

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.15368 OF 2023

Between:

Mathukumilli Sri Mani

... **Petitioner**

And

Union of India & others

... **Respondents**

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

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

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No.15368 OF 2023****% 03.06.2024****Between:**

Mathukumilli Sri Mani

... Petitioner**And**

\$ Union of India & others

... Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner

: Mr.Pasham Mohith

^ Counsel for Respondents: Mr.Gadi Praveen Kumar,
Ld.Deputy Solicitor
General of India for R1,
R3 to R5
Ms.V.Dyumani, for R2

? Cases Referred:

- (1) Judgment dated 06.03.2024 in WPA No.25242 of 2023
- (2) Judgment dated 09.06.2023 in WPA No.22748 of 2022
- (3) 2023 SCC Online Del 8349
- (4) AIR 1978 SC 597
- (5) 2019 (2) SCC Online SC 2048
- (6) AIR 1967 SC 1836
- (7) Judgment dated 31.01.2023 in WPA No.6670 of 2022
- (8) 2022 SCC on P&H 3408
- (9) 2022 SCC Online Cal.3536
- (10) 2022 SCC Online P& H 1176
- (11) 2013 SCC online Mad 4092
- (12) 2022 SCC Online Del 961
- (13) 2021 SCC online Tri 143
- (14) 2018 SCC online Mad 2229
- (15) Judgment in W.P.No.719 of 2020

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 15368 of 2023****ORDER:**

Heard Mr. Pasham Mohith, learned counsel appearing on behalf of the Petitioner, Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India appearing on behalf of Respondent Nos.1, 3 to 5, and Ms.V.Dyumani, learned Standing Counsel appearing on behalf of respondent No.2.

2. Petitioner approached the Court seeking prayer as under :

"...to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the actions of the Respondents in issuing and keeping a Look Out Circular (LoC) pending against the Petitioner as illegal, arbitrary and unconstitutional and set aside/ quash the same and consequently direct the Respondents not to obstruct/restrain the Petitioner from travelling to and from from the country vide Passport No N4236897 and pass..."

PERUSED THE RECORD :

3. The counter affidavit has been filed by the Respondent – Bank and the relevant paragraph Nos.8, 11, 12, 13, 14 and 15, are extracted hereunder:

"8. It is submitted that the Government of India, Ministry of finance, Department of Financial Services issued proceedings no.25016/31/2010, dated 27.10.2010 the guidelines for issue of Lookout Notice in respect of Indian Citizens and Foreigners. Subsequently vide office memorandum dated 04.10.2018 the Government of India empowered the Bank Officers to issue the Lookout Notice. A copy of the office memorandum is filed herewith. The clause no. 1 (d) & 2 of the Office Memorandum is reproduced is under.

(d) It is therefore, clear that the guidelines enable LOCs against persons who are fraudsters/persons who wish to take loans, wilfully default/launders money and then escape to foreign jurisdictions, since such actions would not be in the economic interests of India, or in the larger public interest.

(2) Therefore, as suggested by CBI, MHA is requested to kindly amend the OM dated 27.10.2020 and include in the list of authorities under Paragraph 8 (b) another category, as follows:

"(Xlv) Chairman (State Bank of India)/Managing Directors and Chief Executive Officers (MD& CEOS) of all other Public Sector Banks"

11. It is submitted that though the crystallized liability of the borrower was settled under OTS, the bank guarantees issued by the Respondent on behalf of M/s. Progressive - Hagleig Joint Venture in favour of M/s Tanzania National

Roads Agency for "The Upgrading of Namtumbo - Tunduru Road to Bitumen standard LOT A: Contract No. TRD/HQ/1039/2010/11 Namtumbo - Kilimasera Section (60.70 Km)" and "The Upgrading of Namtumbo Tunduru Road to Bitumen Standard; LOT B: Contract No TRD/HQ/1040/2010/11 Kilimasera Mtemanga Section (68.20 Km)" to the tune of USD 2,18,21,972.00 (approx. Rs.180.43Crore) These BGs have expired during Sep'2013 & June'2014. The Borrower was awarded 3 Road Projects in Tanzania and subsequently all 3 projects terminated on 27.12.2012 citing the reasons for Slow Progress/Borrower failed to perform the works as per Contract. It is submitted that the beneficiary, vide their letters dt.14.01.2013 had submitted invocation letters. But the Borrower has approached Courts and obtained stay order on invocation of BGs by Banks and court also directed the Respondent Bank not to invoke the BGs till the matter is disposed off. Hence, the Respondent has not invoked the BGs. Beneficiary vide letter dt. 03.10.2022, again submitted the invocation letters stating that vide order dated 13.09.2022 court has vacated the stay order.

12. It is submitted that the Borrower vide their letter dt. 12.10.2022 informed that the cases before Hon'ble High Court of Telangana Hyderabad are still pending for final adjudication and final arbitration award copies, not received and requested not to honour the payment. The Borrower has informed that they filed another application before the Hon'ble High Court of Telangana seeking stay on the invocation of the BGs. The Hon'ble High Court vide

order date 08.11.2022 in International Commercial Arbitration passed a status quo Order which is continuing till date. The case was last heard on 16.06.2023 where the Hon'ble court directed that "Interim order, granted earlier, to continue till the matter is listed before appropriate bench". It is submitted that the BG invocation matter is sub judice and involves huge amount USD 2,18,21,972.00 (approx. Rs.180.43Crore). It is submitted further that the securities available are not sufficient to cover the BG exposure.

13. It is submitted that the Petitioner is frequently visiting abroad which is allowed by the Hon'ble court by LOC suspensions for specific period. So, there is an apprehension that the Petitioner may flee out of India so as to be out of reach of the law of the country. Presently to protect and serve the interest of the Respondent bank, the Competent authority of the bank has continued LOC on the Petitioner.

14. It is submitted that the Petitioner is a guarantor for the said credit facilities and the Respondent apprehends that at any moment, the Petitioner may leave the country with malafide intention to avoid payment to the Respondent Bank. If the Petitioner is allowed to leave the country, it will cause grave injustice and irreparable loss to the Respondent Bank. It is submitted that the Respondent is a Public Sector bank and money mobilized from the public by way of deposits is lent to the borrower.

15. It is incorrect to state that the Petitioner does not fall in any of the categories laid out in the guidelines issued by the Ministry of Home Finance and the Petitioner has not defaulted on any dues that are owed to the Respondent Bank and it will not justify the issuance of LOC against the Petitioner. It is incorrect to state that the Respondent Bank issued notice with oblique motive to harass the Petitioner. It is humbly submitted that the Respondent Bank is interested to recover its dues and it has no intention to harass the Petitioner. It is humbly submitted that the Judgements referred by the Petitioner are not relating to the notices issued by bank and facts of the said cases and the facts of this case are entirely different."

4. The case of the Petitioner in brief as per the averments in the affidavit filed by the Petitioner in support of the present writ petition, is as under :

i) It is the case of the petitioner that, M/s. Progressive Constructions Limited (hereinafter referred to as 'Borrower Company') is a company incorporated under the provisions of the Companies Act and is engaged in the business of infrastructure construction and developmental activities, since 1966. During the course of its business, the Borrowing Company had availed loan facilities from Andhra Bank, Sultan Bazar, Hyderabad. Further, the Borrowing Company had also availed another loan from Corporation Bank, MG Road Branch amounting to Rs. 105 Crores.

In furtherance of the said loans, the Petitioner herein stood as a guarantor to the Borrower Company.

ii) Subsequently, the Borrower Company had approached Andhra bank for a One Time Settlement and the same was agreed for INR 54 Crores. The Borrower Company repaid an amount of INR 10 crores. However, subsequently, the said amounts could not have been paid and the OTS proposal stood cancelled.

iii) In the year 2020, both Andhra Bank and Corporation Bank were merged with Union Bank of India, i., the 2nd Respondent herein and the Borrower Company vide a Letter bearing No. PCI/HO/UBI/OTS/FY 2022-23/003 dated 06.10.2022 put forth a request before the 2nd Respondent seeking for a One Time Settlement offer as against both the loans availed by them and proposed to pay an amount of Rs. 95 crores towards the same. On 02.11.2022 a meeting was conducted by the officials of the 2nd respondent and it had been agreed between the parties that the total OTS amount payable was agreed to be Rs.121 crores.

iv) Subsequently, the Borrower Company had made a payment of INR Rs.90 crores to the Bank and the balance amount of Rs. 31 Crores was due to be paid by the company on or before 30.06.2023 and the same was acknowledged by the 2nd respondent vide communication dated 14.12.2022.

v) Pursuant to the default by the Borrower Company in repayment of the loans, the 2nd Respondent had caused the issuance of an LOC against the guarantors of the said company, including the Petitioner herein and that the Petitioner herein is only a guarantor to the said loan availed by the borrower company and is not a beneficiary to the loan. The 2nd respondent herein has not intimated the petitioner that the Respondent has requested for issuance of LOC against the petitioner. The Borrower Company had also addressed a letter dated 09.02.2023 to the 2nd respondent requesting the authorities to withdraw the LOC issued in the name of the petitioner.

vi) It is the case of the petitioner that, on 28.03.2023 the Petitioner had paid amounts to the tune of Rs. 15,00,00,000/- vide RTGS transfer No. SBINR52023032840203618 and INR Rs. 16,17,45,000/- vide RTGS transfer No. SBINR52023032840188445. Therefore,

the Borrowing Company had remitted a sum of INR Rs. 31,17,45,000/- which included amounts payable towards interest and other legal expenses to the 2nd Respondent and the same was duly intimated to the 2nd Respondent that the borrowing company had paid a sum of Rs. 31,17,45,000/- towards outstanding OTS dues through letter dated 28.03.2023.

vii) As things stood thus, the Borrower Company made a request to the Respondent bank to lift the LOC issued against its guarantors. However, the Respondent Bank had issued letter dated 01.06.2023 intimating the Company that it has not considered request for withdrawal of LOC issued against the promoters' guarantors/directors on flimsy grounds that non-fund-based credit limits still exists in the account. As on date, the borrower company has fully discharged its obligations towards any outstanding liabilities and no further dues are payable by the Company to Respondent Bank. Therefore, the LOC pending against the Petitioner is illegal and is liable to be quashed. Aggrieved by the action of the respondents in not lifting the LOC against the petitioner, the present Writ Petition is filed.

5. The learned counsel appearing on behalf of the Petitioner mainly puts-forth the following submissions :

(i) In the event of encashment of Bank Guarantees and subsequent crystallization of debt against the borrowing company and further upon any default of the borrowing company to repay such a debt would then bring upon any liability on the guarantors, including the Petitioner.

(ii) While entering into One Time Settlement, there was a clear understanding between the parties that the OTS was not only with regards to the outstanding amounts towards the "Fund Based Facilities", but also with regards to the terms and conditions for the Non-Fund based Credit Facilities that remained, i.e. Bank Guarantees.

(iii) No new circumstances have arisen since then for any recovery or action to be taken by the Bank against the Company and its Guarantors.

(iv) Clause No. 6 of the OTS letter clearly contemplates that the bank shall open a fresh bank account separately for encashed BGs and then declare them as NPA and thereafter initiate proceedings under the SARFESI Act seeking recovery by way of the collaterals already furnished for the bank guarantee and as per Clause 7 and 13 of the OTS letter itself, it is clearly contemplated that the debt should first be crystallized in favour of the borrower company and after the borrower company defaults to pay, fresh recovery actions will be initiated.

(v) Admittedly, in the present case, none of the proceedings as contemplated under Clause 6, 7 or 13 have been initiated since no occasion has arisen for the Respondent bank to initiate such proceedings. Therefore, the submission of the bank that the Bank Guarantees are still existing and based on assumption that the borrowing company will default and thus, the present LOC must continue is liable to be rejected and the LOC is liable to be quashed

(vi) Assuming that there will be default in payment of the bank guarantee amounts by the borrowing company, the 2nd Respondent bank can initiate appropriate proceedings before the DRT, NCLT or any other forum and can seek recovery of monies by pressing into service, the collaterals given to the bank towards the bank guarantees. Therefore, in light of the same, there shall be no crystallization of liability in favour of the borrowing company, much less the guarantors, including the petitioner.

(vii) Further, it was the Respondent Bank itself who had prescribed the security to be furnished for securing the remaining Non-Fund based Credit facility vide OTS letter dated 14.12.2022 and the same was accepted by the Borrowing Company. Therefore, the Respondent Bank has always admitted sufficiency of the collaterals furnished by the Borrowing Company for securing the fund-based liability. However, the Respondent Bank failed to substantiate as to how the collaterals are not sufficient and up to what extent the bank guarantees amounts are

secured. Therefore, from the above, it is submitted that there exists no liability on the borrower company and hence no liability can be fasted on the guarantor, i.e. the Petitioner herein. Hence, the contention of the Respondent bank is far-fetched and is merely based on assumptions. Such contention is therefore liable to be rejected.

(viii) No criminal action was initiated against the Borrowing Company upon the alleged fraudulent classification of the bank account as contemplated under Frauds classification and reporting by commercial banks and select FIs directions dated 01.07.2016.

(ix) As per the Counter affidavit filed by the Respondent Bank in the present Writ Petition, the classification of the bank account of Borrowing Company as fraudulent is based on forensic audit report. However, the said report is not enclosed with the counter and the Counter selectively extracts one para from the forensic audit report.

(x) In the present case, the Petitioner has settled the outstanding amounts with all of its banks, including the 2nd Respondent bank. Therefore, there is no outstanding claim by any financial institution. Moreover, the Petitioner had fully repaid amounts due to the Respondent Bank by the way of One Time Settlement.

(xi) It is further the case of the petitioner that, the petitioner had neither challenged nor disputed the authority of the 2nd Respondent Bank to seek origination of

LOC as per the office memorandum. Further, the action of the 2nd Respondent bank in seeking to maintain the present LOC under the guise of the alleged non-fund based facilitates (as contended by the bank by its letter dated 01.06.2023) is also contrary to the provisions of law.

(xii) Mere issuance of LOC itself is violative of Fundamental Rights that applies unreasonable restriction on the travel of the Petitioner though the Respondent seeks to confine its argument to clause (I) of Office Memorandum dated 01.07.2022 whereby intimation of travel is sought by them. As per clause (I) of Office Memorandum dated 01.07.2022, intimation of travel is sought which clearly impinges upon the fundamental right of the Petitioner guaranteed under Article 21 of the Constitution of India which guarantees the right to travel. Therefore, the said actions would also be in violation of Article 14 and 19 of the Constitution of India.

(xiii) The 2nd Respondent bank had contended that it does not have any objection if the Petitioner is permitted to travel, while on the other hand the Respondent contends that LOC should be continued so that the Bank is intimated of the travel of the Petitioner. However, the 2nd Respondent bank failed to intimate this Court about any outstanding crystalized liability against the Petitioner. Therefore, for the said reasons, the contention of the 2nd Respondent bank that it can request for opening of

an LOC at any point in time is illegal, arbitrary and contrary to law.

(xiv) To the extent of fund-based liability default, One Time Settlement was entered into between the borrowing company, the respondent bank along with the bank guarantees and amounts have been paid. Therefore, the Respondent Bank was aware that there was no default with respect to non- fund-based liability thus, OTS Letter dated 01.06.2023 factors in procedure shall be followed in case there is a default with respect to non-fund based liability.

6. The learned counsel appearing on behalf of the petitioner placed reliance on few judgments of the Apex Court and other High Courts and contended that the writ petition should be allowed as prayed for.

The following judgments relied upon on behalf of the petitioner that:

(1) Judgment dated 06.03.2024 in WPA No.25242 of 2023 in "Sunil Krishna Khaitan Vs. Union of India and Others", in particular, at paras 29, 33 and 34, read as under:

"29. However, none of the above grounds qualify as sufficient for a request to issue LOC against the petitioner within the purview of the extant Office Memoranda of the MHA governing the issuance of LOCs.

33. In view of the above consideration, the request made by the Bank for issuance of LOC against the petitioner is vitiated and *de hors* the MHA guidelines in that regard, as contained in the various Office Memoranda issued by the MHA from time to time.

34. Consequently, the LOC issued merely on the premise of such request also cannot withstand the scrutiny of judicial review."

(2) Judgment of the Calcutta High Court dated 09.06.2023 in WPA No.22748 of 2022 in "Mannoj Kumar Jain & Another Vs. Union of India and Others", in particular, relevant portion at paras 10 and 12, read as under:

"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.

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.

(3) The Judgment of the Apex Court reported in 2023 SCC Online Del 8349 in "Hulas Rahul Gupta Vs. Bureau of Immigration and Others", in particular, relevant portion at paras 19, 21, 22 and 23, read as under:

"19. It is now a settled law that opening of an LOC has a very serious effect on a person's fundamental right to travel abroad which is on the face of Article 21 of the Constitution of India and the said right to travel cannot be

curtailed without following due process. It is also settled law that recourse to LOC can be taken by the Investigating Agencies primarily when there is a cognizable offence under IPC or in any other penal laws or where the accused is deliberately evading the arrest and not appearing before Court despite summons being served on him or issuance of non-bailable warrants or when other coercive measures have been taken by the Court to ensure his appearance in the Court and that there is likelihood of the accused to leave the country to evade such trial or arrest.

21. ...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."

22. A perusal of the aforesaid judgments also indicates that merely stating that a person's travel would become detrimental to the economic interests of the country on the ground of misappropriation of money cannot be a reason to open an LOC curtailing a person's right to travel.

23...83. The term 'detrimental to economic interest' used in the OM is not defined. Some cases may require the issuance of a LOC, if it is found that the conduct of the individuals concerned affects public interest as a whole or has an adverse impact on the economy. Squandering of public money, siphoning off amounts taken as loans from banks, defrauding depositors, indulging in hawala transactions may have a greater impact as a whole which may justify the issuance of LOCs. **However, issuance of LOCs cannot be resorted to in each and every case of bank loan defaults or credit facilities availed for business etc. Citizens ought not to be harassed and deprived of their liberty to travel, merely due to their participation in a business, whether in a professional or a non-executive capacity. The circumstances have to reveal a higher gravity and a larger impact on the country."**

7. Learned counsel for the Respondent – Bank mainly puts forth the following submissions:

(i) The Bank Guarantees given by the Petitioner had been invoked and the same are pending for encashment.

(ii) The respondent bank herein is holding the money as a custodian and therefore, there may be a liability arising in favour of the respondent bank, in case the Borrowing Company defaults in repayment of the monies and hence the Guarantors may then become liable. Therefore, in order to protect the respondent bank in case of such an eventuality, the LOC must be continued.

(iii) The Account of the Borrowing Company was declared fraudulent and owing to the same the LOC opened against the Petitioner must be continued.

(iv) If the petitioner leaves the country to avoid payment of dues, the same would be detrimental to economic interest of the country.

(v) The Office Memorandum was watered down and banks were allowed to open LOC. However, in the present case the Respondent Bank here in is seeking intimation of travel in terms of Office Memorandum dated 01.07.2022 of the petitioner and thus, there is no violation of fundamental rights of the petitioner.

Based on the aforesaid submissions the learned Counsel for the Respondent-Bank contends that the Writ Petition needs to be dismissed.

8. Learned counsel for the Respondent – Bank relied upon the following judgments:

(1) **Bavaguthuraguram Shetty Vs. Bureau of Immigration Ministry of Home Affairs, Government of India and others in W.A.No.315 of 2021.**

(2) **Garikapati Venkateswara Rao Vs. Union of India in W.P.No.6892 of 2022.**

(3) **Haridas Ramesh Vs. The Union of India and others in W.P.No.44404 of 2022.**

DISCUSSION AND CONCLUSION:

9. A bare perusal of the averments made in the counter affidavit filed by the Respondent – Bank clearly indicates the reasons for opening the Look Out Circular against the petitioner dated 06.05.2022 and continuing the same indefinitely are as under:

- (i) To protect and serve the interest of the Respondent bank, the Competent authority of the bank has continued LOC on the Petitioner.

(ii) The petitioner is a guarantor for the said credit facilities and the Respondent apprehends that at any moment, the Petitioner may leave the country with malafide intention to avoid payment to the Respondent Bank. If the Petitioner is allowed to leave the country, it will cause grave injustice and irreparable loss to the Respondent Bank.

(iii) The Respondent Bank is interested to recover its dues.

(iv) The Petitioner is frequently visiting abroad, so there is an apprehension that the Petitioner may flee out of India so as to be out of reach of the law of the country.

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

11. The Apex Court in “MANEKA GANDHI VS. UNION OF INDIA AND ANOTHER” reported in AIR 1978 SC 597, and in “SATISH CHANDRA VERMA v. UNION OF INDIA (UOI) AND OTHERS” reported in 2019 (2) SCC Online SC 2048 very clearly observed that the right to travel abroad is a part of a personal liberty and the right to possess a passport etc., can only be curtailed in accordance with law only and not on the subjective satisfaction of anyone. **The procedure must also be just, fair and reasonable.**

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

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

14. It is observed at paras 62 to 66 in the Judgment dated 31.01.2023 in W.P.A.No.6670 of 2022 in the said

case of “Vishambhar Saran v. Bureau of Immigration” as under:

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

63. A bald assertion that the petitioner's departure would be detrimental to the economic interest of the country and the LOC must be issued in larger public interest, cannot be due satisfaction of the existing pre- conditions required to be fulfilled before the originator can make such a request. The existence of such pre-conditions and the manner in which the action of the petitioner fell within the exceptions or had affected the country's economic interest had to be demonstrated from the records. The apprehension should be well-founded, backed by reasons and also supported by evidence. The decision of Karnataka High Court in Dr. Bavaguthu Raghuram Shetty (supra) also does not apply in the facts of this case. With due respect, this Court does not agree with the conclusions arrived at in the said judgment, especially with regard to the comparison between the quantum of the loan and the annual budget of a state. Whether the outstanding loan with interest, would be more than the budgetary allocation of a

particular state or not, in my opinion, is not one of the parameters to be considered.

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

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

66. Accordingly, the writ petition is allowed.

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

“(a) The action of the respondent No.2 Bank in seeking issuance of a LoC to prevent the petitioner from leaving the country on the ground that she was a guarantor to respondent No.5’s loan and there was more than Rs.100 crores owed to respondent No.2 is arbitrary, illegal and violative of Article 21 of the Constitution of India and accordingly the same is set aside.

16. In the judgment dated 07.11.2022 in W.P.A.No.9007 of 2022, in Suchita Dinodya v Union of India reported in

2022 SCC Online Cal.3536 the High Court of Calcutta held as under:

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

17. In the judgment dated 02.06.2022 in Poonam Paul v Union of India and others reported in 2022 SCC Online P&H 1176 the High Court of Punjab and Haryana at Chandigarh, dealt with a case of issuance of circular and observed as under:

“Merely looking at the quantum of loss caused to a banker, it cannot be presumed that there was a fraud committed by the borrower/guarantor more so when no criminal case alleging fraud has even been filed against the borrower/guarantor suspicion cannot take the place of proof and further clearly observed “the action of the respondent No.2 Bank in seeking issuance of an Loc to prevent the petitioner from leaving the country on

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

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

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

10. But, the fundamental right to move anywhere including foreign countries could be regulated. Where persons involved in criminal cases are wanted for investigation, for court cases, persons, who are

anti-social elements their movements can be regulated. Need may arise to apprehend persons, who have ability to fly, flee away the country. So, L.O.C. orders are issued. It is an harmonious way out between a person's fundamental right and interest of the society/state. But, in any case, it must be fair and reasonable. It should not be indiscriminate without any reason or basis.

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

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

before the Investigation Agency and hence, no case is made out for issuing the impugned LOC.

13. The impugned LOC is accordingly liable to be set aside as being devoid of merits as well as for infringing the Human right of the Petitioner to travel abroad and to exercise her freedom of speech and expression. For the reasons discussed above, the impugned LOC is set aside and quashed.

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

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

"73. As observed above, the issuance of Look Out Circulars is governed by executive instructions as contained in the Office Memoranda Nos.25022/13/78-F1

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

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

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

23. This Court opines that the pleas put forth by the 2nd respondent i.e., Union Bank of India in the counter affidavit for opening the LOC against the petitioner and continuing the same indefinitely cannot be the grounds, since there is no plea in the counter affidavit filed on behalf of the 2nd respondent that the sovereignty or security or integrity of India would suffer *ex facie* if the petitioner leaves India. The plea in the counter affidavit that the Respondent bank is interested to recover its dues cannot be the reason since the Respondent Bank cannot issue the LOC against the petitioner herein as a recovery mechanism for outstanding monetary dues only with a view to that repaying the dues is best ensured if the petitioner remains within reach, i.e. in the territory of India, on the basis of apprehension that the Petitioner would flee the country and not return so as to be out of reach of the law of the country, as specifically stated at Para 13 of the counter affidavit filed by the Respondent bank and the respondent Bank cannot be unilateral,

irrational while issuing LOC against the petitioner and continue the same for years together.

24. The Circular Memorandum dated 01.07.2022, in particular, Sub-paras I, J and L, read as under :

“(I) In cases where there is no cognizable offence under IPC and other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The Originating Agency can only request that they be informed about the arrival/ departure of the subject in such cases.

(J) The LOC opened shall remain in force until and unless a deletion request is received by BoI from the Originator itself. No LOC shall be deleted automatically. Originating Agency must keep reviewing the LOCS opened at its behest on quarterly and annual basis and submit the proposals to delete the LOC, if any, immediately after such a review. The BOI should contact the LOC Originators through normal channels as well as through the online portal. In all cases where the person against whom LOC has been opened is no longer wanted by the Originating Agency or by Competent Court, the LOC deletion request must be conveyed to BoI immediately so that liberty of the Individual is not jeopardized.

(L) In exceptional cases, LOCs can be issued even in such cases, as may not be covered by the guidelines above, whereby departure of a person from India may be declined

at the request of any of the authorities mentioned in clause **(B) above, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India** or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public interest at any given point in time.

25. A bare perusal of Sub-para I of the guidelines dated 01.07.2022 (referred to and extracted above) specifically provide that in case where there is no cognizable offence, LOC subject cannot be prevented from leaving the country and the originating agency can only request that they be informed about the arrival/ departure of the LOC subject. **In view of the fact as borne on record that as on date no criminal proceedings are initiated against the Petitioner by the Respondent Bank, the LOC issued against the Petitioner cannot be continued, the Respondent Bank can only request that they be informed about the Petitioner's arrival/ departure.**

26. A bare perusal of Sub-para J of Circular Memorandum dated 01.07.2022 (referred to and extracted above) mandates that a LOC shall remain in force until and unless a deletion request is received by the Bureau of Immigration from the Originator and that no LOC shall be deleted automatically. Although these clauses cast an obligation on the originating agency to review the LOC on a quarterly/annual basis and submit proposals for deletion of the same, the same however is not followed seriously by the authorities concerned. In the present case the LOC have been issued in the years 2021-2022 and since then they have been alive till as on date for no valid reasons.

27. A bare perusal of Sub-para L of the circular dated 01.07.2022 (referred to and extracted above) clearly indicates that LOCs could be issued in exceptional cases where the departure of the person concerned will be detrimental to the sovereignty, security and integrity of India or is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or that person may potentially indulge in an act of terrorism or offence against the State, if such person is allowed to leave or where travel ought not be permitted in

the larger public interest at any given point of time. This Court is of the firm opinion that lookout circular can be issued on the specific grounds stated in Sub-para L of the Circular Memorandum dated 01.07.2022 (referred to and extracted above). The ground used against the Petitioner herein is evidently economic interests of India. There is no evidence on record to prove that the Petitioner herein leaving the country for a specific period of time would affect the economic interests of India, in view of the fact as borne on record that the Petitioner has not been declared as fraudster or money launderer.

28. The look out circular issued against the petitioner is contrary to sub-para I, J and L of the Circular Memorandum dated 01.07.2022 and therefore, this Court opines that the Respondent Bank cannot have any continuing reasons to interfere with the Petitioner travel outside the country. This Court is of the firm opinion that there is no reason to allow the impugned lookout circulars issued against the Petitioner (Ref.No.25106/10/2017-Imm(Pt), herein by the Respondent Bank to remain or be used against the Petitioner in the absence of any

acceptable apprehension let alone evidence shown on behalf of the Bank.

29. In the Judgment of the High Court of Judicature at Bombay reported in "Viraj Chetan Shah v. Union of India and another" and connected matters in W.P.No.719 of 2020, in particular at para 176, it is observed as under:

"176. The LOC all fail both the *Wednesbury* and proportionality tests. In their origins and issuance they are ex facie arbitrary, unreasonable, unguided and unsupervised; and they are wholly disproportionate in what they seek to do and for what reason."

30. Taking into consideration the aforesaid facts and circumstances of the case and as per the discussion and conclusion as arrived at as above and duly taking into consideration the view, the observations and the law laid down by the Apex Court and various other High Courts in various judgments (referred to and extracted above), and the averments of the Respondent No.2 in the counter affidavit (referred to and extracted above), the Writ Petition is allowed as prayed for. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 03.06.2024

Note : L.R. Copy to be marked.
B/o. *Yvkr*