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AMENDED PETITION

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. NO. 877/2002

PETITIONER : Balco Officers Association, Through:
Its President Shri S. S. Baghel, Balco
Nagar, Korba, Chhattisgarh

VERSUS

RESPONDENTS : (1) Union of India, Through: The
Secretary, Ministry of Mines, New
Delhi.

(2) Bharat Aluminium Company Ltd.,
Through: Its Managing Director,
Balco Nagar, Korba,
Chhattisgarh.

(3) M/s. Sterlite Industries (India)
Ltd. Dhanraj Mahal, 5th Floor
C.S.M. Road, Apollo Bunder,
Coleba, Mumbai (Maharashtra)

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF
INDIA



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HIGH COURT OF CHHATTISGARH : BILASPUR

WP No.877 of 2002

Petitioner

BALCO Officers Association

Versus

Respondents

Union of India & Ors.

Post for pronouncement of orders on the 06th day of April, 2016

Sd/-
Prashant Kumar Mishra
Judge



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HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 877 of 2002**

- BALCO Officers Association

---- Petitioner

Versus

- Union Of India & Ors.

---- Respondent

For Petitioner

For Respondent No.1/UOI

For Respondents No.2 & 3

Shri V.G. Tamaskar, Advocate

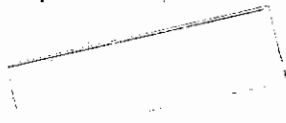
Ms. Purnima Singh, Advocate

Shri Prashant Jaiswal, Sr. Advocate

with Shri Ashutosh Shukla, Advocate

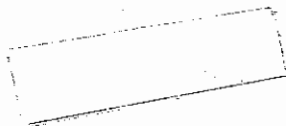
Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order****06/04/2016**

- Petitioner - BALCO Officers Association has preferred this writ petition under Article 226/227 of the Constitution of India seeking declaration that the decision taken by the respondent No.2-Bharat Aluminium Company Limited to reduce the age of superannuation of the members of the petitioner's association from 60 years to 58 years is arbitrary, *mala fide*, unjust, unreasonable and with ulterior motive to deprive the members of the petitioner's association of the benefits of Voluntary



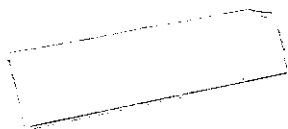
Retirement Scheme ('VRS' in short). It has also been prayed that the action of the respondent No.2 in refusing to accept the VRS for which the members of the petitioner association had applied is illegal and to direct the respondent No.2 to treat such members who have attained the age of superannuation as on 15-4-2002 shall be deemed to be retired under the VRS and are entitled for all the benefits under the Scheme with further prayer to direct the respondent No.2 to not to bring any change in the service conditions and retain the age of retirement to 60 years and to take appropriate decision on their applications for Voluntary Retirement under the Scheme.

2. Shri V.G. Tamaskar, learned counsel appearing for the petitioner, would argue that the members of the petitioner association were entitled to continue in service up to the age of 60 years, however, the management of BALCO reduced the age of superannuation from 60 years to 58 years only with the motive to deny such members of the petitioner association the benefit of VRS because if the age of superannuation has not been reduced they would have been entitled to the benefit of VRS. Shri Tamaskar would also argue that reduction in age of superannuation amounts to change in service conditions.
3. Per contra Shri Prashant Jaiswal, learned senior counsel appearing with Shri Ashutosh Shukla, learned counsel



appearing for the respondents No.2&3, would raise preliminary objection regarding maintainability of the writ petition on the ground that since after 2-3-2001 BALCO has been privatized, the writ petition is not maintainable against a private company. On merits, Shri Jaiswal would submit that at the time when the members of the petitioner association joined the service the age of retirement was 58 years, therefore, qua such members who are denied the VRS on reduction of the age of superannuation from 60 years to 58 years there is no change in their service conditions. Shri Jaiswal would argue that the petitioner association is not a registered association, therefore, the writ petition is not maintainable on this count also.

4. In response to the aforesaid preliminary objection, Shri Tamaskar, learned counsel appearing for the petitioner, would respond that the parent/holding company of the respondent No.2 i.e. M/s Sterlite Industries (India) Limited, the respondent No.3 is discharging public function inasmuch as the Bauxite Ore belongs to the Government, which is used by the respondents No.2 & 3 to produce Aluminium in the BALCO Plant, therefore, an element of public interest is involved and the writ petition is maintainable. To buttress his contention, learned counsel appearing for the petitioner would place reliance upon the decision of the Supreme Court rendered in



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K. Krishnamacharyulu and Others v. Sri Venkateswara Hindu College of Engineering and Another¹.

5. The erstwhile BALCO was a Government company within the meaning of Section 617 of the Companies Act, 1956, however, in furtherance of disinvestment policy of the Government of India, 51% shares of BALCO were divested and the same was purchased by M/s Sterlite Industries (India) Limited on and from 2-3-2001, thus, M/s Sterlite Industries (India) Limited having 51% shares in the BALCO, it no longer remained a Government company and, thus, ceased to be 'State' within the meaning of Article 12 of the Constitution of India.
6. The issue as to whether a writ petition would lie against BALCO after 2-3-2001 has been considered by the Division Bench of this Court in **Bharat Aluminium Company Limited and Others v. Shiv Kumar Gupta and Others²**. The Division Bench held thus in paras 6 to 8 :

'6. It is not disputed that the Bharat Aluminium Company Limited (the BALCO) was registered under the Companies Act in the year 1965. At that time, its all shares were with the Government of India and it was the State within the meaning of Article 12 of the Constitution.

7. The BALCO has been privatized on 2-3-2001 and 49% of the shares are with the Government and 51% of the shares are with the private persons. In view of the

1 (1997) 3 SCC 571

2 (WA No.43 of 2013 decided on 17-9-2014)

same, the BALCO is not the State within the meaning of Article 12 of the Constitution.

8. The writ petition was against private person, no violation of any statutory provision has been brought to our notice. In view of the same, the writ petition against the BALCO was not maintainable.

7. The Single Bench of this Court in **BALCO Officers Association v. Bharat Aluminium Company Ltd. & Others**³

held thus in para 4 :

'4. Any public authority exercising statutory powers whether such powers are governmental or quasi-governmental or non-governmental is under the control of the government or not, will be subject to judicial review under Article 226 of the Constitution of India. The respondent company became a private body and is not exercising any statutory powers or sovereign function and, as such, no judicial review is maintainable particularly when the petitioner have (*sic* has) not impleaded Union of India or State Government as respondents claiming to be enforcement of legal rights. (See: *Tekraj Vasandi Alias K.L. Basandhi v. Union of India and Others*). (1988) 1 SCC 236.'

8. A single Judge of the High Court of Delhi had an occasion to consider the same issue in **Asulal Loya v. Union of India and Others**⁴ and held thus in paras 3, 5 & 6 :

'3. It is fairly well settled that a writ petition is not maintainable against a private

3 (WP No.1370 of 1993 decided on 13-2-2013)

4 (Writ Petition (Civil) No.3043 of 1991 decided on 23-7-2008)



limited company or a public limited company in which the State does not exercise all pervasive control. In Binny Limited and Another versus Sadasivan and Others 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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5. A single Judge of this Court in writ petition (civil) No.5236/1997 titled BALCO Officer's Association and Another versus Bharat Aluminium Company Limited and Another had upheld a similar preliminary objection raised by the respondent company, observing as under :

Learned counsel for the respondents points out that during the pendency of these proceedings, the Bharat Aluminium Company has been pravitised (sic), in that all the shares have been transferred to Sterlite Industries India Limited. As a consequence it is no longer amenable to writ jurisdiction of this Court. In view of this statement and having considered the record, the writ petition is disposed off. It is however open to the petitioner to approach the concerned legal forum for seeking redressal of any grievance, in accordance with law.

The writ petition and all pending applications are disposed off.



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 versus Bharat Aluminium Company Limited and Another 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 Sterlite 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.

9. In view of the abovestated clear pronunciation of law, the present writ petition filed against BALCO, now a private company, is dismissed without going into the merits of the matters upholding the preliminary objection raised by the

respondent Company that it is not a 'State' within the meaning of Article 12 of the Constitution of India, therefore, the petition is not maintainable to the writ jurisdiction of this Court. It is, however, observed that the petitioner would be at liberty to approach any other forum for redressal of grievance, in accordance with law.

10. There shall be no order as to costs.

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Sd/-
Prashant Kumar Mishra
Judge