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

+ **W.P.(C) 13616/2009**

AIRPORTS AUTHORITY OF INDIA AND ORS Petitioners
Through: Mr. V.P. Chaudhary, Senior
Advocate, with Mr. Digvijay Rai,
Advocate, for the AAI.

versus

STATE OF CHHATTISGARH AND ORS Respondents
Through: Ms. Suparna Srivastava, Advocate
for the respondent No. 1/State of
Chhattisgarh.
Mr. Naveen Sharma, Advocate for
the respondent/State of M.P.
Mr. Ashish Wad & Mr. Shikhar
Srivastava, Advocates for the
respondent No. 4.

+ **W.P.(C) 13617/2009**

AIRPORTS AUTHORITY OF INDIA AND ORS Petitioners
Through: Mr. V.P. Chaudhary, Senior
Advocate, with Mr. Digvijay Rai,
Advocate, for the AAI.

versus

STATE OF MADHYA PRADESH AND ORS Respondents
Through: Mr. Naveen Sharma,
Advocate for the respondent No.
1/State of M.P.
Ms. Suparna Srivastava, Advocate
for the respondent No. /State of
Chhattisgarh.
Mr. Ashish Wad & Mr. Shikhar
Srivastava, Advocates for the
respondent No. 4.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
30.01.2012

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1. These two writ petitions have been preferred by the Airports Authority of India (AAI), the National Airports Authority Employees Contributory Provident Fund Trust (NAAECPF) and the Airports Authority of India Employers Provident Fund Trust.

2. W.P.(C.) No. 13616/2009 has been preferred against the State of Chhattisgarh (respondent No. 1), the Chhattisgarh Infrastructure Development Corporation Limited (respondent No. 2), State of Madhya Pradesh (respondent no.3), Madhya Pradesh State Road Transport Corporation (MPSRTC) (respondent no.4) and Securities International Limited (respondent no.5).

3. W.P.(C.) No. 13617/2009 has been preferred against the State of Madhya Pradesh (respondent No. 1), MPSRTC (respondent No. 2) and Securities International Limited (respondent no.3).

4. The petitioners, in both these writ petitions, seek similar relief i.e. a writ or direction in the nature of mandamus directing the State of Chhattisgarh & the State of Madhya Pradesh respectively to honour their sovereign guarantees in respect of the 11% Madhya Pradesh State Road Transport Corporation Bond, 2009 (First Series) issued by the MPSRTC, and to make payment as disclosed in the two writ petitions. The petitioners also claim overdue interest.

5. The case of the petitioners is that they made an investment of Rs.18,54,39,778 in bonds which were issued by MPSRTC on 31.05.2005, through one of its arrangers, i.e. Securities International Limited. The said bonds were initially issued to Punjab National Bank (PNB) in August 2002. The PNB transferred the said bonds to Deutsche Bank on 27.09.2002 and, subsequently, these bonds were purchased by the petitioners. These bonds were guaranteed by the Govt. of Madhya Pradesh as to the repayment of principal and payment of interest. These bonds were carrying interest @ 11% which was payable on 27th of every month and the date of maturity of these bonds was 27.08.2009. Petitioners submit that the entire amount was invested in Delhi, and the entire transaction has been completed in Delhi. The petitioners, on 01.06.2005, sent a communication to MPSRTC informing them about the purchase of the said bonds and also submitted the transfer form for transferring the securities in the name of the petitioners.

6. The state of Chhattisgarh was carved out of the state of Madhya Pradesh and the new state came into being from 01.11.2000. Since no agreement was reached between the two states regarding apportionment of assets, rights and liabilities of the MPSRTC, the Central Government, in exercise of its power under Section 58(3) of Madhya Pradesh Reorganisation Act, 2000 issued a notification dated 27.12.2002, whereby, the MPSRTC was dissolved and all assets and

liabilities was shared in the ratio of 77.26 : 22.24 between the State of Madhya Pradesh and the State of Chhattisgarh.

7. The respondents defaulted in payment of interest, and the petitioners raised their grievance with the MPSRTC on 26.07.2005. On 28.09.2005, the financial consultant of MPSRTC informed the petitioner that MPSRTC has been dissolved on 27.12.2002. They also informed that the said matter has been taken up with the Govt. of Chhattisgarh and its Corporation.

8. The petitioners also sent a reminder to MPSTRC again making a grievance that neither the bonds were transferred in the name of the petitioners, nor the overdue interest had been paid.

9. On 24.03.2006, the financial consultant of MPSRTC sent a proposal to the petitioner for premature payment of the principal amount as on 31.12.2002, as divided between State of Madhya Pradesh and State of Chhattisgarh in the ratio of 77.76% : 22.24%. The petitioners rejected this proposal vide communication dated 29.03.2006, to accept premature payment of the principal amount only, without any interest, and again demanded the overdue interest which had already accrued.

10. The petitioners also issued two legal notices to the respondents on 28.02.2007 and 08.05.2007 for payment of principal and interest

amount. Pursuant to this, the Secretary of Govt. of Madhya Pradesh sent a communication dated 04.10.2008 to the petitioners. It was stated that they are ready to pay an amount of Rs.13.21 crores to the petitioner, and the balance amount of Rs.3.78 crores will be paid by the State of Chhattisgarh. Even the Secretary to the Government of India in the Ministry of Civil Aviation called upon the Chief Secretary of the State of Madhya Pradesh to look into the matter and ensure payment of overdue interest to petitioner no.2 immediately. Since, the petitioners have not been paid the amounts covered by the bonds, these writ petitions have been preferred.

11. The petitioners submit that similar writ petitions in the case of ***Modern Food Industries (India) Limited v. State of Uttar Pradesh and Others***, bearing W.P.(C.) No.16462-63/2004, have been allowed by this court vide judgment dated 21.11.2005. The said judgment has been upheld by the Supreme Court, as the Special Leave Petition bearing No.3146/2006 and the Civil Appeal arising therefrom, bearing C.A. No.6126/2008, has been dismissed.

12. Upon issuance of notice, the respondents State of Madhya Pradesh, the MPSRTC, the State of Chhattisgarh and Chhattisgarh Infrastructure Development Corporation Limited have filed their counter affidavits in the two writ petitions. The said respondents do not deny the aforesaid facts, and the fact that they have defaulted in

making payment of the principal amount and interest which were to be paid under the said bonds.

13. The stand taken by MPSTRC for non payment of interest and repayment of principal amount is their financial stringency. They have also stated that the State Government has been requested by them to make the payment to the petitioners. They have also argued that a writ petition to seek recovery of money alone is not maintainable.

14. The State of Madhya Pradesh has, in its defence, argued that the said bonds do not envisage any transfer to any third person. They contend that the said bonds were transferred by PNB without seeking any approval for the same. The counsel for the State of Madhya Pradesh has argued that the said guarantee was not unconditional, and it was governed by conditions and limitation. To substantiate his point, he has filed a letter dated 21.08.2002 alongwith an additional affidavit, which was addressed by the State Government to the MPSRTC.

15. As far as State of Chhattisgarh and Chhattisgarh Infrastructure Development Corporation are concerned, they have contended that the State of Chhattisgarh was established on 01.11.2000, and any liability of the erstwhile MPSRTC has to be determined on the said day. As the bonds were issued in August 2002, thus they have been issued after the appointed day and thus no liability could be fastened to them.

16. As far as the objection of State of Madhya Pradesh that the bonds were successively transferred without obtaining any prior approval from them is concerned, it has no merit. Firstly, the prospectus issue by MPSRTC in respect of the bonds stated:

"Form of Bonds

8. *The Bonds will be issued in the form of promissory notes payable to **or to holder of PNB** and have been issued under private placement. They will be in the denomination of Rs. Rupees One Crores each **will be transferable by endorsement without attracting any stamp duty or transfer fee**". (emphasis supplied)*

17. Secondly, before subscribing to the bonds, the PNB in its letter dated 20.05.2002 addressed to MPSRTC imposed a condition that it shall have an option to dispose off the bonds in secondary market as and when opportunity arises. This condition was accepted by MPSRTC, as it was never disputed by them. Thirdly, the letter dated 21.08.2002 of the State Government, placed on record by the State of Madhya Pradesh with an additional affidavit, does not put any such restriction on transferability of the bonds.

18. The stand of State of Chhattisgarh aforesaid, cannot be accepted because they have admitted that by the notification dated 27.12.2002 the assets and liabilities of erstwhile corporation i.e. MPSRTC have been divided between the two states. It is specifically mentioned in the notification that all the current assets and liabilities of the corporation

shall be divided in the said ratio between the two states.

19. Even though the state of Chhattisgarh may have been formed prior to the issuance date of said bonds, but the division of assets and liabilities of MPSRT has taken place upon the issuance of the said notification by the Central Government on 27.12.2002. This notification was issued after the bonds were issued by the corporation, and as on the date of issuance of the notification, the bonds formed a part of the liabilities of MPSRTC. Thus, State of Chhattisgarh is liable to repay the amount which comes into their share according to the said ratio.

20. The objection raised by counsel for respondents that the present petition is not maintainable only to seek refund of the amounts due under the said bonds also cannot be accepted. The jurisdiction of the Court under Article 226 of the Constitution of India is unfettered. The only fetters are those which the Courts have themselves placed on the exercise of its said jurisdiction. There are well known and well recognized grounds on which the Court chooses not to exercise its discretionary writ jurisdiction. One of them is, where disputed questions of fact are raised before it.

21. In the present case, firstly, it may be noted that the primary relief is to seek enforcement of the sovereign guarantee of the State of Madhya Pradesh and of the State of Chhattisgarh. Moreover, there is absolutely no disputed question of fact arising before this Court. The

factum of the petitioners having invested in the said bond is not in dispute. The fact that the said bonds were issued by MPSRTC, and guaranteed by State of Madhya Pradesh has also not been disputed. The fact that there was consistent default in payment of interest, and the principal amount of the said bonds on the due dates is also not in dispute. It is not the respondents case that any amounts have been paid under the said bonds. There is no accounting dispute raised by the respondents.

22. The guarantees issued by State of Madhya Pradesh and State of Chhattisgarh are sovereign guarantees. The State cannot say that it does not have the fund to honour its sovereign guarantee. The Court would enforce the sovereign guarantee, because a sovereign guarantee cannot be allowed to fail, if rule of law is to be upheld. This aspect, as well as the aspect of maintainability of the writ petition to recover amounts which have been guaranteed by the State has been dealt with by this Court in **Modern Food Industries (India) Limited** (supra). I consider it appropriate to extract the relevant portion of the said judgment, which stands affirmed by the Supreme Court. The same reads as follows:

"4. Learned counsel for the Respondent have raised a Preliminary Objection with regard to the maintainability of the Writ Petition. It stands uncontroverted that Respondent No.1 had extended its sovereign guarantee to the Bonds issued in favour of investors, such as the Petitioners, issued by Respondent No.2. Over thirty years ago the

Hon'ble Supreme Court had clarified in *The Gujarat State Financial Corporation vs. M/s. Lotus Hotels Pvt. Ltd.*, AIR 1983 SC 848 that it was too late in the day to contend that the "State can commit breach of a solemn undertaking on which other side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract". The Apex Court applied the principle of promissory estoppel for enforcement of such contractual undertakings. Thereafter, similar views have been expressed in *Kumari Shrilekha Vidyarthi vs. State of U.P.*, JT 1990 (4) SC 211 by a Bench comprising J.S. Verma, J. (as the learned Chief Justice then was) and R.M. Sahai, J.

It was opined that "the primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law".

5. In *ABL International Ltd. vs. Export Credit Guarantee Corporation of India Limited*, JT 2003 (10) SC 300 the following principles were culled out and explained:

From the above discussion of ours, following legal principles emerge as to the maintainability of a writ petition:-

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

6. Contemporaneously, the Bench presided by Sabyasachi Mukharji (as the learned Chief Justice then was) and S. Ranganathan, J. held in *Salonah Tea Company Ltd. vs. The Superintendent of Taxes, Nowgong*, AIR 1990 SC 772 that a Writ Court was competent to order a refund of tax deposited under a mistaken understanding of the law. In *Smt. Nilabati Behera v. The State of Orissa*, JT 1993 (2) SC 503 the Apex Court did not find any fetters in granting relief to heirs of a victim of custodial death on the foundation of an infraction of fundamental rights

guaranteed under Article 21 of the Constitution of India and observed as follows:

“Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortuous act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right of life, he cannot get any relief under the public law by the Courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the Courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title 'Freedom under the law' Lord Denning in his own style warned:

“No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power if not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to-date machinery, by declarations, injunctions and actions for negligence. This is not the task of Parliament, the Court must do this. Of all the great tasks that lie ahead

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this is the greatest. Properly exercised the new powers of the executive lead to the welfares state; but abused they lead to a totalitarian state. None such must ever be allowed in this country''.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The court has imposed upon itself certain restrictions in the exercise of this power [See: Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors. JT 1998 (7) SC 243 : 1998 (8) SCC 1]. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the court thinks it necessary to exercise the said jurisdiction.

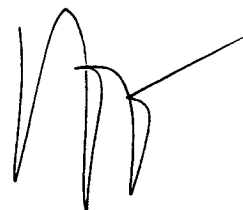
7. In *State of Jammu and Kashmir vs. Ghulam Mohd. Dar*, (2004) 12 SCC 327, after noting that writs in the nature of mandamus would not ordinarily issue for enforcement of a contract, it has been observed that a writ can issue when questions of public law character arise for consideration. The preliminary objection is wholly without substance and is rejected".

23. Recently in the case **Airport Authority of India & Ors. v. State of Jammu & Kashmir and Ors.**, being W.P.(C.)76/2010 decided on 04.01.2012, in similar circumstances, this court has held that the state government is liable to honour its sovereign guarantee.

(F 25)

In that case, the State Govt. of Jammu and Kashmir had guaranteed the payment of the amount and the interest for the bonds issued by one of its corporation. The corporation pleaded shortage of funds and did not make the payment on the scheduled date. The court directed the state government to honour its commitment and make payment accordingly.

24. Accordingly, the present writ petitions are allowed and a direction is issued to State of Madhya Pradesh and State of Chhattisgarh to honour their sovereign guarantee in respect of 11% Madhya Pradesh State Road Transport Corporation Bond, 2009 (First Series) issued by the MPSRTC, and to make payment of the amount due alongwith interest overdue at the rates prescribed in the said bonds. The division of the liability between the State of Madhya Pradesh and the State of Chhattisgarh shall be in the ratio 77.26:22.24 respectively as determined vide notification dated 27.12.2002 of the Central Government. The petitioners shall be entitled to Costs of Rs.25,000/- in each of these petitions, payable by the State of Madhya Pradesh & State of Chhattisgarh respectively.



VIPIN SANGHI, J

JANUARY 30, 2012
'BSR' /sr