

Poonam Paul v. Union of India, 2022 PLRonline 0498 ; ((2023-1)209 PLR 403 (SN))

Look Out circular - Banking - It appears that merely for the asking by the bank the LOC was issued - There has been non-application of mind by respondent No.3 while issuing LOC dt., and mechanically it appears to have been issued without there being any material to show that the petitioner would fall in the category of a person against whom an LOC is permitted to be issued by the guidelines framed in that regard - Bank had abused its authority to request the opening of the LOC - Bank seems to be of the opinion that if a borrower commits a default in payment of loan, and the loan account becomes an NPA, such an event has occurred only because of a fraud committed by the borrower - This Court can take judicial notice of the fact that businesses can fail for several reasons such as market conditions, labour unrest, lack of raw material, events like pandemic of Covid-19 etc. - 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, moreso when no criminal case alleging fraud has even been filed against the borrower/guarantor - Suspicion cannot take the place of proof - It may be that bank entertained the strong apprehension and believed that the guarantors/directors might leave the country without paying the dues of the bank and without informing them and so sought LOC, but that by itself is not sufficient to seek issuance of an LOC since mere suspicion is not enough and it cannot take the place of proof.

[PLRonline 414654](#) (LogIn to read)

[Para 76, 77, 78]

2022 PLRonline 0498 ; ((2023-1)209 PLR 403 (SN))

Punjab and Haryana High Court

Hon'ble Mr. Justice M.S. Ramachandra Rao, Hon'ble Mr. Justice Harminder Singh Madaan

Poonam Paul v. Union of India and Others

CWP No.10488 of 2022 (O&M)

Reserved on: 31.5.2022, Pronounced on: 2.6.2022

Mr. Manish Jain, Advocate and Mr. Siddhant Jain, Advocate, for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General of India with Ms. Shweta Nahata, Advocate for respondents No.1, 3 & 4.

Mr. K.K.Goel, Advocate and Mr. Ankush Bharti, Advocates for respondent No.2.

M.S. Ramachandra Rao, J.

In this Writ Petition, the petitioner is challenging a Look Out Circular (LOC) issued against her by the Bureau of Immigration, Ministry of Home Affairs, Govt. of India (respondent No.3) at the instance of the Bank of India (respondent no.2).

2. The respondent No.1 is the Ministry of Home Affairs, Union of India , the respondent No.2 is the Bank of India, respondent No.3 is the Bureau of Immigration, New Delhi, respondent No.4 is the Foreign Regional Registration office and respondent No.5 is a Company M/s Drish Shoes Ltd.

The Background facts

3. The petitioner herein is a Director in respondent No.5 Company run by her husband and others.

4. Respondent No.5 availed a loan from the respondent No.2- Bank for which the petitioner stood as a guarantor along with others.

5. There was a default committed by respondent No.5 in servicing the loan availed by it from respondent No.2 and so the said respondent recalled the loan by issuing the demand notice dt. 22.11.2021 to respondent No.5 and its guarantors including the petitioner under Section 13(2) of the SARFAESI Act, 2002 demanding a sum of Rs.121,17,11,148.70.

6. It is stated by petitioner that one of the operational creditors of the respondent No.5 filed on 02.09.2021 an application under Section 9 of the IBC, 2016 CP(IB) #239/Chd/Hry/2021 before the NCLT, Chandigarh and when the matter had come up on 13.4.2022 and orders were reserved in the said case.

7. Respondent No.5 also filed a petition before the NCLT, Chandigarh under Section 10 of the IBC for initiation of CIRP of respondent No.5 and the said application is said to be under scrutiny before the NCLT.

8. According to the petitioner, respondent No.5 through one of its Directors sent a letter on 18.12.2021 offering 'voluntary and peaceful handover and possession of all mortgaged assets' of respondent No.5 to the respondent No.2 and requested the latter to sell them and appropriate the proceeds of the sale to the amount due to the respondent No.2.

9. The petitioner contends that her eldest child Mrs. Bahaar Grover @ Bahaar Paul is settled in Australia, that she is to deliver a child in the last week of July,2022, and since the said daughter already has a 3 year old child, she wants to go to Australia to be with her at antenatal and postnatal time and comfort her. .

10. She contends that she received a caveat petition on 23.2.2022 filed at the instance of respondent No.2 mentioning that a Look-Out Circular (LOC) was issued against her, her

family members and associate directors of the respondent No.5 by the Airport Immigration authorities.

11. She contends that Respondent No.5 sent a letter dt.2.3.2022 to Respondent Nos.2, 3 and 4 specifically requesting for copies of the Look Out Circular issued against the petitioner but copy of the same has not been given to her.

12. Admittedly, the said LOC dt. 28.12.2021 is said to have been issued at the instance of the respondent No.2.

13. The petitioner has to apply for Visa formalities at the earliest and make travel arrangements to be in Australia atleast sometime before the delivery of her daughter. She states that she intends to return from Australia at the end of August,2022.

The instant Writ Petition

14. On an apprehension that she would not be allowed to travel to Australia to be with her eldest child Mrs. Bahaar Grover @ Bahaar Paul before and after the delivery of her child because of the LOC, she has filed this Writ Petition to quash the said LOC, and for a direction to the respondents to allow her to travel abroad (Australia) to visit her daughter.

Contentions of Petitioner

15. The petitioner contended that respondent No.5 sent a letter dt. 02.03.2022 to respondent No.2 specifically requesting for copies of the LOC issued at the instance of respondent No.2, copies of which were also sent to respondents No.3&4, but still they did not provide the petitioner LOC dt. 28.12.2021 or its copy.

16. Petitioner contends that before respondent No.2 requested for issuance of LOC against her and others, it should have at least informed the petitioner and respondent no.5 of the same, and that the action of the respondent Nos. 1,3 and 4 in not furnishing even a copy of the said LOC to her was illegal and arbitrary.

17. Counsel for the petitioner relied upon the decisions in Maneka Gandhi vs. Union of India, (1978) 1 SCC 248 and Satish Chandra Verma vs. Union of India & Ors, (2019) SCC Online SC 2048 and contended that a citizen of the country had a constitutional right to go abroad; such a right cannot be prevented from being exercised without due process of law and without observing the principles of natural justice. He placed reliance on the decision of the Supreme Court in State of West Bengal vs. A.B.K. Ltd, (2015) 10 SCC 369 to contend that an un-communicated order, such as the impugned LOC, has no legal effect and would take legal effect only when the same is communicated to the affected party.

18. Counsel for the petitioner further contended that petitioner is not an 'accused' in any criminal case evading the process of law, that no criminal case has been registered against her and there is no declaration issued either that she committed any fraud or that she was a willful defaulter by any competent authority as per the law and therefore, the LOC itself ought not have been issued. Reliance is placed on Madras High Court judgment in S.Martin

vs. The Deputy Commissioner of Police, Central Crime Branch Egmore, Chennai & Ors, (2014) SCC Online Mad 1651.

19. It is also contended 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 the decision rendered by the Calcutta High Court in [Vishambhar Saran v. Bureau of Immigration & Ors, 2022 SCeJ 965 \(Cal.\)](#) is cited in support thereof.

20. Counsel also referred to the order dt.5.4.2022 passed by this Bench in CWP No.5492 – 2022 in case of another daughter of Petitioner Ms.Noor Paul and stated that some directions given in the said order had been stayed by the Supreme Court.

The stand of respondent no.2 Bank

21. The respondent No.2 filed written statement contending that Mrs. Bahaar Grover, who the petitioner claims is her daughter, is not the petitioner's daughter, and that in 2020, petitioner's and her husband's profile was taken and the petitioner or her husband never disclosed that she is their daughter.

22. They contend that since the petitioner was one of the guarantors of the respondent No.5, whose loan account had been classified as NPA w.e.f. 08.11.2021, and since Rs.121,17,11,149 was owed by the said respondent to the said respondent-Bank as on 29.10.2021, the respondent No.2 entertained a strong apprehension and had reason to believe that the Directors/guarantors of the respondent No.5-company might leave the country without paying back their huge debt and without informing the respondent No.2, and that was why the LOCs were opened against the present Directors/guarantors of respondent No.5-Company.

23. The filing of proceedings under the IBC and initiation of proceedings under the SARFAESI Act are admitted.

24. It is stated that after the order dt.5.4.2022 was passed by this Court in the case of Noor Paul, the petitioner might have requested her daughter to send such a letter in her favor to enable her to visit Australia between 20.7.2022 and 30.8.2022. It is stated that petitioner has not filed any proof that she is eligible to travel to Australia.

25. It is alleged that since the investigations by the Banks or other investigating agencies take lot of time to discover the fraud and the modus operandi of the defaulters in siphoning off and diverting the bank loans and funds, the defaulters attempt to leave the country, and so in 2018, the Government of India had issued a notification empowering the Public Sector Banks to seek issuance of LOCs in case loan defaulters are trying to leave the country without paying huge debts.

26. It is stated that if the petitioner is allowed to travel abroad without joining investigation and without repaying her pending debts, economic interest of India will suffer.

27. Reference is made to certain Office Memoranda issued regarding issuance of LOC by the Ministry of Home Affairs, Union of India.

28. Request is lastly made to adjourn this matter till the Supreme Court decides the SLP No.7733 of 2022 filed against the order dt.5.4.2022 in CWP No. 5492 of 2022 by this Court in the case of Noor Paul.

Stand of respondent Nos. 1, 3 and 4

29. Respondents No.1, 3 & 4 have filed a short reply admitting that they had issued the LOC dt. 28.12.2021 at the instance of respondent No.2 preventing the petitioner from travelling abroad on 22.02.2022.

30. It is averred that the Ministry of Home Affairs Look-Out Circular Guidelines are a secret document and the same cannot be shared with the 'accused' or any unauthorized stakeholder; that LOC cannot be provided or shown to the subject of the LOC at the time of detention by the Bureau of Immigration (respondent No.3) since it defeats the purpose of LOC for which it was got issued by the LOC originator (respondent No.2) for various reasons as mentioned in the Guidelines.

31. It is stated that no accused or subject of LOC can be provided any opportunity of hearing before issuance of LOC.

32. It is stated that the legal liability for the action taken by the Immigration authorities pursuant to LOC rests with the Originating agency i.e. respondent No.2-Bank and not with respondent No.3; and that the respondent No.3 is only a custodian of LOCs and takes action against the subject at the Immigration checkpoints at the behest of the Originating agency.

33. It is stated that as per the existing instructions, the LOC can be modified/deleted/withdrawn by respondent No.3 only on the specific request of the authorized Originator on whose request the LOC was issued by respondent No.3.

34. It is stated that an Office Memorandum (OM) No.25016/10/2017-Imm (Pt.) dt. 12.10.2018 was issued by the Ministry of Home Affairs authorizing the Banks to open LOC against any accused, or as per directions of any criminal court in India, and the LOC dt. 28.12.2021 was issued against the Writ petitioner at the instance of MD & CEO, Bank of India, Badra Kurla Complex, Bandra (East), Mumbai.

35. It is stated that the issuance of LOC was by following due procedure at the request of respondent No.2 and the respondent No.3 has no objection to withdraw the LOC issued against the petitioner if respondent No.2 requests or directs for the same.

36. Along with the short Reply , the Additional Solicitor General handed over to us (i) Request of respondent No.2 dt.28.12.2021 of the respondent No.2 through General manager and Nodal officer to the Deputy Director, Bureau of Immigration, New Delhi, (ii) Loc No.2021425916 Dt.28.12.2021 Issued Against Petitioner's Husband And 5 Others Including The Petitioner.

37. These were supplied only to the Court and copy thereof was not given to the petitioner's counsel or the counsel for respondent no.2.

Rejoinder of the Petitioner

38. Petitioner filed a rejoinder reiterating that Mrs. Bahaar Grover is her eldest daughter, that she got married to Mr. Robin Grover in 2012 and then she moved permanently to Australia in 2013 and that was why she was not included in the list of the legal heirs given to respondent No.2 by her and her husband.

39. To prove that Mrs. Bahaar Grover and the petitioner are daughter and mother, copy of the Matriculation Mark sheet dt. 28.05.2002 issued by the CBSE and relevant pages from her old passport have been filed as Annexures P-18 and P-19 have been placed on record.

40. Reference is also made to Annexure P-16 at Page 66 of the Papers filed alongwith the Writ Petition, which is a certificate dt. 19.04.2022 issued by Dr. Melissa Mckenzie, an Obstetrician and Gynecologist at Greenslopes, Queensland, Australia that Mrs. Bahaar Grover is being provided antenatal care by her and that the delivery is planned by elective caesarean section on 28.07.2022.

41. It is reiterated that petitioner has to take care of her daughter during the prenatal and post natal period and therefore she needs to visit Australia so that she can be a source of comfort to her during this sensitive phase. It is further stated that once the daughter is well enough and after the situation stabilizes, she would return to India by end of August, 2022.

42. It is contended that the Australian High Commission will decide whether the petitioner should get Visa or not and it is not for the respondent No.2-Bank to raise objections as to her eligibility to go to the said country.

43. It is denied that her travel will not affect the strategic or economic interest of the country or the relationship between India and Australia.

Consideration by the Court

44. Mr. Manish Jain, Advocate for the petitioner, Mr. SP Jain, Additional Solicitor General of India assisted by Mr. Shweta Nahata, Advocate for respondents No.1, 3 & 4, Mr. Vinish Singla, Advocate for respondent No.2 and Mr. Mayur Kanwar, Advocate for respondent No.5 reiterated the contentions of their respective clients.

45. Annexures P-18 and P-19, which are the copies of the Matriculation Mark sheet issued by CBSE and her old passport prove beyond doubt that Mrs. Bahaar Grover alias Mrs. Bahaar Paul is the daughter of the petitioner and that she is a resident of Australia.

46. Annexure P-16 certificate dt. 19.04.2022 issued by Dr. Melissa Mckenzie shows that Mrs. Bahaar Grover is pregnant and is to deliver a child through caesarean section on 28.07.2022.

47. Therefore, doubts raised by respondent No.2-Bank regarding the relationship of Mrs. Bahaar Grover with the petitioner or the fact that she is pregnant cannot be accepted.

48. Since Mrs. Bahaar Grover was married and is living abroad since 2012 and she had no role in the affairs of the respondent No.5, the petitioner and her husband might not have mentioned her name in the list of legal heirs submitted by them to the respondent No.2-Bank in February, 2020 (Annexures R-1 and R-2).

49. Since the petitioner and her husband had disclosed the details of their other three children i.e. two daughters and a son, it cannot be said that there is any mala fide intention on their part to suppress the fact about Mrs. Bahaar Grover being their daughter.

50. It cannot be disputed that at the time of delivery of a child by Mrs. Bahaar Grover, her mother i.e. the petitioner's presence would be a source of comfort and the petitioner can provide good prenatal and post natal care as only a mother can.

51. We do not appreciate the stand of respondent No.2-Bank that after the order was passed by this Bench on 05.04.2022 in CWP No.5492 of 2022, the petitioner created a story about going to Australia to avoid paying the debts of respondent No.5 to respondent No.2. It is unfortunate that the respondent No.2-Bank has chosen to take the said stand, which is in bad taste.

The right to travel abroad is enshrined in Art.21 of the Constitution of India

52. Way Back in 1967, the Supreme Court in *Satwant Singh Sawhney vs. D.Ramarathnam*, Asstt. Passport Officer, AIR 1967 SC 1836 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.

53. In *Maneka Gandhi (1 supra)*, a 7-judge Bench of the Supreme Court in 1978 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. It held:

'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....'

(emphasis supplied)

54. So such a right to travel abroad cannot be deprived except by just, fair and reasonable procedure.

55. Even in 2019, in Satish Chandra Verma (4 Supra) , the Supreme Court set aside the order of the High Court which affirmed the decision of the Central Administrative Tribunal refusing permission to a member of the Indian Police Service from travelling abroad by rejecting his interim application in a pending case before the Tribunal. It held that the appellant had a fundamental right to travel abroad and that right cannot be infringed on the ground that vigilance clearance has not been given.

56. The said principle is not disputed by counsel for respondents.

57. In the instant case, the respondents No.3&4 would prevent the petitioner from going to Australia on the basis of LOC dt.28.12.2021 issued at the instance of respondent No.2-Bank by the Bureau of Immigration (Ministry of Home Affairs, Govt. of India).

58. It is not in dispute that the copy of the same was never furnished to the petitioner till it was filed for the first time by respondent No.2 along with its written response in Court.

59. It is not in dispute that the Office Memoranda providing the issuance of LOC do not contain any provision for supply of copy of the LOC to the subject of the LOC or supply of reasons for issuing of the LOC.

60. In State of West Bengal vs. AB.K. Ltd (2 supra) the Supreme Court held that there should be communication of an order adverse to a citizen and only then it would come into effect.

61. Without communicating the LOC to the petitioner, the respondents cannot seek to enforce it as it would not have any effect in law.

62. We are of the opinion that the respondent 1,3 and 4 have not followed fair, just and reasonable procedure to deprive the petitioner of her fundamental right to travel abroad as they have not followed the principles of natural justice and did not even supply a copy of the LOC to petitioner inspite of her request to do so.

63. In Karti P.Chidambaram vs. Bureau of Immigration, (2018) SCC Online Mad. 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.

64. In the request for issuance of LOC made on 28.12.2021 by the respondent No.2 to the respondent No.3 placed before us by the counsel for Respondents 1, 3 and 4, there is no mention that the petitioner is an accused in any criminal case initiated by the respondent No.2. Even Annexure thereto leaves blank the column 'FIR No. date.'.

65. Annexure R-2 dt. 28.12.2021 issued by the respondent No.3 to the Nodal Officer of

respondent No.2, however states 'in all cases where accused is no longer required by the originating agency or by the competent court, the LOC deletion request must be conveyed to the BOI immediately'.

We do not understand how the petitioner can be termed as an 'accused' as is mentioned in the LOC when admittedly no criminal case has been initiated in any court in the country against her.

66. Office Memorandum No.25016/10/2017 – IMM dt.22.2.2021 states:

' In cases where there is non-cognizable offence under the IPC and other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The originating Authority can only request that they be informed about the arrival/departure of the subject in such cases.'

67. When there is admittedly not even an FIR registered against the petitioner, and there is no question of her being 'accused' of any noncognizable offence, no LOC could have been issued by respondent No.3 to detain the petitioner. At best, the respondent No.3 could have only given information to respondent No.2 about the arrival/departure of the petitioner according to the OM dt. 22.02.2021.

68. No doubt the OM dt. 22.02.2021 contains a clause stating as under:-

'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 behest 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 interest 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 to be permitted in the larger public interest at any given point of time.'

(emphasis supplied)

69. On the basis of the material placed on record in the instant case, we are satisfied that no exceptional case or any adverse effect on the economic interest of India has been made out either in the original request dt. 28.12.2021 made by respondent No.2 to respondent No.3 or in the reply/affidavits and recourse could not have been taken for a coercive process like issuance of LOC.

70. The plea of respondent No.2 that quantum of loan taken by the petitioner is huge, and if the petitioner were to leave India, there would be a substantial dent in the economic interest of the country cannot be accepted because the loan was not given to the petitioner in the first place, but to respondent No.5, and the petitioner was only a director/guarantor to the loan given to respondent No.5 as on the date of issuance of LOC. Also not even proceedings to declare respondent No.5 or any of the directors/guarantors as 'willful

defaulters' have been initiated by respondent No.2 as of date, much less filing of a criminal case against the petitioner or others.

71. We are of the opinion that the quantum of the alleged default by the borrower by itself cannot be the basis for seeking issuance of an extreme process like an LOC for restricting the personal liberty of the petitioner to travel outside the country without something more.

The OM itself does not draw any line about the quantum of default by a borrower to a financial institution which would be considered detrimental to the sovereignty or integrity of India or to the economic interest of India and a quantum of default which would not fall in the said category.

72. Merely because the word 'public' is used in the exception clause in the OM, it does not elevate a mere default to an exceptional plane. It cannot be said that the departure of the petitioner from the country would adversely impact the economy of the 'country as a whole' and de-stabilize the 'entire economy' of the country.

73. As held in Vishambhar Saran (5 supra), it is incumbent upon the issuing authority of the LOC to ascertain at least whether the grounds disclosed in the LOC and/or the request for LOC fall within the four corners of the OM issued in that regard prima facie, though it may not be able to go into the merits/demerits of the allegations made against the subject by the originating authority.

74. It appears that merely for the asking by the respondent No.2, the LOC dt. 28.12.2021 was issued against the petitioner.

75. We are of the view that there has been non-application of mind by respondent No.3 while issuing LOC dt. 28.12.2021 against the petitioner, and mechanically it appears to have been issued without there being any material to show that the petitioner would fall in the category of a person against whom an LOC is permitted to be issued by the guidelines framed in that regard by respondent No.1. 7

6. We are also of the opinion that respondent No.2 had abused its authority to request the opening of the LOC. The respondent No.2-Bank seems to be of the opinion that if a borrower commits a default in payment of loan, and the loan account becomes an NPA, such an event has occurred only because of a fraud committed by the borrower. This Court can take judicial notice of the fact that businesses can fail for several reasons such as market conditions, labour unrest, lack of raw material, events like pandemic of Covid-19 etc. 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, moreso when no criminal case alleging fraud has even been filed against the borrower/guarantor. Suspicion cannot take the place of proof.

77. It may be that respondent No.2 entertained the strong apprehension and believed that the guarantors/directors of respondent No.5 might leave the country without paying the dues of respondent No.2 and without informing them and so sought LOC from respondents No.1, 3 & 4. But that by itself is not sufficient to seek issuance of an LOC since mere

suspicion is not enough and it cannot take the place of proof.

78. For the aforesaid reasons, we hold that: (a) 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. (b) The action of respondent No.3 in issuing the LOC No.2021425916 against the petitioner in a mechanical way on 28.12.2021 is also declared as arbitrary, illegal, unreasonable and violative of Article 14 of the Constitution of India.

RELIEF: Accordingly (i) The LOC No.2021425916 dt. 28.12.2021 issued by respondents No.1, 3 & 4 against the petitioner at the instance of respondent No.2 is set aside; (ii) Respondents No.1 to 4 are directed to permit the petitioner to travel abroad to Australia to be with her daughter Mrs. Bahaar Grover till end of August, 2022.

79. The Writ Petition is allowed accordingly as mentioned above. No costs.