

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT**

THE HONOURABLE MR.JUSTICE V.G.ARUN

**WEDNESDAY, THE 31ST DAY OF AUGUST 2022 / 9TH BHADRA,
1944**

WP(C) NO. 15649 OF 2022

PETITIONER/S:

SHINAS A FIRDAUS
AGED 41 YEARS
SON OF ASNARU PILLAI
NEW ISHARRYA NAGAR -147,
VADAKKEVIL P.O, MADANNADA, KOLLAM, PIN - 691010

BY ADVS.
B.J.JOHN PRAKASH
P.PRAMEL

RESPONDENT/S:

- 1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF
HOME AFFAIRS,
GOVERNMENT OF INDIA, SOUTH BLOCK NEW DELHI,
PIN - 110001
- 2 THE CHAIRMAN AND MANAGING DIRECTOR
UCO BANK, BTM SARANI,KOLKATA, PIN - 700001
- 3 EMIGRATION OFFICER
THIRUVANANTHAPURAM INTERNATIONAL AIRPORT,
AIRPORT ROAD, CHACKAI,
TRIVANDRUM, KERALA, PIN - 695024

BY ADVS.
ASG OF INDIA
DEEPAK JOY.K.
Girish Kumar V

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 24.8.2022, ALONG WITH WP(C).18168/2022, THE
COURT ON 31.08.2022 DELIVERED THE FOLLOWING:

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT**

THE HONOURABLE MR.JUSTICE V.G.ARUN

**WEDNESDAY, THE 31ST DAY OF AUGUST 2022 / 9TH BHADRA,
1944**

WP(C) NO. 18168 OF 2022

PETITIONER/S:

D. PRADEEP KUMAR
AGED 55 YEARS
S/O DAMODHARAN NAIR
THEKKUMCHERRY, PUTHOOR P.O, KOLLAM, PIN -
691507

BY ADV B.J.JOHN PRAKASH

RESPONDENT/S:

- 1 THE UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF
HOME AFFAIRS,
GOVERNMENT OF INDIA, SOUTH BLOCK NEW DELHI,
PIN - 110001
- 2 THE CHAIRMAN AND MANAGING DIRECTOR,
BANK OF BARODA, KOLLAM BRANCH
PARAMESWARAN PILLAI BUILDING, HOSPITAL ROAD,
KOLLAM, PIN - 691001
- 3 EMIGRATION OFFICER,
THIRUVANANTHAPURAM INTERNATIONAL AIRPORT,
AIRPORT ROAD, CHACKAI,
TRIVANDRUM, KERALA, PIN - 695024

BY ADVS.
S.MANU
R.REMA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 24.8.2022, ALONG WITH WP(C).15649/2022, THE
COURT ON 31.8.2022 DELIVERED THE FOLLOWING:

V.G.ARUN, J.

W.P(C).Nos. 15649 and 18168 of 2022

Dated this the 31st day of August, 2022

JUDGMENT

The question involved in these writ petitions is whether Look Out Circulars can be opened against defaulting borrowers/guarantors at the instance of lending institutions/Public Sector Banks. The essential facts are as under;

In W.P(C).No.18168 of 2022, the petitioner is one of the guarantors for the credit facility availed by M/s.Ravis Exports, an establishment engaged in processing and sale of raw cashew. The establishment had availed credit facility to the tune of Rs.14,50,00,000/- from the Bank of Baroda. As security for the credit facility, the guarantors had mortgaged immovable property valued at more than Rs.20 crores. Repayment of the loan was defaulted, which according to the petitioner was not wilful, but was by reason of the set back suffered by cashew industry and the adverse impact of the floods of 2018 and 2019. The Bank declared the loan account as a Non-Performing Asset (NPA) and initiated recovery proceedings under the SARFAESI Act, 2002. The Bank also declared the petitioner and other guarantors as wilful defaulters. The declaration challenged was in W.P(C).No.2427 of 2020 and this Court allowed the writ petition as per Exhibit P1 judgment. The communications and proceedings declaring the petitioners as wilful defaulters was quashed, reserving the Bank's liberty to consider the case relating to the petitioners afresh, after

issuing notices in accordance with law. While matters stood thus, the petitioner, with the intention of travelling to Dubai in connection with his business, reached the Kochi International Airport on 6.5.2022. To the petitioner's dismay, the third respondent prevented him from boarding the flight, on the premise that a Look Out Circular is pending against him.

2. The petitioner in W.P.(c). No. 15649 of 2022 is the proprietor of a cashew processing and exporting unit by name, Asian Firdous Cashews. He had availed certain credit facilities from the UCO Bank. The loan fell into arrears and the account was classified as Non-Performing Asset (NPA) on 31.5.2019. The Bank initiated various recovery measures, like filing of Original Application before the Debts Recovery Tribunal and initiation of revenue recovery proceedings against the petitioner's father. The revenue recovery proceeding was challenged in W.P(C).No.28221 of 2019 and Exhibit P1 interim order of stay granted. Thereupon, the Bank withdrew the attachment effected over the property of petitioner's father. While so, the petitioner had to travel to Dubai in connection with a criminal case instituted by him against a purchaser in Dubai. On 27.3.2022, while on his way to board the flight, the petitioner was detained by the third respondent, stating that a Look Out Circular is pending against him.

3. Adv.John Prakash, learned Counsel for the petitioners, submitted that the action of the respondents is illegal, high handed and militates against the petitioners' fundamental right to life and liberty. It is contended that in the absence of an enactment empowering the Banks to seek issuance of Look Out Circulars, there cannot be any

curtailment of the liberty of a citizen to travel abroad. Relying on the decision in ***Maneka Gandhi v. Union of India*** [(1978) 1 SCC 248], it is contended that when executive authorities take administrative action involving the depreciation or restriction of inherent fundamental rights of citizens, care must be taken to see that justice is not only done but manifestly appears to be done. In the instant case, neither the Bank nor the Immigration Officer was willing to even reveal the grounds on which the Look Out Circulars are generated. It is argued that the rule requiring reasons in support of quasi judicial and administrative orders is as fundamental as following the principles of natural justice. Support for this proposition is drawn from the decision in ***M/s Kranthi Association Pvt. Ltd. v. Masood Ahammad Khan & others*** [2010 (9) SCC 496] It is submitted that the legality of issuing LOC for the reason of pendency of departmental proceedings against an IPS officer was considered by the Apex Court in ***Satish Chandra Verma v. Union of India and others*** [2019 SCC OnLine SC 2048]. Therein, it was categorically held that pendency of departmental proceedings is not a ground for preventing the officer from going abroad. Reliance is also placed on the decision rendered by a learned Single Judge of this Court in ***Pinnacle Vehicles and Services v. Union of India*** (Judgment in W.P.(C)No.5367 of 2022) wherein, the Look Out Circular opened under almost identical circumstances was held to be illegal. Reference is also made to the decision of the Punjab and Haryana High Court in ***Poonam Paul v. Union of India and Others*** (Judgment in CWP No.10488 of 2022 and that of the Calcutta High Court in ***Vishambhar Saran v. Bureau of Immigration and others*** (Judgment

in WP No. 10241 (W) of 2020).

4. It is contended that the petitioners have every right to be informed about the reason for curtailing their movement and to be furnished with a copy of the proceedings based on which the action was initiated. According to the Counsel, failure to provide reasons and to furnish copy are sufficient grounds for this Court to exercise the extraordinary jurisdiction under Article 226, as even the economic interest projected by the Bank is no justification for the stark violation of the principles of natural justice and fair play.

5. Adv.R.Reman, learned Standing Counsel appearing for the Bank of Baroda in W.P.(C) No.18168 of 2022 made the following submissions;

6. Declaring the borrower as wilful defaulter and issuance of Look Out Circular against him are distinct and separate actions. This Court's interference with the declaration of the petitioner as wilful defaulter does not take away the bank's right to seek issuance of LOC against him. The 2nd respondent authorized and entitled to initiate such action *vide* Office Memorandum dated 04.10.2018 of the Ministry of Home Affairs. The Office Memorandum for issuance of LOC, if departure of the individual will be detrimental to the economic interest of India or if his departure is to be prevented in larger public interest. In the instant case, after offering to settle the account for Rs.10.60 Crores as against the contractual dues of more than Rs.23 Crores, the petitioner failed to abide by the promise. This indicated that the petitioner is not genuinely interested in settling the loan account and may attempt to shirk away from the liability. In such circumstances, if

the petitioner is permitted to go abroad, that would result in the bank being unable to realise the dues, which, in turn, will be against the economic interest of the country. It is submitted that initially look Out Circulars could be opened only if the balance outstanding from the defaulter was more than Rs.50 crores, but the amount is now reduced to Rs.5 crores. It is pointed out that the respondent Bank has constituted an Advisory Committee for deciding the cases in which LOC is to be opened against borrowers/guarantors who are not red flagged/wilful defaulter, non-cooperative borrower or fraudster.

7. Advocate Deepak Joy, learned Standing Counsel appearing for UCO bank in W.P(C).No. 15649 of 2022 adopted the arguments of Adv. Rema and made the following additional submissions; The petitioner had availed credit facilities in two different names; Firdaus Cashews and Asian Firdaus Cashews. The total amount outstanding in the loan account of Firdaus Cashews, as shown in O.A.No.598 of 2019, is Rs.4,31,30,777.95 while the value of the immovable property mortgaged as security is only Rs.2,15,40,000/-. The outstanding balance in the loan account of Asian Firdaus Cashews, as shown in O.A.No.550 of 2019, is Rs.10,90,16,127.08, while the value of the secured asset is only Rs.6,41,44,800/-. Even though movable properties including stock, raw materials, plant and machinery were hypothecated with the Bank, the hypotheca was syphoned off by the borrower. By O.Ms dated 15.12.2017 and 12.10.2018 the heads of Public Sector Banks were empowered to issue requests for opening of LOCs. Later, as per Exhibit R2(d) O.M dated 22.11.2018, specific direction was issued to comply with the previous orders, so that

persons covered by the O.Ms, including fraudsters and those who wish to take loans and wilfully default or launder money are prevented from leaving the country. The Reserve Bank of India has issued Exhibit R2(c) Master Circular consolidating instructions/guidelines issued to banks/financial institutions on matters relating to wilful defaulters. As the bank has initiated action for declaring the petitioner as a wilful defaulter, it has every right to request for the opening of LOC. It is submitted that the judgment of the Punjab and Haryana High Court in ***Poonam Paul's case*** (supra) is under challenge before the Supreme Court and an interim order has been passed in the Special Leave Petition, staying the direction to serve copy of LOC and reasons for issuing it as also the direction to provide the post decisional opportunity to the person against whom it is issued.

8. Adv.V.Girishkumar, learned Central Government Counsel, submitted that the petitioners were intercepted by the third respondent based on the LOC request received from the respondent Banks. The interception and subsequent handing over was made in accordance with the Ministry of Home Affairs O.M.No.25016/10/2017 dated 22.2.2021. The Bureau of Emigration, Ministry of Home Affairs only maintains LOCs for taking action against LOC subjects at the Immigration Check Post. The legal liability for the action taken by the emigration authorities, in pursuance of the LOC, rests with the originating agency.

9. The right to curtail a citizens' travel abroad by compelling surrender of his passport had come up for consideration before the Supreme Court ***Satwant Singh Sawhney v. D.Ramarathnam*** [AIR

1967 SC 1836]. After elaborate consideration, it was held that the expression 'personal liberty' in Article 21 takes in the right of locomotion and travel abroad and that under Article 21, no person can be deprived of his right to travel, except according to procedure established by law. Thereafter, the Apex Court had occasion to consider the State's right to interfere with a citizens' fundamental right to life and personal liberty in ***Maneka Gandhi's case*** (*supra*). To use the erudite expression of Justice Y.V.Chandrachud, "it is indeed difficult to see on what principle we can refuse to give its plain natural meaning to the expression 'personal liberty' as used in Article 21 and read it in a narrow and restricted sense to exclude those attributes of personal liberty which are specifically dealt with in Article 19. We do not think that it should be the correct way of interpreting the provisions of the Constitution conferring fundamental rights. The attempt of the court should be to expand the reach and ambit of the fundamental rights rather than attenuate their and content by a process of judicial construction".

10. The authoritative pronouncement by the Constitution Benches of the Apex Court makes it abundantly clear that liberty of a citizen is sacrosanct and any deprivation of liberty can only be in accordance with the procedure established by law. Here, the procedure is prescribed by Office Memorandums issued by the Ministry of Home Affairs from time to time. In this regard it may be appropriate to extract the relevant portion of the first Office Memorandum, which reads as follows;

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

11. A reading of the above paragraph would show that issuance of LOC is to be resorted only in exceptional cases and for reasons enumerated therein. The public sector banks can request for opening of LOC against defaulting account holders, if departure of the defaulter will be detrimental to the economic interest of India or will not be in the larger public interest. It is not as if the OMs authorise the banks to seek issuance of look out circulars against every defaulting account holder. Even if for the sake of argument it is accepted that the Banks can request for opening of LOC against willful defaulters, that can only be against a person declared as willful defaulter, after following the procedure prescribed in the Master Circular issued by the Reserve Bank of India.

12. It is pertinent to note that, although a declaration as wilful defaulter was made as against the petitioner in W.P(C).No.18186 of 2022 this Court had quashed the communications and proceedings issued by the Bank in that regard. The Bank has no case that the

petitioner was declared as a wilful defaulter again. As far as the petitioner in W.P(C).No.15649 of 2022 is concerned, Exhibit R2(b) request for issuance of LOC was made on the premise that the 'the account holder is in the process of being declared as wilful defaulter'. That application is dated 3.11.2020 and even after almost two years, the same status continues. Therefore, the undisputable factual position is that the petitioners are mere defaulters of loans availed from the respondent banks.

13. The OMs does not empower the banks to originate Look Out Circulars, infringing the petitioner's liberty, as long as their movement to the foreign country is not detrimental to the economic interest of India or is against the larger public interest. The expressions 'economic interest of India' and 'larger public interest' will not take in violations of commercial contracts between a bank and its customer. Such an interpretation will result in liberty being sacrificed to safeguard the commercial interest of banking institutions. There cannot be such a constructed interpretation of the dynamic concept of 'liberty' enunciated and guaranteed by the Constitution of India.

14. The contention about the necessity of stating the reason for opening the LOC and the right to be issued with a copy of the Look Out Circular are not being delved into, as the question is pending consideration before the Supreme Court in SLP No.7733 of 2022, filed against the judgment of the Punjab and Haryana High Court in ***Poonam Paul's case*** (supra).

In the result, the writ petitions are allowed. The issuance of Look Out Circulars against the petitioners based on the request of the

banks, is held to be bad. The third respondent is directed not to prevent the petitioners from travelling abroad based on the pending Look Out Circulars. This judgment does not interdict the banks from seeking issuance of fresh Look Out Circulars in strict compliance of the Office Memorandums issued by the Ministry of Home Affairs.

Sd/-

V.G.ARUN, JUDGE

vgs

APPENDIX OF WP(C) 18168/2022

PETITIONER EXHIBITS

- Exhibit1 THE TRUE COPY OF THE JUDGEMENT OF THIS HON'BLE COURT IN WP(C) 2427 OF 2020 DATED 18.05.2022
- Exhibit-P2 THE TRUE COPY OF THE E-TICKET FOR TRAVELLING TO DUBAI FROM KOCHI
- Exhibit-P3 TRUE COPY OF E-VISA OF THE PETITIONER ISSUED BY GENERAL DIRECTORATE OF RESIDENCY AND FOREIGN AFFAIRS, DUBAI
- Exhibit-P4 THE TRUE COPY OF THE SCREENSHOT DULY SEALED BY THE M.B.O, AIR INDIA LTD, COCHIN CONFIRMING THAT THE PETITIONER WAS OFFLOADED

APPENDIX OF WP(C) 15649/2022

PETITIONER EXHIBITS

- Exhibit-P1 THE TRUE COPY OF THE ORDER OF THE HON'BLE HIGH COURT DATED 21.11.2019 IN WP(C) NO. 28221 OF 2019.
- Exhibit-P2 A TRUE COPY OF THE ORDER DATED 14.02.2020 BY THE TAHSILDAR(RR) WITHDRAWING REVENUE RECOVERY PROCEEDINGS AND THE CONSEQUENT ATTACHMENT.
- Exhibit-P3 TRUE COPY OF THE E-TICKET OF THE PETITIONER TO DUBAI
- Exhibit P4 TRUE COPY OF THE LETTER DATED 09/05/2022 ISSUED BY THE RESPONDENT BANK

RESPONDENT EXHIBITS

- Exhibit R2(A) TRUE COPY OF THE LETTER DATED 31/03/2022 SENT BY THE PETITIONER TO THE 2ND RESPONDENT
- Exhibit R2(B) TRUE COPY OF THE LETTER DATED 03-11-2020 ISSUED BY THE BRANCH TO THE ZONAL OFFICE FOR THE ISSUANCE OF LOC.
- Exhibit R2(C) TRUE COPY OF THE RBI MASTER CIRCULAR DATED 01-07-2015.
- Exhibit R2(D) TRUE COPY OF THE OM NO.F.NO.6/3/2018.BOII DATED 22-11-2018.
- Exhibit R2(E) TRUE COPY OF OM F.NO.6/3/2018.BOII DATED 08-04-2022.
- Exhibit R2(F) TRUE COPY OF THE EXTRACT OF THE UNSTARRED QUESTION NO.1317 TAKEN PRINT OUT FROM THE SEARCH ENGINE

'GOOGLE'.

Exhibit R2(G) TRUE COPY OF THE RECORD OF
PROCEEDINGS DATED 05-05-2022 OF
HON'BLE SUPREME COURT OF INDIA.

Exhibit R2(H) TRUE COPY OF THE ORDER IN WPC NO.
6892/2022 DATED 06-06-2022 OF
TELENGANA HIGH COURT.