



2025:DHC:9407-DB



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

% **Judgement reserved on: 13.10.2025**
Judgement delivered on: 29.10.2025

+ LPA 15/2025 and CM APPL. 1123/2025

SH SHAILENDER CHOPRAAppellant

Through: Mr. Shyam D. Nadan,
Ms. Nandana Menon and
Mr. Rohit Bohra, Advocates.

versus

AIR INDIA LTD & ANR.Respondents

Through: Mr. Avishkar Singhvi,
Mr. Amit Mishra, Mr. Azeem
Samuel, Ms. Mitakshara Goyal,
Mr. Akhil Kulshrestha,
Mr. Shivam Goel and
Ms. Shrijeta Pratik, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G E M E N T

HARISH VAIDYANATHAN SHANKAR J.

1. By way of the present Appeal, filed under Clause 10 of the Letters Patent read with Section 10 of the Delhi High Court Act, 1966, the Appellant herein seeks to challenge the **Judgment and Order dated 08.08.2024¹** passed by the learned Single Judge of this Court in case bearing No. W.P. (C) No. 1342/2012, titled “*Shailender Chopra v. National Aviation Company of India Limited & Anr.*”, whereby the

¹ Impugned Order



Writ Petition filed by the Appellant herein came to be dismissed as being non-maintainable.

2. The Appellant's rights to take such further action as available under law were left open by permitting him to seek any remedy by instituting fresh proceedings before the concerned forum. While dismissing the petition as being non-maintainable, the learned Single Judge also clarified that the Appellant would be entitled to the benefit available under Section 14 of the Limitation Act, 1963 in respect of pendency of the Writ Petition.

3. The learned Single Judge also made it evident that no adjudication had been done on the merits of the matter, and the petition had only been dismissed on the grounds of maintainability.

4. At the very outset, this Court also posed the question to the learned counsel for the Appellant as to how, in view of the conclusive judgment of the Hon'ble Supreme Court in ***R.S. Madireddy & Anr. v. Union of India and Others***², the present Appeal, as well as the Writ Petition before the learned Single Judge, are maintainable.

BRIEF FACTS:

5. Shorn of unnecessary details, the facts germane for the institution of the present Appeal are as follows:

- a. In the year 1953, more specifically on 28.05.1953, the Government of India passed The Air Corporations Act, 1953, and proceeded to establish two corporations, being '*Indian Airlines*' and '*Air India International*'.
- b. Subsequently, on 29.01.1994, the Government of India passed The Air Corporations (Transfer of Undertakings and Repeal)

² 2024 SCC OnLine SC 965



Act 1994 and repealed the Air Corporations Act, 1953. The Government of India, by virtue of the said Act, transferred assets, liabilities, rights and obligations of the erstwhile statutory corporations to two government companies, namely '*Indian Airlines Ltd.*' and '*Air India Ltd.*'.

- c. Thereafter, on 01.04.2007, Indian Airlines Ltd. and Air India Ltd. were merged/amalgamated, and the amalgamated company was called ***National Aviation Company of India Ltd***³. Further, and ultimately, the Government of India on 24.11.2010, renamed NACIL as Air India Limited. Thereafter, the Air India Employees Service Regulations were brought into effect on 01.04.2013.
- d. The Government of India, on 28.06.2017, approved the privatization of Air India and after following the due process, the shareholding of erstwhile Air India was transferred in the name of M/s Talace India Pvt.
- e. The Appellant herein had joined the Indian Airlines as an employee under the Air Corporations Act, 1953, on 20.06.1979.
- f. While the Appellant was working as an In-Flight Support, he was found to be in possession of 372 miniature bottles of alcohol and was issued a Show Cause Notice in respect of the same. After the conclusion of the disciplinary proceedings, the Disciplinary Authority, i.e., the Executive Director, NACIL, issued an order dated 23.11.2010 confirming the dismissal of the Appellant along with full terminal benefits.
- g. The Appellant, aggrieved by the order of dismissal, filed W.P.(C) No. 1342/2012 before this Court challenging the

³ NACIL



dismissal order dated 23.11.2010, which came to be dismissed by the learned Single Judge by way of the Impugned Order for not being maintainable in view of the judgement passed by the Hon'ble Supreme Court in ***R.S. Madireddy and Another (supra)***, and granting liberty to the Appellant to take recourse to remedies available in law before the appropriate forum.

CONTENTIONS OF THE APPELLANT:

6. Learned counsel for the Appellant would commence his arguments by stating that, in his opinion, the judgment of the Hon'ble Supreme Court was *per incuriam* insofar as it did not take into account the fact that the erstwhile employees of Air India have been appointed under the Air Corporation Act, 1953, and upon the vesting of the erstwhile Indian Airlines and Air India in a new company being Indian Airlines Limited and Air India Limited, and wherein, by virtue of Section 8 of the Air Corporation (Transfer of Undertaking and Repeal) Act, 1994, it was stipulated that the employees would continue to hold their office in the vestee company in terms similar to what they had enjoyed in the erstwhile corporation, the obligation of the Government continued and that, owing to the fact that the employees originally came to be employed under conditions which had come to be passed based on the erstwhile 1953 statute, they will continue to be treated as employees of the Government.

7. He would further seek to buttress this contention by stating that there is no clarity or transparency as regards the terms and conditions under which the Airline finally came to be privatized and considering that there is an opacity with regard to the same, the employment conditions would necessarily have to be treated as those that governed



the employees earlier, meaning thereby that the employment of the Appellant would have to be treated as if he continued to be an employee of the State.

8. Learned counsel for the Appellant would thereafter contend that the Airline continued to perform a public function and the mere fact that it came to be privatized would not change the nature of the functions that it was performing.

CONTENTIONS OF THE RESPONDENTS:

9. *Per contra*, learned counsel for the Respondent would submit that the present Appeal is squarely covered by the judgment of the Hon'ble Supreme Court in ***R.S. Madireddy & Anr. (supra)***. He would also rely upon certain other judgments passed by this Court in ***Federation of Tata Communications Employees Unions v. Union of India***⁴, ***Naresh Kumar Beri & Ors. v. Union of India & Ors***⁵ and the judgment of the Hon'ble High Court of Bombay in ***M. Yogeshwar Raj v. Air India Ltd***⁶.

10. Learned Counsel for the Respondent would pertinently draw the attention of this Court to the relevant paragraphs of ***R.S. Madireddy & Anr. (supra)*** to show that the arguments advanced by the Learned Counsel for the Appellant stand squarely answered by the aforementioned judgement. The relevant paras of ***R.S. Madireddy & Anr. (supra)***, as relied upon by the Learned Counsel for the Respondent are reproduced herein below for the sake of brevity:

“26. The same controversy was also considered by a learned Single Judge of the Delhi High Court in the case of Asulal Loya (*supra*) which was a case involving the termination of services of

⁴ 2024 SCC OnLine Del 4355

⁵ Order dated 31.03.2024 passed in LPA 105/2023

⁶ 2025 SCC OnLine Bom 3013



the writ petitioner-employee by the company Bharat Aluminium Company Limited(BALCO) which was previously a Government of India Undertaking and was privatized pursuant to the tripartite share purchase agreement. The employee-writ petitioner filed a writ petition before the Delhi High Court to challenge his termination wherein, a preliminary objection was raised regarding maintainability of the writ petition on the ground that during pendency of the proceedings, the company had changed hands and no longer retained the characteristic of a 'State' or 'Other authority' as defined under Article 12 of the Constitution of India. The assertion of the writ petitioner was that the petition was maintainable against the respondent on the date it was filed. As per the writ petitioner, the rights and obligations of the parties stood crystallized on the date of commencement of litigation and thus, the reliefs should be decided with reference to the date on which the party entered the portals of the Court. The learned Single Judge in para 10(reproduced supra) upheld the preliminary objection raised against the maintainability of the writ petition and relegated the writ petitioner therein to approach the civil Court for ventilating the grievances raised in the writ petition.

29. It is thus, seen that various High Courts across the country have taken a consistent view over a period of time on the pertinent question presented for consideration that the subsequent event i.e. the disinvestment of the Government company and its devolution into a private company would make the company immune from being subjected to writ jurisdiction under Article 226 of the Constitution of India, even if the litigant had entered the portals of the Court while the employer was the Government. The only exception is the solitary judgment of the Division Bench of Calcutta High Court in Ashok Kumar Gupta (supra), which was distinguished by the learned Single Judge of the Gujarat High Court in the case of Kalpana Yogesh Dhagat (supra) and rightly so, in our opinion, we have no hesitation in holding that the view taken in the judgments of Kalpana Yogesh Dhagat (supra) (by the High Court of Gujarat); Asulal Loya (supra)(by the High Court of Delhi) and Tarun Kumar Banerjee (supra)(by the High Court of Bombay) is the correct exposition on this legal issue and we grant full imprimatur to the said proposition of law.

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.”

(emphasis supplied)

ANALYSIS:

11. Adverting to the primary argument canvassed by the learned counsel for the Appellant, it is pertinent to note that the facts in ***R.S. Madireddy & Anr. (supra)*** were very similar to the facts in the present case, insofar as they relate to an employer-employee dispute and also the fact that the Appellants therein were persons who had been employed by the Airline in the late 1980s.



12. While the learned Counsel for the Appellant sought to draw a distinction on facts, we fail to see how there is any difference, considering that the Appellant is similarly placed as the employees in ***R.S. Madireddy & Anr. (supra)***, having been employed prior to 1994. We would emphasize here that this was the emphatic differentiating factor sought to be canvassed repeatedly by the learned Counsel for the Appellant.

13. As already observed, since the Hon'ble Supreme Court has already rendered a Judgment in respect of employees who were similarly employed prior to 1994, we believe that this is not an aspect that should deter this Court for very long. Nonetheless, we also believe that merely the fact that a person came to be employed at a particular stage when an enterprise was under governmental control would not, in law, entitle him to the determination of his rights by way of a Writ Petition at the time when a Court takes it up for adjudication. This aspect has already been clarified by the Hon'ble Supreme Court in ***R.S. Madireddy & Anr. (supra)*** itself.

14. We are also of the view that conditions of employment as existing at the time when an employee within an organization continues to serve in some capacity, may not have any further relevance once the very nature and character of the employer changes. The employer today, in the present case, is no longer a governmental entity and therefore, it cannot be contended that the earlier terms and conditions would have to necessarily follow suit. To our mind, there cannot exist a state of affairs where a dual system can hold the field, wherein an entity ceases to retain any semblance of a Governmental character, but employees would be cloaked with the character of a Government servant/employee.



15. This is not a case where employees have been deputed, but a case of wholesale transfer and transformation in all respects, from being a State enterprise to a private one. This is also in consonance with the Judgment of the Hon'ble Supreme Court in **BALCO Employees' Union v. Union of India**⁷, wherein the Apex Court has clearly held that as a result of dis-investment, it is quite likely that the employees would lose the protection otherwise inherent in them as Government employees, including the power to approach the Courts under Article 226 of the Constitution of India.

16. In any event, the Appellant herein is a former employee and not a current one. We fail to understand how a former employee can continue to assert that, so far as he/she is concerned, the enterprise should retain its identity as a State run enterprise. Clearly, what is sought to be espoused is a private interest as against the larger public interest that is sought to be served by the Government, which in its wisdom has chosen to dis-invest itself from the Airline. If we were to accept the argument of the Appellant, it would only be a roundabout manner of challenging the entire dis-investment process, as according to him, the same would denude him of his rights *vis-à-vis* a State run enterprise.

17. We also take note of the fact that the Hon'ble Supreme Court in **R.S. Madireddy & Anr. (supra)** in Paragraph 38, as reproduced hereinbefore, has clearly held that once the Government of India has transferred its 100% shareholding to another company, it ceases to have any sort of control, administrative or otherwise, and therefore, cannot be treated as a State after such a takeover. This would then clearly lead to the conclusion that the Airline ceased to be covered by

⁷ (2002) 2 SCC 333



the definition of “State” within the meaning of Article 12 of the Constitution of India and could not have been subjected to the Writ Jurisdiction under Article 226 of the **Constitution of India**⁸.

18. We also believe that a plain reading of Article 226 of the Constitution clarifies the entire issue insofar as any Writ under Article 226 is fundamentally predicated upon the fact that (a) there has been a violation of the Fundamental Rights of a person and (b) that such violation is by an entity that comes under the ambit of the definition of State as per Article 12 of the Constitution.

19. As noted hereinabove and as guided by the Judgement of **R.S. Madireddy & Anr.** (*supra*), the Writ Petition would not fulfil the fundamental requirements set out in Article 226 of the Constitution of India, and for the stated reasons, we believe that the present Appeal as against the Impugned Order, holding as such, is not maintainable.

CONCLUSION:

20. For the afore-mentioned reasons, we believe that the Impugned Order does not merit any interference, and resultantly, the present Appeal is dismissed.

21. Pending application(s), if any, shall stand disposed of accordingly.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
OCTOBER 29, 2025/tk/va

⁸ Constitution