2023:DHC:7646

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

% **Date of order : 12th October, 2023**

\+ W.P.(C) 523/2019

YASHPAL SHARMA ..... Petitioner

Through: Mr.R.S. Garia, Mr.Shashank Singh and Mr.Madan Chandra, Advocates alongwith petitioner

versus

TATA POWER DELHI DISTRIBUTION LIMITED & ORS ..... Respondents

Through: Mr.Karan Bharihoke, 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 petitioner seeking the following reliefs:-

> *"(A) Quashing the enquiry report dated 5.12.2013 communicated vide letter dated12.12.2013 wherein the Petitioner was held guilty of the charges.*
> *(B) quashing order imposing penalty dated 22.06.2017.*
> *(C) quashing order dated 31.08.2018 rejecting the appeal filed by the Petitioner;*
> *(D) direct grant of all the benefits arising out of agreement dated 01.04.2011, and higher education reward withheld on the*

pretext of the impugned disciplinary proceedings and orders passed therein in, which have been challenged by way of the present Writ Petition, along with all consequential benefits.
(E) Pass any other order as this Hon'ble court may be deemed fit in the fact and circumstances of the case."

2. By way of the instant petition, the petitioner seeks quashing of the enquiry report dated 5th December 2013, wherein, the petitioner was held guilty of the charges. He also seeks quashing of the order dated 22nd June 2017, vide which a penalty has been imposed upon the petitioner. The petitioner has further prayed for quashing of the order dated 31st August 20188, as per which the petitioner's appeal has been rejected. Along with the said prayers, the petitioner further seeks grant of all the benefits arising out of agreement dated 1st April 2011.

3. Learned counsel appearing on behalf of the respondent submitted during the course of the arguments that the present petition may be dismissed on the grounds of non-maintainability since the respondent company has been disinvested and 51% share of the same lies in the hands of a private organization i.e. the respondent company.

4. *Per contra*, learned counsel appearing on behalf of the petitioner vehemently opposed the arguments advanced by the respondent and submitted that the present petition is maintainable since the respondent company falls within the ambit of Article 12 of the Constitution of India and that 49% share of the respondent company is controlled by the Government.

5. Heard the learned counsel appearing on behalf of the parties and perused the record.

6. Pursuant to the unbundling of the erstwhile Delhi Vidyut Board, w.e.f., 1st July 2002, the respondent No. 1, a company registered under the provisions of the Companies Act, 1956, and having majority share of 51%, took over the distribution of electricity in north and north-west Delhi. Further, it is registered with the Registrar of Companies as a Non-government company.

7. This Court is of the view that the respondent, as an electricity distribution Company may be discharging a public duty but the same is with respect to its consumers and can never be said to be vis-à-vis the petitioner. Since the respondent is a private body, the present writ petition is not maintainable in light of the judgment passed by this Court in ***Saiyam Mishra v. AIR India Ltd.*, 2023 SCC OnLine Del 4904** as well as the judgment passed by the Hon'ble Division Bench of the Bombay High Court in the case of ***R.S. Madireddy & Anr. V. Union of India*, 2022 SCC OnLine Bom 2657.** The relevant paragraph of ***Saiyam Mishra (Supra)***, has been reproduced as under:

> "*29. Under Article 226 of the Constitution of India a writ can be issued "to any person or authority" and "for enforcement of rights conferred by Part-III and for any other purposes". The scope of Article 226 of the Constitution of India, though unfettered is subject to the restraint that a writ cannot be issued against any private entity or for the purpose of settling private disputes. Therefore, the scope of invocation of Article 226 of the Constitution of India against a private body is limited to*

such private body essentially performing a public duty or performing functions akin to functions of the State as per Article 12 of the Constitution of India. A private body doing commercial activities is not amenable to writ jurisdiction except a writ of Habeas Corpus."

The relevant paragraph of ***R.S. Madireddy (Supra)*** has been reiterated below:

"*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.*"

8. Taking into consideration the fact that 51% of the controlling shares of the respondent company are privately owned and 49% shares are owned by the government and as a result of such disinvestment of 51% of the shares of the company, the management and control, no doubt, has gone into private hands.

9. The above said view which is in terms of the concept of 'privatization' is in consonance with the principle held by the Hon'ble Supreme Court in the constitutional bench judgment of ***BALCO Employees'***

***Union (Regd.) v. Union of India,* (2002) 2 SCC 333**. Relevant paragraph of the same has been reproduced as under:

> "*60. As a result of disinvestment of 51% of the shares of the Company, the management and control, no doubt, has gone into private hands. Nevertheless, it cannot, in law, be said that the employer of the workmen has changed. The employees continue to be under the Company and change of management does not in law amount to a change in employment.*"

10. This Court is of the view that there is no deep and pervasive control of the State or the Government in the operation of the respondent company in the instant petition. Therefore, the respondent company having been privatized is not amenable to the writ jurisdiction, as per the decision rendered by the Hon'ble Supreme Court in ***BALCO Employees' Union (Regd.) (Supra)***.

11. In essence, the submission is that the petitioner is seeking a public law remedy for an alleged private wrong. Only those decisions which have a public element can be judicially reviewed under the writ jurisdiction. There is no existence of a deep and pervasive State control on the respondent company. The control if any is only regulatory in nature as applicable to other similar bodies. In view of the same, the petitioner has failed to appreciate that if the rights are purely of a private character, no *writ* can be issued.

12. The respondent in the instant case is a private body and involved in the commercial activities, therefore, as per the law settled, in such circumstances, a writ cannot be held to be maintainable except a writ of

Habeas Corpus, and the same has been already discussed in the judgements mentioned hereinabove.

13. In light of the afore-mentioned judgments, this Court is of the view that the grievance of the petitioner, if any, therefore, cannot be entertained by way of a writ petition under Article 226 of the Constitution of India.

14. In view of the above, the petition is thus, dismissed as being not maintainable. The petitioner is at liberty to approach the appropriate forum to take recourse to remedies available in law. It is made clear that the duration of the disposal of the present petition, shall be excluded for the purpose of computation of limitation, in case the petitioner seeks to avail remedy by instituting fresh proceedings.

15. Nothing stated hereinabove shall tantamount to any expression on the merits or demerits of the case.

16. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 12, 2023
Dy/ryp