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

% *Date of Decision: 21st April, 2023*

\+ W.P.(C) 3423/2020

PANKAJ BHARGAVA ..... Petitioner

Through: Mr. Hemant Kumar and Mr. Shivam Jangra, Advocates.

versus

AIR INDIA LIMITED ..... Respondent

Through: Ms. Fauzia Shakil and Mr. Ujjwal Singh, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking the following reliefs:-

> *"1. Set aside the impugned order Dt. 06.01.2020, passed by the Executive Director (Commercial), Air India Ltd.;*
>
> *2. Stay the impugned order Dt. 06.01.2020, passed by the Executive Director (Commercial), Air India Ltd., till the pendency of the present proceedings;*
>
> *3. Pass any other order as this Hon'ble Court may deem fit.."*

2. Ms. Fauzia Shakil, learned counsel appearing on behalf of the Respondent raises a preliminary objection to the maintainability of the writ petition on the ground that as a result of disinvestment process initiated by the Government of India, Air India Limited ('AIL') has ceased to be a public body and therefore, no writ can lie against AIL in the circumstances that exist today. 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 that stage that the present writ petition was filed, however, in light of the position that obtains today, where AIL has been privatized 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.), no writ petition can lie under Article 226 of the Constitution of India as AIL is no longer a public body or Authority within the meaning of Article 12 of the Constitution of India. In order to support the submissions, Ms. Fauzia Shakil, learned counsel for the Respondent relies on a judgment of this Court in ***Naresh Kumar Beri and Others v. Union of India and Others, 2022 SCC OnLine Del 3585,*** relevant para of which is as under:

> *"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. Hemant Kumar, learned counsel appearing on behalf of the Petitioner, *per contra*, submits that the judgment passed by the Bombay High Court in ***R.S. Madireddy and Another v. Union of India and Others, 2022 SCC OnLine Bom 2657,*** dismissing the writ petition on account of disinvestment of AIL has been challenged before the Supreme Court and notice has been issued on 16.01.2023. Learned counsel also expresses an apprehension that if the writ petition is disposed of and Petitioner is left to resort to other remedies, AIL may, in future, disown its liability towards the Petitioner on the

ground that it is privatized.

4. Ms. Fauzia Shakil, in response, submits that *albeit* notice has been issued by the Supreme Court, as rightly contended by the counsel for the Petitioner, however there is no stay. She further submits that the apprehension expressed on behalf of the Petitioner is wholly misplaced inasmuch as, if the Petitioner was to succeed before the Appropriate Forum, the liability shall rest entirely on AIL.

5. Having heard the learned counsel for AIL and counsel for the Petitioner, the question that pronouncedly emanates is whether the writ petition is liable to dismissed on ground of maintainability, in wake of the admitted position that during the pendency of this petition, 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 writ petition ceases to be maintainable. The judgement squarely covers the present case and this Court is not persuaded to take a different view. It is true that when the writ petition was filed, it was 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. Hemant Kumar is not wrong in questioning as to who would bear the liability in case the Petitioner was 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 Petitioner succeeding in establishing his claims, the liability shall be owned and borne by AIL. The assurance given on behalf of AIL is taken on record and needless to state shall bind the Respondent.

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

JYOTI SINGH, J

APRIL 21, 2023/shivam