioner to settle the liabilities of MTPL.

2.7. On 13th July, 2023, the Petitioner sent a written representation to the Respondents No. 2, 3, and 4, i.e., - Bureau of Immigration, Department of Financial Services, Ministry of Finance and BOB respectively, seeking complete particulars in respect of the LOC issued against her and seeking to quash/recall the LOC or change the same into an Intimation LOC. The Petitioner has till date not received any response to the abovementioned representation from the Respondents.

2.8. In light of the above factual background, the present writ petition has been filed by the Petitioner challenging the LOC issued against her as well as the powers of issuance of LOCs under the Office Memorandums dated 22nd February, 2021, 12th October, 2018 and 27th October, 2010 issued at the instance of Respondent No. 4 - BOB, as being *inter-alia* patently illegal, arbitrary, ultra vires and discriminatory, and having been issued in gross violation of the Principles of Natural Justice.

2.9. The issuance of LOC by BOB is arbitrary as there has been no cause to show that the Petitioner is a flight risk. Considering that the Petitioner is not the main borrower and is just a guarantor against whom BOB has already initiated proceedings for recovery of their dues, BOB is trying to put pressure on the Petitioner, through the issuance of the impugned LOC, to pay the dues owed by MTPL.

3. *Per contra*, Respondents No. 1 to 3 and 5 have filed a common counter affidavit urging as follows:

3.1. The LOC which exists against the Petitioner has been issued at the behest of the Managing Director & CEO of Respondent No. 4 – BOB *vide* Ref. No. BCC/LEG/l12/192 dated 27th February, 2020, due to defaulting the said bank.

3.2. The LOC was issued pursuant to the guidelines provided by the Ministry of Home Affairs. Respondent No. 1 — Bureau of Immigration, serves merely as the custodian, maintaining the LOCs and executing actions against individuals named in the LOCs at Immigration Check Posts on behalf of the originating agencies. The legal responsibility for the implications of actions taken based on the LOC lies with the originating agency.

3.3. The LOC guidelines are framed to protect national and public interests. Their implementation helps prevent individuals deemed to be a threat to the sovereignty and economic security of the State from fleeing the country.

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

At the outset, it must be noted that no ongoing criminal proceedings are pending against the Petitioner. She has not been named as an accused in the ongoing CBI proceedings and in the proceedings under the SARFEASI Act before the DRT, where the Petitioner is impleaded as the guarantor of the defaulting company, the Tribunal has not issued any orders restraining her from travelling abroad.

5. The impugned LOC against the Petitioner has been active since 2020 ostensibly to monitor her international travels and to prevent her from fleeing the Country. However, there is no material placed before the Court to demonstrate the Petitioner's criminal culpability that could suggest her intention to abscond. Given these circumstances, the continued enforcement of the LOC based solely on ongoing DRT proceedings and potential financial liabilities is untenable. Such indefinite restrictions on the Petitioner's movement infringe upon her 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***[6] and ***Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer and Ors.***[7]

6. 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.

7. The Ministry of Home Affairs[8], which is the nodal ministry responsible for issuing guidelines for international travel, has noted that an

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

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."

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.

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[8] "MHA"

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."

8. Thereafter, MHA released Office Memorandum bearing No. 25016/10/2017-Imm (Pt.) dated 27th October, 2010 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 added]

9. 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.

10. Furthermore, as has been held by the Coordinate Bench of this Court in ***Prateek Chitkara v. Union of India***[9], 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.

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[9] 2023 SCC OnLine Del 6104

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."

11. 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 travel guaranteed under Article 21 of the Constitution of India. Reliance in this regard is placed on W.P.(C) 14837/2022[10].

12. To conclude, the LOC issued against the Petitioner stems solely from her role and default as a guarantor for a Company that has defaulted in debt repayment. The Petitioner is not an accused in any cognizable offence and there are no criminal proceedings pending against her. The BOB has already initiated the requisite steps under the SARFAESI Act against the Petitioner as a guarantor of MTPL so as to secure their interest in terms of repayment of dues. There is no material on record which can justify BOB to insist that the Petitioner's right to travel should be restricted and she should not be allowed to depart from the country[11]. Therefore, the basis for maintaining the LOC appears disproportionately punitive rather than precautionary, lacking a justifiable legal foundation.

13. In light of the aforenoted facts and the judgments referred above, in the opinion of the Court, the LOC issued against Petitioner at the behest of BOB cannot be sustained. Accordingly, the same is quashed.

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

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

SANJEEV NARULA, J

AUGUST 8, 2024
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[11] See also: *Rajesh Kumar Mehta v. Union of India*, 2024:DHC:4548