

**2022 LiveLaw (PH) 69**

**HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**  
*M.S. RAMACHANDRA RAO; HARMINDER SINGH MADAAN, JJ.*

CWP-5492-2022 (O&M); 05.04.2022

**Noor Paul v. Union of India & Ors.**

**Look Out Circular - Court quashes Look Out Circular issued without application of mind at the instance of Bank of India for alleged loan default- Asks Bank to pay Rs 1 Lakh compensation to woman who was stopped from foreign travel.**

**Look Out Circular - In our opinion, non-supply of a copy of the LOC to the subject of the LOC at the time the subject is stopped at the airport for travel abroad, non-supply of reasons for issuing LOC , and absence of a post decisional hearing to the subject of the LOC, is not just, fair and reasonable procedure. It is violative of Art.21 of the Constitution of India -It is desirable that these requirements be read into the Office Memoranda relied upon by the said respondents since it is settled law that unless there is a clear mandate to the contrary, principles of natural justice must be read into a law even if it is silent on the aspect. (Para 57, 59)**

**Look Out Circular - We are of the opinion that the quantum of the alleged default by the borrower by itself cannot be the basis for seeking issuance of an extreme process like an LOC for restricting the personal liberty of the petitioner to travel outside the country without something more. (Para 69)**

**Look Out Circular -it is incumbent upon the issuing authority of the LOC to ascertain at least whether the grounds disclosed in the LOC and/or the request for LOC fall within the four corners of the OM issued in that regard prima facie, though it may not be able to go into the merits/demerits of the allegations made against the subject by the originating authority. (Para 72)**

*Present: Mr. Manish Jain, Advocate for the petitioner Mr. Satya Pal Jain, Additional Solicitor General of India with Ms. Shweta Nahata, Advocate for respondents No.1, 3 & 4 Mr. Vinish Singla, Advocate for respondent No.2 Mr. Mayur Kanwar, Advocate for respondent No.5*

**M.S. Ramachandra Rao, J.**

**1.** In this Writ Petition, the petitioner is challenging a Look Out Circular (LOC) issued against her by the Bureau of Immigration, Ministry of Home Affairs, Govt. of India (respondent No.3) at the instance of the Bank of India (respondent no.2) on the basis of which she was prevented from travelling abroad to Dubai on 22.2.2022 at the New Delhi Airport by the immigration authorities.

**2.** The respondent No.1 is the Ministry of Home Affairs, Union of India , the respondent No.2 is the Bank of India, respondent No.3 is the Bureau of Immigration, New Delhi,

respondent No.4 is the Foreign Regional Registration office and respondent No.5 is a Company M/s Drish Shoes Ltd.

### **The Background facts**

3. The petitioner herein, aged about 30 years, was a Director in respondent No.5 Company run by her father and others.
4. Respondent No.5 availed a loan from the respondent No.2- Bank for which the petitioner stood as a guarantor along with others.
5. She resigned from the Board of the respondent No.5 on 13.07.2021 but continues to be the guarantor for the loan taken by respondent No.5 from respondent No.2.
6. There was a default committed by respondent No.5 in servicing the loan availed by it from respondent No.2 and so the said respondent recalled the loan by issuing the demand notice dt. 22.11.2021 to respondent No.5 and its guarantors including the petitioner under Section 13(2) of the SARFAESI Act, 2002 demanding a sum of Rs.121,17,11,148.70.
7. It is stated by petitioner that one of the operational creditors of the respondent No.5 filed on 02.09.2021 an application under Section 9 of the IBC, 2016 before the NCLT, Chandigarh and when the matter had come up on 31.01.2022, counsel for respondent No.5 had informed the NCLT that they are admitting the claim of the said creditor and also sought time to file reply before the next date.
8. Respondent No.5 also filed a petition before the NCLT, Chandigarh under Section 10 of the IBC for initiation of CIRP of respondent No.5 and the said application is said to be under scrutiny before the Registry of the NCLT.
9. According to the petitioner, respondent No.5 through one of its Directors sent a letter on 18.12.2021 offering 'voluntary and peaceful handover and possession of all mortgaged assets' of respondent No.5 to the respondent No.2 and requested the latter to sell them and appropriate the proceeds of the sale to the amount due to the respondent No.2.

### **The events which happened on 22.2.2022**

10. While things stood thus, the petitioner was scheduled to travel Dubai for the Dubai Expo-2022 and was to board flight from New Delhi on 22.2.2022, but at the Indira Gandhi International Airport, New Delhi , she was prevented from boarding the flight AI 915 at 06.15 PM on the ground that a Look-Out Circular (LOC) was issued against her, her family members and associate directors of the respondent No.5 by the Airport Immigration authorities.
11. *The petitioner contends that even copy of the LOC was not provided to her and she was compelled to come back from the Airport.*

12. Admittedly, the said LOC dt. 28.12.2021 (R2/1) is said to have been issued at the instance of the respondent No.2.

13. The petitioner had applied for a Postgraduate MBA Program being offered by prestigious Boston University Questrom School of Business, Massachusetts, USA. She was successful in getting a seat to study the said MBA Programme in the said University and was also awarded a 90% scholarship for the said study by the said University as can be seen from Annexure P7 email. The said program would start from August, 2022 and would go on for 24 months.

14. The petitioner has to apply for Visa formalities at the earliest and also to remit a non-refundable deposit of \$1500 by 01.04.2022 to the said University as a token of having accepted the offer of the University.

### **The instant Writ Petition**

15. On an apprehension that she would not be allowed to travel abroad to pursue her education because of the LOC dt. 28.12.2021, she has filed this Writ Petition to quash the said LOC whereby the respondents No.3&4 have restrained the petitioner from travelling abroad on 22.02.2022, to expunge any remarks/endorsements/entries that might have been entered in the records/Passport of the petitioner with respect to the said LOC and seeks a *Writ of Mandamus* directing the respondents to allow her to travel abroad to pursue her studies.

### **Contentions of Petitioner**

16. The petitioner contends that on 23.2.2022, she received a caveat petition filed by respondent no.2 mentioning about the LOC dt.28.12.2021 issued at the behest of the respondent No.2 bank, but it's copy was not supplied to her. The petitioner alleges that respondent No.5 sent a letter dt. 02.03.2022 to respondent No.2 specifically requesting for copies of the LOC issued at the instance of respondent No.2, copies of which were also sent to respondents No.3&4, but still they did not provide the petitioner LOC dt. 28.12.2021 or its copy.

17. Petitioner contends that before respondent No.2 requested for issuance of LOC against her and others, it should have at least informed the petitioner and respondent no.5 of the same and that the action of the respondent Nos. 1,3 and 4 in not furnishing even a copy of the said LOC to her was illegal and arbitrary.

18. The petitioner contends that the scholarship secured by her was for study in a prestigious institution and was once-in-a-lifetime opportunity; that she is one among 130 students selected from 34 countries for the MBA study program and is only 2<sup>nd</sup> person from India to have been offered 90% scholarship; that the respondent No.2 cannot be permitted to hold her entire future to ransom and deprive her of her right to travel abroad and pursue her education ; and her academic career would be ruined on account of the wrong action of the respondent No.2.

19. Counsel for the petitioner relied upon the decision in **Maneka Gandhi vs. Union of India, (1978) 1 SCC 248** and contended that a citizen of the country had a constitutional right to go abroad and impairment of such a right cannot be done without observing the principles of natural justice. He placed reliance on the decision of the Supreme Court in **State of West Bengal vs. AB.K. Ltd; (2015) 10 SCC 369** to contend that an un-communicated order, such as the impugned LOC, has no legal effect and would take legal effect only when the same is communicated to the affected party.

20. Counsel for the petitioner contended that petitioner is not an '*accused*' in any criminal case evading the process of law since no criminal case has been registered against her and there is no declaration issued either that she committed any *fraud* or that she was a *willful defaulter* by any competent authority as per the law and therefore, the LOC itself ought not have been issued. Reliance is placed on Madras High Court judgment in **S.Martin vs. The Deputy Commissioner of Police, Central Crime Branch Egmore, Chennai & Ors; (2014) SCC Online Mad 1651**.

21. It is contended that the right to travel abroad is an important basic human right as held in **Satish Chandra Verma vs. Union of India & Ors; (2019) SCC Online SC 2048** and such a right cannot be prevented from being exercised without due process of law.

22. It is also contended that mere quantum of alleged default of a loan by a citizen cannot be the basis for the extreme measure of restricting the personal liberty of a borrower/guarantor to travel inside or outside India and the decision rendered by the Calcutta High Court in **Vishambhar Saran vs. Bureau of Immigration & Ors; (2021) SCC Online Cal 3074**, is cited in support thereof.

### **The stand of respondent no.2 Bank**

23. The respondent No.2 filed written statement contending that since the petitioner was one of the guarantors of the respondent No.5, whose loan account had been classified as NPA w.e.f. 08.11.2021, and since Rs.121,17,11,149 was owed by the said respondent to the said respondent-Bank as on 29.10.2021, the respondent No.2 entertained a strong apprehension and had reason to believe that the Directors/guarantors of the respondent No.5-company might leave the country without paying back their huge debt and without informing the respondent No.2, and that was why the LOCs were opened against the present Directors/guarantors of respondent No.5-Company.

24. The filing of proceedings under the IBC and initiation of proceedings under the SARFAESI Act are admitted.

25. Reliance is placed by respondent No.2 on a stock statement ( Annexure R-2) and certain inspection reports ( Annexure R3) pursuant to an inspection said to have been

done from 06.12.2021 to 09.12.2021, and it is alleged that the entire stock of the company was siphoned off and only stock worth Rs.5 to 7 crores was left at the godown.

**26.** It is alleged that the proceeds of the sale of the stock were not deposited with respondent No.2 and there is an apprehension that the stock was removed to some other place to deceive the respondent No.2; and the said respondent therefore entertains apprehension that respondent No.5 Directors/guarantors have a fraudulent or *mala fide* intention to misappropriate public money.

**27.** It is alleged that since the investigations by the Banks or other investigating agencies take lot of time to discover the fraud and the *modus operandi* of the defaulters in siphoning off and diverting the bank loans and funds, the defaulters attempt to leave the country, and so in 2018, the Government of India had issued a notification empowering the Public Sector Banks to seek issuance of LOCs in case loan defaulters are trying to leave the country without paying huge debts. They contend that this apprehension came true when the petitioner who was the guarantor tried to leave the country on the pretext of visiting Dubai Expo-2022 without informing the respondent No.2 on 22.2.2022.

**28.** The Respondent no.2 says that *it is interesting that the petitioner decided to pursue her higher studies not in India but in USA, that the need of the petitioner is more a luxury than a necessity*, and she is not entitled to exercise her right to education abroad at the cost of public Exchequer. It is pointed out that if the scholarship was given to her on the basis of past achievements, the scholarship would be available to her the next year also as per the Rules of the University.

**29.** It is stated that if the petitioner is allowed to travel abroad without joining investigation and without repaying her pending debts, for the period of two years, which is a duration of the MBA course, public interest will suffer.

#### **Stand of respondent Nos. 1,3 and 4**

**30.** Respondents No.1, 3 & 4 have filed a short reply admitting that they had issued the LOC dt. 28.12.2021 at the instance of respondent No.2 preventing the petitioner from travelling abroad on 22.02.2022.

**31.** It is averred that the Ministry of Home Affairs Look-Out Circular Guidelines are a *secret document* and the same cannot be shared with the 'accused' or any unauthorized stakeholder; that LOC cannot be provided or shown to the subject of the LOC at the time of detention by the Bureau of Immigration (respondent No.3) since it defeats the purpose of LOC for which it was got issued by the LOC originator (respondent No.2) for various reasons as mentioned in the Guidelines.

**32.** It is stated that no accused or subject of LOC can be provided any opportunity of hearing before issuance of LOC.

33. It is stated that the legal liability for the action taken by the Immigration authorities pursuant to LOC rests with the Originator agency i.e. respondent No.2-Bank and not with respondent No.3; and that the respondent No.3 is only a custodian of LOCs and takes action against the subject at the Immigration checkpoints at the behest of the Originating agency.

34. It is stated that as per the existing instructions, the LOC can be modified / deleted / withdrawn by respondent No.3 only on the specific request of the authorized Originator on whose request the LOC was issued by respondent No.3.

35. It is stated that an Office Memorandum (OM) No.25016/10/2017-Imm (Pt.) dt. 12.10.2018 was issued by the Ministry of Home Affairs authorising the Banks to open LOC against any accused, or as per directions of any criminal court in India, and the LOC dt. 28.12.2021 was issued against the Writ petitioner at the instance of MD & CEO, Bank of India, Badra Kurla Complex, Bandra (East), Mumbai.

36. It is stated that the reason behind opening of LOC was that the petitioner was a guarantor for respondent No.5 which had defaulted in repayment of more than Rs.100 crores to respondent No.2.

37. It is stated that the issuance of LOC was by following due procedure at the request of respondent No.2 and the respondent No.3 has no objection to withdraw the LOC issued against the petitioner if respondent No.2 requests or directs for the same.

38. Along with the short Reply , the Additional Solicitor General *handed over* to us (i) Request of respondent No.2 dt.28.12.2021 of the respondent No.2 through Genral manager and Nodal officer to the Deputy Director, Bureau of Immigration, New Delhi, (ii) LOC No.2021425918 dt.28.12.2021, (iii) Office Memorandum dt.22.2.2021, Office Memorandum dt.12.10.2018, Office Memorandum dt.5.12.2017 and Office Memorandum Dt.27.10.2020.

39. *These were supplied only to the Court and copy thereof was not given to the petitioner's counsel or the counsel for respondent no.2.*

### **Consideration by the Court**

40. Mr. Manish Jain, Advocate for the petitioner, Mr. SP Jain, Additional Solicitor General of India assisted by Mr. Shweta Nahata, Advocate for respondents No.1, 3 & 4, Mr. Vinish Singla, Advocate for respondent No.2 and Mr. Mayur Kanwar, Advocate for respondent No.5 reiterated the contentions of their respective clients.

### **The right to travel abroad is enshrined in Art.21 of the Constitution of India**

41. Way Back in 1967, the Supreme Court in **Satwant Singh Sawhney vs. D.Ramarathnam, Asstt. Passport Officer, AIR 1967 SC 1836** held that the right to travel abroad falls within the scope of personal liberty enshrined under Article 21 of the Constitution of India and that no person can be deprived of his right to travel except

according to the procedure established by law. At that time the said decision was rendered there was no law regulating the right of a person to go abroad and that was the reason why the order of the Passport Officer refusing to issue passport to the petitioner in **Satwant Singh** case (supra) was struck down as invalid.

**42.** After this decision was rendered, the Passport Act, 1967 was enacted by Parliament and it laid down the circumstances under which a passport may be issued or refused or cancelled or impounded and also prescribes a procedure for doing so.

**43.** In **Maneka Gandhi** (supra), the petitioner was the holder of an Indian passport issued to her on June 1, 1976 under the Passports Act, 1967. On July 4, 1977 the petitioner received a letter dated July 2, 1977 from the Regional Passport Officer, Delhi intimating to her that it has been decided by the Government of India to impound her passport under Section 10(3)(c) of the Act in public interest and requiring her to surrender the passport within seven days from the date of receipt of the letter. The petitioner immediately addressed a letter to the Regional Passport Officer requesting him to furnish a copy of the statement of reasons for making the order as provided in Section 10(5) to which a reply was sent by the Government of India, Ministry of External Affairs on July 6, 1977 stating inter alia that the Government has decided “in the interest of the general public” not to furnish her a copy of the statement of reasons for the making of the order. The petitioner thereupon approached the Supreme Court under Art.32 of the Constitution of India challenging the action of the Government in impounding her passport and declining to give reasons for doing so.

**44.** A 7-judge Bench of the Supreme Court in 1978 declared that no person can be deprived of his right to go abroad unless there is a law enabling the State to do so and such law contains fair, reasonable and just procedure. It held:

*“5. ...Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. It was for this reason, in order to comply with the requirement of Article 21, that Parliament enacted the Passports Act, 1967 for regulating the right to go abroad. It is clear from the provisions of the Passports Act, 1967 that it lays down the circumstances under which a passport may be issued or refused or cancelled or impounded and also prescribes a procedure for doing so, but the question is whether that is sufficient compliance with Article 21. Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements? Obviously, the procedure cannot be arbitrary, unfair or unreasonable. This indeed was conceded by the learned Attorney-General who with his usual candour frankly stated that it was not possible for him to contend that any procedure howsoever arbitrary, oppressive or unjust may be prescribed by the law....”*

(emphasis supplied)

**45.** So such a right to travel abroad cannot be deprived except by just, fair and reasonable procedure.

46. Even in 2019, in **Satish Chandra Verma** (Supra), the Supreme Court set aside the order of the High Court which affirmed the decision of the Central Administrative Tribunal refusing permission to a member of the Indian Police Service from travelling abroad by rejecting his interim application in a pending case before the Tribunal. It held that the appellant had a fundamental right to travel abroad and that right cannot be infringed on the ground that vigilance clearance has not been given.

47. The said principle is not disputed by counsel for respondents.

### **Need for procedural safeguards in the matter of issuance of LOC**

48. In the instant case, the respondents No.3&4 stopped the petitioner from boarding a flight to Dubai on the basis of LOC issued at the instance of respondent No.2-Bank by the Bureau of Immigration (Ministry of Home Affairs, Govt. of India) on 28.12.2021.

49. It is not in dispute that the copy of the same was never furnished to the petitioner till it was filed for the first time by respondent No.2 along with its written response in Court.

50. The Office Memoranda produced by the respondents No.1,3 and 4 for our perusal do not contain any provision for supply of copy of the LOC to the subject of the LOC, supply of reasons for issuing of the LOC or for even a post decisional hearing.

51. In **State of West Bengal vs. AB.K. Ltd** (supra) the Supreme Court held that there should be communication of an order adverse to a citizen and only then it would come into effect.

52. In **Maneka Gandhi** (supra) it was held that in certain situations, there could also be a post-decisional remedial hearing since the rule of *audi alteram partem* is a flexible rule.

53. Did the respondent 1,3 and 4 follow fair, just and reasonable procedure to deprive the petitioner of her fundamental right to travel abroad? (54) We do not think so.

55. It may be that before issuing the LOC the respondent No.s 1,3 and 4 may not wish to issue a *prior* notice to the subject of the LOC like the petitioner because there is every possibility that, after receiving such notice, the subject may clandestinely leave the country.

56. But we see no impediment to give a *post decisional opportunity* to the petitioner by supplying to the subject of LOC, the copy of the LOC, and the reasons for issuing it so that the subject of the LOC can take legal recourse to challenge it.

57. In our opinion, non-supply of a copy of the LOC to the subject of the LOC at the time the subject is stopped at the airport for travel abroad, non-supply of reasons for issuing LOC, and absence of a post decisional hearing to the subject of the LOC, is not just, fair and reasonable procedure. It is violative of Art.21 of the Constitution of India.



58. The Office Memoranda produced by the respondents No.1,3 and 4 for our perusal do not contain any of the above safeguards. The State cannot plead ignore of the decisions in **Satwant Singh** (Supra) and **Maneka Gandhi** (Supra) and contend that there is secrecy surrounding the issuance of an LOC and continue the existing practice.

59. It is desirable that these requirements be read into the Office Memoranda relied upon by the said respondents since it is settled law, as held in **Institute of Chartered Accountants v. L.K. Ratna, (1986) 4 SCC 537** that unless there is a clear mandate to the contrary, principles of natural justice must be read into a law even if it is silent on the aspect. The Supreme Court held in **Institute of Chartered Accountants (Supra) as under:**

*“16. ... ..The principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary.”*

60. We shall now consider the question:

*“Whether in the facts and circumstances of the case the issuance of LOC against the petitioner is justified?”*

61. In **Karti P.Chidambaram vs. Bureau of Immigration, (2018) SCC Online Mad. 2229** it was held that legality and/or validity of an LOC is dependent upon the circumstances prevailing on the date on which the request for issuance of the LOC has been made.

62. In the request for issuance of LOC made on 28.12.2021 by the respondent No.2 to the respondent No.3 (Annexure R-1 filed by the respondents No.1, 3 & 4), there is no mention that the petitioner is an *accused* in any criminal case initiated by the respondent No.2. Even Annexure R-2 filed by the Respondents no.1,3, and 4 leaves *blank* the column “*FIR No. date.*”.

63. Annexure R-2/1 dt. 28.12.2021 issued by the respondent No.3 to the Nodal Officer of respondent No.2, however, states “*in all cases where accused is no longer required by the originating agency or by the competent court, the LOC deletion request must be conveyed to the BOI immediately*”.

We do not understand how the petitioner can be termed as an ‘accused’ as is mentioned in the LOC when admittedly no criminal case has been initiated in any court in the country against her.

64. We may point out that the Office Memorandum No.25016/10/2017 – IMM dt.22.2.2021 placed for our perusal by the learned Additional Solicitor General ( the latest one said to contain consolidated guidelines for issuance of an LOC) states:

*“In cases where there is non-cognizable offence under the IPC and other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country.*

*The originating Authority can only request that they be informed about the arrival/departure of the subject in such cases.”*

**65.** When there is admittedly not even an FIR registered against the petitioner, and there is no question of her being accused of any noncognizable offence, no LOC could have been issued by respondent No.3 to detain the petitioner. At best, the respondent No.3 could have only given information to respondent No.2 about the arrival/departure of the subject according to the OM dt. 22.02.2021.

**66.** No doubt the OM dt. 22.02.2021 contains a clause stating as under:-

*“In exceptional cases LOCs can be issued even in such cases as may not be covered by the guidelines above whereby departure of a person from India may be declined at the behest of any of the authorities mentioned in Clause B above, 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 interest 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 of time.”*

*(emphasis supplied)*

**67.** On the basis of the material placed on record in the instant case, we are satisfied that no exceptional case or any adverse effect on the economic interest of India has been made out either in the original request dt. 28.12.2021 made by respondent No.2 to respondent No.3 or in the reply/affidavits and recourse could not have been taken for a coercive process like issuance of LOC.

**68.** The plea of respondent No.2 in para 6 of its reply that quantum of loan taken by the petitioner is huge, and if the petitioner were to leave India, there would be a substantial dent in the economic interest of the country cannot be accepted because the loan was not given to the petitioner in the first place, but to respondent No.5, and the petitioner was only a guarantor to the loan given to respondent No.5 as on the date of issuance of LOC, and prior thereto a director, which post she had relinquished. Also not even proceedings to declare respondent No.5 or any of the guarantors as ‘willful defaulters’ have been initiated by respondent No.2 as of date, much less filing of a criminal case against the petitioner or others.

**69.** We are of the opinion that the quantum of the alleged default by the borrower *by itself* cannot be the basis for seeking issuance of an extreme process like an LOC for restricting the personal liberty of the petitioner to travel outside the country *without something more*.

The OM itself does not draw any line about the quantum of default by a borrower to a financial institution which would be considered detrimental to the sovereignty or integrity of India or to the economic interest of India *and* a quantum of default which would not fall in the said category.

**70.** Merely because the word '*public*' is used in the exception clause in the OM, it does not elevate a mere default to an exceptional plane. It cannot be said that the departure of the petitioner from the country would adversely impact the economy of the '*country as a whole*' and de-stabilize the '*entire economy*' of the country.

**71.** The stand of respondent No.2 in para 6 of its reply that petitioner cannot be allowed to travel abroad *without joining investigation* cannot be countenanced because there is no criminal investigation initiated by respondent No.2 by filing an FIR.

**72.** As held in **Vishambhar Saran** (*supra*), it is incumbent upon the issuing authority of the LOC to ascertain at least whether the grounds disclosed in the LOC and/or the request for LOC fall within the four corners of the OM issued in that regard *prima facie*, though it may not be able to go into the merits/demerits of the allegations made against the subject by the originating authority.

**73.** It appears that merely for the asking by the respondent No.2, the LOC dt. 28.12.2021 was issued against the petitioner and she was detained by officials of respondent No.3 at the New Delhi Airport on 22.02.2022 when she was about to depart to Dubai.

**74.** We are of the view that there has been non-application of mind by respondent No.3 while issuing LOC dt. 28.12.2021 against the petitioner, and mechanically it appears to have been issued without there being any material to show that the petitioner would fall in the category of a person against whom an LOC is permitted to be issued by the guidelines framed in that regard by respondent No.1.

**75.** We are also of the opinion that respondent No.2 had abused its authority to request the opening of the LOC.

The respondent No.2-Bank seems to be of the opinion that if a borrower commits a default in payment of loan, and the loan account becomes an NPA, such an event has occurred only because of a fraud committed by the borrower.

This Court can take judicial notice of the fact that businesses can fail for several reasons such as market conditions, labour unrest, lack of raw material, events like pandemic of Covid-19 etc.

Merely looking at the quantum of loss caused to a banker, it cannot be presumed that there was a fraud committed by the borrower/guarantor, moreso when no criminal case alleging fraud has even been filed against the borrower/guarantor. Suspicion cannot take the place of proof.

**76.** It may be that respondent No.2 entertained the strong apprehension and believed that the guarantors/directors of respondent No.5 might leave the country without paying the dues of respondent No.2 and without informing them and so sought LOC

from respondents No.1, 3 & 4. But that by itself is not sufficient to seek issuance of an LOC since mere suspicion is not enough and it cannot take the place of proof.

**77.** The stand taken by respondent No.2 in its counter-affidavit that a *foreign education is a luxury than a necessity* and that the petitioner ought to have pursued her higher studies in India only and not abroad, in our opinion, is in poor taste and is perverse. It ought to be a matter of pride that an Indian citizen has secured an MBA seat in a prestigious US University and also a 90% scholarship for study of the MBA course. The bright future of the petitioner cannot be jeopardized in this manner by the respondents.

**78.** For the aforesaid reasons, we hold that:

(a) The action of the respondent No.2-Bank in seeking issuance of an LOC to prevent the petitioner from leaving the country on the ground that she was a guarantor to respondent No.5's loan and there was more than Rs.100 crores owed to respondent no.2, is arbitrary, illegal and violative of Article 21 of the Constitution of India.

(b) The action of respondent No.3 in issuing the LOC against the petitioner in a mechanical way on 28.12.2021 is also arbitrary, illegal, unreasonable and violative of Article 14 of the Constitution of India.

RELIEF:

Accordingly

(i) The LOC dt. 28.12.2021 issued by respondents No.1, 3 & 4 against the petitioner at the instance of respondent No.2 is set aside;

(ii) Since the petitioner had suffered not only the loss of reputation but also lost the cost of the ticket bought by her for travelling from India to Dubai on 22.02.2022 as she was prevented from boarding the flight by respondents No.1, 3 & 4, she is entitled to be compensated by costs of Rs.1 lakh to be paid by respondent No.2- Bank which shall be paid to the petitioner within four weeks from the date of receipt of copy of this order.

(iii) Respondents No.1 to 4 shall expunge any remarks/endorsements/entries that might have been entered in the records/Passport of the petitioner with respect to the LOC dt. 28.12.2021 within one week from the date of receipt of copy of this order and they are directed to permit the petitioner to travel abroad to pursue her studies.

(c) The respondents No.1, 3 and 4 shall serve copy of the LOC and also reasons for issuing it to the person against whom it is issued as soon as possible *after it is issued*, and also provide a post decisional opportunity to him and these requirements shall be read into the OMs issued by respondents concerning the issuance of the LOCs.

**79.** The Writ Petition is allowed accordingly with costs as mentioned above.