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

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

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+ W.P.(C) 6280/2021 & CM APPL. 19831/2021, 43285/2022

CAPT. GURDEEP SINGH TIWANA & ANR. Petitioners

Through: Mr. Ankit Vijaywargiya,
Advocate.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Vivek Goyal with
Mr. Gokul Sharma, Advocates for R-1.
Mr. Rajiv Nayyar, Senior Advocate with
Mr. Amit Kumar Mishra, Mr. Azeem
Samuel, Ms. A. Barman, Ms. Rukmini B.,
Mr. Shivam Chanana and Mr. Sidhant Bajaj,
Advocates for R-2.

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+ W.P.(C) 6507/2021 & CM APPL. 51319/2022

CAPT. VIRENDER SINGH TANWAR Petitioner

Through: Mr. Ankit Vijaywargiya,
Advocate.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Vivek Goyal with
Mr. Gokul Sharma, Advocates for R-1.
Mr. Rajiv Nayyar, Senior Advocate with
Mr. Amit Kumar Mishra, Mr. Azeem
Samuel, Ms. A. Barman, Ms. Rukmini B.,
Mr. Shivam Chanana and Mr. Sidhant Bajaj,
Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTISINGH, J. (ORAL)

1. Present writ petitions have been filed by the Petitioners seeking the following reliefs and on account of common reliefs and issues raised, both petitions are being disposed of by this common judgment:-

“W.P. (C) 6280/2021

a. *Issue a writ, order or direction in the nature of mandamus directing the Respondents to undertake all actions, which are necessary to ensure full and final settlement of, and immediate payment of the amounts due to the Petitioners, along with interest @ 12% per annum;*

b. *Issue a writ, order or direction in the nature of mandamus directing the Respondents to carry out full and final settlement with the Petitioners and make payments of all amounts due to the Petitioners, including the unpaid Flying Allowance and Layover Subsistence Allowance, along with interest thereon;*

W.P. (C) 6507/2021

a. *Issue a writ, order or direction in the nature of mandamus directing the Respondents to undertake all actions, which are necessary to ensure full and final settlement of, and immediate payment of the amounts due to, the Petitioner, along with interest @ 12% per annum;*

b. *Issue a writ, order or direction in the nature of mandamus directing the Respondents to carry out full and final settlement with the Petitioner and make payments of all amounts due to the Petitioner, including the unpaid Flying Allowance and Layover Subsistence Allowance, along with interest thereon.”*

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***, where 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. Learned counsel for the Petitioners submits that the writ petitions were filed in the year 2021 and ought not to be dismissed only because AIL has now been privatized. An apprehension is also expressed as to who would be liable in case the Petitioners were to succeed in establishing their claims in the Forum which they would now approach for seeking redressal.

4. In order to allay the apprehension expressed by the counsel for the Petitioners, Mr. Nayyar submits that the apprehension is wholly misplaced inasmuch as, if the Petitioners were to succeed

before the Appropriate Forum, the liability shall rest entirely on AIL.

5. Having heard the learned Senior Counsel for AIL and counsel for the Petitioners, 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 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 the fears of the Petitioners are not wrong when they question 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, 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.

JYOTI SINGH, J

FEBRUARY 17, 2023/

