



W.P.No.29563 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: **03.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.29563 of 2012
and
M.P.Nos.1 & 2 of 2012 and
M.P.No.01 of 2013

D.Sounder Raj

Vs

...Petitioner

1. The General Manager GH
Air India
Ground Support Department,
AUC Complex,
Cantonment, Pallavaram,
Chennai – 600 043.
2. The Regional Manager -G.S,
Air India,
Ground Service Department,
AUC Complex,
Cantonment, Pallavaram,
Chennai – 600 043.
3. Mr..J.Oommen,
Regional Manager (GS),
Air India,
New International Airport,
Trivandrum – 695 024,
Kerala State.



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4. M.C.Manohar
Senior Manager,
Ground Service Department,
Air India, AUC Complex,
Cantonment, Pallavaram,
Chennai – 600 043.

5. R.J.Parthasarathy,
Senior Aircraft Equipment Operator (Instructor),
Ground Service Department,
Air India, AUC Complex,
Cantonment, Pallavaram,
Chennai – 600 043.

....Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 2nd respondent in his proceedings in REF.GSD/GH-06-01/2/114 dated 21.12.2011 as modified in his Proceedings Ref.GSD/GH/06-01/2/46 dated 31.08.2012 as confirmed by the 1st Respondent in his Proceedings Ref.MGD/EO/305 dated 22.10.2012 and quash the same and direct the respondents to confer all the consequential benefits.

For Petitioner : Mr.V.Sivalingam
for M/s.C.S.Associates

For Respondents : Mr.N.G.R.Prasad
Government Advocate



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ORDER

The Writ Petition has been filed to direct the respondents to call for the records pertaining to the order passed by the 2nd respondent in his proceedings in REF.GSD/GH-06-01/2/114 dated 21.12.2011 as modified in his Proceedings Ref.GSD/GH/06-01/2/46 dated 31.08.2012 as confirmed by the 1st Respondent in his Proceedings Ref.MGD/EO/305 dated 22.10.2012 and quash the same and direct the respondents to confer all the consequential benefits.

2. When the matter is taken up for hearing, the learned counsel for the respondent submitted a memo, wherein it is stated as follows:

1. The Petitioner filed the subject mentioned Writ Petition challenging the proceedings of the Respondents 1 & 2

2. 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 successful bidder to buy 100% shares held by the Government of India in Air Inida Limited. Accordingly on 27.01.2022 the Government of India transferred the 100% shares held by it in Air India Limited to Talace Private Limited



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and its nominees. Thus Air India Limited ceased to be a Government Company and is a Private Limited Company. Therefore, Air India Limited is not a State within the meaning of the Article 12 of Constitution of India.

3.Under Similar Circumstances, this Hon'ble Court and the Apex Court apart from other Hon'ble High Courts dismissed the Writ Petition as maintainable and relegated the parties to workout the remedy before the appropriate forum

S.No	Date	Description
1.		2003(3) LLN 1078 – Judgment in P.Subban Vs.HTL Ltd (Madras High Court)
2	25.04.2008	Order in W.P.No.1461 of 2003 (Tarun Kumar Banerjee Vs.BALCO) (Bombay Division Bench)
3.	05.09.2012	Order in W.P.No.35016 of 2002 – (S.Baby & Others Vs. The Managing Director, HTL & Others (Madras High Court)
4.	28.03.2022	Order in W.P.No.17414 of 2010 T.S.D.Gabrial Vs.NACIL & Others (Madras High Court)
5.	06.04.2022	Order in W.P.No.21448 of 2021 (Padmavathi Subramaniyan & Others vs. The Ministry of Civil Aviation & oThers) (Karnataka High Court)
6.	15.06.2022	Order in W.P.Nos.4747 of 2014 (P.Chandran Vs. The Acting General Manager (GS) (Madras High Court)
7.	25.08.2028	Order in W.P.No.1770 of 2011 R.S.Madireddy Vs. Union of India & Others (Bombay Division Bench)
8.	01.09.2022	Order in W.P(C).No.7908 of 2015 -Satya Sagar & anr Vs.Air India (Delhi High Court)
9.	09.03.2023	Order in W.P.No.2910 of 2015 A.Packialakshmi Vs.Air India Limited & Ors.



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3. In support of his submission, he produced the judgement of this Court and other High Courts and Supreme Court to show that the Writ Petition is not maintainable.

4. It is seen from the judgement reported in **2003(3) L.L.N.1078**, this Court held as follows:

"Having regard to all these aspects, I think it is a fit case where a 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 2002 (the entire order in this case is given in Para. 8 supra) and observe that the writ petition is no longer maintainable. The writ petition is accordingly disposed of as not maintainable leaving it open to the petitioner to workout his remedy before the appropriate forum."

5. The **Hon'ble Division Bench of Bombay High Court** in



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W.P.No.1461 of 2023 and W.P.No.1229 of 1998 in Tarun Kumar Banerjee

Vs. Bharat Aluminium Co.Ltd and other, held as follows:

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.

6. This Court in W.P.No.174247 of 2010 in T.S.D.Gabrial Vs. National Aviation Company of India Ltd and others, held as follows:

6. In support of the same reliance was sought to be placed in the decision of Hindustan teleprinters ltd., wherein



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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 which reads as under:

“Having regard to all these aspects, I think it is a fit case where a 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 is no longer maintainable. The writ petition is accordingly disposed of as not maintainable leaving it open to the petitioner to work out his remedy before the appropriate forum. No costs.” (emphasis supplied)

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 respondent 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.



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7. The learned counsel for the respondent had also produced the order passed by the **Hon'ble Supreme Court of India** in **S.L.P.Nos 5185 to 5186 of 2009** confirming the judgement of the **Hon'ble Division Bench of Bombay High Court** in **W.P.No.1461 of 2023** and **W.P.No.1229 of 1998** in **Tarun Kumar Banerjee Vs. Bharat Aluminium Co.Ltd** and other, wherein it is held as follows:

These Special Leave Petitions are directed against the final judgment and order dated 25th April, 2008, passed by the Bombay High Court in Writ Petition No.1229/1998 and Writ Petition No.1461 of 2003, dismissing the Writ Petitions filed by the petitioner challenging his transfer from Bombay to Korba and, subsequently, his termination from service.

2. When the Writ Petitions were taken up for hearing by the High Court, it was found, that on account of disinvestment, the Company was no longer “State” within the meaning of Article 12 of Constitution and was not, therefore, amenable to Writ Jurisdiction. The Writ Petitions were, accordingly, disposed of granting liberty to the petitioners to approach any other forum for redressal of their grievances, if so advised. It



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was also indicated that the time spent by the petitioners in prosecuting the proceedings before the High Court would be taken into consideration for the purpose of computing limitation in case the petitioner chose any such remedy where the question of limitation would be relevant.

3. In these Special Leave Petitions, at one stage, a question had arisen as to whether the provisions of the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, would apply to the respondent No.1 Company after privatization and, in that context, we had requested the learned Solicitor General to assist us, Since then, however, a decision has been rendered by this Court in Civil Appeal No.1858 of 2007, where the said question in the context of Sections 47 and 2(k) of the Act relating to “establishments” has been answered on the finding that Section 47 would not apply to establishments which do not come under the definition of “establishment” in section 2(k). Accordingly, we are not going into this aspect any further.

4. However, is still required to be considered is whether the petitioner would be entitled to any further remedy under the aforesaid Act such as under sections 62 and 63.

5. In view of the liberty granted by the High Court to approach any other forum, if so advised, and since we are not adjudicating the question as to whether the said Act applies to



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the petitioner or not, we make it clear that the petitioner may apply before the authorities under the Act or before the Civil Court where the said question can be gone into in accordance with law

6. The Special Leave Petitions are disposed of with the aforesaid observations.

The combined reading of these judgements, makes it clear that, once the Government undertaking has been acquired by Private Limited Company, it can no more be considered as “State” within the meaning of Article 12 of Constitution of India and therefore, this Writ Petition is not maintainable.

8. In the case before hand, due 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 the Government in Air India Limited and thus Air India Limited ceases to be a Government Company and is a Private Limited Company. Therefore, Air India Limited is not a State within the meaning of the Article 12 of Constitution of India.



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9. Therefore, this Court is of the view that, this Writ Petition is not maintainable. Accordingly, this Writ Petition is dismissed giving liberty to the petitioner to work out his remedy before the appropriate forum in the manner known to law. The period spent in prosecuting this Writ Petition shall not be computed for the purpose of limitation, if any. Consequently, connected miscellaneous petitions are closed.

03.04.2024

Index :Yes/No

Internet:Yes/No

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To

1. The General Manager GH
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2. The Regional Manager -G.S,
Air India,
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G.CHANDRASEKHARAN, J

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