(2023) 03 DEL CK 0109

In the Delhi High Court

Case No : Civil Writ Petition No. 3999 Of 2017, Civil Miscellaneous Application No. 262 Of 2020

Ritu Joshi APPELLANT

Vs

Union Of India & Ors RESPONDENT

Date of Decision : 02-03-2023

Acts Referred:
Constitution Of India, 1950 — Article 12, 226

Citation : (2023) 03 DEL CK 0109

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Ashok Chhabra, Alok Prakash, Shefali Gupta, Rajesh Ranjan, Attin Shankar Rastogi, Aman Kapoor

Final Decision : Dismissed

Judgement

Jyoti Singh, J

1. Present writ petition has been filed by the Petitioner seeking the following reliefs:-

“(i) Issue a writ in the nature of Certiorari for quashing of the Establishment Order No. 70 of 2017 dated 25.04.2017 issued by Respondents for promotion of 11 persons as Senior Manager (Security), New Delhi in the interest of Justice.

(ii) Issue a writ in the nature of mandamus commanding the respondents for direction to promote the petitioner as Senior Manager (Security) who is at SI. No.9 of the above promoted candidates.

(iii) Cost of the petition may also be awarded in favour of the petitioner.”

2. Appearing on behalf of AIL, Mr. Rajesh Ranjan, learned counsel for AIL, raises an objection to the maintainability of the writ petition against AIL, owing to the disinvestment process initiated by the Government of India. It is submitted that originally AIL was a statutory body constituted under the Air Corporations Act,

1953, however, post its repeal and in terms of the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994, it had become a wholly owned company of the Government of India. It is at this stage that the present writ petition was filed and rightly entertained. However, now AIL has been privatised and the entire shareholding of the Government of India in AIL has been transferred to M/s. Talace Pvt. Ltd., (a wholly owned subsidiary of M/s. Tata Sons Pvt. Ltd.) and thus having ceased to be a Public Body or Authority within the meaning of Article 12 of the Constitution of India, AIL is no longer amenable to writ jurisdiction of this Court under Article 226 of the Constitution. In support of the objection, reliance is placed on the judgment of a Co-ordinate Bench of this Court in Naresh Kumar Beri & Ors. v. Union of India & Ors., 2022 SCC OnLine Del 3585, wherein this issue was examined and after deliberating on the stands of the respective parties, writ petition was dismissed. Operative para of the judgement is as follows:

“23. The Court also finds merit in the second objection which was addressed on behalf of the respondents who had contended that since AIL had ceased to be a government company by virtue of the exercise of privatization noted above, the writ petition itself would cease to be maintainable. This Court notes that High Courts of the country appear to have consistently taken this position as would be manifest from a reading of the decision rendered in R.S. Madireddy by the Bombay High Court and Tarun Kumar Banerjee by the Karnataka High Court. The said position has also been duly reiterated in the judgments rendered by our Court in Asulal Loya, Ladley Mohan and Satya Sagar. The writ petition would thus warrant dismissal on this score also.”

3. Learned counsel appearing for the Petitioner submits that the writ petition was filed in the year 2017 and thus Petitioner should not suffer on account of the intervening circumstances. A serious concern is also raised that if the writ petition is dismissed, leaving the Petitioner to resort to other remedies, AIL may, in future, disown its liability towards the Petitioner on ground of privatization.

4. In order to allay the afore-stated fear/concern of the Petitioner, Mr. Rajesh Ranjan, on instructions, states that if the Petitioner succeeds in her claims before the Appropriate Forum, the liability shall rest entirely on AIL.

5. Having heard the learned counsels for the parties, the question that pronouncedly emanates is whether the writ petition is liable to dismissed on ground of maintainability, in wake of the admitted position that during the pendency of this petition, on 27.01.2022, 100% shareholding of Air India has been acquired by M/s. Talace Pvt. Ltd. and Air India has ceased to be a Government controlled company. A Co-ordinate Bench of this Court in Naresh Kumar Beri (supra) has already examined this issue and held that a writ petition ceases to be maintainable. The judgement squarely covers the present case and this Court is not persuaded to take a different view. It is true that when the writ petition was filed, it was maintainable as AIL was amenable to the writ jurisdiction, however, under the changed scenario, this Court is precluded from

issuing a writ of mandamus against AIL.

6. Having said that, I may also pen down that Mr. Ashok Chhabra, is not wrong in questioning as to who would bear the liability in case the Petitioner was to take recourse to other remedies in a different Forum and succeed. This concern or disquiet, is put to rest by the assurance given on behalf of AIL, that in the event of the Petitioner succeeding in establishing her claim(s), the liability shall be borne by AIL. The assurance given on behalf of AIL is taken on record and needless to state shall bind the said Respondent.

7. In view of the aforesaid, the writ petition along with pending application is dismissed, granting liberty to the Petitioner to take recourse to remedies available to her in law, in an appropriate Forum. It is made clear that the time period, for which the writ petition has been pending in this Court, will be excluded for the purpose of computation of limitation, should the Petitioner seek any remedy by instituting fresh proceeding in a Forum, where question of limitation will be relevant and may arise.