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

Reserved on: 17.12.2021
Date of decision: 12.01.2022

+ W.P.(C) 5374/2021 & CRL.M.(BAIL) 605/2021 (Suspension Of LOC)

VIKAS CHAUDHARY Petitioner

Through Mr.Vikas Pahwa, Senior Advocate with
Mr. Shadman Ahmed Siddiqui, Mr.Samjyor Lepcha
and Mr.Kushagra Raghuvanshi, Advs.

versus

UNION OF INDIA AND ORS Respondent

Through Mr.Anurag Ahluwalia, CGSC for R-1.
Mr. Zoheb Hossain, SSC, Mr. Parth Semwal, JSC &
Ms. Tulika Gupta, Adv. for Respondent no.3/Income
Tax Department

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

JUDGMENT

1. The present petition under Article 226 of the Constitution of India seeks quashing of the Look Out Circular (hereinafter referred to as "LOC") issued against the petitioner by respondent No. 1/Ministry of Home Affairs at the instance of respondent No. 3/Income Tax Department.

2. The Petitioner is a director in two companies, namely M/s Nautilus Metal Crafts Pvt. Ltd., and M/s Aastha Apparels Pvt. Ltd. having their registered offices in Delhi. It is claimed that the two companies are in the business of exporting garments to the USA,

Europe, South America, the UK and the UAE, and based on their performance are the recipients of various certificates and awards from the Government including a “*Two Star Export House Status*” and an “*Authorized Economic Operator T-1 Certificate*”.

3. On the basis of a Warrant of Authorization (WoA) issued on 05.02.2019 u/s 132(1) of the Income Tax Act against a third party, namely ‘The Kochar Group’ comprising *inter alia* of Shri Avtar Singh Kochar, Shri Gagandeep Singh Kochar, Shri Hari Singh Kochar and M/s HL Impex (P) Ltd, a search action was conducted at the petitioner’s residence from 06.02.2019 to 09.02.2019. During this search, besides some loose papers, a hard disk, a digital video recorder, a key to locker no. 150F, Bank of India, Punjabi Bagh New Delhi was also seized and as per procedure, the statements of both the petitioner and his wife were recorded. A WoA was thereafter, issued on 12.02.2019 against the petitioner and his wife for a search of the aforesaid locker, which led to the seizure of jewellery worth about Rs.1,00,67,181 found in the locker. It is at this stage, that upon a request made by the respondent no.3 to the respondent no.1 on 25.02.2019, the impugned LOC came to be issued against the petitioner.

4. The reasons provided by the respondent no. 3 to the respondent no.1 for issuing the LOC as reflected in column 4 of the prescribed performa read as under:-

“Undisclosed foreign assets and interests in foreign entities liable for penalty and prosecution under the Income Tax Act, the Black Money (Undisclosed foreign income and assets) and Imposition of Tax Act, 2015 and Prevention of Money Laundering Act, 2002.”

5. In the meanwhile, on 04.04.2019 the search action at the petitioner's residence resumed under the initial WoA issued on 05.02.2019, and continued till 05.04.2019, when after recording the petitioner's statement, a final *panchnama* was drawn up. The petitioner claims that his requests for being provided with copies of the seized documents as also of the statements recorded during the search action, were not acceded to.

6. On 20.04.2019, proceedings under the Income Tax Act for the assessment of his income for the financial years 2018-19 and 2019-20 were initiated against the petitioner, and culminated in two assessment orders, both dated 05.07.2021. Under these orders, challenge whereto is pending adjudication in proceedings initiated by the petitioner, his additional income has been assessed at Rs. 21.40 crores.

7. At this stage, it may also be noted that the petitioner had by way of W.P.(C) 5213/2020 assailed before this Court, the search actions conducted at his residential premises, and at his locker. This writ petition came to be dismissed by the Division Bench on 07.12.2020 by holding that the respondent's action of carrying out search actions conducted at the petitioner's residence and locker were justified.

8. Upon learning about the issuance of the LOC against him, the petitioner sought withdrawal thereof by approaching the respondents vide representations dated 02.04.2019, 04.05.2019, 15.05.2019 & 31.05.2019. Along with his representations, the petitioner also submitted an affidavit dated 04.05.2019, deposing therein that neither he nor any of his family members held any foreign accounts or any undisclosed assets. The said affidavit was accompanied by supporting certificates issued by the Government of Dubai.

9. However, upon finding that no action was being taken on his representations, the petitioner, on 06.08.2019, approached the learned Additional Chief Metropolitan Magistrate (ACMM), Tis Hazari, New Delhi by way of an application seeking quashing of the LOC. On 27.08.2019, the learned ACMM while suspending the operation of the impugned LOC, subject to certain conditions, granted permission to the petitioner to travel abroad except to the UAE. Aggrieved by this order, the respondents preferred a Revision Petition before the learned Additional District Judge (ADJ), which petition came to be allowed on 07.09.2019. It was held that since the petitioner was neither a complainant nor an accused nor a witness in any matter pending before the ACMM, the order suspending the LOC was without jurisdiction.

10. It is in these circumstances that the petitioner has approached this Court seeking quashing of the LOC. In support of the petition, Mr. Vikas Pahwa, learned senior counsel for the petitioner, at the outset, submits that the impugned LOC having been issued on the basis of a mere suspicion that the petitioner owns undisclosed foreign assets and has interests in foreign entities, is liable to be set aside on this ground alone. Despite repeated search actions having been conducted at the petitioner's residence, first in February 2019 and then in April 2019, no case, either under the Black Money (Undisclosed foreign income and assets) and Imposition of Tax Act, 2015 or under the Prevention of Money Laundering Act, 2002, or even under the Income Tax Act 1961, had been registered against him till date. He, therefore, contends that the mere apprehension of the respondent no.3 that the petitioner, who is otherwise a businessman of repute, might in the future, be prosecuted under these acts, cannot be a ground to harass him any further, as has

been happening for the last almost three years. The respondent's plea that it is still awaiting a response to its FT & TR references, seeking information from the Dubai authorities, regarding an alleged undisclosed transaction, which it claims has emerged from the digital evidences seized during the search action at the petitioner's residence, cannot lead any credence to the respondents' wholly unsubstantiated presumption that the petitioner had transferred any amount to a foreign company namely M/s Centurion International Limited for acquisition of its shares. Moreover, to rebut this wholly baseless presumption of the respondents, the petitioner had in May 2019 itself, submitted to the respondent no.3 an affidavit along with certificates issued by the Government of Dubai, clearly testifying that neither he nor any of his family members own any shares in the said company or any other assets in Dubai, UAE, which aspects have just been ignored by the respondents for the last three years.

11. Mr.Pahwa, thus contends, that once despite having conducted raids on the petitioner's premises and having taken all possible coercive steps against him, the respondents, for want of any incriminating material against him, have not registered any case against him, either under the IPC or any other Penal Law, they cannot now try to justify the LOC by relying on the OM dated 05.12.2017, which was admittedly never invoked at the time of issuing the LOC. The respondent's bald plea that the petitioner's departure would be detrimental to the economic interests of India, cannot be accepted in the face of the categorical stand of the respondent no.1 before this Court, that the request for the issuance of LOC received from the respondent no.3 was under the OM dated 27.10.2010, which lays down a mandatory pre-condition of person being

involved in a cognizable offence under the IPC or any other penal law. He, further, submits that while issuing the impugned LOC the respondents have ignored the guidelines issued by this Court in *Sumer Singh Salkan v. Asst. Directors and others 2010 SCC OnLine Del 2699* wherein it has been held that a criminal investigation must necessarily have been initiated against the individual for a LOC to be issued against him.

12. Mr.Pahwa, further, submits that even the stands taken by respondent nos. 1 and 3 to defend the impugned LOC are contradictory; while the respondent no.3 has, in its counter, stated that the LOC has been issued since the petitioner leaving the country would be “*detrimental to the economic interests of India*” and therefore against larger public interest, the reasons provided by respondent no.1, in complete contrast refer to the petitioner’s alleged undisclosed foreign assets and purported interests in foreign entities, liable for penalty under the Income Tax Act, the Black money (Undisclosed foreign income and assets) & Imposition of Tax Act, 2015 & Prevention of Money Laundering Act, 2002; thus, making it apparent that the respondent no.3 is using vague terms in order to mislead this Court to defend its illegal action of issuing the impugned LOC and getting the same renewed from respondent no.1. By placing reliance on *Deept Sarup Aggarwal v. Union of India 2020 SCC OnLine Del 1913* and *Brij Bhushan Kathuria v. Union of India 2021 SCC OnLine Del 1260*, he contends that the respondents have not made out any case for invoking the Clause introduced vide the 2017 amendment, which permits the issuance of LOC, even when the individual is not involved in a cognizable offence. A mere reference to the power available with the respondents cannot

provide as a substitute to providing reasons for exercising the same and such a practice has been always strongly deprecated by the Court.

13. He, thus contends, that the term '*detrimental to the economic interest of the country*', used by the respondent no.3 in its counter affidavit is merely to justify its arbitrary action of having issued the LOC, without there being any material whatsoever, against the petitioner available with them. To justify its bald allegation against the petitioner of having transferred an amount of AED 16,500,000 (Rs. 30 crore) to purchase 10% percent shares in M/s Centurion International Limited, the respondent no.3 has relied on an unsigned draft agreement and some WhatsApp chats, which, even the respondents are aware have absolutely no evidentiary value whatsoever. Even as per the respondents themselves, the agreement is only a draft agreement, which there is nothing to show was ever acted upon. The respondents have also deliberately ignored the documents provided by the petitioner to show that the amount transferred for the proposed purchase of shares was not AED 16,500,000/- but only AED 7,50,000, which amount was transferred by the petitioner's daughter to M/s Royal Centurion Real Estate Development LLC, Dubai, a sister concern of M/s Centurion International Limited only at the request of the latter. Moreover, once the proposed transaction did not materialize, the amount had been duly returned to the petitioner's daughter through banking channels. The respondents, being fully aware of this position, have wrongly tried to portray that the petitioner's departure will be detrimental to the economic interest of the country by deliberately not disclosing to this Court the fact that after the two income tax assessments carried out subsequent to the search actions conducted at his residence and of his

locker, which locker, the petitioner had admittedly not operated for the last six years, his additional income has been assessed as only Rs.21.40 crore. In the light of this factual position, neither can the respondents' bald statement that the petitioner is involved in a fraud of Rs.1500 crore be relied upon nor can the petitioner's case fall under the ambit of this Clause introduced in the OM dated 05.12.2017.

14. Without prejudice to his aforesaid submission that there was no ground for issuance of the impugned LOC, Mr.Pahwa contends that, even otherwise the impugned LOC stood automatically lapsed after a period of one year *i.e.* on 25.02.2020, as the respondents have not produced any record to suggest that the same was ever renewed by them. His plea, thus being, that both under the OM dated 27.10.2010 and the OM dated 05.12.2017, it fell upon the respondent no.3 to make a request for renewal of the LOC after the duration of one year, the respondent no.3, having never made any such request for renewal of the petitioner's LOC ought not be now permitted to take shelter behind, the amendment introduced vide the OM dated 22.02.2021 which for the very first time lays down that a LOC once issued shall remain in force until and unless a deletion request is received from the originator. He thus contends the impugned LOC already stands lapsed.

15. Mr.Pahwa, submits, that the issuance of the LOC on 25.02.2019 and its continued operation for almost three years, especially in the absence of the registration of any cognizable offence or criminal complaint against the petitioner is *ex facie* illegal, even more so when it is evident that he has been complying with all the notices and summons issued to him by appearing before the respondent no.3 on 19 separate occasions (16 times pre-issuance of LOC, and 3 times post-issuance).

By placing reliance on the decision of the Madras High Court in *Aravindh Narayaswamy v. Deputy of Commissioner of Police 2017 SCC Online Mad 3673*, he submits that once it is an admitted position that the petitioner has already appeared before the respondent no.3 on nineteen different occasions, no further purpose can be served by the continuance of the impugned LOC.

16. The petitioner apart from looking after his business interests, additionally also requires to travel abroad due to the ill-health of his wife, who is stated to be suffering from Endometriosis; and has, owing to the huge surge Covid-19 cases in the city, been unable to obtain regular medical treatment, as required by her in Delhi. She has, therefore, managed to make an appointment with Dr. Janaki Gopalan at the Mediclinic Welfare, Dubai, UAE to seek treatment for the same. The said doctor has advised the petitioner's wife to stay in Dubai, UAE for the duration of a month in order to undergo health check-ups and obtain the requisite treatment. He, thus, prays that since the petitioner is unwilling to leave his wife unattended in her ill-health, he ought to be allowed to accompany her to the UAE for the duration of her treatment.

17. He finally submits that the petitioner, who has never evaded or attempted to evade any proceedings and has always extended his full cooperation to the investigation, has no intentions whatsoever to leave the country for good, as has been sought to be alleged by the respondents, especially in view of his strong roots in the community and the fact that his entire family including his two children are based in Delhi. He therefore, prays that the impugned LOC be quashed by this Court.

18. On the other hand, Mr. Zoheb Hossain learned counsel for the respondent no.3, at whose instance, the impugned LOC has been issued, at the outset submits that the issuance of a LOC is in the nature of administrative action, with which decision this Court ought not to interfere, keeping in view the settled legal position that the scope of judicial review in such cases is extremely limited. Once on the basis of the available material, the said respondent has arrived at a conclusion that the departure of the petitioner from the country would be prejudicial to its economic interests, thus warranting issuance of a LOC against him, this Court ought not to substitute its view for that of the respondent no.3. By placing reliance on the decision of *Union of India v. G. Ganayutham (1997) 7 SCC 463*, he contends that as long as the decision to issue the impugned LOC is found to be a plausible one, the same cannot be faulted and therefore prays that the writ petition be dismissed on this ground alone.

19. Mr. Hossain, then submits, that the petitioner's plea that the impugned LOC being contrary to the provisions of OM dated 27.10.2010, which provides that recourse to a LOC can be taken only when the individual is involved in a cognizable offence under the IPC or any other penal law is therefore liable to be set aside is, wholly misconceived, as the petitioner is conveniently trying to ignore the effect of the amendment of the OM dated 27.10.2010 vide OM dated 05.12.2017. The OM of 2010, having been amended in 2017, vide the OM dated 05.12.2017, now envisages that in exceptional circumstances a LOC may be issued against an individual even when he/she may not be involved in any cognizable offence, but also in a situation, where it appears to the authorities that the departure of such a person is

'detrimental to the economic interests of India'. In the present case, after a search of the petitioner's residence and locker, enough digital evidence was seized to show that he was involved in exports of over-invoiced goods to Dubai and had also surreptitiously purchased, in the name of his daughter, 10% shares in a company in Dubai from one Mr. Amit Aggarwal. The petitioner was clearly involved in a financial scam of a huge magnitude, which can be fully unearthed only after further investigation, which is still underway. He, therefore contends, that in the light of these facts, the respondents were justified in coming to the conclusion that exceptional circumstances existed where recourse to the Clause *'detrimental to the economic interests of India'* introduced vide OM dated 05.12.2017 was not only justified, but was, in fact, essential.

20. He, further submits, that contrary to the petitioner's plea that only a sum of AED750000/- was paid as an advance for purchase of the shares in M/s Centurion International Limited which amount it is claimed was received back after the proposed transaction did not materialize, there is enough *prima facie* evidence to show that a much higher amount was paid by the petitioner, and that too to a different entity, namely M/s Royal Centurion Real Estate Development LLC, Dubai, which amount was never refunded. He, therefore contends, that it was evident that the petitioner and his family own assets in Dubai, UAE, which assets have not been disclosed in their income tax returns.

21. Further, it has been found that, apart from the companies, about which he has disclosed, the petitioner, through his relatives and friends, has a controlling interest in two other companies: M/s. JBB Apparels Pvt. Ltd. and M/s. JBN Apparels Pvt. Ltd. Moreover, Mr. Avtar Singh Kochar, who has been found to be running a Hawala scam, and in

connection with whose affairs the initial warrant of authorization was issued for the search actions at the petitioner's residence, has also disclosed that some of the companies owned or controlled by the petitioner, were being used by him for the process of money laundering. He, therefore, contends that if all the aforesaid offences are taken into account, the amount of tax evasion by the petitioner would be over INR 1500 crores.

22. Mr. Hossain, then submits, that the petitioner's plea that the LOC has been issued only on the basis of a draft agreement for investment by the petitioner in an offshore company i.e. M/s Centurion International Limited from his residence, is wholly misplaced as there is supporting evidence, in the form of his WhatsApp chats, confirming that, as per the draft agreement, he had indeed made a payment of 1.65 million AED on 06.01.2019 for the purchase of 10% of shares in M/s Centurion International Limited. The only reason, as to why till date no criminal complaint has been registered against him, is that the Income Tax department, instead of acting pre-maturely, is awaiting confirmation from the Dubai authorities regarding the petitioner's interests and assets in Dubai. In case, only on account of the delay on part of the government authorities in Dubai in sending information, the petitioner is allowed to travel abroad, he is likely to tamper with the evidence available in foreign countries, especially in Dubai, UAE. He, thus, contends that the petitioner's departure has therefore been rightly perceived to be detrimental to the '*economic interests of India*' and he ought not to be permitted to leave the country taking into account the larger public interest.

23. Besides urging that the judgements relied upon by the petitioner are not applicable to the facts of the present case, Mr. Hossain, has, in support of his submissions, placed reliance on the decision of the Apex Court in *P. Balakotaiah v. Union of India and Ors. AIR 1958 SC 232* to contend that non-invoking of a specific provision while taking any action does not affect the validity of the action or in any manner negate the power of the competent authority to invoke the said provision. He also places reliance on *GSC Rao v. State of Andhra Pradesh and Others (2019) 106 ACC 437*, wherein the Andhra Pradesh High Court, by taking into account the huge amount involved in the case, the investigation whereof was underway, rejected the prayer for quashing of the LOC despite the petitioner cooperating with the investigation by holding that the Court could not disregard that there was a likelihood of the petitioner attempting to flee the country. He further places reliance on *S. Martin v. Deputy Commissioner of Police SCC OnLine Mad 426* wherein, the Madras High Court upheld the issuance of a LOC by observing that in exceptional circumstances, the respondents can take recourse to a LOC, to prevent an individual from evading arrest and to coerce him to cooperate with the investigating authorities. He, therefore, contends that in the present case, even if it were accepted that the petitioner has been duly cooperating with the authorities, the respondent no.3 was still justified to make a request for issuance of the LOC to prevent him from attempting to evade arrest by fleeing from the country.

24. Mr. Anurag Ahluwalia, learned counsel for the Respondent no.1 the agency that has issued the impugned LOC at the instance of respondent no.3, while adopting the submissions made on behalf of the respondent no.3, submits that the procedure for issuing a LOC,

prescribed in the OM dated 27.10.2010 as amended vide the OM dated 05.12.2017, has been scrupulously followed. He, further, contends that in any event, the respondent no.1 is only the issuing agency, and has therefore acted upon the inputs provided by respondent no.3. Once respondent no.3, has brought out that the departure of the petitioner from the country would be detrimental to its economic interests, there was no reason for respondent no.1 to doubt the same or to refuse to issue the LOC. He, therefore, also prays that the present writ petition be dismissed.

25. From the rival submissions of the parties and a perusal of the record, I find that four issues arise for my consideration in the present case. The first and foremost, being whether the Court can interfere with the issuance of a LOC or whether it is purely an administrative decision, with which the Court ought not to interfere, as sought to be contended by the respondent no.3. The second issue being, whether having made a request for issuance of the LOC under the OM dated 27.10.2010, the respondents can now seek to defend the LOC by relying on a Clause introduced only vide the OM dated 05.12.2017 which for the first time permits issuance of a LOC, even when there is no involvement in a cognizable offence, a pre-condition for issuance of a LOC under the OM dated 27.10.2010.

26. The third issue arising for my consideration, is whether the impugned LOC can be held to have lapsed after one year from the date of its issuance or whether the same still continues to hold the field, as urged by the respondent no. 3, for which purpose reliance has been placed on the consolidated guidelines issued by the respondent no. 1, vide it's OM dated 22.02.2021. Depending on the answer to the second

issue, the fourth and final issue, which in my opinion is the pivotal issue, on which the outcome of the present case would depend, the same being as to whether the petitioner's case would fall within the ambit of the Clause '*detrimental to the economic interests of the country*' and if yes, whether the respondents can continue to curtail the petitioner's rights by the impugned LOC for an indefinite period, when admittedly, till date, no proceedings have been initiated against him.

27. Before I deal with the issues noted hereinabove, it would be necessary to refer to the relevant Clauses of the two OMs holding the field. I may first refer to para 8 (g) and (h) of the OM dated 27.10.2010 which read as under:-

Office Memorandum dated 27th October, 2010

“g) 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 a LOC will not be arrested/detained.

h) In cases where there is no cognizable offence under IPC or 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.

28. I may, now note, the relevant extract of the OM dated 05.12.2017 which reads as under-

Sub: Amendments in Circular dated 27.10.2010 for issuance of LOC in respect of Indian citizens and foreigners” – reg.

In continuation to the Ministry OM No.25016/31/2010-Imm dated 27.10.2010 and as approved by the Competent Authority, the following amendment is hereby issued (emphasis supplied):-

Amendment-

Read as:

“In exceptional cases, LOCs 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 to the sovereignty or security or integrity of Indian 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 interest at any given point in time.”

Instead of :

“In exceptional cases, LOCs can be issued without complete parameters and/or case details against CI suspects, terrorists, anti/national elements etc. in larger national interest.”

29. Having noted the relevant extracts of both the OM dated 27.10.2010 and the OM dated 05.12.2017, I may deal with the first issue as to whether the Court can interfere with the issuance of a LOC. In my view, even though the respondents are justified in contending that the scope of judicial review to interfere with the decision of the competent authority issuing a LOC is very limited, it cannot be said that the decision is purely an administrative one or that in no situation can the Court examine the reasons provided by the authority for the issuance of a LOC. When considering a challenge to a LOC, the Courts undoubtedly have a secondary role; and as long as it is found that the decision of the authorities to issue a LOC is a reasonable one, the Court will be circumspect in interfering with the authority's decision to issue the

same. There can, however, never be any blanket bar on the Court's powers of judicial review to examine the authority's decision to issue the LOC. In the light of the adverse effects that the issuance of a LOC can have on the individual's life, the respondent's plea that the Writ Court under Article 226 of the Constitution of India should not review the decision to issue LOC cannot be accepted. In fact, in case, it is found that the decision of the authorities is without application of mind to the relevant factors, the Court can, and in fact, should come to the rescue of the individual. I, therefore, find no merit in the respondent's plea that this Court should not examine the legality of the impugned LOC.

30. Now coming to the second issue, what emerges is that the petitioner has, by relying on the counter affidavit filed by the respondent no.1, vehemently urged, that the request of issuance of the impugned LOC by the respondent no.3 having been made under the OM dated 27.10.2010, which prescribes that a LOC can be issued only when a person is involved in a cognizable offence under the Indian Penal Code, 1860 or under any other penal law, it was now not open for the respondent to take shelter under the amending OM dated 05.12.2017. The respondent has, while not denying that the petitioner is, as on date, not involved in any cognizable offence, sought to defend the LOC by urging that petitioner's case squarely fell within the ambit of the term 'Detrimental to the Economic Interests of India' as introduced vide the amendment to the procedure of issuance of a LOC through the OM dated 05.12.2017. It is the respondents' stand that the Clause introduced in 2017 is only in the nature of an amendment to the OM issued in 2010 and therefore, the applicable OM continues to be the OM dated 27.10.2010. It is, thus, the respondent's plea that the request for issuance

of the LOC could therefore, be made only under the OM of 2010 and was therefore, correctly made under the same.

31. Upon a bare perusal of the provisions of the OM dated 05.12.2017, I find myself unable to accept the petitioner's plea that the request for LOC, having been made under the OM of 2010, no resort could be made to the Clause introduced in 2017. The OM dated 05.12.2017 was clearly in the nature of an amendment to the circular dated 27.10.2010, the very title of which OM, makes it evident that an existing Clause of the OM dated 27.10.2010, dealing with cases covered under the exception Clause was sought to be amended. Even otherwise, I find, that this OM of 2017, except for introducing an amendment to the existing OM of 2010, does not lay down or even refer to any new guidelines. The OM dated 05.12.2017, therefore, only sought to introduce an amendment. The respondents are therefore, right in contending that the OM issued on 05.12.2017 only brought about an amendment and it is the OM of 2010 that continues to hold the field, albeit with the amendment introduced subsequently.

32. In my considered opinion, once a request for issuance of the impugned LOC against the petitioner was made in February 2019, his case was necessarily required to be governed by the OM of 2010, along with all up to date amendments, including the amendment introduced in 2017. The respondent no.3's action, in referring to the OM of 2010, while forwarding its request for issuance of LOC against the petitioner was therefore in order, and cannot be read in such a restrictive manner so as to imply that, no reference having been made to the OM dated 05.12.2017, it must be presumed that the respondent no.3 never intended to invoke the Clause introduced vide the OM dated 05.12.2017. The

respondent's action, in justifying the issuance of the LOC against the petitioner by relying on the Clause introduced vide the 2017 amendment, can, therefore, not be faulted.

33. Now coming to the third issue, as to whether the impugned LOC issued pursuant to the request by respondent no.3 on 25.02.2019 can be said to have lapsed as is sought to be contended by the petitioner, who has, by relying on para 8 (i) of the OM dated 27.10.2010 urged that the LOC stood automatically lapsed after one year. It has been pleaded by the petitioner that once nothing has been placed on record by the respondents to show that the same was ever renewed, the only inevitable conclusion is that the same stood automatically lapsed after one year. It has been further urged by the petitioner that once the LOC stood lapsed in February, 2020 the guidelines issued on 22.02.2021, cannot come to the aid of the respondents to revive a dead LOC. The respondents, have, on the other hand, contended, that the LOC was duly extended from time to time and therefore, being in force when the amendment was introduced in February, 2021, the same would continue till a deletion request is made by the respondent no.3 i.e. the originating authority.

34. In order to appreciate the rival submissions of the parties on this issue, it would be necessary to refer to Clause 8 (i) of the OM dated 27.10.2010 which reads as under:

“8 (i) The LOC will be valid for a period of one year from the date of issue and name of the subject shall be automatically removed from the LOC thereafter unless the concerned agency requests for its renewal within a period of one year. With effect from 1.1.2011, all LOCs with more than one year validity shall be deemed to have lapsed unless the agencies concerned specifically request BoI for continuation of the names in the LOC. However, this provision for automatic deletion after one year shall not be applicable in

following cases:

- a. Ban-entry LOCs issued for watching arrival of wanted persons (which have a specific duration);*
- b. loss of passport LOCs (which ordinarily continue till the validity of the document);*
- c. LOCs regarding impounding of passports;*
- d. LOCs issued at behest of Courts and Interpol.*

As also to Clause 'J' of the guidelines issued on 22.02.2021, which reads as under:

(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."

35. Upon a perusal of these Clauses in OM dated 27.10.2010 and 22.02.2021, what emerges is, that while the petitioner is justified in urging that as per the OM dated 27.10.2010, a LOC, once issued was valid only for one year, unless the same was specifically renewed; this position has however, radically changed after the issuance of OM dated 22.02.2021. Under Clause 'J' of the guidelines issued on 22.02.2021, the position has been reversed, and now a LOC once opened, remains in force, till a request for deletion is made. The concept of an automatic deletion of a LOC no longer exists. No doubt, respondent no.3, the originating agency in the present case, is expected to periodically review the LOCs issued at its behest. However, the fact remains, that in the

present case, it is the respondents' categorical stand that the LOC opened in February, 2019, was in force on 20.02.2021, when the new guidelines were issued. The petitioner has failed to show anything to the contrary. There is, therefore, absolutely no reason to disbelieve the respondents' plea that the impugned LOC was extended from time to time, and was in existence on 22.02.2021 when these consolidated guidelines came into effect.

36. However, the matter does not end here and the crucial issue which needs to be now determined is as to whether the Clause '*detrimental to the economic interests of India*' introduced vide the amendment in 2017, with a specific rider that the same would be used only in exceptional circumstances, could have, in the facts of the present case, been resorted to, for issuing the impugned LOC, as also whether the impugned LOC could be continued for the last almost 3 years without any proceedings under the IPC or any other penal law being initiated against the petitioner. It has to be kept in mind, that the issuance of a LOC necessarily curtails the rights of an individual to travel abroad and therefore, I am of the view, that for invocation of this Clause, which, in any event, is meant to be used only in exceptional circumstances, a mandatory pre-condition would be a formation of a reasonable belief by the originating authority that the departure of an individual would be '*detrimental to the economic interests of India*' to such an extent that it warrants curtailment of an individual's fundamental right to travel abroad. Turning to the facts of the present case, what is emerging is that the entire case of the respondents to believe that the petitioner's departure from the country will be '*detrimental to the economic interests of India*', hinges on an unsigned draft agreement and some WhatsApp

chats, which it is the respondent's own case are not conclusive. The respondents, are therefore, awaiting a response to their FT & TR references to the authorities at Dubai, United Arab Emirates to proceed against the petitioner under the Black Money Act 2015, Income Tax Act 1969, and the Prevention of Money Laundering Act 2002, which were, in fact, the reasons provided by respondent no.3 itself to Respondent no.1, while forwarding its request for issuance of the LOC.

37. The petitioner, on the other hand, has produced certificates from the Govt. of Dubai, to show that the allegations levelled against him are absolutely untrue and neither he nor his family members own any asset or shares in any company in Dubai. These certificates were, I may note, produced by the petitioner and submitted to the respondents in 2019 itself. Even though it is correct that at this stage, this Court is neither expected to examine the evidence in detail nor will the lack of evidence be conclusive, the fact however remains that the LOC in question, has remained in force for almost three years, during which period, the respondents have admittedly not taken any further action against the petitioner either under the Black Money Act 2015, the Income Tax Act 1969, or the Prevention of Money Laundering Act 2002. The two income tax assessment orders passed on 05.07.2021, have assessed the petitioner's additional income to be Rs. 21.40 crores; even these orders are under challenge by the petitioner. It is also an admitted position that except for the FT & TR references made by the respondent no.3, to the Govt. authorities in Dubai in July, 2019, no action has till date been taken by any of the respondents, to substantiate their allegation that the petitioner is involved in a huge financial scam or is involved in an offence under any other penal laws. Thus, when as on date, there is no

active investigation in regard to the alleged economic offences by the petitioner, coupled with the fact that the petitioner has, on 19 occasions appeared before respondent no.3, I have no hesitation in accepting the petitioner's plea that the very premise of the issuance of the LOC against him is based on a suspicion, which suspicion remains a mere suspicion even as on date, and that is perhaps the reason as to why no prosecution has been undertaken against him either under the Black Money Act, Income Tax Act or Prevention of Money Laundering Act, even after an inordinately long period of almost three years.

38. Moreover, even if the respondent's plea, that in view of the ongoing investigation regarding the petitioner's foreign interests, the issuance of the LOC in February, 2019 was justified, were to be accepted, the continuance of this LOC for almost three years without any cogent reasons forthcoming from them, is not understandable. In my considered opinion, it would be wholly impermissible, for the respondents, to continue placing fetters on the petitioner's right to travel abroad, in such a routine and mechanical manner without due consideration of the fact that even after almost three years there is still no sufficient evidence to charge the petitioner under the Black Money Act 2015, Income Tax Act 1969, or the Prevention of Money Laundering Act 2002. It is important to note that the petitioner herein, earns his livelihood by exporting garments to the United States of America, Europe, South America, the United Kingdom and the United Arab Emirates; an integral part of such business is overseas travel. The LOC does not only curtail his right to personal liberty but also his right to livelihood, as enshrined in Article 21 the Constitution of India. Thus, the issuance of a LOC against the petitioner, without any end in

sight, would definitely cause irreparable and considerable damage to the business interests of the petitioner. One also has to keep in mind that the issuance of a LOC is an extremely severe step and when purportedly issued in exceptional circumstances, on the ground of the departure of the person being '*detrimental to the economic interests of India*', the authorities must tread with caution. Once this Clause itself is meant to be used in exceptional circumstances, it cannot be permitted to be used in such a mechanical manner, as in the present case.

39. Merely because the OM dated 05.12.2017 permits the issuance of a LOC, in exceptional circumstances, even when the individual is not involved in any cognizable offence under the IPC or any other penal law, it has to be remembered that this power, is meant to be used in exceptional circumstances and not as a matter of routine, it must therefore, be interpreted in a manner that indicates an offence of such a magnitude so as to significantly affect the economic interests of the country. Mere suspicion of a person opening bank accounts in other countries and of investing in a foreign company cannot, in my view, be accepted as the basis for holding that the petitioner being allowed to travel abroad would be '*detrimental to the economic interests of India*', when it is undisputed that this suspicion has remained a suspicion for such a long period of almost three years.

40. At this stage, it may also be appropriate to refer to the observations of a coordinate bench of this Court, in ***Brij Bhushan Kathuria v. Union of India 2020 SCC OnLine Del 1913***, where the Court, while suspending the LOC therein, has considered the effect of the terms '*economic interest*' and '*larger public interest*' by observing as under:

“18. There is no criminal case pending against the Petitioner. His role is also yet to be ascertained by the investigating authorities. Phrases such as ‘economic interest’ or ‘larger public interest’ cannot be expanded in a manner so as to include an Independent Director who was in the past associated with the company being investigated, without any specific role being attributed to him, as in the present case. The Petitioner poses no flight risk given the fact that his wife and children are residents of Delhi/NCR.

41. Before I conclude, I must also refer to the decisions relied upon by the respondents. In paragraph 11 of **GSC Rao v. State of U.P.(2019) 106 ACC 437** on which learned counsel for the respondent no.3 has relied in support of its plea, that the mere fact of an accused cooperating with an ongoing investigation, can have no impact on whether a LOC ought to have been issued against him or not, the Court held as under:

“11. We are not inclined to extend the benefit to the revisionist-accused of the law laid down in the judgment of Karti P. Chidambaram (Supra) because in the present case, the LOC has been issued with a view to interrogating the revisionist in the matter at hand wherein the FIR has already been lodged and the investigation is going on. Merely because the revisionist so far had been cooperating with the investigation, may not lead us to believe that he would not evade his arrest in future. If some incriminating evidence comes on record against him, the possibility cannot be ruled out in this case of his fleeing abroad.”

What clearly emerges is that in the aforesaid case, the Court was dealing with a situation, where a FIR had already been lodged and a criminal investigation was ongoing against the person against whom the LOC had been issued. The same was the situation in **S. Martin v. Deputy Commissioner of Police SCC OnLine Mad 426**. In the present case, as has already been noted, no proceedings under any penal law

have, in fact, been initiated against the petitioner. These decisions are therefore, clearly distinguishable and do not, in any manner forward the case of the respondents.

42. For the aforesaid reasons, impugned LOC is wholly unsustainable and deserves to be quashed. However, keeping in view the respondent no.3's plea, that it is still awaiting inputs from the authorities at Dubai, upon receipt of which information, cases under various penal laws are likely to be initiated against the petitioner, I am of the view, that it would be in the interest of justice for the petitioner to inform respondent no.3, as and when he decides to leave the country, for the next one year.

43. The writ petition is accordingly, allowed by quashing the impugned LOC, and the extension thereof, by directing the petitioner to, for the next one year, give intimation to the respondent no.3, as and when he departs from or enters the country.

44. It is made clear that this order will not impact any proceedings which have been or which may be initiated against the petitioner.

सत्यमेव जयते

(REKHA PALLI)
JUDGE

JANUARY 12, 2022

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