

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 3RD DAY OF JULY, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO. 31899 OF 2019 (S-RES)

BETWEEN:

SRI. S. RAGHUNATHAN,
S/O SRI T E SRINIVASARAGHAVAN,
AGED ABOUT 60 YEARS,
R/AT FLAT NO.C2,
SRI THEERTHA APRTMENTS,
NO.53/15, 4TH MAIN,
BETWEEN 17TH AND 18TH CROSS,
MALLESHWARAM,
BENGALURU-560055.
EX-EXECUTIVE DIRECTOR, NESL,
HAVING ITS ADMINISTRATIVE OFFICE AT
5TH FLOOR, NO.86, M G ROAD,
BENGALURU-560 001.

...PETITIONER

(BY SRI. S PARTHASARATHI, ADVOCATE)

AND:

1. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF CORPORATE AFFAIRS,
GOVERNMENT OF INDIA,
NEW DELHI.
2. NATIONAL E-GOVERNANCE
SERVICES LTD (NESL),
(A UNION GOVERNMENT COMPANY),
ADMINISTRATIVE OFFICE, 5TH FLOOR,
SPENCER TOWERS,
ABOVE CANARA BANK CIRCLE OFFICE,
NO.86, M G ROAD,
BENGALURU-560 001.
REPRESENTED BY ITS
MANAGING DIRECTOR & CEO,
SRI S RAMANN, I A & AS.

3. M/S NESL ASSET DATA LTD. (NADL),
(WHOLLY OWNED SUBSIDIARY
OF RESPONDENT NO.1-NESL),
ADMINISTRATIVE OFFICE ,
5TH FLOOR, SPENCER TOWERS,
ABOVE CANARA BANK CIRCLE OFFICE,
NO.86, M G ROAD,
BENGALURU-560 001,
REPRESENTED BY
SRI S RAMANN, I A & AS
DIRECTOR, NADL.
 4. INSOLVENCY AND BANKRUPTCY
BOARD OF INDIA (IBBI),
MAYUR BHAVAN, 7TH FLOOR,
SHANKAR MARUTHI,
CANNAUGHAT CIRCUS,
NEW DELHI-110001.
REPRESENTED BY CHAIRPERSON, IBBI
 5. CHIEF GENERAL MANAGER,
RBI, CENTRAL OFFICE,
CUFE PARADE, WTC,
CENTER 1, 2ND FLOOR,
MUMBAI-400005.
 6. COMPTROLLER & AUDITOR GENERAL
OF INDIA, OFFICE OF CAG,
DDU MARG,
NEW DELHI-110124.
- ...RESPONDENTS
- (BY SRI.THIMMANNA BHAT, CGC FOR R1;
SRI. K V OMPRAKASH, ADVOCATE FOR R2 & R3;
SMT. K SARAJINI MUTHANNA, ADVOCATE FOR R4;
R5 IS SERVED AND UNREPRESENTED
V.C.O DATED 13.01.2020, NOTICE TO R6 IS D/W)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH LETTER ISSUED BY THE NATIONAL E-GOVERNANCE
SERVICES LTD (NESL) DATED 25.03.2019 THE IMPUGNED
TERMINATION SERVED ON THE PETITIONER VIDE ANNEX-J
AND ETC.,

THIS PETITION COMING ON FOR ORDERS THIS DAY,
THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner, an Executive Director [now removed] of the 2nd respondent-Company, is knocking at the doors of writ court for assailing the letter dated 25.03.2019 issued by the Managing Director cum Chief Executive Officer of the said Company informing the decision of the Board of Directors in determining his contractual appointment.

2. After service of notice, the respondents having entered appearance through their respective Advocates, resist the Writ Petition making submission in justification of the impugned action; they also contend that the 2nd respondent-Company neither being a Government Company nor being an instrumentality of the State, the Writ Petition is otherwise also not maintainable.

3. Having heard the learned counsel for the parties and having perused the Petition Papers, this Court declines to grant indulgence in the matter for the following reasons:

(a) the answering respondent is a Private Limited Company incorporated under the law relating to Companies; there is no material placed on record to show that it answers the

description of Government Company as defined u/s 617 of the erstwhile Companies Act, 1956 or the corresponding provision of the Companies Act, 2013; this apart, no prima facie evidence is placed to substantiate the contention that the said Company fills the character of State or its instrumentality fitting into the definition given under Article 12 of the Constitution of India in the light of the decision of the Apex Court in **Ramana Dayaram Shetty vs The International Airport 1979 SCR (3) 1014**; therefore, the Writ Petition is misconceived;

(b) secondly, the appointment of the petitioner vide letter dated 30.08.2016 was for a period of five years subject to Condition Nos.8 & 9 therein which read as under:

“8. Notwithstanding anything contained herein, the company may determine your service by giving three months notice or three months gross emoluments’ thereof.

9. You are also required to give three months notice in the event of resignation from the services of the company.”

The contents of the letter of appointment and more particularly, the aforesaid conditions keep beyond the pale of any doubt that appointment of the petitioner was purely contractual in substance; where the determination of services is occasioned by the terms of the contract or

anything done under the terms, it does not become actionable in law, subject to all just exceptions into which the argued case of the petitioner does not fit; condition No.8 reserves liberty to the Company to dispense with services of the petitioner by issuing a three-month-notice, or three months gross emoluments in lieu of such notice; the assertion of the answering respondents that petitioner has accepted a huge sum of more than Rs.12,00,000/- by way of gross emoluments for the three months that too without any protest, is not in dispute; that being the position, there is no choate cause of action for maintaining an action in law and more particularly, for invoking extraordinary jurisdiction of this Court, as rightly contended by the other side;

(c) the vehement argument of the learned counsel for the petitioner that the removal is stigmatic in character and therefore, an enquiry ought to have been held before issuing the impugned removal order, is bit difficult to countenance; arguably, had the answering respondent been an instrumentality of the State, perhaps different factors would have entered the fray of consideration; even otherwise, it is open to the answering respondent-Company, assuming that it is an instrumentality of the

State, to have the services of managerial personnel purely on contract basis, when it is admitted that there are no Recruitment Rules having binding effect; the Apex Court in the Case of Life Insurance Corporation of India Vs Escorts Ltd., 1985 SCR Supl. (3) 909 has observed as under:

“While it cannot be doubted 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 Ar.32 of the Constitution, Art.14 cannot be construed 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 reasons for such actions. 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 obligations or obligations arising out of the tort, 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.”

(d) there is some material which suggests that the impugned termination of the contract for service is preceded by some allegations, is arguably true; but that *per se* does not exclude the respondent-Company from invoking the conditions of contract entered into by the petitioner; as already mentioned, had the contract in question graduated to a **legal status** as it happens in

Public Service Jurisprudence, the matter would have been different, since the infraction of the conditions of service are treated under the Service Rules which usually have abundant public law character; it is needless to mention that if the impugned action or anything done preceding the same, amounts to some other cause of action, it is open to the petitioner to litigate on it; the reliance of the petitioner on the decision in **Sri N Murugesan vs The Union Of India and others** in Writ Appeal Nos.1555 - 1556 OF 2018 [S-RES] disposed off by the Division Bench of this Court on 26.04.2019 is not profitable since the answering respondent nameiy Central Power Research Institute therein is an instrumentality of the State under Article 12 of the Constitution and that there were Rules/Bye-laws relating to recruitment.

In the above circumstances, the Writ Petition being devoid of merits, is liable to be dismissed and accordingly, it is, the costs having been made easy and of course, subject to the observations made herein above.

**Sd/-
JUDGE**