2024:DHC:4679

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 27th May, 2024**

\+ W.P.(C) 8934/2008

FEDERATION OF TATA COMMUNICATIONS EMPLOYEES UNIONS ..... Petitioner

Through: Mr.Manik Dogra and Mr.Dhruv Pande, Advocates

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Rajiv Nayar, Sr. Adv with Mr. Rishi Agrawala, Adv. Mr. Parminder Singh, and Mr.Harsh Mittal, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner vide the present writ petition under Article 226 of the Constitution of India seeks the following reliefs:

> *" a) issue appropriate writs, orders or directions in the nature of Mandamus directing the Respondents, their servants and agents to follow the procedure set forth in OCS Office Memorandum No.HQ/01-01/89-PE.I dated 11.12.1989 and Office Memorandum No. 1/61/89-P&PW (C) dated 18.07.1989; b) direct the Respondent No.2 not to terminate the services of any members of the Petitioner federation without adhering to the procedure set forth in Office Memorandum dated 11.12.1989 and Office Memorandum No. 1/61/89-P & PW (C)*

dated 18.07.1989;
(c) pass such other and further orders/directions as may be deemed just and fit in the interest of justice."

2. The petitioner ('petitioner federation' hereinafter) is a group of former employees of the respondent no.2, *namely*, Tata Communications Limited ('respondent Company' hereinafter). The respondent company had majority stake of Government of India and was under the aegis of Ministry of Telecommunication, Union of India.

3. In the year 2001, the share of the Government was sold, however, the employees were retained and subsequently, some of them were terminated by the respondent no.2 in the year 2008.

4. Aggrieved by the same, the petitioner federation, comprising the said employees who were terminated, has filed the instant petition.

5. During the course of proceedings, Mr. Nayar, learned senior counsel appearing on behalf of the respondent Company objected to the maintainability of the instant petition submitting to the effect that in terms of Article 12 of the Constitution of India the respondent Company is a private entity and not a State, therefore, a writ petition filed under Article 226 of the Constitution is not maintainable against it and prayed that the same may be dismissed at threshold and made the following submissions in this regard.

6. It is submitted that the test for inclusion of the entities as an instrumentality of the State has been well defined and the term '*other authority*' as provided for under Article 12 of the Constitution of India does not include private entities, therefore, a writ is not maintainable against the

respondent Company.

7. It is submitted that the majority of the shareholdings of the respondent Company vests with the Tata group, whereby, the said group holds 58.86% shares, therefore, negating the possibility of government control in the respondent Company.

8. It is submitted that the issue raised by the petitioner has already been dealt with by the Hon'ble Supreme Court in the case of ***Mr. R.S. Madireddy and Anr. Etc. v. Union of India & Ors. Etc.*** reported in 2024 INSC 425, whereby, the Hon'ble Supreme Court categorically held that a writ cannot be maintainable against an erstwhile Government run entity privatized subsequently.

9. It is submitted that the similar petition was filed by the similarly placed employees of the respondent Company before the Bombay High Court in ***S.V. Vasaikar & Ors. v. Union of India*** **in W.P. (C) 5373/2002** which was dismissed on the grounds of maintainability.

10. In view of the foregoing submissions, the learned senior counsel for the respondent Company submitted that the present petition, being non-maintainable may be dismissed.

11. *Per Contra*, Mr. Manik Dogra, the learned counsel appearing on behalf of the petitioner Federation vehemently opposed the submissions made by the learned senior counsel contending to the effect that since the respondent Company is performing public functions, therefore, it is amenable to the writ jurisdiction.

12. It is submitted that the petitioner has sought the main relief against the

respondent no. 1, i.e., Union of India, as the said respondent had promised the retainment of the employees, therefore, the instant writ is maintainable.

13. It is submitted that a writ is maintainable against an entity if the claim of the employee is with respect to the interpretation of the conditions of employment as change in the service condition without hearing the employees would amount to violation of Article 14 of the Constitution of India. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***Balco Employees Union (Regd.) v. Union of India,*** **(2002) 2 SCC 333.**

14. It is submitted that the members of the petitioner federation, i.e. former employees of the respondent Company, had legitimate expectation of getting permanently absorbed as the said expectation arose out of past conduct of the public authority.

15. It is submitted that the respondents had written various Office Memorandums ("OM" hereinafter) and letters assuring job security, therefore, the respondent Company is now estopped from arguing that the members of petitioner federation are part of the private entity. Reliance has been placed upon the case of ***State of Jharkhand v. Brahmputra Metallics Ltd.,*** **(2023) 10 SCC 634,** whereby, the Hon'ble Supreme Court held that the term promissory estoppel is given an expansive interpretation in order to remedy the injustice being done to a party who has relied upon a promise.

16. It is submitted that the relevant rules governing the employees of the respondent company, i.e. Service Manual, 1992 provides for dismissal of the employees only on the grounds of misconduct, therefore, there is no

provision which authorizes the respondent Company to terminate the services of the employees without any cause.

17. Therefore, in view of the foregoing submissions, the learned counsel for the petitioner submitted that the present petition is maintainable and thus, the dispute may be adjudicated on merits.

18. Heard the learned counsel for the parties and perused the record.

19. Since the learned senior counsel for the respondent company raised the issue of maintainability of the instant petition, this Court deems it appropriate to deal with the said issue at the outset.

20. During the course of proceedings, Mr. Rajiv Nayyer, learned senior counsel for the respondent Company vehemently contended that a writ under Article 226 of the Constitution of India is not maintainable against the respondent Company as the said company ceased to be a Government run entity and the majority of its shareholding vests with the TATA group, i.e., a private entity. The learned senior counsel has supplemented his claim by citing the latest dictum of the Hon'ble Supreme Court in the case of ***Mr. R.S. Madireddy and Anr. Etc. v. Union of India & Ors. Etc.*** reported in **2024 INSC 425**, whereby, the Hon'ble Supreme Court held that the writ petition against Air India is not maintainable as the said entity has attained the status of a private entity.

21. In rival submissions, the learned counsel for the petitioner submitted that the claim of the members of the petitioner Federation is based upon the assurances provided by the respondent Company and the Government, whereby, it was promised that the nature of services of the employees shall

be secured. Furthermore, the learned counsel has also invoked the principle of promissory estoppel to contend that the respondent Company cannot legally terminate the services of the employees.

22. Therefore, the limited question for determination before this Court is whether the respondent Company meets the tests enunciated and expounded by the Hon'ble Supreme Court for the purpose of declaring an entity as State within the ambit of Article 12 of the Constitution of India.

23. In order to answer the said question, this Court deems it appropriate to first deal with the aspect of inclusion of an entity as a State and the factors crystalized by the Constitutional Courts to determine the same.

24. Article 12 of the Constitution of India provides for definition of the term State and the same reads as under:

> *"12. Definition.—In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."*

25. Upon perusal of the above, it is clear that the term State constitutes the following authorities: (i) the Government and Parliament of India: (ii) the Government and the Legislature of a State; (iii) all local authorities; and (iv) other authorities within the territory of India, or under the control of the Central Government.

26. The understanding and interpretation of the first two terms is self-explanatory and for understanding the meaning of the term local authority, a reference to the General Clauses Act, 1897 can be made.

27. Now, the only aspect which needs deliberation and has evolved over a period of time is the interpretation of the term other authority. The question with regard to interpretation of the term *other authority* came up before the Hon'ble Supreme Court and this Court time and again, whereby, the landmark judgments delivered by the Hon'ble Supreme Court have settled the position regarding inclusion of the entities under the term other authority.

28. In ***Ajay Hasia v. Khalid Mujib Sehravardi,*** **(1981) 1 SCC 722,** the Hon'ble Supreme Court dealt with the issue of inclusion of various authorities within the ambit of Article 12 of the Constitution of India and held as under:

> ***"7.*** *While considering this question it is necessary to bear in mind that an authority falling within the expression "other authorities" is, by reason of its inclusion within the definition of "State" in Article 12, subject to the same constitutional limitations as the Government and is equally bound by the basic obligation to obey the constitutional mandate of the fundamental rights enshrined in Part III of the Constitution. We must therefore give such an interpretation to the expression "other authorities" as will not stultify the operation and reach of the fundamental rights by enabling the Government to its obligation in relation to the fundamental rights by setting up an authority to act as its instrumentality or agency for carrying out its functions. Where constitutional fundamentals vital to the maintenance of human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool, for constitutional law must seek the substance and not the form. Now it is obvious that the Government may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out*

its functions. In the early days when the Government had limited functions, it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge Governmental functions which were of traditional vintage. But as the tasks of the Government multiplied with the advent of the welfare State, it began to be increasingly felt that the framework of civil service was not sufficient to handle the new tasks which were often specialised and highly technical in character and which called for flexibility of approach and quick decision making. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to forge a new instrumentality or administrative device for handling these new problems It was in these circumstances and with a view to supplying this administrative need that the corporation came into being as the third arm of the Government and over the years it has been increasingly utilised by the Government for setting up and running public enterprises and carrying out other public functions. Today with increasing assumption by the Government of commercial ventures and economic projects, the corporation has become an effective legal contrivance in the hands of the Government for carrying out its activities, for it is found that this legal facility of corporate instrument provides considerable flexibility and elasticity and facilitates proper and efficient management with professional skills and on business principles and it is blissfully free from "departmental rigidity, slow motion procedure and hierarchy of officers". The Government in many of its commercial ventures and public enterprises is resorting to more and more frequently to this resourceful legal contrivance of a corporation because it has many practical advantages and at the same time does not involve the slightest diminution in its ownership and control of the undertaking. In such cases "the true owner is the State, the real operator is the State and the effective controllorate is the State and accountability for its actions to the community and to

Parliament is of the State." It is undoubtedly true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the Government. It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government. Now it is obvious that if a corporation is an instrumentality or agency of the Government, it must be subject to the same limitations in the field of constitutional law as the Government itself, though in the eye of the law it would be a distinct and independent legal entity. If the Government acting through its officers is subject to certain constitutional limitations, it must follow a fortiorari that the Government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations. If such a corporation were to be free from the basic obligation to obey the fundamental rights, it would lead to considerable erosion of the efficiency of the fundamental rights, for in that event the Government would be enabled to override the fundamental rights by adopting the stratagem of carrying out its functions through the instrumentality or agency of a corporation, while retaining control over it. The fundamental rights would then be reduced to little more than an idle dream or a promise of unreality. It must be remembered that the Fundamental rights are constitutional guarantees given to the people of India and are not merely paper hopes or fleeting promises and so long as they find a place in the Constitution, they should not be allowed to be emasculated in their application by a narrow and

constricted judicial interpretation. The courts should be anxious to enlarge the scope and width of the fundamental rights by bringing within their sweep every authority which is an instrumentality or agency of the Government or through the corporate personality of which the Government is acting, so as to subject the Government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligation of the fundamental rights. The constitutional philosophy of a democratic socialist republic requires the Government to undertake a multitude of socio-economic operations and the Government, having regard to the practical advantages of functioning through the legal device of a corporation, embarks on myriad commercial and economic activities by resorting to the instrumentality or agency of a corporation, but this contrivance of carrying on such activities through a corporation cannot exonerate the Government from implicit obedience to the Fundamental rights. To use the corporate methodology is not to liberate the Government from its basic obligation to respect the Fundamental rights and not to override them. The mantle of a corporation may be adopted in order to free the Government from the inevitable constraints of red tapism and slow motion but by doing so, the Government cannot be allowed to play truant with the basic human rights. Otherwise it would be the easiest thing for the Government to assign to a plurality of corporations almost every State business such as post and telegraph, TV and radio, rail road and telephones — in short every economic activity — and thereby cheat the people of India out of the fundamental rights guaranteed to them. That would be a mockery of the Constitution and nothing short of treachery and breach of faith with the people of India, because, though apparently the corporation will be carrying out these functions, it will in truth and reality be the Government which will be controlling the corporation and carrying out these functions through the instrumentality or agency of the corporation. We cannot by a

process of judicial construction allow the Fundamental rights to be rendered futile and meaningless and thereby wipe out Chapter III from the Constitution. That would be contrary to the constitutional faith of the post-Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : (1978) 2 SCR 621] era. It is the fundamental rights which along with the directive principles constitute the life force of the Constitution and they must be quickened into effective action by meaningful and purposive interpretation. If a corporation is found to be a mere agency or surrogate of the Government, "in fact owned by the Government, in truth controlled by the Government and in effect an incarnation of the Government", the court, must not allow the enforcement of fundamental rights to be frustrated by taking the view that it is not the Government and therefore not subject to the constitutional limitations. We are clearly of the view that where a corporation is an instrumentality or agency of the Government, it must be held to be an "authority" within the meaning of Article 12 and hence subject to the same basic obligation to obey the Fundamental rights as the Government.

8. *We may point out that this very question as to when a corporation can be regarded as an "authority" within the meaning of Article 12 arose for consideration before this Court in R.D. Shetty v. International Airport Authority of India [(1979) 3 SCC 489] . There, in a unanimous judgment of three Judges delivered by one of us (Bhagwati, J.) this Court pointed out: (SCC pp. 506-07, para 13)*

"So far as India is concerned, the genesis of the emergence of corporations as instrumentalities or agencies of Government is to be found in the Government of India Resolution on Industrial Policy dated April 6, 1948 where it was stated inter alia that "management of State enterprise will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this." It was in pursuance of the policy envisaged in this and subsequent

resolutions on Industrial policy that corporations were created by Government for setting up and management of public enterprises and carrying out other public functions. Ordinarily these functions could have been carried out by Government departmentally through its service personnel but the instrumentality or agency of the corporations was resorted to in these cases having regard to the nature of the task to be performed. The corporations acting as instrumentality or agency of Government would obviously be subject to the same limitations in the field of constitutional and administrative law as Government itself, though in the eye of the law, they would be distinct and independent legal entities. If Government acting through its officers is subject to certain constitutional and public law limitations, it must follow a fortiori that Government acting through the instrumentality or agency of corporations should equally be subject to the same limitations."

The court then addressed itself to the question as to how to determine whether a corporation is acting as an instrumentality or agency of the Government and dealing with that question, observed: (SCC p. 507, para 14)

"A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act, 1956 or the Societies Registration Act, 1860. Where a corporation is wholly controlled by Government not only in its policy-making but also in carrying out the functions entrusted to it by the law establishing it or by the charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, often times made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters. So also a corporation incorporated under law is managed by a board of Directors or committees of management in accordance with the provisions of the statute under which it

is incorporated. When does such a corporation become an instrumentality or agency of Government? Is the holding of the entire share capital of the Corporation by Government enough or is it necessary that in addition there should be a certain amount of direct control exercised by Government and, if so, what should be the nature of such control? Should the functions which the corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial? Now, one thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a board of Directors appointed by Government though this consideration also may not be determinative, because even where the Directors are appointed by Government, they may be completely free from Governmental control in the discharge of their functions. What then are the tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government? It is not possible to formulate an all-inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula, which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not."

The court then proceeded to indicate the different tests, apart from ownership of the entire share capital: (SCC pp. 508 & 509, paras 15 & 16)

"... if extensive and unusual financial assistance is given and the purpose of the Government in giving such assistance coincides with the purpose for which the corporation is expected to use the assistance and such purpose is of public character, it may be a relevant circumstance supporting an

inference that the corporation is an instrumentality or agency of Government.... It may, therefore, be possible to say that where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character .... But a finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterise an operation as State action". Vide Sukhdev v. Bhagatram [(1975) 1 SCC 421, 454 : 1975 SCC (L&S) 101, 134 : (1975) 3 SCR 619, 658] . So also the existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality. It may also be a relevant factor to consider whether the corporation enjoys monopoly status which is State conferred or State protected. There can be little doubt that State conferred or State protected monopoly status would be highly relevant in assessing the aggregate weight of the corporation's ties to the State...."

There is also another factor which may be regarded as having a bearing on this issue and it is whether the operation of the corporation is an important public function. It has been held in the United States in a number of cases that the concept of private action must yield to a conception of State action where public functions are being performed. Vide Arthur S. Miller: The Constitutional Law of the 'Security State' [10 Stanford Law Review 620, 664] .... It may be noted that besides the so-called traditional functions, the modern State operates a multitude of public enterprises and discharges a host of other public functions. If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. This is precisely what was pointed out by Mathew, J., in Sukhdev v. Bhagatram [(1975) 1 SCC 421, 454 : 1975 SCC (L&S) 101, 134 : (1975) 3 SCR 619, 658] where the learned Judge said that 'institutions

engaged in matters of high public interest of performing public functions are by virtue of the nature of the functions performed Government agencies. Activities which are too fundamental to the society are by definition too important not to be considered Government functions'."

The court however proceeded to point out with reference to the last functional test: (SCC p. 510, para 18)

"... the decisions show that even this test of public or Governmental character of the function is not easy of application and does not invariably lead to the correct inference because the range of Governmental activity is broad and varied and merely because an activity may be such as may legitimately be carried on by Government, it does not mean that a corporation, which is otherwise a private entity, would be an instrumentality or agency of Government by reason of carrying on such activity. In fact, it is difficult to distinguish between Governmental functions and non-Governmental functions. Perhaps the distinction between Governmental and non-Governmental functions is not valid any more in a social welfare State where the laissez faire is an outmoded concept and Herbert Spencer's social statics has no place. The contrast is rather between Governmental activities which are private and private activities which are Governmental. (Mathew, J., Sukhdev v. Bhagatram [Supra foot-note 4, SCC p 452 : SCC (L&S) p. 132 : SCR p. 652]). But the public nature of the function, if impregnated with Governmental character or tied or entwined with Government" or fortified by some other additional factor, may render the corporation an instrumentality or agency of Government. Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference."

These observations of the court in the International Airport Authority case [(1979) 3 SCC 489] have our full approval.

***9.** The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may*

now be culled out from the judgment in the International Airport Authority case [(1979) 3 SCC 489] . These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority case [(1979) 3 SCC 489] as follows:

"(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character. (SCC p. 508, para 15)

(3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an

instrumentality or agency of Government." (SCC p. 510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case [(1979) 3 SCC 489] , be an "authority" and, therefore, 'State' within the meaning of the expression in Article 12.

10. *We find that the same view has been taken by Chinnappa Reddy, J. in a subsequent decision of this Court in the U.P. Warehousing Corporation v. Vijay Narayan [(1980) 3 SCC 459 : 1980 SCC (L&S) 453] and the observations made by the learned Judge in that case strongly reinforced the view we are taking particularly in the matrix of our constitutional system.*

11. *We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a government Company or a Company formed under the Companies Act, 1956 or it may be a society registered under the Societies. Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a Company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the Company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12.*

> ***12.*** *It is also necessary to add that merely because a juristic entity may be an "authority" and therefore "State" within the meaning of Article 12, it may not be elevated to the position of "State" for the purpose of Articles 309, 310 and 311 which find a place in Part XIV. The definition of "State" in Article 12 which includes an "authority" within the territory of India or under the control of the Government of India is limited in its application only to Part III and by virtue of Article 36, to Part IV: it does not extend to the other provisions of the Constitution and hence a juristic entity which may be "State" for the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution. That is why the decisions of this Court in S.L. Aggarwal v. Hindustan Steel Ltd. [(1970) 1 SCC 177 : (1970) 3 SCR 363] and other cases involving the applicability of Article 311 have no relevance to the issue before us.*

29. The above cited paragraphs clarify the position of law which answers the question regarding inclusion of the entities in the definition of the other authorities as provided for in Article 12 of the Constitution of India.

30. The foregoing paragraphs also clarify that an entity can be construed as an authority if the Government of India has majority financial control which establishes the interference of the Government's entire control in the functioning of the said entity. Therefore, the structural features of an entity play a vital role in determining its inclusion under the term other authority under Article 12 of the Constitution of India.

31. The above cited excerpt provides various criteria to ascertain whether an entity can be termed as an instrumentality of a State. Therefore, the said relevant criteria are as follows:

- *Ownership of entire share capital by the Government.*
- *Extensive financial assistance from the state.*
- *Monopoly status conferred or protected by the state.*
- *Deep and pervasive control by the state.*
- *Performance of functions closely related to governmental functions.*
- *Transfer of a government department to the corporation.*

32. As per the factual matrix of the instant case, the respondent Company was divested by the Government in the year 2001, and a private entity namely TATA group holds the majority shares in the respondent Company. Therefore, leading to no control of the Union of India over the functioning of the respondent Company.

33. As reproduced earlier, the learned senior counsel has supplemented his claim by referring to the latest judgment rendered by the Hon'ble Supreme Court in the case of ***Mr. R.S. Madireddy and Anr. Etc. v. Union of India & Ors. Etc.*** (***supra***), whereby, the Hon'ble Court made a categorical finding regarding the issue of maintainability of a writ against Air India, an entity subsequently privatized by the Government. The relevant parts of the said judgment are reproduced herein:

> *"32. There is no dispute that the Government of India having transferred its 100% share to the company Talace India Pvt Ltd., ceased to have any administrative control or deep pervasive control over the private entity and hence, the company after its disinvestment could not have been treated to be a State anymore after having taken over by the private company. Thus, unquestionably, the respondent No.3(AIL) after its disinvestment ceased to be a State or its instrumentality within the meaning of Article 12 of the Constitution of India.*

33. Once the respondent No.3(AIL) ceased to be covered by the definition of State within the meaning of Article 12 of the Constitution of India, it could not have been subjected to writ jurisdiction under Article 226 of the Constitution of India.

34. A plain reading of Article 226 of the Constitution of India would make it clear that the High Court has the power to issue the directions, orders or writs including writs in the nature of Habeas Corpus, Mandamus, Certiorari, Quo Warranto and Prohibition to any person or authority, including in appropriate cases, any Government within its territorial jurisdiction for the enforcement of rights conferred by Part-III of the Constitution of India and for any other purpose.

35. This Court has interpreted the term 'authority' used in Article 226 in the case of ***Andi Mukta****(supra), wherein it was held as follows:*

> *"17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The 'public authority' for them means everybody which is created by statute—and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all 'public authorities'. But there is no such limitation for our High Courts to issue the writ 'in the nature of mandamus'. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to 'any person or authority'. It can be issued 'for the enforcement of any of the fundamental rights and for any other purpose'.*
>
> ***20. The term 'authority' used in Article 226, in the context, must receive a liberal meaning like***

> ***the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words 'any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied."*** *(emphasis supplied)*

36. Further, in the case of ***Federal Bank Ltd. v. Sagar Thomas*** *(2003) 10 SCC 733, this Court culled out the categories of body/persons who would be amenable to writ jurisdiction of the High Court which are as follows:*

> *"**18.** From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to*

discharge any function under any statute, to compel it to perform such a statutory function."

37. The respondent No.3(AIL), the erstwhile Government run airline having been taken over by the private company Talace India Pvt. Ltd., unquestionably, is not performing any public duty inasmuch as it has taken over the Government company Air India Limited for the purpose of commercial operations, plain and simple, and thus no writ petition is maintainable against respondent No.3(AIL). The question No. 1 is decided in the above manner.

38. The question of issuing a writ would only arise when the writ petition is being decided. Thus, the issue about exercise of extra ordinary writ jurisdiction under Article 226 of the Constitution of India would arise only on the date when the writ petitions were taken up for consideration and decision. The respondent No.3(AIL)- employer was a government entity on the date of filing of the writ petitions, which came to be decided after a significant delay by which time, the company had been disinvested and taken over by a private player. Since, respondent No.3 employer had been disinvested and had assumed the character of a private entity not performing any public function, the High Court could not have exercised the extra ordinary writ jurisdiction to issue a writ to such private entity. The learned Division Bench has taken care to protect the rights of the appellants to seek remedy and thus, it cannot be said that the appellants have been non-suited in the case. It is only that the appellants would have to approach another forum for seeking their remedy. Thus, the question No.2 is decided against the appellants.

39. By no stretch of imagination, the delay in disposal of the writ petitions could have been a ground to continue with and maintain the writ petitions because the forum that is the High Court where the writ petitions were instituted could not have issued a writ to the private respondent which had changed

hands in the intervening period. Hence, the question No.3 is also decided against the appellants.

40. Resultantly, the view taken by the Division Bench of the Bombay High Court in denying equitable relief to the appellants herein and relegating them to approach the appropriate forum for ventilating their grievances is the only just and permissible view.

41. We may also note that the appellants raised grievances by way of filing the captioned writ petitions between 2011 and 2013 regarding various service related issues which cropped up between the appellants and the erstwhile employer between 2007 and 2010. Therefore, it is clear that the writ petitions came to be instituted with substantial delay from the time when the cause of action had accrued to the appellants.

42. It may further be noted that the Division Bench of Bombay High Court, only denied equitable relief under Article 226 of the Constitution of India to the appellants but at the same time, rights of the appellants to claim relief in law before the appropriate forum have been protected.

43. We may further observe that in case the appellants choose to approach the appropriate forum for ventilating their grievances as per law in light of the observations made by the Division Bench of the Bombay High Court, Section 14 of the Limitation Act, 1963 shall come to the rescue insofar as the issue of limitation is concerned.

44. In wake of the discussion made hereinabove, we do not find any reason to take a different view from the one taken by the Division Bench of the Bombay High Court in sustaining the preliminary objection qua maintainability of the writ petitions preferred by the appellants and rejecting the same as being not maintainable."

34. Upon perusal of the aforesaid paragraphs, it is made out that the

Hon'ble Supreme Court affirmed the judgment given by the Bombay High Court, whereby, the writ petitions filed by the former employees of the Air India were termed non-maintainable due to privatization of the said entity.

35. While affirming the reasoning provided by the Bombay High Court, the Hon'ble Supreme Court held that pursuant to the disinvestment by the Government, Air India cannot be subjected to writ jurisdiction of the Constitutional Courts and therefore, an aggrieved party cannot seek the said remedy for redressal of any grievance against the said entity.

36. Applying the same principle in the instant case, it is clear that the Government had disinvested its share in the respondent Company in the year 2001 and thereafter, the respondent Company ceased to exist as an authority under Article 12 of the Constitution of India.

37. The respondent Company is similarly placed with the Air India, where the Government had functional, financial and administrative control over the said entities i.e., the respondent Company and Air India, however, the said control ceased to exist post disinvestment in both the entities.

38. In view of the same, this Court is of the view that a writ petition is not maintainable against the respondent Company as the Government does not enjoy financial, functional or administrative control over the entity, conditions necessary for issuance of writ under Article 226 of the Constitution of India.

39. In the pleadings, the learned counsel for the petitioner has also placed reliance upon the case of ***Balco Employees Union (Regd.) v. Union of India,*** **(2002) 2 SCC 33,** whereby, the Government had disinvested the

majority shares of the said entity and it was held that the employees made a case to continue their services.

40. In this regard, it is important to note that the said judgment was nowhere related to the rights of the employees, rather the same revolved around the question of whether the employees of an entity have a role in the decision of disinvestment by the Government.

41. While replying in negative, the Hon'ble Supreme Court clearly held the said decision to be an economic one and upheld the decision of disinvestment by the Government.

42. Therefore, the ruling of the ***Balco (supra)*** case is nowhere applicable to the dispute at hand and the petitioner federation has wrongly relied upon the same as the said case was not adjudicated by the Hon'ble Supreme Court on the different issues.

43. At last, this Court also deems it imperative to deal with the contention regarding application of the principle of promissory estoppel on the respondent Company.

44. In the pleadings as well during the course of proceedings, the learned counsel for the petitioner Federation vehemently submitted that the promises made by the respondent Company regarding the services of the employees created a legitimate expectation and therefore, the respondent Company is estopped.

45. On this aspect, this Court deems it appropriate to hold that the said issue cannot be adjudicated by the Court as dealing with the same would amount to adjudication of the dispute on merit.

46. Since it is clearly established that the writ petition is not maintainable, this Court deems it appropriate to hold that the said contention can only be adjudicated by the Court with competent jurisdiction dealing with the dispute between the parties.

47. In view of the same, this Court is of the view that the present petition is not maintainable as the entity against which the relief is being sought has attained the nature of a private entity and a writ is not maintainable against a private entity in terms of the foregoing discussions.

48. In light of the observations made in the preceding paragraphs, it is held that the present petition is non-maintainable and therefore, the same is liable to be dismissed. It is made clear that this Court has not gone into the merits of the instant case and the petitioner is at liberty to approach the appropriate forum of law. It is also made clear that the time spent in pursuing the litigation shall be excluded while computing the period of limitation. It is also made clear that nothing stated hereinabove shall tantamount to any expression on the merits of the case.

49. Accordingly, the instant petition being non-maintainable is dismissed, along with pending applications, if any.

50. The Order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 27, 2024
SV/AV/RYP