AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1770 OF 2011
WITH
NOTICE OF MOTION (L) NO. 263 OF 2013
WITH
INTERIM APPLICATION (L) NO. 25662 OF 2022

Mr. R. S. Madireddy s/o	**}**	
Mr. Kotyswara Rao Madireddy	**}**	
and Anr.	**}**	**Petitioners**
versus		
The Union of India and Ors.	**}**	**Respondents**

Mr. Sanjay Singhvi, Senior Advocate a/w Ms. Rohini Thyagarajan, Pankaj Sutar and Ms. Shanvi Punamiya i/b. M/s. Jayakar and Partners for petitioners/applicants.

Mr. Dashrath A. Dube for respondent no. 1 – Union of India.

Mr. Darius Khambhata, Senior Advocate, Mr. Kevic Setalvad, Senior Advocate a/w Mr. Aditya Mehta, Sneha Prabhu, Mr. S.D. Shetty, Mr. Rakesh Singh, Mr. Ravi Kini, Shristi Shetty and Jehan Lalkaka i/by. M. V. Kini & Co. for respondent nos.3 and 4.

Mr. Muralidhar Khadilkar a/w. Mr. Aakash Joshi for proposed respondent no.5 in IA(L)/25662/2022.

WITH
WRIT PETITION NO. 1536 OF 2013
WITH
NOTICE OF MOTION NO. 198 OF 2019

Renu Pralhad Mohan and Ors.	**}**	**Petitioners**
Versus		
Union of India and Ors.	**}**	**Respondents**

Mr. Sanjay Singhvi, Senior Advocate a/w Ms. Rohini Thyagarajan, Pankaj Sutar and Ms. Shanvi Punamiya i/b. M/s. Jayakar and Partners for petitioners.

Mr. Niranjan Shimpi a/w. Ms. Naveena Kumari for respondent nos. 1 and 2.

Mr. Darius Khambhata, Senior Advocate, Mr. Kevic Setalvad, Senior Advocate a/w Mr. S.D. Shetty, Mr. Rakesh Singh and Shristi Shetty and Jehan Lalkaka i/by. M. V. Kini & Co. for respondent nos.3.

Mr. Sudhir Talsania, Senior Advocate a/w. Mr. Aditya Mehta, Sneha Prabhu, Mr. S.D. Shetty, Mr. Rakesh Singh, Mr. Ravi Kini, Shristi Shetty and Mr. Jehan Lalkaka i/by. M.V. & Co. for respondent no.6.

WITH
WRIT PETITION NO. 123 OF 2014

Mr. R. S. Madireddy and Anr. } Petitioners
Versus
M/s. Air India and Anr. } Respondents

WITH
INTERIM APPLICATION (L) NO. 25824 OF 2022
IN
WRIT PETITION NO. 123 OF 2014

Mr. R. S. Madireddy and Anr. } Applicants
In the matter between
Mr. R. S. Madireddy and Anr. } Petitioners
Versus
M/s. Air India and Ors. } Respondents

Mr. Sanjay Singhvi, Senior Advocate a/w Ms. Rohini Thyagarajan, Pankaj Sutar and Ms. Shanvi Punamiya i/b. M/s. Jayakar and Partners for petitioners.

Mr. Darius Khambhata, Senior Advocate, Mr. Kevic Setalvad, Senior Advocate a/w Mr. S.D. Shetty, Mr. Rakesh Singh and Shristi Shetty and Jehan Lalkaka i/by. M. V. Kini & Co. for respondent nos.1.

Mrs. Shehnaz V. Bharucha a/w Ms. Poornima Awasthi for respondent no. 2 – (Union of India).

Mr. Muralidhar Khadilkar a/w. Mr. Aakash Joshi for Proposed respondent no.3 in IA(L)/25824/2022.

<u>JUDGMENT RESERVED ON: AUGUST 22, 2022</u>

WITH
WRIT PETITION NO. 844 OF 2014
WITH
NOTICE OF MOTION NO. 363 OF 2016

Mr. Suhail Masood & Ors.	**}**	**Petitioners**
Vs.		
Union of India & Ors.	**}**	**Respondents**

WITH
INTERIM APPLICATION (L) NO.25788 OF 2022
IN
WRIT PETITION NO. 844 OF 2014

Mr. R. S. Madireddy	**}**	**Applicant**
In the matter between		
Mr. Suhail Masood & Ors.	**}**	**Petitioners**
Vs.		
Union of India & Ors.	**}**	**Respondents**

Ms. Shanvi Punamiya i/by M/s. Jayakar & Partners for petitioners.

Mrs. Shehnaz V. Bharucha a/w Ms. Poornima Awasthi for respondent no.1 – (Union of India).

Mr. Darius Khambhata, Senior Advocate, Mr. Kevic Setalvad, Senior Advocate a/w Mr. S.D. Shetty, Mr. Rakesh Singh, Shristi Shetty i/by. M. V. Kini & Co. for respondent no.3.

<u>JUDGMENT RESERVED ON: AUGUST 24, 2022</u>

CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.

JUDGMENT PRONOUNCED ON: SEPTEMBER 20, 2022

JUDGMENT: [per the Chief Justice**]**

Introduction:

1. We have heard these 4 (four) writ petitions together on the point of their maintainability as on date the same were finally considered by us and propose to decide the same by this common judgment and order.

2. As we shall presently notice, writs were prayed for against Air India Ltd. (hereafter "AIL", for short), being the employer of all these petitioners. When these writ petitions were instituted, the same were maintainable. No objection was taken then. However, now the maintainability of these writ petitions has been questioned. The objection to the maintainability of these writ petitions stems from the fact of privatization of AIL during the pendency of the same.

3. The fundamental question that emerges from such objection is this: whether it is an invariable rule that a writ petition has to be decided on the basis of the facts as they were on the date of its institution or whether intervening/subsequent event(s), having a fundamental impact on exercise of jurisdiction for granting relief by this Court, may render the writ petition non-maintainable?

4. Before proceeding to decide the question, it would be essential to note in brief the respective claims of the 4 (four) set of petitioners.

Brief Facts:

5. All these writ petitions were instituted by persons formerly employed by AIL as members of its cabin crew force.

AIL is a respondent in each of the 4 (four) petitions. Union of India (hereafter "UoI", for short) is also a respondent in all the petitions. The petitioners came to be employed by AIL from the late 1980s and all of them have retired between 2016 and 2018.

6. Writ Petition Nos. 123 of 2014 and 844 of 2014, which were filed on 30th August 2013 and 9th October 2013, respectively, essentially arise out of alleged stagnation in pay and non-promotion of the petitioners. However, Writ Petition No. 844 of 2014 additionally pertains to the anomalies in the fixation of pay arising out of (and due to the implementation of) the report of the Justice Dharmadhikari Committee, which was constituted by the UoI (through its Ministry of Civil Aviation) to harmonize the differential service conditions of AIL and Indian Airlines Ltd., which came to be merged.

7. Writ Petition Nos. 1770 of 2011 and 1536 of 2013, instituted on 14th June 2011 and 19th March 2013, respectively, pertain to delay in payment of wage revision arrears and the withdrawal of 8 (eight) of the 17 (seventeen) allowances already paid to the petitioners retrospectively. Given the petitioners' subsequent retirement from service, the claims in the petitions are restricted to arrears of pay and allowances.

8. Each of the writ petitions plead violations of Articles 14, 16 and 21 of the Constitution of India.

9. AIL has filed affidavits-in-reply to Writ Petition Nos. 123 of 2014 and 1536 of 2013. Affidavits-in-reply to the remaining two writ petitions have neither been filed by AIL nor by UoI.

<u>Arguments of the Petitioners</u>:

10. Mr. Singhvi, learned senior counsel for the petitioners urged that the question of maintainability of the writ petitions has to be decided with reference to the dates of their institution. He contended that it is now a settled proposition of law that the jurisdiction and maintainability of a matter must ordinarily be decided with reference to facts as on the date on which it was filed. Reliance was placed on the decisions of the Supreme Court in **Pasupuleti Venkateswarlu vs. The Motor & General Traders**[1], **Om Prakash Gupta vs. Ranbir B. Goyal**[2], **Kedar Nath Agarwal vs. Dhanraji Devi**[3] **and Ishar Singh vs. National Fertilizers**[4].

11. According to Mr. Singhvi, subsequent events as laid down in successive decisions of the Supreme Court may be taken conscious cognizance of only in the following circumstances:

(a) The relief claimed originally has by reason of subsequent change of circumstances become inappropriate.

(b) It is necessary to take notice of subsequent events in order to shorten litigation.

(c) It is necessary to do so in order to do complete justice between the parties.

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1 (1975) 1 SCC 770
2 (2002) 2 SCC 256
3 (2004) 8 SCC 76
4 AIR 1991 SC 1546

12. None of the aforesaid possibilities, Mr. Singhvi further contended, has arisen in the facts of the present case. It is not the case of the respondents that the reliefs originally claimed by the petitioners, by efflux of time, have all been worked out and, thus, have now become inappropriate to grant. It is neither their case that the subsequent event of the privatization of AIL must be taken notice of to shorten litigation, since—if anything—the non-suiting of the petitioners and their relegation to the civil court, at this stage, will greatly prolong an already protracted litigation. It is further not the case of the respondents that privatization of AIL is an event that ought to be accounted for to do justice between the parties. In other words, the respondents have made out no case whatsoever, either in their additional affidavits dated 14th May 2022 or otherwise during oral arguments on how equity lies in their favour, thereby justifying the ouster of this Court's jurisdiction on this count. In fact, it was orally submitted on behalf of AIL (on 22nd August 2022) that it would also have to, after numerous years, go through the trouble of lengthy proceedings before the civil courts.

13. Considerations of justice and equity, Mr. Singhvi claimed, demand that the subsequent event of the privatization of AIL be rejected insofar as it is stated to render the writ petitions itself non-maintainable. The petitioners having approached this Court on diverse dates between 2010 and 2014, it was nobody's case that when the writ petitions were instituted the same were not maintainable or that there was any delay in its institution. The orders admitting the writ petitions were passed during the same period. The writ petitions have since

been listed numerous times but this Court due to the enormous workload and resultant paucity of time was unable to take them up for final hearing previously. All the petitioners much before the disinvestment of AIL, between 2016 and 2018, have even retired. It would defeat the interest of justice and equity if the petitioners, who are all senior citizens, were now to be non-suited based on this intervening event alone and relegated to pursuing any remedies (if at all available to them) under the civil law.

14. Strong reliance was placed by Mr. Singhvi on a decision of the Division Bench of the Calcutta High Court in **Ashok Kumar Gupta vs. Union of India**[5] where, relying upon the decision of the Supreme Court in **Rajamundry Electric Supply Corporation Ltd. vs. A. Nageswara Rao**[6], the Bench held that the writ appeal against dismissal of the writ petition was maintainable, notwithstanding that during the pendency of the appeal the relevant public sector enterprise, viz. Jessop & Co., was privatized.

15. The next contention of Mr. Singhvi was that the present writ petitions are maintainable since they pertain to the discharge of "public duties" by the respondents.

16. Referring to Article 226 of the Constitution, and more particularly the power of a High Court to "issue to ***any person or authority, including in appropriate cases, any Government***, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, *quo warranto* and certiorari, or any of them, for the enforcement of any of the rights conferred by

[5] 2007 SCC OnLine Cal 264
[6] AIR 1956 SC 213

Part III and for any other purpose", the history of the conception of Article 226 was sought to be traced. Mr. Singhvi submitted that as can be gleaned from the Constituent Assembly Debates, the same clarify that the words "any person" must receive a broad meaning[7]. It is also in this backdrop that the Supreme Court had cautioned against strictly adopting the principles governing the issuance of prerogative writs in England.

17. However, over time and in a catena of decisions of the Supreme Court, the phrase "any person or authority" has been interpreted to mean one that exercises a "public duty" or a "public function". A public duty is a duty which is owed to the public at large or to a section of the public and is not merely one relatable to the functions performed by the Government or the Sovereign. Writ petitions under Article 226 directed against private entities in respect of the discharge of any public duties have been held to be maintainable. Reliance was placed on the decision in **Anadi Mukta Sadguru S.M.V.S.S.J.M. Smarak Trust vs. V.R. Rudani and Ors.**[8]. The decision in **Binny Ltd. & Anr. vs. V. Sadasivan**[9] was also relied upon where the principles in this regard have been succinctly summarized in the following manner:

> "23…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

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[7] Dr. B.R. Ambedkar had, in the course of the CA debates, explained the insertion of the phrase "…including in appropriate cases, any Government" to mean that in instances where a writ under Article 226 had to be issued to the State it could be done by way of specific legislation enacted by the Parliament

[8] (1989) 2 SCC 691, ¶ 17-22

[9] (2005) 6 SCC 657

> matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied."

18. Mr. Singhvi cited the decisions in **Bharat Petroleum Corporation Ltd., Mumbai vs. Petroleum Workmen's**[10] and **Bharat Petroleum Corporation Ltd vs. Petroleum Employee's Union**[11] for drawing support to contend that if a private body is discharging a public duty, then a writ can be issued against such body.

19. Mr. Singhvi urged that since the respondents have failed to produce relevant portions of the Share Purchase Agreement or any other document to disclose what the scheme of exchange and distribution of liabilities is, assuming that the liabilities arising out of the present litigation involving retired employees must now be discharged by AIL, such solemn obligation has been undertaken by it pursuant to a contract with the sovereign, i.e., UoI, and is, therefore, a public duty.

20. The right of the petitioners, it was further urged, was and always has been a public right. The petitioners' employment (from its commencement till cessation) was with an entity which was, indisputably, "State" under Article 12 of the Constitution. It is now settled that although a contract of personal service cannot be enforced, the exceptions to this are: (i) employment as a public servant working under the UoI or the States or (ii) employment by an authority/body which is "State" within the meaning of Article 12 of the Constitution. It has been recognized that in the instance of these exceptions, the employment ceases to have a private

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[10] 2011 (6) Mh. L.J. 136
[11] 2013 (4) Mh. L. J. 511

law character. The decision in **K.K. Saksena vs. International Commission on Irrigation and Drainage and Ors.**[12] was relied on this regard. In the written notes of arguments of the petitioners, the recent decision dated 24th August, 2022 of the Supreme Court in **St. Mary's Education Society vs. Rajendra Prasad Bhargava**[13] has been referred to. The nature of the petitioners' employment, it has been contended, was and always has been of a public nature, and since all the writ petitions plead violation of Articles 14 and 21 of the Constitution, the nature of the petitioners' employment and the rights flowing therefrom could not have changed merely because the Government of India sold its shares in AIL to Talace Pvt. Ltd.

21. Moving on, Mr. Singhvi contended that collusion with the State would render the respondents amenable to the writ jurisdiction under Article 226 of the Constitution. In any case, the fact that the respondents have not produced even those portions of the Share Purchase Agreement or any other relevant document which pertain to the manner in which the liabilities arising out of pending litigation instituted by the retired employees would be dealt with – clearly demonstrates that AIL is colluding with UoI to defeat the rights of the petitioners by keeping them in the dark about who has taken over the liabilities arising out of the present writ petitions. Further, in view of the refusal to produce the Share Purchase Agreement or any other relevant documents, adverse inference has to be drawn. Such collusion with the State would render each of the respondents amenable to the writ

[12] (2015) 4 SCC 670.
[13] Civil Appeal No. 5789 of 2022

jurisdiction of this Hon'ble Court under Article 226 of the Constitution.

22. Finally, while moving the Interim Applications filed by the petitioners seeking impleadment of Air India Assets Holding Ltd. (hereafter "AIAHL", for short), Mr. Singhvi submitted that the petitioners in their applications have stated that a large amount of the liabilities of the employees have been taken over by AIAHL, a wholly-owned subsidiary of UoI set up by the latter *inter alia* for the purpose of holding of shares in certain subsidiaries of AIL and for taking over none-core assets and liabilities, "as decided between the Government of India and AIL"[14]. However, as stated above, since the scheme of distribution of liabilities has not been disclosed by any of the respondents, it is not clear as to which of the three entities, i.e., UoI, AIL or AIAHL is responsible for discharging the liabilities arising out of the present writ petition. Thus, the presence of AIAHL, which is indisputably amenable to the writ jurisdiction of this Court, has become crucial to the effective adjudication of the present writ petitions. Even in a situation, where it is found that it is AIAHL which is responsible for discharging all liabilities that may arise out the present writ petitions, the presence of AIAHL is necessary since it has all the records pertaining to the matter.

23. Mr. Singhvi concluded his address by submitting that the objection to the maintainability of the writ petitions be overruled; in the alternative, to grant the prayers for amendment of the writ petitions so that the same could proceed for further hearing.

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[14] Memorandum of Association of AIAHL @ Page 1 (tendered in Court on 22nd August 2022)

Arguments on behalf of AIL:

24. Mr. Khambatta, learned senior counsel representing AIL in W.P. No. 1770 of 2011 contended that it was instituted in June 2011 at a time when AIL was a Government company. During the pendency of the writ petition, on 27th January 2022, AIL was privatized by 100% of its shares being transferred to Talace India Pvt Ltd. As a result, AIL ceased to be a Government company. Shortly after its privatization, by filing an additional affidavit dated 14th May 2022, AIL has brought this subsequent event on record and raised the issue of maintainability of the writ petition under Article 226 of the Constitution.

25. According to him, Article 226 confers jurisdiction on the high courts "to issue to any person or authority" orders or writs; therefore, the question of jurisdiction of a high court under Article 226 must be decided considering events subsequent to the filing of a writ petition up to the stage of issuance of a writ.

26. To buttress his contention that a writ petition ceases to be maintainable upon privatization of a Government company during the pendency of the petition, reliance was placed by Mr. Khambatta on an order dated 25th April 2008 of the Division Bench of this Court in **Tarun Kumar Banerjee vs. Bharat Aluminium Co. Ltd.**[15]. There, upon acceptance of the respondent's submission that consequent upon privatization during the pendency of the writ petition BALCO ceased to be "State" and was not amenable to the writ

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[15] Writ Petition No. 1461 of 2003

jurisdiction of this Court, the Division Bench granted liberty to the petitioner in that case to approach any other forum for redressal of its grievance. It was brought to our notice that the order was carried to the Supreme Court in a Special Leave Petition[16] and it was disposed of by a reasoned order without interfering with the order under challenge.

27. Next, our attention was drawn to two Division Bench decisions of the Gujarat High Court in **Chandrashekhar Jayendrarai Chhaya vs. IPCL Limited**[17] and **IPCL Retired Employees Asso vs. Indian Petrochemical Corporation Ltd.**[18] where the Benches also accepted that a writ petition ceases to be maintainable if the respondent Government company is privatized during the pendency of the writ petition.

28. It was also brought to our notice that similar views had been expressed by Single Benches of the Gujarat and Delhi High Courts in **Kaplana Yogesh Dhagat vs. Reliance Industries Ltd.**[19]; **Asulal Loya vs. Union of India ILR**[20]; **BALCO Officer's Association vs. Bharat Aluminium**[21] and **Ladley Mohan vs. Union of India**[22].

29. With regard to privatization of AIL, order dated 6th April 2022 of a Single Bench of the Karnataka High Court in **Padmavathi Subramaniyan vs. Ministry of Civil Aviation**[23] dismissing a writ petition filed prior to the

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[16] SLP (C) No. 5185 of 2009.
[17] MANU/GJ/0218/2005
[18] (order dated 6th October 2008 in LPA No. 970 of 2008) [*Compilation – Sr. No. 8 / pg 67*]
[19] (MANU/GH/2165/2016)
[20] *(2009) I Del 450*
[21] order dated 2nd March 2006 in W. P. (C) 5326/1997
[22] 2010 SCC OnLine Del 1814
[23] Writ Petition No. 21448 of 2021

privatization was placed. There, it was held that the petitioner’s grievance cannot be redressed under Article 226.

30. Since the petitioners had relied upon **Ashok Kumar Gupta** (supra) to submit that a writ petition filed against a Government company would continue to be maintainable if the company was privatized during the pendency of the writ petition, Mr. Khambatta submitted that such reliance is misplaced as this case was not concerned with the issue of maintainability of a writ petition, but was instead concerned with the maintainability of a writ appeal. In fact, not only at the time the writ petition was instituted as well as decided, even at the time of presentation of the appeal against such decision of dismissal of the writ petition before the Court, Jessop & Co. was a Government company. It was only during the pendency of the appeal that Jessop & Co. was privatized. It was brought to our notice that, in fact, the Gujarat High Court in paragraph 40 of the decision in **Kalpana Yogesh Dhagat** (supra) distinguished the decision in **Ashok Kumar Gupta** (supra), *inter alia*, on this ground.

31. Additionally, Mr. Khambatta contended that if the Calcutta High Court had dismissed the appeal as not being maintainable, the appellant would have had no remedy against the judgment of the Single Judge and the judgment of the Single Judge would have had binding effect. This is entirely different from the present case where, if the writ petition against AIL is dismissed as being not maintainable, the petitioners would be entitled to pursue their remedy before the appropriate forum for redressal of their grievances.

32. Reacting to the petitioners’ reliance on the decision in **Rajamundry Electric Supply Corporation Ltd.** (supra) where it has been held that the validity of the petition must be judged on the facts as they were at the time of its presentation and that a petition cannot cease to be maintainable by reason of events subsequent to its presentation, Mr. Khambatta submitted that such reliance is also misplaced for twin reasons. First, this case/decision did not arise out of a writ petition but was a case concerning an appeal arising out of an application filed under the Indian Companies Act, 1913. Secondly, section 153-C(3)(a)(i) with which this case was concerned provided that “*a member is <u>entitled to apply</u> for relief only if he has obtained the consent in writing of not less than one hundred in number of the members of the company…*” (emphasis supplied). The question that arose in this case was whether an application which was filed after obtaining the consent of requisite number of shareholders would cease to be maintainable if some of those consenting shareholders subsequently withdrew their consent. It was in this context that the Supreme Court held that the maintainability of such an application must be considered based on the facts at the time when the application was filed. This is because the condition regarding obtaining consent applied at the time of filing.

33. Further, it was submitted that the petitioner’s submission ignores the well settled principle that courts can and must take cognizance of events subsequent and developments subsequent to the institution of proceedings, particularly where such subsequent fact has a fundamental impact on the

right to relief. Reference in this regard was made to the decisions in **Pasupuleti Venkateswarlu** (supra) and **Beg Raj Singh vs. State of UP**[24].

34. Next, Mr. Khambatta answered the petitioners' contention that AIL discharges public duty. According to him, whilst there is no dispute with the proposition that any entity discharging a public duty could be amenable to writ jurisdiction under Article 226, it was submitted that it has no application to the present case.

35. Mr. Khambatta contended that the writ petition, as filed, does not contain a single averment as regards any public duty being discharged by AIL. Instead, paragraph 1 of the petition only states that "*Respondent No. 3 is Air India, a Government of India undertaking …*". Further, although the writ petition was amended subsequent to its filing, no averments were added to contend that AIL discharges any public duty. In the circumstances, it was submitted that the decisions on which the petitioners have placed reliance have no application to the present case.

36. Reference was next made to the decision in **Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology**[25], wherein a seven Judge Bench of the Supreme Court approved the following parameters or guidelines for identifying a body as coming within the definition of "other authorities" in Article 12, as laid down in **Ramana Dayaram Shetty vs. The International Airport Authority of India**[26]:

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[24] (2003) 1 SCC 726 (para 7)
[25] (2002) 5 SCC 111 (para 27)
[26] (1979) 3 SCR 1014

> "(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.
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> (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.
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> (3) It may also be a relevant factor … whether the corporation enjoys monopoly status which is State-conferred or State-protected.
>
> (4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.
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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.
>
> (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."

37. Continuing further, it was submitted by Mr. Khambatta that the nature of the duty to be enforced rather than the identity of the authority against whom relief is sought is what that determines whether a writ would be maintainable. The private body must be discharging a public function and there must be a public law element involved in the duty cast upon it, as held in **Binny Ltd.** (supra).

38. Mr. Khambatta next cited the decision in **G. Bassi Reddy v. International Crops Research Institute**[27], where the Supreme Court held that "*(A)lthough, it is not easy*

[27] (2003) 4 SCC 225 (para 28)

to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity." Further, in the same decision, the Supreme Court noted that where a body has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world, though the Indian public may be the beneficiaries of the activities of the body, it certainly cannot be said that the body owes a duty to the Indian public to perform the activity.

39. AIL, according to Mr. Khambatta, does not perform any function which is similar to that performable by the State in its sovereign capacity. Further AIL's operations and activities extend beyond the territorial boundaries of India. In the circumstances, AIL does not discharge any public function and the writ petition deserves to be dismissed as not being maintainable against AIL.

40. Inviting our attention to the decision in **Pradip J. Mehta v Commissioner of Income Tax**[28], Mr. Khambatta contended that the Supreme Court held that a judgment rendered by a high court is not binding on another high court, but it does have persuasive value. A high court is within its right to take a different view from that taken by another high court, but it must record its dissent with reasons therefor. It was submitted that, even assuming that **Ashok Kumar Gupta** (supra) applies to the facts of the present case, this Court is entitled to depart from the view taken in that decision for the following reasons:

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[28] (2008) 14 SCC 283

i) The decision in **Rajamundry Electric Supply Corporation Ltd.** (supra) only applies *qua* maintainability of an application pursuant to section 153-C(3)(a)(i) of the Indian Companies Act, 1913 and does not apply to the question regarding the maintainability of a writ petition.

ii) Even otherwise, it was submitted that the Calcutta High Court erred in following **Rajamundry Electric Supply Corporation Ltd.** (supra) (a decision of 2 judges of the Supreme Court) and in ignoring the decision of the three Judge Bench of the Supreme Court in **Pasupuleti Venkateswarlu** (supra).

41. Finally, it was submitted that the Supreme Court in **Jatya Pal Singh v. Union of India**[29] has upheld the decision dated 7th September 2009 of the Division Bench of this Court in **Mahant Pal Singh v. Union of India**[30] which held that a writ petition would not be maintainable against VSNL after its privatization. Further the Supreme Court held that:

i) In order for it to be held that a body is performing a public function, it was for the petitioner to prove the same (paragraph 52).

ii) Telecom operators provide a commercial service for commercial consideration and such an activity is no different from the activity of a bookshop selling books. Recipients of services from telecom operators voluntarily enter into commercial agreements for the same (paragraph 53).

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[29] (2013) 6 SCC 452 (paras 2, 52 to 56) [*Compilation – Sr. No. 16 / pg 140*]
[30] Writ Petition No. 2139 of 2007

iii) Accordingly, it could not be said that VSNL was performing a public function by providing telecom services (paragraphs 55 – 56).

42. Mr. Khambatta submitted that the services rendered by an airline are also commercial services. These services are voluntarily taken by the recipients of the service by paying commercial consideration. These services are not in the nature of a sovereign function. Accordingly, the present petition is not maintainable against AIL.

43. In response to the amendment application for impleading AIAHL, Mr. Khambatta invited our notice to the Schedule thereto to show the nature of amendment sought for. According to him, given the nature of amendment that the petitioners seek to incorporate, no relief can be granted and that the petitioners would be well advised to institute fresh proceedings claiming relief against AIAHL.

44. Mr. Khambatta, thus, prayed for dismissal of W.P. No. 1770 of 2011.

45. Mr. Setalvad, learned senior advocate appearing for AIL in the other writ petitions while adopting the submissions of Mr. Khambatta prayed for similar dismissal thereof.

ARGUMENTS IN REJOINDER:

46. Mr. Singhvi contended that reliance placed by AIL on orders/decisions of various High Courts, including this Court, in support of its claim that the subsequent event of its privatization means that it is no longer "State" within the meaning of Article 12 and, thus, renders it unamenable to the writ jurisdiction of this Court under Article 226, is misplaced.

47. First, it was contended that a large number of these orders [**Tarun Kumar Banerjee** (supra), **BALCO Officers' Association** (supra), **Chandreshekhar Jayendrarai Chayya** (supra), **IPCL Retired Employees' Association** (supra) and **Padmavathi Subramaniyan** (supra)] were passed in situations where the proposition that a writ petition under Article 226 would not be maintainable once during the pendency thereof the authority concerned ceased to be "State", was *assumed* (emphasis supplied) to be a proposition of law. It is now settled that a proposition of law assumed to be correct, without being disputed by parties, may be incorporated (expressly or by implication) in a judgment. However, such assumption does not bear the authority of an opinion reached by the Court itself and does not create a precedent for use in the decision of other cases, i.e., it is not *ratio decidendi*. Therefore, none of these orders can have precedential value and stand as authorities in support of the proposition put forth by AIL as to the automatic non-maintainability of the writ petitions the moment an entity which was earlier "State" under Article 12 ceases to be so.

48. Secondly, as far as **Asulal Loya** (supra), **Ladley Mohan** (supra) and **Kalpana Yogesh Dhagat** are concerned, the factual background is instructive and bears noting: the concerned employees had been terminated when the companies were Article 12 authorities and were challenging such termination and seeking the relief of reinstatement and by the time the writ petitions were taken up for final hearing, the said companies had become private entities owing to divestment of the Government of India's (GoI) shareholding.

The conclusion as to the non-maintainability of the writ petitions in these matters must therefore be situated in the peculiar context of the concerned employees seeking reinstatement or other consequential reliefs with a private company which, owing to the intervening event of disinvestment, effectively amounted to the creation of a contract with a private entity.

49. It was next contended that reliance placed by AIL on the decision of the Supreme Court in **Jatya Pal Singh** (supra) was entirely misplaced. There, the Supreme Court was considering a batch of appeals from decisions of various High Courts, including this Court, pertaining to the entertainability of writ petitions under Article 226 of the Constitution when nearly 5 (five) years after the disinvestment of VSNL, the services of the employees were terminated. Thus, the observations of the Supreme Court on the maintainability of the writ petition after the disinvestment of VSNL have no relevance in the present context which is wholly different.

50. Mr. Singhvi thereafter iterated why the decision in **Ashok Kumar Gupta** (supra) should be followed. He submitted that AIL has sought to distinguish the applicability of such decision principally on the count that there the question of maintainability of the writ petition arose in a context when during the pendency of the appeal filed by the employees, the Company in question—which at the time of institution of the writ petition was "State" under Article 12—was privatized. Although, according to him, there could be no quarrel as to these being the surrounding circumstances, the fact remains that the rival propositions put forth and the

decision rendered thereon was squarely on the question of whether the maintainability of the writ petition and the appeal—which was contended by the private company to be a continuation of the writ petition—ought to be decided having regard to the facts as they existed on the date of institution of the writ petition (paragraphs 6 and 7). Proceeding on the premise that the appeal was a continuation of the writ proceedings itself, the Bench in its concluding paragraph observed:

> "32. It is nobody's case that the writ petition was not maintainable when it was filed. The cause of action for filing the writ petition crystallized at a point of time when the respondent authority was, admittedly, subject to the writ jurisdiction. The said cause of action confers a vested right to the writ petitioners to have their grievances adjudicated in a writ proceeding. No one can contend that the writ petitioners have brought about the present situation by their conduct. The change of circumstances is not attributable to the writ petitioners."

51. Reverting to the decision in **Kalpana Yogesh Dhagat** (supra) [which was additionally adverted to by AIL to support its contention that it distinguished the applicability of the aforesaid decision in **Ashok Kumar Gupta** (supra) to the facts of that case, on the counts that the company there was "State" from the date of institution of the writ petition till the date of the filing of the appeal and that the challenge to its privatization was pending], it was contended that although these are the factual circumstances noted in the decision in **Ashok Kumar Gupta** (supra), but what ultimately weighed with the Court and what its decision *turned on* (emphasis supplied) was that the appeal was a continuation of the writ

petition and that it was the date of institution of the original petition which was key to deciding the maintainability of the writ petition as well as the appeal.

52. Mr. Singhvi then submitted that there have been no replies whatsoever or even any oral submissions either by AIAHL or by UoI in respect of the averments made by the petitioners in the interim applications. The only response forthcoming, and that too orally, has been from AIL which has simply contended that the Schedule of Amendment does not contain the averments made in the interim applications and that, even if that were to be sidestepped, the inclusion of AIAHL in the fray gives rise to a "fresh cause of action". As far as the latter contention is concerned, it is clear that there has been no change in the cause of action, which is the entire bundle of facts pleaded by the petitioners in respect of the actions of the current respondents. The mere transfer of liabilities for such cause of action to another entity would not amount to a "fresh" cause of action.

53. Though, the Schedule of Amendment appended to the interim applications proposes amendments to the memo of parties and paragraph 1 of the writ petition, Mr. Singhvi asserted that the body of the application itself sets out all the relevant facts that form the basis of the petitioners' claim that AIAHL has now become a necessary party to the present petitions. Further, even the writ petitions in their grounds and prayers refer to the "Respondents" as responsible. As such, even if only the Schedule of Amendments were to be considered that would also be enough, without prejudice to the contention that this Court may, as and when required,

easily look into the facts mentioned in the application for impleading AIAHL as a party respondent.

CONSIDERATION:

54. When the Air Corporations Act, 1953 was operative, Air India was a statutory body. Thereafter, with the repeal of the said Act of 1953 by the Air Corporations (Transfer of Undertakings) Act, 1994, Air India ceased to exist; but upon its incorporation, AIL became a wholly owned Government company and, thus, an 'other authority' within the meaning of Article 12. That position subsisted when these writ petitions were instituted and continued thereafter till privatization of AIL. There is, thus, no doubt that this Court was competent to receive the writ petitions when the same were presented. But whether they are maintainable as on date the same were finally heard is what has engaged our consideration.

55. Having heard the parties and perusing the materials placed before us by them, we are of the opinion that the issue regarding maintainability of the writ petitions owing to the intervening event of privatization of AIL, the principal respondent, between institution of the writ petitions and its final hearing before us, is no longer *res integra*. The decisions of this Court in **Tarun Kumar Banerjee** (supra) [since upheld by the Supreme Court while dismissing SLP (C) No. 5185 of 2009], and **Mahant Pal Singh** (supra) [since upheld in **Jatya Pal Singh** (supra)], the decision of the Karnataka High Court in **Padmavathi Subramaniyan** (supra), and the several decisions of the Delhi and Gujarat High Courts, noted above, have taken a consistent view and these lead us to form

the firm opinion that with the privatization of AIL, our jurisdiction to issue a writ to AIL, particularly in its role as an employer, does not subsist. We could have disposed of these writ petitions without much ado by following the judicial authorities in the field but having regard to the submissions advanced by Mr. Singhvi, noted in paragraph 47 above, we would like to proffer some reasons for reaching our own conclusions.

56. We have read Article 226 on multiple occasions but would like to read clause (1) thereof once more. It reads:

> "**226. Power of High Courts to issue certain writs:**
>
> (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by part III and for any other purpose.
> …"

57. That a writ could be issued to an 'authority' within the meaning of "the State" as in Article 12 of the Constitution as well as an 'authority' within the meaning of Article 226 has never been in dispute. By judicial pronouncements, law has developed over a period of time that a writ or order or direction under Article 226 can also lie against a 'person', even though it is not a statutory body, if it performs a public function or discharges a public duty or owes a statutory duty to the party aggrieved. These are unquestionable principles and the parties are *ad idem* in respect thereof. However, they

have joined issue because of the intervening event of privatization of AIL.

58. While proceeding to examine the question that has emerged for an answer, we can profitably draw guidance from the decision of the Supreme Court in **G. Bassi Reddy** (supra) cited by Mr. Khambatta. We extract a relevant passage therefrom for better appreciation hereunder:

> "27. It is true that a writ under Article 226 also lies against a 'person' for 'any other purpose'. The power of the High Court to issue such a writ to 'any person' can only mean the power to issue such a writ to any person to whom, according to the well-established principles, a writ lay. That a writ may issue to an appropriate person for the enforcement of any of the rights conferred by Part III is clear enough from the language used. But the words 'and for any other purpose' must mean 'for any other purpose for which any of the writs mentioned would, according to well-established principles issue'."

59. Our discussion should start with the alert that writ remedy is discretionary. It is elementary that a writ petition under Article 226 of the Constitution may be entertained by a high court if an entitlement in law, which is normally referred to as a legal right, is shown to exist and a breach thereof is alleged. The right to relief before a writ court, as claimed, necessarily casts a duty on the party aggrieved who approaches the court to satisfy it that the entitlement is capable of being judicially enforced against the party complained of and that the latter answers the identity of an 'authority' or a 'person' to whom the writ or order or direction can legitimately be issued. In other words, the party complained of must be amenable to the writ jurisdiction of the high court. Therefore, generally speaking, as on date of

admission hearing of a writ petition, the writ court is required to form a *prima facie* satisfaction on both the above counts. If either a legal right has not been infringed or the party complained of is not amenable to the court's writ jurisdiction, obviously the writ petition cannot be entertained. If, however, the court is *prima facie* satisfied, the court may in the exercise of its discretion admit the writ petition and post it for final hearing. After the pleadings are exchanged, and once the court arrives at a conclusion that a legal entitlement exists and such entitlement has been breached, together with the satisfaction that a writ would lie against the party complained of, an appropriate writ or order or direction can be issued. Thus, satisfaction as regards the breach of a legal entitlement apart, what is important in this context is that such breach must have been at the instance of the party complained of to whom a writ or order or direction can legitimately be issued. Not only, therefore, the party complained of should be amenable to the writ jurisdiction of the high court on the date of institution of the writ petition, it must also be so when the writ petition is finally heard and decided. It is thus axiomatic that only upon a double check (first at the time of admission of the writ petition, and then again at the time of final hearing thereof that the respondent against whom the complaint of commission of breach of a legal right of the petitioner is made is amenable to the writ jurisdiction) would the court proceed to decide the contentious issues. If not so amenable, the question of deciding the issues on merits may not arise. What follows from the aforesaid discussion is that the writ court when approached must not only have jurisdiction to issue a

writ or order or direction to the party against whom the complaint of breach of a legal right has been made at the inception of receiving the writ petition but such jurisdiction it must retain, without impairment, till the jurisdiction to issue the writ to such party is actually discharged.

60. The argument advanced on behalf of the petitioners by Mr. Singhvi that AIL was previously "State" within the meaning of Article 12 of the Constitution on the date these writ petitions were instituted and, thus, these petitions do not cease to be maintainable by reason of the intervening event during its pendency, based on the decisions in **Rajamundry Electric Supply Corporation Ltd.** (supra), **Pasupuleti Venkateswarlu** (supra), **Om Prakash Gupta** (supra), **Kedar Nath Agarwal** (supra) and **Ishar Singh** (supra), is too tenuous to be acceptable.

61. We have noted on perusal of the decisions in **Rajamundry Electric Supply Corporation Ltd.** (supra) and **P. Venkateswarlu** (supra), relied on by Mr. Singhvi, that the proceedings dealt with by the Court did not arise out of any writ petition. The reasons for the inapplicability of the ratio of the former decision, proferred by Mr. Khambatta, are acceptable to us and hence we refrain from restating the reasons. We, however, wish to add that a sentence in a decision of the Supreme Court does not constitute the ratio of its decision, and that a statement of law enunciated by the Supreme Court must be read in the light of the principle which it seeks to effectuate and it should not be construed as if it were a section of an enactment. In the latter decision, the

Supreme Court dealt with the adjectival activism relating to post-institution circumstances and laid down the proposition that *"it is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding"*. This is an emphatic statement that the right of a party is determined by the facts as they exist on the date the action is instituted. Granting the presence of such facts, then he is entitled to its enforcement. Later developments cannot defeat his right because had the court found his facts to be true the day he sued, he would have got his decree. The court's procedural delays cannot deprive him of legal justice or right crystallized in the initial cause of action.

62. However, such law as is laid down in **P. Venkateswarlu** (supra) may not apply with equal force to writ proceedings which are of a different character and are extraordinary in nature. The change in the status of the 'authority' against whom the writ was initially claimed plays a significant role in determining the issue of maintainability.

63. The other decisions relied on by Mr. Singhvi were rendered in rent control matters or proceedings arising out of civil suits to which the provisions of the Code of Civil Procedure and the ordinary rule of civil law (that the rights of the parties which existed on the date of institution of the suit are relevant) are applicable and not rendered on proceedings under Article 226 of the Constitution, which is a special jurisdiction conferred on the high courts to issue high prerogative writs; and howsoever wide and expansive the

jurisdiction might be to reach injustice wherever found, such jurisdiction has to be exercised within well-defined self-imposed restrictions and limitations of jurisdiction as carved out by judicial pronouncements of the Supreme Court.

64. We may in this connection profitably take note of the enunciation of law in **Beg Raj Singh** (supra). The Supreme Court, while dealing with proceedings arising out of a writ petition, had the occasion to observe that:

> "7. *** The ordinary rule of litigation is that the rights of the parties stand crystallized on the date of commencement of litigation and the right to relief should be decided by reference to the date on which the petitioner entered the portals of the court. A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events i.e. the events between the commencement of litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgment. Third-party interests may have been created or allowing relief to the claimant may result in unjust enrichment on account of events happening in-between. Else the relief may not be denied solely on account of time lost in prosecuting proceedings in judicial or quasi-judicial forum and for no fault of the petitioner. ***"

65. Perusal of the aforesaid excerpt would reveal some of the circumstances when a subsequent or an intervening event during pendency of a writ petition could result in the petitioner becoming disentitled to relief, viz. relief claimed being rendered redundant by lapse of time, or rendered

incapable of being granted by change in law, or being rendered inequitable because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of the judgment, or creation of third-party interests. It is, therefore, not an invariable rule that a writ petition has to be decided on the facts as were presented on the date of its institution. A circumstance of the present nature would count as an additional reason for the writ court to hold a petitioner disentitled to relief.

66. We may also take note of the decision in **Rajesh D. Darbar vs. Narasingrao Krishnaji Kulkarni**[31]. The decision arose out of appeals under section 72(4) of the Bombay Public Trusts Act, 1950. In the appeals, challenge was laid to a decision of the IInd Additional District Judge, Bijapur. The dispute related to elections claimed to have been conducted by 2 (two) rival groups for the Managing Committee of a Sangh, which was a society registered not only under the Societies Registration Act, 1860, but also the provisions of the said Trusts Act. One of the points raised before the Supreme Court was that the high court had lost sight of the fact that by passage of time, the dispute as regards validity of the election in October 1996 became non-est. *Per contra*, it was submitted that the dispute did not become infructuous by passage of time. The exposition of law on the point is found in paragraph 4. According to the Supreme Court, the courts are entitled to mould, vary or reshape the relief to make it justly relevant in the updated circumstances, provided (i) circumstances in which modified remedy is claimed are exceptional; (ii) such

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modification, if the statute on which the legal question is based, inhibits by its scheme or otherwise, such change; and (iii) the party claiming the relief must have the same right from which either the first or the modified remedy may flow. We do not see any reason to hold that conditions (ii) and (iii) are satisfied in view of the very scheme of a writ remedy. Article 226 would not arm us to issue a writ to any authority or person not comprehended within its meaning. We are thus precluded from issuing any writ to AIL in the changed circumstances.

67. **Pradip J. Mehta** (supra) mandates us to give reasons if a decision of a high court is not followed. The decision in **Ashok Kumar Gupta** (supra) has been very aptly distinguished by Mr. Khambatta. We are reminded of the age old saying that the intelligent perceive even that which is unsaid. Although it was not so said in the said decision, Mr. Khambatta is right in his contention that had the Division Bench not held in favour of maintainability of the writ appeal, the decision under challenge therein of the learned Single Judge would have had the stamp of validity for all times to come and in view of the doctrine of finality attached to judgments which are not questioned or cannot be questioned, the appellants would have been left high and dry without having any forum to pursue their remedy. This, however, is apart from the other reasons argued by him and our agreement with the reasons assigned by the learned Judge of the Gujarat High Court in **Kalpana Yogesh Dhagat** (supra), as regards the distinguishing features of **Ashok Kumar Gupta** (supra). We, thus, hold that **Ashok Kumar Gupta**

(supra) must be read as confined to the facts before the Division Bench and cannot come to the rescue of the petitioners.

68. With its privatization, AIL has ceased to be an Article 12 authority. There is and can be no doubt that no writ or order or direction can be issued on these writ petitions against AIL for an alleged breach of a Fundamental Right. Conscious of the change in the factual as well as legal position arising out of privatization of AIL, Mr. Singhvi with the experience behind him changed the line of argument and introduced the concept of 'public employment' of the petitioners and contended that since the petitioners were employees of AIL, which at the material time was discharging public functions, the writ petitions ought to be heard particularly when the petitioners are not at fault for the time lapse.

69. We are afraid, the contention that the petitioners were in 'public employment' earlier and that it should weigh in our minds for the purpose of grant of relief, as claimed originally, or moulding of relief because of the changed circumstances, is unacceptable for the reasons discussed above. By way of reiteration, we say that whether or not AIL was discharging public functions or the petitioners were in public employment need not be examined in these proceedings because, as the matter presently stands, no writ can be issued by us to AIL. In the circumstances, all the decisions cited by Mr. Singhvi laying down the law that a body discharging public functions would be amenable to the writ jurisdiction have no materiality for deciding the question at hand.

70. Further, we see no reason to accept the contention of Mr. Singhvi that there has been a collusion between UoI and AIL, which should make the writ petition maintainable. After all, whether or not there has been collusion is a question of fact. There needs to be a factual foundation therefor, meaning thereby that collusion has to be pleaded. Once pleaded, the Court may, upon looking at the reply-affidavit, decide whether collusion is proved or not. In the absence of any foundation having been laid to prove collusion, we are of the view that the contention is not well taken.

71. We are also of the view that impleadment of AIAHL in these writ petitions by granting the prayer for amendment without there being any substantial amendments incorporated in the Schedule of Amendment would not lead the petitioners to their desire of obtaining relief from this Court. The objection of Mr. Khambatta is well-founded and, if at all, any writ petition is maintainable against AIAHL, the petitioners ought to pursue their remedy by instituting a fresh writ petition; or else, by pursuing proceedings before the civil court in accordance with law.

72. Before parting, we place on record that we are not oblivious of the observations of the Supreme Court, made in the context of a landlord-tenant dispute, in paragraph 10 of its decision in **Pratap Rai Tanwani vs. Uttam Chand**[32]. It was observed thus:

> "10. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the

[32] (2004) 8 SCC 490

> ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system, it shatters the confidence of the litigant, despite the impairment already caused."

73. It is a fact that this Court could not decide these writ petitions during the long years of its pendency, which is bound to have shattered the hopes and aspirations of retired employees like the petitioners. However, at the same time, such inability to decide these writ petitions prior to privatization of AIL was due to reasons absolutely beyond the control of this Court, as admitted by Mr. Singhvi even. Notwithstanding the same, this Court, through its Chief Justice, regrets its inability to so decide prior to privatization of AIL.

CONCLUSION

74. The writ petitions, although maintainable on the dates they were instituted, have ceased to be maintainable by reason of privatization of AIL which takes it beyond our jurisdiction to issue a writ or order or direction to it. For the reasons discussed above, the writ petitions and the connected applications and chamber summons stand disposed of without granting any relief as claimed therein but with liberty to the petitioners to explore their remedy in accordance with law. No costs.

75. We make it clear that the time taken for disposal of these writ petitions would, however, be excluded for the

purpose of computation of limitation should the petitioners seek any remedy by instituting fresh proceedings where the question of limitation would be relevant.

(M. S. KARNIK, J.) **(CHIEF JUSTICE)**