



2025:DHC:2953



\$~21

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 24.04.2025

+ **W.P.(C) 1431/2021, CM APPL. 29299/2024**

AI EMPLOYEES PENSIONERS WELFARE ASSOCIATION

.....Petitioner

Through: Mr. Dattatray Vyas, Mr. Shaurya Nirwal, Advs.

versus

AIR INDIA LIMITED & ORS.

.....Respondents

Through: Mr. Amit Mishra, Mr. Azeem Samuel, Ms. Mitakshara Goyal, Mr. Akhil Kulshrestha, Mr. Shivam Goel, Advs. for R-1
Ms. Nidhi Raman, CGSC with Mr. Arnav Mittal, Adv. for R-2 & 3
Mr. Debesh Panda, SSC with Mr. Vikramaditya Singh, Ms. Zehra Khan, Ms. Yashika Gupta, Advs. for R-4
Mr. Kamal Mehta, Adv. for R-5

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition was filed *inter alia* seeking the following prayers:

"A) Allow the present petition;

B) Issue a writ of Certiorari or any other appropriate writ, orders and / or direction quashing Respondent No.1's communication / letter dated 13.08.2020 by which Respondent No. 1 rejected all the legitimate contentions/requests/proposals which were stated in the Writ Petition filed by Petitioner Association bearing W.P.(C) 2369 of 2020 and which this Hon'ble Court, vide order dated 02.03.2020 was pleased to direct Respondent No.1 to treat the said Writ Petition as



2025:DHC:2953



Petitioners' representation to Respondent No.1;

C) Issue a writ of Mandamus or any other appropriate writ, orders and / or direction directing the Respondent No.2 and/or Respondent No. 3 to cover the Petitioners under the Employee's Provident Fund And Miscellaneous Provision Act, 1952;

D) Issue a writ of Mandamus or any other appropriate writ, orders and / or direction directing the Respondent No.2 and/or Respondent No. 3 to extend all benefits of Employees Pension Scheme, 1995, to Petitioners;

E) Issue a writ of Mandamus or any other appropriate writ, orders and / or direction directing the Respondent No.4 to take requisite steps to provide all benefits of Employees Pension Scheme, 1995 as amended upto date to all employees, including retired employees of Respondent No.1- Petitioners;

F) Issue a writ of Mandamus or any other appropriate writ, orders and / or direction directing the Respondents to implement, abide by and honour the commitments given to the Petitioners under the Rules read with Scheme under unamended original Principal Trust Deed of erstwhile Air India dated 12.08.1996 and original Principal Trust Deed of erstwhile Indian Airlines dated 19.09.1997 declaring amendments thereto as void ab initio;

2. Learned Counsel for Respondent No.1 submits that in view of the judgment of the Supreme Court in ***R.S. Madireddy and Another v. Union of India and Others***¹ [hereinafter referred to as “***R.S. Madireddy*** case”], the prayers in the present Petition which are in essence seeking directions *qua* Respondent No.1, do not survive.

2.1 Learned Counsel for the remaining Respondents also supports the stand of the Respondent No.1.

3. The Supreme Court in ***R.S. Madireddy*** case has held that in view of the privatisation of the state-run-carrier, Air India Limited, a Petition under Article 226 of the Constitution of India seeking relief against the erstwhile

¹ 2024 SCC OnLine SC 965



2025:DHC:2953



Government company cannot be sustained. It was held that there is no dispute that the Government of India has transferred 100% share of the Respondent No.1 to a private company Talace India Pvt. Ltd. and has ceased to have any administrative or pervasive control in the Respondent No.1.

3.1 It has further been held that once this disinvestment has been carried out, the Respondent No.1 has ceased to be an instrumentality of State under the meaning of Article 12 of the Constitution of India, 1950 and this is not amenable to the jurisdiction of the Court under Article 226 of the Constitution of India, 1950. The relevant extract of the ***R.S. Madireddy*** case is below:

*“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.**”*

xxx

xxx

xxx

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.

xxx

xxx

xxx

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



2025:DHC:2953



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...

[Emphasis Supplied]

4. Given the law as settled in this behalf, the prayers in the present Petition cannot be sustained, the Petition is accordingly dismissed. The pending Application also stands closed.

5. It is, however, clarified that this Court has not expressed any opinion on the merits of the disputes *inter se* the parties. The Petitioner is granted liberty to take appropriate steps in accordance with law, for the redressal of his grievance.

6. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

APRIL 24, 2025/jn

[Click here to check corrigendum, if any](#)