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

Date of decision: 16th FEBRUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 4081/2021 & CM APPLs. 12407/2021, 19323/2021, 45294/2022, 46182/2022**

JAYANT NANDA

..... Petitioner

Through: Mr. R K Handoo, Mr. Yoginder Handoo, Mr. Ashwin Kataria, Advocates

versus

UNION OF INDIA, THROUGH SECRETARY, MINISTRY OF FINANCE, GOI & ORS

..... Respondents

Through: Mr. Anil Soni, CGSC with Mr. Devvrat Yadav, Advocate for UOI. Mr. Shlok Chandra, Sr. Standing Counsel with Ms. Madhavi Shukla, Jr. Standing Counsel, Ms. Priya Sarkar, Jr. Standing Counsel and Ms. Soumya Pandey, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court challenging a Look Out Circular dated 22.01.2020 opened against the Petitioner at the request of the Deputy Director, Income Tax (Investigation).
2. It is stated that the Petitioner is an Indian citizen holding an Indian Passport and is a Non Resident Indian living in Dubai, United Arab Emirates. It is stated that the Income Tax Department conducted search and seizure operations under Section 132 of the Income Tax Act, 1961



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(hereinafter referred to as “the IT Act”) on the premises of the Suri Family of the Lalit Hotels Group, including the premises of the petitioner herein. It is stated that the preliminary investigation reveals that the Suri Family with the help of the Petitioner herein have indulged in evading the disclosure of a large amount of undisclosed foreign assets/income to the tune of Rs.1400 crores in offshore jurisdictions. It is stated that the Petitioner has employed his NRI status in creating a structure of institutions/trusts in offshore jurisdictions for the benefit of the larger family and his sister, Ms. Jyotsana Suri, and has indulged in diversion of unaccounted assets/income with the purpose of circumventing the jurisdiction of Indian revenue authorities. Statement of the Petitioner under Section 132 of the IT Act was taken on 20.01.2020. On the basis of the search and seizure operations conducted by the Income Tax Department and the evidence collected by the Income Tax Department, the Deputy Director of the Income Tax issued an LOC against the Petitioner on 22.01.2020. Material on record discloses that summons have been issued against the Petitioner on 23.01.2020, 24.08.2020, 21.12.2020, 16.02.2021, 22.02.2021, 07.05.2021 and lastly on 12.03.2022.

3. The Petitioner approached this Court by filing the present Writ Petition on 25.03.2021. Vide Order dated 24.05.2021, the Petitioner was given permission to travel to Dubai. It is stated that the Petitioner went to Dubai on 28.08.2021 and returned back to the country on 05.09.2021. Vide Order dated 27.09.2021 the Petitioner was permitted to travel to UK and UAE for a period of three months. Further, vide Order dated 11.03.2022 the Petitioner was permitted to travel to UAE and Thailand for a period of three months. Vide Order dated 30.05.2022 the Petitioner was once again given permission to travel to UAE, Thailand, UK, Europe & the USA. Vide Order



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dated 31.10.2022, the Petitioner was given permission to travel to Thailand, UAE, Germany, Monaco and United Kingdom between 03.11.2022 to 14.12.2022. The petitioner was also allowed to travel to UAE and UK vide order dated 21.12.2022 between 24.12.2022 to 03.04.2023.

4. Pleadings in the matter are complete and various status reports have been filed by the authorities.

5. It is stated by the learned Counsel for the Petitioner that the Petitioner has not been summoned by the IT Department after 12.03.2022. He further states that the LOC against Ms. Jyotsana Suri has been quashed by the learned ACMM (Special Acts), Central District, Tis Hazari Court, vide Order dated 17.10.2022 subject to Ms. Jyotsana Suri furnishing an FDR of Rs.1 crore as a security for her future travels abroad. He states that the LOC against the Petitioner herein was opened on 22.01.2020 and though the LOCs have been periodically reviewed, no reason is discernible as to why the LOC against the Petitioner has still not been closed. He states that the Petitioner has not been called by the IT Department since 12.03.2022 which means that the physical presence of the Petitioner is no longer required for the investigation to continue.

6. Per contra, learned counsel for the Respondent states that the Petitioner is involved in various offences under the Prevention of Money Laundering Act, 2002 and he has been instrumental in creating a structure of institutions/trusts in offshore jurisdictions for the benefit of the larger family and has indulged in diversion of unaccounted income/assets with the purpose of circumventing the jurisdiction of Indian revenue authorities. He states that due to these entities, foreign income has been accrued to the petitioner and his family in excess of the amounts disclosed to the IT



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Department which is an offence under the Black Money Act. He states that the petitioner has been the architect of these structures which he has created by misusing his residential status as an NRI. He further states that the information sought through the Foreign Tax and Tax Research Division (FT&TR) from other jurisdictions such as the UAE, UK and Switzerland is still awaited and the presence of the petitioner will be necessary for further departmental proceedings on receipt of the information. He states that it is for this purpose that the LOC against the petitioner should not be quashed.

7. Heard the Counsels for the parties and perused the material on record.

8. Initially LOCs were issued against such individuals who were suspected of committing serious crimes and were indulged in anti national activities, terrorist activities, etc. However, after amendment, LOCs are now also opened at the instance of investigating agencies and banks against persons who have committed economic offences which involve offences under the Black Money Act and Prevention of Money Laundering Act including the act of siphoning off and misappropriation of funds which have been advanced to them by various banks.

9. In view of the Judgments passed by this Court in Vikram Sharma v. Union of India, **2010 SCC OnLine Del 2475**, and Sumer Singh Salkan v. Asstt. Director, **2010 SCC OnLine Del 2699**, and other decisions, an Office Memorandum dated 27.10.2010 by the ministry of Home Affairs was issued to regulate issuance of LOC by the concerned authorities wherein it is stated that recourse to LOC can be taken by the investigating agency in cognizable offences under IPC and other penal laws if the accused is deliberately avoiding arrest or not appearing before the Trial Court despite issuance of NBWs or that there is a likelihood of the accused leaving the country to



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evade arrest / trial. The said Memorandum also states that details in the enclosed proforma must be provided regarding “reason for opening LOC” without which the LOC was not to be opened. The said Memorandum further provides that in case where there is no cognizable offence under IPC and other penal laws, the person against whom LOC has been opened cannot be detained/arrested/prevented from leaving the country. The guidelines further provides that in exceptional cases, LOCs can be issued without complete parameters and/or case details against terrorists, anti-national elements, etc. in larger national interest. In 2017 the Office Memorandum was amended vide Office Memorandum dated 05.12.2017 and the same reads as under:

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

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 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 to be permitted in the larger public interest at any given point in time.”



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10. The scope and ambit of the term “*economic interests of India*” has been a subject matter of a number of judgments and most of the Courts, in unison, have held that the magnitude of the offence must be such that it has affected the economic interest of the country and larger public interest is involved. In Vikas Chaudhary v. Union of India, 2022 SCC OnLine Del 97, this court while discussing the extent of the term “economic interest of India” held as under

“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



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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.

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



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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."

11. Admittedly, the allegations made by the IT Department after conducting a search and seizure operations warranted the issuance of an LOC in 2020 for ensuring compliance of the petitioner with the ongoing investigation. The LOC was further reviewed and extended in 2021 and 2022. However, the investigation has been going on for more than 3 years and the petitioner has complied with multiple summons issued to him. The last summon was issued to the Petitioner in March 2022, i.e. about two years back, and the Petitioner has not been summoned by the authorities since then. An LOC cannot be permitted to continue for such a long period without there being any cogent and valid reason. The Petitioner has not been called for investigation since March 2022 and the counter affidavit filed by the Respondents does not indicate as to how the Petitioner has not cooperated with the investigation. In fact, material on record discloses that the petitioner has complied with the summons and has cooperated with the ongoing investigations against him by the IT Department.

12. Right to travel abroad has been held to be a fundamental right under Article 21 of the Constitution of India which cannot be taken away in an arbitrary and illegal manner [Refer: Maneka Gandhi v. Union of India, (1978) 1 SCC 248].

13. In view of the fact that LOC against Ms. Jyotsana Suri has been quashed and also in view of the fact that the Petitioner has not been called



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for investigation by the Investigating Agency for the past two years and in the absence of any material which indicates that the Petitioner is likely to be called for investigation in the near future, this Court is inclined to quash the LOC opened against the Petitioner. Mere fact that information sought through the Foreign Tax and Tax Research from other jurisdictions such as the UAE is still awaited does not persuade this Court to keep the LOC against the Petitioner pending to curtail his fundamental rights.

14. Considering the fact that the Petitioner is an NRI citizen who stays in Dubai and in order to ensure Petitioner's presence in India this Court is inclined to impose the following conditions on the Petitioner before quashing the LOC:

- a. The petitioner shall furnish security by way of an unencumbered property of a value of Rs.10 crores or above, or a fixed deposit of the same value before the Registrar General of this Court.
- b. The petitioner shall furnish liquid security for a sum of Rs.1 crore, either in the form of a Bank Guarantee or in the form of a Fixed Deposit or in any other liquid form before the Registrar General of this Court.
- c. The Petitioner shall not dispose of the properties which have been furnished as security in this Court without prior leave of this Court.
- d. The Petitioner shall give his entire itinerary to the Investigating Officer before leaving the country and shall adhere to the itinerary given to the IO.

15. With these conditions, the LOC against the Petitioner is hereby



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quashed.

16. The Writ Petition is disposed of. Pending applications, if any, also stand disposed of.

17. It is always open for the Respondents to open a fresh LOC against the Petitioner in case any of the conditions given in this Order is breached by the Petitioner.

SUBRAMONIUM PRASAD, J

FEBRUARY 16, 2024

Rahul