2024 INSC 425

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO (S) . OF 2024

(arising out of Special Leave Petition(C) No(s).23441-23444 of 2022)

MR. R.S. MADIREDDY .... APPELLANT(S)
AND ANR. ETC.

VERSUS.

UNION OF INDIA & ORS. ETC. .... RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). OF 2024

(arising out of Special Leave Petition (C) No(s). 12221 of 2023)

CIVIL APPEAL NO(S). OF 2024

(arising out of Special Leave Petition (C) No(s). 22777 of 2023)

J U D G M E N T

Mehta, J.

1. Leave granted.

2. The present appeals are filed challenging the common impugned judgment and order dated 20th September, 2022 passed by the Division Bench of the High Court of Bombay thereby

dismissing four writ petitions instituted by the appellants being the former employees of respondent No.3 i.e. Air India Limited(hereinafter referred to as 'AIL') as members of its cabin crew force. Appellants came to be employed in AIL in the late 1980s and all of them retired between 2016 and 2018.

3. Writ Petition Nos. 123 of 2014[1] and 844 of 2014[2] were filed for alleged stagnation in pay and non-promotion of the employees. Writ Petition No. 844 of 2014 additionally raised issues of anomalies in the fixation of pay arising out of and for implementation of the report of the Justice Dharmadhikari Committee[3]. Writ Petition Nos. 1770 of 2011[4] and 1536 of 2013[5], pertained to the delay in payment of wage revision arrears and the withdrawal of eight out of the seventeen allowances already paid to the employees retrospectively. In each of the writ petitions, violation of Articles 14, 16, and 21 of the Constitution of India, 1950, was pleaded. The Division Bench of Bombay High Court, vide common judgment and order dated 20th September, 2022 disposed of the above writ petitions denying relief as claimed

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[1] Filed on 30th August, 2013
[2] Filed on 09th October, 2014
[3] Constituted by the respondent No.1 i.e. Union of India(through its Ministry of Civil Aviation) to harmonize the differential service conditions of AIL and Indian Airlines Ltd, which came to be merged.
[4] Filed on 14th June, 2011
[5] Filed on 19th March, 2013

therein on the ground of non-maintainability of the writ petitions owing to the intervening event of privatisation of respondent No. 3(AIL). Nevertheless, liberty was granted to the employee petitioners to seek their remedies in accordance with law.

Brief Facts: -

4. Air India was a statutory body constituted under the Air Corporations Act, 1953. With the repeal of the Act of 1953 by the Air Corporations(Transfer of Undertakings) Act, 1994, Air India merged with Indian Airlines and upon incorporation, respondent No. 3(AIL) became a wholly Government owned company and, thus, came under the category of 'other authorities' within the meaning of Article 12 of the Constitution of India. This status of Air India continued to subsist on the date when the subject batch of writ petitions*(supra)* under Article 226 of the Constitution of India were filed before the High Court invoking writ jurisdiction, against respondent No.3(AIL).

5. However, on 08th October, 2021, the Government of India announced that it had accepted the bid of Talace India Pvt Ltd. to purchase its 100% shares in respondent No. 3 (AIL). Subsequently, on 27th January, 2022 pursuant to the share purchase agreement signed with Talace India Pvt. Ltd., 100% equity shares of the

Government of India in respondent No. 3(AIL) were purchased by the said private company and respondent No. 3(AIL) was privatised and disinvested. Therefore, the writ petitions were maintainable on the date of institution but the question that arose before the High Court was whether they continued to be maintainable as on the date the same were finally heard.

6. Learned Judges of the Division Bench of the Bombay High Court, while placing reliance upon the decisions of ***Tarun Kumar Banerjee v. Bharat Aluminium Co. Ltd. and Another***[6] ***; Mahant Pal Singh v. Union of India and Others***[7] ; **Padmavathi Subramaniyan and Others *v. Ministry of Civil Aviation Government of India rep by its Secretary and Others*** [8] ; and few more decisions of the Delhi High Court and Gujarat High Court concluded that with the privatisation of respondent No. 3(AIL), jurisdiction of the High Court under Article 226 of the Constitution of India to issue a writ to respondent No. 3(AIL), particularly in its role as an employer, did not subsist and disposed of the writ petitions vide common impugned judgment dated 20th September 2022, which is assailed in the present appeals by special leave.

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[6] 2008 SCC OnLine Bom 1899
[7] 2009 SCC OnLine Bom 2554
[8] 2022 SCC OnLine Kar 1706

Submissions and contentions on behalf of the appellants: -

7. Shri Sanjay Singhvi, learned senior counsel appearing on behalf of the appellants submitted that the right to seek remedy stands crystallised on the date of institution of proceedings and though subsequent events can be considered, it is a well settled tenet of law that such subsequent events can be looked at only to advance equity rather than to defeat it. Reliance in this regard was placed by learned senior counsel upon ***Pasupuleti Venkateswarlu v. Motor & General Traders***[9]; ***Beg Raj Singh v. State of U.P. and Ors.***[10]. He urged that different view is permissible only in exceptional circumstances and in no event can a party be divested of its substantive rights on account of such subsequent event as laid down in ***Rajesh D. Darbar and Others v. Narasingrao Krishnaji Kulkarni and Others***[11]. The relevant extract of ***Rajesh D. Darbar****(supra)* as relied upon by the learned senior counsel for the appellants is extracted hereinbelow: -

> "**4**. The impact of subsequent happenings may now be spelt out. First, its bearing on the right of action, second, on the nature of the relief and third, on its importance to create or destroy substantive rights. Where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the

[9] (1975) 1 SCC 770
[10] (2003) 1 SCC 726
[11] (2003) 7 SCC 219

> appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts. Patterson v. State of Alabama [294 US 600 : 79 L Ed 1082 (1934)] (US at p. 607) illustrates this position. It is important that the party claiming the relief or change of relief must have the same right from which either the first or the modified remedy may flow. Subsequent events in the course of the case cannot be constitutive of substantive rights enforceable in that very litigation except in a narrow category (later spelt out) but may influence the equitable jurisdiction to mould reliefs. Conversely, where rights have already vested in a party, they cannot be nullified or negated by subsequent events save where there is a change in the law and it is made applicable at any stage. Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri [1940 FCR 84 : AIR 1941 FC 5] falls in this category. Courts of justice may, when the compelling equities of a case oblige them, shape reliefs — cannot deny rights — to make them justly relevant in the updated circumstances. Where the relief is discretionary, courts may exercise this jurisdiction to avoid injustice. Likewise, where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts at the time the relief is to be ultimately granted, the court, even in appeal, can take note of such supervening facts with fundamental impact. This Court's judgment in Pasupuleti Venkateswarlu v. Motor & General Traders [(1975) 1 SCC 770 : AIR 1975 SC 1409] read in its statutory setting, falls in this category. Where a cause of action is deficient but later events have made up the deficiency, the court may, in order to avoid multiplicity of litigation, permit amendment and continue the proceeding, provided no prejudice is caused to the other side. All these are done only in exceptional situations and just cannot be done if the statute, on which the legal proceeding is based, inhibits, by its scheme or otherwise, such change in the cause of action or relief. The primary concern of the court is to implement the justice of the legislation. Rights vested by virtue of a statute cannot be divested by this equitable doctrine (see V.P.R.V. Chockalingam Chetty v. Seethai Ache [AIR 1927 PC 252 : 26 All LJ 371]).”

8. Reliance was also placed by the learned senior counsel on the judgment of ***Ashok Kumar Gupta & Ors. v. Union of India & Ors.***[12], wherein the Division Bench of Calcutta High Court, after

[12] (2007) SCC OnLine Cal 264

adverting to the extant principles concerning the maintainability of writ proceedings as on the date of the institution, held that an employer which had been privatised during the pendency of a writ appeal filed against the order rejecting the writ petition would continue to be amenable to writ jurisdiction under Article 226 of the Constitution of India. The relevant portion of ***Ashok Kumar Gupta***(*supra*) relied upon is extracted hereinbelow: -

> "**32**. It is nobody's case that the writ petition was not maintainable when it was filed. The cause of action for filing the writ petition crystallized at a point of time when the respondent authority was, admittedly, subject to the writ jurisdiction. The said cause of action confers a vested right to the writ petitioners to have their grievances adjudicated in a writ proceeding. No one can contend that the writ petitioners have brought the present situation by their conduct. The change of circumstances is not attributable to the petitioners.
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> **33**. For the aforesaid reasons, we are of the opinion that the instant appeal is very much maintainable, and the preliminary objection raised on behalf of the respondent company cannot be sustained in the eye of law. Therefore, the said preliminary objection regarding maintainability of this appeal as raised by the respondent company is rejected."

9. Learned senior counsel further contended that the scope of issuing a writ, order, or direction under Article 226 of the Constitution of India is much broader than the high prerogative writs issued by the British Courts and this position has been recognised by this Court in the case of ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav***

Smarak Trust and Ors. v. V.R. Rudani & Ors.[13], and following the said decision, Courts in India have consistently issued writs even to private persons performing public duties and this position has further been reiterated by the recent judgment of this Court in the case of ***Kaushal Kishor vs. State of Uttar Pradesh and Ors.***[14]. The relevant portions of ***Andi Mukta****(supra)* as relied upon by the learned senior counsel are extracted hereinbelow: -

> "**16.** The law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of Section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission "to review the existing remedies for the judicial control of administrative acts and omissions with a view to evolving a simpler and more effective procedure". The Law Commission made their report in March 1976 (Law Commission Report No. 73). It was implemented by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by Section 31 of the Supreme Court Act, 1981. It combined all the former remedies into one proceeding called Judicial Review. Lord Denning explains the scope of this "judicial review":
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> "At one stroke the courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the applicant had to get the leave of a judge.
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> The statute is phrased in flexible terms. It gives scope for development. It uses the words "having regard to". Those words are very indefinite. The result is that the courts are not bound hand and foot by the previous law. They are to "have regard to" it. So the previous law as to who are — and who are not —

[13] (1989) 2 SCC 691
[14] (2023) 4 SCC 1

> public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the judges can develop the public law as they think best. That they have done and are doing." [See The Closing Chapter by Rt. Hon. Lord Denning, p. 122]
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> **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."

10. He further submitted that equity should prevail over injustice and since the appellants have diligently pursued their case in the High Court for more than a decade, subsequent events can be accounted for only to support and not undermine equity. It was further contended that a private body that promises the sovereign to fulfill its obligations and liabilities as a public employer towards its employees under Articles 14 & 16, then performs a public duty to the extent of discharging such liabilities. It is not the form, but the nature of the duty imposed that is relevant for adjudging whether a writ petition would lie against a private body. Reliance in support of this contention was placed upon the following

extracts from the decision of this Court in ***Binny Ltd. and Anr. v. V. Sadasivan and Ors.***[15]:-

> "**23.** The counsel for the respondent in Civil Appeal No. 1976 of 1998 and for the appellant in the civil appeal arising out of SLP (Civil) No. 6016 of 2002 strongly contended that irrespective of the nature of the body, the writ petition under Article 226 is maintainable provided such body is discharging a public function or statutory function and that the decision itself has the flavour of public law element and they relied on the decision of this Court in Shri Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani [(1989) 2 SCC 691] . In this case, the appellant was a Trust running a science college affiliated to the Gujarat University under the Gujarat University Act, 1949. The teachers working in that college were paid in the pay scales recommended by the University Grants Commission and the college was an aided institution. There was some dispute between the University Teachers Association and the University regarding the fixation of their pay scales. Ultimately, the Chancellor passed an award and this award was accepted by the State Government as well as the University and the University directed to pay the teachers as per the award. The appellants refused to implement the award and the respondents filed a writ petition seeking a writ of mandamus and in the writ petition the appellants contended that the college managed by the Trust was not an "authority" coming within the purview of Article 12 of the Constitution and therefore the writ petition was not maintainable. This plea was rejected and this Court held that the writ of mandamus would lie against a private individual and the words "any person or authority" used in Article 226 are not to be confined only to statutory authorities and instrumentalities of the State and 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."

11. Learned senior counsel further contended that when a private employer steps into the shoes of a public employer i.e. to

[15] (2005) 6 SCC 657

perform the same functions as had previously been performed to the same end and substantially in the same manner, then its actions are amenable to judicial review. Reliance in support of this contention was placed upon the decision of the United Kingdom Court of Appeal in ***Regina(Beer(trading as Hammer Trout Farm)) v. Hampshire Farmers' Markets & Ltd.***[16].

12. It was further contended that the writ petitions came to be instituted on behalf of the appellants herein way back in the year 2011-2013 and at that point of time unquestionably the employer, i.e. respondent No. 3(AIL) was a 'State' within the ambit and purview of Article 12 of the Constitution of India. The writ petitions were filed with genuine and *bona fide* service-related issues of the appellant employees based on substantive allegations of infringement of fundamental rights guaranteed under Article 14 and Article 16 of the Constitution of India. However, the writ petitions could not be taken up and decided for over a period of almost 10 years and thus, the appellants cannot be non-suited for the non-disposal of their *bona fide lis* in a timely manner. He thus urged that appellants herein are entitled to the relief, as claimed for in the writ petitions because the employer i.e. respondent No.

[16] [2004] 1 WLR 233

3(AIL), undisputedly was amenable to writ jurisdiction at the time the writ petitions were instituted and that it continues to discharge public duties even after privatisation.

13. On these grounds, learned senior counsel for the appellants implored the Court to accept the appeals; set aside the impugned judgment and remand the writ petitions to the High Court for adjudication on merits.

Submission and contentions on behalf of respondent No. 3-AIL: -

14. Shri Abhishek Manu Singhvi, learned senior counsel appearing on behalf of respondent No. 3(AIL) contended that a bare reading of Article 226 of the Constitution of India, would clearly show that the 'test of jurisdiction' is to be invoked/applied at the time of issuance of the writ by the High Court. It is at the stage of issuance of a writ that the High Court actually exercises its writ jurisdiction, and therefore, it is at that point of time, the High Court ought to be satisfied that the person to whom it is issuing a writ is amenable to the extraordinary writ jurisdiction.

15. Learned senior counsel placed reliance upon the decision of the High Court of Gujarat in the case of ***Kalpana Yogesh Dhagat***

through Legal Heirs v. Reliance Industries Ltd. [17], wherein a writ petition had been filed against Indian Petrochemical Corporation Ltd.("IPCL") in 2002 which came to be decided in the year 2016. In the intervening period, the IPCL was privatized and taken over by Reliance Industries Limited(RIL) in 2007. The pertinent issue that cropped up for consideration was whether the writ petition filed against IPCL was maintainable even after its privatization. Learned Single Judge[18] of the Gujarat High Court held that the writ petition was not maintainable. The relevant portion of ***Kalpana Yogesh Dhagat****(supra)* as relied upon is extracted hereinbelow:-

> "**53.** In the case in hand, before the writ application could be taken up for final hearing, the status of I.P.C.L. changed. The I.P.C.L. once a public sector enterprise is no longer in existence, the same has been taken over by the Reliance Industries Limited. At no point of time, the legality and validity of the amalgamation of the I.P.C.L. with the Reliance Industries Limited arose before any Court. In such circumstances, I find it extremely difficult to hold that this writ application is maintainable and that too by applying the provisions of Order 22 Rule 10 of the Code of Civil Procedure. Ultimately, the whole issue boils down as to how a writ can be issued against a private entity."

16. Learned senior counsel further placed reliance upon the decision of the High Court of Delhi in ***Asulal Loya vs. Union of***

[17] 2016 SCC OnLine Guj 10186
[18] HMJ J.B. Pardiwala (as his lordship then was)

India and Ors.[19], wherein learned Single Judge[20] arrived at the same conclusion, while dealing with a writ petition filed against the Bharat Aluminium Company Limited(BALCO) in the year 1991 and decided in 2008 i.e., post-privatization of BALCO in 2001. The relevant portions from the said judgment as relied upon are extracted hereinbelow: -

> "**3.** It is fairly well settled that a writ petition is not maintainable against a private limited company or a public limited company in which the State does not exercise all pervasive control. In Binny Limited v. V. Sadasivan, reported in (2005) 6 SCC 657, the Supreme Court has held that a writ petition under Article 226 of the Constitution is normally issued against public authorities and can also be issued against private authorities when they are discharging public functions and the decision which is sought to be corrected or enforced must be in discharge of a public function. In the present case, the issues and questions involved do not relate to public functions.
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> **10.** In these circumstances, the present writ petition is dismissed without going into the merits of the matter upholding the preliminary objection raised by the respondent company that it is not a State and, therefore, not amenable to writ jurisdiction. It is, however, observed that the petitioner is at liberty to approach any forum for redressal of his grievance, if so advised and the time spent by him in these proceedings shall be taken into consideration for the purpose of limitation. In the facts and circumstances of the case, there will be no order as to costs."

17. Learned senior counsel further submitted that this Court in the case of ***Kaushal Kishor****(supra)* has held that a writ cannot be issued against non-state entities that are not performing any

[19] ILR (2009) I Delhi 450
[20] HMJ Sanjeev Khanna (as his lordship then was)

'Public Function'. He further pointed out that it is the conceded case of the appellants that post privatisation, respondent No. 3(AIL) does not perform any 'Public Function' and in any case running a private airline with purely a commercial motive can never be equated to performing a 'Public Duty'.

18. He further submitted that the issue is not that of a 'Right' but of a 'Remedy' i.e. dismissal of a writ petition filed by the appellants on the ground of maintainability would not lead to extinguishment of the rights of the appellants and only the forum for adjudication of their dispute would change. Any alleged violations of Articles 14 or 16 of the Constitution of India are simply grounds for claiming relief which can well be agitated before any other appropriate forum.

19. Learned senior counsel further submitted that appellants' rights, if any, are protected by the specific liberty granted to them by the High Court vide the impugned judgment and if a Court of competent jurisdiction was to hold in their favour, the same would be enforceable against the employer-respondent No. 3(AIL).

20. He further contended that the appellants employees approached the writ Court after significant delay, since the cause of action arose between 2007 to 2010 and captioned writ petitions

came to be filed before the Division Bench of the Bombay High Court between 2011 to 2013 and implored the Court to dismiss the appeals.

21. We have given our thoughtful consideration to the submissions advanced by learned counsel for the parties and have gone through the impugned judgment and the material placed on record.

Questions of law posed for adjudication: -

22. The questions of law presented for adjudication of this Court are:

(i) Whether respondent No.3(AIL) after having been taken over by a private corporate entity could have been subjected to writ jurisdiction of the High Court?

(ii) Whether the appellants herein could have been non-suited on account of the fact that during pendency of their writ petitions, the nature of the employer changed from a Government entity to a private entity?

(iii) Whether the delay in disposal of the writ petition could be treated a valid ground to sustain the claim of the appellants even against the private entity?

Discussion and Conclusion: -

23. The thrust of submissions of learned senior counsel appearing on behalf of the appellants was based on the judgment of the Division Bench of Calcutta High Court in the case of ***Ashok Kumar Gupta****(supra)* wherein, it was held in para 32(reproduced *supra*) that the cause of action crystallized at a point of time when the authority was subjected to the writ jurisdiction.

24. ***Ashok Kumar Gupta's*** case*(supra)* was distinguished by the learned Single Judge of the Gujarat High Court in the case of ***Kalpana Yogesh Dhagat****(supra)*. The relevant excerpts from the said judgment are reproduced hereinbelow for the sake of ready reference: -

> "**50.** There is no doubt that if the dictum, as explained by the Division Bench of the Calcutta High Court (Ashok Kumar Gupta vs. Union of India, (2007) SCC OnLine Cal 264) is applied in the case in hand, then probably, the writ application could be said to be maintainable**. However, there are few distinguishing features, which, in my view, are important as they go to the root of the matter. First, in the case before the Calcutta High Court even at the time when the writ application was rejected, the company was a public sector undertaking; Secondly, even when the appeal was filed, the same was a public sector undertaking; and thirdly and most importantly, the issue as regards the propriety and legality of the privatisation was pending before the Larger Bench of the Supreme Court."**
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> (emphasis supplied)

25. In the case of ***Kalpana Yogesh Dhagat****(supra),* the learned Single Judge of the Gujarat High Court went on to uphold the

preliminary objection regarding the maintainability of the writ petition against Reliance Industries Limited(RIL). The relevant excerpts from the said judgment are extracted hereinbelow: -

> **"19.** .....However, the scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging public function, the pubic law remedy can be enforced. **The duty cast upon a public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be a public law element in such action. The respondent Reliance Petro Investment Limited has nothing to do with the public as such. It is a company engaged in the business of petroleum products. Neither the Union nor the 'State' has any control over the respondent company. Mere issue of a licence by the Union or State Government for the purpose of running the company by itself will not make it an instrumentality of a "State" or an agency of a "State".**
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> ***
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> **21.** The language of Article 226 is no doubt very wide. It states that a writ can be issued "to any person or authority" and "for enforcement of right conferred by Part III and for any other purpose". However, the aforesaid language in Article 226 cannot be interpreted and understood literally. The Court should not apply the literal rule of interpretation while interpreting Article 226. If we take the language of Article 226 literally it will follow that a writ can be issued to any private person or to settle even the private disputes. If we interpret the word "for any other purpose" literally it will mean that a writ can be issued for any purpose whatsoever, e.g. for deciding private disputes, for grant of divorce, succession certificate etc. Similarly, if we interpret the words "to any person" literally it will mean that a writ can even be issued to the private persons. However, this would not be the correct meaning in view of the various decisions of the Supreme Court in which it has been held that a writ will lie only against the State or instrumentality of the State vide Chander Mohan Khanna v. N.C.E.R.T, (1991) 4 SCC 578, Tekraj Vasandhi v. Union of India, (1988) 1 SCC 236 : AIR 1988 SC 469, General Manager, Kisan Sahkari Chini Mills Ltd. v. Satrughan Nishad, (2003) 8 SCC 639, Federal Bank Ltd. v. Sagar Thomas & Co., (2003) 10 SCC 733, Pradeep Kumar Biswas v. Indian Institute of Chemical Biology ((2002) 5 SCC 111) etc. In General Manager, Kisan Sahkari Chini Mills

> Ltd. v. Satrughan Nishad (supra), **the Supreme Court observed that a writ will lie against a private body only when it performed a public function or discharged a public duty. The 'R.I.L.' is not performing a public function nor discharging a public duty. It is only doing a commercial activity. Hence, no writ lies against it.**
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> **58. Even if the aforesaid dictum of the Supreme Court is applied in the case in hand, it is difficult for this Court to take the view that as the writ applicant is not responsible for the change of circumstances and the writ application was maintainable at the time when it was filed, a writ can be issued to a private entity for the purpose of enforcing the fundamental rights of the writ applicant alleged to have been infringed by a company, a public sector undertaking at a point of time and now no longer in existence.** It is also not legally permissible to take the view that since the I.P.C.L. was a Government of India undertaking, a writ could be issued against the Union of India. An employee of a public sector undertaking by itself will not be a civil servant or an employee of the Union of India. At best, he could be termed as an employee of a company owned by the Government. Therefore, even ignoring the I.P.C.L., no liability could be fastened even on the Government of India at this stage.
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> **59.** I am not impressed by the submission of Mr. Bhatt that the writ applicant has no other alternative remedy, except invoking the writ jurisdiction of this Court. According to Mr. Bhatt, since the original writ applicant i.e. the employee has passed away, it will be legally impermissible for the legal heirs to file a civil suit for declaration for the purpose of challenging the order of dismissal from service. The legal heirs on record can definitely file a civil suit for declaration that the departmental inquiry was not conducted in a fair and transparent manner and the consequential order of dismissal is illegal. Section 14 of the Limitation Act would also save the situation. Section 14 of the Limitation Act itself is meant for the suits."
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> (emphasis supplied)

26. The same controversy was also considered by a learned Single Judge of the Delhi High Court in the case of ***Asulal Loya****(supra)* which was a case involving the termination of services of the writ

petitioner-employee by the company Bharat Aluminium Company Limited(BALCO) which was previously a Government of India Undertaking and was privatized pursuant to the tripartite share purchase agreement. The employee-writ petitioner filed a writ petition before the Delhi High Court to challenge his termination wherein, a preliminary objection was raised regarding maintainability of the writ petition on the ground that during pendency of the proceedings, the company had changed hands and no longer retained the characteristic of a 'State' or 'Other authority' as defined under Article 12 of the Constitution of India. The assertion of the writ petitioner was that the petition was maintainable against the respondent on the date it was filed. As per the writ petitioner, the rights and obligations of the parties stood crystallized on the date of commencement of litigation and thus, the reliefs should be decided with reference to the date on which the party entered the portals of the Court. The learned Single Judge in para 10(reproduced *supra*) upheld the preliminary objection raised against the maintainability of the writ petition and relegated the writ petitioner therein to approach the civil Court for ventilating the grievances raised in the writ petition.

27. The Division Bench of the Bombay High Court in the case of ***Tarun Kumar Banerjee****(supra)* also took a similar view observing as below: -

> **"1.** Both the petitions were filed against Bharat Aluminium Co. Ltd. when the petitions were filed, it was a Government of India enterprise. **We are told by the Respondent that they had filed an affidavit on 22-3-1996 thereby pointing out that Bharat Aluminium Co. Ltd. has been privatized and share of more than 50% have been transferred to Sterlit Industries India Ltd. and as a consequence Bharat Aluminium Company Ltd. is not a state and is not amenable to writ jurisdiction of this Court.**
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> **2**. In view of this submission we dispose of both the petitions while granting the petitioner liberty to approach any other forum for redressal of their grievance if so advised. The time spent by the petitioners in prosecuting these proceeding shall be taken into consideration for the purpose of limitation in case the petitioner choose any such remedy where the question of limitation would be relevant.**"**
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> (emphasis supplied)

28. Further, in the case of ***Beg Raj Singh****(supra)*, this Court observed as below: -

> "**7.** .... **A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events, i.e. the events between the commencement of litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law.** There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgment...."
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> (emphasis supplied)

29. It is thus, seen that various High Courts across the country have taken a consistent view over a period of time on the pertinent question presented for consideration that the subsequent event i.e. the disinvestment of the Government company and its devolution into a private company would make the company immune from being subjected to writ jurisdiction under Article 226 of the Constitution of India, even if the litigant had entered the portals of the Court while the employer was the Government. The only exception is the solitary judgment of the Division Bench of Calcutta High Court in ***Ashok Kumar Gupta****(supra)*, which was distinguished by the learned Single Judge of the Gujarat High Court in the case of ***Kalpana Yogesh Dhagat****(supra)* and rightly so, in our opinion, we have no hesitation in holding that the view taken in the judgments of ***Kalpana Yogesh Dhagat****(supra)*(by the High Court of Gujarat); ***Asulal Loya****(supra)*(by the High Court of Delhi) and ***Tarun Kumar Banerjee****(supra)*(by the High Court of Bombay) is the correct exposition on this legal issue and we grant full imprimatur to the said proposition of law.

30. We would like to answer the three questions of law enumerated above as follows.

31. In order to be declared as "State" or "other authority" within the meaning of Article 12 of the Constitution of India, it would have to fall within the well-recognised parameters laid down in a number of judgments of this Court. In this regard, we may refer to the case of ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology***[21] wherein this Court after taking into consideration the previous judgments on this point, observed as follows:

> **"27.***Ramana* [(1979) 3 SCC 489 : AIR 1979 SC 1628] was noted and quoted with approval *in extenso* and the tests propounded for determining as to when a corporation can be said to be an instrumentality or agency of the Government therein were culled out and summarised as follows : (SCC p. 737, para 9)
>
> > "(*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)

[21] (2002) 5 SCC 111

> (*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)"

40. The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* [*Ajay Hasia* v. *Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be — whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

(emphasis supplied)

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*** [22], 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."

[22] (2003) 10 SCC 733

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.

45. With the above observations, the appeals are dismissed. No order as to costs.

46. Pending application(s), if any, shall stand disposed of.

.....J.
(B.R. GAVAI)

.....J.
(SANDEEP MEHTA)

New Delhi;
May 16, 2024