

*** THE HON'BLE Dr. JUSTICE G. RADHA RANI**

+ WRIT PETITION No.6892 OF 2022

% 06.06.2022

Garikapati Venkateswara Rao W/o. Chenchaiya,
Aged: 68 years, Occ: Business,
R.o.H.No.6-2-117, Behind ZP quarters,
Khammam Town & District, T.S.

.... Petitioner

Vs.

\$ Union of India, Rep. by its Secretary,
Ministry of Home, New Delhi and others

..... Respondents

!Counsel for the Petitioner : Sri C. Raghu

Counsel for the Respondents : Sri B. Jithender,
Standing Counsel for Central Govt.

<Gist :

>Head Note:

? Cases referred:

THE HON'BLE Dr. JUSTICE G. RADHA RANI**WRIT PETITION No.6892 OF 2022****ORDER:**

This writ petition is filed by the petitioner seeking to issue Writ of Mandamus declaring the action of the 7th and 8th respondents, instructing the Court to impose travel ban on the petitioner and consequential action of the 4th respondent in imposing a travel ban on the petitioner as illegal, arbitrary and in violation of Article 21 of the Constitution.

2. Heard learned counsel for the petitioner and learned Counsel Sri B.Jitender, representing respondent Nos.1 to 6 and learned standing counsel for respondent Nos.7 and 8.

3. The learned counsel for the petitioner submitted that the petitioner was the Director cum Chairman of GVR Infra Projects Ltd. GVR Infra Projects availed a loan from erstwhile Vijaya Bank which was now merged with the 7th respondent bank and the 8th respondent was the branch which has advanced the loan. Proceedings were initiated against the company under the provisions of Insolvency & Bankruptcy Code, 2016. A resolution plan was approved by the National Company Law Tribunal, Chennai vide order dated 20.07.2020. Under the said resolution plan, resolution

applicant UV Asset Reconstruction Company Limited & WL Structures Private Limited Consortium had taken over the management of the company. During the pendency of the proceedings an interim resolution professional (IRP) was appointed on 15.10.2018 and the board of the company was terminated. In the resolution plan the claims of all the bankers were taken into consideration and thereafter the resolution plan was approved. The 7th respondent bank had also participated in the resolution process and was part of consortium of bankers.

4. He further submitted that the petitioner booked a ticket to travel to Maldives on 7th October, 2021 by Go First Airlines along with five others. The return ticket was also booked for 10th October, 2021. The petitioner was holding the passport bearing No.U8680182 which was valid up to 10.02.2031. The passport was issued on 11.02.2021 and no objection was raised at the time of issuing the passport. The petitioner had taken boarding pass for travel on 07.10.2021. When he went to Airport for boarding flight, he was stopped by the immigration authorities. The other five members were allowed to travel. When the petitioner insisted for the reasons, the authorities failed to disclose the same and simply stated that he could not travel since there was a ban of foreign travel imposed on him. No notice was issued to the petitioner by any authority informing him about the said

ban. The petitioner returned back and made a representation to the 4th respondent on 22.10.2021. When the information was not provided by the 4th respondent, the petitioner filed W.P.No.30196 of 2021 and the said writ petition was disposed by order dated 24.11.2021, directing the 4th respondent to pass orders on the representation submitted by the petitioner and also to furnish the information sought by the petitioner within a period of one week. The petitioner received a letter, dated 29.11.2021 from the 5th respondent stating that the information sought by the petitioner was pertaining to Intelligence Bureau (IB)/Bureau of Immigration (BOI) AND SINCE Section 24(1) and II Schedule of the RTI Act, 2005 exempted IB/BOI from providing any information, the same is not being provided.

5. He further submitted that on enquiry the petitioner reliably learnt that on the instructions given by the 7th and 8th respondents, travel ban was imposed on the petitioner. The entire loan amounts were covered under the resolution plan and the resolution plan had taken over M/s.GVR Infra Projects Ltd. The petitioner was not connected with the company any more. It was alleged by some banks who were part of consortium that the petitioner continue as a personal guarantor and filed applications before Debt Recovery Tribunal at Chennai, which were pending. No orders were passed by the Debt Recovery Tribunal at Chennai. Merely because the

petitioner stood as personal guarantor to the company, which loans in fact were covered under the resolution plan approved by the National Company Law Tribunal, Chennai, a travel ban could not be imposed on the petitioner without any material to show that he would abscond from the jurisdiction of the Court. All the collateral securities offered by the erstwhile Directors had been covered under the resolution plan handed over to the resolution applicant. Hence, imposing travel ban on the petitioner was illegal and would violate Article 21 of the Constitution of India.

6. Learned Counsel Sri B.Jitender, representing respondent Nos.1 to 6 submitted that at the instance of Respondent Nos.7 and 8, a Look Out Circular (LOC) was issued against the petitioner due to which the petitioner was stopped from travelling outside the country.

7. Learned Standing Counsel for the respondent Nos.7 and 8 submitted that on the request of GVR Infra Projects Limited, the erstwhile Vijaya Bank which was now merged with Bank of Baroda had sanctioned fund based and non-fund based credit facilities in consortium with individual exposure of Rs.250,03,49,427.18 (Rupees Two Hundred and Fifty Crores Three Lakhs Forty Nine Thousand Four Hundred Twenty Seven and Paise Eighteen only). The said facilities were secured by the personal guarantees

of promoters of the company including the petitioner herein vide Deed of personal guarantee dated 18.05.2017. The company defaulted in making payments to the bank and its account was classified as an NPA w.e.f 28.09.2016. Subsequently, the erstwhile Vijaya Bank invoked the personal guarantees vide legal notice dated 25.08.2018 along with other consortium members against the company and its guarantors under SARFAESI Act, 2002 and RBD Act, 1993 before Debt Recovery Tribunal at Chennai. The said application was admitted vide orders dated 15.10.2018 and Corporate Insolvency Resolution Process of the company was initiated. The resolution plan submitted by UV ARC Ltd., together with WI Infrastructure Private Limited was approved by the NCLT vide its order dated 20.07.2020. as per the resolution plan, the respondent received an amount of Rs.6.24 Crore including the amount received against assignment of debt along with all the rights and security interest in the assets collateralized by the securities and was entitled to receive an amount of Rs.17.6 Crores over a period of two years as against total dues of Rs.250.03 Crores as on 15.10.2018. After adjusting the said dues, the outstanding amount as on 23.09.2021 was Rs.226.02 Crores. As per the settled legal position, the liability of borrower and guarantor were co-extensive, as such, the 8th respondent was continuing recovery action

against the personal guarantors of the company including the petitioner herein for recovery of balance outstanding amount of Rs.226.02 Crores. The 8th respondent made request for opening of LOC as per office memorandum issued by the Government of India. Having evaded payments to the bank and attempting to flee the country, the petitioner could not claim that his rights were violated. The bank had taken action as per the guidelines of Government of India to protect public money. The action by the bank to safeguard its economic interest does not amount to violation of petitioner's fundamental rights and prayed to dismiss the petition.

8. Perused the record and the office memorandum issued by the Government of India.

9. It was not in dispute that GVR Infra Projects Limited had taken loan of Rs.250.03 Crores from the erstwhile Vijaya Bank which was now merged with Bank of Baroda, Respondent Nos.7 and 8 herein. It was also not disputed by the petitioner that the said loan was secured by him by way of personal guarantee dated 18.05.2017 along with other promoters of the company and that the company defaulted in making payments to the bank and the account was classified as NPA and the erstwhile Vijaya Bank had

initiated recovery action against the company and its guarantors by initiating proceedings before the Debt Recovery Tribunal-I Chennai. It was also not in dispute that one of the creditors of the company filed an application under Section 7 of the Insolvency & Bankruptcy Code, 2016 before NCLT, Chennai and insolvency resolution process was initiated and a resolution plan was submitted and as per the resolution plan, the resolution applicant UVS Reconstruction Company Ltd and WS Structures Private Limited consortium had taken over the management of the company.

10. The contention of the petitioner was that as the entire loan amount was covered under the resolution plan, the petitioner was in no manner connected with the company. The contention of the learned standing counsel for respondent Nos.7 and 8 was that taking over of the company by Resolution Applicant pursuant to Corporate Insolvency Resolution Process would not absolve the personal guarantor of his liability, as the terms of the guarantee would make it clear that the liability of the guarantors under the guarantee were not affected by the acquisition of the borrower pursuant to any law, as such, the petitioner was liable for payment of Rs.226.02 Crores. The respondent got issued Form B notice under Section 95 of the Insolvency and Bankruptcy Code to all the

personal guarantors of the company including the petitioner to initiate personal insolvency proceedings and were in the process of filing insolvency application before NCLT, Chennai. The petitioner owed huge money of Rs.226.02 Crores which was public money and was aware of the legal proceedings against him and despite repeated requests and demand to pay the amount, he and was avoiding payment to the bank and the bank apprehended that the petitioner was attempting to flee the country to escape from legal process and as such recommended for opening of LOC against the guarantors including the petitioner herein, in order to recover the public money and to protect the economic interest of the country.

11. On perusal of the office memorandum dated 12.10.2018 issuance of Look Out Circular (LOC) was amended including the Chairman (State Bank of India)/Managing Directors/Chief Executive of all other Public Sector Banks in the list of officers who could make request for opening of LOC. The amendment was made to the Office Memorandum No.25016/31/2010-IMM, dated 27.10.2010.

12. Learned counsel for the petitioner relied upon the judgment of the High Court of Bombay in Om Prakash Bhatt v. State of Maharashtra reported in 2021 (2) AIR Bom.R (Crl) 638 wherein it was held that :

“...Petitioner not aware about any Lookout Circular (LOC) issued against him and basis of same – Petitioner not having arraigned as accused for cognizable offence and was merely called for questioning only once by CBI in connection with case of Kingfisher Airlines, travel restrictions could not have been imposed upon him – Petitioner entitled to travel abroad for his personal and professional obligations with certain conditions.”

In the said case, it was also observed that :

“...it was not the case of Authorities that any amounts are to be recovered from petitioner for which Chairman of SBI or any other public sector bank has made request for issuance of LOC...”

13. But, in the present case a public sector bank had made request for issuance of LOC as huge amount of Rs.226.02 Crores was due and the petitioner had given a personal guarantee to the said outstanding amount.

14. Learned counsel for respondent Nos.7 and 8 relied upon the judgment of the High Court of Delhi (Division Bench) in ICICI Bank Limited v. Kapil Puri and others reported in 2017 LawSuit (Del) 899.

In the said case, the deed of guarantee, the term of contract stipulated that without the permission of ICICI, the respondents 1 and 2 should not leave India for employment or business or for long stay at abroad and the DRT without taking into consideration, the said terms, had given a blanket order directing the respondents 1 and 2 that whenever they would go out of India, they should inform the Tribunal and seek its permission, hence set aside the same.

15. Learned counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court in *Satwant Singh Sawhney v. D. Ramaratnam*, Assistant Passport Officer, New Delhi reported in AIR 1967 SC 1836 wherein it was held that:

“The right to visit 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.”

16. After the said decision was rendered the Passport Act 1967 was enacted by Parliament and it laid down the circumstances under which passport may be issued or refused or cancelled or impounded and also prescribed the procedure for doing so.

In *Maneka Gandhi vs Union of India* (1978) 1 SCC 248 a Seven Judge Bench of the Supreme Court declared that:

“No person can be deprived of his right to go abroad unless there is a law enabling the State to do so and such law contains fair reasonable and just procedure.

In *Karti P Chidambaram v. Bureau of Immigration*, (2018) SCC Online Madras 2229 it was held that :

“Legality and / or validity of an LOC is dependent upon the circumstances prevailing on the date on which the request for issuance of the LOC has been made.”

17. As per the Office Memorandum dt. 12.10.2018, the conspectus of the issuance of the LOC was broadened to include the economic offenders hampering the interests of India and as such, a lookout circular can be issued in larger public interest. As the respondent Bank initiated recovery proceedings against the petitioner and if lookout circular is lifted and if the petitioner disappears, the recovery proceedings would be brought to standstill and recovery of crores of public money would become impossible. Hence, it is considered fit to dismiss the petition.

18. In the result, the Writ Petition is dismissed. No order as to costs.

19. Miscellaneous Petitions pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

June 06, 2022
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