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WP-40054-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE PRANAY VERMA

WRIT PETITION No. 40054 of 2025

RAJIV SONI

Versus

ICICI BANK

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Appearance:

Shri Ravindra Singh Chhabra, learned Senior Advocate with Shri Raghav Raj Singh, learned counsel for the petitioner.

Shri Sanjay Pathak, learned counsel for the respondent.
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ORDER

(Reserved on 12.11.2025)

(Pronounced on 02.12.2025)

1. By this petition preferred under Article 226 of the Constitution of India the petitioner has challenged the order dated 22.08.2025 passed by the Recovery Officer of the Debts Recovery Tribunal in so far as he has imposed conditions on the travel of the petitioner to the effect that he shall deposit a sum of Rs.50,00,00,000/- in official account of Recovery Officer which is to be kept in FDR as surety for the Bank or provide equal amount of surety be it in the form of immovable property of self or someone known to him or shares worth this amount. On breach/non-return of the petitioner the Bank guarantee/cash deposit/surety bond shall be forthwith invoked and the Recovery Officer may proceed directly against the surety for the bond amount.

2. As per the petitioner, he is an ex-Director of Metalman Industries



Limited and respondent Bank is a lender. Since there was default in repayment of loans advanced to Metalman Industries Limited it was declared as a NPA. Respondent filed an Original Application under Section 19 (1) of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Debts Recovery Tribunal has issued a recovery certificate in favour of the Bank. Petitioner being a co-guarantor to the loan has been arrayed as corporate debtor No.2 in the proceedings. The petitioner received an offer for appointment in the United States of America and has accepted the same. Thereafter he approached the DRT by filing an application seeking permission to travel abroad. The application was contested by the respondent by filing reply to the same. By the impugned order DRT has imposed conditions on the petitioner for his travel as stated above.

3. Learned counsel for the petitioner has submitted that the impugned conditions are dehors the powers conferred upon the authority by the Act, 1993 or the Rules made thereunder. The same violate the fundamental rights of the petitioner under Article 19(1)(g) and Article 21 of the Constitution of India being arbitrary, illegal and unreasonable on his free movement abroad and adversely effect his livelihood and employment. There is no power under the Act, 1993 or the Rules to impose conditions as have been imposed for the purpose of granting permission to travel abroad. Petitioner's assets have already been attached and there is no restriction placed on other corporate debtors. It is hence submitted that the impugned conditions be quashed. Reliance has been placed on the decisions of the Apex Court in Satwant Singh Sawhney v. D. Ramarathnam, Asstt. Passport



Officer AIR 1967 SC 1836, Smt. Menka Gandhi V/s. Union of India AIR 1978 SC 598 and upon Anurag V/s. Bank of India and Another 2022 SCC OnLine Bom 1160, ICICI Bank Limited V/s. Kapil Puri and Others 2017 SCC OnLine Del 7377 and State Bank of India V/s. Prafulchandra V. Patel and Others 2011 SCC OnLine Guj 1055.

4. Reply has been filed by the respondent and learned counsel for the respondent has submitted that the petition preferred against respondent Bank is not maintainable since it is not amenable to the writ jurisdiction of this Court. It is further submitted that the petitioner has an alternate remedy of preferring an appeal before the Presiding Officer of the DRT against the impugned order passed by the Recovery Officer. It is also submitted that in proceedings for recovery of the loan amount an order was passed by this Court on 18.03.2024 in M.P. No.7327/2023 whereby petitioner was directed to approach the appellate authority. It is further submitted that earlier there was a direction for the petitioner to deposit a sum of Rs.1,00,00,000/- by order dated 11.01.2018 passed in W.P. No.809/2018 but the same has not been complied with by him. The petitioner is liable to pay a huge amount to the Bank hence he cannot be permitted to travel abroad and in case he does so there is every possibility of him not returning back hence the conditions imposed by way of the impugned order are perfectly justified. The petition hence deserves to be dismissed.

5. I have considered the submissions of the learned counsel for the parties and have perused the record.

6. In Anurag (supra) the question before the Division Bench of the



Bombay High Court was as to whether the expression "personal liberty" occurring in Article 21 of the Constitution of India includes the right to travel abroad and whether refusal to grant permission to travel abroad results in infringement of Article 21 of the Constitution of India. By relying upon the decision of the Apex Court in **Satvant Singh Sawhney (supra)** it was held that the right to travel abroad is a fundamental right. The DRT has no power to restrain a citizen from traveling abroad. The provisions of the Act, 1993 do not even impliedly confer power upon the DRT to restrain a person from traveling abroad. The relevant paragraphs of the said judgment are as under :-

"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.

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 v. D. Ramarathnam**, Assistant Passport Officer, New Delhi reported in AIR 1967 SC 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.

22. **** In the absence of a specific provision conferred on the Debts Recovery Tribunal by statute, the Debts 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 Debts Recovery Tribunal to restrain a person from travelling abroad.

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."

7. Before the Division Bench of the Delhi High Court in the case of **Kapil Puri and Others (supra)** the question which arose for consideration was whether the Tribunal constituted under the Act, 1993 has the power in terms of the provisions of the said Act to impose travel restrictions on a defaulting borrower/guarantor. The said question was answered in the negative holding as under :-

"33. The plea of Mr. Vashist that in these judgments, this Court did not have the occasion to consider Section 19(25) of the Act of 1993 is concerned, even this provision would not support the order of the DRT and in this regard we agree with the following reasoning of the DRAT:—

“The Debts Recovery Tribunal being a creature of statute would have power as conferred on these Tribunals by the statute. If the intention was to confer such power allowing the Tribunal to restrain a person from travelling abroad, it ought to have been so conferred on the Tribunal. Here notice can be taken of the provisions of Section 19(17) of the RDDDBFI Act which empowers the Recovery Tribunal to order detention of a person in civil prison for a period not exceeding three months if such person is found guilty of disobedience or breach of any order made by the Tribunal. Apparent reason for not bestowing power to the Tribunal to restrain the borrower from travelling abroad may be because borrower is not needed to



remain present in person before the Tribunal when the recovery proceedings are in progress. It is his property only which is the security for recovery of the debt and his presence may be need at much later stage during the recovery proceedings as and when ordered if full amount is not recovered from the secured assets. To justify passing of such order by invoking the provisions of Section 19(25) of the RDDBFI Act or Rule 18 of the Rules to urge that these would be available to ensure recovery may lead to creating or recognizing a right or liability or obligation which is not provided for in the Statute.”

8. Before the Division Bench of the Gujrat High Court in **Prafulchandra V. Patel and Others (supra)** the question involved was whether the DRT is empowered to prohibit a borrower from leaving the country without prior permission of the Tribunal. It was held that the DRT is not empowered to issue any prohibitory order prohibiting the credit debtor from leaving the country without prior permission. Under Article 21 of the Constitution no person can be deprived of his right to travel except according to the procedure established by law. The law would mean 'Enacted Law' or 'State Law'. No law has been made by the State regulating or depriving a person of such right in case proceeding under Section 19 of the DRT Act, 1993 is pending. In absence of any such 'Enacted Law' or 'State Law', Tribunal has no right to prohibit a person from going abroad. It has been held as under :-

"13. Thus, it will be evident from sub-sections (12), (13)(A), 17 and 18 of Section 19 that the Tribunal is not empowered to issue any prohibitory order prohibiting the defendant from leaving the country without prior permission.

15. The only question arises for determination is whether under sub-section (25) of Section 19, the Tribunal can issue order prohibiting a defendant from leaving the country to prevent abuse of its process or to secure the ends of justice.



21. The question arises whether for taking recourse of Section 19(25) read with Rule 18 of the 1993 Rules or Section 22 of the DRT Rules, a person can be prohibited to go aboard.

23. In the case of *Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, New Delhi*, reported in AIR 1967 SC 1836, the Supreme Court held that right to travel abroad is fundamental right. In absence of law regulating or depriving a person of such right, refusal to give passport or withdrawal of one given violates Articles 21 and 14 of the Constitution of India. The expression 'personal liberty' in Article 21 of the Constitution takes in the right of locomotion and to travel abroad, but the right to move throughout the territories of India is not covered by it inasmuch as it is specially provided in Article 19. Under Article 21, no person can be deprived of his right to travel except according to the procedure established by law.

24. In the case of *Smt. Maneka Gandhi v. Union of India*, reported in AIR 1978 SC 597 (1), the Supreme Court held that the expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19. From the language of Article 21, it will be seen at once that the protection it secures is a limited one. It safeguards the right to go abroad against executive interference which is not supported by law; and law here means 'enacted law' or 'State law'. 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. Obviously, the procedure cannot be arbitrary, unfair and unreasonable. If a law depriving a person of 'personal liberty' and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, ex hypothesis it must be liable to be tested with reference to Article 14.

25. From the reasons mentioned in the aforesaid case, it follows that under Article 21 of the Constitution, no person can be deprived of his right to travel except according to the procedure established by law. The law means 'enacted law' or 'State law'.

27. Section 22 deals with the procedure and powers of the Tribunal and the Appellate Tribunal. It relates to summoning and enforcing the attendance, requiring the discovery and production of documents, receiving evidence on affidavits, issuing commissions for the examination of witnesses or documents, reviewing its decisions, dismissing an application for default or



deciding it ex-parte, setting aside any order of dismissal of any application for default or any order passed by it ex-parte, or any other matter which may be prescribed, but no provision has been made therein or by a separate notification issued by the Central Government empowering the Tribunal to deprive a person of his personal liberty to move abroad as guaranteed under Article 21 of the Constitution of India. In absence of any such 'enacted law' or 'State law', we hold that the Tribunal had no jurisdiction to deprive the defendants, the respondents herein, of their right to go abroad. The learned Single Judge for the very same reason having set aside the order passed by the Tribunal, no interference is called for. In absence of any merit, the appeal is dismissed, but there shall be no order as to costs."

9. In the aforesaid cases it has been laid down that right of a person to travel abroad is a fundamental right guaranteed under Article 19 and 21 of the Constitution of India. No person can be deprived of his aforesaid right except according to the procedure established by law. Law would mean 'Enacted Law' or 'State Law'. Nothing has been brought on record to show that a law has been made by the State regulating depriving a person of such right in case proceedings under Section 19 of the DRT Act, 1993 are pending against him. Since there is no such enacted law or state law the DRT has no jurisdiction to deprive a person of his right to go abroad.

10. When the Tribunal does not have the power to deprive a person of his right to travel abroad then it would not also have any power to impose any condition upon him for travelling abroad. The conditions as have been imposed by the Recovery Officer of the Tribunal upon the petitioner by way of the impugned order are hence unsustainable and cannot be given the stamp of approval since they effectively deprive him of his right to travel abroad. Though permission has been granted by the Tribunal but on such conditions as above which in absence of any power itself to prohibit the



petitioner from traveling abroad cannot be sustained.

11. Though it has been submitted by the learned counsel for the respondent that the petition is not maintainable against the respondent Bank but it is observed that the same has been preferred against order passed by the Recovery Officer of the DRT and its legality can very well be examined in this petition. In so far as the issue as regards availability of alternate remedy to the petitioner to prefer an appeal before the Presiding Officer of the DRT is concerned it is noted that entertaining a petition despite availability of alternate remedy is a rule of discretion and despite such remedy a petition can be entertained *inter alia* if it is in respect of violation of fundamental rights of a person. In the instant case as has been held above, the conditions imposed upon the petitioner are violative of his fundamental right to go abroad as guaranteed under Article 19 and 21 of the Constitution of India hence this writ petition despite availability of such alternate remedy is very much entertainable.

12. In view of the aforesaid discussion, the petition deserves to be and is accordingly allowed and condition No.(ii) as imposed in the impugned order dated 22.08.2025 (Annexure P/6) is hereby quashed.

(PRANAY VERMA)
JUDGE