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

% ***Date of Decision: October 27th, 2026***

\# **CNR No. DLHC010077772022**

\+ **W.P.(C) 3138/2022**

SANJEEV BHAYANA .....Petitioner

Through: Mr. Karanpreet Singh, Ms. Prachi & Ms. Vani Sharma, Advs.

versus

AIR INDIA LTD AND ORS .....Respondents

Through: Mr. Avishkar Singhvi (through V.C.), Mr. Amit Mishra, Mr. Azeem Sameul, Ms. Malakshara Goyal, Mr. Vaibhav Kharbanda, Mr. Mujeeb & Ms. Srijeta Pratik, Advs. for R-1.
Ms. Anjana Gosain, Ms. Akansha Chaudhary, Advs. for R-4.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. *(Oral)*

1. By way of the present petition, the petitioner seeks the following reliefs:

> *"a) Pass a Writ in the nature of Mandamus or any other appropriate Writ/Order/Direction against the Respondent No.1, 2 and 3 thereby directing the Respondent No.1, 2 and 3 to refund the airfare of the above said four tickets (E-Ticket No. 098-3757799787,098-3757799788,098- 3757799784 and 098-*

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3757799785) into the account of the Petitioner.;
b) Pass a Writ in the nature of mandamus or any other appropriate Writ/Order/Directions against the Respondent No.4 thereby directing the Respondent No.4 to ensure the proper compliance of the Circular dated 07.10.2020 and to take necessary actions against the Respondent No.] and 2 for failing to comply with the directions contained in the said Circular dated 07.10.2020; or c) Pass any other Order(s) deem fit and necessary 111 the facts and circumstances of the case."

2. It is the grievance of the petitioner that he had booked four round-trip air tickets for travel from Delhi to Frankfurt, Germany, scheduled for 07.03.2020 and 12.03.2020, respectively, on flights operated by Respondent No. 1, through Respondent No. 3, for a total consideration of ₹1,09,688/-. However, in view of the COVID-19 pandemic, the petitioner sought to reschedule the journey and requested Respondent No. 1 to waive the applicable date-change charges. It contended that despite repeated follow-ups, his request was not accepted, whereafter the tickets were converted into open tickets upon imposition of cancellation charges. Subsequently, in view of the prevailing restrictions on international travel and the inability of the petitioner to undertake the journey, the petitioner sought a refund of the airfare from Respondent No. 3 on 30.12.2020. However, Respondent Nos. 1 to 3 have failed to refund the amount.

3. At the outset, the respondents have opposed the maintainability of the present writ petition on the ground that Respondent Nos. 1 to 3 are private entities and are not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. It is contended that, following the disinvestment of the Government of India's entire shareholding in Air India in favour of Respondent No.2 on 27.01.2022, Respondent No. 1 ceased to be a government entity.

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4. It is pertinent to note that the present petition has been filed after the Government of India sold 100% of its shareholding to Respondent No.2. The Hon'ble Apex Court has also considered whether writ petitions against Air India would be maintainable pursuant to the aforesaid sale in ***R.S. Madireddy v. Union of Inida*** **: 2024 SCC OnLine SC 965** and held as under:

> *"31. In order to be declared as "State" or "other authority" within the meaning of Article 12 of the Constitution of India, it would have to fall within the well-recognised parameters laid down in a number of judgments of this Court. In this regard, we may refer to the case of Pradeep Kumar Biswas v. Indian Institute of Chemical Biology21 wherein this Court after taking into consideration the previous judgments on this point, observed as follows:*
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> > *"27.Ramana [(1979) 3 SCC 489 : AIR 1979 SC 1628] was noted and quoted with approval in extenso and the tests propounded for determining as to when a corporation can be said to be an instrumentality or agency of the Government therein were culled out and summarised as follows : (SCC p. 737, para 9)*
> >
> > *"(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)*
> >
> > *(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. (SCC p. 508, para 15)*
> >
> > *(3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State-conferred or State-protected. (SCC p. 508, para 15)*
> >
> > *(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)*

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(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government. (SCC p. 510, para 18)"

40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be — whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

(emphasis supplied)

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

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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'.*
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> ***
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> *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."*

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(emphasis supplied)

36. Further, in the case of Federal Bank Ltd. v. Sagar Thomas22, 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

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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."

5. In view of the aforesaid, it is evident that Respondent No. 1 is a private entity and a writ petition would not be maintainable against it.

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Pursuant to the Government of India selling its entire shareholding to Respondent No. 2 on 27.01.2022, Respondent No. 1 ceased to be a government-owned entity and is no longer an instrumentality of the State. The mere fact that Respondent No. 1 provides air transport services, which are of public importance, would not, by itself, render it amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. Respondent Nos. 2 and 3 are also private entities and, therefore, a writ would not lie against them in the facts of the present case.

6. The only direction sought against Respondent No. 4 is to ensure compliance with its Circular dated 07.10.2020 and to take necessary action against Respondent Nos. 1 and 2 for failing to comply with the directions contained therein. However, the issuance of a writ of mandamus requires a clear demonstration that the respondent against whom such relief is sought has neglected to discharge a statutory duty. Mandamus is an extraordinary judicial remedy exercised to compel a public authority to perform a duty which it is legally obligated to discharge but has failed to do so. In the present case, the petitioner has failed to establish any such neglect or failure on the part of Respondent No. 4 in the discharge of its statutory duties. In the absence of any such demonstration, no case is made out for issuance of a writ of mandamus against Respondent No. 4.

7. In view of the aforesaid, this Court finds no grounds for exercising jurisdiction under Article 226 of the Constitution of India in the present case.

8. Accordingly, the present petition is dismissed.

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9. The petitioner is at liberty to pursue alternate remedies permissible in law, if any.

AMIT MAHAJAN, J

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