

2023:DHC:4881-DB



Neutral Citation Number: 2023:DHC:4881-DB

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

+ **Date of Decision: 22.05.2023**

% **LPA 443/2023 & CM APPL. 26356/2023, CM APPL. 26357/2023**

MOHAMMAD JAFOR ALI MOLLAH Appellant

Through: **Mr. Muhammad Suhail, Advocate.**

versus

DIRECTOR GENERAL OF CIVIL AVIATION & ANR.

..... Respondent

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J. (ORAL)

1. This appeal raises important questions pertaining to the maintainability of writ petition against the State or its instrumentality in contractual matters (service matters). Whether State continues to the State or changes its character as it steps into the contractual domain and becomes free from constitutional standards, is the core issue before us. The appellant before this Court was employed by respondent no. 2 on a fixed term



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employment for five years. The parties entered into a contract of service, however, he was terminated prematurely before the expiration of the term of five years. The said termination order was assailed by the appellant by way of a writ petition which came to be dismissed on 21.12.2022. The present LPA is arising out of the said order dated 21.12.2022, passed by learned Single Judge in W.P.(C) No. 8685/2022.

2. The factual scenario, in brief, reveals that an advertisement was issued by respondent no. 2 on 07.08.2019 for recruitment at the post of Aircraft Maintenance Engineer (AME) in Air India Engineering Services Limited (AIESL). The recruitment was stated to be a fixed term employment for a period of five years, along with a clause for extension as well as for premature termination. The advertisement provided that salary would fall in the range of Rs.95,000/- to Rs.1,28,000/-, commensurate with qualification and experience of the candidate. The appellant, in response to the advertisement dated 07.08.2019, submitted his application. Upon assessment of his suitability, he was appointed as AME in AIESL vide appointment order dated 10.01.2020. Accordingly, a contract of service was executed between the appellant and respondent No. 2 laying down the terms of employment. Thereafter, the appellant was posted as contractual AME in Western Region, Group A, Mumbai w.e.f. 28.01.2020.

3. Initially, the appellant was paid a salary of Rs. 37,000/- as per the contract of service. The salary was supposed to be increased, to be brought in line with the salary structure mentioned in the advertisement, after the

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receipt of authorization from the Quality Division of the respondent. On 01.06.2020, necessary authorization for store inspection was issued in favour of the appellant and on 25.03.2021, Category-A certificate was issued to the appellant by the Quality Division of the respondent at Mumbai. However, despite authorization, the appellant's salary was not revised. The appellant requested for revision of his salary by writing various emails to the respondent. On 12.05.2021, Director General (Quality) of the respondent forwarded a note-sheet to the General Manager (Engineering) recommending the revision of appellant's salary primarily on the ground that the appellant has received due authorization from the Quality Division and was eligible for the salary revision at par with other employees engaged in similar work. However, he was not paid the full salary. From January, 2022 onwards, he was paid Rs.70,000/- per month, however, full salary was not paid even then. The appellant again pressed for full salary by making various representations through email.

4. While correspondence between the appellant and respondent was going on, he sent an email on 18.05.2022 requesting for grant of full salary. On 20.05.2022, a termination order was issued to the appellant. Thereafter, the appellant addressed another email dated 23.05.2022 to the Chief Executive Officer of AIESL and protested against his termination, stating that his services have been put to an end without affording him any opportunity to show cause. He also requested for revocation of the order and sought posting to Hyderabad, stating that he would be able to manage his



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finances better if he could be posted in his hometown. The email received no response from the respondent and consequently, the appellant preferred a writ petition before the Court.

5. Before Ld. Single Judge, the appellant prayed for the following reliefs:

- "i. To quash/ set aside the termination letter dated 20.05.2022 in Ref No. AIESL/Contractual/Termination/88009300 issued by the Respondent as being unconstitutional, illegal, void and non-est in the eyes of law; and*
- ii. To direct the respondents to release balance amount of the salary of the Petitioner @ Rs.95,000/- per month w.e.f 01.06.2020 till date after adjusting the paid amount of salary to him along with interest @ 18% p.a.; and*
- iii. To direct the respondents to issue certificates of B1 Type rated course on A320 Family Aircraft fitted with CFM56 engine to the petitioner which is on hold with the respondents till date;"*

6. During the course of hearing, the prayer at serial no. 3 was dropped by the appellant as he had received the required certificates. The same has been duly recorded in the impugned order. A detailed reply in the form of counter-affidavit was filed on behalf of Respondent No.2. The respondent, at the outset, questioned the maintainability of the petition under Article 226 of the Constitution on the ground that the petitioner was a contractual employee, and was strictly governed as per the terms and conditions of the contract of service executed between the parties.

7. The respondent admitted that pursuant to an advertisement dated 07.08.2019, the Petitioner was shortlisted and appointed as Aircraft



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Maintenance Engineer vide appointment letter dated 10.01.2020. Thereafter, a Fixed Term Employment Agreement (FTEA) was executed on 25.01.2020. Relying upon Clause 11 of the said agreement, the respondent submitted that it was permissible for the company to terminate the employment of the appellant at any point of time after giving a 3 months' notice or salary in lieu thereof. It further submitted that as per the agreement, the respondent was not obliged to assign reasons for the termination.

8. The respondent further submitted that as per the DGCA Guidelines, the appellant was required to obtain appropriate authorization from AIESL's Quality Division to utilize his license and the salary of the respondent was commensurate with such authorization. The respondent further submitted that the authorization was to be obtained by the appellant after gaining minimum 06 months of documented practical experience in the AIESL. Since the appellant was not performing his duties as AME at the relevant point of time, he was offered a lower salary, of Rs.37,000/- per month.

9. The respondent further submitted that instead of obtaining the relevant authorization, the appellant had obtained the authorization as Store Inspector by June, 2020 and the said authorization as Store Inspector was not consistent with the required qualification and was not the same as AME. Therefore, the appellant was not given the salary of AME and he was paid a lower salary.

10. Further, the respondent submitted that the appellant was granted CAT-A authorization by AIESL on 08.05 2021 and it was only after that,



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from 01.01.2022, his salary was increased to Rs. 70000/- per month. The respondent urged that the CAT-A authorization was not full AME authorization and holders of the same were not authorized to handle/ repair snags in aircrafts, which was essential for an AME. Thus, the appellant was not paid the full salary of Rs.95,000/-.

11. Regarding termination, the respondent submitted that the appellant was not performing his duties properly and was even warned by an email dated 17.04.2022 addressed to him by Station Maintenance Engineer. Thus, as the submission goes, the appellant was warned of disciplinary action.

12. The respondent further submitted that clause 11.3 empowered the respondent to terminate the appellant and the same was done strictly in consonance with the contract executed between the parties and salary in lieu of termination was duly paid by it.

13. After analysis, Ld. Single Judge, sided with the respondent and dismissed the writ petition. The said order of dismissal is assailed before us. Before proceeding towards the formulation of issues arising for our consideration, we may have a look at the reasons that weighed upon Ld. Single Judge while passing the impugned order.

14. Noting that the parties were bound by a contract of service, Ld. Single Judge observed that the writ jurisdiction of this Court could not be invoked for the enforcement of a pure contract of service as the same would amount to specific performance of a contract. The relevant para reads thus:

“16. It is therefore clear that the appointment/employment of the Petitioner was on a fixed term contract, terminable at the



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*discretion of AIESL, without assigning reason and with notice of three months or salary in lieu thereof. Petitioner by way of the present petition seeks enforcement of this contract of service. **The question that arises for consideration before this Court is whether Petitioner can enforce this contract of service by invoking the writ jurisdiction of this Court and the answer, in the opinion of this Court, is in the negative.** Law does not permit enforcement of personal contract of service and this is open to very few exceptions. A contract which is determinable cannot be specifically enforced and any such direction by a writ Court would amount to directing specific performance of a contract ...”(emphasis supplied)*

The Court observed that the contract of service in the present case is a determinable contract and even otherwise, a determinable contract cannot be specifically enforced. Ld. Single then analysed a series of judgments on the point of maintainability of writ petition in such cases and concluded that a non-statutory and determinable contract of service cannot be enforced in a writ petition. The concluding para reads thus:

*“23. From a conspectus of the aforesaid judgements, **it is crystal clear that a non-statutory and determinable contract of service cannot be enforced in a writ petition.** Indisputably, Petitioner was appointed under a contract of service, terminable by a 3 months notice or salary in lieu thereof, which cannot be enforced by the Petitioner by way of the present writ petition and no direction can be given by this Court to set aside the Termination Letter and/or direct reinstatement of the Petitioner.”*

(emphasis supplied)



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15. Taking exception to the aforesaid order passed by Ld. Single Judge, the appellant contends that the respondent is “State” within the meaning of Article 12 of the Constitution and thus, an order passed by the respondent could be assailed by way of a writ petition under Article 226. He further contends that the termination order was passed without enabling him to show cause and denial of such opportunity was in complete negation of the principles of natural justice. He further contends that the termination clause in the service agreement was an unconscionable clause as it enabled the respondent to “hire and fire” without assigning any reason whatsoever for termination. It is urged that such clause cannot be sustained as constitutional. To advance this point, the appellant placed reliance upon the decisions of the Hon’ble Supreme Court in *Kumari Shrilekha Vidyarthi v. State of Uttar Pradesh*, (1990) SCR Suppl. (1) 625, *Balmer Lawrie & Co. Ltd. & Ors. v. Partha Sarathi Sen Roy*, (2013) 8 SCC 345 and *West Bengal State Electricity Board & Ors. v. Desh Bandhu Ghosh & Ors.*, (1985) 3 SCC 116.

16. The appellant further contends that the note-sheet dated 12.05.2021 was an admission on the part of the respondent that the appellant was discharging his duties efficiently and his salary was not revised despite issuance of authorization in his favour with effect from 01.06.2020, as promised in the service agreement.



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17. Upon a careful consideration of the grounds urged in this appeal and the impugned order, we may now proceed to delineate the issues that arise for our consideration:

- i. Whether the order of termination and non-payment of salary as per the contract of service could be assailed by way of a writ petition under Article 226.
- ii. If yes, whether the order of termination and non-payment of salary was sustainable in the eyes of law.

18. The issues touching upon the true scope of the writ jurisdiction of the High Court under Article 226 of the Constitution have emerged time and again before the constitutional courts. Despite a long journey amidst divergent lanes of judicial opinion, the question has not been answered in black and white, and justifiably so. No straight-jacket formula could be laid down for determining the scope of Article 226. Legal exactitude cannot be achieved on this question and it must be determined in the peculiar facts and circumstances of each case. Let us briefly examine the law on this point.

19. We may usefully refer to a recent decision of the Hon'ble Supreme Court in *St. Mary's Education Society v. Rajendra Prasad Bhargava*, (2023) 4 SCC 498, wherein the Court analysed and summed up the legal position in a succinct manner as follows:

“75. We may sum up our final conclusions as under:

...

...



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75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element.

(emphasis supplied)

In *Balmer Lawrie & Co. Ltd. v. Partha Sarathi Sen Roy*, (2013) 8 SCC 345, the Court was dealing with a similar clause, akin to the termination clause in the present case, which provided for termination by a three months’ notice without assigning any reason. The Court first held the company in question to be “State” within the meaning of Article 12 and then went on to declare the said clause as “hire and fire” clause and thus, unsustainable in law. The relevant portion reads thus:

“39. Clause 11(a) of the letter of appointment reads as under:

“The Company shall have the right, at its sole discretion, to terminate your services by giving you three calendar months’ notice in writing and without assigning any reason. The Company also reserves the right to pay you in lieu of notice, a sum by way of compensation equal to three months’ emoluments consisting of basic salary, dearness allowance, house rent



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assistance and bonus entitlements, if any, after declaration of bonus.”

40. Undoubtedly, the High Court has not dealt with the issue on merits with respect to the termination of the services of the respondents herein. However, considering the fact that such termination took place several decades ago, and litigation in respect of the same remained pending not only before the High Court, but also before this Court, it is desirable that the dispute come to quietus. Therefore, we have dealt with the case on merits. In keeping with this, we cannot approve the “hire and fire” policy adopted by the appellant Company, and the terms and conditions incorporated in the Manual of Officers in 1976, cannot be held to be justifiable, and the same being arbitrary, cannot be enforced. In such a fact situation, Clause 11 of the appointment letter is held to be an unconscionable clause, and thus the Service Condition Rules are held to be violative of Article 14 of the Constitution to this extent. The contract of employment is also held to be void to such extent.”

(emphasis supplied)

20. Coming down to the specific question of maintainability of a writ petition under Article 226 for judicial review of a contractual action by the State or its instrumentality, we may briefly traverse through the line of precedents. In *Shrilekha Vidyarthi (Kumari) v. State of U.P.*, (1991) 1 SCC 212, Hon’ble Supreme Court observed thus:

“19. Even otherwise and sans the public element so obvious in these appointments, the appointment and its concomitants viewed as purely contractual matters after the appointment is made, also attract Article 14 and exclude arbitrariness



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permitting judicial review of the impugned State action. This aspect is dealt with hereafter.

20. *Even apart from the premise that the 'office' or 'post' of DGCs has a public element which alone is sufficient to attract the power of judicial review for testing validity of the impugned circular on the anvil of Article 14, we are also clearly of the view that this power is available even without that element on the premise that after the initial appointment, the matter is purely contractual. Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, can it be said that the State can thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more? **We have no hesitation in saying that the personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot co-exist.***

22. *There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and*



impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.

*24. The State cannot be attributed the split personality of Dr Jekyll and Mr Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. **The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the State which must***



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invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity.

28. *Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, we have no hesitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14.”*

(emphasis supplied)

The above issue was more categorically answered in **ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.**, (2004) 3 SCC 553, wherein the Court observed thus:

“8. As could be seen from the arguments addressed in this appeal and as also from the divergent views of the two courts below, one of the questions that falls for our consideration is whether a writ petition under Article 226 of the Constitution of India is maintainable to enforce a contractual obligation of the State or its instrumentality, by an aggrieved party.

...

19. *... This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for*



entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent ...”

27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

28. ...And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.”(emphasis supplied)



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In *Noble Resources Ltd. v. State of Orissa*, (2006) 10 SCC 236, the Court succinctly observed thus:

“15. It is trite that if an action on the part of the State is violative of the equality clause contained in Article 14 of the Constitution of India, a writ petition would be maintainable even in the contractual field. A distinction indisputably must be made between a matter which is at the threshold of a contract and a breach of contract; whereas in the former the court's scrutiny would be more intrusive, in the latter the court may not ordinarily exercise its discretionary jurisdiction of judicial review, unless it is found to be violative of Article 14 of the Constitution. While exercising contractual powers also, the government bodies may be subjected to judicial review in order to prevent arbitrariness or favouritism on their part. Indisputably, inherent limitations exist, but it would not be correct to opine that under no circumstances a writ will lie only because it involves a contractual matter.”(emphasis supplied)

In *Joshi Technologies International Inc. v. Union of India*, (2015) 7 SCC 728, the Court observed that violation of the principles of natural justice could also form sufficient basis for entertaining a contractual dispute involving State or its instrumentality by way of a writ petition. It summarized certain principles as:

“70. Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:

70.1. At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.



70.2. *State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.*

...

...

70.7. *Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.”*(emphasis supplied)

More recently, in *Popatrao Vyankatrao Patil v. State of Maharashtra*, (2020) 19 SCC 241 and *Unitech Limited & Others v. Telangana State Industrial Infrastructure Corporation*, (2021) SCC OnLine SC 99, the issue was addressed on similar lines. It was observed that a writ under Article 226 would be maintainable if the action, even if contractual, is arbitrary and unreasonable and thus, violative of Article 14. The relevant para from *Popatrao Vyankatrao Patil* (Supra) reads thus:

“11. It could thus be seen, that even if there are disputed questions of fact which fall for consideration but if they do not require elaborate evidence to be adduced, the High Court is not precluded from entertaining a petition under Article 226 of the Constitution. However, such a plenary power has to be exercised by the High Court in exceptional circumstances. The High Court would be justified in exercising such a power to the exclusion of other available remedies only when it finds that the action of the State or its instrumentality is arbitrary



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and unreasonable and, as such, violative of Article 14 of the Constitution of India ...”(emphasis supplied)

21. The remedy contemplated under Article 226 is a special remedy which is a gift of the Constitution and is not controllable by any statute. It empowers the High Court to issue writ or pass any order against any person or authority to enforce any fundamental right in Part-III or for any other purpose. A bare perusal of the provision reveals its wide reach. In order to bring this provision within judicially determinable parameters, in light of the precedents discussed above, it may be observed that a writ under Article 226 would be maintainable in the following cases:

- i. When the respondent is a “State” or other authority within the meaning of Article 12 of the Constitution;
- ii. When the respondent is engaged in an activity of public nature and the action complained of impinges upon an element of public law;
- iii. When the respondent was bound to act in accordance with a statute and the impugned act violates any statutory mandate.

The maintainability of writ petition in purely contractual matters involving State or its instrumentalities stands on a slightly different footing. In addition to the factors indicated above, in contractual matters, a writ petition under Article 226 is maintainable in the following cases:



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iv. In contractual matters, when the act of the State or its instrumentality is arbitrary or unreasonable and violative of Article 14 of the Constitution.

v. In contractual matters, when the act of the State or its instrumentality is violative of the principles of natural justice.

22. The above parameters are not exhaustive and can never be made exhaustive, as discussed above. It is so because the power under Article 226 is a plenary power directly sourced from the Constitution and thus, it cannot be narrowed down in any sense. Thus, Ld. Single Judge fell in error in coming to the conclusion that a non-statutory contract of service is *per se* beyond the scope of a writ petition even if the respondent is an instrumentality of the State. We are not inclined to accept the view that since a determinable contract cannot be specifically enforced under the Specific Relief Act, 1963 the same cannot be assailed by way of a writ petition either. For, the writ jurisdiction of the High Court is plenary and stands on an independent footing. The limitations implicit in a statute cannot put fetters on the writ jurisdiction.

23. In the present case, it is the admitted position that respondent no. 2 Air India Engineering Services Pvt. Ltd. (AIESL) is a state-controlled company and thus, falls within the expansive definition of Article 12. In addition to the respondent entity being an instrumentality of the State, it is also essential that the act complained of involves an element of public law or public interest. The act in question is of termination and it stems from a pure



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contract of service. There is no violation of any statutory mandate. In such cases, a writ petition is maintainable, however, in a restricted arena only. The line of precedents, beginning from *Shrilekha Vidyarthi* (Supra) and *ABL International* (Supra) make it amply clear that the State does not lose its character of being a State on entering into contractual relationships. It continues to be State and continues to be bound by the constitutional obligations of fairness and reasonableness in its acts. Although, one may note that a contract also continues to be a contract, even if entered into by State and thus, in ordinary circumstances, contractual disputes are not to be entertained in a writ petition. The reasons are two-fold – availability of an efficacious remedy in civil law and involvement of complex questions of fact in such cases. For this reason, a writ petition in contractual disputes is maintainable in exceptional circumstances only, which reveal the violation of Article 14 or the constitutional standards of reasonableness or non-arbitrariness, as implicit in Article 14. In other words, the State or its instrumentality cannot be permitted to subvert the standard of equality enshrined in Article 14, and cannot be given a free pass merely because the matter is contractual in nature. That is the limited scope of a writ petition in contractual matters involving State. Equal, fair and reasonable treatment at the hands of the State lies at the core of all its functions – statutory or contractual. To hold otherwise would cause a grave prejudice to the guarantees offered by the Constitution, specifically in view of the fact that the State is increasingly adopting contractual means in its usual transactions.



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24. Having said so, it is important to note that in judicial review of contractual disputes, the Court is not analyzing the constitutionality or validity of the terms of a contract, as if it is a statute. Rather, the Court is examining the manner of decision making i.e. procedural correctness. It is so because unlike a statute, in a contract, the parties decide their own rights and liabilities in a voluntary exercise. A contract comes into being only upon acceptance of the offer. Even if the terms of a contract appear to be unconscionable, there are efficacious remedies in law for cancellation, termination or revocation of contracts, on settled parameters. Thus, when a contractual dispute involving State is taken up in a writ petition, the Court is concerned with the procedural fairness of decision making, in order to ascertain whether the procedure adopted in the case was manifestly arbitrary or has led to denial of fairness. In other words, the endeavour is to see whether the act of the State or its instrumentality has fallen short of the constitutional standard expected from it in Article 14. If found so, the same would automatically be antithetical to public interest. Even in *Shrilekha Vidyarthi* (Supra) , it is specifically observed that all acts of State have an impact on public good and public interest.

25. We have also carefully considered the authorities relied upon by Ld. Single Judge in the impugned judgment. We may observe that the factual scenario in the said cases was materially different from the one that arises before us. For instance, in *Deepak Wankhede v. Indian Renewable Energy Development Agency*, MANU/DE/2114/2020, the Court was dealing with a



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contract of personal service with a private company, and not with an authority under Article 12. In *Satyam Thapliyal v. Air India Limited and Another*, 2022 SCC OnLine 3099, the Court was dealing with a case against Air India Limited (AIL) and conducted a review on merits under Article 226 and found the termination to be justified. The writ petition in that case was not dismissed on the ground of maintainability. In *L.M. Khosla v. Thai Airways International Public Company Limited*, 2012 SCC OnLine Del 4019, the Court was seized of a civil suit (not a writ petition) and was dealing with the question of specific enforcement of a determinable contract. In *Ram Niwas Sharma v. Union of India and Ors.*, 2020 SCC OnLine All 205, the Court was adjudicating upon a claim raised against a private school and not against any organization qualifying as “State” or other authority under Article 12. Similar was the case in *Naresh Kumar Beri and Others v. Union of India*, 2022 SCC OnLine Del 3585.

26. It is reiterated that AIESL is a State controlled company and is a State as defined under Article 12 of the Constitution of India.

27. The Appellant before this Court was an employee of AIESL and instrumentality of State. Therefore, even though he was serving as a contractual employee, the Writ Petition under Article 226, in light of the aforesaid discussion, was certainly maintainable, and, therefore, the order passed by the Learned Single Judge dated 21.12.2022 is hereby set aside. Accordingly, the matter is remanded back for deciding on merits in accordance with law.

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28. It is needless to mention that this Court has not observed anything on merits except on the issue of maintainability of the Writ Petition, and, therefore, the Learned Single Judge shall be free to decide the matter afresh and in accordance with law on merits.

29. The Parties are directed to appear before the Learned Single Judge on 01.08.2023.

30. The present LPA stands disposed of.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J.

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