

**In The High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 105 of 2020

Mritunjay Singh

Vs.

Union of India and others

For the petitioner	:	Mr. Ranajit Chatterjee, Mr. Dipak Ranjan Mukherjee, Mr. N. Banerjee, Mr. Arijit Dey
For the respondent No.2	:	Mr. Avinash Kankani
For the respondent Bank-SBI	:	Mr. Soumya Roy, Mr. Santosh Mahato
Hearing concluded on	:	13.04.2021
Judgment on	:	20.04.2021

The Court:

1. The present challenge is against a Look-Out Circular (LOC) issued against the petitioner. The petitioner is a Captain of the Merchant Navy and stays on the high seas for the most part of the year, since 2008.
2. The petitioner was a Director of Kaushik Global Logistic Limited (KGLL) between March 19, 2009 and July 11, 2012. The said company defaulted in repayment of a term loan availed from the State Bank of India (SBI), Alipore Branch, Kolkata. A criminal case was initiated by the Central Bureau of Investigation (CBI), in which the petitioner was one of the accused. The CBI Court, *vide* order dated July 22, 2016, discharged the writ petitioner on the finding that the petitioner was not involved in the day-to-day activities of the company

and there was no material sufficient to establish, even *prima facie*, the charges against him.

3. The petitioner denies being a guarantor as per Form C5A dated February 7, 2013, when a fresh letter regarding grant of individual limits within the overall limit was issued by the guarantors for KGLL, which did not include the petitioner's name as a guarantor. It is the further case of the petitioner that the Bank has an award against the borrower-Company passed by the Debts Recovery Tribunal under the SARFAESI Act.
4. The order of the CBI Court was upheld by the Sessions Court on July 7, 2017 in Criminal Revision Case No. 186 of 2016. CRR No. 1831 of 2017 was filed by the CBI against such order in this Court, in connection with which an application for condonation of delay remains pending.
5. In addition, a proceeding under the Prevention of Money Laundering Act (PMLA), 2002 was also initiated against the petitioner by the Enforcement Directorate (ED), bearing OC No. 1139 of 2019. The Adjudicating Authority under the said Act ordered attachment of the movable and immovable assets of the accused-Company and the other accused persons, including the writ petitioner, on September 30, 2019. An appeal against the said order, preferred before the Appellate Tribunal, was admitted on January 22, 2020.
6. A previous writ petition filed by the petitioner against the ED culminated in a Division Bench order of April 22, 2019, granting the petitioner liberty to open a fresh bank account for credit of his salary for the maintenance of his family and himself.

7. Subsequently, the Immigration Authorities opened the impugned LOC on the basis of a request of the SBI dated January 17, 2020. The writ petitioner was detained at the Kolkata Airport on February 11, 2020, when the petitioner was going to take a flight to Bangkok for boarding a merchant vessel as Captain.
8. The reason for opening LOC, as discussed in the LOC itself as well as the request of the Bank is that the writ petitioner is a Director of KGLL, which had been identified to have committed fraud, by the Bank, on March 7, 2014. The petitioner argues that neither the LOC nor the request for it was furnished to the writ petitioner.
9. Learned counsel for the petitioner argues that the right to travel abroad is a fundamental right and, in the present case, the livelihood of the petitioner, who is a sailor, depends on overseas travel.
10. It is also contended that Section 10A of the Passports Act, 1967 is the only statute empowering the Central Government to suspend a passport or restrict overseas travel of a citizen and provides for a prior opportunity of hearing to the affected person. In the present case, no opportunity of hearing was given to the petitioner before issuance of the LOC.
11. It is further submitted that the ground for request to issue LOC was invalid on the date of the request, that is, January 17, 2020, since the writ petitioner had resigned as Director of KGLL as long back as on July 11, 2012.
12. It is submitted that no other reason for such request and the consequential issuance of LOC were disclosed either by the Bank or the Immigration Authorities.

13. The 2017 Amendment of the concerned Office Memorandum (OM) pertaining to LOCs cites exceptional circumstances detrimental to the economic interests of India as one of the grounds for issuance of LOC. Nothing has been brought on record by the respondents to demonstrate that the said criteria applied to the writ petitioner at all.
14. That apart, in view of the subsistence of the DRT Award against the borrower-Company and the Attachment Order passed regarding the petitioner's movable and immovable property by the Adjudicating Authority under the PMLA, passed at the behest of the ED, the debt-in-question is sufficiently secured.
15. On the basis of a fresh request by the Bank, as submitted by the respondents, the LOC under challenge was renewed on January 8, 2021, during pendency of the writ petition. However, since the veracity of the original LOC is challenged and no new ground has been cited, apart from the petitioner's alleged Directorship of the borrower-Company even in the renewal, the above arguments hold true in respect of such renewed LOC as well.
16. It is also submitted by learned counsel for the petitioner that the respondents cannot supply reasons *post facto* in their affidavit-in-opposition by alleging that the petitioner is also a guarantor in respect of the borrower-Company.
17. Learned counsel for the writ petitioner cites an unreported judgment rendered by the Delhi High Court on December 2, 2020 in *WP (C) 5382 of 2020 (Deept Sarup Aggarwal Vs. Union of India & Anr.)* for the proposition that unless reasons are disclosed in the LOC or for subsequent extension thereof which come within the purview of the

relevant Office Memoranda, no LOC can be issued. In the said case, as in the present, it is argued, mere mention of the power to issue LOC did not justify how the travel of the petitioner would in any manner prejudice the economic interests of the country.

- 18.** Learned counsel for the writ petitioner next places reliance on an unreported judgment of the Gujarat High Court rendered in *Special Civil Application No. 15328 of 2019 (Nimish Kalyanbhai Vasa Vs. Union of India)* and argues that in view of the petitioner therein having suffered a decree as guarantor to the principal borrower-Company and the petitioner had on several occasions travelled out of India, the Court proceeded on the presumption that no Look-Out Circular existed as on the relevant date.
- 19.** Learned counsel next relies on *UCO Bank Vs. Dr. Siten Saha Roy and others*, rendered by a Single Judge of this Court in RVW 23 of 2020, in connection with *WP No. 23412(W) of 2012*, wherein it was held, *inter alia*, that the "economic interests of India" could not be ascertained merely on the quantum of loan and is on a much higher footing, directly and adversely impacting the share market or the economy of the country as a whole, which would be jeopardized in the event the accused is permitted to travel abroad, to such an extent that it destabilizes the entire economy of the country. The said ground cannot be confined to individual loans on the basis of commercial transactions, it was held.
- 20.** Learned counsel appearing for the Union of India takes a rather neutral stand in submitting that the Immigration Authorities are bound by law to issue an LOC if so requested by a competent

authority, being the SBI in the present instance.

- 21.** Learned counsel appearing for the respondent no.3-Bank contends that the present liability of the borrower-Company is over Rs.144 crore. Learned counsel harps on the contention that the petitioner is also a guarantor of the Company, whose liability is co-extensive with the borrower.
- 22.** It is further submitted that the allegation of being a guarantor, made in paragraph no.20 of the affidavit-in-opposition of respondent no.3, was not dealt with in the relevant paragraph (paragraph no.27) of the affidavit-in-reply filed by the petitioner.
- 23.** Since, if the writ petitioner decides to flee the country, public money may be lost, the economic interest of the country being squarely affected.
- 24.** Upon considering the materials-on-record and hearing learned counsel for the contending parties, it is clear that the only reason disclosed in the request of the Bank as well as in the LOC itself was that the petitioner was a Director of the borrower-Company. Such allegation was made in the present tense in both the request and the LOC. However, such allegation is, by itself, insufficient to fall within any of the grounds for issuance of LOC, as contemplated in the relevant Office Memoranda.
- 25.** The petitioner has clearly shown that the petitioner had resigned long back, even before the discovery of alleged fraud in 2014 by the Bank.
- 26.** As regards the other ground that the petitioner's liability was co-extensive with the borrower-Company in the capacity of a guarantor, it is well-settled that a new ground cannot be supplanted by pleadings

if not furnished in the original LOC or the request therefor. Introduction of such an allegation *post facto* cannot justify the issuance of the LOC and subsequent renewal at the relevant juncture.

- 27.** That apart, in paragraph 20 of the affidavit-in-opposition filed by respondent no.3-Bank, a mere cursory reference has been made in the passing regarding the petitioner being a guarantor of the borrower-Company. There is no specific allegation, let alone any document disclosed by the Bank, to exhibit that the petitioner was a guarantor at the relevant point of time. Thus, even in the absence of any specific denial to such vague allegation, the issuance of the LOC and its subsequent renewal cannot be justified.
- 28.** Economic offence or any other ground contemplated in the relevant Office Memoranda was not disclosed either in the request of the Bank or the LOC itself to justify the issuance thereof. Apart from the CBI Court and Sessions Court having given a clean chit to the petitioner on similar allegations, the loan-in-question is sufficiently secured in view of the DRT award obtained by the Bank against the borrower-Company and the attachment order passed by the Adjudicating Authority under the PMLA at the instance of the ED relating to the writ petitioner's movable and immovable properties.
- 29.** Moreover, in the present case, the petitioner earns his livelihood as a sailor, being the Captain of the Merchant Navy, an integral part of which is overseas travel on the high seas for the major part of the year. Hence, in the present case, the LOC would not only amount to curtailing the fundamental right to liberty of the petitioner, as guaranteed by the Constitution of India, it would also take away the

livelihood of the petitioner which would directly affect his life, also guaranteed by the Constitution.

30. Neither the LOC nor the request therefor discloses any ground as envisaged in the relevant Office Memoranda to justify the issuance of the LOC and/or the subsequent renewal thereof.
31. Among the judgments cited on behalf of the petitioner, *Deept Sarup Aggarwal (supra)* clearly lays down the proposition that reasons have to be disclosed in the LOC and in the subsequent extension thereof which come within the purview of the relevant Office Memoranda. In the present case, no such reasons were disclosed either in the LOC or the subsequent extension and/or in the request for issuance of LOC, which was the very basis of issuance of the LOC.
32. In any event, a vague allegation made *post facto* in the affidavit-in-opposition of respondent no.3 as regards the petitioner being a guarantor to the borrower-Company, without any material to substantiate such allegation, cannot retrospectively validate the reasons given in the request for issuance of LOC and/or the LOC or subsequent extension thereof.
33. The facts of *Nimish Kalyanbhai Vasa (supra)* somewhat match with the present case insofar as the borrower-Company has suffered an Award of the DRT and the petitioner has travelled overseas on several occasions, each time returning within the stipulated period.
34. The proposition laid down in *UCO Bank (supra)* holds good in the present case as well, since there is nothing on record to show that the economic interests of India would be adversely affected in the event

the petitioner travels abroad. No such ground was disclosed in the LOC or preceding request for its issuance.

- 35.** Neither the LOC nor its subsequent extension, in any event, could go beyond the reasons furnished by the respondent no.3-Bank in its request for issuance of LOC. Such request being based merely on the allegation that the petitioner “is” (present tense) a Director of the Company is utterly insufficient to issue a Look-Out Circular. Moreover, there is no justification in withholding the petitioner unnecessarily from leaving the country, particularly in view of the fact that the livelihood of the petitioner depends on such overseas travel, since the interests of the bank are sufficiently protected by the award passed against the borrower-company by the DRT as well as the order of attachment of the petitioner’s property, both movable and immovable, passed by the Adjudicating Authority under the PMLA at the instance of the ED.
- 36.** The petitioner has successfully demonstrated that he was not a Director of the Company at the relevant juncture when the borrower-company is alleged to have committed fraud. Thus, there is no basis whatsoever for issuance of the impugned LOC and the consequential subsequent extension thereof against the petitioner.
- 37.** Neither the grounds mentioned in the Office Memorandum issued by the Government of India, Ministry of Home Affairs on December 5, 2017, nor the Circular dated October 27, 2010, which was amended by the 2017 Memorandum, are applicable in the present case to justify issuance and renewal of the LOC against the writ petitioner.

- 38.** In view of the reasons set forth above, WPO No.105 of 2020 is allowed on contest, thereby quashing the Look-Out Circular and the subsequent extension thereof, issued against the writ petitioner. Respondent nos. 1 and 2 shall take immediate steps for circulation of this Order to the concerned Airport Authorities and/or other agencies which were intimated about the issuance and extension of the LOC so that no further steps are taken against the petitioner on the basis of the said Look-Out Circular as well as the subsequent extension thereof.
- 39.** There will be no order as to costs.
- 40.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)