

(2025) 03 DEL CK 1043

In the Delhi High Court

Case No : Writ Petition (C) No. 7026 Of 2015, Civil Miscellaneous Petition Nos. 12878, 18072 Of 2015, 70532 Of 2024

NCM (India) Ltd

APPELLANT

Vs

Air India Ltd. & Ors

RESPONDENT

Date of Decision : 11-03-2025

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2025) 03 DEL CK 1043

Hon'ble Judges : Tara Vitasta Ganju, J

Bench : Single Bench

Advocate : Sumit Chander, Gurdeep Chauhan, Mahak Dua, Avishkar Singhvi, Azeem Samuel, Amit Mishra, Akhil Kulshrestha, Shivam Goel, Anuj Kumar, Mr. Nippun Sharma, Anjana Gosain

Final Decision : Dismissed

Judgement

Tara Vitasta Ganju, J

1. The present Petition was filed in the year 2015 seeking the following prayers:

“(a) pass an order, direction or writ in the nature of certiorari calling for the records of the Respondent No. 1 pertaining to the show cause notice dated 08.08.2014 issued by the Respondent No. 1 seeking to black-list the Petitioner on the basis of supplies made in respect of old tenders pertaining to 2008-2011 (including those pertaining to the note-sheets dealing with the decision making process leading to the issuance of the show cause notice dated 08.08.2014) and also pertaining to the letters dated 04.06.2015 and 09.07.2015 of the Respondent No. 1 regarding proposed personal hearing to the Petitioner by Joint Committee of Respondent No. 1 constituted by Respondent Nos. 2 and 3;

(b) pass an order, direction or writ in the nature of certiorari quashing and/or setting aside the entire decision making process in relation to the show cause notice dated 08.08.2014 issued by the Respondent No. 1 seeking to black-list the

Petitioner in respect of old tenders pertaining to 2008-2011 regarding proposed personal hearing to the Petitioner by Joint Committee of Respondent No. 1 constituted by Respondent Nos. 2 and 3 and also setting aside (i) the show cause notice dated 08.08.2014 (ii) the letter dated 04.06.2015 and (iii) the letter dated 09.07.2015 of the Respondent No. 1;

(c) pass an order, direction or writ in the nature of Mandamus directing that an independent authority/persons or a retired Judge of this Hon'ble Court appointed by this Hon'ble Court shall judiciously and fairly consider the defence of the Petitioner to the show cause notice dated 08.08.2014 by giving a proper opportunity of personal hearing to the Petitioner and pass a speaking order in respect thereof;

(d) pass an order, direction or writ in the nature of Mandamus directing the Respondent Nos. 6 and 7 to conduct a detailed and thorough enquiry into the complaint dated 20.01.2015 made by the Petitioner to the Respondent No.6 as well the complaints dated 06.04.2015 and 10.06.2015 made by the Petitioner to Respondent No. 7 and pass a speaking order thereupon and also initiate appropriate disciplinary and other proceedings against the concerned officers of Respondent No.1 including but not limited to the Respondent Nos. 2 to 6;

(e) grant costs of the present proceedings of those incidental thereto in favour of the Petitioner; and

(f) issue any other appropriate writ, order or direction as may deem fit and proper in the facts and circumstances of the present case; so as to give complete relief to the Petitioner."

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 2024 SCC OnLine SC 965 [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.

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

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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.

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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..."

[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. Pending Applications stand closed.

5. It is clarified that this Court has not expressed any opinion on the merits of

the disputes inter se the parties. The Petitioner is however granted liberty to take appropriate steps in accordance with law for redressal of his grievance.

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