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

% *Date of Decision: 17th February, 2023*

88

+ W.P.(C) 10077/2019 & CM APPL. 41694/2019

RIPTINDER JIT SINGH Petitioner

Through: Mr. Vivek Kohli, Senior Advocate with Mr. Nalin Talwar, Mr. Sunil Tyagi, Ms. Yeshi Rinchhen, Mr. Akash Yadav and Mr. Juvas Rawal, Advocates.

versus

AIR INDIA LIMITED Respondent

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Avishkar Singhvi, Mr. Shivam Chanana and Mr. Advaya Hari Singh, Advocates.

89

+ W.P.(C) 11339/2019 & CM APPL. 46667/2019, 18246/2020, 18247/2020

CAPTAIN MANISH KUMAR & ORS Petitioners

Through: Mr. Vivek Kohli, Senior Advocate with Mr. Nalin Talwar, Mr. Sunil Tyagi, Ms. Yeshi Rinchhen, Mr. Akash Yadav and Mr. Juvas Rawal, Advocates.

versus

AIR INDIA LIMITED Respondent

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Avishkar Singhvi, Mr. Shivam Chanana and Mr. Advaya Hari Singh, Advocates.

90

+ W.P.(C) 13384/2019 & CM APPL. 54317/2019, 2293/2020

CAPTAIN NIDHIN THOMAS AND ORS. Petitioners

Through: Mr. Vivek Kohli, Senior Advocate with Mr. Nalin Talwar, Mr. Sunil Tyagi, Ms. Yeshi Rinchhen, Mr. Akash

Yadav and Mr. Juvas Rawal, Advocates.

versus

AIR INDIA LIMITED Respondent
Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Avishkar Singhvi, Mr. Shivam Chanana and Mr. Advaya Hari Singh, Advocates.

91

+ W.P.(C) 2309/2020 & CM APPL. 8026/2020

CAPTAIN AMIT SAINI AND ORS. Petitioners
Through: Mr. Vivek Kohli, Senior Advocate with Mr. Nalin Talwar, Mr. Sunil Tyagi, Ms. Yeshi Rinchhen, Mr. Akash Yadav and Mr. Juvas Rawal, Advocates.

versus

AIR INDIA LIMITED Respondent
Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Avishkar Singhvi, Mr. Shivam Chanana and Mr. Advaya Hari Singh, Advocates for AIR INDIA.

92

+ W.P.(C) 8527/2022

RUCHIR MATHUR Petitioner
Through: Mr. Vivek Kohli, Senior Advocate with Mr. Nalin Talwar, Mr. Sunil Tyagi, Ms. Yeshi Rinchhen, Mr. Akash Yadav and Mr. Juvas Rawal, Advocates.

versus

AIR INDIA LIMITED & ORS. Respondents
Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Avishkar Singhvi, Mr. Shivam Chanana and Mr. Advaya Hari Singh, Advocates for R-1.
Ms. Akanksha Das, Advocate for AIAHL.

93

+ W.P.(C) 8528/2022

SHIVAM

..... Petitioner

Through: Mr. Vivek Kohli, Senior Advocate with Mr. Nalin Talwar, Mr. Sunil Tyagi, Ms. Yeshe Rinchhen, Mr. Akash Yadav and Mr. Juvas Rawal, Advocates.

versus

AIR INDIA LIMITED & ORS.

..... Respondents

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Avishkar Singhvi, Mr. Shivam Chanana and Mr. Advaya Hari Singh, Advocates for R-1.
Ms. Akanksha Das, Advocate for AIAHL.

94

+ W.P.(C) 8543/2022

SIDDHARTH RUSTAGI

..... Petitioner

Through: Mr. Vivek Kohli, Senior Advocate with Mr. Nalin Talwar, Mr. Sunil Tyagi, Ms. Yeshe Rinchhen, Mr. Akash Yadav and Mr. Juvas Rawal, Advocates.

versus

AIR INDIA LIMITED & ORS.

..... Respondents

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Avishkar Singhvi, Mr. Shivam Chanana and Mr. Advaya Hari Singh, Advocates for R-1.
Ms. Akanksha Das, Advocate for AIAHL.

95

+ W.P.(C) 8545/2022

SAMANVAY KUMAR

..... Petitioner

Through: Mr. Vivek Kohli, Senior Advocate with Mr. Nalin Talwar, Mr. Sunil Tyagi, Ms. Yeshe Rinchhen, Mr. Akash Yadav and Mr. Juvas Rawal, Advocates.

versus

AIR INDIA LIMITED & ORS. Respondents
Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Avishkar Singhvi, Mr. Shivam Chanana and Mr. Advaya Hari Singh, Advocates for R-1.
Ms. Akanksha Das, Advocate for AIAHL.

96

+ W.P.(C) 8547/2022

AKSHAY KADAM Petitioner
Through: Mr. Vivek Kohli, Senior Advocate with Mr. Nalin Talwar, Mr. Sunil Tyagi, Ms. Yeshi Rinchhen, Mr. Akash Yadav and Mr. Juvas Rawal, Advocates.

versus

AIR INDIA LIMITED & ORS. Respondents
Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Avishkar Singhvi, Mr. Shivam Chanana and Mr. Advaya Hari Singh, Advocates for R-1.
Ms. Akanksha Das, Advocate for AIAHL.
Mr. Arnav Kumar, Central Government Standing Counsel with Mr. Suprateek Neogi, Advocates for R-3.

97

+ W.P.(C) 8557/2022

AARON PEREIRA Petitioner
Through: Mr. Vivek Kohli, Senior Advocate with Mr. Nalin Talwar, Mr. Sunil Tyagi, Ms. Yeshi Rinchhen, Mr. Akash Yadav and Mr. Juvas Rawal, Advocates.

versus

AIR INDIA LIMITED & ORS. Respondents
Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Avishkar Singhvi, Mr. Shivam Chanana and Mr. Advaya Hari Singh, Advocates for R-1.
Ms. Akanksha Das, Advocate for AIAHL.

98

+ W.P.(C) 8564/2022

AVIK MONDAL

..... Petitioner

Through: Mr. Vivek Kohli, Senior Advocate with Mr. Nalin Talwar, Mr. Sunil Tyagi, Ms. Yeshi Rinchhen, Mr. Akash Yadav and Mr. Juvas Rawal, Advocates.

versus

AIR INDIA LIMITED & ORS.

..... Respondents

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Avishkar Singhvi, Mr. Shivam Chanana and Mr. Advaya Hari Singh, Advocates for R-1.
Ms. Akanksha Das, Advocate for AIAHL.
Mr. Farman Ali, Mr. Krishan Kumar and Ms. Usha, Advocates for R-3.

99

+ W.P.(C) 8565/2022

SHREYAS SHRIKANT BANDEKAR

..... Petitioner

Through: Mr. Vivek Kohli, Senior Advocate with Mr. Nalin Talwar, Mr. Sunil Tyagi, Ms. Yeshi Rinchhen, Mr. Akash Yadav and Mr. Juvas Rawal, Advocates.

versus

AIR INDIA LIMITED & ORS.

..... Respondents

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Avishkar Singhvi, Mr. Shivam Chanana and Mr. Advaya Hari Singh, Advocates for R-1.
Ms. Akanksha Das, Advocate for AIAHL.
Mr. Vineet Dhanda, Central Government Standing Counsel with Mr. Shubham Prasad, Mr. Adil Hussain Taqui and Ms. Shwiti Gupta, Advocates for R-3.

100

+ W.P.(C) 8220/2022 & CM APPL. 24827/2022

AKASHDEEP KAUL

..... Petitioner

Through: Mr. Vivek Kohli, Senior Advocate with Mr. Nalin Talwar, Mr. Sunil Tyagi, Ms. Yeshi Rinchhen, Mr. Akash Yadav and Mr. Juvas Rawal, Advocates.

versus

AIR INDIA LIMITED & ORS.

..... Respondents

Through: Mr. Rajiv Nayyar, Senior Advocate with Mr. Avishkar Singhvi, Mr. Shivam Chanana and Mr. Advaya Hari Singh, Advocates for R-1.
Mr. Vijay Joshi and Mr. Sahaj Garg, Advocates for R-3.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Above writ petitions were filed by the Petitioners *inter alia* seeking directions to Air India Limited ('AIL') for release of emoluments/terminal benefits etc. The common thread that, however, runs in all the writ petitions is the prayer for quashing of 'clause 7' in the offer letters, wherein it is provided that after completion of training as Trainee Pilot and on being absorbed as First Officers/Co-Pilot, a sum of Rs. 25,00,000/-, being the cost of training, will be recovered from the salary in 84 equal monthly instalments. Trainee Pilot was required to execute a Surety Bond to satisfactorily complete the training and serve for a period of at least 07 years upon absorption along with execution of a Performance Bond after completion of each subsequent training. Additionally, there was a requirement of giving

post-dated cheques of Rs.25,00,000/- towards the training cost.

2. Appearing on behalf of AIL, Mr. Rajiv Nayyar, learned Senior Counsel, raises an objection to the maintainability of the writ petitions against AIL, owing to the disinvestment process initiated by the Government of India. It is submitted that originally AIL was a statutory body constituted under the Air Corporations Act, 1953, however, post its repeal and in terms of the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994, it had become a wholly owned company of the Government of India. It is at this stage that the present writ petitions were filed and rightly entertained. However, now AIL has been privatised and the entire shareholding of the Government of India in AIL has been transferred to M/s. Talace Pvt. Ltd., (a wholly owned subsidiary of M/s. Tata Sons Pvt. Ltd.) and thus having ceased to be a Public Body or Authority within the meaning of Article 12 of the Constitution of India, AIL is no longer amenable to writ jurisdiction of this Court under Article 226 of the Constitution. In support of the objection, reliance is placed on the judgment of a Co-ordinate Bench of this Court in ***Naresh Kumar Beri & Ors. v. Union of India & Ors., 2022 SCC OnLine Del 3585***, wherein this issue was examined and after deliberating on the stands of the respective parties, writ petition was dismissed. Operative para of the judgement is 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.”

3. Mr. Vivek Kohli, learned Senior Counsel for the Petitioners submits that the writ petitions were filed between the years 2019 to 2022 and thus Petitioners should not suffer on account of the intervening circumstances. A serious concern is also raised that if the writ petitions are dismissed, leaving the Petitioners to resort to other remedies, AIL may, in future, disown its liability towards the Petitioners on ground of privatization.

4. In order to allay the afore-stated fear/concern of the Petitioners, Mr. Nayyar, on instructions, states that if the Petitioners were to succeed in their claims before the Appropriate Forum, the liability shall rest entirely on AIL.

5. Having heard the learned Senior Counsels for the parties, the question that pronouncedly emanates is whether the writ petitions are liable to be dismissed on ground of maintainability, in wake of the admitted position that during the pendency of these petitions, on 27.01.2022, 100% shareholding of Air India has been acquired by M/s. Talace Pvt. Ltd. and Air India has ceased to be a Government controlled company. A Co-ordinate Bench of this Court in ***Naresh Kumar Beri (supra)*** has already examined this issue and held that a writ petition ceases to be maintainable. The judgement squarely covers the present cases and this Court is not persuaded to take a different view. It is true that when the writ petitions were filed, they were maintainable as AIL was amenable to the writ jurisdiction, however, under the changed scenario, this Court is precluded from issuing a writ of mandamus against AIL.

6. Having said that, I may also pen down that Mr. Kohli is not wrong in questioning as to who would bear the liability in case the Petitioners were to take recourse to other remedies in a different

Forum and succeed. This concern or disquiet, is put to rest by the assurance given on behalf of AIL, that in the event of the Petitioners succeeding in establishing their claims, the liability shall be borne by AIL. The assurance given on behalf of AIL is taken on record and needless to state shall bind the said Respondent.

7. In view of the aforesaid, the writ petitions along with pending applications are dismissed, granting liberty to the Petitioners to take recourse to remedies available to them in law, in an appropriate Forum. It is made clear that the time period, for which the writ petitions have been pending in this Court, will be excluded for the purpose of computation of limitation, should the Petitioners seek any remedy by instituting fresh proceedings in a Forum, where question of limitation will be relevant and may arise.

JYOTISINGH, J

FEBRUARY 17, 2023/yo/shivam