



\$~64

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

% *Judgment Delivered on: 15.04.2025*

+ **W.P.(C) 4781/2024 & CM APPL. 19524/2024**

VINAY MITTAL & ANR.

.....Petitioners

Through: Mr. Amol Sinha, Mr. Kshitiz Garg,
Mr. Rahul Kochar and Mr. Ankit
Kumar, Advs.

versus

BANK OF BARODA & ORS.

.....Respondents

Through: Mr. Santosh Kumar Rout, Standing
Counsel with Mr. B.N. Mishra and
Ms. Shilpa Chaurasia, Adv. for R-1.
Mr. Amit Tiwari, CGSC for UOI.
Mr. O.P. Gaggar and Mr. Sachindra
Karn, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J (ORAL)

1. The present petition has been filed seeking following reliefs:

“a) *Issue a writ of certiorari or any other appropriate writ or direction quashing and setting aside the impugned Look Out Circular (which are still not provided to the Petitioners) issued against the Petitioners;*

xxx

xxx

xxx

c) *Award cost of litigation to the tune of Rs. 1 Lac.”*

2. Mr. Amol Sinha, the learned counsel appearing on behalf of the petitioners submits that the impugned Look Out Circular (in short ‘LOC’)



has been issued against the petitioners at the instance of two banks namely, Punjab National Bank (PNB) and Bank of Baroda (BoB).

3. He submits that the petitioners were only guarantors and not the principal borrowers in the loan availed from the aforesaid banks nor they were part of the management of the borrower company. According to him, action has already been taken by the aforesaid banks against the principal borrower company under the SARFAESI Act, 2002. He further contends that the borrower company is under liquidation.

4. Mr. Sinha submits that the aforesaid banks had made a request for issuance of LOC to the Bureau of Immigration (BoI) in terms of Clause 8(b)(xv) of the Office Memorandum dated 27.10.2010 bearing O.M. 23016/31/2010-Imm. [as amended by O.M. 25016/10/2017-Imm (Pt.)], issued by the Ministry of Home Affairs, Foreign Division (Immigration Section), which confers authority on the Chairman/Managing Director/Chief Executive of all the public sector banks to make a request for opening of LOC. To buttress his contention, he draws attention of the court to Clause 8(b)(xv) of the aforesaid OM, which reads as under:

“8. In accordance with the order dated 26.7.2010 of the High Court of Delhi the matter has been discussed with the concerned agencies and the governing guidelines are hereby laid down regarding issuance of LOCs in respect of Indian citizens and foreigners:

xxx xxx xxx

(b) The request for opening of LOC must invariably be issued with the approval of an Originating agency that shall be an officer not below the rank of -

xxx xxx xxx

xv. Chairman/Managing Directors/Chief Executive of all Public Sector Banks.”

(emphasis supplied)



5. Mr. Sinha places reliance on the decision of the Division Bench of the Bombay High Court in ***Viraj Chetan Shah v. Union of India, 2024 SCC OnLine Bom 1195*** to submit that the Bombay High Court in the said case has quashed Clause 8(b)(xv) of the Office Memorandum dated 27.10.2010 bearing O.M. 23016/31/2010-Imm., which is equivalent to Clause 6(B)(xv) of the O.M. 25016/10/2017-Imm.(Pt.) dated 22.02.2021 (presently in vogue), and consequently also quashed the LOCs which had been impugned therein. The operative part of the said decision reads thus:

“195. Consequently:

(a) Clause 8(b)(xv) of the 2010 amended OM (equivalent to Clause 6(B)(xv) of the 2021 consolidated OM) which includes the Chairmen, Managing Directors and Chief Executive Officers of all public sector banks as authorities who may request the issuance of a Look Out Circular is quashed.

(b) All the LOCs are quashed and set aside.

(c) The Bureau of Immigration will ignore and not act upon any LOCs issued by any public sector banks. All databases will be updated accordingly. We do not expect the public sector banks to do this, and therefore direct the Bureau of Immigration or MHA to do the needful.

(d) All authorities at all ports of embarkation will be informed and apprised accordingly.”

6. He submits that the Coordinate Bench of this court, relying upon the aforesaid decision of the Bombay High Court, *vide* judgment dated 28.05.2024 passed in W.P.(C) 11707/2022, titled as ***Rajesh Kumar Mehta v. Union of India*** has also ordered for quashing of LOC which had been issued at the instance of the bank. The relevant part of the decision reads thus:

“24. It is also pertinent to mention the Division Bench judgment



of the High Court of Bombay wherein the Division Bench of the High Court of Bombay vide its Judgment dated 23.04.2024 in Viraj Chetan Shah v. Union of India & Anr., W.P.(C)719/2020 has quashed Clause 8(b)(xv) of the Office Memorandum dated 27.10.2010 bearing O.M. 23016/31/2010-Imm. equivalent to Clause 6(B)(xv) of the O.M. dated 22.02.2021 bearing O.M. 25016/10/2017-Imm.(Pt.) whereby the Chairman/Managing Director/Chief Executives of all Public Sector Banks could request for opening of an LOC.

25. *Lookout Circular has been issued against the Petitioner only because of the inability of the company to repay its debts for which the Petitioner stood guarantee. There are no criminal proceedings against the Petitioner and there is no allegation that the Petitioner was instrumental in defalcation or siphoning off the money. The Bank has already initiated steps against the Petitioner and the company by taking steps under the RDDB Act, SARFAESI Act and under the IBC. This Court is of the opinion that after resorting to all the remedies available in law, the Bank cannot open a Lookout Circular as an arm-twisting tactic to recover debt from a person who is otherwise unable to pay more so when there are no allegations that he was engaged in any fraud or in any siphoning off or defalcation of the amounts given as loan.*

26. *Lookout Circular is a major impediment for a person who wants to travel abroad. There is plethora of judgments which states that no person can be deprived of his right to go abroad other than for very compelling reasons. In Maneka Gandhi v Union of India, (1978) 1 SCC 248, 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....”

27. *In view of the above, the Lookout Circular (LOC) issued against the Petitioner is hereby quashed.”*

7. Mr. Amit Tiwari, the learned CGSC appearing on behalf of Union of India (UOI) submits that he has instructions to state that LOCs in the present case have been issued at the instance of two banks, namely, PNB and BoB. On a query posed by the court, he states that in terms of the aforesaid OM dated 27.10.2010 (as amended) and OM dated 22.02.2021, the Bureau of Immigration (BoI) is only the custodian of the LOC and the modification/deletion of LOC can be done by the BoI in the event originating agency makes a request to that effect or if the court so directs.

8. On further being queried, Mr. Tiwari submits that the BoI has not received any request from any investigating agency for issuance of LOC against the present petitioners.

9. The respondent no.5/PNB has not filed any counter affidavit. However, respondent no.4/Union Bank of India has filed a counter affidavit stating that it has not sent recommendation to competent authority to issue a look out circular against the petitioners.

10. The respondent no.1/Bank of Baroda in its counter affidavit has taken



a stand that *vide* letter dated 29.07.2020, it had requested Bureau of Immigration for issuance of LOC against the directors/guarantors of the principal borrower, M/s Santosh Overseas Private Ltd./respondent no.6, in terms Office Memorandum dated 27.10.2010 bearing O.M. 23016/31/2010-Imm. However, it is not in dispute that the petitioners are only guarantors of the respondent no.6/borrower.

11. Having regard to the fact that – (i) Clause 8(b)(xv) of the Office Memorandum dated 27.10.2010 bearing O.M. 23016/31/2010-Imm. [*which is equivalent to Clause 6(B)(xv) of the O.M. 25016/10/2017-Imm.(Pt.) dated 22.02.2021*] in terms of which LOC were recommended to be issued by the aforesaid banks, has already been quashed by the Division Bench of the Bombay High Court in **Viraj Chetan Shah** (supra); (ii) a Coordinate Bench of this court in **Rajesh Kumar Mehta** (supra) has also quashed the LOC relying upon the aforesaid decision of the Bombay High Court; (iii) there is no criminal case pending against the petitioner nor there is any request of any investigating agency for the issuance of LOC in question; (iv) the petitioners are only guarantors; and (v) the banks have already availed their remedies under SARFAESI Act, this court is inclined to allow the present writ petition.

12. Resultantly, the writ petition is allowed and the impugned LOC issued against the present petitioners, is quashed and set aside.

13. The petition along with pending application, is disposed of in the above terms.

VIKAS MAHAJAN, J

APRIL 15, 2025/aj