

(2022) 12 TEL CK 0017
In the Telangana High Court
Case No : Writ Petition No. 43531 Of 2022

Surendra Kumar Sivapuram

APPELLANT

Vs

Union Of India And 4 Others

RESPONDENT

Date of Decision : 05-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 21

Citation : (2022) 12 TEL CK 0017

Hon'ble Judges : K.Lakshman, J

Bench : Single Bench

Advocate : K Keertivardhan Reddy, G Srikanth Goud

Final Decision : Disposed Of

Judgement

1. Heard Sri Vikram Pooserla, learned counsel for the petitioner representing Sri K.Keertivardhan Reddy, learned counsel for the petitioner and Sri N.Nagendran, Special Public Prosecutor CBI appearing for 4th respondent and Sri G.Srikanth Goud, learned Standing Counsel for Central Government appearing for respondent Nos.1 to 3. Perused the record.

2. In compliance of the order dated 02.11.2022, Sri N.Nagendran, learned Special Public Prosecutor for CBI, on instructions, would submit that the Investigating Officer in Cr.No.RCO352020A0010 filed charge sheet in January, 2022 and the same was returned with certain objections on 12.01.2022 i.e. CFSL report and prosecution sanction against A.1 to A.3 were not filed. Now they have obtained CFSL report. Sanction of prosecution in respect of A.1 to A.3 rejected.

Therefore, they are going to re-submit the charge sheet against the A.1 to A.3. According to him, it takes some time. He would further submit that there are serious allegations against the petitioner herein/A.10 that he has fabricated the property documents which were given as collateral security towards loan obtained from 5th respondent-Bank. The aforesaid facts would reveal that as on today, charge sheet is not filed against the petitioner herein/A.10 in the aforesaid

crime. The said fact was also recorded by learned Principal Special Judge for CBI Cases in the order dated 07.03.2022 in CrI.M.P.No.388 of 2022 in RC No.10A/2020-CBI/ACB/HYD.

3. According to the learned Special Public Prosecutor for CBI, 4th respondent has issued the aforesaid Look Out Circular (LOC) considering the economic interest of India. Review was also conducted in terms of the latest guidelines issued by the Ministry of Home Affairs, Union of India, vide Office Memorandum, dated 22.02.2021. However, the said fact was not mentioned in the counter filed by 4th respondent.

4. In view of the above facts and submissions, it is relevant to note that 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 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, 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.

5. 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.

6. In the present case, according to the petitioner, he is intending to travel abroad to Dubai, Tanzania, Zambia and Madagascar etc., from 08.12.2022 to

22.12.2022 for the purpose of business activities. Due to the pendency of the LOC against him, he is not in a position to travel abroad. Therefore, he seeks suspension of the aforesaid LOC issued against him so as to travel abroad.

7. In view of the above guidelines and also law laid down, coming to the case on hand as discussed supra, this Court is not inclined to suspend LOC issued against the petitioner herein but to dispose the present writ petition with the following directions:-

i. LOC issued by the respondent No.4 against the petitioner is suspended for the period from 08.12.2022 to 22.12.2022.

ii. The respondent Nos.4 and 5 shall inform/communicate this order to other respondents in terms of Office Memorandum, dated 22.02.2021.

iii. The petitioner shall inform his arrival/departure to the respondent Nos.4 and 5 in terms of the said Office Memorandum, dated 22.02.2021.

iv. Respondent No.4 - Originating Agency shall review LOC opened against the petitioner 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. They shall communicate the same to the petitioner herein.

v. Both the petitioner and the respondent Nos.4 and 5 are directed to comply with the guidelines issued by the Government of India vide Office Memorandum dated 22.02.2021.

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

8. Accordingly this writ petition is disposed of. Consequently, miscellaneous Petitions, if any, pending, shall also stand closed.