

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF FEBRUARY, 2021

BEFORE

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

WRIT PETITION No.15032 OF 2020 (GM-RES)

C/W

WRIT PETITION No.13862 OF 2020 (GM-PASS)

R

IN W.P.15032 OF 2020

BETWEEN :

DR. BAVAGUTHU RAGHURAM SHETTY
(ALSO KNOWN AS DR. B.R. SHETTY)
S/O LATE SHRI. SHAMBHU SHETTY
AGED ABOUT 77 YEARS
RESIDING AT "ROSHNI"
NEAR CV NAYAK HALL
KADRI ROAD, KADRI
MANGALORE-575 003

... PETITIONER

(BY SHRI. K. SHASHIKIRAN SHETTY, SENIOR COUNSEL FOR
SHRI. SANDEEP LAHIRI , ADVOCATE)

AND :

1. BUREAU OF IMMIGRATION
MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
REPRESENTED BY ITS COMMISSIONER
(IMMIGRATION)
EAST BLOCK-VIII, LEVEL-V
SECTOR-1, R.K. PURAM
NEW DELHI-110 066
2. FOREIGN REGIONAL REGISTRARION
OFFICER (FRRO), BANGALORE
BUREAU OF IMMIGRATION

MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
5TH FLOOR, 'A' BLOCK
TTMC, BMTc BUS STAND BUILDING
K.H. ROAD, SHANTINAGAR
BANGALORE-560 027

3. BANK OF BARODA
A BANKING COMPANY ESTABLISHED
UNDER THE BANKING COMPANIES
(ACQUISITION AND TRANSFER OF
UNDERTAKINGS) ACT, 1970
HAVING ITS CORPORATE OFFICE AT
BARODA CORPORATE CENTRE
PLOT NO.C-26, BLOCK G
BANDRA KURLA COMPLEX
BANDRA (EAST)
MUMBAI-400 051.

ALSO HAVING REGIONAL OFFICE AT
BANK OF BARODA
REGIONAL OFFICE-NORTH
2ND FLOOR, 41/2, VIJAYA TOWER
M.G.ROAD, TRINITY CIRCLE
BANGALORE-560 001
REPRESENTED BY ITS GENERAL MANAGER.

4. PUNJAB NATIONAL BANK
A BANKING COMPANY HAVING
ITS CORPORATE OFFICE AT
PLOT NO.4, SECTOR-10
DWARKA
NEW DELHI-110 075

ALSO HAVING ZONAL OFFICE AT
RAHEJA TOWERS, 26-27
M.G. ROAD
BENGALURU-560 001
REPRESENTED BY ITS
GENERAL MANAGER

... RESPONDENTS

(BY SHRI. ADITYA SINGH, CGC FOR R1 & R2;
SHRI. B. PRASANNA KUMAR AND
SHRI. D.R. RAVISHANKAR, ADVOCATE FOR R4;
SHRI. MANU KULKARNI, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS OF THE RESPONDENTS RELATING TO THE ISSUANCE OF LOOK OUT CIRCULAR/ COMMUNICATION DATED 08.05.2020 AND 18.07.2020 ISSUED BY THE R-3 AND 4 RESPECTIVELY, BASED ON WHICH THE PETITIONER WAS PREVENTED FROM TRAVELING OUT OF COUNTRY AND CONSEQUENTLY THE R-1 HAS ISSUED THE ENDORSEMENT DATED 08.12.2020 ANNEXURE-A AND DIRECT THE R-3 AND 4 HEREIN TO PROVIDE A COPY OF THE LOOK OUT CIRCULAR/COMMUNICATION DATED 08.05.2020 AND 18.07.2020 RESPECTIVELY TO THE PETITIONER ANNEXURE-A ETC.

IN W.P.13862 OF 2020

BETWEEN :

DR. BAVAGUTHU RAGHURAM SHETTY
(ALSO KNOWN AS DR. B.R. SHETTY)
S/O LATE SHRI. SHAMBHU SHETTY
AGED ABOUT 77 YEARS
RESIDING AT "ROSHNI"
NEAR CV NAYAK HALL
KADRI ROAD, KADRI
MANGALORE-575 003

... PETITIONER

(BY SHRI. K. SHASHIKIRAN SHETTY, SENIOR COUNSEL FOR
SHRI. SANDEEP LAHIRI , ADVOCATE)

AND :

1. BUREAU OF IMMIGRATION
MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
REPRESENTED BY ITS COMMISSIONER
(IMMIGRATION)
EAST BLOCK-VIII, LEVEL-V
SECTOR-1, R.K. PURAM
NEW DELHI-110 066
2. FOREIGN REGIONAL REGISTRARION
OFFICER (FRRO), BANGALORE
BUREAU OF IMMIGRATION
MINISTRY OF HOME AFFAIRS

GOVERNMENT OF INDIA
5TH FLOOR, 'A' BLOCK
TTMC, BMTc BUS STAND BUILDING
K.H. ROAD, SHANTINAGAR
BANGALORE-560 027

3. BANK OF BARODA
A BANKING COMPANY ESTABLISHED
UNDER THE BANKING COMPANIES
(ACQUISITION AND TRANSFER OF
UNDERTAKINGS) ACT, 1970
HAVING ITS CORPORATE OFFICE AT
BARODA CORPORATE CENTRE
PLOT NO.C-26, BLOCK G
BANDRA KURLA COMPLEX
BANDRA (EAST)
MUMBAI-400 051

ALSO HAVING REGIONAL OFFICE AT
BANK OF BARODA
REGIONAL OFFICE-NORTH
2ND FLOOR, 41/2, VIJAYA TOWER
M.G.ROAD, TRINITY CIRCLE
BANGALORE-560 001
REPRESENTED BY ITS GENERAL MANAGER

4. PUNJAB NATIONAL BANK
A BANKING COMPANY HAVING
ITS CORPORATE OFFICE AT
PLOT NO.4, SECTOR-10
DWARKA
NEW DELHI-110 075

ALSO HAVING ZONAL OFFICE AT
RAHEJA TOWERS, 26-27
M.G. ROAD
BENGALURU-560 001
REPRESENTED BY ITS
GENERAL MANAGER

... RESPONDENTS

(BY SHRI. ADITYA SINGH, CGC FOR R1 & R2
SHRI. MANU KULKARNI, ADVOCATE FOR PROPOSED R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE

ACTIONS OF THE RESPONDENTS IN ISSUING AN ENDORSEMENT OF CANCELLATION IN PASSPORT OF THE PETITIONER DATED 14.11.2020 BY R-2 AND NOT PERMITTING THE PETITIONER TO TRAVEL FROM BENGALURU TO ABU DHABI, UAE (ANNEXURE-A) IS HIGH ARBITRARY, ILLEGAL AND WITHOUT AUTHORITY OF LAW AND IS IN VIOLATION OF ARTICLE 14, 19 AND 21 OF THE CONSTITUTION OF INDIA ETC.

THESE WRIT PETITIONS, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.01.2021, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

ORDER

Petitioner, a non-resident Indian has presented these two writ petitions challenging the Lookout Circulars (LOCs for short) issued by Bank of Baroda ('BOB' for short) and Punjab National Bank ('PNB' for short). Hence, they are disposed of by this common order:

Facts of the case:

2. On November 30, 2020, petitioner has presented W.P.No.13862/2020 with a prayer *inter alia* to declare the endorsement dated November 14, 2020 by Bureau of Immigration not permitting him to travel to Abu Dhabi, UAE, as illegal. In response to the notice issued by this Court, the learned Central Government Counsel has filed a copy of the letter dated December 8, 2020 written by the

Commissioner, Bureau of Immigration in reply to petitioner's letter seeking reasons for not allowing him to board the flight. It is stated in the said letter that BOB and PNB have issued LOCs dated May 8, 2020 and July 18, 2020 respectively to prevent petitioner from leaving India.

3. In the second Writ petition No.15032/2020, petitioner has challenged the letter issued by the Bureau of Immigration with following prayers:

- a. *Call for records of the Respondents relating to the issuance of Look Out Circular / communication dated 08.05.2020 and 18.07.2020 issued by the Respondent Nos.3 and 4 respectively, based on which the Petitioner was prevented from traveling out of Country and consequently the Respondent No.1 has issued the endorsement dated 08.12.2020 (**Annexure "A"**).*
- b. *Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the Respondent No.3 and 4 herein to provide a copy of the Look Out Circular / communication dated 08.05.2020 and 18.07.2020 respectively to the petitioner Annexure-"A".*
- c. *Issue a Writ of Mandamus or any other appropriate writ, order or direction declaring that the actions of the Respondent No.3 and 4 in issuing Look Out Circulars / communication dated 08.05.2020 and 18.07.2020 respectively, without any prior notice/ intimation/ communication to the Petitioner are highly arbitrary, illegal and in violation of Article 14, 19 and 21 of the Constitution of India Annexure-"A".*
- d. *Issue a Writ of Mandamus or any other appropriate writ, order or direction declaring that the actions of the Respondent No.1 and 2*

in issuing an endorsement of cancellation in passport of the Petitioner dated 14.11.2020 by Respondent No.2 and not permitting the Petitioner to travel from Bengaluru to Abu Dhabi, UAE (Annexure-B) is highly arbitrary, illegal and without authority of law and is in violation of Article 14, 19 and 21 of the Constitution of India.

- e. Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the Respondents to permit the Petitioner to travel from Bengaluru to Abu Dhabi, UAE, under such terms and conditions as this Hon'ble Court deems fit, in accordance with law.*
- f. Grant costs of the proceedings; and grant such other relief/s as this Hon'ble Court may deem fit in the interest of justice and equity."*

4. It is averred in the writ petitions that petitioner has promoted several companies in pharmaceutical, hospitality, healthcare and foreign exchange businesses. He stepped down from the Management and handed over the companies to the respective Officers between 2015 and 2017. During late 2019 and early 2020, due to various illegal activities and mismanagement in the companies by the persons in-charge, the companies were unable to service the loans obtained from various banks.

5. Banks have initiated various proceedings against the Companies and also petitioner who is the guarantor. All transactions are governed by the laws in the UAE. As on date, 34 cases are pending in Dubai and Abu Dhabi filed by various Banks including Indian Banks and four cases in India.

6. Bank of Baroda has filed a suit for specific performance in Com.O.S.No.1/2020 against petitioner. The order passed on application for interim injunction by the Commercial Court has been challenged before this Court in Com.AP No.19/2020 and this Court has passed an order of *status quo*.

7. Petitioner has not received any notice from PNB but he has learnt that PNB has initiated recovery proceedings in Dubai.

8. Petitioner had travelled to India during February 2020. He was scheduled to travel to Abu Dhabi on November 14, 2020 and he was denied permission by the

Immigration Authorities to board the Flight. Hence, these writ petitions.

9. Shri. Shashikiran Shetty, learned Senior Advocate after addressing detailed arguments has filed a synopsis and summary of his arguments as follows:

- Loans were taken in UAE by various Companies and petitioner has given guarantees in UAE and not in India;
- Default in repayment has occurred due to mismanagement by the borrower Companies which came to light between December 2019 and April 2020. Thereafter, proceedings have been initiated by Banks in UAE;
- Loans have been given to the listed Companies. They are managed by the Directors and respective CEOs/CFOs. Petitioner has stepped down from the Management of Companies in the year 2017;
- As transactions have taken place in UAE, respondent Banks have no jurisdiction to invoke his Personal

Guarantees in India. The Banks cannot prevent petitioner from travelling to UAE to defend cases against him;

- Issuance of a LOC is governed by Official Memorandum issued by Ministry of Home Affairs dated October 27, 2010, as amended on December 5, 2017 giving power to the Chairmen of the Banks to issue LOCs;
- The amendment requires exercise of power only in exceptional cases against fraudsters, persons taking loans and willfully defaulting, money launderers etc. Petitioner does not fall under any such category;
- Petitioner is required to travel (a) to defend cases filed against him in UAE; (b) to settle disputes and clear his name; (c) to help investigation of complaints filed by petitioner who is a victim of fraud; and (d) to carry on his work for his livelihood, as he ordinarily resides in UAE.

10. Thus, in substance, Shri. Shashikiran Shetty has argued that petitioner is "only a guarantor". He ordinarily resides in UAE. Loans were disbursed in UAE. He has a fundamental right to travel.

11. Petitions are opposed by both BOB and PNB.

12. I have carefully considered rival contentions and perused the records.

13. Undisputed facts of the case are, BOB has lent about Rs.2,000 Crores and exposure of PNB is Rs.800 Crores. Petitioner is an Indian National. He claims that he ordinarily resides in the UAE. It is the admitted case of petitioner that the Companies in question were promoted by him and he was in-charge of them till he stepped down from the Managements between 2015 and 2017. It is also the admitted case of petitioner that default has occurred due to mismanagement of Companies by the present CEOs and CFOs.

14. The cumulative exposure of BOB and PNB is about Rs.2800 crores. The Banks are duty bound to recover public money.

15. The contention urged on behalf of the petitioner with regard to jurisdiction on the ground that all transactions have taken place in UAE is noted only to be rejected, because, as rightly submitted by Shri.Ravishankar, the Guarantee Agreement executed by the petitioner in favour of the Banks provides for initiation of proceedings by the Banks in any number of jurisdictions. Shri. Ravishankar has filed a copy of the Guarantee Agreement dated June 15, 2010 executed in favour of PNB. Clause 10.1 thereof, provides that Courts of Dubai shall have 'non-exclusive jurisdiction'. Admittedly, BOB has filed a suit for specific performance in the Commercial Court, Bengaluru and in the Commercial Appeal filed thereon, this Court has directed an order of *status-quo*.

16. In the second writ petition, petitioner has prayed for:

- a direction to provide copy of the look out circular;
- mandamus to declare issuance of LOCs without prior notice as illegal; and
- to permit petitioner to travel to Abudabi.

17. Petitioner has conceded to Bank's power to issue LOCs. The relevant portion in Official Memorandum dated 27.10.2010 (Annexure-AA) namely Paragraph No.7 thereof reads as follows:

"7. The High Court has answered these questions in its judgment dated 11.8.2010 which are reproduced below for guidance of all concerned agencies;

a) Recourse of LOC can be taken by investigating agency in cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court despite NBWs and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest.

b) The Investigating Officer shall make a written request for LOC to the officer as notified by the circular of Ministry of Home Affairs, giving details and reasons for seeking LOC. The competent officer alone shall give directions for opening LOC by passing an order in this respect.

c) The person against whom LOC is issued must join investigation by appearing before I.O or should surrender before the court concerned or should satisfy the court that

*LOC was wrongly issued against him. **He may also approach the officer who ordered issuance of LOC & explain that LOC was wrongly issued against him.** LOC can be withdrawn by the authority that issued and can also be rescinded by the trial court where case is pending or having jurisdiction over concerned police station on an application by the person concerned.*

d) LOC is a coercive measure to make a person surrender to the investigating agency or Court of law. The subordinate courts' jurisdiction in affirming or canceling LOC is commensurate with the jurisdiction of cancellation of NBWs or affirming NBWs."

(Emphasis supplied)

18. Thus, Clause(c) of paragraph No.7 gives liberty for a person against whom LOC is issued, to approach the officer who has ordered issuance of LOC and explain that it is wrongly issued against him. In the letter written by the Commissioner, Bureau of Immigration, it is stated that the LOCs have been issued at the behest of BOB and PNB. Therefore, petitioner has to first approach the Bank Authorities. Hence, a direction to provide a copy is unnecessary.

19. The next prayer is to declare issuance of LOC without prior notice as illegal and violative Article 14, 19 and 21 of the Constitution of India. On the face of it, the prayer is misconceived because, the whole purpose of issuance of LOC would be defeated by a prior notice. By amending the Official Memorandum, Chairmen of Banks have been empowered to issue LOCs. Banker may consider issuing LOC to protect Bank's interest based on the subjective satisfaction of the issuing authority and in this case, the BOB and PNB. Therefore, the argument seeking prior notice is incongruous and therefore rejected.

20. The third prayer is to permit petitioner to travel to Abudabi. Unless, petitioner exhausts the remedy of approaching BOB and PNB and explains to them as to how the LOCs have been wrongly issued and the Banks pass any further orders thereon, there is no cause of action to consider the said prayer.

21. Shri Shashikiran Shetty relied upon an order passed in a review petition by the Calcutta High Court in *UCO Bank Vs. Dr.Siten Saha Roy and others*¹ Relying on the said judgment, he argued that in similar set of facts, interpreting the economic interest of India, the Calcutta High Court has held that the economic interests, if considered in proper perspective, has to be on a much higher footing, directly and adversely impacting the share market or the economy of the Country as a whole, which destabilizes the entire economy. Perusal of said order shows that petitioner's liability in that case was Rs.20 Crores.

22. Shri Shetty also relied upon *Mrs.Maneka Gandhi Vs. Union of India*².

23. He also strongly relied upon *Priya Parameshwaran Pillai Vs. Union of India and Others*³ and *Karti P.Chidambaram Vs. Bureau of Immigration, Ministry of*

¹ (Decided on 06.02.2020 in a review petition in W.P.No.23412/2019).

² (1978) 1 SCC 248

³ 2015 SCC OnLine Del 7987

*Home Affairs, Government of India*⁴ and in substance argued that petitioner has a right to travel.

24. Countering the argument of Shri. Shetty, Shri. Ravishankar relied upon *Shivashakti Sugars Limited Vs. Shree Renuka Sugar Limited and Others*⁵. Adverting to paragraph No.42 thereof, he submitted that economic impact has to be kept in mind as amount involved is very large.

25. Shri Ravishankar next relied upon *Renusagar Power Co.Ltd. Vs. General Electric Co.*⁶ Placing reliance on paragraph No.68, he argued that it is imperative to protect the economy of the nation.

26. Shri Manu Kulkarni opposing the writ petition contended that in the case of *Maneka Gandhi*, based on the majority view, the full Court, in view of the statement made

⁴(2018) 2 CWC 609

⁵ (2017) 7 SCC 729

⁶ 1994 Supp.(1) SCC 644

by the learned Attorney General, did not interfere with the order impugned therein.

27. Placing reliance on paragraph No.66 in *Mardia Chemicals Ltd and Others. Vs. Union of India and Others*⁷, he argued that economy of the Country cannot be ignored purely restricting it to individual transactions.

28. Though Shri. Shashikiran Shetty contended that the right of petitioner to travel is paramount, in the facts of this case, it is relevant to note that petitioner is liable for repayment of about Rs.2800 Crores lent by Public Sector Banks. Undoubtedly, this money belongs to this Country in general and the depositors in particular. This Court cannot lose sight of the fact that money belonging to this Country has been utilized by the petitioner in a foreign country to run his businesses. No material is produced to show that money lent by BOB and PNB has resulted in any development of this country. On the other hand, as on date, it has become a bad debt and public sector banks are

⁷ (2004)4 SCC 311

fighting litigations in India as also in UAE to recover the same. It is no doubt true that a citizen of this Country has a right to travel. But I hasten to add that persons who take public money have a sacred duty to repay it too. Therefore, the reliance in the case of *Uco Bank Vs. Dr.Siten Saha Roy* is of no avail to the petitioner because the amount involved in the said case was Rs.20 Crores and proceedings were initiated under the SARFAESI Act to recover the amount from the assets mortgaged to the bank. In contradistinction, in this case, the amount involved is astronomically high when compared with the Calcutta case, which is about Rs.2800 Crores. It is more than one third of the annual budget of a State like Sikkim. Thus the amount involved in this case is bound to have serious impact on the economy of this Country and therefore the authorities in the case of *Shivashakti Sugars Vs. Renu Sugar Ltd.*, and *Marida Chemicals Vs. Union of India* are aptly applicable.

29. One of the main argument advanced on behalf of the petitioner is, he is 'only a guarantor'. In the facts of

this case, this admission, without anything more, must entail dismissal of this writ petition in *limine* because a guarantor is equally liable to repay the debt. Further, it is admitted in the pleadings that petitioner is the promoter of the borrower Companies.

30. The liability of guarantor is well settled. In *Ram Kishun Vs. State of UP*⁸ it is held as follows:

"10. There can be no dispute to the settled legal proposition of law that in view of the provisions of Section 128 of the Contract Act, 1872 (hereinafter called "the Contract Act"), the liability of the guarantor/surety is coextensive with that of the debtor. Therefore, the creditor has a right to obtain a decree against the surety and the principal debtor. The surety has no right to restrain execution of the decree against him until the creditor has exhausted his remedy against the principal debtor for the reason that it is the business of the surety/guarantor to see whether the principal debtor has paid or not. The surety does not have a right to dictate terms to the creditor as to how he should make the recovery and pursue his remedies against the principal debtor at his instance. (Vide Bank of Bihar Ltd. v. Damodar Prasad [AIR 1969 SC 297] , Maharashtra SEB v. Official Liquidator [(1982) 3 SCC 358 : AIR 1982 SC 1497] , Union Bank of India v. Manku Narayana [(1987) 2 SCC 335 : AIR 1987 SC 1078] and SBI v. Indexport Registered [(1992) 3 SCC 159 : AIR 1992 SC 1740] .)"

⁸ (2012)11 SCC 511

31. In *Central Bank of India Vs. C.L. Vimala*⁹ the Apex Court has reiterated the opinion in *Ram Kishun* as follows:

"13. We are of the opinion that the questions that need to be decided by us are regarding the liability of the guarantor under Section 128 of the Contract Act, 1872. The legislature has succinctly stated that the liability of the guarantor is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. This Court has decided on this question, time and again, in line with the intent of the legislature. In Ram Kishun v. State of U.P. [(2012) 11 SCC 511 : (2013) 1 SCC (Civ) 382] , this Court has held that: (SCC p. 518, para 10)

"10. ... in view of the provisions of Section 128 of the Contract Act, 1872 (hereinafter called 'the Contract Act'), the liability of the guarantor/surety is co-extensive with that of the debtor."

(emphasis supplied)

The only exception to the nature of the liability of the guarantor is provided in the section itself, which is only if it stated explicitly to be otherwise in the contract."

32. During the course of hearing, this Court called upon the learned advocates for the Banks to explain on what security the Banks permitted such large exposure.

⁹ (2015)7 SCC 337

The answer given was, the Companies to which loans are advanced were 'listed companies' in London Stock Exchange and the share value had shown that the said Companies had high net worth. Tangible assets, if any, mortgaged in favour of Banks and their valuation is not forthcoming. If Public Sector Banks are permitting such large exposure without adequate securities, it is a matter of great concern and it shall have serious adverse impact on the economy of this Country. It is time, the law makers and Reserve Bank of India re-visit the lending guidelines and the procedures and take necessary remedial measures to ensure that public money is well secured before disbursement.

33. In the light of above discussion and particularly in view of the liberty available to the petitioner to approach the Bank authorities and explain that LOCs have been wrongly issued, petitioner is not entitled for relief in these writ petitions.

34. In the result, these writ petitions must fail and they are accordingly ***dismissed***.

35. In view of dismissal of these petitions, all pending interlocutory applications do not survive for consideration and the same are disposed of.

No costs.

Sd/-

**(P.S. DINESH KUMAR)
JUDGE**

Yn/SPS

PSDJ:
12.02.2021

ORDER

IN

WRIT PETITION No.15032 OF 2020 (GM-RES)
C/Wz
WRIT PETITION No.13862 OF 2020 (GM-PASS)

SPS
CT-CSR

