IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

WRIT PETITION NO. 30722 OF 2025 (S-RES)

BETWEEN:

VINOD RAYAPPA UGARE
SON OF RAYAPPA M UGARE
AGED ABOUT 46 YEARS,
RESIDING AT NO.201,
1ST FLOOR, 2GM, 2ND MAIN ROAD,
KASTURINAGAR,
BENGALURU-560 043

…PETITIONER

(BY SRI. SHRIDHAR PRABHU., ADVOCATE)

AND:

1. VOLVO GROUP INDIA PRIVATE LIMITED
CIN U50101KA1996PTC024176
A PRIVATE LIMITED COMPANY REGISTERED UNDER
THE COMPANIES ACT 1956,
HAVING ITS REGISTERED OFFICE AT
YALACHAHALLY VILLAGE,
TAVAREKERE POST,
HOSKOTE TALUK,
BENGALURU-560 122

ALSO AT 2ND , 3RD , 4TH , 5TH AND 6TH FLOOR
BLOCK A, PARIN BUILDING,
BAGMANE TECH PARK,
CV RAMAN NAGAR, BENGALURU-560093
REPRESENTED BY MANAGING DIRECTOR KAMAL BAI

Digitally signed by KIRAN KUMAR R
Location: HIGH COURT OF KARNATAKA

2. VOLVO GROUP
AB VOLVO
SE-405 08, GOTHENBURG, SWEDEN
REPRESENTED BY ITS DIRECTOR
(REGISTERED UNDER COMPANIES ACT 1956)

3. KAMAL BAI
FATHER'S NAME NOT KNOWN TO THE
PETITIONER
MAJOR
WORKING AS MANAGING DIRECTOR AT
VOLVO GROUP INDIA PRIVATE LIMITED
HAVING OFFICE AT 5TH FLOOR, BLOCK A,
PARIN BUILDING,
BAGMANE TECH PARK,
CV RAMAN NAGAR, BENGALURU-560093

4. NIKLAS VALDEMAR GUSTAFSSON
FATHER'S NAME NOT KNOWN TO THE
PETITIONER
MAJOR
WORKING AS DIRECTOR AT
VOLVO GROUP INDIA PRIVATE LIMITED
HAVING OFFICE AT 5TH FLOOR, BLOCK A,
PARIN BUILDING,
BAGMANE TECH PARK,
CV RAMAN NAGAR,
BENGALURU-560 093

5. SOMASUNDRAM GANGADHAR
FATHER'S NAME NOT KNOWN TO THE
PETITIONER
MAJOR
WORKING AS DIRECTOR AT
VOLVO GROUP INDIA PRIVATE LIMITED
HAVING OFFICE AT 5TH FLOOR, BLOCK A,
PARIN BUILDING,
BAGMANE TECH PARK,
CV RAMAN NAGAR,
BENGALURU-560 093

6. LAXMINARAYANA HEGDE
FATHER'S NAME NOT KNOWN TO THE PETITIONER
MAJOR
WORKING AS COMPANY SECRETARY AT
VOLVO GROUP INDIA PRIVATE LIMITED
HAVING OFFICE AT 5TH FLOOR, BLOCK A,
PARIN BUILDING,
BAGMANE TECH PARK,
CV RAMAN NAGAR,
BENGALURU-560 093

7. MANOJ SEBASTIAN
FATHER'S NAME NOT KNOWN TO THE PETITIONER
MAJOR
WORKING AS CHIEF FINANCIAL OFFICER AT
VOLVO GROUP INDIA PRIVATE LIMITED
HAVING OFFICE AT 5TH FLOOR, BLOCK A,
PARIN BUILDING,
BAGMANE TECH PARK,
CV RAMAN NAGAR,
BENGALURU-560 093

8. JOHAN PETER HERBERTS
FATHER'S NAME NOT KNOWN TO THE PETITIONER
MAJOR
WORKING AS DIRECTOR AT
VOLVO GROUP INDIA PRIVATE LIMITED
HAVING OFFICE AT 5TH FLOOR, BLOCK A,
PARIN BUILDING,
BAGMANE TECH PARK,
CV RAMAN NAGAR,
BENGALURU-560 093

9. JOSEPH RAJARATNAM SATISH RAJKUMAR
FATHER'S NAME NOT KNOWN TO THE PETITIONER
MAJOR
WORKING AS DIRECTOR AT

VOLVO GROUP INDIA PRIVATE LIMITED
HAVING OFFICE AT 5TH FLOOR, BLOCK A,
PARIN BUILDING,
BAGMANE TECH PARK,
CV RAMAN NAGAR,
BENGALURU-560 093

10. SOFIA HELENA FRANDBERG
FATHER'S NAME NOT KNOWN TO THE
PETITIONER
MAJOR
WORKING AS DIRECTOR AT
VOLVO GROUP INDIA PRIVATE LIMITED
HAVING OFFICE AT 5TH FLOOR, BLOCK A,
PARIN BUILDING,
BAGMANE TECH PARK,
CV RAMAN NAGAR,
BENGALURU-560 093

…RESPONDENTS

(BY, SRI.S.N.MURTHY, SENIOR COUNSEL FOR
SMT. ROOPASRI S., ADVOCATE FOR R1.
R6 SERVED- UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A. ISSUE A WRIT OF MANDAMUS, OR ANY OTHER APPROPRIATE WRIT, ORDER, DIRECTION TO DECLARE THAT THE PETITION HAS RESIGNED LAWFULLY AND SERVED HIS NOTICE PERIOD. B. ISSUE A WRIT OF MANDAMUS, OR ANY OTHER APPROPRIATE WRIT, ORDER, DIRECTION TO DIRECT THE RESPONDENT COMPANY TO ISSUE THE PETITIONERS RELIEVING AND EXPERIENCE LETTER. C. ISSUE A WRIT OF MANDAMUS, OR ANY OTHER APPROPRIATE WRIT, ORDER, DIRECTION TO DIRECT THE RESPONDENT COMPANY TO PAY THE EMOLUMENTS DUE TO THE PETITIONER, MORE FULLY DESCRIBED IN SCHEDULE-ID.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

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CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL ORDER

1. The Petitioner filed this writ petition seeking the following reliefs:

   i. Issue a Writ of Mandamus, or any other appropriate writ, order, direction to declare that the petitioner has resigned lawfully and served his notice period.

   ii. Issue a Writ of Mandamus, or any other appropriate writ, order, direction to direct the Respondent Company to issue the Petitioner's Relieving and Experience Letter.

   iii. Issue a Writ of Mandamus, or any other appropriate writ, order, direction to direct the Respondent company to pay the emoluments due to the petitioner, morefully described in Schedule- I.

   iv. Grant cost of Writ Petition.

   v. Grant such other and further reliefs as this Hon'ble court deems fit and proper to pass under the circumstances of this case, in the interest of justice and equity.

2. Brief facts, leading rise to the filing of this writ petition are as follows:

3. The petitioner joined the services of respondent No.1 company as Manager in grade "L4" in its real estate division vide Appointment letter at Annexure-A. The petitioner was promoted as "Senior Manager" on 1st April 2015, as Assistant General Manager, as Acting Director Real Estate and finally he was promoted to the position of Director of Real Estate vide promotion letter at Annexure B. The petitioner has been in continuous employment for 14 years. The petitioner submitted his resignation letter vide Annexure-C to the Respondent company on 18th June 2025, notifying his 2 months notice period. Thereafter the Respondent held a meeting on 14th July 2025 with the petitioner to discuss the petitioner's alleged misconduct during his tenure at company. Further, the petitioner received a charge sheet cum show cause notice vide letter dated

15-07-2025 and simultaneously he was placed under suspension. The petitioner issued a response vide Annexure G denying the allegations made against him and requested the company to relieve him. Respondent company issued a letter of Domestic enquiry to the petitioner on 21-07-2015 vide Annexure H and thereafter the company denied to issue the relieving letter to the petitioner. Further, the petitioner issued a letter to Respondent Company seeking the disclosure of documents and again requested the company to issue relieving letter, to which the company denied vide Email dated 13-08-2025. Further, the petitioner having served his notice period issued another letter requesting to issue relieving letter and the respondent company once again denied the issuance of the letter. It is submitted that, the petitioner facing difficulties in the hands of the Respondent Company, he requested for assistance of legal practitioner along with release of

emoluments due and relieving letter, but again the same was rejected by the Respondent company. The petitioner aggrieved by the actions of the petitioner, filed this writ petition.

4. Respondents have filed a statement of objections contending that the 1st Respondent is a company registered under the Companies Act and is engaged in trade and business of providing sustainable transport solutions. It is contended that the 1st Respondent is not a public body, Government aided institution and does not perform any public duty. Hence, the 1st Respondent is not a "State" under Article 12 of the Constitution of India and not amenable to writ jurisdiction of this court under Article 226 of the Constitution of India and the same is not maintainable against the private company. It is contended that the petitioner was very well aware that he would be held guilty for causing substantial loss to the Respondent company on account of his

unlawful and illegal acts with a view to escape disciplinary proceedings against him, hence he submitted his resignation dated 18.06.2025. Accordingly, prays to dismiss the writ petition.

5. Heard the arguments of Sri. Sridhar Prabhu, learned counsel for the petitioner and Sri. S.N.Murthy, learned Senior counsel for Smt. Roopasri. S., learned counsel for respondent No.1.

6. The learned counsel for the petitioner submits that the petitioner had been working in the respondent company since 14 years and tendered his resignation. He submits that the respondent company denied the acceptance of resignation tendered by the petitioner and also did not issue the relieving letter and submits that the respondent company initiated a sham disciplinary enquiry proceedings against the petitioner by keeping in abeyance the issuance of the relieving letter. He submits that Articles 19 and 21 of the Constitution of

India can even be enforced against the non "State" entity under Article 12 of the Constitution of India. He submits that when the rights have horizontal effect they extend to a relationship between the private individual and entities ensuring the dignity and non discrimination. Therefore, he submits that the instant writ petition is maintainable.

7. To buttress his arguments he placed reliance on the judgment of the Hon'ble Apex court in the case of ***Kaushal Kishor v. state of Uttar Pradesh and others*** reported in ***(2023) 4 SCC 1*** and submits that the writ jurisdiction is amenable even against private entities in the event of violation of Articles 19 and 21 of the Constitution of India. To buttress his arguments he also places reliance on the following authorities:

A. Karnataka Bank v T Gopalkrishna Rao reported in ILR 1994 KAR 230

B. ***Jane Kaushik v Unoin of India reported 2025 SCC OnLine SC 2257***

C. ***Arup Bhuyan v State of Assam and Another reported in (2023) 8 SCC 535***

D. ***Sukanya Shantha v. Union of India and others reported in (2024) 15 SCC 535***

E. ***Karnataka Karmikara Vedike R. Represented by its president Sri. Pradeep Nail V. State of Karnataka Rep. By its chief secretary and others reported in 2025 SCC ONLINE KAR 15224***

F. ***Sri Sheenappa Moolya and Anr v. The state and others in WP no. 19382/2023 disposed off on 20.01.2025***

G. ***state of Gujurat and Ors v. Honble High Court of Gujurat reported in AIR 1998 SC 3164***

H. ***People's union for Democratic Rights and Ors v Union Of India reported in AIR 1982 SC 1473***

Hence, on these grounds, he prays to allow the writ petition.

8. *Per contra*, Sri. S N Murthy, learned senior counsel for the respondent company submits that, the disciplinary enquiry is pending against the petitioner and he is appearing in the enquiry. The question of accepting the resignation does not arise during the pendency of the disciplinary enquiry. He submits that if an employee is permitted to resign during the pendency of the disciplinary proceedings it would ease for him to escape from the consequences of the enquiry against him. Further, he submits that the respondent company is neither a State nor an instrumentality of State under Article 12 of the Constitution of India. He submits that the respondent company is not entrusted with public duty and does not perform any public function. He submits that the private entities are not amenable to writ jurisdiction under Article 226 of the Constitution of India and the instant writ Petition is not maintainable since it is against a private entity. He also submits that the

respondent company does not satisfy the necessary ingredients to constitute an instrumentality of the State under Article 12 of the Constitution of India.

9. To buttress his arguments he placed reliance on the judgment of the Hon'ble Apex Court in the case of ***S. Shobha v. Muthoot Finance*** reported in ***2025 (3) ALD 286*** and submitted that, writ jurisdiction is amenable only when the private institution is performing the public duty under a statute and however the respondent company is not performing any public duty. He also places reliance on the following authorities:

   A. Central Inland Water Transport Corporation Limited And Another v. Brojo Nath Ganguly and Another reported in (1986) 3 SCC 156

   B. The Maharashtra State Cooperative Housing Finance Corporation Ltd v. Prabhakar Sitara Bhandage reported in AIR 2017 SC 1647

C. Premier Automobiles Ltd v. Kamlekar Shantaram Wadke of Bombay and Ors reported in AIR 1975 SC 2238

Accordingly, on these grounds, he prays to dismiss the writ petition.

10. Perused the records and considered the submissions of the learned counsel for the parties.

11. It is undisputed that, the petitioner joined the services of the Respondent Company as a Manager in grade L4 within the real estate division vide Appointment at Annexure A. Thereafter, the petitioner was promoted to various positions including Senior Manager, Assistant Senior Manager, Acting Director Real Estate and as Director Real Estate with effect from 01.01.2025. Further the petitioner tendered his resignation to the respondent Company notifying his 2 months notice period vide Annexure C dated 18.06.2025. The respondent Company subsequently issued a charge sheet cum

show cause notice to the petitioner vide letter dated 15.07.2025 at Annexure E, to which the petitioner issued his written response vide Annexure G dated 17.07.2025. The company thereafter issued with another notice of enquiry intimating the initiation of domestic enquiry against the petitioner vide Annexure H dated 21.07.2025. Again the petitioner issued a reply on 23.07.2025 vide Annexure J highlighting the lapses in the initiation of domestic proceedings. However, the Respondent Company denied to issue a relieving letter to the petitioner vide email dated 22.07.2025 at Annexure K. Furthermore, the petitioner issued another letter dated 31.07.2025 requesting the company to issue relieving letter vide Annexure L, however, the Respondent Company denied to issue relieving letter vide its reply email dated 13.08.2025 vide Annexure M. Further, the petitioner again requested for the issuance of the relieving letter vide email dated

11.09.2025 at Annexure R. However, the respondents submitted a reply stating that relieving letter would be issued only after conclusion of the domestic enquiry vide Annexure S. Thereafter, the petitioner has joined a new company on 18.09.2025 vide joining letter at Annexure T.

12. Before proceeding ahead with deciding the matter in issue involved in this writ petition, it is appropriate to decide Whether the present writ petition is maintainable on the ground of non amenability of writ jurisdiction to private entities? The instant petition revolves around a question as to whether the writ petition is maintainable against a private entity.

13. It is a settled position of law that the fundamental rights are enforceable against the State as defined under Article 12 of the Constitution of India and the writ jurisdiction is not amenable to private entities with certain exceptions. However looking into the averments made in the petition it is very clear that

the petitioner herein is seeking to enforce his rights against the private entity i.e., the Respondent company. However, to bring the Respondent company under the purview of "State" under Article 12 of the Constitution, it is necessary to examine whether the Respondent company is a State or its instrumentality.

14. It is the contention of the learned counsel for the petitioner that some fundamental rights can be enforced against the private entities and in support of his contention, he relies on the following authorities:

A. *The Hon'ble Apex court in the case of* ***Kaushal Kishor v. State of Uttar Pradesh and Others reported in (2023) 4 SCC 1*** *dealt with the question as to whether the right under Article 19 or 21 of the constitution of India can be claimed against other than against the State or its instrumentalities. The case was dealt with before the Hon'ble Court in 4:1 majority. The Honble Apex court while answering the said*

question, made it very clear that a fundamental rights under Article 19 or 21 can be enforced even against the persons other than the state or it's instrumentalities. Also it was held that, there are some articles in Part III where the mandate is directly to the State and there are other articles where without injuncting the State, certain rights are recognised to be inherent, either in the citizens of the country or in persons. In fact, there are two sets of dichotomies that are apparent in the articles contained in Part III. One set of dichotomy is between: (i) what is directed against the State; and (ii) what is spelt out as inhering in every individual without reference to the State. The other dichotomy is between: (i) citizens; and (ii) persons.

*However, partly dissenting with the aforementioned view**, it was held that it is trite that writ courts do not enter into adjudication of disputed questions of fact. But, questions regarding infringement of the fundamental rights under Articles 19/21, by a private entity, would invariably involve disputed questions of fact.** Therefore, this is another difficulty that must be borne in mind while determining the*

horizontal operation of such rights in a writ proceeding.

Also, it was held in para 276 of the judgment as follows:

"The rights in the realm of common law, which may be similar or identical in their content to the fundamental rights under Articles 19/21. operate horizontally: However, the fundamental rights under Articles 19 and 21, may not be justifiable horizontally before the constitutional courts except those rights which have been statutorily recognised and in accordance with the applicable law. However, they may be the basis for seeking common law remedies. But a remedy in the form of writ of Habeas Corpus, if sought against a private person on the basis of Article 21 of the Constitution can be before a constitutional court i.e. by way of Article 226 before the High Court or Article 32 read with Article 142 before the Supreme Court."

B. In the case of ***Karnataka Bank v T Gopalkrishna Rao reported in ILR 1994 KAR 230***, the coordinate Bench of this Court dealt with the question whether the aggrieved

person can knock the doors of a Civil court in case of an industrial dispute. Answering the question the Court held that in the cases not covered by the Industrial Disputes act, or by another statute and the employment is a private employment, remedy of the employee will be to sue for damages in the case of an illegal termination of service; he cannot insist before the Civil Court that he should be continued in service; he cannot achieve the same result of subsisting in service unhindered, by recourse to an action to restrain the employer from proceeding in a manner that may lead to the termination of service. Civil Court's jurisdiction to grant such a relief is barred by necessary implication.

C. In the case of ***Jane Kaushik v Unoin of India reported 2025 SCC OnLine SC 2257***, the honble Apex court addressed the issue of violation of fundamental rights of Transgender. In this case, the Apex court also dealt with an issue as to whom does the fundamental rights binds in terms of its vertical and horizontal effect and held that the question as to whom the fundamental rights bind or constrain, would flow as a necessary consequence of the distinction underlying the 'vertical' and

'horizontal effect of such rights. When fundamental rights are said to have a vertical effect, they apply only between the individual and the State, thereby, limiting how the State may act towards its citizens. In contradistinction, when rights are understood to have a horizontal effect, they extend to relationships between private individuals or entities, ensuring that constitutional values such as equality, dignity, and non-discrimination are also respected in private interactions, be it in employment, housing, education, or access to public places. Also, the Apex court made bit clear that the controversy of horizontality of fundamental rights is settled in the case of Kaushal referred supra.

D. In the case of ***Arup Bhuyan v State of Assam and Another reported in (2023) 8 SCC 535,*** the Honble Apex court extensively dealt with nature, scope and applicability UAPA Act. However, the Honble Apex court, observed that in the case of Kaushal referred supra, it has been held that restrictions under Article 19(2) are exhaustive.

E. Again, in the case of ***Sukanya Shantha v. Union of India and others reported in***

(2024) 15 SCC 535, the Honble Apex court on a general note dealt with the constitutional philosophy. It is held at para 9 that Our interpretation of the Constitution must fill the silences in its text. The Framers of the Constitution could not have anticipated every situation that might arise in the future. They also intentionally left certain decisions to the discretion of future generations. However, the choices we make today must align with the broader constitutional framework and values. In filling the gaps, whenever they arise, our interpretation must enhance the foundational b values of the Constitution such as equality, dignity, liberty, federalism and institutional accountability. Also, at para 29 it is held that the Constitution thus stands as a testament to the fight against historical injustices and for the establishment of an egalitarian social order. It aims to prevent caste-based discrimination. This commitment is not limited to preventing discriminatory actions by the State alone. It extends to the actions of citizens and private entities as well. It empowers the State to enact appropriate legislation or take executive measures to tackle caste-based discrimination. Also the Hon'ble Apex court in the very case, spoke about Article 21 with it expanding

horizons and held that AN INDIVIDUALS DIGNITY IS FUNDAMENTAL TO THEIR SELF AND AUTONOMY.

F. In the case of ***Karnataka Karmikara Vedike R. Represented by its president Sri. Pradeep Nail V. State of Karnataka Rep. By its chief secretary and others reported in 2025 SCC ONLINE KAR 15224***, the Coordinate Bench of this Court dealt with the question of restraining the respondents from preventing the members of Karnataka Karmika Vedike R. from conducting peaceful protest regarding justice for soujanya movement at freedom park Bengaluru. The co-ordinate bench of this court placing reliance on the judgment of the Hon'ble Apex Court in the case of Kaushal Kishor referred supra, held that Dignity is protected under Article 21 and it is part of individual rights. Further, Article 21 could not be sacrificed at the altar of securing the widest amplitude of free speech rights, this premise can serve as a theoretical justification for prescribing restraints on derogatory and disparaging speech. Human dignity, being a primary element under the protective umbrella of Article 21, cannot be negatively altered on account of derogatory speech, which marks out

persons as unequal and vilifies them leading to indignity. The right to protect the dignity of an individual is therefore placed on a higher pedestal than the right to speech.

G. Furthermore, the coordinate Bench of this Court in the case of ***Sri Sheenappa Moolya and Anr v. The state and others in WP no. 19382/2023*** off on 20.01.2025, granted relief directing the police to conduct investigation in connection with CC No. 203/2016 and the coordinate bench of this court disposed has placed reliance on the Judgment of the Hon'ble Apex court in the case of Kaushal Kishor referred supra and held in para 9 that the right to protect dignity of an individual is therefore placed on a higher pedestal than the right to speech.

H. In the case of ***state of Gujurat and Ors v. Honble High Court of Gujurat reported in AIR 1998 SC 3164*** the Hon'ble Apex court held that there are certain fundamental rights conferred by the Constitution which are enforceable against the whole world and they are to be found inter alia in Articles 17, 23 and 24, while it was dealing with the question as to whether Whether prisoners, who are required

to do labour as part of their punishment should necessarily be paid wages for such work at the rates prescribed under Minimum Wages law.

I. In the case of ***People's union for Democratic Rights and Ors v Union Of India reported in AIR 1982 SC 1473***, the Hon'ble Apex court dealt with the issue of observance of provisions of various labour laws in relation to work men employed in construction work and it has been held that many of the fundamental rights enacted in Part III operate as limitations on the power of the State and impose negative obligations on the State not to encroach on individual liberty and they are enforceable only against the State. But there are certain fundamental rights conferred by the Constitution which are enforceable against the whole world and they are to be found inter alia in Articles 17, 23 and 24.

15. The cases relied upon by the learned counsel for the petitioner are not applicable to the case on hand. The cases referred to above run on a different factual such as, in the case of ***Karnataka Bank referred***

supra, Co-ordinate Bench of this Court dealt with the question whether the aggrieved person can knock the doors of a Civil court in case of an industrial dispute, in the case of ***Jane Kaushik referred supra*** the Hon'ble Apex Court addressed the issue of violation of fundamental rights of transgender, in the case of ***Arup Bhuyan referred supra*** the Hon'ble Apex Court extensively dealt with nature, scope and applicability UAPA Act, in the case of ***Sukanya Shantha referred supra*** the Hon'ble Apex Court on a general note dealt with the Constitutional philosophy, in the case of ***Karnataka Karmikara Vedike R. Represented by its president Sri. Pradeep Nail*** (referred supra) the Co-ordinate Bench of this Court dealt with the question of restraining the persons from preventing the members of Karnataka Karmika Vedike R. from conducting peaceful protest regarding justice for Soujanya movement, and in the case of ***Sri Sheenappa***

Moolya (referred supra) the Co-ordinate bench of this court granted relief directing the police to conduct investigation in connection with C.C.No. 203/2016.

16. It is also pertinent to note that the main question upon which the present writ petition is founded is on its maintainability against private entity, whereas the Hon'ble Apex court in the case of ***Kaushal Kishor referred supra*** dealt with the question as to whether the right under Articles 19 or 21 of the Constitution of India can be claimed other than against the State or its instrumentalities. The case in ***Kaushal kishor*** (referred supra) also runs on a different factual matrix. The cases referred to above do not apply to the case on hand since the instant case involves the element of service related dispute. Also, no cases have been relied upon by the learned counsel for the petitioner to bring the respondent

herein under the purview of "State" under Article 12 of the Constitution of India.

17. It is the contention of the learned Senior counsel for the respondents that the respondent company is neither a "State" nor its instrumentality under Article 12 of the Constitution of India. To support his contention he places reliance on the following authorities:

A. In the case of **S Shobha v Muthoot Finance Ltd reported in 2025 INSC 117 (MANU/SC/0115/2025),** the question which came before the Hon'ble Apex court was regarding the maintainability of Writ petition against the company registered under the companies Act and with regard to the transaction of loan by way of pledge of Gold, whether involves any public function. In this case the Hon'ble Apex Court has held that the company is not state under Article 12 of the Constitution. Further the Hon'ble Supreme Court at para 9 of the judgment has summed up the guidelines as to against what entity does the writ petition lies, which reads as follows:

(1) For issuing writ against a legal entity, it would have to be an instrumentality or agency of a State or should have been entrusted with such functions as are governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence Governmental.

(2) A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government; (ii) 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.

(3) Although a non-banking finance company like the Muthoot Finance Ltd. with which we are concerned is duty bound to follow and abide by the guidelines provided by the Reserve Bank of India for smooth conduct of its affairs in carrying on its business, yet those are of regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company.

(4) A private company carrying on banking business as a scheduled bank cannot be termed as a company carrying on any public function or public duty.

(5) Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or statutory rule. In exceptional cases a writ of mandamus or a writ in the nature of mandamus may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

(6) Merely because a statue or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.

(7) If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but, nevertheless, there must be the public law element in such action.

(8) According to Halsbury's Laws of England, 3rd Ed. Vol.30 p.682, "a public authority is a body not necessarily a county council, municipal

corporation or other local authority which has public statutory duties to perform, and which perform the duties and carries out its transactions for the benefit of the public and not for private profit". There cannot be any general definition of public authority or public action. The facts of each case decide the point.

However, the Hon'ble Apex court has rejected the Writ Petition on the ground of maintainability.

B. In the case of **Central Inland Water Transport Corporation Limited And Another v. Brojo Nath Ganguly and Another reported in (1986) 3 SCC 156**, the Hon'ble Apex court dealt with the question as to whether the government company as defined under Section 617 of the Companies Act 1956 is the state under Article 12 of the constitution of India. Answering the said question, Hon'ble Apex court held in para 67 held that" … ***If there is an instrumentality or agency of the state which has assumed the garb of a Government company as defined in section 617 of the Companies Act, it does not follow that it thereby ceases to be an instrumentality or agency of the State. For the purposes of Article 12 one must necessarily see through the corporate veil to ascertain whether behind that veil is the face***

of an instrumentality or agency of the State…."

18. The authorities relied upon by the learned Senior counsel for the respondent company are applicable to the case on hand in ascertaining whether the respondent company is the "State" or its "instrumentality" under Article 12 of the Constitution of India.

19. To ascertain whether the Respondent company is the State or instrumentality under Article 12 of the Constitution of India, it is necessary to examine, whether it falls within the criteria's or tests laid down by the Hon'ble Apex court, every now and then. In the case on hand, the petitioner except producing the code of conduct of the respondent company at Annexure F, no single document has been placed on record by the petitioner to substantiate that the Respondent company is the State under Article 12. The petitioner, to bring the Respondent company

within the purview of the State under Article 12 of the Constitution of India, could have produced some documents or materials which would have brought the Respondent company under the "State". No materials have been placed on record to show that the financial assistance is given by the State or major shareholder in the respondent company is a State or where the control of the management and policies of the company is by the State or whether the company enjoys State conferred or State protected monopoly status or whether the functions carried out by the corporation/ company are public functions closely related to Governmental functions.

20. Further, the Hon'ble Apex court in the case of ***S. Shobha*** *(*referred supra) held that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government (ii) 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. Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or statutory rule. In exceptional cases a writ of *mandamus* or a writ in the nature of *mandamus* may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

21. From the perusal of the aforementioned authority it is crystal clear that, to constitute a State under Article 12 of the Constitution of India, the company should be financed by the State or substantially run by the State fund or it should perform the public duty

as cast by some statute. In the case on hand, from the perusal of the materials on record, it is very clear that the respondent company is neither financed by the State nor funded by the State and it does not perform any public duty.

22. Hence, as observed above, the writ jurisdiction is not amenable against the private entities and the fundamental rights can be enforced against the State. Since, the Respondent Company is neither a "State" nor its "instrumentality" under Article 12 of the Constitution of India, the instant petition is not maintainable, and deserves to be dismissed on the ground of maintainability.

23. In view of the above discussion, I proceed to pass the following order:

ORDER

i. The Writ Petition is ***dismissed***.

ii. Liberty is reserved to the petitioner to agitate the grievance before the appropriate forum.

iii. In view of dismissal of the petition, pending IA's, if any, do not survive for consideration and stand disposed of accordingly.

Sd/-
(ASHOK S.KINAGI)
JUDGE

SKS
CT:KHV