

Calcutta High Court

Sabyasachi Bhattacharyya, J.

Vishambhar Saran v. Bureau of Immigration

W.P.No.10241(W) of 2020 , IA No: CAN 1 of 2021 With W.P.A. No. 10247 of 2020 IA No: CAN 1 of 2021 With W.P.A. No. 10249 of 2020, IA No: CAN 1 of 2021

24.12.2021

(i) Constitution of India, Art. 14, 19(1)(g) and 21 - Lookout Circular (LoC) - Banking - Mere subsistence of an allegation of default could not trigger the issuance of the LoC - “REASON FOR OPENING OF LOC” in Clause IV, it was stated that the LoC was being issued as an exceptional case as it appeared to the concerned authority (MD & CEO of respondent no.2), on the inputs received, that departure of the petitioner would be detrimental to the economic interest of India and larger public interest. The inputs, which were the alleged basis of such opinion, were not disclosed in the LoC itself - The disclosed reason for issuance of LoC is insufficient and, in any event, does not tally with the allegations made against the petitioner - Apart from the LoC being devoid of any such reason sufficient to bring the petitioners within the purview of the Office Memorandum Office Memorandum No.25016/31/2010-Imm dated October 27, 2010 (as amended), an exceptional case had to be made out against the petitioners, which has not been done - Undoubtedly, Rs.351 crores is a substantial amount of money, but the Lookout Circular was silent as to why extraordinary circumstances were alleged by the bank in its request for the LoC - Both the LoC as well as the request by the bank for issuance of such LoC were cryptic with regard to the ground of issuance - The mere quantum of alleged default cannot be a basis for the extreme measure of restricting the personal liberty of the petitioners to travel inside or outside India -Respondent-authorities have failed to justify rationally as to why the departure of the petitioners from India would, in any manner, be detrimental to the sovereignty or security or integrity of India or to the bilateral relations with any country or to the strategic and/or economic interests of India as a whole - The mere subsistence of an allegation of default could not trigger the issuance of the LoC at the drop of a hat - As such, the expression “detrimental to the economic interests” of India ought not to be an excuse to restrain citizens of India from leaving the country without any convincing ground being disclosed for such restraint - There is no allegation that the CBI has an arrest-warrant against the petitioners and/or the petitioners’ personal participation in the CBI enquiry is of utmost necessity at the present juncture - That apart, even if the petitioners were to leave India, there is nothing on record to indicate that the recovery of any amount of default, if committed at the behest of the petitioners by the borrower-company, would affect such recovery in any manner, detrimental or otherwise - As such, the LoC was unfounded and lacked any cogent contemporaneous or prior act of the

petitioners - Respondent bank has abused its authority to request for opening a Lookout Circular at the behest of the Chairman/Managing Director/Chief Executive, in the capacity of a Public Sector Bank, thereby substituting a regular proceeding for recovery of the debt in the process - The issuance of LoC cannot be an alternative for initiating recovery proceedings against the borrower itself, let alone a director of the borrower-entity. [Para 3, 42, 43, 47, 51, 52, 53, 54]

Held,

The limited grounds, as it stands amended, as mentioned in the relevant Office Memorandum, dated October 27, 2010 (as amended), are:

“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 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 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.” [Para 50]

Held further,

In the event the authorities seek to resort to the quantum of alleged default for restricting citizens’ departure outside the country, it is obvious that the quantum is relative and the amount of Rs.350 crores can be exorbitant or meagre, depending merely on the whims of the authorities or the perspective of the judge. As such, in the absence of any stipulation in that regard in the relevant Office Memorandum, no cut-off line can be drawn between an amount which is detrimental to the sovereignty or security or integrity of India or to the economic interests of India and one which is not.

Held further,

Even the respondent-authorities acted in an unlawful manner in blindly issuing the LoC without even ascertaining whether the request by the respondent no.2 revealed any exceptional case as envisaged in the amended Office Memorandum No.25016/31/2010-Imm dated October 27, 2010. 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 exceptional cases as defined in the Office Memorandum. Although it would be going too far to extend such logic to the extent that the authorities issuing the LoC shall ascertain the merits/demerits of the allegations made in the request, at least ingredients justifying the issuance of LoC has to be looked into prima facie by the issuing authority.

(ii) Bureau Of Immigration - Office Memorandum Office Memorandum No.25016/31/2010- Imm dated October 27, 2010 (as amended), an exceptional

case had to be made out against the petitioners - The respondent-authorities, Bureau Of Immigration, acted in an unlawful manner in blindly issuing the LoC without even ascertaining whether the request by the bank revealed any exceptional case as envisaged in the amended Office Memorandum. [Para 62]

Held,

Even the respondent-authorities acted in an unlawful manner in blindly issuing the LoC without even ascertaining whether the request by the respondent no.2 revealed any exceptional case as envisaged in the amended Office Memorandum No.25016/31/2010-Imm dated October 27, 2010. 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 exceptional cases as defined in the Office Memorandum. Although it would be going too far to extend such logic to the extent that the authorities issuing the LoC shall ascertain the merits/demerits of the allegations made in the request, at least ingredients justifying the issuance of LoC has to be looked into prima facie by the issuing authority. [Para 62]

(iii) Constitution of India, Art. 14, 19(1)(g) and 21 - Lookout Circular (LoC) - 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. [Para 62]

[2022-SCeJ-965Download](#)