

\$~A-7

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

%

Date of decision: 27.07.2020

+ W.P. (C) 4546/2020

RAKESH SHARMA & ORS.

..... Petitioners

Through: Mr. Gautam Awasthi, Mr. Ayush Choudhary, Mr. Devanshu Yadav, Mr. Sameer Pandey, Advocates for Petitioners

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Jivesh Kumar Tiwari, Advocate for R- 1 & 2

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

C.M. APPL. 16423/2020

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

C.M. APPL. 16424/2020

3. This application has been filed seeking exemption from filing original affidavits, *Vakalatnama*, duly affirmed/notarised affidavits and requisite welfare Stamp of *Vakalatnama*. Application is disposed of with a direction to the Applicant to file the same within 72 hours from the date of resumption of regular functioning of the Court.

W.P. (C) 4546/2020

4. Present petition has been filed by the erstwhile employees of Indiabulls Housing Finance Limited seeking a direction to the said Respondent not to dispense with the services of the Petitioners.

5. Present petition is not maintainable in this Court under Article 226 of the Constitution of India as Indiabulls Housing Finance Limited is neither a 'State' under Article 12 of the Constitution of India nor 'any other authority' under Article 226 of the Constitution of India. It has been held in several judgements that writ can be issued against a State under Article 12 or 'any person' performing public function. In the case of ***National Seeds Corporation Employees Union & Anr. vs. National Seeds Corporation AIR 1972 Del 292***, Supreme Court held that once the origin and history of the prerogative writs are remembered, it is clear that powers given to the High Court under Article 226 are to be exercised in accordance with principles which govern the writs. Therefore, the expression 'any person' is to be read *ejusdem generis* and cannot include private persons.

6. It is also settled law in writ petition that Courts cannot enforce the Contract of personal service. In the case of ***S.C. Sharma & Ors. vs. Union of India & Ors., 2000 (55) DRJ***, a Coordinate Bench of this Court held as under:

“If the writ is entertained and relief granted to these employees, as claimed by them, it would amount to enforcing the contract of personal service and this would be contrary to the consistent view taken by the Apex Court in series of judgments mentioned above over a long period of time. It would amount to nullifying the effect of the aforesaid judgments. Therefore, the expression “any person” found in Article 226 has to be given an

interpretation which would harmonise with the legal thinking expressed in the aforesaid cases relating to enforcement of contract of personal service. One therefore cannot extend the scope of expression “any person” to include those coming under the realm of private law. Keeping in view the aforesaid reasoning, it would not be necessary to deal with various judgments cited by the petitioners as they would fall into the bale of irrelevance. The cases cited by the petitioners are either on principle laid down in order to determine whether a particular authority is “State” or not, or relating to the principle for lifting corporate veil or concerning the welfare roll which the State organs discharge for the promotion of social and economic uplift of people in tune with Directive Principles of State Policy etc. While there is no quarrel about the principles laid down in these judgments, suffice is to state that they are not applicable to the cases in hand in view of aforesaid discussion.”

7. At this stage, Mr. Gautam Awasthi, Learned Counsel for the Petitioners seeks to withdraw the petition with liberty to take recourse to the appropriate remedy.

8. Writ Petition is disposed of as withdrawn with liberty to the Petitioners to resort to the appropriate remedies that may be available to them in law. Needless to state if any such remedy is resorted to, the competent Court, keeping in view the unprecedented prevailing circumstances on account of the Pandemic COVID-19, will make every endeavour to take up the matter as expeditiously as possible.

JYOTI SINGH, J

JULY 27, 2020
rd