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MAINTAINABILITY OF WRIT PETITIONS AGAINST ERSTWHILE PUBLIC ENTITIES

Introduction

1. Writ petitions envisage two important conditions, first, it can be filed against a 'State' or 'Authority' and second, the alleged infringement of a particular right must relate to a corresponding duty of the 'State' or 'Authority'.
2. Article 12 of the Constitution of India defines 'State' as the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.
3. Articles 32 and 226 provide for writs as form of remedies for enforcement of the rights guaranteed under the Constitution of India. Article 226 is, however, wider in scope and empowers the High Courts to issue writs for enforcement of the fundamental rights "or for any other purpose".
4. The rights under the writ jurisdiction of a Court can be enforced only against the State or the entities on the State or local authorities and bodies.
5. This article focusses on the status of erstwhile public entities that have eventually transformed into private entities by disinvestment or otherwise - whether such entities would be amenable to writ jurisdiction of the Supreme Court and High Courts.

Writs against private entities

1. The argument in favour of a strict interpretation of Article 12 is that writs can only be issued against the State and government entities and entities that are public in nature. It cannot be issued against private individuals or entities since they do not perform a public duty. Similarly, once a government entity is eventually disinvested and takes the form of a private entity, it cannot be made subject of writ petitions.
2. However, Courts have on several occasions also issued writs against private entities and institutions such as educational institutes, hospitals and banks on the reasoning that they essentially perform a public duty on

behalf of/in place of the State and thus have the duty to ensure that the rights of citizens are not violated.

3. *In Ramkrishna Mission vs. Kago Kunya, (2019) 16 SCC 303*, Supreme Court held that a private party may be covered under a writ petition when it performs a public function which is closely related to functions that are performed by the State in its sovereign capacity.
4. In *Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology, (2002) 5 SCC 111*, the Court recognized that the judicial definition of State in Article 12 has expanded over years as the concepts of equality under Articles 14 and 16 of the Constitution have also broadened.
5. However, when dealing with obligations of insurance companies, the Court held that the roles of a private player and the State are different. It was observed that public sector companies being a part of the State have a different role to play and the Court also intended to explain that public sector entities' liability is of a greater degree. [*United India Insurance Co. Ltd. vs. Manubhai Dharmasin bhai Gajera, (2008) 10 SCC 404*]

Maintainability of a writ petition after the public entity ceases to be "State" and converts into private entity

1. In *Asulal Loya vs. Union of India, 2008 SCC OnLine Del 838*, the maintainability of the petition was questioned given that the entity concerned had ceased to be "State" or "other authority" under Article 12. The Petitioner claimed it was maintainable since it had been filed prior to the privatisation. The Court upheld the preliminary objection regarding the maintainability since the company had ceased to be a public company and the issue did not relate to public functions



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tion. The Court upheld the preliminary objection regarding the maintainability since the company had ceased to be a public company and the issue did not relate to public functions.

2. The Court observed that it is a well settled principle that writ petition is not maintainable against private limited company or public limited company in which the State does not have a majority control unless the question raised relates to a public function being discharged by such company.
3. The *decision in Ladley Mohan vs. UOI, 2010 SCC OnLine Del 1814* was passed on a similar reasoning where the Court held that the writ petition is not maintainable since as on the date of filing, Mohan Food Industries (India) Limited was not a public entity being taken over by Hindustan Unilever which is a private entity. Thus, the Court held that it had no jurisdiction to entertain a prayer for writ against a private entity.
4. *Ashok Kumar Gupta vs. Union of India, 2007 SCC OnLine Cal 264* was decided on different facts where the change of public company into private company happened while the appeal was already pending before the Court. The respondents argued that the petitioner was no longer entitled to pursue the matter. The Calcutta High Court held that the cause of action for filing of the writ petition had crystallized at the point of time when the respondent was subject to the writ petition and it conferred vested rights on the petitioners to have their grievance adjudicated in a writ proceeding. As such, the writ petition was held to be maintainable. Thus, a subsequent action cannot render the writ petition infructuous. Further, the change in status was not attributable to the action of the petitioner and hence the petitioner cannot be denied relief.

5. In *Jatya Pal Singh vs. Union of India, (2013) 6 SCC 452* the Supreme Court held that a reconstituted entity of erstwhile public sector undertaking would not be amenable to writ jurisdiction after disinvestment with the government retaining only a minority stake. On applying the parameters for recognition of an entity or 'Authority' as a 'State' under Article 12 of the Constitution, it was found that the concerned entity was not state or "other authority" nor was it performing any public function to make it amenable to writ jurisdiction. The Court also clarified that for a private body to be held to be performing a public function it must perform acts of benefits for the public.

Conclusion

The conclusion on scope of writ petitions against private entities (or erstwhile public entities) may be derived from *Binny Ltd. vs. V. Sadasivan, (2005) 6 SCC 657 - writ remedy under Art 226* is primarily applicable to public/statutory authorities and can also be issued against any private body or person, however, it is limited to the discharge of public function and enforcement of public duty. The nature of the duty to be enforced is to be looked into as opposed to the identity of the Authority against whom it is sought.