(2022) 07 TEL CK 0058

In the Telangana High Court

Case No : Writ Petition No. 27795 Of 2022

M.S Prabhakar APPELLANT

Vs

State Bank Of India RESPONDENT

Date of Decision : 28-07-2022

Acts Referred:
Constitution Of India, 1950 — Article 21

Citation : (2022) 07 TEL CK 0058

Hon'ble Judges : K.Lakshman, J

Bench : Single Bench

Advocate : I Mytri, A Krishnam Raju

Final Decision : Disposed Of

Judgement

1. This Writ Petition is filed to declare the action of respondent Nos.1 and 2 with regard to the communication/ proceedings/Look Out Circular (LOC) issued by 1st respondent to 2nd respondent against the petitioners herein, and to declare action of the respondents in curtailing petitioners' personal liberty by preventing them from travelling abroad as illegal and consequently, to quash the said proceedings.

2. Heard Ms. Mytri Indukuru, learned counsel for the petitioners and Sri A.Krishnamraju, learned counsel appearing for 1st respondent – Bank, and Smt. Anjali Agarwal, learned counsel appearing for 2nd respondent, Sri N.Nagendran, learned Spl.Public Prosecutor for CBI. Perused the record.

FACTS OF THE CASE:-

3. The petitions herein are Promotors/Directors of M/s. Kadevi Industries Limited (for short, 'the Company'). The said company had obtained credit facilities in the form of Fund and Non-Fund basis limits from consortium banks which includes 1st respondent – Bank. The Indian Bank, (Lead Bank) has classified the account of the said company as Non Performing Asset (NPA). Challenging the said action, the said company had filed a Writ Petition vide W.P.No.28827 of 2021 and this

Court had passed the following interim order :-

'The proceedings if any initiated shall be subject to further orders of this Court.'

The said Writ Petition is pending and interim order is subsisting.

4. The 1st respondent – Bank has issued a notice stating that the petitioners are willful defaulters. The petitioners herein have challenged the said notice by way of filing a Writ Petition vide W.P.No.20818 of 2020. This Court vide order dated 19.11.2020 granted interim suspension of the said show cause notice. The said writ petition is pending and the said interim order is still subsisting.

5. 1st respondent – Bank had lodged a complaint with CBI against the petitioners herein and the same was challenged by the petitioners vide W.P.No.9344 of 2021 and this Court granted interim order dated 15.04.2021. The said writ petition is also pending and the said interim order is still subsisting.

6. In the meanwhile, the above said company had submitted One Time Settlement (OTS) proposal with 1st respondent – Bank Negotiations are going on. In the meanwhile 1st respondent had issued LOC against the petitioners herein.

7. It is contended by the petitioners herein that husband of 2nd petitioner's sister Mr. Gunaranjan Suri suffered brain haemorrhage on 20.04.2022 and is currently in vegetative stage after the surgery. Since her sister is alone therein, both the petitioners intending to travel abroad to Virginia, USA for a period of two months i.e. from 01.08.2022 to 30.09.2022. Due to the present LOC, the petitioners herein are not in a position to travel abroad for the said purpose.

8. Learned counsel for the petitioners would submit that while issuing LOC, 1st respondent has violated the guidelines issued by the Ministry of Home Affairs, from time to time including the latest guidelines issued vide Office Memorandum dated 22.02.2021 and it is abuse of process of law. The right of the petitioners to travel abroad cannot be deprived and it amounts to violation of Article 21 of the Constitution of India. He has also placed reliance on several judgments. With the said submissions, the petitioners sought to declare the LOC issued against them as illegal.

9. Whereas, Sri A.Krishnamraju, learned standing counsel appearing for 1st respondent, referring to the counter, would submit that 1st respondent – Bank has followed the guidelines issued by the Ministry of Home Affairs, Union of India, including the guidelines dated 22.02.2021. 1st respondent being a financial institution dealing with the deposits of the public, are in immediate need of funds for re-cycling and the same can be obtained only by taking expeditious action by enforcing its available lawful remedies against the defaulting parties and investigating the mis-utilization or diversion of funds. As on today a sum of Rs.141.22 Crores is due and payable by the borrower company and also by the petitioners as on 30.06.2022. The said company including its Promotors/ Directors/the petitioners herein manipulated the finances in relation to sundry

debtors. Therefore, 1st respondent has lodged a complaint against the petitioners herein and also the company with the CBI. However, the same was challenged by the petitioners and this Court has granted interim order. Forensic Audit was conducted in relation to the transactions of the said company and on the basis of the information collected by them, 1st respondent - bank has come to conclusion that the petitioners/ Promoters/Directors of the said company are indulging in fraudulent act with an intention to have illegal gain and therefore it is within the banks right to make a request to 2nd respondent to issue LOC against the petitioners herein. The Bank has reasonable apprehension that if the petitioners are permitted to travel out of country despite LOC, they would not return to India to avoid the prosecution and other consequences which have to be faced by the petitioners. There is no irregularity in it. The petitioners have to approach the officer who ordered issuance of LOC and extend LOC wrongly. Instead of doing so, they have filed the present writ petition.

10. The petitioners herein have filed an application vide I.A.No.2 of 2022 to implead CBI and the same is ordered.

11. In view of the above said facts, this Court directed the learned Special Public Prosecutor for CBI to submit information with regard to stage of investigation of the above said proceedings pending before the CBI. On instructions, he has submitted that the petitioners have been cooperating with the Investigating Officer, and the Investigating Officer has recorded the statements of 78 witnesses and he has collected documentary evidence. The investigation is pending and it is almost completed. Therefore, he sought to impose certain conditions on the petitioners herein.

12. The petitioners are intending to travel Virginia, USA since husband of sister of 2nd petitioner is undergoing treatment at Fairfax Hospital in the said city. In proof of the same, the petitioners have filed certain documents. The petitioners herein are intending to travel abroad from 01.08.2022 to 30.09.2022 to assist the said patient who underwent surgery for brain haemorrhage. There is no dispute that the petitioners herein have filed the above said three writ petitions, interim orders were passed and the said writ petitions are pending and the said interim orders are subsisting as on today. It is also specifically contended by the petitioners that they are residents of Hyderabad for the past 5 to 6 decades and their family members are also residents of Hyderabad and their children are pursuing studies in Hyderabad itself. The 1st petitioner’s father is aged about 90 years and resident of Hyderabad. He needs constant care. Therefore, the petitioners will return from USA. In proof of the same they have also filed air tickets.

13. In Menaka Gandhi Vs. 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.

14. Referring to the said principle and also the principles 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 a right to travel abroad 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.

15. 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.

16. It is also relevant to note that the Bank of India, respondent therein, the Originator of the LOC had preferred Spl.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 for 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.

17. As discussed supra, the proceedings are pending with the CBI against the petitioners. The Investigating Officer has recorded statements of 78 witnesses and collected 100 documents. There is no allegation against the petitioners herein that they are not cooperating with the Investigating Officer.

18. 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.

19. As per clause-6(J) of the Office Memorandum, dated 22.02.2021, the LOC opened shall remain in force until and unless a deletion request is received by the BOI from the Originator itself. No LOC shall 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. 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. Therefore, the 1st respondent, Originating Agency, shall review the said LOC.

20. In view of the above said guidelines and also the law laid down, coming to the case on hand, as discussed supra, the petitioners herein are Promotors/ Directors of the Borrower Company. The said company is declared as NPA and a notice was issued to the petitioners herein as to why they should not be declared as willful defaulters. The petitioners herein have filed the above said three writ petitions and this court has granted interim orders. The said interim orders are subsisting. It is not in dispute that the borrower Company has approached the 1st respondent – Bank by way of submitting OTS proposal. Thus, negotiations are going on for settlement. Complaint lodged by the Bank is pending with CBI. Petitioners have to co-operate with the Investigating Officer.

21. In view of the above said discussion, this Court is not inclined to declare the LOC issued against the petitioners herein as illegal. However, as per the above said guidelines dated 22.02.2021, the Originating Agency has to review the said LOC on quarterly and annual basis. But the 1st respondent – Bank did not do the said exercise. Their counter is silent with regard to the same. It is not in dispute that the petitioners herein are permanent residents of Hyderabad and their children, parents and assets are in Hyderabad only. They are seeking permission

to travel abroad for a period of two months from 01.08.2022 to 30.09.2022 for the purpose of giving assistance to the above said patient who is in critical condition. Therefore, this Court is inclined to suspend the LOC issued against the petitioners herein for a period of two months from 01.08.2022 to 30.09.2022 for the purpose of the petitioners travelling abroad i.e. Virginia, USA and return back.

22. Considering the said principles and also in view of the above said discussion, this Writ Petition is disposed of with the following directions:-

i. LOC issued by 1st respondent against the petitioners is suspended for a period of two months i.e. from 01.08.2022 to 30.09.2022.

ii. 1st respondent shall inform/communicate this order to 2nd respondent in terms of Office Memorandum, dated 22.02.2021.

iii. The petitioners shall inform their arrival/ departure to the respondents and also Investigating Officer, CBI, in terms of the said Office Memorandum, dated 22.02.2021.

iv. The petitioners shall inform to respondents the address and other particulars with regard to their stay in Virginia, USA.

v. The petitioners shall cooperate with the Investigating Agency including the Central Bureau of Investigation (CBI) by furnishing information/documents, if any, as sought by them.

vi. 1st respondent – Originating Agency shall review the LOC opened against the petitioners herein on quarterly and annual basis, submit proposals to delete LOC, if any, immediately after such a review in terms of the said Office Memorandum, dated 22.02.2021.

vii. Both the respondents are directed to comply with the guidelines issued by the Government of India vide Office Memorandum dated 22.02.2021.

viii. Liberty is granted to the respondents to take action against the petitioners herein for violation of any of the aforesaid conditions.

Miscellaneous Petitions, if any, pending, shall also stand closed.

