

THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 8202 of 2023

AND

W.P.No.8206 OF 2023

W.P. No. 8202 of 2023

Between:

Dr Venkata Ramana Rao Maganti

... Petitioner

And

UCO Bank and others

... Respondents

W.P.No.8206 OF 2023

Between:

Ms Usha Rani Maganti

... Petitioner

And

UCO Bank and others

... Respondents

JUDGMENT PRONOUNCED ON: 21.12.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 8202 of 2023

AND

W.P.No.8206 OF 2023

% 21.12.2023

W.P. No. 8202 of 2023

Between:

Dr Venkata Ramana Rao Maganti

... Petitioner

And

UCO Bank and others

... Respondents

W.P.No.8206 OF 2023

Between:

Ms Usha Rani Maganti

... Petitioner

And

UCO Bank and others

... Respondents

< Gist:

> Head Note:

!Counsel for the Petitioners:

Mr Vikram Poosarala
Sr. Counsel representing
Abhinay Reddy M and
Shreya Devaki

^ counsel for Respondents 1 to 3:

M/s M.Shalini

^counsel for Respondents 4 to 6:

Dy.Solicitor General of
India

? Cases Referred:

1. AIR 1978 SC 597
2. 2019(2) SC online SC 2048
3. 2013 SCC Online Mad 4092
4. 2021 SCC online Tri. 143
5. 2018 SCC online Mad 2229
6. Manu/DE/0737/2021
7. 2022 SCC online Del 961
8. 2022 SCC 1176 online P& H
9. 2022 SCC Online P&H 3408
10. AIR 2022P&H 131

HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 8202 of 2023

and

W.P.No.8206 of 2023

COMMON ORDER:

Heard Mr. Vikram Poosarala, the learned Senior Counsel representing Mr Abhinay Reddy M, learned counsel in W.P.No.2202 of 2023 and Mr Shreya Devaki, learned counsel in W.P.No.2206 of 2023 appearing on behalf of the Petitioners, M/s M.Shalini, learned standing counsel appearing on behalf of Respondent Nos.1 to 3 and Mr G.Praveen Kumar, learned Deputy Socilicor General of India appearing on behalf of Respondents 4 to 6.

2. Petitioner in W.P.No.8202 of 2023 approached the Court seeking prayer as under :

“to pass an order or orders, direction or writ more particularly one in the nature of writ of Mandamus declaring the Look-Out Circular issued by the Respondent Bank against the petitioner is contrary to Look-Out Circular guidelines dated 22.02.2021 (Ref.No.25016/2017-Imm(Pt.)) and consequently, to set aside the same.

3. Petitioner in W.P.No.8206 of 2023 approached the Court seeking prayer as under :

“to pass an order or orders, direction or writ more particularly one in the nature of writ of Mandamus declaring the Look-Out Circular issued by the Respondent Bank against the petitioner as being contrary to Look-Out Circular guidelines dated 22.02.2021 (Ref.No.25016/2017-Imm(Pt.)) and consequently, set aside the same.

PERUSED THE RECORD :

4. Office Memorandum dated 22.02.2021 and the relevant guidelines are hereunder:

“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 supersession 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:- A. The request for opening an LOC would be made by the Originating Agency (OA) to the Deputy Director, Bureau of Immigration (BoI), East Block – VIII,

R.k. Puram, New Delhi – 110066 (Telefax: 011-26192883, email: boihq@nic.in) in the enclosed proforma.

B. The request for opening of LOC must invariably be issued with the approval of an Originating Agency that shall be an officer not below the rank of – (i) Deputy Secretary to the Government of India; or (ii) Joint Secretary in the State Government; or (iii) District Magistrate of the District concerned; or (iv) Superintendent of Police (SP) of the District concerned; or (v) SP in CBI or an officer of equivalent level working in CBI; or (vi) Zonal Director in Narcotics Control Bureau (NCB) or an officer of equivalent level (including Assistant Director (Ops) in Headquarters of NCB]; or (vii) Deputy Commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Indirect Taxes and Customs; or (viii) Assistant Director of Intelligence Bureau/Bureau of Immigration (BoI); or (ix) Deputy Secretary of Research and Analysis Wing (R&A W); or (x) An officer not below the level of Superintendent of Police in National Investigation Agency; or (xi) Assistant Director of Enforcement Directorate; or (xii) Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary to the Government of India; or (xiii) Designated officer of Interpol; or (xiv) An officer of Serious Fraud Investigation Office (SFIO),

Ministry of Corporate Affairs not below the rank of Additional Director (in the rank of Director in the Government of India); or (xv) Chairman/Managing Directors/Chief Executive of all Public Sector Banks.”

C) -----

D)-----

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. 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.

5. Case of the Petitioners in both the writ petitions, in brief, is as under :-

a) The Petitioner in W.P.No.8202/2023 i.e., Dr. Venkata Ramana Rao Maganti, is the husband of Writ Petitioner in W.P.No.8206/2023 i.e., Mrs. Usha Rani Maganti and the Petitioners in the present writ petitions seek a writ of mandamus declaring the lookout circular issued by the Respondent Bank against the Petitioners individually as being contrary to lookout circular

guidelines dated 22.02.2021 [(Ref.No.25016/10/2017-Imm(Pt)] and consequently to set aside the same. The Petitioners are citizens of India holding a valid passport bearing No.Z3509053 and Z3537295 respectively expiring on 01.12.2025 and 20.01.2026 respectively. The Petitioner in W.P.No.8202 of 2023 is a Technocrat who has set up several successful businesses in India and the Petitioner in W.P.No.8206 of 2023 is a homemaker and also a Trustee for the Devineni Ramana Pranitha Memorial Trust and carries out her responsibilities as a Trustee which involves promoting awareness and advancing the goals of trust. Both the Petitioners in W.P.No.8202 of 2023 and 8206 of 2023 live in Hyderabad, travel frequently to United States of America to visit their relatives in addition to their professional obligations.

b) The Petitioner in W.P.No.8202 of 2023 Dr. Venkata Ramana Maganti in his personal capacity had availed loan to a tune of Rs.75 lakhs from Respondent No.1 Bank and he was the co-applicant for the loans availed by 3 other individuals. His wife the Petitioner in W.P.No.

8206 of 2023 is a guarantor. She stood as a guarantor for the aforesaid loan by extending property admeasuring 1.871/2 cents at Nidamanuru Village, Delhi Public School, Vijayawada, Krishna District, Andhra Pradesh. Since the loanees failed to repay the afore said loan amount, the Respondent Bank has initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short SARFAESI Act). Original applications were also filed by Bank and writ petitioners and others have filed Securitization Applications under the provisions of SARFAESI Act before the Debts Recovery Tribunal. According to the Petitioners the Respondent Bank had offered one time settlement proposals and the Bank had agreed to close all four loan accounts for Rs.3,75,00,000/- and the Petitioners had paid the said amount. The details of the same are specifically mentioned by the Petitioners in the affidavit filed in support of W.P.Nos.17271 and 36901/2022. However, according to the Respondent No.1 Bank they are due and liable to pay an amount i.e., Rs.6,36,32,384.21.

c) The Petitioner in W.P.No.8202 of 2023 was scheduled to travel to USA on 27.12.2021 to attend the Consumer Electronic Show (CES) 2022 and to his shock he was prevented from travelling abroad by Immigration authorities as a consequence of a LOC issued by the Respondent Bank. Likewise the petitioner in W.P.No.8206 of 2023 was scheduled to visit her daughter and family members in San Fransico, USA and had a scheduled flight from Rajiv Gandhi International Airport, Hyderabad on 16.09.2022, the Petitioner was shocked to know that she was not allowed to travel because the Respondent Bank had issued a LOC against her. The petitioner in W.P.No.8202 of 2023 on an earlier occasion filed W.P.No.1531 of 2023 and sought a direction to the respondents to permit the petitioner to travel abroad viz Spain from 30.01.2023 to 05.02.2023 and to USA from 10.02.2023 to 28.02.2023 while the petitioner in W.P.No.8206 of 2023 on an earlier occasion filed W.P.No.1534 of 2023 and sought permission to travel abroad i.e. USA from 10.02.2023 to 22.03.2023 both W.P.No.1531 and 1534 of 2023 were

disposed off vide orders dated 31.01.2023, permitting the petitioners to travel on certain terms and conditions. The Petitioner in W.P.No.8202 of 2023 filed W.P.No.17217 of 2022 and the Petitioner in W.P.No.8206 of 2023 filed W.P.No.3690 of 2022 before High Court at Hyderabad and obtained interim orders suspending the lookout circular initially for some period. However both the writ petitions have been disposed off vide common order dt. 12.10.2022 with the following directions.

d) Aggrieved by the order dated 12.10.2022 passed in W.P.No.17217 of 2022 and W.P.No.3690 of 2022 the Respondent UCO Bank preferred W.A.Nos.768 and 770/2022 and the same were disposed off vide orders of the Court dated 09.12.2022 with certain specific observations.

e) Aggrieved by the issuance of lookout circulars against the Petitioners and continuing the same since the year 2021 and 2022 against the Petitioner in W.P.No.8202 of 2023 and W.P.No. 8206 of 2023 till as

on date, the Petitioners approached the Court by filing the present writ petition.

6. The learned Senior Counsel Mr. Vikram Poosarala appearing on behalf of the Petitioners in both the writ petitions mainly puts-forth the following submissions :

- i. The issuance of LOCs against the Petitioners is contrary to the guidelines for issuance of LOCs dated 22.02.2021 issued by the Ministry of Home Affairs.
- ii. The only ground for issuance of LOCs against the Petitioners is that Petitioners defaulted in payment of dues. However recovery of dues is not a ground for issuance of LOC.
- iii. There are no outstanding dues payable by the Petitioners to the Respondent Bank.
- iv. The Petitioners case does not fall under the category of Economic Interest of India and cannot be used as a justification by the Respondent Bank for issuance of LOC.
- v. None of the categories listed in the guidelines dt. 22.02.2021 apply to the Petitioners.

- vi. The action of the Respondent Bank is ultra vires the guidelines dt. 22.02.2021 paragraph 6(j) of the guidelines which is extracted hereunder :
- “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.
- As no criminal proceedings are initiated against the Petitioners by the Respondent Bank the Petitioners cannot be detained by issuance of LOC.
- vii. There must be strong supporting reasons that warrant curtailment of Fundamental Rights of an individual for issuance of LOC and the said exceptional circumstances are not made out in the present case.
- viii. The Petitioners cannot be deprived of their fundamental right to travel anywhere in the World since they hold valid passports. It is settled law that the right to travel is a part of the right to life as guaranteed under Article 21 of the Constitution of India. The issuance of LOCs against the Petitioners is thus in violation of Article 21 and Article 19(1)(g) of the

Constitution of India to carry on any trade or business.

7. The learned Senior Counsel placed reliance on few judgments of the Apex Court and contended that the writ petitions should be allowed as prayed for. The judgments relied upon on behalf of the petitioner's are given below:-

- 1. WPA No.6670 of 2022, Calcutta High Court**
- 2. AIR 2022 P&H 131**
- 3. 2022 SCC online P&H 3408**
- 4. Special Leave to Appeal ©No.7733 of 2022**
- 5. 2022 SCC online Cal. 3536**
- 6. 2022 SCC online Del 97**

8. Counter affidavit has been filed by Respondent Bank in W.P.No.8202 of 2023 and 8206 of 2023. The relevant paragraphs of the counter affidavit filed in W.P.No.8202 of 2023 by the Respondent Bank read as under :

"2. It is submitted that Dr. Venkata Ramana Rao Maganti/petitioner herein is a constituent with out Bank. The association of petitioner with our Bank has been through various credit facilities availed either directly by him(in personal capacity) as well as in the capacity of a

guarantor. The details of the credit facilities have been mentioned hereunder:

Sl. No .	Loans sanctioned by bank	Date of sanction	Amount sanctioned	Date of NPA	Amount Defaulted
1	Mr M.V.Ramana Rao & Mrs Usha Rani	15.4.2009	75,00,000	31.3.2013	70,96,948/-
2.	Mr L.Naga Malleshwara Rao & Mr M.V.Ramana Rao	15.4.2009	75,00,000	31.3.2013	80,06,681/-
3.	Mr Maganti Srinivas Rao & M.V.Ramana Rao	15.4.2009	75,00,000	31.3.2013	79,73,652/-
4.	Mr I Siva Prasad & M.V.Ramana Rao	15.4.2009	75,00,000	31.3.2013	76,21,69,205.17
5.	MIC Electronics Limited	29.9.2008	20,00,00,000	02.11.2013	7,21,69,205.17
6.	Micronet Technologies Ltd	31.3.2013	13,40,61,000	29.09.2021	13,18,06,582.23

Restructured account.

There is one more loan account which is now assigned to Asset Reconstruction Company.

5. It is submitted that petitioner has been a chronic defaulter with the Bank and has tried every possible means to deny, create hindrance towards recovery of Bank's legitimate dues. The Ld. Single Judge suspending the effect of impugned LOC issued on 07-11-2020 for a period of 13-10-2022 to 30-11-2022, thus leaving the bank remediless and paving his way to leave the country, without paying the public dues or without

submitting solvent securities which involves Economic Interest of the Country and public interest.

8. It is submitted that in order to protect the interests of the respondent bank and as still there are dues to be settled by the petitioner to the bank, the bank is justified in requesting the Bureau of Immigration to issue Lookout Circular for protecting the interests of the creditor and the economy.

10. As per the Office Memorandum dated 22-02-2021 review was made on 25-08-2022 therefore there are no procedural and even technical lapses in making request for issuance of LOC. It is respectfully submitted that the record speaks that there are great irregularities by the petitioner in repayment of default amount and trying to escape from the recovery process by denying to cooperate the proceedings before the DRT and even denying to approach the bank though the Memo dated 22-02-2022 clearly provides, for at clause No. 4 (c) which states as under: -

C. The person against whom LOC is issued must join investigation by appearing before LOC or should surrender before the court concerned or should satisfy the court that LOC was wrongly issued against him. He may also approach the officer who ordered issuance of LOC & explain that LOC was wrongly issued against him. LOC can be withdrawn by the authority that issued and can also be rescinded by the trial court where the case

is pending or having jurisdiction over concerned police station on an application by the person concerned'.

9. Counter in similar lines had been filed in W.P.No.8206 of 2023 as well by the Respondent Bank.

10. The learned Counsel appearing on behalf of the Respondent bank in W.P.No.8202 of 2023 and 8206/2023 placing reliance in the averments made in the counter affidavits filed by Respondent bank mainly puts-forth the following submissions :

- i. That the Petitioners are defaulters with the Respondent Bank and the Petitioner in WP No.8202/2023 availed credit facilities in personal capacity as well as in the capacity of a guarantor and the Petitioners together defaulted re-payment of the said amounts.**
- ii. Pursuant to classifying the accounts of the Petitioners as NPA as on 31.03.2013 the Bank in the individual/personal loans issued the demand notice dt. 15.05.2017 recalling its dues amounting to Rs.2,69,50,403/- + Interest and charges from 31.12.2012.**

- iii. **The Petitioners are chronic defaulters having enriched themselves at the cost of public money and deprived the Respondent Bank of its legitimate dues.**
- iv. **In order to protect the interest of the Respondent Bank since there are dues to be settled by the Petitioners to the bank, the bank is justified in requesting the Bureau of Investigation to issue lookout circular for protecting the interests of the creditor and the economy.**
- v. **As per the Office Memorandum dt. 22.02.2021 review was made on 25.08.2022 and therefore there are no procedural and even technical lapses in making requests for issuance of LOC.**

The learned counsel appearing on behalf of the Respondent Bank on the basis of the aforesaid submissions contends that the writ petition should be dismissed.

11. The Learned Deputy Solicitor General of India appearing on behalf of Respondents No.4 to 6 would submit that the Respondent No.4 is only custodian and

it is maintaining the lookout circulars issued by the Originator the Respondent Bank.

DISCUSSION AND CONCLUSION

12. This Court vide its orders dt. 15.12.2023 in I.A.No.3/2023 in W.P.No.8202/2023 and I.A.No.3/2023 in W.P.No.8206/2023 permitted the Petitioners to travel abroad from 18.12.2023 to 30.03.2023 duly suspending the lookout circulars issued against the Petitioners.

13. Para 6(x) of the order dated 12.10.2022 passed in W.P.No.17271/2022 and 36901/2022 is extracted hereunder :

“6(x) As discussed supra, both the petitioners are intending to travel abroad to see their grand children aged about 2 years and 6 years. Bank is not in a position to explain as to why they are continuing the issuance of Look Out Circulars against the petitioners. Bank is also not in a position to explain as to why it required the physical presence of the petitioners for the purpose of continuation of recovery proceedings and to recover the amount by initiating proceedings under the provisions of the SARFAESI Act. Pleadings in writ

petition, counters and reply affidavit would reveal that recovery proceedings are pending. Therefore physical presence of petitioners is not required for the purpose of continuation of the aforesaid recovery proceedings. Therefore, this Court is inclined to grant relief to both the petitioners herein."

14. Observations at paras 10 to 14 of the Division Bench Judgment dated 09.12.2022 passed in W.A.Nos.768 and 770 of 2022 in the writ appeals preferred by the respondent Bank aggrieved against the order dated 12.10.2022 passed in W.P.No.17271 of 2022 and W.P.No.36901 of 2022 are extracted hereunder :

"10. We see no error or infirmity in the views expressed by the learned Single Judge. It is unfortunate that appellants have decided to file the appeals against such reasoned order of the learned Single Judge. Approach of the appellants in not accepting reasoned judicial verdicts and continuing to challenge the same being in a dominant position cannot be appreciated. Such an attitude needs to be changed by the appellants, more particularly, since they are public sector undertakings. That apart, LOCs were suspended for a period from 13.10.2022 to 30.11.2022, which period had already expired.

11. In the proceedings held on 25.11.2022, we had directed Regional Manager, UCO Bank to be present before us and to answer queries of the Court pertaining to LOC.

12. In terms of our order, Mr.Sandeep Sharma, Regional Manager is present before us. He submits that it is only in the interest of the bank, the LOCs were issued. On a query by the Court as to whether LOCs were issued against all the loan defaulters, he submits that only in case of persons committing economic offences, LOCs are issued by the Bank.

13. We deprecate the approach of the appellants in selectively issuing LOCs against two senior citizens who have not only substantially complied in discharging the loan amount but are also contesting the SARFAESI proceedings before the Debts Recovery Tribunal.

14. In view of the above, both the appeals are dismissed. Cost of Rs.50,000/- is imposed on Mr.Sandeep Sharma, Regional Manager, UCO Bank, Hyderabad which shall be recovered from him personally by the UCO Bank and deposited before the High Court Legal Aid Committee, Telangana within 60 days.

15. A bare perusal of the relevant portions of the aforesaid judgments (referred to and extracted above) clearly indicate the observations of High Court at Hyderabad in the said matters in respect of the

Petitioners herein, that the Petitioners travel abroad frequently out of personal and professional obligations and the bank is not in a position to explain as to why they are continuing the issuance of lookout circulars against the Petitioners and the bank is not also in a position as to why it required the physical presence of the Petitioners for the purpose of continuation of recovery proceedings and to recover the amount by initiating proceedings under the provisions of the SARFAESI Act. It is further observed by High Court at Hyderabad in its order dt.12.10.2022 in W.P.No.17271 of 2022 and 36901 of 2022 that in view of the fact that the recovery proceedings are still pending the presence of the Petitioners herein is not required for the purpose of continuation of the aforesaid recovery proceedings. It is also borne on record as per the observations of the Division Bench of this Court dt. 09.12.2022 passed in W.A.Nos.768 and 770 of 2022 (referred to and extracted above) that the Respondent Bank is selectively issuing LOCs against two senior citizens who have not only substantially complied in discharging the

loan amount but are also contesting the SARFAESI Proceedings before the Debts Recovery Tribunal and further the Division Bench dismissed the said appeals preferred by the Respondent Bank by imposing costs of Rs.50,000/- upon the Regional Manager, UCO Bank, Hyderabad, preferred by the Respondent Bank aggrieved against the order dt.12.10.2022 passed in W.P.No.17271/2022 and 36901/2022.

16. This Court on perusal of the material on record and the counter affidavits filed by the respondent Bank in W.P.No.8202 of 2023 and W.P.No.8206 of 2023 and duly considering the statement made by the respondent Bank in the counter affidavit filed in W.P.No.8202 of 2023 that in order to protect the interest of the respondent Bank since there are dues to be settled by the petitioners to the Bank, the Bank is justified in requesting the Bureau of Investigation to issue Look Out Circular for Protecting the interests of creditor and economy, opines that in fact in the present case no exceptional case or any adverse effect on the economic interests of India has been made out by the Respondent

Bank. So recourse could not have been taken for a coercive process like issuance of LOC interfering with the right to travel abroad. This Court opines that recovery of dues cannot be a ground for issuance of LOC. In Poonam Kaur vs. Union of India reported in (2022) SCC Online Punjab & Haryana 1176 (Division Bench) and in Noor Paul vs. Union of India reported in (2022) SCC Online P&H 1176, it has been held that the right to travel abroad which is guaranteed by Article 21 of the Constitution of India as per the decision of the Constitutional Bench of the Supreme Court in Menaka Gandhi vs. Union of India reported in (1978) 1 SCC 248 cannot be taken away by the Respondents in an arbitrary and illegal manner in contravention of the sub-paras I, J and L of the office memorandum dated 22.02.2021 issued by the Ministry of Home Affairs.

17. The office Memorandum dated 22.02.2021 Sub-
paras I, J and L, read as under :

“(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 Bol 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 Bol immediately so that liberty of the Individual is not jeopardized.

(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.

18. A bare perusal of Sub-para I of the guidelines dt. 22.02.2021 (referred to and extracted above) specifically provide that in case where there is no cognizable offence, LOC subject cannot be prevented from leaving the country and the originating agency can only request that they be informed about the arrival/ departure of the LOC subject. In view of the fact as borne on record that as on date no criminal proceedings are initiated against the Petitioners by the Respondent Bank the LOC issued against the Petitioners cannot be continued, the Respondent Bank can only request that they be informed about the Petitioner's arrival/ departure.

19. A bare perusal of Sub-para J of Office Memorandum dated 22.02.2021 (referred to and extracted above) mandates that a LOC shall remain in force until and unless a deletion request is received by the Bureau of Immigration from the Originator and that no LOC shall be deleted automatically. Although these

clauses cast an obligation on the originating agency to review the LOC on a quarterly/annual basis and submit proposals for deletion of the same, the same however is not followed seriously by the authorities concerned. In the present case the LOC have been issued in the years 2021-2022 and since then they have been alive till as on date for no valid reasons.

20. A bare perusal of Sub-para L of the circular dt.22.02.2021 (referred to and extracted above) clearly indicates that LOCs could be issued in exceptional cases where the departure of the person concerned will be detrimental to the sovereignty, security and integrity of India or is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or that person may potentially indulge in an act of terrorism or offence against the State, if such person is allowed to leave or where travel ought not be permitted in the larger public interest at any given point of time. This Court is of the firm opinion that lookout circular can be issued on the specific grounds stated in Sub-para L of the OM dt.22.02.2021

(referred to and extracted above). The ground used against the Petitioners herein is evidently economic interests of India. There is no evidence on record to prove that the Petitioners herein leaving the country for a specific period of time would affect the economic interests of India, in view of the fact as borne on record that the Petitioners have not been declared as fraudsters or money launderers.

21. The look out circular issued against the petitioners is contrary to sub-para I, J and L of the Office Memorandum dated 22.02.2021 and therefore, this Court opines that the Respondent Bank cannot have any continuing reasons to interfere with the Petitioners travel outside the country. This Court is of the firm opinion that there is no reason to allow the impugned lookout circulars issued against the Petitioners (Ref.No.25106/10/2017-Imm(Pt), herein by the Respondent Bank to remain or be used against the Petitioners in the absence of any acceptable apprehension let alone evidence shown on behalf of the Bank.

22. The Court opines that the Respondent Bank issued lookout circulars against the Petitioners herein as a recovery mechanism for outstanding monitory dues, only with a view that repaying the dues is best ensured if the Petitioners remain within reach i.e., in the territory of India. On the basis of apprehension that the Petitioners would flee the country and not return to repay their outstanding loans cannot become the uniform rationale for issuing lookout circulars against the Petitioners and to continue them for years together.

23. The observations of the Apex Court in few matters relating to Look Out Circulars are extracted hereunder.

24. The Apex Court in "MENAKA GANDHI VS. UNION OF INDIA AND ANOTHER" reported in AIR 1978 SC 597, and in "SATISH CHANDRA VERMA v. UNION OF INDIA (UOI) AND OTHERS" reported in 2019 (2) SCC Online SC 2048 very clearly observed that the right to travel abroad is a part of a personal liberty and the right to possess a passport etc., can only be curtailed in accordance with law

only and not on the subjective satisfaction of anyone. **The procedure must also be just, fair and reasonable.**

25. The Apex Court way back in 1967, in Judgment reported in AIR 1967 SC 1836, in "Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer held that the right to travel abroad falls within the scope of personal liberty enshrined under Article 21 of the Constitution of India and that no person can be deprived of his right to travel except according to the procedure established by law.

26. The Apex Court in Vishambhar Saran v Bureau of Immigration held that mere quantum of alleged default of a loan by a citizen cannot be the basis for the extreme measure of restricting the personal liberty of a borrower/guarantor to travel inside or outside India and accordingly set aside the LOCs issued against the petitioners therein inter alia, on the ground that no objective parameter were found for the issuance of LOCs against the petitioners. Nothing detrimental to

the economic interest of India or exceptional was established in the said case, it was held.

27. It is observed at paras 62 to 66 in the Judgment dated 31.01.2023 in W.P.A.No.6670 of 2022 in the said case of "Vishambhar Saran v. Bureau of Immigration" as under:

"62. Considering the materials on record, the averments in affidavit-in- opposition and documents annexed thereto, this Court comes to the conclusion that the conditions which must pre-exist as per the existing policy of the government for opening LOC, are absent in this case.

63. A bald assertion that the petitioner's departure would be detrimental to the economic interest of the country and the LOC must be issued in larger public interest, cannot be due satisfaction of the existing pre- conditions required to be fulfilled before the originator can make such a request. The existence of such pre-conditions and the manner in which the action of the petitioner fell within the exceptions or had affected the country's economic interest had to be demonstrated from the records. The apprehension should be well-founded, backed by reasons and also supported by evidence. The decision of Karnataka High Court in Dr. Bavaguthu Raghuram Shetty (supra) also does not apply in

the facts of this case. With due respect, this Court does not agree with the conclusions arrived at in the said judgment, especially with regard to the comparison between the quantum of the loan and the annual budget of a state. Whether the outstanding loan with interest, would be more than the budgetary allocation of a particular state or not, in my opinion, is not one of the parameters to be considered.

64. The bank acted in arbitrary exercise of the power vested in making a request for opening LOC which was an attempt to curtail personal liberty and fundamental right of movement of a citizen guaranty by the Constitution of India.

65. The request of BOB for issuance of LOC dated 29 November, 2021 and all steps taken thereafter, if any, are set aside and quashed. The bank is at liberty to request the immigration authorities to intimate the entry and exit of the petitioner to and from the country.

66. Accordingly, the writ petition is allowed.

28. In the judgment dated 05.04.2022 in Noor Paul v Union of India and others reported in 2022 SCC on P&H 3408 refering to an LoC issued to a guarantor it is observed as under:

“(a) The action of the respondent No.2 Bank in seeking issuance of a LoC to prevent the petitioner from leaving

the country on the ground that she was a guarantor to respondent No.5's loan and there was more than Rs.100 crores owed to respondent No.2 is arbitrary, illegal and violative of Article 21 of the Constitution of India and accordingly the same is set aside.

29. In the judgment dated 07.11.2022 in W.P.A.No.9007 of 2022, in Suchita Dinodya v Union of India reported in 2022 SCC Online Cal.3536 the High Court of Calcutta held as under:

"The petitioner is not subjected to any criminal case, nor is the sovereignty or security or integrity of India to suffer ex facie if the petitioner leaves India. The mere quantum of the loan recoverable is Rs.73 crores, by itself cannot be sufficient to tag the claim to be 'for larger public interest' and/or deemed to affect' the economic interest of the country as a whole'. The LOC issued in respect of the petitioner is not justified at all and the W.P.A.No.9007 of 2022 is allowed thereby setting aside the LoC issued in respect of the petitioner."

30. In the judgment dated 02.06.2022 in Poonam Paul v Union of India and others reported in 2022 SCC Online P& H 1176 the High Court of Punjab and Haryana at

Chandigarh, dealt with a case of issuance of circular and observed as under:

“Merely looking at the quantum of loss caused to a banker, it cannot be presumed that there was a fraud committed by the borrower/guarantor more so when no criminal case alleging fraud has even been filed against the borrower/guarantor suspicion cannot take the place of proof and further clearly observed “the action of the respondent No.2 Bank in seeking issuance of an Loc to prevent the petitioner from leaving the country on the ground that she was a guarantor to respondent No.5’s loan and there was more than Rs.100 crores owed to respondent No.2 is arbitrary illegal and violative of Article 21 of the Constitution of India.

31. In the case of Brij Bhushan Kathuria v Union of India and others W.P.(C)3374/2021, reported in Manu/DE/0737/2021, the Delhi High Court while setting aside the LOC issued against the petitioner held that the phrases such as “economic interest” or “larger public interest” could not be expanded in a manner so as to restrict an independent director who was in the past associated with the company being investigated, from traveling abroad, without any specific role being attributed to him.

32. In the case of E.V.Perumal Samy Reddy v State, reported in 2013 SCC online Mad 4092, the Madras High Court while setting aside an LOC, observed as under:

"9. It is basic that merely because a person is involved in a criminal case, he is not denude of his Fundamental Rights. It is the fundamental of a person to move anywhere he likes including foreign countries. One's such personal freedom and liberty cannot be abridged.[See: Article 21 Constitution of India]. In the celebrated in MENAKA GANDHI Vs. UNION OF INDIA[AIR 1978 SC 597], the Hon'ble Supreme Court upheld the constitutional right of persons to go abroad. The phrase no one shall be deprived of his "life and liberty" except procedure established by law employed in Article 21, had deep and pervasive effect on fundamental right and human right. MENAKA GANTHI (supra) ushered a new era in the annals of Indian Human Rights Law. It had gone ahead of American concept of 'Due Process of Law'.

10. But, the fundamental right to move anywhere including foreign countries could be regulated. Where persons involved in criminal cases are wanted for investigation, for court cases, persons, who are anti-social elements their movements can be regulated. Need may arose to apprehend persons, who have ability to fly, flee away the country. So, L.O.C. orders are

issued. It is an harmonius way out between a person's fundamental right and interest of the society/state. But, in any case, it must be fair and reasonable. It should not be indiscriminate without any reason or basis.

33. In the case of Rana Ayyub v Union of India and another W.P. (CRL) 714/2022, reported in 2022 SCC Online Del 961 the Delhi High Court at paras 12 and 13 of the said judgment observed as under:

"12. In the particular facts of the case, it becomes evident that the LOC was issued in haste and despite the absence of any precondition necessitating such a measure. An LOC is a coercive measure to make a person surrender and consequentially interferes with petitioner's right of personal liberty and free movement. It is to be issued in cases where the accused is deliberately evading summons/arrest or where such person fails to appear in Court despite a Non-Bailable Warrant. In the instant case, there is no contradiction by the respondent to the submission of the petitioner that she has appeared on each and every date before the Investigating Agency when summoned, and hence, there is no cogent reason for presuming that the Petitioner would not appear before the Investigation Agency and hence, no case is made out for issuing the impugned LOC.

13. The impugned LOC is accordingly liable to be set aside as being devoid of merits as well as for infringing the Human right of the Petitioner to travel abroad and to exercise her freedom of speech and expression. For the reasons discussed above, the impugned LOC is set aside and quashed. However, a balance has to be struck qua the right of the investigation Signature Not Verified Digitally Signed By:DAMINI YADAV Signing Date:04.04.2022 17:44:27 agency to investigate the instant matter as well as the fundamental right of the petitioner of movement and free speech.

34. In the case of Soumen Sarkar v State of Tripura, represented by the Secretary, Home Department and others reported in 2021 SCC online Tri 143, the High Court of Tripura on perusal of MHA's Office Memorandum dated 31.08.2010, stated that the reasons for opening LOC must be given categorically. It was held that LOCs could not be issued as a matter of course, but only when reasons existed and the accused deliberately evaded arrest or did not appear in the trial Court.

35. In the case of Karti P.Chidambaram v Bureau of Immigration, reported in 2018 SCC online Mad 2229, the Hon'ble Madras High Court observed as under:

"73. As observed above, the issuance of Look Out Circulars is governed by executive instructions as contained in the Office Memoranda Nos.25022/13/78-F1 dated 05.09.1979 and 25022/20/98-FIV dated 27.12.2000, as modified by Office Memorandum dated 27.10.2010. Such LOCs cannot be issued as a matter of course, but when reasons exist, where an accused deliberately evades arrest or does not appear in the trial Court. The argument of the learned Additional Solicitor General that a request for Look Out Circular could have been made in view of the inherent power of the investigating authority to secure attendance and cooperation of an accused is contrary to the aforesaid circulars and thus, not sustainable.

74. It is, in the view of this Court, too late in the day to contend that whether or not to issue an LOC, being an executive decision, the same is not subject to judicial review. It is now well settled that any decision, be it executive or quasi-judicial, is amenable to the power of judicial review of the writ Court under Article 226 of the Constitution of India, when such decision has adverse civil consequences. An LOC, which is a coercive measure to make a person surrender and consequentially interferes with his right of personal liberty and free movement, certainly has adverse civil consequences. This Court, therefore, holds that in exercise of power of judicial review under Article 226 of the Constitution, the writ Court can interfere with an LOC. The question is

whether the writ Court should exercise its discretionary jurisdiction to interfere with the impugned LOC.

36. This Court opines that the judgments relied upon by the learned counsel for the respondent bank have no application to the facts of the present case.

37. Taking into consideration the aforesaid facts and circumstances of the case and as per the discussion and conclusion as arrived at as above and duly taking into consideration the view, the observations and the law laid down by the Apex Court and various other High Courts in various judgments (referred to and extracted above at paragraphs 24 to 35 of the present order) and also duly taking into consideration the observations of the High Court at Hyderabad in its order dt.12.10.2022 passed in W.P.No.17271/2022 and 36901/2022 and the order dated 09.12.2022 in W.A.Nos.768 and 770/2022, the W.P.No.8202/2023 and 8206/2023 are allowed as prayed for and the lookout circular issued against the Petitioner in W.P.No.8202/2023 and the lookout circular issued against the Petitioner in W.P.No.

8206/2023 are set aside. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Dated: 21.12.2023

Note: L.R. copy to be marked

b/o

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