

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya

WPA 22748 of 2022

Mannoj Kumar Jain & Anr.

vs

Union of India & Ors.

For the petitioners : Mr. Sudip Deb, Adv.
Mr. Riju Ghosh, Adv.
Mr. Sumitava Chakraborty, Adv.
Mr. Aranyak Saha, Adv.
Ms. Ipsita Ghosh, Adv.

For the U.O.I. : Mr. Billwadal Bhattacharya, Ld. DSG.
Mr. Narendra Prasad Gupta, Adv.

For the respondent no. 6 : Mr. Suhrid Sur, Adv.

For the respondent no. 8/ Bank : Mr. Shiv Mongal Singh, Adv.
Ms. Moriam Sanfui, Adv.

Last Heard on : 10.05.2023.

Delivered on : 09.06.2023.

Moushumi Bhattacharya, J.

1. The petitioners initially filed the writ petition against the action taken by the Immigration Authority preventing the petitioners from travelling to the United Kingdom. An order was passed on 30.9.2022 directing the petitioners to add Indian Overseas Bank as a party respondent as the Court was informed that the petitioners had been prevented from travelling to the United Kingdom by reason of a Look Out Circular on the basis of a request made by the Indian Overseas Bank. The Indian Overseas Bank was thereafter, added as the respondent no. 8. The Vacation Bench passed an order on 18.10.2022 permitting the second Petitioner to travel to the U.K. on account of the 2nd petitioner's son pursuing his studies there. The petitioners filed an application for amendment of the writ petition for challenging the Look Out Circular issued by the Indian Overseas Bank and sought for quashing of the same. By an order dated 28.02.2023, the petitioners were permitted to challenge the Look Out Circular issued at the instance of the Indian Overseas Bank / respondent no. 8. Affidavits are complete in the amendment application.

2. The issue for adjudication is whether the Look Out Circular can continue to prevent the petitioners from travelling outside India or should be quashed on the facts which have been brought to the notice of the Court.

3. The petitioner no. 1 is a Director of Jain Infra Private Limited and Prakash Vanijya Private Limited; the petitioner no. 2 is an erstwhile Director of Jain Infra and PrakashVanijya. The material facts are as follows.

4. The petitioners had obtained loans for the expansion of businesses from various Banks. The leading Bank in the consortium of 11 Banks was the Central Bank of India. The petitioners have settled the claims of all the Banks except the respondent no. 8 / Indian Overseas Bank (IOB), Andhra Bank (now Union Bank of India) and IDBI Bank. The petitioners have also given a proposal to Andhra Bank and IDBI Bank for a One Time Settlement (OTS) which is presently under consideration. The claim of Andhra Bank (Union Bank of India) is Rs. 12.5 crores out of which the petitioners have already paid Rs. 2.44 crores and have also paid Rs. 4.88 crores to IDBI Bank against the claim of Rs. 31.95 crores.

5. The documents placed before the Court also show that the petitioners have paid Rs. 5.03 crores to the IOB and that IOB has further realized Rs. 86 lakhs by selling a property which was mortgaged to the consortium of Banks. Although, disputed, the balance OTS amount shown in the books of the respondent no. 8 as on 18.08.2020 was Rs. 18.40 crores. The documents filed by the respondent no. 8 also disclose that. The total value of immovable securities given by the petitioners to the respondent no. 8 is Rs. 5.45 crores. The outstanding amount of Rs. 5,07,07,38,897.67/- shown by the IOB/respondent no. 8 as on 30.9.2022 is disputed by the petitioners. The petitioners rely on the letter dated 18.08.2020 which is part of the amended writ petition and shows the balance OTS amount to be Rs. 18.40 crores.

6. The contentions of the respondents, namely, the Indian Overseas Bank and the Immigration Authority/Union of India are that the writ petition, as it was originally filed, cannot be amended to seek the quashing of the Look Out Circular and further that the Central Bureau of Investigation (CBI) should be impleaded as a necessary party to the proceedings. The argument for the first is that the scope of the writ petition has been expanded beyond the permissible limits of an amendment. The learned Additional Solicitor General appearing for the Immigration Authority submits that the CBI should be made a party respondent to the proceedings since cases are pending against the petitioners before the 3rd Special CBI Court, among other cases.

7. To answer to the above point first, the initial prayer in the writ petition was for permission to travel to the U.K. on account of the academic compulsions of the petitioners' son. The cause of action at that stage was that the petitioners had been denied permission to travel to the U.K. and were de-boarded from the aircraft without any reason being assigned for the same. The order dated 18.10.2022 was passed on the un-amended writ petition and on the basis of the petitioners' specific requirement at that stage of the proceedings. During the course of the argument however, the petitioners were informed of the Look Out Circular being issued at the behest of the respondent no. 8, Indian Overseas Bank. The petitioners were informed that this was the reason for the petitioners being denied permission to travel. The petitioners hence sought to amend the writ petition for setting aside of the Look Out Circular.

8. The sequence of facts would indicate that the petitioners could not have challenged the Look Out Circular in the original writ petition since the petitioners were made aware of the Look Out Circular and the originator of such (respondent no. 8 / Indian Overseas Bank) only subsequent to filing of the writ petition. The law with regard to permitting amendments is liberal and appropriately so since the purpose of an amendment under Order VI Rule 17 of The Code of Civil Procedure, 1908, is to determine the real questions of controversy between the parties. Hence, if the petitioners are chained to the initial writ petition and the limited cause of action and reliefs therein, the Look Out Circular which is the basis of the petitioners' travel-curtailement would remain un-challenged. This Court is hence of the view that the objection to the amendment changing the nature and character of the original writ petition is untenable, illogical and contrary to law.

9. With regard to the second objection, namely, the addition of CBI as a necessary party, this Court is not inclined to accept such view. The petitioners have not raised any grievance against the CBI either before or after the amendment. The originator of the Look Out Circular is admittedly the respondent no. 8 Indian Overseas Bank and not the CBI. It is also undisputed that the CBI has not curtailed or denied permission to the petitioners to travel outside India. In fact, the CBI Court granted permission to the petitioner no. 1 to travel abroad as many as 19 times after which the petitioners travelled outside India. There is no complaint that the petitioner no. 1 has failed to comply with the conditions imposed on the said petitioner for travelling abroad.

CBI has also not instituted any case against the petitioner no. 2 at any point of time.

10. Look Out Circulars are issued where the concerned persons are considered as flight risks, that is, it is apprehended that they will fail to return to India. The originator of a Look Out Circular, which is the entity at whose instance the Circular is issued, usually takes recourse to pending criminal cases against the person or an ongoing proceeding where the continuous presence of the person is required. The apprehension is that the person concerned cannot be allowed to travel since the person, presumably in search of a safe haven, will not return to India for the logical culmination of the proceedings. The recent trend however is of banks issuing Look Out Circulars as a recovery mechanism for outstanding monetary dues. The reasoning of the Bank is that the person may frustrate settlement of the dues by not returning to India. The logic put forth is that the person's bona fides in repaying the dues is best ensured if the person remains within reach, i.e. in the territory of India.

11. The Banks' apprehension may be founded on a real threat of the person leaving the country forever and the Banks' loans being written off. This reasoning however cannot apply across the board for all borrowers without exception. The criteria for assessing the credit-worthiness of a borrower and his/her bona fides for repayment must be determined on a case-to-case basis. The individual circumstances of a borrower's ability and willingness to pay or

the mode and manner of repayment must be assessed before the fundamental right of a person to travel is denied.

12. Look Out Circulars which have the effect of restricting a person's free movement and the right to travel should only be issued in exceptional circumstances. Look Out Circulars cannot be issued at random and at the slightest provocation particularly at the instance of a Bank who seeks restriction on travel as a buffer to payments outstanding to the Bank. The only acceptable logic - albeit with some effort - is that a person may flee the country and not return to repay his/her outstanding loan. This however cannot be the rule across the board and a borrower's credentials and circumstances for making payment must be taken into account.

13. There is something draconian and uncivilised in a person being de-boarded from an aircraft without being informed of the reason for such. In most cases, the person concerned is simply handed a piece of paper and told at the last moment to de-plane without being made aware of the reason. This is against the principles of natural justice and fair play in action where the fundamental right to travel and the right to life is inexorably compromised and with impunity. The extreme repercussions of issuing a Look Out Circular must hence be regulated to give it form and certainty and not be made the norm for recovery of outstanding payments to the Bank. Isolated and few-and-far between cases of persons fleeing the country cannot become the uniform rationale for issuing of Look Out Circulars left, right and centre.

14. The petitioners' efforts in the settlement of loans are a sure-shot factor in establishing the petitioners' case for relief. The details of the efforts made as well as actual payments to the 8 other Banks including the lead Bank of the Consortium has already been stated above. The petitioners have also made payments to Andhra Bank (Union Bank of India) and the IDBI Bank and have made a proposal to the Indian Overseas Bank/respondent no. 8 which is the originator of the Look Out Circular. The Indian Overseas Bank has already realised Rs.86 lacs by selling a property mortgaged by the petitioners and the total value of immovable securities given to the respondent no. 8 is Rs.5.45 crores. Besides this, the petitioner no. 1 was permitted to travel 19 times by the CBI Court and there was no complaint that the petitioner no. 1 had failed to comply with the conditions imposed or return to India on the scheduled date. The petitioner no. 2 is not a party to the CBI proceedings. The petitioners also have assets in India and continue to be Directors (at least one of them) of a company in India. The respondent no. 8 has not denied the fact of the petitioners making part payments to the said respondent or that the petitioners having settled the claims of the remaining banks of the consortium. The argument that the petitioners continue to be a threat to the economic interest of the country is far-fetched and suffers from an absence of a rational basis.

15. Although the quantum due to the respondent no. 8 is disputed, *Vishambhar Saran v. Bureau of Immigration; W.P. No. 10241(W) of 2020* and *WPA 6670 of 2022* shows that quantum alone cannot be the determining factor for preventing a person from leaving the country.

16. *Ghanshyam Pandey v. Union of India*; 2023 SCC OnLine Del 936, cited on behalf of the respondent Bank, involved facts which persuaded the Court to accept the contentions of the Bank. The Court noted that the petitioner did not have any assets in India and his travel would impede the ongoing investigation. The petitioner was found to have avoided payments to the Bank and there was reasonable apprehension that the petitioner was trying to flee the country.

17. The consensus arrived at in the decisions shown on behalf of the petitioners is substantially the same, namely, that Look Out Circulars are coercive measures to make a person surrender to the Investigating Agency or a Court of Law : *Karti P. Chidambaran v. Bureau of Immigration, Ministry of Home Affairs, Government of India*; 2018 SCC OnLine Mad 2229. The decisions of two learned Single Judges of this Court in *Vishambhar Saran vs. Bureau of Immigration*; W.P. No. 10241(W) of 2020 and WPA 6670 of 2022 proceed on the same basis. Both the decisions rely on the sequence of Office Memoranda from 27.10.2010 – 22.02.2021 where the last version is that LOCs could be issued in exceptional cases not covered by the guidelines in the OMs and at the request of the authorities impugned in the OM where the departure of the person concerned would be detrimental to the sovereignty, security or integrity of India or is detrimental to the bilateral relations with any country or to the strategic and / or economic interest of India or that person may potentially indulge in any 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. The expressions used are from the OM

dated 22.02.2021 which has been extracted in one of the decisions referred to above.

18. The Look Out Circular in the present case has not been produced by the respondent Bank and hence the Court cannot refer to the contents of the Look Out Circular which has been issued against the petitioners. It is clear from the last Memoranda (presumably the last, since none of the OMs have been placed before the Court) that a Look Out Circular can be issued on the specific grounds stated in sub-paragraph L of the OM of 22.02.2021.

19. The ground used against the petitioners is evidently economic interests of India. There is no evidence that the petitioners' leaving the country for a specific period of time would affect the economic interest of India. The petitioners have not been declared fraudsters or money-launderers or even economic offenders.

20. Apart from the reach of Look Out Circulars to cause immediate and irrevocable violation of a person's fundamental right of movement, Look Out Circulars have an inexplicably long shelf-life. Sub-paragraph J of the OM dated 22.02.2021 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, this is sadly found to be absent in most cases. Once a Look Out Circular is issued, it remains alive and

kicking for almost all times to come. This spells dangerous repercussions on the person's right to freely move across and beyond the country and remain mobile. The Banks have been given untrammelled powers to issue, use and exploit the lock-in power of a Look Out Circular without sufficient recourse being provided in law to the person at the receiving end of it. The expressions "... detrimental... to the economic interest of India" in the concerned OM is sufficient to sharpen the talons of a vindictive Bank to clip the wings of a vulnerable prey (in the metaphoric sense). The Writ Court hence can and should step in to check such unregulated abuse of power by Banks where the facts demand relief.

21. In view of the above reasons, the respondent no. 8 Indian Overseas Bank cannot have any continuing reason to interfere with the petitioners' travel outside the country. The interference sought to be imposed by way of the Look Out Circular is arbitrary and without any rational basis. The CBI Courts, where the cases are pending, are free to pass orders or impose conditions as the Courts may deem fit. The petitioners have not claimed any reliefs against those proceedings in the writ petition. This Court however sees no reason to allow the impugned Look Out Circular 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. WPA 22748 of 2022 is accordingly allowed by quashing the impugned Look Out Circular issued by the respondent no. 8 Bank. The respondent no. 8

and the other respondents shall not continue to give any further effect to the Look Out Circular which would have the effect of preventing the petitioners to travel outside India. The writ petition and all connected applications are disposed of accordingly.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)