**IN THE HIGH COURT FOR THE STATE OF TELANGANA**

**AT: HYDERABAD**

**CORAM:**

***HON'BLE SRI JUSTICE K. LAKSHMAN**

**+ WRIT PETITION No.44404 OF 2022**

**% Delivered on: 19-04-2023**

**Between**:

# Sri Haridass Ramesh S/o Sri Haridass .. Petitioner

Vs.

$ The Union of India, rep.by its Secretary,
Ministry of Home Affairs, New Delhi & others. .. Respondents

! For Petitioner : Mr. V. Murali Manohar,

^ For Respondent Nos.1 & 2 : Mr. Gadi Praveen Kumar,
Ld. Dy. Solicitor General,

For Respondent No.3 : Mr. Alluri Krishnam Raju

For Respondent No.4 : Mr. N. Nagendran,
Ld. Spl.P.P. for CBI

< Gist :

> Head Note :

? Cases Referred :

1. MANU/TL/0751/2022
2. 2020 SCC OnLine Cal 3255
3. 2010 SCC OnLine Del 2475
4. (1967) 3 SCR 525
5. (1978) 1 SCC 248
6. (2012) 5 SCC 1
7. 2009 SCC OnLineGuj 11998
8. 2018 SCC OnLine Mad 2229
9. 2022 SCC OnLine Del 3494
10. 2022 SCC OnLine P&H 3408
11. (2010) 2 SCC 114
12. (2007) 8 SCC 449
13. 2010 SCC OnLine Del 2699
14. (2012) 4 SCC 483
15. (2005) 9 SCC 579
16. (2022) 11 SCC 1
17. 1992 Supp (3) SCC 217
18. 2021 SCC OnLine Kar 14863

**HON'BLE SRI JUSTICE K. LAKSHMAN**

**WRIT PETITION No.44404 OF 2022**

**ORDER**:

The present writ petition is filed seeking to declare the action of respondent No.2 (Bureau of Immigration) in issuing and continuing a Look Out Circular (hereinafter referred to as 'LOC') against the petitioner on request of respondent No.3 as illegal, arbitrary and violative of Articles 14, 19 and 21 of the Constitution of India and the Passports Act, 1967.

2. Heard Mr. V. Murali Manohar, learned counsel for the petitioner, Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India appearing on behalf of respondent Nos.1 and 2, Mr. Alluri Krishnam Raju, learned Standing Counsel for the State Bank of India appearing on behalf of respondent No.3 and Mr. N. Nagendran, learned Special Public Prosecutor for CBI appearing on behalf of respondent No.4.

3. For the sake of convenience and unless stated otherwise, wherever the term 'petitioner' is used it shall refer to the actual petitioner herein i.e., Haridass Ramesh, the company of which he is

a managing director i.e., Nandini Industries Pvt. Ltd. (hereinafter referred to as 'NIPL') and M/s Techtrans Construction KCPL JV in which he held 50% shareholding.

4. **Facts of the case**

i) The parties have raised various factual aspects relating to their contractual obligations and losses incurred by them. As the said facts are not germane to decide the issues involved in the present case, only the necessary facts are stated herein below.

ii) The petitioner being the managing director of NIPL availed loan in the form of various credit facilities from respondent No.3 to execute projects in foreign countries. Between 2010-13, the petitioner entered into an agreement with a German company i.e., M/s Desa Techno-Export Gmbh (hereinafter referred to as 'Desatec') to supply equipment for installation of a distillation plant in Turkey for a total contract value of Euro 8.8 million.

iii) The petitioner availed various forms of credit facilities including foreign bill discounting and export packing credit to the tune of Rs. 88 crores from respondent No.3 herein. Further, the

petitioner had drawn a bill of exchange for the entire contract amount of Euro 8.8 million directly payable to respondent No.3.

iv) The petitioner alleges that respondent No.3 being the beneficiary under the bill of exchange failed to receive the amounts from M/s Desatec under the German law and caused wrongful loss to the petitioner.

v) On the other hand, respondent No.3 herein after extending the said credit facilities, alleged that the petitioner defaulted in repayment of loan and declared NIPL as a Non-Performing Asset (NPA) on 30.03.2014.

vi) Further, alleging fraud and misappropriation of the sanctioned credit, respondent No.3 filed O.A. No.1475 of 2017 before the DRT for recovery of Rs. 80,99,23,517.27/-.

vii) In the said O.A. No.1475 of 2017, the petitioner herein filed a counter claim of Rs. 101,52,35,148/- alleging that wrongful loss was caused to him due to the inaction of respondent No.3. As in the present writ petition, the petitioner herein in O.A. No.1475 of 2017 raised similar contentions that the alleged default

committed by him was on account of defective services and non-cooperation by respondent No.3.

viii) Subsequently, respondent No.3 herein issued a possession notice dated 29.09.2015 against the petitioner herein under SARFAESI and the same was challenged before the DRT *vide* S.A. No.441 of 2017. The DRT dismissed the said application *vide* order dated 08.04.2019. The said order was challenged before this Court *vide* W.P. No.11465 of 2019 and the same was decided granting liberty to the petitioner to approach the DRAT.

ix) The petitioner also states that he entered into a joint venture agreement with M/s Technic Construction Co. an Iranian company. The joint venture was under the name of M/s Techtrans Construction KCPL JV (hereinafter referred to as 'TC KCPL JV'). TC KCPL JV entered into a sub-contract with M/s Reliance Utility Engineers Pvt. Ltd. (hereinafter referred to as 'RUEPL') to lay road from Trichy to Karur. For the completion of the project by a JV involving an Iranian company, TC KCPL JV was required to furnish a bank guarantee payable by any bank at Iran.

x) Therefore, TC KCPL JV availed credit facilities from respondent No.3 which issued back-to-back bank guarantee worth Rs. 16,72,50,000/- in favour of RUEPL and stood as a guarantor on behalf of TC KCPL JV.

xi) According to the petitioner, the said bank guarantees were fraudulently invoked by RUEPL and no action was taken by respondent No.3 to recover the amount of Rs. 16,72,50,000/- However, respondent No.3 filed recovery proceedings *vide* O.A. No.1702 of 2017before the DRT demanding an amount of Rs. 36, 15, 29, 947/- from the petitioner herein in relation to the contract entered into by TC KCPL JV.

xii) As things stood thus, respondent No.3 got conducted a forensic audit of the petitioner's bank account for a period from 01.04.2008 to 31.03.2018. Based on the findings of the audit report dated 31.05.2019, petitioner's account was declared as fraud on 01.07.2019. The petitioner approached this Court *vide* W.P. No.28182 of 2019 challenging the action of respondent No.3 herein in not providing the copy of the forensic audit report.

xiii) The petitioner was also declared a willful defaulter and a complaint dated 12.12.2019 was lodged with respondent No.4 alleging fraud and misappropriation of funds. According to the petitioner, the said complaint was closed by respondent No.4 *vide* its letter dated 11.12.2020. However, according to respondent No.4, the said complaint was not closed and the letter dated 14.12.2020 only sought for clarification regarding to certain aspects from respondent No.3.

xiv) Subsequently, respondent No.3 replied to the letter dated 14.12.2020 on 17.06.2021 informing respondent No.4 that as no settlement proposal was pending between itself and the petitioner herein, a complaint be registered. Therefore, respondent No.4 registered a first information report bearing RC/035/2022/A 011 against the petitioners and others for the offences punishable under Section 120B r/w Sections 420, 468 and 471 of the IPC and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988.

xv) It is relevant to note that the petitioner herein filed Crl.P. No.1712 of 2022 seeking to quash RC/035/2022/A011, W.P.

No.36734 of 2022 challenging the declaration of his bank account as fraud by respondent No.3 and W.P. No.24016 of 2022 challenging his declaration as a willful defaulter.

xvi) Based on the registration of RC/035/2022/A011, respondent No. 3 requested respondent No.2 to issue an LOC against the petitioner herein under the Office Memorandum bearing O.M. No.25016/10/2017-IMM (Pt.) dated 22.02.2021 (hereinafter referred to as 'O.M. dated 22.02.2021') issued by Ministry of Home Affairs.

xvii) Challenging the issuance of LOC against him, the petitioner herein has filed the present writ petition.

5. **Contentions of the petitioner**

i. The alleged default committed by the petitioner was on account of non-cooperation of respondent No.3 and its failure to recover monies from M/s Desatec. Further, the declaration of petitioner as a willful defaulter and declaring his account as fraud is illegal and the same is under challenge before this Court in W.P. No.24016 of 2022 and

W.P. No.36734 of 2022, respectively. Therefore, LOC could not have been issued and continued.

ii. Respondent No.3 agreed to a settlement with M/s Desatec wherein it received only Euro 4.80 million as against the contract amount of Euro 7.80 million causing loss to the petitioner.

iii. LOC was issued in violation of principles of natural justice and the petitioner was neither served with a notice nor was intimated before issuance of such LOC. Reliance was placed on **Kondaveeti Papammav. Union of India**[1].

iv. LOC could not have been issued for mere violation of a commercial contract with respondent No.3. Default in payment of loan cannot be equated with 'economic interests of India'. Reliance was placed on **UCO Bank v. SitenSaha Roy**[2].

v. LOC issued beyond a period of one year is violative of the Constitution of India.

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[1]. MANU/TL/0751/2022
[2]. 2020 SCC OnLine Cal 3255

vi. Statutory bodies like respondent No.3 cannot request for issuance of LOC based on an executive order. An executive order like O.M. dated 22.02.2021 cannot restrict the fundamental rights of the petitioner, unless the executive order had legislative sanction of a statute. Reliance was placed on **Vikram Sharma v. Union of India**[3], **Satwant SinghSawhney v. D. Ramarathnam**[4], **Maneka Gandhi v. Union of India**[5] and **Ramlila Maidan Incident, In re**[6].

vii. Right to travel can only be restricted under the Sections 10 and 10A of the Passports Act, 1967 by impounding the passport. It cannot be restricted under executive guidelines like O.M. dated 22.02.2021.

viii. LOC can only be issued in exceptional circumstances only in cases where a person is deliberately evading arrest or trial. Further, fundamental rights cannot be taken away merely because civil disputes are pending. Reliance was placed on **Prafulchandra V. Patel v. State Bank of India**[7], **Karti P.**

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[3]. 2010 SCC OnLine Del 2475
[4]. (1967) 3 SCR 525
[5]. (1978) 1 SCC 248
[6]. (2012) 5 SCC 1
[7]. 2009 SCC OnLineGuj 11998

**Chidambaram v. Bureau of Immigration**[8], **Mohd. Kashif v. Union of India**[9]and **Noor Paul v. Union of India**[10].

6. **Contentions of respondent No.3**

i. Respondent No.3 being a public sector bank was empowered to request for issuance of LOC under the O.M. dated 22.02.2021.

ii. Petitioner is involved in commission of fraud and misappropriation of funds. He has been declared as a willful defaulter and his bank account has been classified as fraud.

iii. Denying the allegations of non-cooperation and wrong doing, it was contended that the petitioner defaulted in payment of loans involving Rs. 300 crores.

iv. The petitioner is guilty of suppression of material facts. It was based on his letter dated 04.02.2015 and 23.03.2015 that respondent No.3 agreed to settle the matter with M/s Desatec for Euro 4.80 million. Therefore, the present writ petition is liable to be dismissed on account of suppression. Reliance

[8]. 2018 SCC OnLine Mad 2229
[9]. 2022 SCC OnLine Del 3494
[10].2022 SCC OnLine P&H 3408

was placed on **Dalip Singh v. State of U.P.**[11] and **Prestige Lights Ltd. v. SBI**[12].

v. There is a pending criminal case against the petitioner based on the allegations of fraud and there is every likelihood that the petitioner will flee the country to avoid repayment of the availed loans and to avoid trial and investigation.

7. **Contentions of respondent No.4**

i. The petitioner is alleged to have committed fraud which involves public servants. The alleged fraud resulted in a loss of Rs. 218.21 crores to respondent No.3.

ii. It is alleged that highly inflated bills/invoices were submitted to respondent No.3 in relation to the execution of contract with M/s Desatec Ltd.

iii. The petitioner has allegedly diverted Rs. 21.29 crores to NIPL's subsidiary companies causing loss to respondent No.3.

iv. There are chances that the petitioner might flee to any foreign country having no extradition treaty with India.

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[11]. (2010) 2 SCC 114
[12]. (2007) 8 SCC 449

There is every possibility that petitioner might not turn up for trial and securing his presence may not be possible.

v. Economic offences have deep rooted conspiracies involving public funds. Therefore, such offences have to be viewed seriously.

8. **Findings of the court**

i) The parties have raised various factual aspects before this Court relating to the alleged loan defaults committed by the petitioner. However, considering the relief sought by the petitioner, the present writ petition is restricted only decide the legality of issuance and continuance of LOC.

ii) From the facts of the case and the contentions of the parties, the following issues fall for consideration before this Court:

A. Whether O.M. dated 22.02.2021 has no legislative sanction due to which respondent No.3 could not have requested issuance of LOC restricting the freedom to travel abroad?

B. Whether respondent No.3 ought to have issued a show cause notice or intimated the petitioner herein before requesting issuance of LOC?

C. Whether under the facts of the case, the issuance of LOC was justified?

iii) Before deciding the issue at hand, it is appropriate to briefly discuss the law surrounding the issuance of LOCs. The concept of LOCs was introduced by the Ministry of Home Affairs, Government of India by issuing guidelines in respect of Indian citizens & foreigners against whom criminal cases are pending and whose presence is required in relation to any criminal investigation. The first LOC guidelines were issued by the Ministry of Home Affairs *vide* letter No.25022/13/78-FI dated 05.09.1979.Subsequently, the guidelines were amended from time-to-time by issuing various Office Memoranda.

iv) It is relevant to note that Office Memorandum bearing O.M. No.25016/31/2010-Imm. dated 27.10.2010 consolidated the guidelines relating to the issuance of LOCs. The said guidelines were issued after the decision by the Delhi High Court in **Sumer**

**Singh Salkan v. Asstt. Director**[13], wherein the Court framed certain questions in relation to the issuance of LOCs and answered them. The following findings in **Sumer Singh Salkan (supra)** were incorporated in O.M. No.25016/31/2010-Imm. dated 27.10.2010:

> "11. Look-out-Circular has also been issued against the petitioner as the petitioner is an accused the Court of M.M. and he has not appeared the Court of M.M. If the petitioner gives an undertaking the court for his appearance on a particular date, through his counsel, the Look-out-Circular issued against the petitioner shall be withdrawn within 24 hours of giving undertaking by the petitioner.
>
> The questions raised in the reference are as under:
>
> "A. What are the categories of cases in which the investigating agency can seek recourse of Look-out-Circular and under what circumstances?
>
> B. What procedure is required to be followed by the investigating agency opening a Look-out-circular?

[13]. 2010 SCC OnLine Del 2699

C. What is the remedy available to the person against whom such Look-out-Circular has been opened?

D. What is the role of the concerned Court when such a case is brought it and under what circumstances, the subordinate courts can intervene?

The questions are answered as under:

A. Recourse to LOC can be taken by investigating agency in cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court despite NBWs and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest.

B. The Investigating Officer shall make a written request for LOC to the officer as notified by the circular of Ministry of Home Affairs, giving details & reasons for seeking LOC. The competent officer alone shall give directions for opening LOC by passing an order in this respect.

C. The person against whom LOC is issued must join investigation by appearing I.O. or should surrender 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 case is pending or having jurisdiction over concerned police station on an application by the person concerned.

D. LOC is a coercive measure to make a person surrender to the investigating agency or Court of law. The subordinate courts' jurisdiction in affirming or cancelling LOC is commensurate with the jurisdiction of cancellation of NBWs or affirming NBWs."

Thereafter, the guidelines issued in 2010 were again modified in 2017, 2018 and later consolidated O.M. dated 22.02.2021 was issued.

v) The basic scheme of LOCs is that an agency or body is recognised as an originating agency. Such originating agency has been empowered to request the Bureau of Immigration to issue an LOC. Once such request is made, the Bureau of Immigration will issue an LOC.

vi) The O.M. dated 22.02.2021 specifies the agencies/ bodies/authorities that can request for issuance of an LOC. The

said memorandum also recognizes the cases in which request for such LOC can be made and when such LOC can be issued. The relevant portion of the O.M. dated 22.02.2021 is extracted below:

> "4. The Hon'ble High Court in its aforesaid judgment dated 11.08.2010 answered these questions, which are reproduced below, for guidance of all concerned agencies:
>
> **(a) <u>Recourse to LOC can be taken by investigating agency in cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court despite Non Bailable Warrant (NBW) and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest.</u>**
>
> (b) The Investigating Officer shall make a written request for LOC to the officer as notified by the circular of Ministry of Home Affairs, giving details and reasons for seeking LOC. The competent officer alone shall give directions for opening LOC by passing an order in this respect.
>
> (c) The person against whom LOC is issued must join investigation by appearing before 1.0. 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 case is pending or having jurisdiction over concerned police station on an application by the person concerned.

(d) LOC is a coercive measure to make a person surrender to the investigating agency or Court of law. The subordinate courts' jurisdiction in affirming or cancelling LOC is commensurate with the jurisdiction of cancellation of NBWs or affirming NBWS:

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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 (Bol), 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 (Bol); or (ix) Deputy Secretary of Research and Analysis Wing (R&AW); 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.**

It is clear from the above extract of the O.M. dated 22.02.2021 that public sector banks like respondent No.3 herein and investigating agencies like respondent No.4 herein are empowered to request for

issuance of an LOC. Further, an LOC can be requested, *inter alia*, where the person is accused of commission of any cognizable office, where he/she is evading arrest and is not appearing before the concerned court and where there is likelihood of such person leaving the country to evade the trial/investigation.

vii) Further, the O.M. dated 20.02.2021 also provides that apart from the reasons extracted above, LOC can also be issued in exceptional cases where a person may be restricted from travelling abroad, if inputs are available that departure of such person is detrimental to the sovereignty of India or security or integrity of India. LOC can also be issued if such person's departure will result in causing detriment to bilateral relations with other countries or his departure is prejudicial to the economic interests of India or where the person may potentially indulge in terrorism or offences against the State or where his departure is against the larger public interest. The relevant portion is extracted below:

> "(L) In exceptional cases, LOCs can be issued even in such cases, 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."

In the said background, the issues arising in the present case are discussed herein below.

**9. <u>Issue - A</u>**

i) As stated above, the petitioner contends that right to travel abroad is a fundamental right under Article 19 of the Constitution of India. Such a right is subject to reasonable restrictions and cannot be taken away unless by procedure established by law. According to the petitioner, reasonable restrictions under Article 19(2) can only be imposed by Parliament by enacting a statute and not by Executive in the form of O.M. dated 22.02.2021. In other words, the contention of the petitioner is that his right to travel

cannot be restricted under O.M. dated 22.02.2021 which was brought in by the Executive and not by the legislature.

ii) According to this Court, the said contention cannot be considered in the absence of the challenge to the constitutionality of O.M. dated 22.02.2021. The Courts always presume the constitutionality of a law. The Supreme Court in **K.B. Nagur v. Union of India**[14] held as follows:

> **"17. Still another aspect is that presumption of constitutionality is always in favour of a legislation, unless the contrary is shown. Furthermore, a legislature, in enacting a law, operates on a presumption, in law and practise, both, that all other forums and entities constituted under one or other Act would, in their functioning, act in accordance with law and expeditiously. As it is a settled precept in the application of economic principles, that all other things will remain the same i.e. ceteris paribus, similarly, for the proper interpretation and examination of a provision of a statute, all bodies must be presumed to act effectively and in accordance with law.**

[14]. (2012) 4 SCC 483

> 18. A statute is construed so as to make it effective and operative as per the principle expressed in *ut res valeat potiusquampereat*. There is, therefore, a presumption that the legislature does not exceed its jurisdiction and the burden of establishing that the Act is not within the competence of legislature or that it has transgressed other constitutional mandates, such as those relating to fundamental rights, is always on the person who challenges its vagaries."

iii) Further, a court cannot read down or restrict any law, unless a party challenging its constitutionality rebuts the presumption of constitutionality by showing violation of fundamental rights or legislative incompetence in enacting such law. The Supreme Court in **Union of India v. Vipan Kumar Jain**[15]held as follows:

> "6. In our view, this appeal must be allowed. The several sections which have been cited by the appellants would show that the assessing officer has, either directly or by virtue of his appointment or authorisation by a superior authority under the Act, been given the power

[15]. (2005) 9 SCC 579

of gathering information for the purposes of assessment. The mode of gathering such information may vary from the mere issuance of a notice under Section 142 to the more intrusive method of entry and search envisaged under Sections 133-A and 133-B and seizure under Section 132. **The appellants are also correct in their submission that in the absence of any challenge to any of these provisions, it was not open to the High Court to have disabled the assessing officer from discharging his statutory functions. What the High Court has done is to read limitations into the Act and to qualify the jurisdiction of the assessing officer and the powers of the authorities empowered to appoint the assessing officer as an authorised officer under Section 132 without any foundation for such conclusion being laid in any manner whatsoever by the writ petitioners.**

**10. Finally, the courts cannot read in limitations to the jurisdiction conferred by statutes, in the absence of a challenge to the provision itself when the language of the Act clearly allows for an ostensible violation of the principles of natural justice including the principle that a person cannot be a judge in**

> **his own cause.** In *Union of India* v. *Tulsiram Patel* [(1985) 3 SCC 398 : 1985 SCC (L&S) 672] in recognition of this principle this Court held: (SCC p. 479, para 101)
>
> "*101*. Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the *nemo judex in causa sua* rule as also to the audi alteram partem rule. The *nemo judex in causa sua* rule is subject to the doctrine of necessity and yields to it as pointed out by this Court in *J. Mohapatra & Co.* v. *State of Orissa* [(1984) 4 SCC 103] ." "

iv) It is relevant to note that O.M. dated 22.02.2021 issued by the Executive i.e., Government of India falls within the definition of law under Article 13(1)(a) of the Constitution of India. For the sake of convenience, Article 13 is extracted below:

> "13. Laws inconsistent with or in derogation of the fundamental rights.--
> (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this Clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,--

**(a) "law" includes any Ordinance, order, bye-law, rule, Regulation, notification, custom or usage having in the territory of India the force of law;**

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this Article shall apply to any amendment of this Constitution made Under Article 368."

v) It is clear that the definition of law as noted by the Supreme Court in **Rajeev Suri v. DDA**[16] is wide and inclusive. It also includes guidelines in the form of notifications, letters, office memoranda. Further, a nine-judge constitution bench of the

[16]. (2022) 11 SCC 1

Supreme Court in **Indra Sawhney v. Union of India**[17] noted that executive orders like O.M. dated 22.02.2021 fall within the definition of law under Article 13(1)(a). The relevant paragraph of Hon'ble Justice Sawant's opinion is extracted below:

> "526. The language of Article 16(4) is very clear. It enables the State to make a "provision" for the reservation of appointments to the posts. The provision may be made either by an Act of legislature or by rule or regulation made under such Act or in the absence of both, by executive order. **Executive order is no less a law under Article 13(3) which defines law to include, among other things, order, bye-laws and notifications.** The provisions of reservation under Article 16(4) being relatable to the recruitment and conditions of service under the State, they are also covered by Article 309 of the Constitution. Article 309 expressly provides that until provision in that behalf is made by or under an Act of the appropriate legislature, the rules regulating the recruitment and conditions of service of persons appointed to services under the Union or a State may be regulated by rules made by the President or the Governor as the case may

[17]. 1992 Supp (3) SCC 217

> be. Further, wherever the Constitution requires that the provisions may be made only by an Act of the legislature, the Constitution has in express terms stated so. For example, the provisions of Article 16(3) speak of the Parliament making a law, unlike the provisions of Article 16(4) which permit the State to make "any provision". Similarly, Articles 302, 304 and 307 require a law to be enacted by the Parliament or a State legislature as the case may be on the subjects concerned. These are but some of the provisions in the Constitution, to illustrate the point."

Therefore, it is clear that executive orders like O.M. dated 22.02.2021 fall within the definition of law under Article 13(1)(a) of the Constitution of India and the same has to be presumed as constitutionally valid.

vi) In the present case, the relief sought by the petitioner is only to declare the action of issuance and continuance of LOC against him as illegal. The petitioner has not specifically assailed the constitutional validity of the O.M. dated 22.02.2021. Therefore, this Court has to presume its constitutional validity.

vii) Further, O.M. dated 22.02.2021 specifically empowers public sector banks like respondent No.3 to request issuance of LOC. In the absence of the challenge to the said O.M. dated 22.02.2021 on the ground that fundamental rights cannot be restricted by Executive action, this Court cannot restrict or limit the scope of O.M. dated 22.02.2021.

viii) Therefore, Issue A is decided holding that respondent No.3 was empowered to request issuance of LOC against the petitioner herein.

ix) Though this Court leaves open the question whether O.M. dated 20.02.2021 is constitutionally valid, it would like to highlight Article 73 of the Constitution of India which is extracted below:

> "73. Extent of executive power of the Union.—
> (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—
> (a) to the matters with respect to which Parliament has power to make laws; and
> (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the

> Government of India by virtue of any treaty or agreement:
>
> Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.
>
> (2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution."

Article 73 of the Constitution of India empowers the executive of the Union or the Central Government to make laws in respect of matters where the Parliament is empowered to make laws. In other words, the Executive can make law in the form of guidelines over a subject on which no law made by the Parliament exists.

x) Dealing with a question whether reservations can be provided under an executive order by the Central Government, the

Supreme Court in **Indra Sawhney (supra)** held that executive can make laws under Article 73 and such laws have equal binding force. The relevant paragraphs are extracted below:

> **“392. This question has been examined by Brother Judges and they have held that the reservations can be provided by the Parliament, State Legislatures, statutory rules as well as by way of Executive Instructions issued by the Central Government and the State Governments from time to time. The Executive Instructions can be issued only when there are no statutory provisions on the subject. Executive Instructions can also be issued to supplement the statutory provisions when those provisions are silent on the subject of reservations. These propositions of law are unexceptionable and I reiterate the same. I, however, make it clear that any Executive Instruction [issued under Article 16(4), 73 or 162] providing reservations, which goes contrary to statutory provisions or the rules under Article 309 or any other statutory rules, shall not be operative to the extent it is contrary to the statutory provisions/rules.**

*Would making "any provision" under Article 16(4) for reservation "by the State" necessarily have to be by law made by the legislatures of the State or by law made by Parliament? Or could such provisions be made by an executive order?*

527. The impugned orders are no doubt neither enactments of the legislature nor rules or regulations made under any Act of the legislature. They are also not rules made by the President under Article 309 of the Constitution. **They are undoubtedly executive orders. It is not suggested that in the absence of an Act or rules, the Government cannot make provisions on the subject by executive orders nor is it contended that the impugned orders made in exercise of the executive powers, have transgressed the limits of legislative powers of the Parliament. What is contended by Shri Venugopal is that the power to make provisions on such vital subject must be shared with, and can only be exercised after due deliberations by, the Parliament.** The contention, in essence, questions the method of exercising the power and not the absence of it. The method should be left to the discretion and the policy of the Government and the exigencies of the situation. It may be pointed

out that, so far the reservations made by the Central Government in favour of the SCs/STs and the State Governments in favour of all backward classes, have been made by executive instructions, or by rules made under Article 309 of the Constitution. No reservations have been made by Acts of legislatures. **There is, therefore, no illegality attached to the impugned orders merely because the Government instead of enacting a statute for the purpose, has chosen to make the provisions by executive orders. Such executive orders having been made under Article 73 of the Constitution have for their operation an equal efficacy as an Act of the Parliament or the rules made by the President under Article 309 of the Constitution.**

736. The words “order”, “bye-law”, “rule” and “regulation” in this definition are significant. Reading the definition of “State” in Article 12 and of “law” in Article 13(3)(*a*), it becomes clear that a measure of the nature contemplated by Article 16(4) can be provided not only by the Parliament/Legislature but also by the executive in respect of Central/State services and by the local bodies and “other authorities”

contemplated by Article 12, in respect of their respective services. Some of the local bodies and some of the statutory corporations like universities may have their own legislative wings. In such a situation, it would be unreasonable and inappropriate to insist that reservation in all these services should be provided by Parliament/Legislature. The situation and circumstances of each of these bodies may vary. The rule regarding reservation has to be framed to suit the particular situations. All this cannot reasonably be done by Parliament/Legislature.

859. We may summarise our answers to the various questions dealt with and answered hereinabove:

**(1) (*a*) It is not necessary that the 'provision' under Article 16(4) should necessarily be made by the Parliament/Legislature. Such a provision can be made by the Executive also. Local bodies, Statutory Corporations and other instrumentalities of the State falling under Article 12 of the Constitution are themselves competent to make such a provision, if so advised. (Paras 735-737)**

(*b*) An executive order making a provision under Article 16(4) is enforceable the moment it is made and issued. (Paras 738-740)."

Therefore, whether the Government of India, in absence of statutory sanction, had legislative competence to issue O.M. dated 20.02.2021 which has an effect of restricting a citizen's freedom may have to be decided in light of Article 73 of the Constitution of India. However, as the question is left open, this Court refrains from opining anything.

10. **Issue - B**

i) The petitioner contends that respondent No.3 could not have requested issuance of LOC without issuing a show cause notice or without intimating him about such request. The said contention of the petitioner cannot be accepted in light of the Supreme Court's order dated 05.05.2022 wherein the Court stayed the following portion of the judgment in **Noor Paul (supra)**:

> **"(78) For the aforesaid reasons, we hold that: (c) The respondents No. 1, 3 and 4 shall serve copy of the LOC and also reasons for issuing it to the person against whom it is issued as soon as possible after it is issued, and also provide a post decisional opportunity to him and these requirements shall be read into the Oms issued by**

**respondents concerning the issuance of the LOCs."**

Therefore, as the Supreme Court is seized of the issue raised by the petitioner, this Court cannot accept the contention that a prior notice of issuance of LOC has to be given.

ii) At this stage, it is appropriate to refer to the decision in **Bavaguthuraghuram Shetty v. Bureau of Immigration**[18] rendered by a division bench of the Karnataka High Court. In the said decision, a similar contention was raised that the petitioner therein should have been issued a notice before the issuance of LOC. The Court therein referring to the decision in **Maneka Gandhi (supra)** rejected the said contention. It was held that as the Officer Memoranda under which LOCs are issued grant a post decisional hearing and as the same is reviewed time and again, it cannot be said that principles of natural justice are violated.

iii) Further, the Court held that non-intimation of issuance of LOC by the originating agency does not violate any rights. This Court agrees with the view expressed in **Bavaguthuraghuram**

[18]. 2021 SCC OnLine Kar 14863

**Shetty (supra)** and the relevant paragraphs of the said decision are extracted below:

> "22. It is the specific act emerging from the said OMs, which the petitioner seeks to assail in the writ petition and when examined in this background, it would emerge from the authoritative pronouncement of the Apex Court in the case of *MANEKA GANDHI's*, wherein the Hon'ble Apex Court (per Hon'ble Mr. Justices Bhagawati, Untwalia and Fazal Ali) have observed that procedure established by law under Article 21 must meet the requirement of Article 14 and it has been further held the right to travel abroad cannot be regarded as forming part of Articles 19(1) (a) or 19(1) (g), since such right is not guaranteed and such right cannot be inferred as a peripheral or concomitant right under Article 19(1). It is further held by the Apex Court to the following effect:
>
> "34. The right to go abroad cannot, therefore, be regarded as included in freedom of speech and expression guaranteed under Article 19(1) (a) on the theory of peripheral or concomitant right. This theory has been firmly rejected in the *All India Bank Employees Association's case* and we can not countenance any attempt to revive it, as that would completely upset the scheme of Article 19(1) and to quote the words of RajagopalaAyyanger, J., speaking on behalf of the Court in *All India Bank Employees Association's case* "by a series of ever expending concentric, circles in the

shape of rights concomitant to concomitant rights and so on, lead to an almost grostesque result". So also, for the same reasons, the right to go abroad cannot be treated as part of the, right to carry on trade, business, profession or calling guaranteed under Article 19(1) (g). The right to go abroad is clearly not a guaranteed right under any clause of Article 19(1) and section 10(3) (c) which authorises imposition of restrictions on the right to go abroad by impounding of passport cannot be held to be void as offending Article 19 (1) (a) or (g), as its direct and inevitable impact is on the right, to go abroad and not on the right of free speech and expression or the. right to carry on trade, business profession or calling."

"54. The next question is whether the right to go out of India is an integral part of the right of free speech and expression and is comprehended within it. It seems to me impossible to answer this question in the affirmative as is contended by the petitioner's counsel, Shri Madan Bhatia. It is possible to predicate of many a right that its exercise would be more meaningful if the right is extended to comprehended an extraneous facility. But such extensions do not form part of the right conferred by the Constitution. The analogy of the freedom of press being included in the right of free speech and expression 4-119SCI/78 is wholly misplaced because the right of free expression incontrovertibly includes the right of freedom of the press. The right to, go abroad on one hand and the right of

free speech and expression on the other are made up of basically different constituents, so different indeed that one cannot be comprehended in the other.

55. Brother Bhagwati has, on this aspect considered at length certain American decisions like Kent(1),_Apthekar(2) and Zemel(3) and illuminating though his analysis is, I am inclined to think that the presence of the due process clause in the 5th and 14th Amendments of the American Constitution makes significant difference to the approach of American Judges to the definition and evaluation of constitutional guarantees. The content which has been meaningfully and imaginatively poured into “due process of law” may, in my view, constitute an important point of distinction between the American Constitution and ours which studiously avoided the use of that expression. In the Centennial Volume. “The Fourteenth Amendment” edited by Bernard Schwartz, is contained in an article on ‘Landmarks of Legal Liberty’ by Justice William J. Brennan in which the learned Judge quoting from Yeat's play has this to say : In the service of the age old dream for recognition of the equal and inalienable rights of man, the 14th Amendment though 100 years old, can never be old.

“Like the poor old women in Yeat's play, “Did you see an old woman going down the path?” asked Bridget. “I did not,” replied Patrick, who had come into the house after the

old woman left it, “But I saw a young girl and she had the walk of a queen.”

Our Constitution too strides in its majesty but, may it be remembered, without the due process clause, I prefer to be content with a decision directly in point, All India Bank Employees’ Association(4) In which this Court rejected the contention that the freedom to form associations or unions contained in article 19 (1) (c) carried with it the right that a workers’ union could do all that was necessary to make that right effective, in order to achieve the purpose for which the union was formed. One right leading to another and that another to still other, and so on, was described in the abovementioned decision as productive of a “grotesque result”.

**56. I have nothing more to add to what Brother Bhagwati has said on the other points in the case. I share his opinion that though the right to go abroad is not included in the right contained in article 19 (1) (a), if an order made under section 10 (3) (c) of the Act does in fact violate, the right of free speech and expression, such an order could be struck down as unconstitutional. It is well-settled that a statute may pass the test of constitutionality and yet an order passed under it may be unconstitutional. But of that I will say no more because in this branch, one says no more than the facts warrant and decides nothing that does not call for a decision. The fact that the petitioner was not heard before or soon after the impounding**

**of her passport would have introduced a serious infirmity in the order but for the statement of the Attorney General that the. Government was, willing to hear the petitioner and further to limit the operation of the order to a period of six months from the date of the fresh decision, if the decision was adverse to the petitioner. The order, I agree, does not in fact offend against article 19 (1) (a) or 19 (1) (g).**

**23. It has also been held by the Hon'ble Apex Court (per Hon' ble the Chief Justice-Mr. Beg and per Hon'ble Mr. Justice Kailasam) that a passport may be impounded without giving prior opportunity and subsequently hearing must be provided. Hence, petitioner cannot be heard to contend that his right of hearing has been taken away and thereby act of the respondents are hit by Article 14 of the Constitution.**

**24. In the instant case, we notice that the extant OMs provide for an opportunity to the petitioner namely, the petitioner being entided to appear before the third and fourth respondent-Banks and explain the circumstances which perforced the Banks for issuing LOC was not prevailing and both the Banks are required to examine, consider and then pass an order on the said plea. Though Sri. Mukul Rohatgi has made an attempt to contend that post decisional hearing is an empty formality we are not inclined to accept the same, inasmuch as, Hon'ble Apex Court in *MANEKA GANDHIs***

***case*, has held that though prior opportunity at the time of impounding the passport is not required, the subsequent opportunity as to why such impounding is not required to be continued, should be considered as inherent in fair hearing.** It has been further held to the following effect:

"14. Now, as already pointed out, the doctrine of natural justice consists principally of two rules, namely, nemo debt esse judex propria cause : no one shall be a judge in his own cause, and audi alteram partem : no decision shall be given against a party without affording him a reasonable hearing. We are concerned here with the second rule and hence we shall confine ourselves only to a discussion of that rule. The learned Attorney General, appearing on behalf of the Union of India, fairly conceded that the audi alteram partem rule is a highly effective tool devised by the courts to enable a statutory authority to arrive at ajust decision and it is calculated to act as a healthy check on abuse or misuse of power and hence its reach should not be narrowed and its applicability circum- scribed. He rightiy did not plead for reconsideration of the historic advances made in the law as a result of the decisions of this Court and did not suggest that the Court should re-trace its steps. That would indeed have been a most startling argument coming from the Government of India and for the Court to accede to such an argument would have been so act of utter retrogression. But fortunately no such argument was advanced by

the learned Attorney General. What he urged was a very limited contention, namely that having regard to the nature of the action involved in the impounding of a passport, the audi alteram partem rule must be held to, be excluded, because if notice were to be given to the holder of the passport and reasonable opportunity afforded to him to show cause why his passport should not be impounded, he might immediately, on the strength of the passport, make good his exit from the country and the object of impounding the passport would be frustrated. The argument was that if the audi alteram partem rule were applied, its effect would be to stultify the power of impounding the passport and it would defeat and paralyse the administration of the law and hence the audi alteram partem rule cannot in fairness be applied while exercising the power to impound a passport. This, argument was sought to be supported by reference to the statement of the law in *A.S. de Smith, Judicial Review of Administrative Action*, 2nd ed., where the learned authorsays at page 174 that "in administrative, lawa prima facie right to prior notice and opportunity to be heard may be held to be excluded by implication- where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt action, especially action of a preventive or remedial nature". Now, it is true that since the right to prior notice and opportunity of hearing arises only by implication from the duty to act fairly, or to use the words of Lord Morris of Borth-y-Gest, from 'fair play in action, it may

equally be excluded where, having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provision, fairness in action does not demand its implication and even warrants its exclusion. There are certain well recognised exceptions to the audi alteram partem rule established by judicial decisions and they are summarised by *S.A. de Smith in Judicial Review of Administrative Action*, 2nd ed., at page 168 to 179. If we analyse these exceptions a little closely, it will be apparent that they do not in any way militate against the principle which requires fair play in administrative action. The word 'exception' is really a misnomer because in these exclusionary cases the audi alteram partem rule is held inapplicable not by way of an exception to "fair play in action", but because nothing unfair can be inferred by not affording an opportunity to present or meet a case. The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law 'lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation'. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audi alteram partem rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it

must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not be too ready to eschew it in its application to a given case. True rue it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly excluded. The court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the Hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, L.J., emphasised in *Russel* v. *Duke of Norfolk* (1), that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case". What opportunity may be regarded as reasonable would necessarily depend on the

practical necessities of the situation. It may be a sophisticated full fledged hearing or it may be a hearing which is very brief and minimal : it may be a hearing prior to the decision or it may even be a post-decisional remedial hearing. The audi alteram partem rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which max, arise. This circumstantial flexibility of the audi alteram partem rule was emphasised by Lord Reid in *Wiseman* v. *Someman*, (supra) when he said that he would be "sorry to see this fundamental general principle degenerate into a series of hard and fast rules" and Lord Hailsham, L.C., also observed in *Pearl-Berg* v. *Party* (2) that the courts "have taken in increasingly sophisticated view of what is required in individual cases". It would not, therefore, be right to conclude that the audi alteram partem rule is excluded merely because the power to impound a passport might be frustrated, if prior notice and hearing were to be given to the person concerned before impounding his passport, the Passport Authority may proceed to impound the passport without giving any prior opportunity to the person concerned to be heard, but as soon as the order impounding the passport is made, and opportunity of hearing, remedial in aim, should be given to him so that he may present his case and controvert that of the Passport Authority and point out why his passport should not be impounded and the order impounding it recalled. This should not only be possible but also quite appropriate, because the reasons for

impounding the passport are required to be supplied by the Passport Authority after the making of the order and the person affected would, therefore, be in a position to make a representation setting forth his case and plead for setting aside the action impounding his passport. A fair opportunity of being heard following immediately upon the order impounding the passport would satisfy the mandate of natural justice and a provision requiring giving of such opportunity to the person concerned can and should be read by implication in the Passports Act, 1967. If such a provision were held to be incorporated in the Passports, Act, 1967 by necessary implication, as we hold it must be, the procedure prescribed by the Act for impounding a passport would be fight, fair and just and it would not suffer from the vice of arbitrariness or unreasonableness. We must, therefore, hold that the procedure 'established' by the Passports Act, 1967 for impounding a passport is in conformity with the requirement of Article 21 and does not fall foul of that article.

25. This view also gets fortified from the law laid down by the Apex Court in the matter of *ManekaGandhi*v. *Union of India*, (supra) referred to herein supra where under Justice Krishna Iyer concurring with the opinion rendered by Bhagawati, Untwalia and Fazal Ali, JJ, held that any order passed under Section 10(3) (c) of the Passports Act, 1967, is subject to a limited judicial scrutiny. It is further held:

**"189. In the result, I hold that the petitioner is not entitled to any of the fundamental rights enumerated-in Article 19 of the Constitution and that the Passport Act complies with the requirements of Art. 21 of the Constitution and is in accordance with the procedure established by law. I construe section 10(3) (c) as providing a right to the holder of the passport to be heard before the passport authority and that any order passed under section 10(3) is subject to a limited judicial scrutiny by the, High Court and the Supreme Court."**

Hence, the contention raised by Sri. Mukul Rohatgi, Learned Senior Counsel appearing for the petitioner that subsequent hearing of the petitioner would be an empty formality or in other words, such post decisional hearing is impermissible cannot be accepted. However, it is needless to state that notwithstanding the conclusion arrived at by respondent Nos. 3 and 4 for issuance of LOC against the petitioner, prayer of the petitioner for revoking the same shall be considered independently and without being influenced by any conclusion already arrived by them and without being influenced by any observations made either by the Learned Single Judge or by this Court.

**28. By not intimating the petitioner about issuance of LOC would not infringe upon any of the rights of petitioner guaranteed under the Constitution of India. The OM dated 27.10.2010 (Annexure-AA) would clearly indicate that LOC can be issued**

**subject to the guidelines prescribed therein. OMs dated 27.10.2010 has been revised/amended from time to time by issuance of OMs dated 05.12.2017, 19.07.2018 and 19.09.2018 by the Ministry of Home Affairs, Government of India. The amended OMs are dated 04.10.2018, 12.10.2018 and 22.11.2018 (Annexures-Rl to R3), which discloses the respondent Nos.3 and 4 are entitled to issue LOC against a person, in the facts and circumstances of the case that may be obtained. The extant OM dated 12.10.2018 (Annexure-R2) would clearly indicate that Chairman/Managing Director/Chief Executive of all public sector Banks are empowered to request Bureau of Immigration (first respondent) to issue LOCs vide Clause- 8B and 8J. Same has been referred to by the Learned Single Judge under the order under challenge and as such we refrain from extracting the same.**

It would suffice to state that the said amended OM provides for:

(i) The Managing Director of the public sector bank being empowered to make a request for opening an LOC;

(ii) Such LOC can be issued by respondent Nos. 1 and 2 by preventing or declining the departure of a person from India, if such departure is detrimental ‘to the economic interest of India’ and ‘that such departure ought not to be permitted in the larger public interest at any given point of time’.”

iv) Therefore, Issue B is decided by holding that respondent No.3 was not bound to inform the petitioner about request for issuance of LOC.

11. **Issue - C**

i) The only question that remains is whether the issuance and continuance of LOC against the petitioner is maintainable in light of the facts of the case. According to this Court, the issuance of LOC and continuance thereof is valid, in light of the facts and reasons stated below.

ii) It is not in dispute that the petitioner had defaulted payment of monies to respondent No.3. Though the petitioner has stated that the default happened due to the inaction of respondent No.3, this Court cannot go into such factual aspects. Further, recovery proceedings against the petitioner are pending before the DRT.

iii) Further, the petitioner is an accused in RC/035/2022/A011 and the investigation is still pending. The petitioner's request to quash RC/035/2022/A011 was declined by this Court *vide* order dated 14.11.2022 in Cr.L.P. No.1712 of 2022,

in light of the seriousness of alleged the fraud and gravity of the offence. Further, the questions whether the declaration of petitioner as willful defaulter is valid and whether the declaration of his account as fraud is justified are pending adjudication before this Court.

iv) As a criminal case is pending against the petitioner, respondent No.3 based on its satisfaction requested issuance of LOC. The allegations against the petitioner indicate commission of a large-scale fraud to the tune of over 200 Crores.

v) Further, the Special CBI court considering the application of the petitioner's wife, who is also an accused in RC/035/2022/A011, to travel abroad noted that they have not cooperated in the investigation.

vi) Therefore, according to this Court, there is a reasonable apprehension that the petitioner might not return, if the LOC is quashed. However, the restriction placed on travelling abroad is not absolute, the petitioner as and when required can approach the competent court seeking permission to travel abroad. Further, as

the LOC is required to be reviewed on quarterly and annual basis, the interest of the petitioner is adequately safeguarded.

vii) Issue C is decided by holding that issuance and continuance of LOC against the petitioner is valid, given the nature of allegations and the facts of the case.

12. **Conclusion**

In light of the aforesaid discussion, the present writ petition is liable to be dismissed and is accordingly dismissed. However, liberty is granted to the petitioner to approach the competent Court and seek permission to travel aboard. In the circumstances, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petitions shall stand closed.

**K. LAKSHMAN, J**

**19th April, 2023**

**Note**: 1. Furnish C.C. of order forthwith.
2. L.R. copy be marked.
(B/O.) Mgr