

**In The High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 53 of 2021

Hemanta Kumar Banka

Vs.

Union of India and others

For the petitioner	:	Mr. Sabyasachi Banerjee, Ms. Sanjukta Gupta, Mr. Ayan Bhattacharya, Mr. Arnab Sardar, Mr. Anirban Dutta
For the respondent nos.1 and 2	:	Mr. Phiroze Edulji, Mr. Avinash Kankani, Mr. Debu Chowdhury
For the respondent no.3	:	Mr. Rajarshi Dutta, Mr. Arjun Mookherjee
Hearing concluded on	:	11.02.2021
Judgment on	:	23.02.2021

The Court:

1. The petitioner is a non-resident Indian and holds a passport issued by the Republic of India, bearing Passport No.Z5300713, which was renewed and reissued on April 24, 2019. The place of issuance was Singapore.
2. The petitioner holds a Permanent Resident Card bearing Identity Card No.S7762646H issued by the Government of Singapore and conducts business primarily at Singapore. The said Permanent Resident Card is valid till November 15, 2021.
3. The petitioner carries on trading through his company at Singapore and applied for credit facilities with various banks, including the

branch of the respondent no.3 (UCO Bank) at Singapore. Respondent no.3 is a Government undertaking bank of India.

4. Admittedly, the High Court at Singapore passed an order on October 9, 2020 in Case no. HC/CWU 137/2020, directing the petitioner's company to be wound up.
5. Vide order dated November 19, 2020, the Singapore High Court, in Case No. HC/B 1472/2020, issued a Bankruptcy Order against the petitioner.
6. Such orders were issued on applications of financing companies (not respondent no.3).
7. In connection with his business, the petitioner travels to various destinations including India. On October 8, 2020, allegedly in connection with his business, the petitioner had travelled to Tanzania on a Business VISA and returned to India on January 13, 2021. On January 25, 2021, the petitioner was scheduled to travel to Tanzania again and accordingly boarded a flight from Kolkata to Mumbai for the said purpose on January 24, 2021 arriving at Mumbai on January 25, 2021. The petitioner went for immigration clearance, but was disallowed to cross the immigration channel. The Immigration Officer concerned informed the petitioner that such restraint was imposed pursuant to a Look-Out Circular (LOC) issued on a complaint filed by respondent no.3. The LOC prohibits the petitioner from travelling beyond the territorial borders of India, although his domestic travels within the country are exempt.
8. The petitioner has preferred the present writ petition, challenging the said Look-Out Circular.

- 9.** Learned counsel for the petitioner argues that there arose no occasion for such Look-Out Circular to be issued for the petitioner in India. It is argued that the petitioner has been carrying on business legally and travelling to various countries, including India, on valid passport and Visas. It is also contended that the petitioner does not have any business with respondent no.3 but only with its Singapore Branch; as such, respondent no. 3, which is situated in India, cannot have any cause of action to lodge a complaint asking for an LOC to be issued against the petitioner.
- 10.** The winding up and bankruptcy orders passed by the Singapore Court, under the law of Singapore, could not have any bearing on the present Look-Out Circular. It is submitted that the respondents have not established any violation by the petitioner of any Indian law and/or any threat to the sovereignty, security or integrity of India and/or the economic interests of India, sufficient to justify issuance of the LOC.
- 11.** Hence, it is argued that the impugned LOC is illegal and ought to be set aside.
- 12.** Learned Counsel appearing for the respondent no.3-Bank submits, by placing reliance in the relevant Office Memoranda issued by the Government of India, Ministry of Home Affairs (Foreigners' Division) that sufficient cause of action was made out by the Bank for the issuance of such Circular.
- 13.** It is argued that the respondent no.3 is a nationalized bank and a Government of India undertaking. Thus, any transaction pertaining to any of its branches, including the Singapore Branch, directly affects

the interest of respondent no.3 and, in turn, the economy of the country and the larger public interest of the Indian populace.

- 14.** Although no Indian law has been violated, it is argued that the petitioner has been declared to be bankrupt and his company wound up, which raises sufficient apprehension that the loans taken by the petitioner from the Singapore Branch of the respondent no.3 would not be repaid. In such context, if the petitioner travels out of India, respondent no.3, which is the parent body of the Singapore Branch, will have no means to enforce repayment of the loans taken by the petitioner from its Singapore Branch.
- 15.** Since the quantum of the loan taken by the petitioner is huge, if the petitioner were to leave India, there would be a substantial dent in the economic interest of the country as well. Learned counsel relies in particular on the Office Memorandum issued by the Government of India, Ministry of Finance dated October 4, 2018 (annexed at page 79 of the Affidavit-in-opposition of respondent no.3) to indicate that the Chairman of the State Bank of India/Managing Directors and Chief Executive Officers of other public sector banks were included within the authorities at whose behest Look-Out Circulars could be issued. Pursuant thereto, by an Office Memorandum dated October 12, 2018, the Government of India, Ministry of Home Affairs, Foreigners' Division (Immigration Section) introduced such amendment in the original Office Memorandum dated October 27, 2010, which governs LOCs. Thus, it is argued that the said functionaries of respondent no.3 had authority to request for issuance of LOCs.
- 16.** By placing reliance on the Office Memorandum (O.M.) dated December

5, 2017, also issued by the Ministry of Home Affairs, Foreigners' Division (Immigration Section), learned counsel for all the respondents argues that LOCs can be issued even in such cases as would not be covered by the guidelines given in the October 27, 2010 O.M. whereby the departure of a person from India may be declined at the request of any of the authorities mentioned in the O.M. if it appears to such authority, based on inputs received, that the departure of such person is detrimental to the sovereignty, security or integrity of India or to the bilateral relationships with any country or to the strategic and/or economic interests of India. In the present case, it is submitted, the said criteria were fulfilled, justifying the issuance of LOC.

- 17.** Learned counsel for the petitioner cites two unreported Single Bench judgments of this court. The order dated February 21, 2020, passed in W.P. No. 105 of 2020 (*Mritunjay Singh vs. the Union of India and others*), was merely an interim order and not the final adjudication of any issue. In the said case, the person against whom the LOC was issued was a sailor in a merchant vessel. It was observed by the Court that the contract of employment of the petitioner itself stipulated that the outer limit within which the petitioner had to return to India was five months from the commencement of his voyage. Moreover, a Division Bench order of this Court was considered, which permitted the petitioner to open a separate salary account which would be beyond the pale of the order of attachment passed against the petitioner. This Court held that the said direction would be rendered meaningless in the event the petitioner therein was not allowed to earn such salary by travelling abroad. More

importantly, the CBI had discharged the petitioner in the said writ petition from a criminal case initiated against the petitioner; as such, there was no pending allegation of offence under the India Penal Code or any penal statute, as contemplated in the guidelines governing LOCs.

- 18.** Under such circumstances, it was held that the economic interest of the country as a whole would not suffer and an interim order was passed by this Court restraining the respondents from preventing the writ petitioner therein from travelling abroad, subject to certain restrictions.
- 19.** The next order cited by the petitioner was passed on February 6, 2020 in *WP No.23412(W) of 2019 (UCO Bank vs. Dr. Siten Saha Roy and others)* on a review application heard along with a contempt application filed in connection with the main writ petition. It was held that no offence, as contemplated in the relevant guidelines, was disclosed against the petitioner therein, sufficient to be detrimental to the economic interest of India at large. The concept of economic interest of India was discussed briefly and it was observed that no exceptional case or adverse effect on such economic interest as a whole had been made out in the review petition or the original request for issuance of LOC issued by the Bank. Non-disclosure of any offence was considered, particularly, in the light of the request for issuance of LOC, which mentioned, under the respective entries for the subject "FIR No." and "Section of Law (where applicable)", "not available on record." Thus, there was no justification for issuance of LOC or any request being made thereof in the said case.

- 20.** On a bare perusal, it is clear that none of the aforesaid cited orders are relevant to the present case. Even apart from the fact that those were passed on review/contempt applications or were of interim nature, where no case of any offence being committed by the respective petitioners under any law was made out at all. In the present case, however, there was sufficient justification for the apprehension of respondent no.3 that the petitioner might escape from India, thereby defeating any effort to recover the huge amounts of loan due from him, which led to the request for issuance of LOC.
- 21.** Admittedly, the petitioner's Company, which is the main source of business of the petitioner as per the averments made in the writ petition itself, was wound up by the Singapore High Court. Even, on a personal level, the petitioner was declared to be bankrupt, albeit by the Singapore High Court. The premise of security for the loan taken by the petitioner from the Singapore Branch of respondent no.3 was thus denuded by such declarations. Although passed under the Singaporean law, such orders utterly jeopardized financial standing and integrity of the petitioner, which was sufficient to raise apprehension that the petitioner might not be in a position to repay the loan.
- 22.** No distinction can be drawn, merely on territorial grounds, between the UCO Bank of India (respondent no.3) and its branch at Singapore. The branches of a bank are, as the nomenclature suggests, outlets of the bank itself and not separate juristic entities. The transactions carried out through those branches are those which have, at their source, the parent branch which, in the present case, is the UCO

Bank in India. Admittedly, the UCO Bank is a nationalized bank and a Government of India undertaking. Thus, the financial interests of the Singapore Branch of respondent no.3 are inextricably linked with those of the respondent no.3 itself and, consequently, with the interests of Indian public money.

- 23.** The winding up and bankruptcy orders were sufficient to freeze the business of the petitioner in Singapore, which was the source of repayment of loan by the petitioner to respondent no.3 through its Singapore branch. This, in turn, directly affected the Indian interests vested in respondent no.3.
- 24.** The parent Office Memorandum dated October 27, 2010 clearly stipulates not only cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court, but also touches upon larger national interest in Clause (j) thereof. Moreover, the said Memorandum was subsequently supplemented by several Memoranda, including the Office Memorandum dated December 5, 2017 which categorically stipulated that in exceptional cases, LOCs can be issued even in such cases as would not be covered by the guidelines given in the parent O.M., whereby departure of a person from India may be declined at the request of the authorities mentioned in Clause (b) of October 27, 2010 O.M. if it appears to such authority, based on inputs received, that the departure of such person is detrimental to the bilateral relationships with any country and economic interests of India (among other grounds). Thus, the conspectus of the issuance of LOCs was broadened from mere suspected terrorists and anti-national elements

to the economic offenders hampering the interests of India as a whole.

- 25.** The Office Memorandum dated October 4, 2018, apart from the above provisions, also clarified that the guidelines enable LOCs against persons who are fraudsters/persons who take loans, willfully default/lend money and then escape to foreign jurisdictions, since such actions would not be in the economic interests of India or in the larger public interest.
- 26.** Such parameters, as discussed above, sufficiently govern the case of the present writ petitioner.
- 27.** The only other sticking point, as regards authority of the bank officials to issue a request, was obliterated vide Office Memorandum dated October 12, 2018, which introduced Clause (xv), empowering the Chairman/Managing Directors/Chief Executive of all public sector banks to issue requests for LOCs. In the present case, the designated official of the respondent no.3-Bank issued the request which was, thus, valid in law. The present writ petitioner is not a mere sailor in a merchant vessel, whose livelihood depends on travels outside India and, has to have a steady income by dint of such travels to put money into his salary account as per any Division Bench direction of this Court; nor is the present writ petitioner a person against whom a specific offence has been alleged but the relevant FIR and other documents are admittedly not available on record, as were the facts of the judgment/order cited by the petitioner. The present petitioner is a declared bankrupt with his only company, disclosed in the writ petition, having been wound up by orders of a competent court of Singapore, which country is the admitted business base of the

petitioner.

28. Not only the economic interests of India but bilateral relations with Singapore (both of which are recognized in the relevant Office Memoranda as valid grounds of issuance of LOC) will suffer in the event the petitioner is permitted to leave India, thereby evading repayment of the huge loans taken by him from the Singapore branch of respondent no.3, a nationalized and Government undertaking bank of India.
29. In such context, it does not lie in the mouth of the petitioner to say that his rights of travel touch his personal liberty under Article 21 of the Constitution of India. Article 21(6) is a sufficient handle to curtail such right, since the individual right of the writ petitioner has to give way to the public interest of India.
30. Without incriminating the petitioner in any future proceeding/challenge in any court of law against the winding up and bankruptcy orders, it can safely be observed that there was sufficient ground for apprehension to issue an LOC against the petitioner.
31. As such, there is no merit in the present writ petition. WPO No.53 of 2021 is, thus, dismissed on contest without, however, any order as to costs.
32. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)