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

+ **W.P.(C) 1663/2014 and CM APPL. 9672/2023**

GEETA KAPOOR

.....Petitioner

Through: Ms. Pallavi Singh, Advocate

versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr. Bhagvan Swarup Shukla, CGSC
with Ms. Priya Dwivedi, Advocates for UOI.

Mr. Nalin Kohli, Mr. Azeem Samuel, Mr. Amit
Mishra, Ms. Mitakshara Goyal, Mr. Akhil
Kulshrestha and Ms. Yashika Nagpal, Advocates
for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

02.08.2024

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1. This writ petition has been filed by the Petitioner under Article 226 of the Constitution of India seeking the following prayers:

"i) Allow the Writ Petition and direct the respondent No.2 to issue promotion order to the petitioner to the post of Dy. General Manager, Commercial w.e.f. 01.04.2009 in pursuance to the promotion order dated 02.11.2010 with all consequential benefits including seniority, pay, pay-fixation etc.;

ii) Quash and set aside order dated 24.02.2014 and direct the respondent No.2 to consider the petitioner for promotion to the post of General Manager, Commercial;

iii) Direct the respondents No.2 to conclude the pending departmental proceedings initiated vide charge sheet dated 24.01.2011 in a time bound manner and in any case by 31.03.2014 prior to the superannuation of the petitioner;

iv) Direct the respondents No.3 to conclude the pending departmental proceedings initiated vide chargesheet dated 29.11.2013 in a time bound



manner prior to the superannuation of the petitioner;

v) Award the cost of the petition in favour of petitioner;

vi) Pass any other appropriate, writ, order or direction as deem just and proper in the circumstances of the case.”

2. Learned counsel for AIL raises an objection to the maintainability of the writ petitions on the ground that as a result of the disinvestment process initiated by the Government of India, AIL has ceased to be a public body and therefore, no writ can lie against AIL in the circumstances that exist today. It is submitted that originally AIL was a statutory body constituted under the Air Corporations Act, 1953, however, post its repeal and in terms of the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994, it had become a wholly owned company of the Government of India. However, in light of the position that obtains today, where AIL has been privatised and the entire shareholding of the Government of India in AIL has been transferred to M/s. Talace Pvt. Ltd. (a wholly owned subsidiary of M/s. Tata Sons Pvt. Ltd.), no writ petition can lie under Article 226 of the Constitution of India as AIL is no longer a public body or Authority within the meaning of Article 12 of the Constitution of India. Reliance is placed on the judgment of the Supreme Court in ***R.S. Madireddy and Another v. Union of India and Others***, 2024 SCC OnLine SC 965, in this context.

3. Learned counsel appearing for the Petitioner contests the preliminary objection and submits that the writ petition is maintainable. The judgment of the Supreme Court in ***R.S. Madireddy (supra)***, has to be read holistically and Petitioner cannot be left remediless. When the writ petition was filed in the year 2014, it was maintainable and has been pending for nearly 09 years and it would be travesty of justice if Petitioner was ousted on the sole ground that AIL has been disinvested. According to learned counsel, a



meaningful reading of the judgment does not indicate that the Supreme Court has held that all pending writ petitions against AIL were to be dismissed without looking into any other factor, more importantly the hardship that shall be caused to the Petitioner if she were to be ousted at this stage having approached to Court in 2014. Additionally, reliance is placed on the judgment of the Supreme Court in **Anita Kushwaha v. Pushap Sudan, (2016) 8 SCC 509**, to contend that access to justice is basic to human rights and right to access to Courts is deemed to include the right to reasonably speedy and effective justice in all matters before the Courts, Tribunals or other Fora and it is the duty of the State to take all reasonable steps to achieve the said object.

4. I have heard learned counsel for the Petitioner and learned counsels for the Respondents.

5. It is a matter of record that this petition was filed in the year 2014 and has been pending in this Court for nearly 10 years. It is, however, an undisputed fact that AIL stands disinvested and the entire shareholding of the Government of India in AIL has been transferred to M/s. Talace Pvt. Ltd. (a wholly owned subsidiary of M/s. Tata Sons Pvt. Ltd.) and therefore, no writ petition can lie under Article 226 of the Constitution of India as AIL is no longer a public body or Authority within the meaning of Article 12 of the Constitution of India. This position of law is no longer *res integra* and stands crystallized by the Supreme Court in the decision in **R.S. Madireddy (supra)**. Relevant passages from the judgment are extracted hereunder for ready reference:

“32. There is no dispute that the Government of India having transferred its 100% share to the company Talace India Pvt Ltd., ceased to have any administrative control or deep pervasive control over the private



entity and hence, the company after its disinvestment could not have been treated to be a State anymore after having taken over by the private company. Thus, unquestionably, the respondent No. 3(AIL) after its disinvestment ceased to be a State or its instrumentality within the meaning of Article 12 of the Constitution of India.

33. Once the respondent No. 3(AIL) ceased to be covered by the definition of State within the meaning of Article 12 of the Constitution of India, it could not have been subjected to writ jurisdiction under Article 226 of the Constitution of India.

34. A plain reading of Article 226 of the Constitution of India would make it clear that the High Court has the power to issue the directions, orders or writs including writs in the nature of Habeas Corpus, Mandamus, Certiorari, Quo Warranto and Prohibition to any person or authority, including in appropriate cases, any Government within its territorial jurisdiction for the enforcement of rights conferred by Part-III of the Constitution of India and for any other purpose.

35. This Court has interpreted the term ‘authority’ used in Article 226 in the case of *Andi Mukta* (supra), wherein it was held as follows:

“17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The ‘public authority’ for them means everybody which is created by statute—and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all ‘public authorities’. But there is no such limitation for our High Courts to issue the writ ‘in the nature of mandamus’. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to ‘any person or authority’. It can be issued ‘for the enforcement of any of the fundamental rights and for any other purpose’.

20. The term ‘authority’ used in Article 226, in the context, must receive a liberal meaning like the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words ‘any person or authority’ used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of



the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.”

(emphasis supplied)

36. Further, in the case of *Federal Bank Ltd. v. Sagar Thomas*, this Court culled out the categories of body/persons who would be amenable to writ jurisdiction of the High Court which are as follows:

“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.”

37. The respondent No. 3(AIL), the erstwhile Government run airline having been taken over by the private company Talace India Pvt. Ltd., unquestionably, is not performing any public duty inasmuch as it has taken over the Government company Air India Limited for the purpose of commercial operations, plain and simple, and thus no writ petition is maintainable against respondent No. 3(AIL). The question No. 1 is decided in the above manner.

38. The question of issuing a writ would only arise when the writ petition is being decided. Thus, the issue about exercise of extra ordinary writ jurisdiction under Article 226 of the Constitution of India would arise only on the date when the writ petitions were taken up for consideration and decision. The respondent No. 3(AIL)- employer was a government entity on the date of filing of the writ petitions, which came to be decided after a significant delay by which time, the company had been disinvested and taken over by a private player. Since, respondent No. 3 employer had been disinvested and had assumed the character of a private entity not performing any public function, the High Court could not have exercised the extra ordinary writ jurisdiction to issue a writ to such private entity. The learned Division Bench has taken care to protect the rights of the appellants to seek remedy and thus, it cannot be said that the appellants have been non-suited in the case. It is only that the appellants would have to approach another forum for seeking their remedy. Thus, the question No. 2 is decided against the appellants.

39. By no stretch of imagination, the delay in disposal of the writ petitions could have been a ground to continue with and maintain the writ



petitions because the forum that is the High Court where the writ petitions were instituted could not have issued a writ to the private respondent which had changed hands in the intervening period. Hence, the question No. 3 is also decided against the appellants.

40. Resultantly, the view taken by the Division Bench of the Bombay High Court in denying equitable relief to the appellants herein and relegating them to approach the appropriate forum for ventilating their grievances is the only just and permissible view.

41. We may also note that the appellants raised grievances by way of filing the captioned writ petitions between 2011 and 2013 regarding various service-related issues which cropped up between the appellants and the erstwhile employer between 2007 and 2010. Therefore, it is clear that the writ petitions came to be instituted with substantial delay from the time when the cause of action had accrued to the appellants.

42. It may further be noted that the Division Bench of Bombay High Court, only denied equitable relief under Article 226 of the Constitution of India to the appellants but at the same time, rights of the appellants to claim relief in law before the appropriate forum have been protected.

43. We may further observe that in case the appellants choose to approach the appropriate forum for ventilating their grievances as per law in light of the observations made by the Division Bench of the Bombay High Court, Section 14 of the Limitation Act, 1963 shall come to the rescue insofar as the issue of limitation is concerned.

44. In wake of the discussion made hereinabove, we do not find any reason to take a different view from the one taken by the Division Bench of the Bombay High Court in sustaining the preliminary objection qua maintainability of the writ petitions preferred by the appellants and rejecting the same as being not maintainable.”

6. Contentions of the learned counsel for the Petitioner, broadly understood are: (a) when the writ petition was filed, it was maintainable against AIL; (b) at this belated stage after nearly 10 years, Petitioner cannot be non-suited as she cannot be blamed for the pendency; and (c) right to access to Courts includes right to reasonably speedy and effective justice. The argument is that the Supreme Court in ***R.S. Madireddy (supra)***, does not lay down a general principle that all pending writ petitions against AIL should be dismissed, when read holistically. These contentions, in my



considered view, only deserve to be rejected.

7. A holistic reading of the judgment of the Supreme Court in ***R.S. Madireddy (supra)***, shows that both these contentions raised by the Petitioners therein were negated and repelled by the Supreme Court. The questions arising for adjudication before the Supreme Court encapsulated in paragraph 22 of the judgment are extracted hereunder, at the cost of repetition:

“22. The questions of law presented for adjudication of this Court are:

(i) Whether respondent No. 3(AIL) after having been taken over by a private corporate entity could have been subjected to writ jurisdiction of the High Court?

(ii) Whether the appellants herein could have been non-suited on account of the fact that during pendency of their writ petitions, the nature of the employer changed from a Government entity to a private entity?

(iii) Whether the delay in disposal of the writ petition could be treated a valid ground to sustain the claim of the appellants even against the private entity?”

8. It is thus luminously clear that the Supreme Court delved into both the issues flagged by the Petitioners and held that the question of issuing a writ would only arise when the writ petition is being decided and the issue of exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India would arise only on the date when the writ petitions are taken up for consideration and decision. AIL was a Government entity on the date of filing of the writ petitions, which came for consideration after a significant delay by which time, the Company had been disinvested and taken over by a private player and since it had assumed the character of a private entity, not performing any public function, the High Court could not have exercised the extraordinary writ jurisdiction to issue a writ to such private entity. Significantly, the Supreme Court further observed that by no



stretch of imagination, delay in disposal of the writ petitions could have been a ground to continue with and maintain the writ petitions because the forum, that is the High Court where the writ petitions were instituted could not have issued a writ to the private Respondent which had changed hands in the intervening period. Therefore, both questions, i.e., Questions No.2 and 3 were decided against the writ Petitioners and in favour of AIL.

9. Insofar as reliance on the judgment of the Supreme Court in *Anita Kushwaha (supra)* is concerned, there cannot be any quarrel with the proposition that right to access to Courts is deemed to include the right to reasonably speedy and effective justice in all matters before Courts, Tribunals or other Fora as this is the essence and mandate of Article 30-A of the Constitution of India. However, this judgment cannot aid the Petitioner in view of the findings of the Supreme Court in *R.S. Madireddy (supra)* that the crucial date, on which the maintainability of a writ petition before the High Court under Article 226 of the Constitution of India is to be tested, is the date on which the writ petition comes up for decision as also the observations that if during the pendency of the writ petition, the entity against whom a writ is sought assumes the character of a private entity not performing any public function, the High Court cannot exercise its extraordinary writ jurisdiction to issue a writ to such an entity.

10. In view of the aforesaid judgment of the Supreme Court, writ petition cannot be entertained and is accordingly dismissed as not maintainable. Liberty is granted to the Petitioner to take recourse to remedies available in law before the appropriate Forum. It is made clear that the time period, for which the writ petition has been pending in this Court, will be excluded for the purpose of computation of limitation under Section 14 of the Limitation



Act, 1963, should the Petitioner seek any remedy by instituting fresh proceedings in a Forum where question of limitation will be relevant and may arise.

11. Petition is accordingly disposed of along with the pending application.

JYOTI SINGH, J

AUGUST 02, 2024/kks