



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th AUGUST, 2023

IN THE MATTER OF:

+ **W.P.(C) 11180/2022 & CM APPL. 32852/2022, 34305/2022, 49560/2022, 1028/2023, 28041/2023**

MR. MUTHUVEERAPPAN ARUNACHALAM Petitioner

Through: Mr. Gaurav Mitra, Mr. Sachin Midha
and Mr. Aditya Vikram Bajpai,
Advocates.

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Chetan Sharma, ASG with Mr.
Anil Soni, CGSC with Mr. Devvrat
Yadav, Mr. Amit Gupta and Mr.
Prateek Rana, Advocates for UoI.
Ms. Rachita Garg, Advocate for
R-3/PNB.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present Writ petition has been filed under Article 226 and 227 seeking the issuance of an appropriate writ for quashing and setting aside a look out circular issued at the instance of Respondent No. 3, Punjab National Bank, Head Office, Plot no. 4, Sector 10, Dwarka, New Delhi, 110075, by Respondent No.5, the Foreign Regional Registration Office, Bureau of Immigration, East Block-VIII, Level 2, Sector 1, RK Puram, New Delhi - 110066 against the petitioner.

2. The facts, in brief, are as under:

a. The petitioner, Muthuveerappan Arunachalam, currently R/o A-16, Main Road, 11th Cross Thillai Nagar, Tiruchy, Tamil Nadu – 620018 is a citizen of the United Kingdom of Great Britain and



Northern Ireland, a permanent resident of Hong Kong and is a Director and Shareholder of M/s AR Intl (Hong Kong) Limited which was engaged in import, export and trade finance.

- b. It is stated that M/s AR Intl (Hong Kong) Limited had availed loan facilities from the Hong Kong branch of Respondent No. 3, Punjab National Bank (PNB), for which the petitioner had extended his personal guarantee. It is further stated that default occurred on all loans of the company due to slump in the business thereby causing the accounts of the company to being declared as Non-Performing Assets by the Hong Kong Branch of Punjab National Bank on 01.04.2012.
- c. It is stated that a complaint was filed by the creditor banks to the Commercial Crimes Department of the Hong Kong Police on 12.01.2018, the investigation for which was completed after a period of six months, and subsequently, the legal notices recalling the loan amount was issued and a case was filed in the High Court of Hong Kong by the Hong Kong branch of Respondent No. 3, Punjab National Bank. It is additionally stated that the Hon'ble High Court of Hong Kong on 18.02.2019 passed an order for the winding up of M/s AR Intl (Hong Kong) Limited and on 20.02.2019 passed an order declaring the petitioner bankrupt, thereby appointing the Official Receiver as the Provisional Trustee of the Petitioner. Moreover, the creditors including the Hong Kong branch of Respondent No. 3, Punjab National Bank appointed joint and several Trustees to take over and manage the petitioner's estate



with immediate effect via a general Meeting held on 22.03.2019.

- d. It is stated that the petitioner, on 08.01.2021 travelled to India for Medical Treatment and due to the onset of the pandemic and his Bankruptcy declaration, ended up residing with and being entirely financially dependent on his son in India.
- e. Subsequently, due to the requirement of overseas medical treatment for the petitioner to treat for Glaucoma as stated by his doctor, which was causing deterioration in his eyesight and the need to meet his personal bankruptcy administrator and the Administrator of M/s AR Intl (Hong Kong) Limited, for an annual review in Hong Kong, the petitioner was required to travel abroad for which he booked flight tickets for the 24.06.2022.
- f. It is stated that on the said date of travel on 24.06.2022 during immigration process, the petitioner was made aware by the immigration Officials at the Chennai International Airport of a Look Out Circular in place against the petitioner, issued at the instance of Respondent No. 3, Punjab National Bank New Delhi thereby debarring him from undertaking over-seas travel.
- g. It is further stated that the petitioner in view of Clause 7(c), Office Memorandum No. 25016/31/2010 issued by Ministry of Home Affairs (Foreigners Division) on the 'Issuance of Look Out Circulars (LOC) in respect of Indian Citizens and Foreigners' which grants the right to 'approach the officer who ordered the issuance of the Look Out Circular and explain that the LOC was wrongly issued', duly submitted a representation



to Respondent No. 3, Punjab National Bank dated 29.06.2022 seeking the release of LOC to enable the petitioner to undertake the scheduled over-sees travel. It is additionally stated that no reply was received by the Respondent No. 3 in lieu of the abovementioned representation.

- h. The present writ petition is therefore filed by the petitioner in view of the abovementioned facts thereof, praying that an appropriate writ be issued in the nature of a certiorari quashing the Look Out Circular (LOC) issued against the petitioner and to declare the said Look Out Circular as illegal, arbitral and Ultravires.

3. It is stated by the petitioner that the actions of Respondent No. 3, Punjab National Bank are in an arbitrary and illegal manner without understanding the object of issuance of Look Out Circulars since the petitioner has not committed any offence punishable under the provisions of the Indian Penal Code or any other law for the time being in force and has neither been declared as a proclaimed offender by any Indian court nor is evading / has evaded any court proceeding pending trial in India. It is also stated that assuming the purpose of the Look Out Circular is to secure the presence of an individual facing prosecution, the same is not available in the present case as even the investigation initiated in Hong Kong has already been completed.

4. It is further stated that by participating in the winding up proceeding initiated against the petitioner in the High Court of Hong Kong, the Respondent No. 3 becomes barred by principles of estoppel and Res Judicata from issuing an LOC against the petitioner. Moreover, it is also stated that the series of transactions having taken place in Hong Kong where



the amount of recoverable were accrued to the Punjab National Bank, Hong Kong Branch, the issuance of LOC at the instance of Petitioner No.3, Punjab National Bank, New Delhi is without any cause of action arising in India and is therefore severally invasive and grossly violating the rights to free movement of the petitioner.

5. It is further stated by the petitioner that because of the order dated 20.02.2019 by the Hon'ble High Court of Hong Kong which adjudged the petitioner as bankrupt, that is, unfit to discharge their liabilities and pay outstanding dues, the actions taken for recovery of loan amount by Respondent No. 3 in the form of issuance of the LOC from the petitioner is incomprehensible. It is additionally submitted that since the Provisional Trustee had taken control over the petitioners assets for realisation towards the benefit of the creditors via order of the Hon'ble High Court of Hong Kong dated 20.02.2019 for personal bankruptcy proceedings, the petitioner's assets are ungovernable by him. It is also submitted that the LOC is unlawful in attempting to coerce the petitioner to recover a loan amount which is not recoverable in India.

6. Notice was issued and Counter has been filed by the respondent on 24.11.2022.

7. It is stated by the respondents that the present writ petition ought to not be entertained by this Hon'ble court in the presence of an alternate remedy in the form of representation to the LOC issuing authority under clause 7(c) of the Official Memorandum dated 27.10.2010. It is also stated that the Managing Directors of Public Sector Banks derive power by virtue of amendment dated 05.12.2017 to the O.M dated 27.10.2010 to issue Look Out Circulars wherever the departure of any person from the country is detrimental to economic interest or such departure ought not be permitted in



consideration of the larger public interest at any given point of time, and that with public funds involved in the present case, such an impact in the country's economy and public interest will ensue in the form of a cascading effect on public funds and public money. It is also stated that since the accounts of the petitioner had turned NPA, no efforts were undertaken by the petitioner to repay the dues of the Respondent Bank. It is further stated that if the petitioner were to be allowed to leave India, it is possible that he may alienate his assets and interests within India and create encumbrances with a view to defraud his creditors.

8. The learned counsel appearing for the respondents apart from reiterating the averments stated in the counter also submitted that despite the loan having been extended to the petitioner through the PNB Hong Kong Branch, it forms a part of the main branch being Punjab National Bank, India where all profits and losses of PNB Hong Kong are routed to India, and is also governed by the Reserve Bank of India. It was therefore submitted that by virtue of the abovementioned and his residence in India, Indian law is also applicable on the petitioner and since he is yet to relinquish and disclose his estate rights in India, nothing precludes the respondent bank from issuing an LOC, which was done here in pursuance of a circular issued by the Foreigners Division (Immigration Section) Ministry of Home Affairs, Government of India vide their OM No. 25016/10/2017-Imm(Pt) dated 22.03.2021.

9. Heard the parties and perused the material on record.

10. The issuance of LOCs in respect Indian Citizens and foreigners was governed by an Office Memorandum No.25016/31/2010-Imm dt.27.10.2010, which permits Look Out Circulars to be opened essentially against persons involved in cognizable offences who are evading arrest and



their appearance in trial courts despite coercive measures with the likelihood that they would leave the country to evade trial or arrest. The intention of issuing an LOC was to act as a coercive measure to make a person surrender to the Court of Law or investigating agency. With subsequent amendments made to the Office Memorandum, Clause 8(j) was inserted through another office memorandum dated 05.12.2017 which read as under:

"..... In exceptional cases, LOCs can be issued even in such cases, as would 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) of the above referred OM, 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 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 of time."

11. The insertion of Clause 8(j) via Memorandum dated 05.12.2017 included authorization for Chief Executive Officers of Public Sector Banks to make requests for opening of LOCs which was later changed in Office Memorandum dated 04.10.2018 thereby directly including them in the list of authorities who may seek LOCs. This was done with a view to enable LOCs being issued against wilful defaulters, fraudsters, money launderers who wish to escape to foreign jurisdictions evading their liabilities, since such actions would be antithetical to the economic interest of India or the larger public interest.



12. Since the threshold of default which would render an impact on the country's economic interest or the larger public interest is not spelt out in the said Office Memorandum, by taking advantage of this, Public Sector Banks often make requests for LOCs against persons defaulting in payment of loan dues to them. Simple defaults of loan don't get elevated to an exceptional circumstance where the petitioner's departure from the country would cause an adverse impact to the nation's economy. The validity and legality of LOC's therefore, heavily depends on the prevailing circumstances governing the date on which such an LOC request is being made.

13. Based on the materials placed on record in the instant case, this Court is of the opinion that no exceptional case of adverse effects on India's economic interest exists. The contention of the respondent that despite the loan being taken for an entity in Hong Kong from the Hong Kong Branch of PNB, there is a sharing of profits and losses being brought in from Hong Kong to India, there exists reasonable nexus between the operations of the two entities and that the default in Hong Kong may have an impact on public funds in India, that is, the amount lost will have a cascading effect on Indian public money cannot be accepted.

14. It is well settled that the purpose of opening an LOC is to ensure that if a person, against whom the LOC has been opened, is allowed to leave the country then that person should come back. LOC is issued to secure the presence of the person so that the person can cooperate with the investigation and he is there to attend the court proceedings.

15. In the present case, there is no LOC against the Petitioner. The LOC was issued against the petitioner who, along with his company M/s AR Intl (Hong Kong) Limited, had already been adjudged Bankrupt by the Hon'ble High Court of Hong Kong. Additionally, the company's creditors, during a



General Body meeting held on 22.03.2019 had appointed joint and several Trustees to take over and manage the estate of the bankrupt with immediate effect, being a process in which the Respondent bank had already partaken. Moreover, as per the additional documents brought on record by the petitioner dated 13.04.2023, it is stated that an E-mail was received by the petitioner dated 06.04.2023 by his provisional trustee / bankruptcy administrator informing him of his discharge as a bankrupt from their end with no former or future liabilities existing against the petitioner and that a letter of discharge to that effect has been submitted before the High Court of Hong Kong for the issuance of a Certificate of Discharge by indicating their lack of objection to the issuance of such a certificate in favour of the Petitioner / Applicant. Additionally, as per the additional Documents brought of record dated 11.07.23, an Order was passed dated 25.05.23 by the Hon'ble High Court of Hong Kong acknowledging the petitioner as 'discharged' from his bankruptcy on 20.02.2023. It is to be noted here that discharging of a bankrupt is tantamount to releasing him or her from all provable debts and bankruptcy debts in view of the proceedings initiated against them,

16. The issuance of LOC, despite the respondent bank already participating in the securing of the rights via winding up process on M/s AR Intl (Hong Kong) Limited which took place in Hong Kong and the subsequent declaration of discharge of the petitioner thereof, is excessive and without any due merit. It is amply evident that the petitioner has no criminal case mentioned against him by the respondent in India. All civil, criminal and recovery proceedings were undertaken by the Respondent Bank against the petitioner in Hong Kong, which have all reached their logical ends. The mere loan default of the petitioner and subsequently, them



undergoing Winding up proceedings which has currently led up to a discharge, are not grave enough to substantiate a bar on the exercise of their right to travel abroad on the grounds of affecting the overall economic wellbeing and public good of India.

17. LOC is a major impediment for a person who wants to travel abroad. There are plethora of judgments which states that no person can be deprived of his right to go abroad other than for very compelling reasons.

18. Moreover, in Manekha Gandhi v Union of India, (1978) 1 SCC 248, a seven-judge bench of the Apex Court has held as under:

"5. ...Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. It was for this reason, in order to comply with the requirement of Article 21, that Parliament enacted the Passports Act, 1967 for regulating the right to go abroad. It is clear from the provisions of the Passports Act, 1967 that it lays down the circumstances under which a passport may be issued or refused or cancelled or impounded and also prescribes a procedure for doing so, but the question is whether that is sufficient compliance with Article 21. Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements? Obviously, the procedure cannot be arbitrary, unfair or unreasonable. This indeed was conceded by the learned Attorney-General who with his usual candour frankly stated that it was not possible for him to contend that any procedure howsoever arbitrary, oppressive or unjust may be prescribed by the law...."

19. In Chandra Verma vs. Union of India &Ors; (2019) SCC Online SC 2048, the Apex Court has also held that such a right cannot be prevented



from being exercised without due process of law. Relevant portion of the said judgment reads as under:

"5. The right to travel abroad is an important basic human right for it nourishes independent and self-determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience. The right also extends to private life; marriage, family and friendship are humanities which can be rarely affected through refusal of freedom to go abroad and clearly show that this freedom is a genuine human right."

20. As stated above, the right to travel abroad is a basic human right and a part of Article 21 of the Constitution of India and no person can be deprived of this right without following the due process of law. Any State action must satisfy the requirements of Articles 14, 19 & 21 of the Constitution of India and must be reasonable and non arbitrary. The Courts in such cases will have it well within their mandate under Article 226 to intervene in the said decisions of the Look Out Circular Issuing authorities to prevent such unreasonableness and perversity and in ensuring adequate conformity to both the form and substance of the standards set in the Official Memorandums from which the power to issue LOCs are derived.

21. Resultantly, the Writ Petition is allowed and the LOC is quashed. Pending applications, if any, stands disposed of.

SUBRAMONIUM PRASAD, J

AUGUST 16, 2023

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