2023:DHC:5601

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

% **Date of order: 31st July, 2023**

\+ W.P.(C) 9224/2018 & CM APPL. 35554/2018

SH. NARESH KUMAR AND ORS. ..... Petitioners

Through: Mr. Hari Prakash, Advocate.

versus

UNION OF INDIA THROUGH SECRETARY, MINISTRY OF CIVIL AVIATION AND ORS. ..... Respondents

Through: Ms. Anjana Gosain, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioners seeking the following reliefs: -

> "*a. Issue a writ, order or direction in the nature of mandamus or certiorari or quo warranto or any other appropriate writ thereby commanding the respondents No.l and 2 to not to transfer the services of the petitioners to private contractor i.e. AI SATS and maintain the status quo by setting aside the impugned directions issued by the respondent No.2 to the heads of all departments by way of message dated 16/08/2018 and 20/08/2018 as stated hereinabove.*
> *b. Issue a writ, order or direction in the nature of mandamus or certiorari or quo warranto or any other appropriate writ thereby commanding the respondents to regularize the*

services of the petitioners as permanent employees with all consequential benefits.
c. Such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of the present case may also be passed in favour of the petitioners and against the respondents, in the interest of justice.
Any other or further order which this Hon'ble Court deem fit in the facts and circumstances of the case, may also be passed in favour of the petitioners and against the respondents."

2. The facts leading to the present petition are as follows:

i. The respondent No. 2 issued a notification dated 23rd March 1999 for casual empanelment. Pursuant to the said notification, applications were invited for appointment of Casual Labourers against future requirement/vacancies in the unskilled categories.

ii. The due process of appointment was conducted and accordingly the petitioners were appointed between the year 2000 and 2004, and were deployed in the various departments of the respondent No 2.

iii. The petitioners had grievances regarding the regularisation of their employment as they were not yet awarded the status of permanent employees even though they have been working as Casual Labourers at the respondent No. 2 organization since the last 18 years. The petitioners pursuant to their grievances, made several representations before the respondent No. 2 on 26th April 2010, 9th August 2011 and 13th December 2011, addressing their grievances.

iv. In the year 2011, around 68 casual workers of the Centaur Hotel, Srinagar which is a wholly owned subsidiary of the respondent No.

2, were regularised and thereafter, some of the Casual Labours who were initially appointed on compassionate ground were also regularised.

v. Emails dated 16th August 2017 and 20th August 2018 were sent by the respondent No. 2 stating the terms of transfer of the petitioners to different contractors.

3. Learned counsel appearing on behalf of the petitioners submitted that the present Writ Petition has been filed on behalf of the petitioners being aggrieved by the decision of the respondents conveyed to the petitioners *vide* the e-mail communications dated 16th August 2017 and 20th August 2018 whereby, the petitioners were transferred from the services of the respondent No. 2 to a private contractor namely Air India Singapore Aviation Transport Services (hereinafter "AISATS"), and the request for regularization of petitioner's services as permanent employees with all consequential benefits was also declined by the respondent No. 2.

4. It is further submitted that the act of transferring the services of the petitioners to a private contractor which is a multinational company of Singapore is illegal, unwarranted and unconstitutional. It will lead to the exploitation of the workers.

5. Learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of ***Bhavnagar Municipality v. Alibhai Karimbhai & Ors.*, AIR 1977 S.C 1229**, wherein it was held that status quo ante with regard to the employment has to be maintained even in case of daily rated workers demanding permanent status.

6. It is submitted that the respondent No. 2 neither served any show cause notice nor any notification was issued with regard to the directions

issued *via* email. The said directions of transferring the petitioners to a private contractor has been done in secrecy without following the due process and the same amounts to arbitrariness on the part of the respondent No. 2.

7. It is also submitted that the wrongful act of transferring the services of the petitioners will result in failure of the on-going demand of regularization of the services of the petitioners and will further disturb the seniority of the petitioners, which will adversely affect the career of the petitioners.

8. In view of the foregoing paragraphs, the learned counsel for the petitioners submitted that the instant petition may be allowed and the reliefs sought may be granted.

9. *Per contra*, the learned counsel appearing on behalf of the respondent No. 2 vehemently opposed the averments made by the petitioners and submitted that the present petition has been filed with the sole purpose of harassing the respondent and to coerce them to allow the petitioner's request. The present petition is nothing but an abuse of the process of law.

10. Learned counsel appearing on behalf of the respondent submitted at the threshold that the instant petition is not maintainable since, Air India Limited, i.e. respondent no. 1, does not fall within the definition of 'State' under Article 12 of the Constitution of India.

11. Learned counsel raised a preliminary objection to the maintainability of the writ petition on the ground that as a result of the disinvestment process initiated by the Government of India, Air India Limited ('AIL') has ceased to be a public body and therefore, no writ can

lie against AIL in the circumstances that exist today.

12. It is argued that AIL, initially established as a statutory body, became a wholly owned company of the Government of India under the Air Corporations (Transfer of Undertakings and Repeal) Act of 1994. The present writ petition was filed at the stage when AIL had not yet been privatized and the Government of India owned AIL. However, the current situation is different, as AIL has now been privatized and the Government of India's shares have been transferred to a private company namely M/s Talace Pvt. Ltd. Consequently, it is submitted that a writ petition cannot be entertained under Article 226 of the Constitution of India, as AIL no longer qualifies as a public body or Authority as defined under Article 12 of the Constitution of India.

13. It is submitted that in view of the above, while the writ petition could have been maintained against AIL prior to its disinvestment, in light of the changed circumstances the writ petition today must necessarily be dismissed as the respondent No. 2 has become a purely private entity.

14. It is further submitted that even while going into the merits of the instant petition, the working, manpower requirement, operations etc. of the respondent have changed considerably over the years. The work of the engineering department was hived off by the respondent No. 1 to its subsidiary Air India Engineering Services Ltd. in the year 2013. Similarly, the respondent is no longer carrying out the ground handling work and the same is being carried out by a Joint Venture Company known as AISATS and by another subsidiary company Air India Transport Service Ltd.

15. It is submitted that the petitioners having been engaged as Casual Labourers have no vested rights or lien over any post merely because they have been working on casual basis for a long term.

16. It is further submitted that since AIL did not have any work for the casual workers/petitioners, a meeting was fixed on 7th August 2018, wherein it was decided that all casual workers deployed at the Airports will be transferred to the respective ground handling subsidiary companies/joint ventures/subsidiaries. This decision of the company was conveyed by the Director-Personnel of AIL, *vide* email dated 16th August 2018. In order to prevent job loss, all such casual workers were offered employment for engagement for 3 years', on fixed term contract basis, in the category of Handyman. However, none of the petitioners had accepted the above offer.

17. It is therefore submitted that the instant writ petition at the threshold is not maintainable. Hence, the petition is liable to be dismissed.

18. In the rejoinder, it is submitted on behalf of the petitioners that even though the respondent No. 2 has completed the process of disinvestment, it is still recruiting staff for its various departments. It is submitted on the ground of maintainability, that the present petition has been filed in 2018 while the disinvestment took place in the year 2022 and the petitioners cannot be made to suffer due to the subsequent intervening circumstances. Since, at the relevant time the petitioners were still employees of AIL, their grievances are still maintainable to be addressed under the writ jurisdiction of this Court.

19. Heard.

20. This Court has perused the materials on record including the pleadings and judicial precedents cited.

21. A preliminary objection has been raised by the respondent that since the AIL has been privatized and the entire share holdings have been disinvested by the Government of India, the grievance of the employees of the AIL cannot be redressed directly under the writ jurisdiction of this Court.

22. During the course of arguments, it has been contended to the effect, on behalf of the petitioners, that since the petitioners were the employees of AIL, the petition should be decided on the facts as on the date when the petition was filed and should not be considered on the basis of the subsequent event i.e., privatization.

23. Keeping in view the arguments advanced by the learned counsel for the parties, this Court deems it appropriate to frame the following issues for adjudication of the dispute in the instant petition:

a. *Whether a writ is maintainable under Article 226 against a private entity which was earlier a government owned entity?*
b. *Whether a writ can be maintained against AIL considering it is a private body but at the time of institution of this writ, it was an Authority under Article 12?*
c. *Whether the relief as sought by the petitioners can be granted pursuant to the subsequent developments causing change in law?*

a. Whether a writ is maintainable under Article 226 against a private entity which was earlier a government owned entity?

24. Before proceeding further on the discussion of the present situation

with regard to the issue of maintainability of the instant petition, it is first necessary to delve into the aspect of the process of disinvestment and privatization of a public sector company, and the extent its impact. Disinvestment is a policy decision which includes numerous economic aspects. The Courts have consistently refrained from interfering with economic decisions because it has been recognized that economic expediencies lack adjudicative disposition, and unless the economic decision is demonstrated to be so violative of constitutional or legal limits on power, or so objectionable to reason, the courts will decline to intervene.

25. Now, with regards to the issue raised above, it is imperative to discuss the scope and applicability of Article 226 of the Constitution of India. A writ under Article 226 can lie against a 'person' if it is a statutory body or performs a public function. Despite the wide scope of the concept of public functions or public duties, it can be inferred that such functions are similar to or closely related to those performable by the State in its sovereign capacity. Article 226 empowers every High Court in the country to issue orders or writs to any person or authority including the Government for the 'enforcement of the rights' or 'for any other purpose'.

26. It is a basic tenet of law that a writ petition may be entertained by a High Court in case it is shown that a legal right or a fundamental right has been breached and therefore, it is the obligation of the party seeking relief before a writ court to satisfy the Court that the right of the aggrieved can be legally enforced and the party against whom the petition is filed must qualify as an 'authority' or a 'person' to whom the writ, order, or

direction can lawfully be issued under Article 12.

27. Thus, in the context of maintainability, the writ court must satisfy itself on a preliminary stage regarding the aforementioned aspects. If a legal right has not been violated or if the party is not subject to the Court's jurisdiction, it is not amenable to the writ jurisdiction. However, if the Court is initially satisfied, by establishing that a writ is maintainable against the respondent party, the court may exercise its writ jurisdiction.

28. Therefore, it is crucial to emphasise that a writ petition for infringement of a right must be initiated against a party who is eligible under the writ jurisdiction for issuance of a writ, order, or direction. Here, it is explicitly stated that the party against whom relief is being sought must qualify as 'State' under Article 12 of the Constitution, discharging public function. It is also imperative that the other party possesses the requisite amenability to the writ jurisdiction of the High Court at the time of initiating the writ petition as well as at the time of its final hearing and adjudication.

29. Further, in view of the tests laid down by the Hon'ble Supreme Court in ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology,*** **(2002) 5 SCC 111**, for determining a State authority, the material available must justify the holding of the entity with regard to it being a public or a private body. Unless satisfied, that it is an authority under Article 12, writ jurisdiction cannot be enforced. The relevant para is reproduced herein below:

> *"97. It is this basic and essential distinction between an "instrumentality or agency" of the State and "other authorities" which has to be borne in mind. An authority must be an authority sui juris to fall within the meaning of*

> *the expression "other authorities" under Article 12. A juridical entity, though an authority, may also satisfy the test of being an instrumentality or agency of the State in which event such authority may be held to be an instrumentality or agency of the State but not vice versa."*

30. Further, in ***Zee Telefilms Ltd. v. Union of India,* (2005) 4 SCC 649**, the Hon'ble Supreme Court while dealing with the aspect of privatization of a public body has held that not every body or association which is regulated in its private functions becomes a 'State'. What matters is the quality and character of functions discharged by the body and the State control flowing therefrom.

31. The question of maintainability of a writ petition after the privatization of a Government corporation has been further observed by the Hon'ble Supreme Court in ***BALCO Employees' Union (Regd.) v. Union of India,* (2002) 2 SCC 333**. One of the grounds for challenge in the said case was, that pursuant to disinvestment, the respondent company will become a private company and will not, therefore, be amenable to writ jurisdiction. The said challenge was considered and rejected by the Supreme Court.

32. On the aspect of privatization of the Government owned entity, the case of ***BALCO (Supra)*** was further referred to by a Coordinate Bench of this Court in ***Asulal Loya v. Union of India and Ors.*, 2008 SCC OnLine Del 838**, and it was held as under:

> "*6. A Division Bench of Bombay High Court was also to examine the same preliminary issue in Writ Petition No. 1461/2003 titled Tarun Kumar Banerjee v. Bharat Aluminium Company Limited and the said writ petition was dismissed holding as under:—*

"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.

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.

(BILAL NAZKI, J)

(A.P. BHANGALE, J)"

7. Privatisation of the respondent company was challenged by BALCO Employees' Union (Regd.) before the Supreme Court. One of the grounds for challenge was that pursuant to disinvestment, the respondent company will become a private company and will not, therefore, be amenable to writ jurisdiction. The said challenge was considered and rejected by the Supreme Court in the following words:—

"47. Process of disinvestment is a policy decision involving complex economic factors. The courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error"

as long as both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only

Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on Part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners, non-government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of Part III of the Constitution, can claim a superior or a better right than a government servant and impugn its change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.

48. Merely because the workmen may have protection of Articles 14 and 16 of the Constitution, by regarding BALCO as a State, it does not mean that the erstwhile sole shareholder viz. Government had to give the workers prior notice of hearing before deciding to

> *disinvest. There is no principle of natural justice which requires prior notice and hearing to persons who are generally affected as a class by an economic policy decision of the Government. If the abolition of a post pursuant to a policy decision does not attract the provisions of Article 311 of the Constitution as held in State of Haryana v. Des Raj Sangar on the same parity of reasoning, the policy of disinvestment cannot be faulted if as a result thereof the employees lose their rights or protection under Articles 14 and 16 of the Constitution. In other words, the existence of rights of protection under Articles 14 and 16 of the Constitution cannot possibly have the effect of vetoing the Government's right to disinvest. Nor can the employees claim a right of continuous consultation at different stages of the disinvestment process. If the disinvestment process is gone through without contravening any law, then the normal consequences as a result of disinvestment must follow."*

33. The Division Bench of Bombay High Court in the judgment ***All India IDBI Officers Association v. Union of India*, 2022 SCC OnLine Bom 2693,** has dealt with the aspect of privatization of a Government entity and held that such entity no longer falls within the ambit of "State" under Article 12 of the Constitution of India and hence, is not amenable to the writ jurisdiction under Article 226 of the Constitution of India. It was held as follows:

> "*89. Here, we are concerned with a dispute arising out of a service matter. It would now be our endeavor to decide the contentious issue of maintainability based on the dicta of the Supreme Court in respect of matters where service disputes raised by officers/employees in proceedings before the Courts required, in view of the status of the employers, as of necessity, determination of the primary question as to whether such employers were amenable to the writ*

jurisdiction under Article 226 of the Constitution. We would have been inclined, in the process, to attempt at leaving aside decisions where the employer is other than a company or a Government company but the demands of the case may require us to navigate through other decisions as well, not dealing with service disputes, but which deal with the aspect of maintainability.

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*99. The third in the series is the decision in Virendra Kumar Srivastava v. U.P. Rajya Karmachari Kalyan Nigam*105*. The Supreme Court reiterated that in order to examine whether or not an authority is a "State" within the meaning of Article 12 of the Constitution, the court must carry out an in-depth examination of who has administrative, financial and functional control of such a company/corporation, and then assess whether the State in such a case is only a regulatory authority, or if it has deep and pervasive control over such a company/corporation, whether such company is receiving full financial support from the Government, and whether administrative control over it has been retained by the State and its authorities, and further, whether it is supervised, controlled and watched over by various departmental authorities of the State, even with respect to its day-to-day functioning. If it is so, then such company/corporation can be held to be an instrumentality of the State under Article 12 of the Constitution and, therefore, will be amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution.*

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104. Next in the series is the decision in Jatya Pal Singh (supra). As noted above, it arose out of an order dated 8th September 2009 of a Division Bench of this Court dismissing a writ petition filed by the appellant. No separate reason was assigned by the Division Bench except observing that the reasons assigned by it while dismissing an earlier writ petition involving common questions of fact and law by its order dated 7th September 2009 would apply to the writ petition of the appellant (Jatya Pal Singh) before the

> *Supreme Court. From the report, we have found that the other petitioner too was before the Supreme Court with an independent appeal, titled M.P. Singh v. Union of India The decision also appears to have dealt with civil appeals arising from orders of dismissal of writ petitions passed by the Delhi High Court.*
> *105. The appellants were employees of VSNL. Their services were terminated by VSNL. The writ petitions were dismissed on the ground that VSNL was not amenable to the writ jurisdiction. For the reasons assigned in the common judgment, the appeals stood dismissed.*"

34. It is, therefore, concluded, that the court will proceed to determine the disputed matters only after conducting a thorough examination, first, during the admission of the writ petition, and second, during the final hearing. This examination is necessary to establish whether the respondent, who is accused of violating the petitioner's legal or fundamental rights, falls within the jurisdiction of the writ court.

35. The aforementioned discussion leads to the conclusion that the Court, upon being approached by the aggrieved party, must possess the authority to issue a writ, order, or direction to the party against whom such relief is being sought for breaching of a legal or a fundamental right. The party against whom the writ is to be issued, must fall within the ambit of the Article 12 i.e. it should be a 'State' or "other authority'.

36. This Court is of the view that under Article 226 of the Constitution of India, a writ cannot be issued against a Government entity which has been subsequently privatized and is presently a private entity which is not performing a public duty anymore. The Government entity which has been privatized is not amenable to the writ jurisdiction under Article 226 of the Constitution of India and does not fall within the ambit of Article

12 of the Constitution of India. The guiding factor, therefore, is the nature of duty imposed on such a body namely, the public duty to make any authority amenable to the writ jurisdiction.

37. Under Article 226 of the Constitution of India, the phrase "for any other purpose" has to be given a narrower meaning to exclude private entities performing their private and commercial duties from the ambit of writ jurisdiction. Furthermore, a private entity does not fall within the ambit of Article 226 as there is an alternate remedy available against such private entity.

38. Accordingly, 'issue a' has been decided.

b. Whether a writ can be maintained against AIL considering it is a private body but at the time of institution of this writ, it was an Authority under Article 12?

39. In the instant petition, the bone of contention, as also stated above, is whether the reliefs claimed against the respondent No. 2 are still amenable to the writ jurisdiction of this Court as the petition was initially instituted when the AIL was owned by the Government but since its disinvestment the AIL cannot be subjected to the writ jurisdiction.

40. The preliminary objection on the maintainability of the writ petition under Article 226 may now be examined. This Court has referred to the judgment of Division Bench of Bombay High Court in ***R.S Madireddy & Anr. v. Union of India,*** **2022 SCC OnLine Bom 2657**, wherein, it was held that the writ petition against AIL, which has been privatized, is not maintainable and the relevant paragraphs have been reproduced as below:

> "*55. Having heard the parties and perusing the materials*

placed before us by them, we are of the opinion that the issue regarding maintainability of the writ petitions owing to the intervening event of privatization of AIL, the principal respondent, between institution of the writ petitions and its final hearing before us, is no longer res integra. The decisions of this Court in Tarun Kumar Banerjee (supra) [since upheld by the Supreme Court while dismissing SLP (C) No. 5185 of 2009], and Mahant Pal Singh (supra) [since upheld in Jatya Pal Singh (supra)], the decision of the Karnataka High Court in Padmavathi Subramaniyan (supra), and the several decisions of the Delhi and Gujarat High Courts, noted above, have taken a consistent view and these lead us to form the firm opinion that with the privatization of AIL, our jurisdiction to issue a writ to AIL, particularly in its role as an employer, does not subsist. We could have disposed of these writ petitions without much ado by following the judicial authorities in the field but having regard to the submissions advanced by Mr. Singhvi, noted in paragraph 47 above, we would like to proffer some reasons for reaching our own conclusions.

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57. That a writ could be issued to an 'authority' within the meaning of "the State" as in Article 12 of the Constitution as well as an 'authority' within the meaning of Article 226 has never been in dispute. By judicial pronouncements, law has developed over a period of time that a writ or order or direction under Article 226 can also lie against a 'person', even though it is not a statutory body, if it performs a public function or discharges a public duty or owes a statutory duty to the party aggrieved. These are unquestionable principles and the parties are ad idem in respect thereof. However, they have joined issue because of the intervening event of privatization of AIL.

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59. Our discussion should start with the alert that writ remedy is discretionary. It is elementary that a writ petition under Article 226 of the Constitution may be entertained by a high court if an entitlement in law, which is normally

referred to as a legal right, is shown to exist and a breach thereof is alleged. The right to relief before a writ court, as claimed, necessarily casts a duty on the party aggrieved who approaches the court to satisfy it that the entitlement is capable of being judicially enforced against the party complained of and that the latter answers the identity of an 'authority' or a 'person' to whom the writ or order or direction can legitimately be issued. In other words, the party complained of must be amenable to the writ jurisdiction of the high court. Therefore, generally speaking, as on date of admission hearing of a writ petition, the writ court is required to form a prima facie satisfaction on both the above counts. If either a legal right has not been infringed or the party complained of is not amenable to the court's writ jurisdiction, obviously the writ petition cannot be entertained. If, however, the court is prima facie satisfied, the court may in the exercise of its discretion admit the writ petition and post it for final hearing. After the pleadings are exchanged, and once the court arrives at a conclusion that a legal entitlement exists and such entitlement has been breached, together with the satisfaction that a writ would lie against the party complained of, an appropriate writ or order or direction can be issued. Thus, satisfaction as regards the breach of a legal entitlement apart, what is important in this context is that such breach must have been at the instance of the party complained of to whom a writ or order or direction can legitimately be issued. Not only, therefore, the party complained of should be amenable to the writ jurisdiction of the high court on the date of institution of the writ petition, it must also be so when the writ petition is finally heard and decided. It is thus axiomatic that only upon a double check (first at the time of admission of the writ petition, and then again at the time of final hearing thereof that the respondent against whom the complaint of commission of breach of a legal right of the petitioner is made is amenable to the writ jurisdiction) would the court proceed to decide the contentious issues. If not so amenable, the question of deciding the issues on merits may not arise.

What follows from the aforesaid discussion is that the writ court when approached must not only have jurisdiction to issue a writ or order or direction to the party against whom the complaint of breach of a legal right has been made at the inception of receiving the writ petition but such jurisdiction it must retain, without impairment, till the jurisdiction to issue the writ to such party is actually discharged.

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65. Perusal of the aforesaid excerpt would reveal some of the circumstances when a subsequent or an intervening event during pendency of a writ petition could result in the petitioner becoming disentitled to relief, viz. relief claimed being rendered redundant by lapse of time, or rendered incapable of being granted by change in law, or being rendered inequitable because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of the judgment, or creation of third-party interests. It is, therefore, not an invariable rule that a writ petition has to be decided on the facts as were presented on the date of its institution. A circumstance of the present nature would count as an additional reason for the writ court to hold a petitioner disentitled to relief.

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68. With its privatization, AIL has ceased to be an Article 12 authority. There is and can be no doubt that no writ or order or direction can be issued on these writ petitions against AIL for an alleged breach of a Fundamental Right. Conscious of the change in the factual as well as legal position arising out of privatization of AIL, Mr. Singhvi with the experience behind him changed the line of argument and introduced the concept of 'public employment' of the petitioners and contended that since the petitioners were employees of AIL, which at the material time was discharging public functions, the writ petitions ought to be heard particularly when the petitioners are not at fault for the time lapse.

69. We are afraid, the contention that the petitioners were in 'public employment' earlier and that it should weigh in our minds for the purpose of grant of relief, as claimed

originally, or moulding of relief because of the changed circumstances, is unacceptable for the reasons discussed above. By way of reiteration, we say that whether or not AIL was discharging public functions or the petitioners were in public employment need not be examined in these proceedings because, as the matter presently stands, no writ can be issued by us to AIL. In the circumstances, all the decisions cited by Mr. Singhvi laying down the law that a body discharging public functions would be amenable to the writ jurisdiction have no materiality for deciding the question at hand.

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73. It is a fact that this Court could not decide these writ petitions during the long years of its pendency, which is bound to have shattered the hopes and aspirations of retired employees like the petitioners. However, at the same time, such inability to decide these writ petitions prior to privatization of AIL was due to reasons absolutely beyond the control of this Court, as admitted by Mr. Singhvi even. Notwithstanding the same, this Court, through its Chief Justice, regrets its inability to so decide prior to privatization of AIL.

74. The writ petitions, although maintainable on the dates they were instituted, have ceased to be maintainable by reason of privatization of AIL which takes it beyond our jurisdiction to issue a writ or order or direction to it. For the reasons discussed above, the writ petitions and the connected applications and chamber summons stand disposed of without granting any relief as claimed therein but with liberty to the petitioners to explore their remedy in accordance with law. No costs.

75. We make it clear that the time taken for disposal of these writ petitions would, however, be excluded for the purpose of computation of limitation should the petitioners seek any remedy by instituting fresh proceedings where the question of limitation would be relevant."

41. In pursuance to the above, it is inferred that the legal rights of the

parties become fixed on the date when the litigation begins, and the determination of the right to seek redress should be based on the date when the petitioner initiates legal proceedings. A petitioner, despite having a legal entitlement to relief, may still be refused equitable relief due to subsequent or intervening circumstances, namely those events occurring between the initiation of legal proceedings and the subsequent dates thereof.

42. Upon a bare perusal of the judgment of the Division Bench of the High Court, it is observed that a change in the status of the 'authority' against whom the writ was initially claimed plays a significant role in determining the issue of maintainability of the writ petition under Article 226. The State which has disinvested in an entity, did the same of its own volition. Till the time the State holds the controlling interest or the whole of the shareholding, employees thereto may claim the status of employees of a Government company or 'other authority' under Article 12 of the Constitution.

43. The aspect of maintainability of writ petition against AIL has also been elaborated by the High Court of Madras in the judgment of ***T.S.D Gabriel v. NACIL,*** **WP NO. 17424/2010** dated 28th March 2022, wherein it was observed as follows:

> "*4. Today the learned counsel for the respondents submitted a memo which has been circulated to the petitioner's wherein it is brought to the notice of the court that pursuant to the policy decision taken by the Government of India to disinvest 100% share holding of the Government in Air India Limited, M/s Talace Pvt Ltd was declared as successful bidder to buy 100% shares held by it in Air India Limited.*
> *5. The shares held by the Government of India in Air India*

Limited stood transferred to M/s Talace Private Limited and its nominees on 27.01.2022. Consequent to which Air India Limited ceases to be a Government company and is a Private Limited Company. It is the submission of the learned counsel for the respondents that in view of the above change in constitution Air India Limited may no longer qualify as a "State" within the meaning of Article 12 of the Constitution for the writ petition to lie.

6. In support of the same reliance was sought to be placed in the decision of Hindustan teleprinters ltd., wherein this Court in the case of P. Subban vs Hindustan Teleprinters Ltd., reported in 2003 (3) L.L.N. 1078 and the relevant portion of such reads as under:

> *"Having regard to all these aspects, I think it is a fit case where writ can no longer be issued in view of the changed circumstances, namely privatisation of the respondent. Therefore, I follow the course adopted in the similar Writ Petition No. 14425 of 1995 dated 19 July 202 (the entire order in this case is given in Para. 8 Supra) and observe that the writ petition id no longer maintainable. The writ petition is accordingly disposed of as not maintainable leaving it to be open to the petitioner to work out his remedy before the appropriated forum. No costs."*

7.The learned counsel for the petitioner also agrees to the above position and further submits liberty may be granted to the petitioner's to work out its remedy and also prays that the time spent in this writ petition may be excluded in reckoning the period of limitation, if the petitioner chooses to enforce its right before an appropriate forum. The learned counsel for the correspondent also does not have any serious objection to the same. Consequently, liberty is granted to the petitioner to work out its remedy before the appropriate forum, in which case the time spent in pursuing the writ petition shall stand excluded in reckoning the period of limitation if any."

44. The similar findings have been given by this Court in the judgment

of ***Naresh Kumar Beri & Ors. v. UOI & Ors.*, 2022 SCC OnLine Del 3585**, wherein it was held as follows*:*

> "*23. The Court also finds merit in the second objection which was addressed on behalf of the respondents who had contended that since AIL had ceased to be a government company by virtue of the exercise of privatization noted above, the writ petition itself would cease to be maintainable. This Court notes that High Courts of the country appear to have consistently taken this position as would be manifest from a reading of the decision rendered in R.S. Madireddy by the Bombay High Court and Tarun Kumar Banerjee by the Karnataka High Court. The said position has also been duly reiterated in the judgments rendered by our Court in Asulal Loya, Ladley Mohan and Satya Sagar. The writ petition would thus warrant dismissal on this score also.*
> *XXX*
> *27. The Court lastly notes that the impugned action is sought to be sustained by AIL with it being asserted that Clause VI empowers it to terminate a contractual engagement of a pilot on an assessment of the requirement of AIL.*
> *28. Accordingly and for all the aforesaid reasons, the preliminary objections are upheld. The writ petitions shall consequently stand dismissed. The present order, however, shall not deprive the petitioners of the right to assail the action of AIL in accordance with law, if so chosen and advised.*"

45. The principle discussed herein above has also been enunciated by the Karnataka High Court in the judgment of ***M/s Padmavati Subramanium v. MOCA and Ors.*, WP No. 4171 of 2021** dated 6th April 2022, wherein it was held as under:

> "*1. Since a preliminary objection was raised at the hands of the respondents including Union of India that when once the*

Air India Limited is privatized and the entire share holdings are disinvested from the hands of the Government of India and a Private Company has taken over, the grievance of the employees of the Air India Limited cannot be redressed directly under a writ jurisdiction of this Court, the learned Senior Counsel for the petitioners was required to answer the question.

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4. From the above, it is clear that the Air India Limited is a private company owned by M/s Talace Pvt. Ltd. The earlier position of Air India Limited was fully owned Government of India Company, has changed and it is now a Private Limited Company. Therefore, the grievance of the petitioner in the matter of seniority can be redressed only before the competent authority which can deal with the question and not under Article 226 of the Constitution of India."

Furthermore, the Karnataka High Court has reiterated the same in the judgment of Capt. Kripa Sindhu v. Air India Ltd. & Ors., W.P No. 4171/ 2021, dated 28th November 2022, it was held as follows:

> *"9. This Court had an occasion to consider the grievance of an employee of Air India Limited in W.P. NO.21448/2021, subsequent to privatization and this Court by order dated 06.04.2022, at paragraph (4) held as follows:*
>
> *11. In view of the above decision, I am of the considered opiniuon that the writ petition under Article 226 of the Constitution of India would not be maintainable against the respondent- air India Limited.*
>
> *12. The decision relied upon the learned counsel for the petitioner of the Delhi High Court by the learned Single Judge as well as the Division Bench is prior to the privatization of the first respondent- Air India Limited rendered on 01.06.2021 as well as 17.12.2021. Those decisions would have no application to the facts of the present case since subsequent to the said decision, the first respondent- Air India Limited was privatized and it had become Private Limited Company. Therefore, I*

decline to entertain the writ petition."

46. In the light of the judgments of this Court in ***Capt. Dhirendra Kumar v. Air India Limited and Others,*** **2023 SCC OnLine Del 3722;** ***Pankaj Bhargava v. Air India Limited,*** **2023 SCC OnLine Del 2567;** ***Poonam Dinesh Singh v. CMD AIR India and Another,*** **2023 SCC OnLine Del 2583;** ***Yash Anand v. Air India Limited,*** **2023 SCC OnLine Del 1923,** and ***Rohita Jaidka v. Air India Limited and Others,*** **2023 SCC OnLine Del 1765**, this Court finds that once the AIL has been privatized and the entire share holdings are disinvested from the hands of the Government of India and a private company has taken over, the grievance of the employees of the AIL cannot be redressed directly under the writ jurisdiction of this Court.

47. This Court is of the view that AIL, respondent No. 2, is no longer a "State" under Article 12 of the Constitution of India. Under Article 226, a writ petition can only be instituted against a public authority. No writ or order or direction can be issued in these writ petitions against Air India Limited for an alleged breach of a fundamental right or a legal right. Hence, the respondent No. 2, does not fall under the definition of "State" as per Article 12 of the Constitution of India and writ is not maintainable under Article 226 of the Constitution of India. The instant petition was maintainable on the date of the institution of the said petition, however, it has ceased to be maintainable by reason of privatization of Air India Limited, respondent No. 2, which takes it beyond this Court's writ jurisdiction.

48. Further, in light of the aforementioned judgments, it is well settled

that a writ petition under Article 226 of the Constitution of India is maintainable only against "State" under Article 12 of the Constitution of India. Accordingly, since, AIL has been privatized and has ceased to be a Government controlled company, it is no longer amenable to this Court's writ jurisdiction.

49. Accordingly, 'issue b' is decided.

c. Whether the relief as sought by the petitioners can be granted pursuant to the subsequent developments causing change in law?

50. It is important to note that in cases where a writ petition is pending, subsequent or intervening events may lead to the petitioner's relief being ineligible to be sought. These events lead to the reliefs becoming irrelevant due to the passage of time, changes in the law, the balance of equities shifting against the petitioner at the time of judgment, or the creation of third party interests. Hence, it is not an absolute principle that a writ petition must be adjudicated based solely on the facts, as they were at the time of filing of the petition. The subsequent situation would serve as an additional justification for the writ court to deem a petitioner ineligible for relief. The writ petition, while initially deemed maintainable at the time of its initiation, has since become non-maintainable due to the privatization of AIL. This development has rendered it beyond this Court's jurisdiction to issue any writ, order, or direction against the respondents.

51. Before delving into the merits of the case, this Court has referred to the judgments dealing with the issue whether the relief can be granted if the relief has become incapable of being granted due to subsequent changes of events and changes in law.

52. At this juncture, it is relevant to take note of the observation made by the Hon'ble Supreme Court in ***BALCO Employees' Union (Regd.) v. Union of India*, (2002) 2 SCC 333**, wherein it was held as under:

> "*50. .....Actions of the Government or other authorities performing any public duty are amenable to correction in proceedings under Article 226. By reason of the disinvestment, employees do not lose their right to seek redressal through courts for any wrongs done to them.*"

53. Further, the Hon'ble Supreme Court in the judgment of ***Hukum Chandra v. Nemi Chand Jain*, (2019) 13 SCC 363** held as follows**:**

> *"15. Rights of the parties stand crystallised on the date of institution of the suit. However, in appropriate cases, court can take note of all the subsequent events…..*"

54. This Court is of the view that usually the rights of the parties as on the date of the filing of the petition are taken into account while delivering the judgment. The right to relief should be decided by reference to the position of law or circumstances as on the date on which the petitioner filed the petition. There may be cases where the relief to which the petitioner is entitled to may have been rendered redundant by the lapse of time or by change of law. The same has been also observed in the judgment by the Hon'ble Supreme Court in ***Pasupuleti Venkateswarlu v. Motor and General Traders*, (1975) 1 SCC 770.**

55. However, this Court need not enter into any determinative findings on the submissions regarding the petitioner's claims w.r.t. quashing of transfer orders or regularization, since, that would clearly relate to the merits of the action which has been taken by AIL. A challenge to the same, while being open to be addressed before a competent forum and on

grounds which may otherwise be permissible in law, cannot be the subject matter of consideration in a writ petition under Article 226 of the Constitution of India. It is an admitted position that when the writ petition was filed in the year 2018, it was maintainable as AIL was amenable to the writ jurisdiction being a public body. However, due to the subsequent developments, this Court is precluded from issuing a writ of certiorari and/or mandamus in the current situation.

56. This Court is of the view that the writ petitions, although initially maintainable when they were filed, have since become non-maintainable due to the privatization of AIL. This transfer of ownership places the concerned company outside the jurisdiction of this Court to issue any writs, orders, or directions to it. Therefore, the grievance of the petitioners regarding the regularisation of their services by granting them the status of permanent employees and seeking quashing of the letter dated 16th August 2017 and 20th August 2018 whereby, the petitioners were transferred, can be redressed only before the competent forum which can deal with the concerned question, and not under Article 226 of the Constitution of India.

57. Accordingly, 'issue c' has been decided.

CONCLUSION

58. In view of the above discussions, I am of the considered opinion that the writ petition under Article 226 of the Constitution of India is not maintainable against Air India Limited, the respondent No. 2 due to its privatization.

59. This Court upholds the objection taken by the respondent on the aspect of the maintainability of the writ petition and has not gone into

merits of the matter.

60. This writ petition is accordingly disposed of, granting liberty to the petitioners to take recourse to the remedies available before a competent forum. Further, the time period for which the writ petition has been pending in this Court shall be excluded for the purpose of computation of limitation in case the petitioners may seek any remedy by instituting fresh proceedings before a competent forum.

61. Pending applications, if any, also stand disposed of.

62. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 31, 2023
Pa/Ryp

Click here to check corrigendum, if any