

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ARBITRATION CASE No. 111 of 2019

M/S MAVERICK DEVELOPER AND COLONIZERS PVT. LTD.

Versus

PROJECT OFFICER

WITH

ARBITRATION CASE No. 112 of 2019

M/S MAVERICK DEVELOPER AND COLONIZERS PVT. LTD.

Versus

PROJECT OFFICER

Appearance:

*Shri Shekhar Sharma – Sr. Advocate with Shri Dhruv Sharma –
Advocate for the petitioner.*

Shri Mihir Agarwal – Advocate for the respondent.

ORDER

**(Reserved on 03.12.2025)
(Pronounced on 20.01.2026)**

Since both these petitions are on common legal issues and involve similar facts, therefore they are being decided by this common order. For the sake of convenience the facts are being taken from AC No.111/2019.

2. The present petition has been filed under Section 11(6) of Arbitration and Conciliation Act, 1996 (for short 'Act of 1996'), wrongly captioned in the application as under Section 11(5), for appointment of arbitrator on account of disputes rising between the parties in relation to agreement for construction of RCC overhead tanks and other ancillary works for water supply distribution network project floated by Bhopal Municipal Corporation.

3. The sole question that arises for consideration in the present case is that whether an arbitrator under Act of 1996 can be appointed in the present case or not, or whether the arbitration will be conducted as per the statutory provisions contained in MP Madhyastham Adhikaran Adhiniyam, 1983 (for short 'Adhiniyam 1983') which provides for a separate procedure for arbitration and M.P. Arbitration Tribunal has been constituted by the State Government under the said Adhiniyam 1983 and the parties have to approach the said statutory Tribunal, or the petitioner can maintain the present application under section 11(6) of Act 1996 for getting an arbitrator appointed under Act of 1996.

4. The legal question is that whether the Act of 1996 would prevail over Adhiniyam, 1983, has been subject matter of determination by the Hon'ble Supreme Court from time to time and initially in the case of VA

Tech Escher Wyass Flovel Ltd. v. M.P. SEB, (2011) 13 SCC 261 the issue was decided in favour of Act of 1996. However, later on the in case of **M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors, (2012) 3 SCC 495** it was decided by the Hon'ble Supreme Court that all disputes in relation to works contract have to be statutorily referred to the Tribunal set up under 1983 Act. However, there was partly dissenting opinion between the Hon'ble Judges constituting the Bench that whether disputes pertaining to termination, cancellation or repudiation of works contract would still be maintainable before the Tribunal under the Adhiniyam, 1983 and the matter was referred to Larger Bench of the Hon'ble Apex Court.

5. Thereafter the Larger Bench in the case of **M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors, (2018) 10 SCC 826** has emphatically overruled the judgment in the case of **V.A. Tech (Supra)** and it has been conclusively held that in view of Section 2 (d) of the Adhiniyam, 1983, the State Act will cover a dispute even after termination of the works contract. It was held that the State Act cannot be said to be impliedly repealed by the Act of 1996. The Larger Bench in **L.G. Choudhary Engineers (supra)** held as under:-

“4. When the matter was considered by a Bench of this Court on 24-1-2012 (order in M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors [M.P.

Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors, (2012) 3 SCC 495 : (2012) 2 SCC (Civ) 210], this Court held that the judgment in *VA Tech Escher Wyass Flovel Ltd. [VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB*, (2011) 13 SCC 261 : (2012) 3 SCC (Civ) 468] was *per incuriam* insofar as it held that the M.P. Act stands impliedly repealed by the Central Act. While Hon'ble Ganguly, J., held that the State Act will cover a dispute even after termination of the "works contract", Hon'ble Gyan Sudha Mishra, J. took a different view as follows : (M.P. Rural Road Development case [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors, (2012) 3 SCC 495 : (2012) 2 SCC (Civ) 210], SCC p. 511, para 51)

"51. It is no doubt true that if the matter were before an arbitrator appointed under the Arbitration and Conciliation Act, 1996 for adjudication of any dispute including the question regarding the justification and legality as to whether the cancellation of works contract was legal or illegal, then the said arbitrator in view of the ratio of the judgment of the Supreme Court in *Maharshi Dayanand University v. Anand Coop. L/C Society Ltd. [Maharshi Dayanand University v. Anand Coop. L/C Society Ltd., (2007) 5 SCC 295]*, as also in view of the persuasive reasoning assigned in the judgment and order in *Heyman v. Darwins Ltd. [Heyman v. Darwins Ltd., 1942 AC 356 : (1942) 1 All ER 337 (HL)]* would have had the jurisdiction to adjudicate the dispute regarding the justification and legality of cancellation of works contract also. But the same cannot be allowed to be raised under the M.P. Act of 1983 since the definition of "works contract" unambiguously lays down in explicit terms as to what is the nature and scope of "works contract" and further enumerates the specific nature of disputes arising out of the execution of works contract which would come within the definition of a "works contract". However, the same does not even vaguely include the issue or dispute arising out of cancellation and termination of contract due to which this question, in my considered opinion, would not fall within the jurisdiction of the M.P. State Arbitration Tribunal so as to be referred for adjudication arising out of its termination."

5. We find from the definition under Section 2(d) of the Arbitration and Conciliation Act, 1996 that even after a contract

is terminated, the subject-matter of dispute is covered by the said definition. The said provision has not been even referred to in the judgment rendered by Hon'ble Gyan Sudha Mishra, J.

6. In view of the above, we are of the opinion that the view expressed by Hon'ble Ganguly, J. is the correct interpretation and not the contra view of Hon'ble Gyan Sudha Mishra, J. Reference stands answered accordingly.”

6. The counsel for the petitioner did not dispute the aforesaid legal position at all, but submitted that though the contract in question falls within the definition of works contract being a contract relating to construction of overhead tanks and other ancillary works for water supply system and also that the dispute in the present case is covered within the definition of Section 2(d) of Adhiniyam, 1983, but submits that the respondent is not such an institution the disputes relating to which can be referred to the Tribunal under Adhiniyam, 1983. It is stated that this is because the disputes relating to works contracts of State Government or Public undertakings or notified Corporations of the State Government are referable to the statutory Tribunal under State Act, which are covered within purview of Section 2 (i) of Adhiniyam 1983 and public undertaking is defined under section 2(g) of Adhiniyam, 1983. The Municipal Corporation Bhopal being a Municipal Corporation constituted under Part-IX-A of the Constitution of India and as per Article 243Q of the Constitution of India the Municipal Corporation being an institution of local self-government under Article 243 P(e) of the Constitution, therefore

it being a separate statutory entity, would not fall within the purview of 'Corporation or other statutory body by whatever name called, wholly or substantially owned or controlled by the State Government'. It is argued that the Municipal Corporation is not a Corporation or a Statutory body wholly or substantially owned or controlled by the State Government and since Article 243 P(e) read with Article 243Q vests local self-government in the Municipality constituted under Part IX-A of the Constitution of India, therefore the Municipal Corporation is not an entity substantially owned or controlled by the State Government and therefore would not fall within the purview of 'public undertaking'.

7. *Per contra*, the petition is vehemently opposed by counsel for the respondents and it is contended that the Municipal Corporation would indeed fall within the purview of 'public undertaking'.

8. Heard the counsel for the parties.

9. For appreciating the controversy arising between the parties, the relevant provisions of the Adhiniyam 1983 are required to be considered that is Section 2(g) and 2 (i), which are as under:-

*"[(g) "public undertaking" means a Government Company within the meaning of clause (45) of Section 2 of the Companies Act, 2013 (No. 18 of 2013) and **includes a***

corporation or other statutory body by whatever name called in each case, wholly or substantially owned or controlled by the State Government.

(i) "works-contract" means an agreement in writing or a letter of intent or work order issued for the execution of any work relating to construction, repair or maintenance of any build-ing or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory, work-shop, power-house, transformer or such other works of the State Govern-ment or public undertakings or of the Corporations of the State as the State Government may, by notification, specify in this behalf at any of its stages, entered into by the State Government or by any official of the State Government or by public undertakings or Corporation or by any official of the State Government for and on behalf of such Corporation or public undertakings and includes an agreement for supply of goods or material and all other matters relating to execu-tion of any of the said works and also includes the services so hired for carrying out the aforesaid works and shall also include all concession agreement, so entered into by the. State Government or public undertakings or Corporation, wherein a State support is involved or not:].”

10. By referring to Article 243 Q and 243 P(e) of the Constitution of India it was vehemently argued before this Court that a Municipality being an institution of local self-government, it is not a Corporation “owned or controlled” by the State Government and therefore, it does not fall within the definition of Public Undertaking under Section 2(g) Adhiniyam, 1983. The learned counsel for the petitioner has heavily stressed on Article 243P (e) and 243-Q to contend that the Municipality does not function as servient to the State Government and it is not a Corporation owned or controlled by the State Government and it is an autonomous entity deriving

its existence and autonomy from Part IX-A of the Constitution of India and declared as such by virtue of Article 243 P(e) and 243 Q of the Constitution of India. The relevant provisions which have been heavily relied by the counsel for petitioner are as under:-

243P. Definitions. In this Part, unless the context otherwise requires,-

(a) "Committee" means a Committee constituted under article 2435;

(b) "district" means a district in a State;

(c) "Metropolitan area" means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part;

(d) "Municipal area" means the territorial area of a Municipality as is notified by the Governor;

(e) "Municipality" means an institution of self-government constituted under article 243Q;

(f) "Panchayat" means a Panchayat constituted under article 243B;

(g) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

243Q. Constitution of Municipalities. (1) There shall be constituted in every State,-

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

11. Previously a Coordinate Bench of this Court has already decided the issue in the favour of applicability and jurisdiction of the Tribunal constituted under State Act/Adhiniyam of 1983 for Municipalities. The matter has been decided in case of ***Indian Construction Co. (Guj.) Ltd. Vs. Indore Municipal Corporation and Ors., 2019 (1) MPLJ 206.*** The Coordinate Bench has held that Municipal Corporation is a public undertaking and by going through the provisions of M.P. Municipal Corporation Act, 1956 has held that Municipal Corporation is substantially controlled by the State Government and therefore it is a public undertaking under section 2(g) the Adhiniyam, 1983. The Coordinate Bench held as under:-

"17. To examine the issue if Indore Municipal Corporation is substantially controlled by the State Government, the provisions of Municipal Corporation Act, 1956 (for short "the Act") need to be looked into.

18 . *The respondent-Municipal Corporation Indore has been constituted under the provisions of the Act. Chapter 36 of the Act deals with the control of the State Government on the Municipal Corporation. Section 417 of Chapter 36 empowers the State Government to require the Commissioner to furnish the return or to call for and examine the record of any case pending before or disposed of by the Commissioner; the Corporation or the Mayor-in-Council. Section 417-A empowers the Government to depute officers to make enquiry into the affairs of the Corporation or inspection or examination of any department, office, service, work or thing under the control of any Corporation authority and to report to it the result of such enquiry, inspection or examination. Section 418 gives power to the State Government to require Municipal Authority to take action. Section 418-A gives power to the State Government to issue directions to the Municipal Corporation for implementation of welfare measure. Under section 419 the Government is empowered to appoint a person if the Corporation fails to take action within stipulated period on the order issued under section 418 or directions issued under section 418-A. If the Government feels that any officer or servant of the Corporation is negligent in the discharge of his duty, it can require the Corporation to suspend, fine or otherwise punish him under section 420. Section 421 empowers the Government to suspend any resolution or order of the Corporation and section 422 empowers the State Government to dissolve the Corporation on certain contingencies. Under section 423 on dissolution of the Corporation, the administrator can be appointed by the Government. Section 425 empowers the Government to enforce its order if the Corporation makes default in carrying out them. In terms of section 425-A authorized officials of the State Government are entitled to attend any meeting of the Corporation or Mayor-in-Council and address it on any matter concerning the work of this department. Section 426 empowers the Government to make rules authorizing inspection by servants of the Government, of Institution and works which are under the management and control of the Corporation and regulating such inspection. Section 426-A authorises the Government to remove any difficulty which arises in giving effect to the provisions of the Act.*

19 . *The aforesaid provisions make it clear that the Municipal Corporation is substantially controlled by the State Government, therefore, it is a public undertaking under section 2(1)(g) of the Madhyastham Act.*

20. *The record further reveals that in the matters relating to Works Contract with the Municipal Corporation, other aggrieved parties are approaching the Madhyastham Tribunal and such references are being entertained and adjudicated by the Tribunal. Along with the additional reply one such award passed by the Madhyastham Tribunal has been placed on record.*

21. *Having regard to the aforesaid analysis, I am of the opinion that the Municipal Corporation, Indore being substantially controlled by the State Government, is a Public Undertaking within the meaning of section 2(1)(i) of the Madhyastham Act and since undisputedly the agreement was for execution of Works Contract, therefore, the applicant has a remedy to approach the statutory Arbitration Tribunal constituted under the Madhyastham Act and the present application under section 11(6) of the Arbitration and Conciliation Act, 1996 is not maintainable, which is accordingly rejected."*

12. The counsel for the petitioner had tried to distinguish the aforesaid judgment of the Coordinate Bench on the ground that the Coordinate Bench has not considered Articles 243-P and 243-Q of the Constitution of India and therefore, the judgement of the Coordinate Bench is *per incurium* inasmuch as the autonomy given to the Municipalities under Part IX-A of the Constitution of India has not been taken up for consideration by the Coordinate Bench and without considering the effect of Constitutional provisions, the Coordinate Bench has held that the Municipalities are public undertakings under Section 2(g) of Adhiniyam, 1983 which should not be followed by this Court because owing to failure to consider the relevant constitutional provisions, the aforesaid judgment deserves to be declared *per incuriam* by this Court and is not a binding precedent.

13. Upon considering the aforesaid assertions of the counsel for petitioner, it is seen that though as per Article 243-P(e), Municipality is an institution of self-government constituted under Article 243Q, but the said Part IX-A nowhere vests any status to the Municipalities which brings them out of control of the State Government concerned. The self-government as prescribed in Article 243-P(e) has to be understood in the manner of self-government of the Municipal area or the local area for which the Municipality is functioning. It cannot be construed to be a self-government institution vis-à-vis the State Government and to bring it out of financial and supervisory control of the State Government. Such a status is not contemplated by the Constitution of India which would catapult the Municipalities to the status of quasi-states under the Constitution of India, that is nowhere contemplated in the Constitution and the interpretation which is being suggested to this Court by counsel for the petitioner would indeed catapult the Municipalities to the status of quasi-states under the Constitution.

14. As per Articles 243-P to 243-ZG of the Constitution of India which constitute Part-IX A of the Constitution of India, powers have been given to the Legislature of the State concerned to frame laws in the matter of constitution of municipalities, composition of municipalities, composition of wards, reservation of seats, duration of municipalities, powers,

authorities and responsibilities of municipalities, power to impose taxes, funds, finance, audit, election and all other matters containing municipalities for which the legislature of the State concerned would make the laws.

15. The State Government of Madhya Pradesh indeed enacted M.P. Municipal Corporation Act 1956 which provides for all such matters which have been laid down in the Constitution of India for the State Legislature to enact and provide.

16. As per Section 4, Provisional Commissioner shall be appointed by the State Government. As per Section 5(1), the State Government can appoint an administrator. As per Section 9(1)(c), Eldermen are to be appointed by the Government. As per Section 10(1) the State Government shall determine by notification, the number and extent of wards in municipal area. As per Section 14(2), State Government will frame rules for preparation of electoral rolls. As per Section 17(3) the State Government has the power to decide whether vacancy has occurred in the Municipal Corporation. As per Section 17-A power to disqualify ex-Mayor and Speaker etc. rests with the Government. As per Section 19- B removal of Mayor or Speaker or Chairman of Committee can be ordered by the State Government. As per Section 25(2)(a) the Mayor is prohibited to work

in contravention of any order of the State Government. The honorarium or allowances of the Mayor, Councillors, Speakers etc. shall be determined by the State Government. In case the Office of Mayor is declared vacant under the Act, then the Councillor nominated by the Government under Section 21(2) shall perform the duties of the Mayor. The State Government has the power to prescribe the functions and powers of wards committees and the procedure for conduct of their business as per Section 48A(7).

17. Not only this, but in the matter of Municipal Officers and servants, Municipal Commissioner is appointed by the State Government under Section 54(1). He receives a salary as shall be determined by the State Government from time to time and the Government grants leave of absence to the Commissioner in consultation with the Municipality. The rules are to be made by the State Government for service conditions of Municipal servants as per Section 58(1). Major penalties cannot be imposed on the employees without previous sanction of the State Government as per Section 60(6). The State Government has the power to declare state of emergency in the municipal area as per Section 65.

18. As per Section 68 which relates to functions of municipal authorities and powers of said authorities, the State Government is having power to entrust functions to the Corporation. The Municipality is vested with the

Municipal property transferred to it by the Government and the Corporation can rescind or vary the by-laws for management of such lands only with the previous approval of the State Government. The Government is having power to resume any immovable property transferred to the Corporation without payment of compensation and this power is given to the Government by Section 84.

19. So far as municipal funds are concerned, the Corporation receives funds from the State Government. As per Section 98, the State Government has power to direct that budget of the Corporation shall be subject to sanction of the Government in case the financial condition of corporation is such that it is desirable to have such control over the Corporation. The Corporation cannot raise any loan without sanction of the Government as per Section 102. The Corporation cannot issue debentures without previous sanction of the Government as provided under Section 105. The establishment and maintenance of sinking funds under Section 114 is also to be made with permission of the Government. As per Section 122, the Government can attach the municipal fund. The Government has the power to prescribe the manner of receipt and expenditure of Corporation as per Section 125 and such accounts have to be transmitted to the government as per Section 126. Annual administration report and accounts have to be forwarded to the Government as per Section 127. An audit has to be

conducted by Auditor appointed by the Government in terms of Section 129. The State Government also has a power to prescribe the manner of social audit as per Section 130-A.

20. In the matter of taxation, the Corporation can impose taxes as per Section 132 subject to any general or special order made by the State Government. Same is the situation for levy of user charges as per Section 132A which is also subject to any general or special order of the State Government. As per Section 133-A, the State Government shall pay to the Corporation from the consolidated fund of the State, a grant-in-aid, equal to the duty realised under Section 133-A(1) which is for the purpose of raising funds for the Corporation. The State Government has been given a power to require Corporation to impose taxes which is as per Section 133-B.

21. The aforesaid provisions that have been quoted above by this Court are only illustrations and from the entire perusal of the M.P. Municipal Corporation Act 1956, it is clear that the municipality works under active control of the State Government and it cannot be disputed that there is substantial control of the State Government in each sphere of management and functioning of the Municipal Corporation.

22. The State Government has powers in the matter of requiring works to be undertaken by the Corporation, town planning schemes to be framed,

grant permission to the Corporation to close the public streets, to frame rules for grant of permission to lay down railways, transmission, electricity and telephone poles, etc., permit streets to be opened or broken up, etc.

23. The State Government has the power to decide disputes between corporation and local authorities as per Section 415 and as per Chapter XXXVI of the Act of 1956, the Government exercises control over the Corporation and Government can require returns from the Corporation as per Section 417. Government can depute Officers to make enquiry, inspection or examination and submit report to the Government as per Section 417A. The Government can require an municipal authority to take action as per Section 418. Government can issue directions for implementation of welfare schemes, and most importantly as per Section 419, there is a detailed procedure to be taken by the Government when municipal authority fails to take action. Government can suspend any resolution or order of the Corporation as per Section 421. As per Section 422 the Government can dissolve the Corporation and appoint a committee after such resolution by exercising powers under Section 423. The Government has the powers under Section 425 to get its orders enforced by the Corporation.

24. In view of the aforesaid detailed provisions most importantly the provisions of Chapter XXXVI, it is clear that Municipal Corporation works under substantial control of the State Government and it cannot be inferred that the Municipal Corporation is a body not substantially controlled by the State Government. In fact there is substantial control of the State Government in every manner and every facet of working of the Corporation. The Constitution of India duly authorizes the State Legislature to make laws to regulate working of the Corporation and the State Government has enacted the Act of 1956, which contains detailed provisions in the manner in which the Municipal Corporation will function and such provisions give power to the State Government to control each and every facet of activities of the Municipal Corporation.

25. Therefore, this Court does not find any good ground to take any different view from the view already taken by the Coordinate Bench in the case of **Indian Construction (Supra)**. It is held that the Municipal Corporation is a statutory body substantially controlled by the State Government. As the necessary data with regard to finances of Municipal Corporation Bhopal have not been placed for consideration of this Court, therefore this Court has not given any finding that whether Municipal Corporation, Bhopal is substantially owned by the State Government or not. However it is to be noted that Government vests funds so also

properties in the Municipal Corporation which are managed by the Municipal Corporation. However substantial control of the State Government in the Municipal Corporation cannot be denied and therefore it is held that Municipal Corporation is a “public undertaking” under Section 2(g) of the Adhiniyam 1983.

26. After having held so, in view of the judgment of the Hon’ble Apex Court in the case of **L.G. Chaudhary Engineers-II (supra)** the provisions of Act of 1996 would not apply to the contract in question which is a works contract in terms of Adhiniyam 1983 and therefore, no arbitrator can be appointed by this Court by exercising powers under section 11(6) of Act of 1996. Resultantly, the petitions for appointment of arbitrator under section 11(6) of Act of 1996 are rejected, leaving it open to the petitioner to approach the Tribunal under the State Adhiniyam of 1983, subject to law of Limitation.

27. With the aforesaid liberty, the petitions are **dismissed**.

(VIVEK JAIN)
JUDGE