



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

% **Date of order : 31st July 2023**

+ **W.P.(C) 14636/2021**

SAIYAM MISHRA AND ORS Petitioners

Through: **Mr.Akshat Bajpai and Ms.Ishanee
Sharma, Advocates**

versus

AIR INDIA LIMITED AND ORS Respondents

Through: **Mr.Attin Shanker Rastogi, Advocate
for R-1 and 2
Ms.Manish Agrawal Narain, CGSC
for R-3/UOI**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition under Article 226 of the Constitution of India has been filed by the petitioners seeking the following reliefs:

“a) issue a writ of Mandamus or any other appropriate writ, order or direction to direct the Respondent No.1 to treat the Petitioner No.1, 2 and 3 as promoted to the post of Dy. Managers w.e.f.23.08.2009 and to recalculate their Revised Basic Pay w.e.f.01.07.2012 as per the salary they would have been paid as Dy. Managers as on 01.01.2012 with all consequential reliefs and interest at commercial rate;



b) issue a writ of Mandamus or any other appropriate writ, order or direction directing the Respondent No.1 to treat the Petitioner No. 1 and 2 as promoted to the post of Senior Assistant General Manager w.e.f. 24.08.2016 and the Petitioner No. 3 as promoted to the post of Senior Assistant General Manager w.e.f. 23.08.2016, with all consequential benefits w.e.f. the said dates with interest at commercial rates;

c) issue a writ of Mandamus or any other appropriate writ, order or direction to direct the Respondent No.1 to grant the Petitioners w.e.f. 01.07.2012 the same Basic Pay as calculated for the Service Engineers (Grade T6/E2) employed in the Ground Service Department pursuant to the Revised Basic Pay implemented pursuant to the Justice Dhramdhikari Committee Report with all consequential reliefs and interest at commercial rate;

Or in the alternative

d) The Hon'ble Court be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction to direct the Respondent no.1 to grant the Petitioners wef. 01.07.2012 the same Basic Pay as calculated for the Service Engineers (Grade T7/E3) employed in the Ground Service Department pursuant to the Revised Basic Pay implemented pursuant to the Justice Dharmadhikari Committee Report with all consequential reliefs and interest at commercial rate;

e) Any other relief that this Hon'ble Court deems fit & proper under given facts and circumstances of the case may also be granted in favor of the Petitioners."

2. Learned Counsel for the petitioner submitted that the petitioners are working as Executives of the General Category under respondent no. 1 company. The respondent no. 1 is Air India Limited, a company registered



under the Companies Act, 1956. The respondent no. 2 is Air India Airport Services Ltd., a wholly owned subsidiary of the respondent no. 1 and the respondent no. 3 is the Ministry of Civil Aviation, Union of India.

3. It is submitted that the petitioner no.1 was offered appointment on 13th July 2007, with the respondent no. 1 as an Assistant Manager (Plant Engineering) at Mumbai and was confirmed *vide* joining report issued by the Deputy General Manager on 27th August 2007.

4. Learned Counsel for the petitioner submitted that the petitioner No.2 and 3 joined the respondent no. 1 on 24th August 2007, as Assistant Manager (Plant Engineering) at Mumbai. The appointment of petitioner No. 2 was confirmed *vide* joining report, dated 03rd September 2007, issued by the Deputy General Manager.

5. It is further submitted that upon the merger of Indian Airlines Ltd. & Air India Ltd., the services of the petitioner no.1 were transferred to the newly formed National Aviation Company of India Ltd. (NACIL), (later on renamed as “Air India Ltd.”), with continuity of the service and on the same terms and conditions of service.

6. It is submitted that in the year of 2013, the Ground Handling Department of the respondent no. 1 was transferred to the respondent no.2 and the services of all the employees of the said department, including the present petitioners, were transferred to the respondent no.2, w.e.f. 10th May 2013, with the continuity of service and on the same terms and conditions of the service as before.

7. Learned Counsel for the petitioner submitted that on 01st November



2017, the services of the petitioner no.1 were “de-seconded” from the respondent no.2, back to the respondent no.1’s Flight Safety Department. It is submitted that the petitioners are now employed in the Ground Handling Department of the respondent no.1.

8. It is submitted that all the changes in the service conditions of the employees, even when they were employed in the afore-mentioned subsidiary companies, were determined and fixed by the respondent No.1, including, promotions and revised basic pay.

9. It is submitted that the detailed criteria for promotions at the time of the appointment of the petitioners were laid down in the Personnel Manual of Indian Airlines Ltd. It is further submitted that the post of Assistant Manager , Grade 10/12 (also known as E-2), the petitioners were covered under para 3(b) of the Chapter on Promotions wherein it is specifically laid down that there was a time-bound promotion on completion of 2 years to the post of Deputy Manager (Grade 13/14 (also known as Grade E3).

10. It is submitted that in 2011, the respondent No. 3, *vide* Notification dated 11th May 2011, set up a Committee headed by Justice D.M. Dharmadhikari (hereinafter, ‘Justice Dharmadhikari Committee’), to give recommendations in respect of harmonization of the service conditions of the aforesaid streams of employees.

11. It is submitted that on 31st August 2012, the Justice Dharmadhikari Committee gave its Report and recommendations. The Justice Dharmadhikari Committee made recommendations to “level map” the two streams of employees. Hence, the post of Assistant Manager in *erstwhile*



Indian Airlines was treated as equivalent to the post of the Deputy Manager in *erstwhile* Air India Ltd.

12. Learned Counsel for the petitioner submitted that in accordance with the recommendations of Justice Dharmadhikari Committee, the petitioners were re-designated as Deputy Managers on 01st October 2013, w.e.f. 1st July 2012, on immediate basis but at the same Payscale and Grade as before (E2).

13. It is submitted that the petitioners being aggrieved by the delayed promotions and the anomaly in Revised Basic Pay, wrote several representations to the various authorities.

14. It is submitted that in the year 2016, the respondents constituted a fresh Anomalies Committee to deal with the anomalies that had arisen from the implementation of the Dharmadhikari Committee Report and had still not been resolved. The Committee was set up in October 2016 to address & rectify various anomalies which had arisen for General Category Officers & General Category, Non-Technical Staff. The respondent No.1 ultimately, in May 2017, announced the rectification of various anomalies, but much to the dismay of the petitioners, this did not, in any way, deal with the issue regarding their promotion.

15. Learned Counsel for the petitioner submitted that the petitioners were promoted to the post of Manager in the year 2014 and were later, promoted to the post of Senior Manager in the year 2016. The petitioners thereafter were promoted to the post of Assistant General Manager (AGM) *vide* letter dated 14th January 2020.

16. It is contended that the aforementioned promotions were granted after



a long delay, but also, they did not come into effect till the due date, as per the applicable rules/criteria, even though they were granted w.e.f. 1st July 2012, itself.

17. Learned Counsel for the petitioner submitted that the petitioners have endlessly and ceaselessly pleaded the respondent's management, the Anomalies Committees, and even the Ministry for years, simultaneously, for redressal of their grievances and injustices suffered by them, but to no avail.

18. In view of the foregoing paragraphs, the learned counsel for the petitioners submitted that the instant petition may be allowed and the relief sought may be granted.

19. *Per Contra* learned counsel for the respondents have vehemently opposed the averments of the petitioners and submitted to that effect that the writ petition is not maintainable since Air India Limited, i.e. respondent no. 1, does not fall within the definition of "State" under Article 12 of the Constitution of India.

20. It is submitted that the respondent no. 1 is now a private company owned by M/s Talace Pvt. Ltd. and there is 100 % disinvestment of the shares of the Government of India in the respondent no. 1 company.

21. It is contended that since the respondent no. 1 is now a Private Limited Company, the grievances of the petitioner can be redressed before the Competent Forum and not by this Court under Article 226 of the Constitution of India. The respondent has further placed reliance on the judgment of the Division Bench of Bombay High Court in the case of ***R. S. Madireddy & Anr. v. Union of India, 2022 SCC OnLine Bom 2657***



wherein it was held that since Air India Limited has ceased to be a government company and is privatized, and does not fall within the domain of “State” as per Article 12 of the Constitution of India, hence the writ petition is not maintainable under Article 226 of the Constitution of India.

22. It is, therefore, submitted that the writ petition is not maintainable since Air India Limited has ceased to be “State” under Article 12 of the Constitution of India. Hence, the petition is liable to be dismissed.

23. In the Rejoinder, the learned counsel for the petitioners submitted on the ground of maintainability that the present petition had been filed in 2021 while the disinvestment of Air India Limited took place in the year 2022 and the petitioners cannot be made to suffer due to the intervening circumstances, and non-suited at this stage. It is further contended that the judgment relied upon by the respondents is distinguishable on the facts of the present case and pertains to the Bombay High Court therefore, it does not bind this Court and only has a persuasive value.

24. In view of the foregoing paragraphs, the learned counsel for the petitioners submitted that the instant petition may be allowed and the relief sought may be granted.

25. Heard both the parties and perused the contents of the material on record including the petition and the judgment filed by the respondents.

26. A preliminary objection has been raised by the respondent that since Air India Limited has been privatized and the entire share holdings are disinvested from the hands of the Government of India, hence the writ is not maintainable against Air India Limited.



27. This Court has formed the following issues to adjudicate upon the preliminary objection raised by the respondent :

- i. *Whether a Writ is maintainable under Article 226 against a Government entity which has subsequently become a private entity?*
- ii. *Whether writ is maintainable against Air India Limited since it has been privatized and the entire shareholdings are disinvested from the hands of the Government of India, and vest with a private company?*
- iii. *Whether the relief can be granted if the relief has become incapable of being granted due to subsequent changes of events and changes in law?*

28. Keeping in view the arguments advanced by the learned counsel for the parties and contents made in the instant petition, this Court will now deal with the issue no. (i)-Whether a Writ is maintainable under Article 226 against a Government entity which has subsequently become a private entity

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.

30. Accordingly, a Government-owned entity which has been subsequently privatized and is performing commercial functions is no longer considered "State" under Article 12. Therefore, a writ is not maintainable against them. This position of law has been enunciated in a catena of judgments which have been discussed hereinbelow.

31. The Division Bench of the Bombay High Court enunciated on the aspect of a Government entity which has been privatized is not amenable to writ jurisdiction under Article 226 of the Constitution of India in the judgment of **All India IDBI Officers Association v. Union of India 2022 SCC OnLine Bom 2693** as follows:

“89. Here, we are concerned with a dispute arising out of a service matter. It would now be our endeavor to decide the contentious issue of maintainability based on the dicta of the Supreme Court in respect of matters where service disputes raised by officers/employees in proceedings before the Courts required, in view of the status of the employers, as of necessity, determination of the primary question as to whether such employers were amenable to the writ jurisdiction under Article 226 of the Constitution. We would have been inclined, in the process, to attempt at leaving aside decisions where the employer is other than a company or a Government company but the demands of the case may require us to navigate through other decisions as well, not dealing with service disputes, but which deal with the aspect of maintainability.

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92. There are 5 (five) other decisions which, though not cited by the parties, are either referred to in the decisions in Balmer Lawrie &



Co. Limited (supra) and in Jatya Pal Singh (supra). While the former decision has been referred to by both the parties, the latter has been cited by Mr. Talsania.

93. *Close on the heels of Pradeep Kumar Biswas (supra) followed the decision in G. Bassi Reddy v. International Crops Research Institute⁹⁷, authored by Justice Ruma Pal (as Her Ladyship then was). Incidentally, the majority opinion in Pradeep Kumar Biswas (supra) too was authored by Her Ladyship. The appellants in G. Bassi Reddy (supra) were terminated employees of the respondent institute (referred to in the relevant judgment as ICRISAT). The Court traced the origin of ICRISAT and found that ICRISAT was not set up by the Government and it gives its services voluntarily to a large number of countries besides India. It is not controlled by nor is it accountable to the Government. The Indian Government's financial contribution to ICRISAT was minimal. Its participation in ICRISAT's administration was limited to 3 (three) out of 15 (fifteen) members. Since ICRISAT did not fulfil any of the tests laid down in Pradeep Kumar Biswas (supra), ICRISAT was held not to be a State or other authority as defined in Article 12 of the Constitution.*

94. *We may, at this stage, take notice of certain important observations made by the Court after considering the decisions in Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B.⁹⁸, Praga Tools Corpn. v. C.A. Imanuel⁹⁹, Andi Mukta Sadguru S.M.V.S.S.J.M.S. Trust v. V.R. Rudani¹⁰⁰, VST Industries Ltd. v. Workers' Union¹⁰¹ and Sohan Lal v. Union of India¹⁰². The observations read thus:*

“25. A writ under Article 226 lies only when the petitioner establishes that his or her fundamental right or some other legal right has been infringed [Calcutta Gas Co. (Proprietary) Ltd.]. The claim as made by the appellant in his writ petition is founded on Articles 14 and 16. The claim would not be maintainable against ICRISAT unless



*ICRISAT were a 'State' or authority within the meaning of Article 12. ****

26. ***

27. It is true that a writ under Article 226 also lies against a 'person' for 'any other purpose'. The power of the High Court to issue such a writ to 'any person' can only mean the power to issue such a writ to any person to whom, according to the well-established principles, a writ lay. That a writ may issue to an appropriate person for the enforcement of any of the rights conferred by Part III is clear enough from the language used. But the words 'and for any other purpose' must mean 'for any other purpose for which any of the writs mentioned would, according to well-established principles issue'.

28. A writ under Article 226 can lie against a 'person' if it is a statutory body or performs a public function or discharges a public or statutory duty. ... ICRISAT has not been set up by a statute nor are its activities statutorily controlled. Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world. While the Indian public may be the beneficiary of the activities of the Institute, it certainly cannot be said that ICRISAT owes a duty to the Indian public to provide research and training facilities. In Praga Tools Corpn. this Court construed Article 226 to hold that the High Court could issue a writ of mandamus



‘to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest’. The Court also held that:

“[A]n application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. (See Sohan Lal).”

29. We are therefore of the view that the High Court was right in its conclusion that the writ petition of the appellant was not maintainable against ICRISAT.”

95. Having noted G. Bassi Reddy (supra), we move on to consider Federal Bank v. Sagar Thomas¹⁰³ which followed within a few months of the former decision. In Federal Bank (supra), the question arising for decision was whether the appellant bank was a private body or falls within the definition of “State” or local or other authorities under the control of the Government within the meaning of Article 12. Incidentally, the civil appeal before the Supreme Court arose out of a writ petition instituted by a dismissed employee of the appellant bank. The relevant High Court held the writ petition to be maintainable. Considering various precedents, the Court proceeded to hold that:

“18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v.) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body



under liability to discharge any function under any statute, to compel it to perform such a statutory function.”

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99. *The third in the series is the decision in Virendra Kumar Srivastava v. U.P. Rajya Karmachari Kalyan Nigam¹⁰⁵. The Supreme Court reiterated that in order to examine whether or not an authority is a “State” within the meaning of Article 12 of the Constitution, the court must carry out an in-depth examination of who has administrative, financial and functional control of such a company/corporation, and then assess whether the State in such a case is only a regulatory authority, or if it has deep and pervasive control over such a company/corporation, whether such company is receiving full financial support from the Government, and whether administrative control over it has been retained by the State and its authorities, and further, whether it is supervised, controlled and watched over by various departmental authorities of the State, even with respect to its day-to-day functioning. If it is so, then such company/corporation can be held to be an instrumentality of the State under Article 12 of the Constitution and, therefore, will be amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution.*

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104. *Next in the series is the decision in Jatya Pal Singh (supra). As noted above, it arose out of an order dated 8th September 2009 of a Division Bench of this Court dismissing a writ petition filed by the appellant. No separate reason was assigned by the Division Bench except observing that the reasons assigned by it while dismissing an earlier writ petition involving common questions of fact and law by its order dated 7th September 2009 would apply to the writ petition of the appellant (Jatya Pal Singh) before the Supreme Court. From the report, we have found that the other petitioner too was before the Supreme Court with an independent appeal, titled M.P. Singh v. Union of India The decision also appears to have dealt with*



civil appeals arising from orders of dismissal of writ petitions passed by the Delhi High Court.

105. *The appellants were employees of VSNL. Their services were terminated by VSNL. The writ petitions were dismissed on the ground that VSNL was not amenable to the writ jurisdiction. For the reasons assigned in the common judgment, the appeals stood dismissed.*

106. *It was contended on behalf of the appellants that VSNL cannot be said to be not amenable to the writ jurisdiction in view of the shareholding pattern which revealed that Union of India, holding 26.97% shares, was the single largest shareholder in VSNL and other Government companies held 17.35% shares. Furthermore, VSNL was under the complete control of the Telecom Regulatory Authority of India (TRAI) Act, 1997 and the Telegraph Act, 1948. Therefore, writ petitions would lie in cases where the services of the employees were terminated in breach of the rules governing the service conditions of the employees. It was further the case of the appellants that Panatone Finvest Ltd. having stepped into the shoes of the erstwhile shareholder is bound by the commitments and obligations, rights and liabilities arising from the sale/purchase of shares.*

107. *The Court noted that after disinvestment of VSNL in 2002, the name of VSNL being a TATA group company was changed to Tata Communications Ltd. (TCL). However, the orders of termination impugned in the writ petitions were issued before such change took place. After noting Pradeep Kumar Biswas (supra), the Court examined whether TCL was performing public functions and answered the question in the negative. Having considered Binny Ltd. (supra), the Court held that:*

“52. These observations make it abundantly clear that in order for it to be held that the body is performing a public function, the appellant would have to prove that the body seeks to achieve some collective benefit for the public or a



section of public and accepted by the public as having authority to do so.

53. In the present case, as noticed earlier, all telecom operators are providing commercial service for commercial considerations. Such an activity in substance is no different from the activities of a bookshop selling books. It would be no different from any other amenity which facilitates the dissemination of information or data through any medium. We are unable to appreciate the submission of the learned counsel for the appellants that the activities of TCL are in aid of enforcing the fundamental rights under Article 19(1)(a) of the Constitution. The recipients of the service of the telecom service voluntarily enter into a commercial agreement for receipt and transmission of information.

*54. The function performed by VSNL/TCL cannot be put on the same pedestal as the function performed by private institution in imparting education to children. It has been repeatedly held by this Court that private education service is in the nature of sovereign function which is required to be performed by the Union of India. Right to education is a fundamental right for children up to the age of 14 as provided in Article 21-A. Therefore, reliance placed by the learned counsel for the appellants on the judgment of this Court in *Andi Mukta* would be of no avail. In any event, in the aforesaid case, this Court was concerned with the non-payment of salary to the teachers by *Andi Mukta Trust*. In those circumstances, it was held that the Trust is duty-bound to make the payment and, therefore, a writ in the nature of mandamus was issued.”*

108. *The Court, therefore, held that a writ petition would not be maintainable against VSNL, a fortiori, TCL.”*

32. The Division Bench of the Bombay High Court has held that



Government entity which is no longer falls within the ambit of “State” under Article 12 of the Constitution of India and hence, is not amenable to the writ jurisdiction under Article 226 of the Constitution of India.

33. This Court has further referred to ***Asulal Loya v. Union of India and others* 2008 SCC OnLine Del 838** delivered by a Coordinate Bench of this Court, regarding non-maintainability of a writ petition under Article 226 of the Constitution of India pursuant to privatisation of a Government-owned entity, wherein it was held as under :

“6. A Division Bench of Bombay High Court was also to examine the same preliminary issue in Writ Petition No. 1461/2003 titled Tarun Kumar Banerjee v. Bharat Aluminium Company Limited and the said writ petition was dismissed holding as under:—

“1. Both the petitions were filed against Bharat Aluminium Co. Ltd. when the petitions were filed, it was a Government of India enterprise. We are told by the Respondent that they had filed an affidavit on 22-3-1996 thereby pointing out that Bharat Aluminium Co. Ltd, has been privatized and share of more than 50% have been transferred to Sterlit Industries India Ltd. and as a consequence Bharat Aluminium Company Ltd is not a state and is not amenable to writ jurisdiction of this Court.

2. In view of this submission we dispose of both the petitions while granting the petitioner liberty to approach any other forum for redressal of their grievance if so advised. The time spent by the petitioners in prosecuting these proceeding shall be taken into consideration for the purpose of limitation in case the petitioner choose any



such remedy where the question of limitation would be relevant.

(BILAL NAZKI, J)

(A.P. BHANGALE, J)”

7. Privatisation of the respondent company was challenged by BALCO Employees' Union (Regd.) before the Supreme Court. One of the grounds for challenge was that pursuant to disinvestment, the respondent company will become a private company and will not, therefore, be amenable to writ jurisdiction. The said challenge was considered and rejected by the Supreme Court in the following words:—

“47. Process of disinvestment is a policy decision involving complex economic factors. The courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to “trial and error” as long as both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only



Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on Part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners, non-government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of Part III of the Constitution, can claim a superior or a better right than a government servant and impugn its change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.

*48. Merely because the workmen may have protection of Articles 14 and 16 of the Constitution, by regarding BALCO as a State, it does not mean that the erstwhile sole shareholder viz. Government had to give the workers prior notice of hearing before deciding to disinvest. There is no principle of natural justice which requires prior notice and hearing to persons who are generally affected as a class by an economic policy decision of the Government. If the abolition of a post pursuant to a policy decision does not attract the provisions of Article 311 of the Constitution as held in *State of Haryana v. Des Raj Sangar* on the same parity of reasoning, the policy of disinvestment cannot be faulted if as a result thereof the employees lose their rights or protection under Articles 14 and 16 of the Constitution. In other words, the*



existence of rights of protection under Articles 14 and 16 of the Constitution cannot possibly have the effect of vetoing the Government's right to disinvest. Nor can the employees claim a right of continuous consultation at different stages of the disinvestment process. If the disinvestment process is gone through without contravening any law, then the normal consequences as a result of disinvestment must follow."

34. This Court has further referred to judgment of Coordinate Bench of the Gujarat High Court in ***Kalpna Yogesh Dhagat, through Legal Heirs v. Reliance Industries Limited*** 2016 SCC OnLine Guj 10186 wherein it was held as follows:

"29. In ROHTAS Industries v. its Union [(1976) 2 SCC 82 : AIR 1976 SC 425 : (1976) 3 SCR 12], the Supreme Court observed as follows:

"9. (1) (a) & (b):

The expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates and so can affect any person - even a private individual - and be available for any (other) purpose, even one for which another remedy may exist. The amendment to Article 226(1-A) reiterates the targets of the writ power as inclusive of any person by the expressive reference to 'the residence of such person.' But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a china shop. This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be



judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people's sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash.”

30. *In the case of I.P.C.L. Retired Employees (supra), a Division Bench of this Court made the following observations as follows:*

“This Appeal, preferred under clause 15 of the Letters Patent, arises from the order dated 24th March, 2008 passed by the learned Single Judge in above Special Civil Application No. 8027 of 1999.

*The appellants - writ petitioners are the employees of the erstwhile Indian Petrochemicals Corporation Limited (hereinafter referred to as **the IPCL**), the State within the meaning of Article 12 of the Constitution. Pending the petition, the IPCL has been taken over by the Reliance Petro Investment Limited. The said Reliance Petro Investment Limited is not a State within the meaning of Article 12 of the Constitution. The writ petition has been disposed of by the learned Single Judge as not maintainable under Article 226 of the Constitution. We agree with the learned Single Judge.”*

31. *In Chandrashekhar Chhaya (supra), a Division Bench of this Court, observed as follows:*

“#At the very outset, the learned counsel for the respondent submits that the respondent-Indian Petrochemicals Corporation Ltd. has been taken over by M/s. Reliance Petro Investments Ltd., and as such the respondent is non-existent and the establishment which has taken over the respondent is not a State within the meaning of Article 12 of the Constitution.



#. Learned counsel for the petitioner-appellant wanted to contest the issue submitting that the Special Civil Application was filed in the year 1982 and if during pendency of this writ application, because of the disinvestment or because of taking over of the Central Government's Corporation, the Corporation has become non-existent, their rights would not suffer a dent.

#. In the opinion of this Court, the question would have been different if writ had already been issued in favour of the appellants and Indian Petrochemicals Corporation Ltd. had been appellant before us, at that point of time, this argument could assume some importance.

#. As the respondent is not in existence and the authority/establishment, which has taken over it, is not falling within the mischief of Article 12 of the Constitution, we must observe that the appeal has become infructuous. It is accordingly dismissed. We, however, make it clear that if law provides any other forum to the petitioners for redressal of their grievance, then they would be free to approach such forum in accordance with law. As the Letters Patent Appeal is dismissed, Civil Application No. 3069 of 1994 is also dismissed.”

32. Thus, the two Division Bench judgments of this Court referred to above make it very clear that the Indian Petrochemicals Limited, having been taken over by M/s. Reliance Petro Investment Limited, the ‘R.P.I.L.’ being not a “State” within the meaning of Article 12 of the Constitution, the writ application would be said to have become infructuous. The Division Bench also clarified and such clarification answers the contention of Mr. Bhatt that the question would have been different if the writ had already been issued in favour of the writ applicant herein and the I.P.C.L. would have been in appeal. Mere issue of Rule would not amount to determining the final rights of the parties or issue of a writ.”



35. Similarly, this Court in the judgment of ***Ladley Mohan v. UOI, 2010 SCC OnLine Del 1814*** held further reiterated the principle as under :

“10. The petitioner next contends that Asulal Loya did not consider the clause as aforesaid. Undoubtedly, as per the said clause, the proceeding pending on the date of privatization against MFIL were to be continued against MFIL/Hindustan Lever Limited without prejudicially affecting the same; the petitioner would certainly be affected by this court holding the writ petition to be not maintainable. However, the question that arises is that, when the writ petition is not maintainable against MFIL/Hindustan Lever Limited, could MFIL/Hindustan Lever Limited by agreement aforesaid, make itself amenable to the writ jurisdiction. It is not open for a person/party to agree or disagree to the amenability to the writ jurisdiction. If under the law, a party is not amenable to the writ jurisdiction, he would not so become amenable merely because he has represented to the other or has agreed with the other that he would be so amenable. It is a settled principle of law that jurisdiction cannot be vested by contract in a court which otherwise does not have the jurisdiction. Similarly, if this court has no jurisdiction to entertain a writ against MFIL/Hindustan Unilever Limited, which as of today is a private entity, merely because Hindustan Lever Ltd at the time of acquiring the shares of MFIL from the Government agreed that the proceedings then pending against MFIL would be continued, would not vest jurisdiction in this court to entertain a writ against MFIL/Hindustan Unilever Limited.”

36. In the light of the aforementioned judgments, it is a settled principle that a writ petition is not maintainable against a private limited company or



even a public limited company in which the State does not exercise pervasive control and is not performing a public function. The Government entity which has been privatized is not amenable to writ jurisdiction under Article 226 of the Constitution of India and does not fall within the ambit of Article 12 of the Constitution of India. The guiding factor, therefore, is the nature of duty imposed on such a body namely, the public duty to make any authority amenable to writ jurisdiction.

37. This Court is of the view that under Article 226 of the Constitution of India, a writ cannot be issued against a Government- entity which has been subsequently privatized and no longer performing any public duty. The phrase under Article 226 of the Constitution of India “for any other purpose” has to be given a narrower meaning to exclude private entities performing their private and commercial duties from the ambit of writ jurisdiction. Furthermore, a private entity does not fall within the ambit of Article 226 as there is an alternate remedy available against such private entity. Accordingly, issue no. 1 has been decided.

38. Now advertent to the issue No.2 - *Whether writ is maintainable against Air India Limited since it has been privatized and the entire shareholdings are disinvested from the hands of the Government of India, and vest with a private company*

39. The maintainability of writ petition against Air India Limited under Article 226 of the Constitution of India has been challenged on the ground that it was a Government entity prior to privatization and under the ambit of Article 12 of the Constitution of India.



40. The issue regarding maintainability of writ petition against Air India was first dealt by the Karnataka High Court in the judgment of **M/s Padvavati Subramaniam Vs MOCA and Others, WP No. 4171 of 2021** dated 6th April 2022 whereby, the Court held as under:

“1. Since a preliminary objection was raised at the hands of the respondents including Union of India that when once the Air India Limited is privatized and the entire share holdings are disinvested from the hands of the Government of India and a Private Company has taken over, the grievance of the employees of the Air India Limited cannot be redressed directly under a writ jurisdiction of this Court, the learned Senior Counsel for the petitioners was required to answer the question.

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4. From the above, it is clear that the Air India Limited is a private company owned by M/s Talace Pvt. Ltd. The earlier position of Air India Limited was fully owned Government of India Company, has changed and it is now a Private Limited Company. Therefore, the grievance of the petitioner in the matter of seniority can be redressed only before the Competent Forum which can deal with the question and not under Article 226 of the Constitution of India.”

41. The aforementioned judgment laid down the basic principle that on the event of the privatization of the Air India Limited the writ petition is not maintainable. The dispute between the petitioner and respondent is one pertaining to private dispute between the private company and its employee. Such parties can approach the Court of competent jurisdiction for redressal of the grievances.



42. This Court has further referred to the judgment by the Division Bench of the Bombay High Court in ***R. S Madireddy & Anr. (Supra)***, wherein, it was held that a writ petition against Air India is not maintainable since it has been privatised by way of disinvestment of the shares of the Government of India in Air India. The relevant paras has been reproduced as below:

“55. Having heard the parties and perusing the materials placed before us by them, we are of the opinion that the issue regarding maintainability of the writ petitions owing to the intervening event of privatization of AIL, the principal respondent, between institution of the writ petitions and its final hearing before us, is no longer res integra. The decisions of this Court in Tarun Kumar Banerjee (supra) [since upheld by the Supreme Court while dismissing SLP (C) No. 5185 of 2009], and Mahant Pal Singh (supra) [since upheld in Jatya Pal Singh (supra)], the decision of the Karnataka High Court in Padmavathi Subramaniyan (supra), and the several decisions of the Delhi and Gujarat High Courts, noted above, have taken a consistent view and these lead us to form the firm opinion that with the privatization of AIL, our jurisdiction to issue a writ to AIL, particularly in its role as an employer, does not subsist. We could have disposed of these writ petitions without much ado by following the judicial authorities in the field but having regard to the submissions advanced by Mr. Singhvi, noted in paragraph 47 above, we would like to proffer some reasons for reaching our own conclusions.

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57. That a writ could be issued to an 'authority' 'within the meaning of "the State" as in Article 12 of the Constitution as well as an 'authority' 'within the meaning of Article 226 has never been in dispute. By judicial pronouncements, law has developed over a period of time that a writ or order or



direction under Article 226 can also lie against a 'person', even though it is not a statutory body, if it performs a public function or discharges a public duty or owes a statutory duty to the party aggrieved. These are unquestionable principles and the parties are ad idem in respect thereof. However, they have joined issue because of the intervening event of privatization of AIL.

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59. Our discussion should start with the alert that writ remedy is discretionary. It is elementary that a writ petition under Article 226 of the Constitution may be entertained by a high court if an entitlement in law, which is normally referred to as a legal right, is shown to exist and a breach thereof is alleged. The right to relief before a writ court, as claimed, necessarily casts a duty on the party aggrieved who approaches the court to satisfy it that the entitlement is capable of being judicially enforced against the party complained of and that the latter answers the identity of an 'authority' or a 'person' to whom the writ or order or direction can legitimately be issued. In other words, the party complained of must be amenable to the writ jurisdiction of the high court. Therefore, generally speaking, as on date of admission hearing of a writ petition, the writ court is required to form a prima facie satisfaction on both the above counts. If either a legal right has not been infringed or the party complained of is not amenable to the court's writ jurisdiction, obviously the writ petition cannot be entertained. If, however, the court is prima facie satisfied, the court may in the exercise of its discretion admit the writ petition and post it for final hearing. After the pleadings are exchanged, and once the court arrives at a conclusion that a legal entitlement exists and such entitlement has been breached, together with the satisfaction that a writ would lie against the party complained of, an appropriate writ or order or direction can be issued. Thus, satisfaction as regards the



breach of a legal entitlement apart, what is important in this context is that such breach must have been at the instance of the party complained of to whom a writ or order or direction can legitimately be issued. Not only, therefore, the party complained of should be amenable to the writ jurisdiction of the high court on the date of institution of the writ petition, it must also be so when the writ petition is finally heard and decided. It is thus axiomatic that only upon a double check (first at the time of admission of the writ petition, and then again at the time of final hearing thereof that the respondent against whom the complaint of commission of breach of a legal right of the petitioner is made is amenable to the writ jurisdiction) would the court proceed to decide the contentious issues. If not so amenable, the question of deciding the issues on merits may not arise. What follows from the aforesaid discussion is that the writ court when approached must not only have jurisdiction to issue a writ or order or direction to the party against whom the complaint of breach of a legal right has been made at the inception of receiving the writ petition but such jurisdiction it must retain, without impairment, till the jurisdiction to issue the writ to such party is actually discharged.

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65. Perusal of the aforesaid excerpt would reveal some of the circumstances when a subsequent or an intervening event during pendency of a writ petition could result in the petitioner becoming disentitled to relief, viz. relief claimed being rendered redundant by lapse of time, or rendered incapable of being granted by change in law, or being rendered inequitable because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of the judgment, or creation of third-party interests. It is, therefore, not an invariable rule that a writ petition has to be decided on the facts as were presented on the date of its institution. A



circumstance of the present nature would count as an additional reason for the writ court to hold a petitioner disentitled to relief.

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68. With its privatization, AIL has ceased to be an Article 12 authority. There is and can be no doubt that no writ or order or direction can be issued on these writ petitions against AIL for an alleged breach of a Fundamental Right. Conscious of the change in the factual as well as legal position arising out of privatization of AIL, Mr. Singhvi with the experience behind him changed the line of argument and introduced the concept of 'public employment' of the petitioners and contended that since the petitioners were employees of AIL, which at the material time was discharging public functions, the writ petitions ought to be heard particularly when the petitioners are not at fault for the time lapse.

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.

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73. It is a fact that this Court could not decide these writ petitions during the long years of its pendency, which is bound



to have shattered the hopes and aspirations of retired employees like the petitioners. However, at the same time, such inability to decide these writ petitions prior to privatization of AIL was due to reasons absolutely beyond the control of this Court, as admitted by Mr. Singhvi even. Notwithstanding the same, this Court, through its Chief Justice, regrets its inability to so decide prior to privatization of AIL.

74. The writ petitions, although maintainable on the dates they were instituted, have ceased to be maintainable by reason of privatization of AIL which takes it beyond our jurisdiction to issue a writ or order or direction to it. For the reasons discussed above, the writ petitions and the connected applications and chamber summons stand disposed of without granting any relief as claimed therein but with liberty to the petitioners to explore their remedy in accordance with law. No costs.

75. We make it clear that the time taken for disposal of these writ petitions would, however, be excluded for the purpose of computation of limitation should the petitioners seek any remedy by instituting fresh proceedings where the question of limitation would be relevant.”

43. In light of the aforementioned judgment, the principal laid down was that a writ petition under Article 226 of the Constitution of India is not maintainable since Air India Limited has been privatized and the employees of Air India Limited are no longer falling within the domain of “public employment”. The employees of Air India Limited were earlier discharging public function. However, presently, they do not fall within the domain of “public employment” and their disputes cannot be redressed by this Court under its extraordinary writ jurisdiction.



44. The Division Bench of the Bombay High Court further held that the petitioners/ employees of the Air India Limited have the liberty to approach the appropriate forum for redressal of their grievances. The Court has further excluded the time for which the writ was pending in the Court for the purpose of computation of the limitation by the competent forum.

45. The similar findings have been given by this Court in the judgment of ***Naresh Kumar Beri & Ors. Vs. UOI & Ors., 2022 SCC OnLine Del 3585***, wherein it was held 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.

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27. The Court lastly notes that the impugned action is sought to be sustained by AIL with it being asserted that Clause VI empowers it to terminate a contractual engagement of a pilot on an assessment of the requirement of AIL.

28. Accordingly and for all the aforesaid reasons, the preliminary objections are upheld. The writ petitions shall consequently stand dismissed. The present order, however,



shall not deprive the petitioners of the right to assail the action of AIL in accordance with law, if so chosen and advised.”

46. This Court has further relied on the aforementioned judgment of this Court in the judgments of ***Capt. Dhirendra Kumar v. Air India Limited and Others*** 2023 SCC OnLine Del 3722, ***Pankaj Bhargava v. Air India Limited*** 2023 SCC OnLine Del 2567, ***Poonam Dinesh Singh v. CMD AIR India and Another*** 2023 SCC OnLine Del 2583, ***Yash Anand v. Air India Limited*** 2023 SCC OnLine Del 1923 and ***Rohita Jaidka v. Air India Limited and Others*** 2023 SCC OnLine Del 1765.

47. Furthermore, the Karnataka High Court has reiterated the principal regarding non- maintainability of writ petition against Air India Limited in the judgment of ***Capt. Kripa Sindhu v. Air India Ltd. & Ors.***, W.P No. **4171/ 2021**, dated 28th November 2022, wherein it was held as follows:

“9. This Court had an occasion to consider the grievance of an employee of Air India Limited in W.P. NO.21448/2021, subsequent to privatization and this Court by order dated 06.04.2022, at paragraph (4) held as follows:

“4. From the above, it is clear that the Air India Limited is now a private company owned by M/s. Talace Pvt. Ltd. The earlier position of Air India Limited which was a fully owned Government of India Company, has changed and it is now a Private Limited Company. Therefore, the grievance of the petitioner in the matter of the seniority can be redressed only before the Competent Forum which can deal with the question and not under Article 226 of the Constitution of India.”

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11. In view of the above decision, I am of the considered opiniuon that the writ petition under Article 226 of the Constitution of India would not be maintainable against the respondent- air India Limited.

12. The decision relied upon the learned counsel for the petitioner of the Delhi High Court by the learned Single Judge as well as the Division Bench is prior to the privatization of the first respondent- Air India Limited rendered on 01.06.2021 as well as 17.12.2021. Those decisions would have no application to the facts of the present case since subsequent to the said decision, the first respondent- Air India Limited was privatized and it had become Private Limited Company. Therefore, I decline to entertain the writ petition.”

48. The High Court of Madras has also elaborated on the aspect of maintainability of writ petition against Air India in the judgment of ***T.S.D Gabriel V. NACIL WP NO. 17424/2010*** dated 28th March 2022, and observed as follows:

“4. Today the learned counsel for the respondents submitted a memo which has been circulated to the petitioner’s wherein it is brought to the notice of the court that pursuant to the policy decision taken by the Government of India to disinvest 100% share holding of the Government in Air India Limited, M/s Talace Pvt Ltd was declared as successful bidder to buy 100% shares held by it in Air India Limited.

5. The shares held by the Government of India in Air India Limited stood transferred to M/s Talace Private Limited and its nominees on 27.01.2022. Consequent to which Air India Limited ceases to be a Government company and is a Private Limited Company. It is the submission of the learned counsel for the respondents that in view of the above change in constitution Air India Limited may no longer qualify as a



“State” within the meaning of Article 12 of the Constitution for the writ petition to lie.

6. In support of the same reliance was sought to be placed in the decision of Hindustan teleprinters ltd., wherein this Court in the case of P. Subban vs Hindustan Teleprinters Ltd., reported in 2003 (3) L.L.N. 1078 and the relevant portion of such reads as under:

“Having regard to all these aspects, I think it is a fit case where writ can no longer be issued in view of the changed circumstances, namely privatisation of the respondent. Therefore, I follow the course adopted in the similar Writ Petition No. 14425 of 1995 dated 19 July 202 (the entire order in this case is given in Para. 8 Supra) and observe that the writ petition id no longer maintainable. The writ petition is accordingly disposed of as not maintainable leaving it to be open to the petitioner to work out his remedy before the appropriated forum. No costs.”

7.The learned counsel for the petitioner also agrees to the above position and further submits liberty may be granted to the petitioner’s to work out its remedy and also prays that the time spent in this writ petition may be excluded in reckoning the period of limitation, if the petitioner chooses to enforce its right before an appropriate forum. The learned counsel for the correspondent also does not have any serious objection to the same. Consequently liberty is granted to the petitioner to work out its remedy before the appropriate forum, in which case the time spent in pursuing the writ petition shall stand excluded in reckoning the period of limitation if any.”

49. In light of the aforementioned judgments, it is well-settled that Air



India Limited due to disinvestment of its share vested in the Government of India, is now a private entity. It is no longer discharging any “public duty” and performing its own commercial activities. Hence, it does not fall within the ambit of “State” under Article 12 of the Constitution of India. It is a settled law that a writ is not available against a private entity except the writ of habeas corpus.

50. The dispute between Air India Limited and its employee is therefore, of a private nature and does not warrant any interference of this Court under the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The employees of Air India Limited are no longer in “public employment” since they are not discharging any public duty and they have a remedy to approach the Competent Forum for redressal of their claim.

51. This Court is of the view that Air India Limited, the respondent no. 1 herein, is no longer “State” under Article 12 of the Constitution of India. Under Article 226, a writ petition can only be instituted against a public authority. No writ or order or direction can be issued in the instant petition against Air India Limited for an alleged breach of a legal right except the writ of habeas corpus in exceptional circumstances. Hence, the respondent no. 1 does not fall under the definition of “State” as per Article 12 of the Constitution of India and therefore, a writ is not maintainable under Article 226 of the Constitution of India.

52. In the present scenario, the respondent no. 1, is a private company owned by M/s Talace Pvt. Ltd. The earlier position of Air India Limited



being fully owned by the Government of India has changed and it is now a Private Company. In the present petition, the petitioner has not controverted the factual position regarding privatization of Air India Limited.

53. Since, the respondent no. 1 Air India Limited is now a private entity, the dispute regarding seniority and revised basic pay can be redressed only before the Competent Forum and not before this Court. This Court grants the liberty to petitioner to approach the appropriate forum. The computation of time period for the purpose of limitation shall exclude the time period for which the writ is pending before this Court. Hence, the present writ petition is not maintainable against Air India Limited since, it does not fall within the definition of Article 12 of the Constitution of India and not amenable to writ jurisdiction. Accordingly, issue no. 2 has been decided.

54. Lastly, this Court will now deal with issue no.3 - *Whether the relief can be granted if the relief has become incapable of being granted due to subsequent changes of events and changes in law*

55. The petitioner has not disputed the factual position regarding privatization of Air India Limited. It is the plea of the petitioners that due to privatisation of Air India Limited, the petitioners should not suffer the brunt of it and be denied the reliefs that they are seeking. Since at time of the filing of the petition, the present petition was maintainable against Air India. It was further contended that facts at the time of the filing of the petition should be considered and not on the date of the judgment.

56. Before delving into the merits of the case, this Court has referred to the judgments dealing with the issue whether the relief can be granted if the



relief has become incapable of being granted due to subsequent changes of events and changes in law.

57. The Hon'ble Supreme Court in the judgment of ***Hukum Chandra v. Nemi Chand Jain***, (2019) 13 SCC 363 held as follows:

“15. Rights of the parties stand crystallised on the date of institution of the suit. However, in appropriate cases, court can take note of all the subsequent events. Observing that the court may permit subsequent event being introduced into the pleadings by way of amendment as it would be necessary to do so for the performance of determining the rule in controversy for the parties provided certain conditions are being satisfied, in Om Prakash Gupta v. Ranbir B. Goyal [Om Prakash Gupta v. Ranbir B. Goyal, (2002) 2 SCC 256] , it was held as under: (SCC pp. 262-63, para 11)

“11. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite



party is not taken by surprise. In Pasupuleti Venkateswarlu v. Motor & General Traders [Pasupuleti Venkateswarlu v. Motor & General Traders, (1975) 1 SCC 770] , this Court held that a fact arising after the lis, coming to the notice of the court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the court cannot be blinked at. The court may in such cases bend the rules of procedure if no specific provision of law or rule of fair play is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The Court speaking through Krishna Iyer, J. affirmed the proposition that the court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the Court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautious, and (iv) the rules of fairness to both sides should be scrupulously obeyed.”

16. *The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtained at the commencement of the litigation. Whenever, there is subsequent events of fact or law, which have a material barring on the rights of the parties to relief or on the aspects of moulding appropriate relief to the parties, the court is not*



precluded from taking cognizance of the subsequent changes of fact and law to mould the relief (vide Ramesh Kumar v. Kesho Ram [Ramesh Kumar v. Kesho Ram, 1992 Supp (2) SCC 623]).”

58. This Court has further referred to the Division Bench judgment of the Kerala High Court in the judgment of ***T.P. Gireeshbabu v. Jameela and Others*** 2021 SCC OnLine Ker 3641

25. In Sheshambal, before the Apex Court it was contended on behalf of the appellants that the rights and obligations of the parties get crystallised at the time of institution of the suit so that any subsequent development is not only inconsequential but also wholly irrelevant for determination of the case before the Apex Court. In that context, the Apex Court observed that, while it is true that the right to relief must be judged by reference to the date suit or the legal proceedings were instituted, it is equally true that if subsequent to the filing of the suit, certain developments take place that have a bearing on the right to relief claimed by a party, such subsequent events cannot be shut out from consideration. What the court in such a situation is expected to do is to examine the impact of the said subsequent development on the right to relief claimed by a party and, if necessary, mould the relief suitably so that the same is tailored to the situation that obtains on the date the relief is actually granted.

26. In Sheshambal, the Apex Court noticed that, the above proposition of law is fairly settled by the decision in Pasupuleti Venkateswarlu v. Motor and General Traders [(1975) 1 SCC 770]. To the same effect is the decision in Om Prakash Gupta v. Ranbir B. Goyal [(2002) 2 SCC 256] where it was declared that although the ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit, yet the court has power to mould the



relief in case the following three conditions are satisfied (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In *Hasmat Rai v. Reghunath Prasad* [(1981) 3 SCC 103] it was observed that, if the tenant is in a position to show that the need or requirement no more exists because of subsequent events, it would be open to him to point out such events, and the court including the appellate court has to examine, evaluate and adjudicate upon the same. To the same effect is the decision in *Baba Kashinath Bhinge v. Samast Lingayat Gavali* [1994 Supp (3) SCC 698] where relying upon the decision in *Hasmat Rai* it was held that in a case of bona fide requirement it is necessary to establish that the landlord needs the premises and the need subsists till a decree is passed in his favour. In a case where such need is available at the time of the filing of the petition but becomes extinct by the time the matter attains finality in appeal for revision no decree will be justified. For that purpose, the court should take all the subsequent events into consideration and mould the relief accordingly.

27. In *Sheshambal*, at Para.22 of the decision (SCC page 477), the Apex Court quoted with approval the following passage from the decision in *Baba Kashinath Bhinge* (SCC pages 699-700, para 2) as complete answer to the question raised before it, which reads thus;

“2. Equally it is settled by this Court in series of judgments and a reference in this behalf would be sufficient by citing *Hasmat Rai v. Raghunath Prasad* [(1981) 3 SCC 103]



that in a case of bona fide requirement, it is always necessary, till the decree of eviction is passed that the landlord should satisfy that the need is bona fide and the need subsists. In a case where the need is available at the time of filing of the petition, but at the time of granting decree it may not continue to subsist, in that event, the decree for eviction could not be made. Similarly pending appeal or revision or writ petition, the need may become more acute. The court should take into account all the subsequent events to mould the relief. The High Court may not be justified in omitting to consider this aspect of the matter but that does not render the judgment illegal for the subsequent discussion we are going to make.”

(emphasis in original)

28. In Sheshambal, the Apex Court noticed that, a similar view was expressed in Ramesh Kumar v. Kesho Ram [1992 Supp (2) SCC 623] (SCC pages 626-27, para 6), wherein it was held that, the normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a ‘cautious cognizance’ of the subsequent changes of fact and law to mould the relief. Similarly, in Maganlal Kishanlal Godha v. Nanasaheb Uddhaorao Gadewar [(2008) 13 SCC 758] it was held that, if the litigation keeps extending and number of developments sprouting up during the long interregnum, the court should adopt a pragmatic approach in the matter and determine whether or not the development



pending finalisation of the litigation is such as would completely non-suit the party concerned. In Sheshambal, the Apex Court observed that the decision in Maganlal Kishanlal Godha is no authority for the proposition that subsequent developments having material impact on the rights and obligations of the parties can be ignored by a court simply because such rights and obligations have to be determined by reference to the date on which the litigation was instituted.

29. In Sheshambal, the Apex Court further noticed that, the decision in Kedar Nath Agrawal v. Dhanraji Devi [(2004) 8 SCC 76] has reiterated the legal position after a detailed review of the case law on the subject. That was also a case where the two landlords seeking eviction of the tenant had passed away during the pendency of the eviction petition and the question was whether the three married daughters left behind by the couple could continue with the same. In the said decision (SCC page 86, para 31) it was observed that, in view of the settled legal position as also the decisions in Pasupuleti Venkateswarlu [(1975) 1 SCC 770] and Hasmat Rai [(1981) 3 SCC 103] the High Court was in error in not considering the subsequent event of death of both the landlords. It was the power as well as the duty of the High Court to consider the fact of death of the landlords during the pendency of the writ petition. Since it was the case of the tenant that all the three daughters got married and were staying with their in-laws, obviously, the said fact was relevant and material.

30. In Sheshambal (SCC page 478, paras 26 and 27), the Apex Court noticed that, the decisions in Pratap Rai Tanwani v. Uttam Chand [(2004) 8 SCC 490], Gaya Prasad v. Pradeep Srivastava [(2001) 2 SCC 604], Kamleshwar Prasad v. Pradumanju Agarwal [(1997) 4 SCC 413], Shakuntala Bai v. Narayan Das [(2004) 5 SCC 772], G.C. Kapoor v. Nand Kumar Bhasin [(2002) 1 SCC 610], Shantilal Thakordas v. Chimanlal Maganlal



*Telwala [(1976) 4 SCC 417] and Pukhraj Jain v. Padma Kashyap [(1990) 2 SCC 431] do not lend any support to the proposition that subsequent developments cannot be noticed by the court, especially when such developments have an impact on the right of a party to the relief prayed for. In *Shantilal Thakordas v. Chimanlal Maganlal Telwala* [(1976) 4 SCC 417] the earlier decision rendered in *Phool Rani v. Naubat Rai Ahluwalia* [(1973) 1 SCC 688] was overruled and it was held that the law permitted the eviction of the tenant for the requirement of the landlord for occupation of the landlord as residence for himself and members of his family and that, such a requirement was both of the landlord and the members of his family so that upon the death of the landlord the right to sue survived to the members of his family. That is not the position in the case on hand.*

*31. In *Sheshambal*, on the facts of the case on hand, the Apex Court noticed that, the requirement pleaded in the eviction petition by the landlords was their own personal requirement and not the requirement of the members of their family whether dependent or otherwise. Indeed if the deceased landlords had any dependent member of the family, the Court may have, even in the absence of a pleading assumed that the requirement pleaded extended also to the dependent member of their family. That unfortunately, for the appellants is neither the case set up nor the position on facts. The deceased couple did not have any dependent member of the family for whose benefit they could have sought eviction on the ground that she required the premises for personal occupation. In the light of what have been stated above, the Apex Court held that on the death of the landlords in the original eviction petition their right to seek eviction on the ground of personal requirement for the demised premises became extinct and no order could on the basis of any such requirement be passed at this point of time.*



32. The factual matrix and the law laid down by the Apex Court in Sheshambal, which we have dealt with in extenso hereinbefore, gives a complete answer to the question as to whether the subsequent event, i.e., the death of Kuzhichalil Abdurahiman during the pendency of R.C.A. No. 66 of 2018, is of such a magnitude as to completely eclipse the bona fide need projected in R.C.P. No. 71 of 2016.

33. As already noticed, the bona fide need projected in the Rent Control Petition was that of Kuzhichalil Abdurahiman and his wife Jameela, the original landlords, for starting Jewellery business in the petition schedule shop room and also the adjacent shop room. Before the Rent Control Court, Kuzhichalil Abdurahiman, who was examined as RW1, has deposed that he intends to start business in gold ornaments, along with his wife, in the petition schedule shop room and in the adjacent shop room. It has also come out in evidence that Kuzhichalil Abdurahiman and his wife Jameela were employed abroad. In the year 2015, they quit their employment abroad and settled in their native place. They are getting a rental income of Rs. 1,47,000/- per month from buildings let out to tenants.

34. In view of the law laid down by the Apex Court in Sheshambal it would be open to a tenant to point out a subsequent event of such a magnitude as to completely eclipse the bona fide need projected in the Rent Control Petition filed seeking eviction under Section 11(3) of the Act, in which event, the Rent Control Court, including the Appellate Court, has to examine, evaluate and adjudicate upon the same, in order to find out whether such bona fide need no more exists because of the subsequent event”

59. In the light of the aforementioned judgments, it was held that usually the rights as on the date of the filing of the petition are considered for the



adjudication of the dispute by the Court. An exception has been carved out in this aspect that in certain cases, when the relief is rendered infructuous due to the change in circumstances after the filing of the case and before the judgment is rendered, then the Court has to consider the implication of such change and accordingly, pass its judgment.

60. There is no straightjacket formula that change in the circumstances should not be considered and only facts as on date of the filing of the petition should be taken into account. In case change of circumstances is not taken into account, it will lead to the petitioner being rendered remediless since, relief granted on basis of the facts as per the date of filing of the petition cannot be enforced by the petitioner. Therefore, to balance equity the petitioner has to take into account the change of the circumstances and accordingly, mould the relief granted to the parties.

61. The instant petition was maintainable on the date of the institution of the said petition, however, it has ceased to be maintainable due to privatization of Air India Limited, respondent no. 1. Thus leading to respondent no. 1 being taken beyond this Court's jurisdiction to issue a writ or an order or a direction to it under Article 226 of the Constitution of India against Air India Limited, respondent no. 1.

62. This Court is of the view that usually the rights of the parties as on the date of the filing of the petition are taken into account while delivering the judgment. The right to relief should be decided by reference to the position of law or circumstances as on the date on which the petitioner filed the petition. There may be cases where the relief to which the petitioner is



entitled may have been rendered redundant by lapse of time or may be rendered redundant by change of law.

63. However, it is not a thumb rule that a writ petition has to be decided on the facts as were presented on the date of its institution. A subsequent event during the pendency of a writ petition which can result in the petitioner becoming disentitled to relief would render the writ petition non-maintainable on the date of the judgment. In such cases the Court has to take into account the impact of the subsequent developments, and accordingly, it has to modify the relief. Therefore, the Court has to devise a tailor-made relief in accordance with the circumstances of the case.

64. As in the present case, the petitioners are disentitled to relief on the date of the judgment due to privatization of Air India Limited which was earlier a public authority, rendering the writ petition non-maintainable. The petition, though maintainable on the date it was instituted, has ceased to be maintainable which takes it beyond this Court's jurisdiction to issue a writ or order or direction to it under Article 226 of the Constitution of India. Accordingly, issue no. 3 has been decided.

CONCLUSION

65. In view of the above discussions, I am of the considered opinion that the writ petition under Article 226 of the Constitution of India would not be maintainable against Air India Limited in view of its privatisation hence, not amenable to writ jurisdiction.

66. This Court upholds the objection taken by the respondent on the aspect of the maintainability of the writ petition and has not gone into merits



of the matter.

67. The writ petition along with the pending applications, is accordingly disposed of, granting liberty to the petitioners to take recourse to remedies available before a Competent Forum. The time period for which the writ petition has been pending in this Court shall be excluded for the purpose of computation of limitation in case, since the petitioners may seek any remedy by instituting fresh proceedings before a Competent Forum, then the question of limitation may arise.

68. The order to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 31, 2023
SV/DB

Click here to check corrigendum, if any