(2023) 01 TEL CK 0033

In the Telangana High Court

Case No : Writ Petition Nos. 1531 And 1534 Of 2023

Dr. Venkata Ramana Rao Maganti APPELLANT

Vs

UCO Bank RESPONDENT

Date of Decision : 31-01-2023

Acts Referred:
Constitution Of India, 1950 — Article 21

Citation : (2023) 01 TEL CK 0033

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Advocate : Malipeddi Abhinay Reddy, M Shalini

Final Decision : Disposed Of

Judgement

1. Heard Mr. Vikram Poosarla, learned senior counsel representing Mr.Abhinay Reddy, learned counsel for the petitioner in W.P.No.1531 of 2023 and Ms. Shreya Devaki, learned counsel for the petitioner in W.P. No.1534 of 2023, Ms. Shalini, learned Standing Counsel appearing for respondent Nos.1 to 3, and Mr.Gadi Praveen Kumar, learned Deputy Solicitor General of India appearing on behalf of respondent Nos.4 to 6.

2. The grievance in both the writ petitions is one and the same and, therefore, they were heard together and disposed of by way of this common order.

3. FACTS OF THE CASE:

i) Petitioner in W.P.No.1531 of 2023 i.e., Dr. Venkata Ramana Rao Maganti, is the husband of writ petitioner in W.P.No.1534 of 2023 i.e., Ms. Usha Rani Maganti. The petitioner in W.P. No.1531 of 2023 sought a direction to the respondents to permit him to travel abroad viz., Sapin from 30.01.2023 to 05.02.2023 and to USA from 10.02.2023 to 28.02.2023, while the petitioner in W.P.No.1534 of 2023 sought permission to travel abroad viz., USA from 10.02.2023 to 22.03.2023.

ii) The petitioner in W.P.No.1531 of 2023 i.e., Dr. Venkata Ramana Maganti in his personal capacity had availed loan to a tune of Rs.75.00 lakhs from respondent No.1 Bank and he was the co-applicant for the loans availed by three other individuals. His wife, the petitioner in W.P.No.1534 of 2023 is a guarantor. She stood as guarantor for the aforesaid loan by extending property admeasuring 1.871/2 cents at Nidamanuru Village, Delhi Public School, Vijayawada, Krishna district Andhra Pradesh. Since the loanees failed to repay the aforesaid Loan amount, the respondent Bank has initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short SARFAESI Act'). Original applications were also filed by Bank and writ petitioners and others have filed securitization applications under the provisions of SARFAESI Act before the Debts Recovery Tribunal. According to the petitioners, the respondent Bank had offered one time settlement proposals and the Bank had agreed to close all four loan accounts for Rs.3,75,00,000/-. They have paid the same amount. The details of the same are specifically mentioned in the writ affidavit in W.P. Nos.17271 and 366901 of 2022. However, according to the petitioners they are due and liable to pay an amount that is Rs.6,36,32,384.21/-. Whereas according to respondent No.1 Bank, the petitioners are liable to pay Rs.6,36,32,384.21/-.

iii) While so, the Respondent Bank had issued Look Out Circular against the petitioners, continuing the same in violation of the guidelines issued by the Ministry of Home Affairs, Union of India vide Office Memorandum dated 22.02.2021. Challenging the same, the petitioners have filed writ petitions vide W.P. Nos.17271 of 2022 and 366901 of 2022 contending that there are no criminal proceedings pending against them, there is no investigation initiated by the Enforcement Directorate. The proceedings initiated by the Bank are under SARFAESI Act for recovery of the amount and securitization applications and writ petitions are pending before Debt Recovery Tribunal and this Court respectively. Therefore issuance of Look Out Circulars and continuation of the same is in violation of the aforesaid guidelines dated 22.02.2021. It also amounts to violation of their right guaranteed under Article 21 of the Constitution of India.

iv) According to petitioner in W.P.No.1531 of 2023, he is an indigenously developed technocrat, manufactured and supplied products like LED Video Display, Digital Loop Carrier on Optical Fiber, Telecom Software, Inter-Connect Billing personally and through M/s.MIC Electronics Ltd. He was the promoter and erstwhile Managing Director. He has been awarded several patents and he has attended seminars. When he was travelling to USA on 27.12.2021, he was prevented from travelling abroad by the Immigration Authorities on the ground of pendency of LookOut Circular. After hearing both sides, this Court vide common order dated 12.10.2022 disposed of the said writ petitions suspending the said LOCs for a period from 13.10.2022 to 30.11.2022 on certain conditions.

v) Challenging the said common order, dated 12.10.2022, the respondent bank preferred appeals vide W.A. Nos.768 and 770 of 2022. A Division Bench of this Court vide order dated 09.12.2022 dismissed the said appeals with costs.

vi) After dismissal of the aforesaid writ appeals, the petitioners approached the respondent bank to lift/delete the LOC issued against them as they do not fall under any of the categories of persons against whom LOC may be issued as per the guidelines dated 22.02.2021, but the respondent bank failed to respond.

vii) According to the petitioners, the petitioner in W.P.No.1531 of 2023 is required to travel Barcelona, Spain on 30.01.2023 to attend the Integrated Systems Europe (ISE) 2023, which is an International Trade Show showcasing the World's leading technology innovators and bringing together a range of industry organizations. The said trade show is a crucial marketing opportunity for him to show-cause his business on an International Platform. Further, he is also required to travel USA from 10.02.2023 to 28.02.2023 to visit manufacturing facilities of and have techno commercial discussions with Advanced Energy Materials LLC, Kentucky, U.S.A for exploring potential collaboration of the MIC College of Technology of which the petitioner is the Chairman to establish Micro LED Display FAB facilities and Ecosystem in India and also to visit his daughter residing in San Francisco, USA.

viii) The petitioner in W.P. No.1534 of 2023 intends to travel USA to visit her daughter and relatives residing there and also to accompany her husband.

ix) It is further submitted that they own substantial assets in India. Their entire family is staying in India. The petitioner in W.P. No.1531 of 2023 is also the Managing Trustee of a Trust. Therefore, they will come back to India. No prejudice will be caused to the respondent Bank.

3. Shri Vikram Pooserla, learned counsel appearing for both the petitioners would submit that the Look Out Circulars both dated 07.11.2020 issued against the petitioners are in violation of guidelines issued by Ministry of Home Affairs vide Office Memorandum dated 05.02.2017 and also dated 22.02.2021. There are no crimes pending against the petitioners registered either by State Police or CBI. No investigation by Enforcement Directorate is initiated and pending against the petitioners herein. Therefore issuance of Look Out Circular is in violation of their right guaranteed under Article 21 of the Constitution of India and also principle laid down by the Hon'ble Supreme Court.

5. On the other hand, Ms. Shalini, learned counsel for respondent Bank, on instructions, would submit that the respondent Bank had issued Look Out Circular strictly in terms of guidelines issued by Ministry of Home Affairs vide Office Memorandum dated 27.10.2010 and 22.02.2021. The Bank had issued the aforesaid Lookout Circulars for the purpose of protecting economic interest of bank or economy of the Country. The Bank is originator of the aforesaid Lookout Circulars, reviewed the same in terms of guidelines issued by Union of India vide Office Memorandum dated 22.02.2021. Both the petitioners are due and liable to pay the aforesaid amount.

i) She also vehemently opposed the relief sought in the present writ petitions. Referring to the Office Memorandums, dated 23.03.2022 and 08.04.2022, she would submit that the respondent bank considered the guidelines and also the guidelines issued by the Union of India, Ministry of Home Affairs, dated 22.02.2021 and consideration of the same, the Bank has decided to continue the LOCs issued against the petitioners. There is every possibility of the petitioners not coming back to India in which event the respondent bank will not be in a position to recover the aforesaid amount. Referring to the orders 22.04.2022 passed by a Division Bench in W.A. Nos.291 of 2022, she sought to impose same conditions on the petitioners of furnishing bank guarantee.

6. Whereas, learned Deputy Solicitor General of India appearing on behalf of respondent Nos.4 to 6 would submit that the respondent No.4 is only custodian and it is maintaining the Look Out Circulars issued by the originator, the respondent Bank.

7. ANALYSIS AND FINDING OF THE COURT:

i) The aforesaid facts would reveal that, admittedly there are no criminal proceedings pending against both the petitioners, registered either by State Police or by the CBI. The said fact was confirmed by Ms. Shalini, learned counsel appearing for respondent bank. There is no dispute that Enforcement Directorate has not initiated any investigation under the provisions of the Prevention of Money Laundering Act. However, the respondent Bank had initiated proceedings under SARFAESI Act. Securitization applications, writ petitions are pending between the petitioners and respondent Bank. The amount due and pendency of the aforesaid proceedings are specifically mentioned by both the petitioners and the respondent Bank.

ii) The grievance of the petitioners in the present writ petitions is only to permit them to travel abroad on business and personal works. But, continuation of Look Out Circulars by the respondents is in violation of the aforesaid guidelines.

iii) In view of the same, it is relevant to mention that as on the date of issuance of Look Out Circulars i.e., dated 07.11.2020, guidelines dated 05.12.2017 issued by Union of India were in operation. The relevant clause which deals with the issuance of Look Out Circulars in the aforesaid Office Memorandum is extracted below.

"In exceptional cases, LOC 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 in the sovereignty or security, integrity of India or that the same is detrimental to the bilateral relation 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".

iv) According to Ms. Shalini, learned counsel appearing for bank, the case of the petitioner will fall under the aforesaid category i.e., economic interest of India. Whereas, Sri Vikram Poosarla, learned senior counsel appearing on behalf of the petitioners denied the said fact.

v) It is also relevant to note that in supersession of the aforesaid guidelines dated 5.12.2017, Union of India had also issued fresh guidelines vide Office Memorandum dated 22.02.2021. Relevant guidelines are mentioned below.

"6. The existing guidelines with regard to issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners have been reviewed by this Ministry. After due deliberations in consultation with various stakeholders and in supersession of all the existing guidelines issued vide this Ministry's letters/ O.M.referred to in para 1 above, it has been decided with the approval of the competent authority that the following consolidated guidelines shall be followed henceforth by all concerned for the purpose of issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners:-

A. The request for opening an LOC would be made by the Originating Agency (OA) to the Deputy Director, Bureau of Immigration (BoI), East Block – VIII, R.k. Puram, New Delhi – 110066 (Telefax: 011-26192883,email:boihq@nic.in) in the enclosed proforma.

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 –

(i) Deputy Secretary to the Government of India; or

(ii) Joint Secretary in the State Government; or

(iii) District Magistrate of the District concerned; or

(iv) Superintendent of Police (SP) of the District concerned; or

(v) SP in CBI or an officer of equivalent level working in CBI; or

(vi) Zonal Director in Narcotics Control Bureau (NCB) or an officer of equivalent level (including Assistant Director (Ops) in Headquarters of NCB]; or

(vii) Deputy Commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Indirect Taxes and Customs; or

(viii) Assistant Director of Intelligence Bureau/Bureau of Immigration (BoI); or

(ix) Deputy Secretary of Research and Analysis Wing (R&A W); or

(x) An officer not below the level of Superintendent of Police in National Investigation Agency; or

(xi) Assistant Director of Enforcement Directorate; or

(xii) Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary to the Government of India; or

(xiii) Designated officer of Interpol; or

(xiv) An officer of Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs not below the rank of Additional Director (in the rank of Director in the Government of India); or

(xv) Chairman/Managing Directors/Chief Executive of all Public Sector Banks."

C) --------

D)---------

H. Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in Column IV in the enclosed Proforma regarding 'reason for opening LOC must invariably be provided without which the subject of an LOC will not be arrested/detained.

I. In cases where there is no cognizable offence under IPC and other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The Originating Agency can only request that they be informed about the arrival/departure of the subject in such cases.

J. The LOC opened shall remain in force until and unless a deletion request is received by BoI from the Originator itself. No LOC shall be deleted automatically. Originating Agency must keep reviewing the LOCs opened at its behest on quarterly and annual basis and submit the proposals to delete the LOC.

If any, immediately after such a review. The BOI should contact the LOC Originators through normal channels as well as through the online portal. In all cases where the person against whom LOC has been opened is no longer wanted by the Originating Agency or by Competent Court, the LOC deletion request must be conveyed to BoI immediately so that liberty of the individual is not jeopardized.

L. 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 request 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 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.

vi) In Menaka Gandhi v. Union of India (1978) 1 SCC 248, it was held by the Apex Court 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. Paragraph No.5 of the said judgment is relevant and the same is extracted below:-

“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 tight to go abroad. It is clear from the provisions of the Passports, Act, 1967 that is 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, 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.”

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

vii) Referring to the said principle and also the principle laid down by the Apex Court in several other judgments, considering the guidelines issued by the Union of India from time to time, the Division Bench of High Court of Punjab and Haryana at Chandigarh in Noor Paul Vs. Union of India (2022) SCC online P&H 1176 held that right to travel abroad of a citizen cannot be deprived except by just, fair and reasonable procedure. Without communicating the LOC to the subject of LOC, the authorities cannot seek to enforce it as it would not have any effect in law.

viii) On examination of the facts therein, it had declared that issuance of LOC against the petitioner therein, a Guarantor to the loans, as illegal and set aside the LOC issued against the petitioner therein.

ix) It is also relevant to note that the Bank of India, respondent therein, the Originator of the LOC had preferred Special Leave to Appeal (c) No(s). 7733 of 2022 wherein the Apex Court, vide order dated 05.05.2022 declined to stay the operation of said judgment except the direction in the operative part of the order that the respondent Nos.1, 3 and 4 therein shall serve a copy of the LOC and also reasons for issuing it to the persons against whom it is issued as soon as possible after it is issued, and also provide a post - decisional opportunity to him and those requirements shall be read into the OMs issued by the respondents concerning the issuance of LOCs. The Apex Court also granted stay of the direction for payment of costs. The Apex Court however directed the Originator and custodian to ensure that the petitioner therein shall not be prevented from travelling abroad to pursue her studies by reason of the LOC. However, the Apex Court has also directed the respondent No.1/Writ Petitioner therein to give an undertaking to the Court not to dispose of her assets if any. She shall also keep the Bureau of Immigration informed of the dates of her departure from and entry into India.

x) It is also relevant to note that in supersession of its earlier Office Memorandum/guidelines, the Government of India, had issued guidelines vide Office Memorandum, dated 22.02.2021 with regard to issuance of LOC. In the said guidelines, the details of the Officers who have to issue LOC and other procedures were explained. As per the said guidelines, the Chairman/Managing Directors/Chief Executive of all Public Sector Banks can request for opening an LOC to the Deputy Director, Bureau of Immigration (BOI) custodian of the LOC for issuance of the LOC until and unless there is specific request from the Originator, LOC shall not be deleted automatically. The Originating Agency must keep reviewing the LOCs opened at its behest on quarterly and annual basis and has to submit the proposals to delete the LOC, if any, immediately after such a review. A guideline similar to that of the above referred guideline is also there, in OM, dated 05.12.2017. Therefore, the 2nd respondent, Originating Agency, shall review the said LOC."

xi) As discussed above, admittedly there are no criminal cases pending against the petitioners herein and Enforcement Directorate has also not initiated any investigation against both the petitioners herein. Respondent No.1 - Bank - originator had requested opening of the aforesaid Look Out Circular only in the economic interest of the Country.

x) Further, there are no changed circumstances from the date of the order dated 12.10.2022 passed by this Court in W.P. Nos.17271 of 2022 and 366901 of 2022. Even there is no allegation that the petitioners have violated the conditions imposed by this Court in the aforesaid orders.

xi) It is relevant to note that this Court vide common order dated 12.10.2022 in W.P.Nos.17271 and 366901 of 2022, suspended the Look Out Circular notice dated 07.11.2020 issued against both the petitioners by respondent No.1 bank for a period from 13.10.2022 to 30.11.2022 and permitted them to travel USA. Feeling aggrieved by the said order, the respondent Bank had filed appeals vide W.A.Nos.768 and 770 of 2022 and the same were dismissed by a Division Bench of this Court with costs this Court vide order 09.12.2022.

xii) As discussed above, both the petitioners are intending to travel abroad on business and personal purposes. The Bank is not in a position to explain as to why they are continuing the issuance of Lookout Circulars against the petitioners except saying in the economic interest of India. The Bank is also not in a position to explain as to why it required the physical presence of the petitioners for the purpose of continuation of recovery proceedings and to recover the amount by initiating proceedings under the provisions of the SARFAESI Act. Therefore physical presence of petitioners is not required for the purpose of continuation of the aforesaid recovery proceedings. Therefore, this Court is inclined to grant relief to both the petitioners herein.

8. CONCLUSION:

i) Both the writ petitions are disposed of with the following directions:

a) Look out Circular (LOC) dated 07.11.2020 issued by respondent No.1 - Bank against the petitioner in W.P. No.1531 of 2023 is suspended for a period from 31.01.2023 to 28.02.2023.

b) Look out Circular (LOC) dated 07.11.2020 issued by respondent No.1 - Bank against the petitioner in W.P. No.1534 of 2023 is suspended for a period from 10.02.2023 to 22.03.2023.

c) Respondent bank shall inform/communicate this order to respondent No.4 - Immigration Bureau in terms of Office Memorandum dated 22.02.2021.

d) The petitioners in both the writ petitions shall inform their arrival/departure to respondent No.1 - Bank in terms of the aforesaid Office Memorandum dated 22.02.2021, and they shall cooperate with the Bank by furnishing information/ documents, if any, as and when required.

e) Respondent - Bank/Originating Agency shall review both the Lookout Circulars (LOCs) dated 07.11.2020 issued against both the petitioners on quarterly and annual basis, submit proposals, if any, immediately after such review in terms of the said Office Memorandum dated 22.02.2021. Both respondents shall comply with the guidelines issued by the Union of India vide Office Memorandum dated 22.02.2021.

f) Liberty is granted to the respondents to take action against the petitioners in the event of violation of any of the aforesaid conditions.

ii) In the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition shall stand closed.

