

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 2826 OF 2022

Anurag

... **Petitioner.**

Versus

1. Bank of India,
Th. Its Assistant General Manager,
Having its office at Mid Corporate Branch,
S. V. Patel Road, Nagpur – 440001.
2. M/s. Gupta Energy Pvt. Ltd.,
5th Floor, Gupta Towers, Temple Road,
Civil Lines, Nagpur – 440001
Through its Liquidator
Shri Vikas Gupta.

... **Respondents.**

Mr. Akshay Naik a/w Mr. D.V. Chauhan and Mr. C.J. Dhruv,
Advocates for Petitioner.

Mr. A. T. Purohit, Advocate for Respondent No.1.

Mr. D. Gupta, Advocate for Respondent No.2(Official Liquidator).

**CORAM : A. S. CHANDURKAR &
AMIT BORKAR, JJ.**

DATE : 07.06.2022.

PER : [AMIT BORKAR, J.]

1 **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2. The present petition raises an important question as to the interpretation of Article 21 of the Constitution of India as to whether the expression "personal liberty" occurring in the said Article includes the right to travel abroad. Second important question that arises is whether the refusal to grant permission to travel abroad results in the infringement of Article 21 of the Constitution of India ?

3. By this Writ Petition under Articles 226 and 227 of the Constitution of India, the Petitioner is challenging the order passed by the Debt Recovery Tribunal refusing to grant permission to travel abroad for a limited time from 09.06.2022 to 17.06.2022 to attend the marriage of the petitioner's sister-in-law.

4. The brief facts giving rise to the present petition are as under :

The Petitioner is the personal guarantor of a private limited company (respondent No.2) engaged in electricity and power generation. To establish the Power Plant, a consortium led by Axis Bank Limited and another group of lenders, namely L & T Infrastructure Finance, State Bank of Mysore, Corporation Bank, State Bank of India and respondent No.1, financed the project. Proceedings under the Insolvency & Bankruptcy Code, 2016 are pending in relation to the respondent No.2 – Company before NCLT, Mumbai and the same is under liquidation order passed by the NCLT dated 15.03.2018.

5. Original Application No.330/2016 came to be filed before the Debt Recovery Tribunal, Nagpur, for recovery of amount against the Petitioner and other directors of respondent No.2 – Company for a sum of Rs.110,15,00,000/-. In the said Original Application, respondent No.1 – Bank sought interim relief restraining the Petitioner from travelling abroad and for impounding the passport of the Petitioner. On 18.01.2018, the

Debt Recovery Tribunal passed an order restraining the Petitioner from travelling abroad.

6. Since the marriage of the sister-in-law of the Petitioner is scheduled in Turkey from 12.06.2022 till 14.06.2022, the Petitioner filed an application with the Debt Recovery Tribunal, Nagpur seeking permission to travel abroad for a short duration seeking relaxation of a condition imposed by order dated 18.01.2018. However, the said application came to be rejected by an order dated 23.05.2022. Therefore, the Petitioner has challenged the order dated 23.05.2022 by way of the present petition.

7. This Court, on 31.05.2022, issued notice to the respondents, making it returnable on 06.06.2022.

8. On 06.06.2022, Mr A. T. Purohit, learned Advocate for respondent No.1, appeared and sought time to prepare himself regarding the position of the law considering the questions involved in the petition. The matter was therefore

fixed at 2.30 p.m.

9. We have heard Mr. Akshay Naik, learned Advocate for the Petitioner, along with Mr. D. V. Chauhan, learned Advocate and Mr. A. T. Purohit, learned Advocate for the respondent No.1 -Bank.

10. Mr. Naik, learned Advocate for the Petitioner, submitted that right to travel abroad had been recognised as the fundamental right enshrined under Article 21 of the Constitution of India. He submitted that a person could not be deprived of his personal liberty in the absence of specific 'enacted law'. According to him, existing provisions of the Recovery of Debts Due To Banks and Financial Institutions Act, 1993 (Hereinafter referred to as "said Act") do not confer power on the Tribunal to issue a direction restraining a person from travelling abroad. In support of his submission, he placed reliance on the following judgments in the cases of ***State Bank of India Vs. Prafulchandra V. Patel and 8*** reported in **2011 SCC OnLine Guj. 1055**, ***ICICI Bank Ltd. Vs. Kapil Puri and***

Ors. reported in **2017 SCC OnLine Del. 7377** and **Satish Chandra Verma Vs. Union of India and Ors** reported in **2019 SCC OnLine SC 2048**.

11. Per contra, Mr. A. T. Purohit, learned Advocate for the respondent No.1 – Bank, submitted that the Petitioner has an efficacious alternative remedy by approaching the Appellate Tribunal and, therefore present petition is not maintainable. He invited our attention to Section 22(2) of the Act and submitted that Tribunal is vested with the same powers vested in Civil Court under Civil Procedure Code. He placed reliance on Section 19(25) of the said Act and Rule 18 of Debt Recovery Tribunal (Procedure) Rules, 1993, to contend that the Tribunal has the power to pass such orders which are necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure ends of justice. In support of his submission, he placed reliance upon the following judgments in the cases of **Smt. Annai Jayabharathi Vs. Debt Recovery Tribunal (Kerala and Lakshadweep), Ernakulam and Anr.** reported in **AIR 2005 Kerala 137** and **ICICI Bank Ltd. vs. Debts Recovery**

Appellate Tribunal, Chennai and Ors. reported in ***AIR 2012 Madras 111.***

12. We have carefully considered the submissions raised on behalf of both sides. To adjudicate the issue involved in the present petition, it is necessary to consider the relevant Article of the Constitution as Article 21. It reads:

"21. No person shall be deprived of his life or personal liberty except according to procedure established by law."

13. It is now well settled that the expression "personal liberty" includes a right of a citizen to travel abroad and return to the home country without any impediment, direct or indirect. The expression "personal liberty" has not been used in the restricted sense of freedom from arrest and detention but has been used in a much wider sense. This right emanates from the freedom of a person. The right to travel abroad and return to the country without impediment, direct or indirect, is contained in the expression "personal liberty" occurring in Article 21 of the Constitution. It is well settled that law in this Article means the law enacted by a competent Legislature.

14. The difference between Article 19 and Article 21 is that rights conferred by Article 19, which certainly are fundamental personal rights, are conferred only on the citizens, and restrictions thereon could be imposed by law in a limited manner stated in the said clauses. Article 21 comprises all the personal liberties which are not included in Article 19. The rest of the personal rights are conferred not only on the citizens but on all, including citizens. Every person could be deprived of these rights in their totality "according to procedure established by law". The mandate of Article 21 is that the deprivation of "personal liberty" has to be "according to procedure established by law."

15. If the right to travel is a part of the personal liberty of a person, he cannot be deprived of his right except according to the procedure established by law. The right to travel abroad is right distinct and separate from the right of freedom of movement in a foreign country. The right to travel abroad by its necessary implications means the right to leave the home country and visit a foreign country. The right to travel abroad

has been spelt out from the expression "personal liberty" in Article 21 of the Constitution.

16. The Hon'ble Apex Court, in the case of ***Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, New Delhi***, reported in ***1967 AIR 1836*** has authoritatively held that the right to travel abroad is a fundamental right. It has also been held that in the absence of a law regulating or depriving a person of such right, refusal to give a passport or withdrawal of one violates Articles 21 and 14 of the Constitution of India.

17. The Constitution Bench of the Hon'ble Apex Court had occasion to consider the right to travel abroad of a citizen of India in the case of ***Smt. Maneka Gandhi Vs. Union of India*** reported in AIR ***1978 SC 597***. In the said case, it is held that the expression 'personal liberty' in Article 21 is of the widest amplitude, which includes the right to go abroad. It has also been held that the expression "Law" under Article 21 means "Enacted Law" or "State Law". Therefore, the Hon'ble Apex

Court authoritatively held that no person could be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for depriving a citizen of his right to go abroad. It has also been held that the procedure contemplated under the said Article cannot be arbitrary, unfair or unreasonable.

18. The Hon'ble Apex Court, in a recent judgment in the case of **Satish Chandra Verma Vs. Union of India and Ors** in **Civil Appeal No.3802/2019** decided on 09.04.2019 reiterated aforesaid position by observing as under.

"5. The right to travel abroad is an important basic human right for it nourishes independent and self-determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience. The right also extends to private life; marriage, family and friendship are humanities which can be rarely affected through refusal of freedom to go abroad and clearly show that this freedom is a genuine human right. (See: Mrs. Maneka Gandhi v. Union of India (1978) 1 SCC 248). In the said judgment, there is a reference to the words of Justice Douglas in Kent v. Dulles 357 US 116 (1958) which are as follows:

"Freedom to go abroad has much social value and

represents the basic human right of great significance."

19. At this stage, it is necessary to consider the following provisions of the Recovery of Debts Due To Banks and Financial Institutions Act, 1993.

"Section 19. Application to the Tribunal.--

(12) The Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.

(13) (A) Where, at any stage of the proceedings, [the Tribunal on an application made by the applicant along with particulars of property to be attached and estimated value thereof, or otherwise is satisfied], that the defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him,--

(i) is about to dispose of the whole or any part of his property; or

(ii) is about to remove the whole or any part of the property from the local limits of the jurisdiction of the Tribunal; or

(iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest,

the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the

certificate for the recovery of debt, or to appear and show cause why he should not furnish security.

(B) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the defendant as appears sufficient to satisfy any certificate for the recovery of debt.

22. Procedure and powers of the Tribunal and the Appellate Tribunal.—

(1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure, including the places at which they shall have their sittings.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

- (f) dismissing an application for default or deciding it ex parte;*
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;*
- (h) any other matter which may be prescribed.*

(3) Any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Tribunal or the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

25. Modes of recovery of debts.— *The Recovery Officer shall, on receipt of the copy of the certificate under sub-section (7) of section 19, proceed to recover the amount of debt specified in the certificate by one or more of the following modes, namely:*

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- (a) attachment and sale of the movable or immovable property of the defendant;*
- (aa) taking possession of property over which security interest is created or any other property of the defendant and appointing receiver for such property and to sell the same;]*
- (b) arrest of the defendant and his detention in prison;*
- (c) appointing a receiver for the management of the movable or immovable properties of the defendant;*
- (d) any other mode of recovery as may be prescribed by the Central Government.]"*

20. Under Section 19(25), the Tribunal is empowered to make such orders and give such directions as may be necessary or expedient to give effect to its orders or prevent abuse of its process or secure the ends of its justice. Sub Section (12) of Section 19 conferred the powers on Tribunal to pass interim orders during the pendency of proceedings by way of injunction or stay or attachment against the defendant restraining him from transferring, alienating or otherwise dealing with or disposing of any property and assets belonging to him without prior permission of the Tribunal. The Tribunal is also empowered under Sub Section 13(A) of Section 19 to direct the defendant to furnish security or pass such order as specified therein on being satisfied that the defendant with an intent to obstruct or delay or frustrate the execution of any order or the recovery of debt passed against him, or is about to dispose of the whole or any part of the property, or is about to remove to whole or any of the part of the property, or is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest. On careful consideration of the language of Sub Section 12, 13(A), 17 and 18 of Section 19, we

are of the considered view that the Tribunal is not conferred with specific power to restrain a person from leaving the country.

21. Insofar as the submission of respondent No.1 that the Tribunal has powers under Section 22 of the Said Act to pass orders restraining a person from travelling abroad is concerned, the Hon'ble Apex Court in the case of ***Industrial Credit Investment Corporation of India Limited Vs. Grapco Industries Ltd. And Ors.*** reported in **1999 (3) SCR 759** in paragraphs No. 11 and 12 held as under :

"11. We, however, do not agree with the reasoning adopted by the High Court. When Section 22 of the Act says that the Tribunal shall not be bound by the procedure laid by the Code of Civil Procedure, it does not mean that it will not have jurisdiction to exercise powers of a Court as contained in the Code of Civil Procedure, Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice.....

12.It will, thus, be seen that while there are no limitations on the powers of the Tribunal under me Act, the legislature has thought fit to restrict the powers of the authorities under various enactments while exercising certain powers under those enactments. We have to give meaning to Section 22 of the Act as here the Tribunal is exercising powers

of a Civil Court trying a money suit. Further, when power is given to the Tribunal to make interim order by way of injunction or stay, it inheres in it the power to grant that order even ex parte, if it is so in the interest of justice.....”

22. The reading of the observations made by the Hon'ble Apex Court in the case of **ICICI Bank Ltd.** (supra) makes it clear that the Tribunal while exercising powers of Civil Court adjudicating money suit, is limited to the extent of passing interim order by way of injunction or stay which are expressly conferred on it. The Tribunal can travel beyond the powers conferred by the Code of Civil Procedure with a view to observe the principle of natural justice. In our view, Section 22 confers the procedural right to regulate proceedings before it. In the absence of a specific provision conferred on the Debt Recovery Tribunal by statute, the Debt Recovery Tribunal has no power to restrain a citizen from travelling abroad, particularly when the said right has been recognised as a facet of Article 21 of the Constitution of India. In our view, the provisions under the Recovery of Debts Due To Banks and Financial Institutions Act, 1993, as they stand, do not even impliedly confer such powers on the Debt Recovery Tribunal to restrain a person from

travelling abroad.

23. Mr. Purohit, learned Advocate for respondent No.1, has placed reliance upon judgment in the case of **ICICI Bank Ltd.** (supra) and **Smt. Annai Jayabharathi** (supra), in support of his submission, that the Tribunal has power under Section 22 and Section 19 of the said Act to pass an order restraining a person from travelling abroad. In the case of ICICI Bank Ltd., the High Court of Delhi has considered both judgments and, by detailed judgment, has dissented from the views taken by Kerala and Madras High Court. A similar matter fell for consideration before a Division Bench of the Gujarat High Court in **State Bank of India** (supra), which held that the Debt Recovery Tribunal has no power to restrain a person from travelling abroad in the absence of specific powers to that effect. Special Leave to Appeal (Civil) No.16714/2011 against the judgment of the High Court of Gujarat has been dismissed by the Hon'ble Supreme Court on 15.07.2011. We fully agree with the views expressed by the Delhi High Court in the case of **ICICI Bank Ltd.** (supra) and Gujarat High Court in **State Bank**

of India (supra) that the Debt Recovery Tribunal has no power to restrain a person from travelling abroad.

24. Respondent No.1 has filed a reply before the Debt Recovery Tribunal. A copy of the reply has been produced on record by the Advocate for the Petitioner. Having perused the said reply, we do not find any apprehension expressed by respondent No.1 that the Petitioner is likely to abscond from the country is possible. The Petitioner has stated in paragraph 8-C that the Petitioner's daughter is studying in Kindergarten School, Nagpur and he has deep roots in society. He is a prominent business person actively engaged in social work.

25. The learned Advocate for the Petitioner made a statement that the Petitioner is willing to file an undertaking stating before this Court that (1) He will return back to India on 17.06.2022 as per the flight details mentioned in the petition, (2) He shall carry his mobile phone with an active mobile No. 917709048077 to Turkey, (3) He shall keep his phone activated for international calls and shall also be available on WhatsApp Application with active internet connection, (4) He

shall mark his attendance before the Indian Embassy in Turkey on 15.06.2022/ 16.06.2022, (5) He shall inform the authorised persons of respondent No.1 – Bank about his whereabouts once he returns back to India.

26. The immovable properties of Petitioner are mortgaged with Respondent No. 1 Bank. The Petitioner has also stated that fixed deposit receipts worth 67 crores lie with respondent No.1 – Bank. It is stated that the Government of India and the Government of Turkey entered into an extradition agreement on 27.02.2004 to extradite any person who has been accused or convicted of an offence as described under Article 2 of the said Agreement. It is stated that the Petitioner had already travelled to Abu Dhabi to attend his friend's marriage in the month of October 2019 for three days and had returned to India. The above factors, in our opinion, sufficiently protect the rights of Respondent No. 1 to recover the amount of dues from Petitioner.

27. On consideration of the scheme of the said Act, we hold that the order refusing permission to travel abroad has been made in contravention of the provisions of Article 21 of the Constitution and is violative of the right guaranteed to the petitioner under Article 21. The State has not made any law or provision in the said Act seeking to deprive or regulate the right of a person to travel abroad. The order is, therefore, liable to be set aside.

28. Before parting with the case, we would like to say that we were not unmindful of the necessity of regulating the issue of recovery of public money. On the other hand, we are fully conscious that in certain cases, it may be necessary for the interests of the country and the public interest to prevent certain persons from leaving India. In **Satwant Singh Sawhney v. D. Ramarathnam** reported in **(1967) 3 SCR 525**, the Constitution Bench of the Apex Court held that right to travel abroad was a part of "personal liberty" and, as such, a fundamental right guaranteed by Article 21 of the Constitution. Therefore, it could be regulated only "according to procedure established by law" thereunder and not by mere executive

discretion. Further, the exercise of executive discretion was also violative of Article 14 of the Constitution. Parliament thereupon enacted the Passports Act, 1967 to establish the procedure under which passports may be granted or refused to applicants by the Central Government. As we have already pointed out, for the purpose of depriving or regulating the right of a person to travel abroad, it is necessary to have a procedure established by law enacted by a competent Legislature in the said act or by way of independent legislation which is absent herein.

29. For the reasons stated above, we are of the considered view that the Debt Recovery Tribunal has no power to restrain a person from travelling abroad in the absence of specific powers to that effect. We, therefore, pass the following order :

ORDER

- (i) Order dated 23.05.2022 in O. A. No.330/2016 in I. A. No.634/2022 is hereby quashed and set aside.

- (ii) The Petitioner is permitted to travel to Turkey from 09.06.2022 to 17.06.2022 subject to furnishing undertaking as stated in aforesaid paragraph no.25 in this Court.

Rule is made absolute in aforesaid terms. No order as to costs.

(AMIT BORKAR, J.)

(A. S. CHANDURKAR, J.)

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