S Shobha vs Muthoot Finance Ltd on 24 January, 2025

REPOR

IN THE SUPREME COURT OF INDIA

2025 INSC 117 EXTRAORDINARY APPELLATE JURISDICTION

SPECIAL LEAVE PETITION(C) NOS.2625-2627 OF 2025
(Arising out of Diary No(s). 1061/2025)

S SHOBHA Petitioner(

VERSUS

MUTHOOT FINANCE LTD. Respondent(

O R D E R

1. Delay condoned.

2. The High Court in its impugned order has observed in para 5 as under:-

> "5. While the Court examined the appeals and considered the controversy raised in the petitions, a conspicuous aspect surfaced that the petitions were filed against the Company named Muthoot Finance Limited. Admittedly, the respondent – Company is a Company registered under the Companies Act, 1956. It does not answer the definition of "State" within meaning of Article 12 of the Constitution. Nor the transaction of loan by pledging gold between the petitioner and the respondent could be said to be involving any public function or could be said to be in the public realm. Also the Company is not discharging any function which has the trapping of sovereign function. Respondent – Company is a Private Company registered under the law. It is not a "State".
>
> 5.1 Once the above position is clear, the writ petitions would not lie against the respondent – Company. Learned Single Judge could not have, therefore, entertained the CHANDRESH Date: 2025.01.29 11:24:37 IST Reason:
>
> petitions on that ground alone.
>
> 5.2 Noticeably, learned Single Judge was aware of the said aspect that the respondent

> – Company did not have the status of the "State" under Article 12 of the Constitution. What was reasoned by the learned Single Judge to entertain the petitions notwithstanding the aforesaid aspect was that, since the financier had acted contrary to some interim order, the petitions merited entertainment. The Court does not endorse to the said view and to make the petitions maintainable on the said ground 5.3 The following was observed by learned Single Judge, "Since on this fact the financier has acted contrary to the interim order, the petition merited entertainment notwithstanding the fact that the respondent is a private financier and would not completely answer its status as being a State under Article 12 of the Constitution of India who performs public functions and loan is granted under the statutory requirement, as enunciated by Reserve Bank of India.

On all these factors, the petitions are entertained. The amount of Rs.24,39,085/- is in deposit before this Court." 5.4 Thus, it is clear that though the learned Single Judge was well aware that the respondent – Company did not fall within the purview of the 'state' or its instrumentality under Article 12 of the Constitution, he proceeded to entertain the petitions and passed the order. The party-in-person submitted that it was a COVID-19 time when she approached the High Court by way of petitions, therefore, they ought to have been entertained. The Court is not impressed with the submission.

5.5 The remedy for the petitioner may be to institute the civil suit and to seek appropriate relief. It was further pointed out by learned advocate for the appellant that the loan agreement between the Company and the petitioner contains an arbitration clause. The loan agreement figures on record (page No.88 onwards) which is found to be containing arbitration clause. Paragraph No.6 (page No.100) of the loan agreement is the arbitration clause."

3. The Division Bench of the High Court is right in taking the view that Muthoot Finance Ltd. is not a "State" within the meaning of Article 12 of the Constitution and therefore not amenable to writ jurisdiction of the High Court under Article 226 of Constitution.

4. The learned counsel appearing for the petitioner would submit that although the Finance Company may not be strictly falling within the ambit of State yet being a non-banking financial institution is governed by the rules and regulations framed by the RBI and if the statutory rules and regulations framed by the RBI are breached by a non-finance banking company then as a statutory authority such finance company is amenable to writ jurisdiction.

5. We are afraid the position of law is otherwise.

6. In the case of LIC of India v. Escorts Ltd. reported in AIR 1986 SC 1370, it was contended before this Court that the Life Insurance Corporation was an instrumentality of the State and was debarred by Article 14 from acting arbitrarily. It was also contended that it was obligatory upon the Corporation to disclose the reasons for its action complained of, namely, its requisition to call an extra-ordinary general meeting of the company for the purpose of moving a Resolution to remove some Directors and appoint others in their place. Such argument was opposed by the State,

contending that the actions of the State or an instrumentality of the State, which do not properly belong to the field of public law but belong to the field of private law, were not subject to judicial review. Dealing with the said contentions, this Court observed:-

> "While we do find considerable force in the contention of the learned Attorney-General it may not be necessary for us to enter into any lengthy discussion of the topic, as we shall presently see. We also desire to warn ourselves against readily referring to English cases on questions of Constitutional law' Administrative Law and Public Law as the law in India in these branches has forced ahead of the law in England, guided as we are by our Constitution and uninhibited as we are by the technical rules which have hampered the development of the English law. While we do not for a moment doubt that every action of the State or an instrumentality of the State must be informed by reason and that, in appropriate cases actions uninformed by reason may be questioned as arbitrary in proceedings under Art.226 or Art.32 of the Constitution, we do not construe Art.14 as a charter for judicial review of State actions and to call upon the State to account for its actions in its manifold activities by stating reason; for such actions. For example, if the action of the State is political or sovereign in character, the Court will keep away from it 'the Court will not debate academic matters or concern itself with the intricacies of trade and commerce. If the action of the State is related to contractual obligation or obligations arising out of the contract, the Court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the Court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of then action and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a share holder, and dons the robes of a share-holder, with all the rights available to such a share-holder there is no reason why the State as a share-holder should be expected to state its reasons when it seeks to change the management, by a resolution of the Company, like any other shareholder.." Distinction between 'public law' and 'private law':
>
> Difficult as this distinction is and incapable of precise demarcation, it is yet necessary to keep the broad distinction in mind. Lord Denning in his book "The Closing Chapter" has this to say on the subject: "The first thing to notice is that public law is confined to 'public authorities'. What are 'public authorities'? There is only one avenue of Approach. It is by asking, in the words of Section 31(2)(b) of the Supreme Court Act 1981:

What is the 'nature of the persons and bodies against whom relief may be granted by such orders', that is, by mandamus, prohibition or certiorari?

These are divided into two main categories: First, the persons or bodies who have legal authority to determine questions affecting the common law or statutory rights or obligations of other persons as individuals. That is the formula stated by Lord Justice Atkin in R. v. Electricity Commissioners, ex parte London Electricity Joint Committee Co., (1920) Ltd, (1924) 1 KB 171/205 as broadened by Lord Diplock in O'Reilly v. Mackman (1982) 3, WLR 1096/1104). Second, the persons or bodies who are entrusted by Parliament with functions, powers and duties which involve the making of decisions of a public nature....To which I would add the words of Lord Goddard, C.J. in R. v. National Joint Council for Dental Technicians, ex parte Neate (1953) 1 QB 704/707):

"The bodies to which in modern times the remedies of these prerogative writs have been applied have all been statutory bodies on whom Parliament has conferred statutory powers and duties which, when exercised, may lead to the detriment of subjects who may have to submit to their jurisdiction".

But those categories are not exhaustive. The courts can extend them to any other person or body of a public nature exercising public duties which it is desirable to control by the remedy of judicial review. There are many cases which give guidance, but I will just give some illustrations.

Every body which is created by statute and whose powers and duties are defined by statute is a 'public authority'. So Government departments, local authorities, police authorities, and statutory undertakings and corporations, are all 'public authorities'. So are members of a statutory tribunal or inquiry, and the board of visitors of a prison. The Criminal Injuries Compensation Board is a public authority. So also, I suggest, is a university incorporated by Royal charter; and the managers of a State School. So is the Boundary Commission: and the Committee of Lloyd's.

But a limited liability company incorporated under the Companies Acts is not a 'public authority'; (see Tozer v. National Greyhound Racing Club Ltd. (1983) Times, 16 May). Nor is an unincorporated association like the Jockey Club...". (see pp. 122, 123, 124)

38. Sir Harry Woolf, a Lord Justice of Court of Appeal, points out the distinction in the following words:-

"I regard public law as being the system which enforces the proper performance by public bodies of the duties which they owe to the public. I regard private law as being the system which protects the private rights of private individuals or the private rights of public bodies.

> The critical distinction arises out of the fact that it is the public as a whole, or in the case of local government the public in the locality, who are the beneficiaries of what is protected by public law and it is the individuals or bodies entitled to the rights who are the beneficiaries of the protection provided by private law ". (see page 221 of his Article "Public Law Private Law: Why the Divide? A personal View (published in "Public Law" Summer (1986)").
>
> The learned Law Lord stated further in the same Article, at page 223:
>
> "While public law deals only with public bodies, this does not mean that the activities of public bodies are never governed by private law. Like public figures, at least in theory, public bodies are entitled to have a private life. There have been suggestions that in the commercial field public bodies should adopt different and higher ethical standards than private individuals, but this is not yet required as a matter of law and in relation to purely commercial transactions the same law is applicable, whether or not a public duty is involved. Prima facie, the same is true in relation to employment. The servant employed by a public body ordinarily has the same private rights as any other servant ".
>
> The position may, however, be different pointed out the learned Law Lord if such relationship is circumscribed by a statutory provision.
>
> 39. In this context, it would be appropriate to refer to two important English decisions, where a public duty was implied even in the absence of a statutory provisions.

They are R. v. Criminal Injuries Compensation Board, ex parte Lain (1967) 2 All ER 770, and R. v. Panel on take- overs (1987) 1 All ER 564. In Criminal Injuries Compensation Board, the relevant facts are the following: In the year 1964 the Government of Great Britian announced a Scheme in both Houses of Parliament providing for compensation to victims of violence and persons injured while assisting the police. It was a non-statutory scheme under which compensation was to be paid ex gratia. The scheme was to be administered by a Board, who were to be provided with money through a grant-in-aid, out of which payment would be made when the Board was satisfied that the compensation was justified. The widow of a Police Constable who was shot in the face by a suspect whom he was about to question, and who subsequently shot himself, applied to the Board for compensation. The Board awarded compensation, but made certain deductions, which was questioned by way of certiorari. The first question before the Court was "whether the Board are a body of persons amenable to the supervisory jurisdiction of this Court?". For the Board reliance was placed upon the well-known words of Atkin, L.J., in' R. v. Electricity Commissioners (1924) 1 KB 171, at p. 205 to the effect that the body of persons to be amenable to writ jurisdiction must have the legal authority to determine questions affecting the rights of subjects and who are under a duty to act judicially. The Court held that the said words of Atkin. L. J., were not supposed to be exhaustive of the situation where a certiorari may issue, and pointed out that the Board, though not set up under a statute, is set up by the executive Government, i.e., under the prerogative, and that its acts

are no less lawful on that account. The Court observed:

> "Indeed, the writ of certiorari has been issued not only to courts set up by statutes but also to courts whose authority was derived, inter alia, from the prerogative. Once the jurisdiction is extended, as it clearly has been, to tribunals as opposed to courts, there is no reason why the remedy by way of certiorari cannot be invoked to a body of persons set up under the prerogative. Moreover, the Board, though set up under the prerogative and not by statute, had in fact the recognition of Parliament in debate and Parliament provided the money to satisfy the Board's awards....". It was further observed:
>
> "We have, as it seems to me, reached the position when the ambit of certiorari can be said to cover every case in which a body of persons, of a public as opposed to a purely private or domestic character, has to determine matters affecting subjects provided always that it has a duty to act judicially. Looked at in this way, the Board in my judgment comes fairly and squarely within the jurisdiction of this Court. The Board are, as counsel for the Board said, "a servant of the Crown, charged by the Crown, by executive instructions, with the duty of distributing the bounty of the Crown". The Board are clearly, therefore, performing public duties. Moreover, the Board are quite clearly under a duty to act judicially".
>
> The same idea was put forward by Diplock, L.J., in his separate opinion, where he said:
>
> "If new tribunals are established by acts of Government, the supervisory jurisdiction of the High Court extends to them if they possess the essential characteristics on which the subjection of inferior tribunals to the supervisory control of the High Court is based...". Ashworth, J., justified the issue of certiorari in that case on the following basis:
>
> "They (Board) were set up by the executive after the proposal to set them up had been debated in both Houses of Parliament, and the money needed to satisfy their awards is drawn from sums provided by Parliament. It can therefore be said that their existence and their functions have at least been recognized by Parliament, which to my mind has a twofold consequence: in the first place it negatives any notion that the Board are a private tribunal, and secondly it confers on the Board what I may call a public or official character. The number of applications for compensation and the amounts awarded by the Board alike show how greatly the general public are affected by the functioning of the Board ....".
>
> 40. This decision has since been followed and applied in several English decisions. It would suffice to refer to R. v. Panel on Takeovers and Mergers, Ex Parte Datafin (1987) 1 All ER 564. The Panel on Take-overs and Mergers was a self-regulating unincorporated association which devised and operated the City Code on Take-overs

> and Mergers prescribing a Code of Conduct to be observed in the take-overs of listed public companies. The panel had no direct statutory, prerogative or common law powers, nor were its powers based solely on consensus; its acts were supported and sustained by certain statutory powers and penalties introduced after the inception of the Panel. A decision of the panel was sought to be questioned by way of certiorari. One of the objections of the respondents was that the supervisory jurisdiction of the Court was confined to bodies whose power was derived solely from legislation or the exercise of the prerogative, and that the power of judicial review did not extend to a body such as the Panel on Takeovers.

Overruling this objection, it was held that in determining whether the decisions of a particular body were subject to judicial review, the Court was not confined to considering the source of that body's powers and duties, but could also look to their nature. Accordingly, if the duty imposed on a body, whether expressly or by implication, was a public duty and the body was exercising public law functions, the Court had jurisdiction to entertain an application for judicial review of that body's decisions. It was held that, having regard to the wide-ranging nature and importance of the matters covered by the City Code on Take-overs and Mergers and to the public consequences of noncompliance with the Code, the Panel on Takeovers and Mergers was performing a public duty when prescribing and administering the Code and its rules and was subject to public law remedies. Accordingly, it was held that an application for judicial review would lie in an appropriate case. The approach to be adopted in such cases, it was stated by Sir John Donaldson, M.R., is "to recognize the realities of executive power". This is what the learned Master of Rolls stated:-

> "In fact, given its novelty, the panel fits surprisingly well into the format which this court had in mind in R. v. Criminal Injuries Compensation Board (1967-2 QB
>
> 867). It is without doubt performing a public duty and an important one. This is clear from the expressed willingness of the Secretary of State for Trade and Industry to limit legislation in the field of take-overs and mergers and to use the panel as the centerpiece of his regulation of that market. The rights of citizens are indirectly affected by its decisions, some, but by no means all of whom, may in a technical sense be said to have assented to this situation, e.g., the members of the Stock Exchange. At least in its determination of whether there has been a breach of the Code, it has a duty to act judicially and it asserts that its raison d'etre is to do equity between one shareholder and another. Its source of power is only partly based on moral persuasion and the assent of institutions and their members, the bottom line being the statutory powers exercised by the Department of Trade and Industries and the Bank of England. In this context I should be very disappointed if the courts could not recognize the realities of executive power and allowed their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted...".

This rule was reiterated in yet another decision of the Court of Appeal in R. v. Panel on Take-overs and Mergers, ex parte Guinness, (1989) 1 All ER 509. This was indeed the approach indicated by Mathew, J. in Sukhdev v. Bhagatram, AIR 1975 SC 1331, when the learned Judge spoke of "the

governing power, wherever located" being subjected to "fundamental constitutional limitations". The learned Judge felt that "the need to subject the power centres to the control of the Constitution requires an expansion of the concept of State action". (see para 93 at p. 1352).

7. Applying the above test, the respondent herein cannot be called a public body. It has no duty towards the public. It's duty is towards its account holders, which may include the borrowers having availed of the loan facility. It has no power to take any action, or pass any order affecting the rights of the members of the public. The binding nature of its orders and actions is confined to its account holders and borrowers and to its employees.

Its functions are also not akin to Governmental functions.

8. A body, public or private, should not be categorized as "amenable" or "not amenable" to writ jurisdiction. The most important and vital consideration should be the "function" test as regards the maintainability of a writ application. If a public duty or public function is involved, any body, public or private, concerned or connection with that duty or function, and limited to that, would be subject to judicial scrutiny under the extraordinary writ jurisdiction of Article 226 of the Constitution of India.

9. We may sum up thus:

> (1) For issuing writ against a legal entity, it would have to be an instrumentality or agency of a State or should have been entrusted with such functions as are Governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence Governmental.
>
> (2) A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government;
>
> (ii) 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.
>
> (3) Although a non-banking finance company like the Muthoot Finance Ltd. with which we are concerned is duty bound to follow and abide by the guidelines provided by the Reserve Bank of India for smooth conduct of its affairs in carrying on its business, yet those are of regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company.
>
> (4) A private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.

(5) Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or statutory rule. In exceptional cases a writ of mandamus or a writ in the nature of mandamus may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

(6) Merely because a statue or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.

(7) If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but, nevertheless, there must be the public law element in such action.

(8) According to Halsbury's Laws of England, 3rd Ed. Vol.30, p.682, "a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform, and which perform the duties and carries out its transactions for the benefit of the public and not for private profit". There cannot be any general definition of public authority or public action. The facts of each case decide the point.

10. Even while rejecting the writ petition on the ground of its maintainability, the High Court has protected the interest of the parties by observing in paras 6.1 as under:-

"6.1 Following order shall govern,

(i) It would be open for the respondent – original petitioner to have recourse to civil remedy before the appropriate Court in relation to the claim and grievance which she agitated by filing the writ petitions.

(ii) The appellant-Company is not precluded from taking any recourse in law, if it is of the view that it has any claim against the respondent – party-in-person.

(iii) It is also open to either side to invoke arbitration clause and engage in the process of arbitration to resolve the disputes.

(iv) The amount of Rs.24,39,085/-, which has been realized from sale of the gold pursuant to the auction conducted by the appellant-Company, shall remain deposited with the Registry of this Court.

(v) The Registry shall invest the said amount in a Fixed Deposit in a Nationalized Bank initially for a period of one year and renewable.

(vi) Such Fixed Deposit shall continue to renew for a maximum period of three years.

(vii) The amount of interest which may accrue on such deposit shall be receivable by the respondent– petitioner.

(viii) However, the petitioner shall not be entitled to raise any loan on the Fixed Deposit.

(ix) The Fixed Deposit kept shall remain in custody of the Registry of this Court.

(x) It would be open for either party to take recourse of civil remedy or before the arbitration within a period of three months from today."

11. No case is made out for interference.

12. The petitions are dismissed. However, if the petitioner has any grievance to redress against the finance company it shall be open for the petitioner to avail appropriate legal remedy before the appropriate forum in accordance with law including approaching the Ombudsman of the RBI.

13. Pending application(s), if any, stands disposed of.

……J. (J.B. PARDIWALA) ……J. (R. MAHADEVAN) NEW DELHI.

24th JANUARY, 2025.