

Umri Pooph Pratappur (UPP) Tollways Pvt. Ltd. Vs. M.P. Road Development Corporation and Anr.

Civil Appeal No. 9920 of 2025 arising out of SLP (C) No. 13415 of 2025 · Supreme Court of India · 2025-07-30 · J.B. Pardiwala · R. Mahadevan · F2J-C-1403

Full judgment text

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[Civil Appeal No. 9920 of 2025 arising out of SLP (C) No. 13415 of 2025]

R. Mahadevan, J.

1. Leave granted.

2. This appeal has been preferred against the final judgment and order dated 09.09.2024 passed by the High Court of Madhya Pradesh at Jabalpur¹ in Writ Petition (Civil) No. 14569 of 2022 filed by Respondent No. 1 - Madhya Pradesh Road Development Corporation. By the impugned judgment, the High Court allowed the writ petition and quashed the orders dated 02.06.2022 and 07.06.2022 passed by the International Centre for Alternative Dispute Resolution² - Respondent No.2 and the Arbitral Tribunal, respectively. For ease of reference, the orders impugned in the writ petition, are extracted below:

Order dated 02.06.2022 passed by the ICADR

"The ICADR has made thorough examination of all the points of the Claimant and Respondent including the aforesaid nine attachments with email dated 24.05.2022 and due deliberation and consideration of all the points raised by both the Claimant and Respondent particularly Arbitration Agreement, the judgement in Writ Petition no. 11783/2021 dt.03.09.2021 and Orders sheets of Madhyastham Adhikaran at Bhopal and it has come to the following conclusions:

1. ICADR is the proper forum for the arbitration of disputes arising out of execution of Concession Agreement dated 05.01.2012 between M/s. Umri Pooph Pratappur Tollway Private Limited and Madhya Pradesh Road Development Corporation Ltd. and the same can be ascertained from Arbitration Agreement incorporated in Article 44.3.1 and 44.3.2.

2. The Judgement in Writ Petition no. 11783/2021 dt.03.09.2021 gives clear finding that ICADR is the proper forum for Arbitration of dispute arising from the Concession agreement dated 05.01.2012.

3. In view of and from the orders sheets of Madhyastham Adhikaran at Bhopal, it is ascertained that the Madhyastham Adhikaran at Bhopal has not entered upon reference of the arbitration and therefore not in seisin of the aforementioned arbitrable disputes.

Therefore, in view of Rule 5(2) of the ICADR Arbitration Rules, 1996, inter alia, provides that where a party fails to appoint an arbitrator within 30 days from the receipt of a request to do so from the other party, the appointment shall be made upon request of the party, by ICADR. However, in view of Reply of MPRDCL vide letter No. 2941/83/BOT/MPRDC Bhopal dated 13.05.2022 to Arbitration Notice dated 06.05.2022 of the Claimant whereby the Respondent has declined to nominate their Arbitrator, hence, ICADR need not wait for expiry of 30 days.

Since the Respondent has failed to appoint their arbitrator in terms of clause 44.3.1 of the Agreement, now, therefore, I, R.K. Rathore, Secretary General of the International Centre for Alternative Dispute Resolution (ICADR), in exercise of the powers vested in me under Rule 5(2) read with Rule 35(3) of ICADR Arbitration Rules, 1996, do hereby appoint the following arbitrator on the behalf of Respondent:

Shri Jagdish Prasad Shukla, IRSE (Retd.)

Former Principal Engineer/Northern Railway Chief Managing Director/ Rail Vikas Nigam Ltd. &

Member Administration/Central Administrative Tribunal

Add: 501, Ridgewood, Omaxe Forest Sector-92, Noida.

Cell No. 9958998686

E-mail:

The two appointed arbitrators will select the third Arbitrator, i.e. Presiding Arbitrator, as provided in clause 44.3.2 of the above mentioned Agreement."

Order dated 07.06.2022 passed by the Arbitral Tribunal

"Notice for preliminary hearing

1) The Concessionaire/ Claimant has appointed Shri Kamlesh Kumar as Arbitrator on their behalf. The ICADR on behalf of Madhya Pradesh Road Development Corporation Limited has nominated Shri J. P. Shukla as Arbitrator for MPRDC Ltd.

2) The above said nominee Arbitrators of the parties by mutual consent have appointed me the Presiding Arbitrator to adjudicate the matter in dispute relating to the above-mentioned subject vide email date 05.06.2022. I have accepted to act as Presiding Arbitrator in the above referred dispute on 05.06.2022 and the same was communicated to all concerned by email.

3) In pursuance thereof, the parties to the dispute are hereby notified that Preliminary hearing of the Arbitral Tribunal will be held on 18.06.2022 (11.00 AM) through video conferencing wherein timeline for submission of the Statement of Claims (SOC) and Statement of Defense (SOD) and the procedure for conducting the Arbitration will be discussed and decided. The claimant shall arrange to send meeting link to all concerned for the video conferencing well in advance.

4) The Parties to dispute may kindly note that I have received the proposal of my appointment as Presiding Arbitrator on 05.06.2022 and on same day i.e., on 05.06.2022 accepted to act as Presiding Arbitrator. Therefore, the period of 6 months for filing the statement of claims (SOC) and statement of defense (SOD) as specified in Sub Section 4 of Section 23 of Arbitration and Conciliation Act, 1996 (Amendment 2019) shall be reckoned from 05.06.2022 and such period end on 04.12.2022.

5) In the meantime, the Respondent is directed to file a certified copy of Agreement between the Respondent and Claimant to all the Tribunal Members with a copy to the Claimant.

6) My Disclosure under section 12(1 b) as schedule VI of the Arbitration and Conciliation Act 1996 (Amendment 2019) is enclosed for reference of parties to the dispute."

3. The brief facts necessary for adjudication of the present appeal are as follows:

3.1. The appellant and Respondent No.1 entered into a Concession Agreement dated 05.01.2012 for the development of the Umari - Pooph - Pratappur Road on a Build, Operate and Transfer (BOT - Toll + Annuity) basis. The total cost of the project was Rs. 73.68 crores for the augmentation of the existing road from T-Junction of SH-45 at Umari Village to 43.775 km on the Umri - Pooph - Pratappur section of Major District Road (MDR) in the State of Madhya Pradesh, as stipulated in Clause 48.1 of the Concession Agreement. The implementation period was fixed at 24 months from the appointed date.

3.2. In accordance with Article 9.1.1 and Schedule F of the Concession Agreement, the appellant furnished a performance security of Rs. 3.68 crores in the form of an irrevocable and unconditional bank guarantee, vide Bank Guarantee No. 00494121PG000028 dated 03.07.2012 issued by Allahabad Bank. An Escrow Agreement was also executed on 20.06.2012 among the appellant, Respondent No.1 and Allahabad Bank.

3.3. M/s. S&P Infrastructure Developers Private Limited and M/s. BLA Infrastructure Private Limited, by Deeds of Guarantee dated 20.06.2012 and 15.05.2012 respectively, guaranteed the performance of the appellant under the Common Loan Agreement. The appellant alleged that Respondent No.1 arbitrarily fixed the appointed date as 20.06.2012. Thereafter, the appellant submitted the project completion schedule, work programme, and designs and drawings for review by the Divisional Manager, who had been temporarily appointed as the Independent Engineer. Upon acceptance, the appellant mobilized men, materials, and machinery at the site and commenced work.

3.4. Vide Letter No. VO/TL/2012/Gen/02 dated 27.06.2012, the appellant was informed that M/s. Vaidya Organisation had been appointed as the Independent Engineer with effect from 01.06.2012. The Independent Engineer did not approve the designs and drawings earlier submitted and directed the appellant not to proceed with construction until the already executed work was reviewed and approved. The appellant was further directed to submit revised designs and drawings. Despite

objections, revised submissions were made by the appellant on 11.07.2012, which were eventually approved. Consequently, the appellant was compelled to dismantle and re-execute substantial portions of the work, resulting in an escalation of the total project cost to Rs. 99.80 crores.

3.5. Subsequent delays and disruptions allegedly occurred due to breaches of contractual obligations by Respondent No. 1. Consequently, the appellant raised 19 claims before the Independent Engineer invoking Article 44.2 of the Concession Agreement for amicable resolution and compensation. These claims were also submitted to the Secretary, PWD. While some claims were accepted during conciliation proceedings, most were rejected, and no payments were released to the appellant.

3.6. With no resolution forthcoming, the appellant initiated proceedings before the Madhya Pradesh Arbitration Tribunal by filing Reference Case No. 61 of 2018. Notice in the said reference was issued on 13.08.2018.

3.7. Thereafter, the appellant invoked Clause 44.3.1 of the Concession Agreement and approached the ICADR. Respondent No. 1 raised objections under Section 7 of the Madhya Pradesh Madhyastham Adhikaran Adhinyam, 1983. Nevertheless, the ICADR, by order dated 02.06.2022, proceeded to appoint arbitrators to adjudicate the disputes. The Arbitral Tribunal issued a notice for preliminary hearing, by order dated 07.06.2022.

3.8. Subsequently, on 24.06.2022, the appellant filed an application before the Madhya Pradesh Arbitration Tribunal, seeking withdrawal of Reference Case No.61 of 2018.

3.9. Aggrieved by the orders dated 02.06.2022 and 07.06.2022 passed by the ICADR and the Arbitral Tribunal, respectively, Respondent No.1 filed Writ Petition No.14569 of 2022 before the High Court. During the pendency of the writ petition, the Madhya Pradesh Arbitration Tribunal allowed the appellant's withdrawal application by order dated 08.02.2023.

3.10. Ultimately, by judgment dated 09.09.2024, the High Court allowed the writ petition and quashed the orders dated 02.06.2022 and 07.06.2022. Aggrieved thereby, the appellant has preferred the present appeal before this Court.

4. The learned Senior Counsel for the appellant submitted that the writ petition filed by Respondent No. 1 before the High Court was not maintainable as the appellant is a private company and does not function as an instrumentality of the State. Reliance was placed on the judgment of this Court in *S.Shobha v. Muthoot Finance Ltd*⁴, wherein it was held that a writ petition is maintainable only against a body that qualifies as 'State' under Article 12 of the Constitution. Therefore, the High Court erred in entertaining the writ petition and passing the impugned order against the appellant.

4.1. Reference was also made to the decisions of this Court in *Jagmittar Sain Bhagat v. Director, Health Services, Haryana and others*⁵ and *Kanwar Singh Saini v. High Court of Delhi*⁶, to submit that the issue of maintainability of a writ petition can be raised at any stage of the proceedings, and must be determined at the threshold.

4.2. The learned Senior Counsel submitted that the arbitration proceedings were initiated by the appellant under the Arbitration and Conciliation Act, 1996, strictly in accordance with Clause 44.3.1 of the Concession Agreement dated 05.01.2012, and not as an alternative or secondary remedy. Both parties, being fully aware of the existence of the Madhya Pradesh Arbitration Tribunal constituted under the 1983 Act, had mutually agreed to resolve disputes through arbitration governed by the 1996 Act and the ICADR Rules. Accordingly, the invocation of the 1996 Act was not barred by the 1983 Act.

4.3. It was further emphasized that if the parties had intended to refer disputes to the Tribunal under the 1983 Act, the agreement would have specifically provided for such reference. Whereas, Clause 44.3.1 of the Concession Agreement mandates arbitration under the aegis of ICADR, New Delhi. Therefore, the jurisdiction of the Madhya Pradesh Arbitration Tribunal cannot override this binding contractual mechanism.

4.4. The learned Senior Counsel placed reliance on paragraph 79 of the decision of the Madhya Pradesh High Court in *Viva Highways Ltd v. Madhya Pradesh Road Development Corporation Ltd*⁸, which held that the Madhya Pradesh Arbitration Tribunal under the 1983 Act has jurisdiction only over "ascertained" claims. It also acknowledged that "ascertained" claims have a specific connotation. In the present case, the appellant's claims are, at best, "ascertainable", and therefore, outside the jurisdiction of the Tribunal. Even assuming, without conceding, that the claims could be considered

"ascertained", it was incumbent upon the High Court or Tribunal to undertake an inquiry to classify the nature of the claims. However, no such determination was carried out in the present case.

4.5. It was contended that the Doctrine of Election has no application to the present case. Firstly, the appellant invoked arbitration proceedings under the Concession Agreement and did not approach the Madhya Pradesh Arbitration Tribunal under the 1983 Act on its own volition. Secondly, arbitration was not resorted to as an alternative, but as a binding and mutually agreed remedy under the contract.

4.6. It was further submitted that the 1996 Act is a self-contained and exhaustive code, based on the UNCITRAL Model Law, enacted with the objective of promoting speed, efficiency, and uniformity in arbitral proceedings. Therefore, allowing statutory tribunals such as the one under the 1983 Act to override the framework of the 1996 Act would defeat the legislative intent and undermines India's aspiration to be a country that can provide early dispute settlement mechanism for commercial disputes through promotion of arbitration.

4.7. It was also submitted that the Madhya Pradesh Arbitration Tribunal constituted under the 1983 Act functions more akin to a civil Court than an Arbitral Tribunal. Section 2(d) restricts its jurisdiction to "ascertained" claims. Section 7(5) permits summary dismissal, similar to Order 37 of the Civil Procedure Code, 1908. Section 19 limits the revisional jurisdiction of the High Court to narrow grounds under Section 115 of the CPC, thereby excluding recourse under Section 34 of the 1996 Act. Section 16 mandates delivery of an award within four months of notice. However, in the present case, even after three and a half years, no effective progress has been made, highlighting the Tribunal's inefficacy.

4.8. Additionally, it was submitted that although the appellant had initially invoked the jurisdiction of the Tribunal under the 1983 Act, it was compelled to withdraw the reference due to an inordinate delay of over four years, and because the claims were only "ascertainable" and not "ascertained". Therefore, the ratio in *Madhya Pradesh Rural Road Development Corporation Ltd v. L.G. Chaudhary Engineers and Contractors*¹⁰ is not applicable to the present case.

4.9. Finally, it was submitted that the appellant's claims, aggregating to Rs.280.1566 crores pertain to expenses incurred, damages under Clauses 4.2 and 10.3.4 of the Concession Agreement, and other project related costs. The quashing of the arbitration proceedings by the High Court without directing adjudication either under the 1996 Act or the 1983 Act, has left the appellant without any effective legal remedy.

4.10. In light of the above submissions and case laws, the learned Senior Counsel prayed that this appeal be allowed and the impugned order be set aside.

5. Per contra, the learned Solicitor General of India appearing for Respondent No.1 submitted that there is no dispute between the parties regarding the nature of the Concession Agreement dated 05.01.2012 - it constitutes a works contract. The Government of Madhya Pradesh enacted the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, which provides for the establishment of the Madhya Pradesh Arbitration Tribunal to adjudicate disputes arising out of 'works contracts', where the State Government or a State Public Undertaking is a party. Section 2(1)(d) of the 1983 Act defines a "dispute" as a claim for ascertained or ascertainable money valued at Rs. 50,000 or more relating to differences arising from the execution or non-execution of a works contract.

5.1. It was further submitted that Respondent No.1 is a wholly owned entity of the State of Madhya Pradesh, and that any Concession Agreement executed by it falls within the ambit of a 'works contract' under Section 2(1)(i) of the 1983 Act. Section 7(1) provides for mandatory reference of such disputes to the Madhya Pradesh Arbitration Tribunal, notwithstanding any arbitration clause in the agreement. Section 20 bars the jurisdiction of civil Courts in such matters, thereby establishing the Tribunal as the exclusive forum. Furthermore, Section 2(4) of the 1996 Act, preserves the operation of special statutory forums like the Madhya Pradesh Arbitration Tribunal, reinforcing this exclusivity.

5.2. Reliance was placed on the judgment of a three-judge bench of this Court in *Madhya Pradesh Rural Road Development Authority v. L. G. Chaudhary Engineers and Contractors* (supra), which upheld the exclusive jurisdiction of the Madhya Pradesh Arbitration Tribunal for disputes arising out of works contracts. Similarly, in *Viva Highways Ltd.* (supra), a Full Bench of the Madhya Pradesh High Court confirmed the Tribunal's exclusive jurisdiction, and the 13 Special Leave Petition (Civil) No.17070/2017 filed against the same was dismissed by this Court on 18.04.2018.

5.3. The learned Solicitor General also referred to the decisions in *State of Chhattisgarh v. M/s. KMC Construction*¹¹, *ARSS Damoh - Hirapur Tolls (P) Ltd. v. M.P. Road Development Corporation*¹², and *Madhya Pradesh Rural Road Development Authority v. Backbone Enterprises Limited*¹³, where this Court reiterated that disputes arising out of a works contract, must be adjudicated exclusively by the Madhya Pradesh Arbitration Tribunal.

5.4. Accordingly, the learned Solicitor General contended that since the Concession Agreement is a "works contract" and Respondent No. 1 is a State-owned corporation, any dispute arising therefrom falls squarely within the Tribunal's exclusive jurisdiction. The appointment of a private arbitral tribunal under the aegis of ICADR is in direct contravention of the statutory framework, and the High Court rightly intervened to quash the arbitration proceedings under the 1996 Act.

5.5. It was further submitted that the appellant had raised inflated claims amounting to Rs.280.1566 crores before the Madhya Pradesh Arbitration Tribunal in Reference Case No. 61 of 2018, including claims for loss of profits and damages. These claims were ex facie time-barred under Section 7-B the 1983 Act, which requires claims to be filed within one year from the date of communication of the decision of the final authority. The appellant, having failed to comply with the limitation, sought to circumvent the statutory bar by initiating private arbitration under the 1996 Act, reflecting forum shopping and lack of bona fides.

5.6. The learned Solicitor General pointed out that Reference Case No. 61 of 2018 was admitted on 06.09.2021, and Respondent No.1 filed its written statement on 05.11.2021, raising limitation as a preliminary objection. Thereafter, the appellant invoked Clause 44.3.1 of the Concession Agreement and issued a notice under Section 21 of the 1996 Act. Simultaneously, the appellant filed an application to withdraw the reference before the Tribunal on 24.06.2022, which was allowed on 08.02.2023.

5.7. According to the learned Solicitor General, as per Rule 53(3)(b) of the Madhya Pradesh Madhyastham Adhikaran Regulations, 1985, a party that withdraws a reference without the permission contemplated under Rule 53(2) is barred from instituting a fresh reference on the same subject matter. Since the appellant withdrew its claim without such leave, it is now barred from re-agitating the same claims before any forum, including private arbitration. The conduct of the appellant, therefore, amounts to an impermissible attempt to sidestep statutory restrictions.

5.8. Reference was made to *Deep Industries Ltd v. Oil and Natural Gas Corporation Ltd*¹⁴, where this Court upheld the High Court's power to exercise writ jurisdiction and quash arbitration proceedings coram non iudice.

5.9. It was argued that contractual terms cannot override statutory mandates. If a statute designates a specific forum for adjudication, parties cannot, by mutual agreement, confer jurisdiction on an alternate forum. Clause 44.3.1 of the Concession Agreement, to the extent that it provides for private arbitration, is void ab initio in the context of a works contract governed by the 1983 Act. In support, reliance was placed on *Booz Allen and Hamilton Inc v. SBI Home Finance Ltd*¹⁵.

5.10. It was further submitted that the term 'ascertained money' under Section 2(1)(d) includes consequential reliefs. Moreover, the amendment to the 1983 Act post - *Viva Highways*, includes unascertained money claims within the definition of "dispute". Thus, the Tribunal has jurisdiction even over claims where quantification may occur during adjudication.

5.11. The learned Solicitor General also submitted that the appellant's claims totalling Rs. 280.1566 crores were clearly quantified and sought money relief alone. No declaratory or indeterminate relief was prayed for. The appellant's conduct in attempting to re-agitate these very claims before the ICADR Tribunal - despite having withdrawn the earlier reference under Rule 53(3)(b) - reveals its intent to circumvent the statutory bar. Accordingly, the Madhya Pradesh Arbitration Tribunal under the 1983 Act remained the appropriate and exclusive forum, and the High Court rightly quashed the arbitration proceedings initiated under the 1996 Act.

5.12. It was further submitted that by withdrawing the reference without seeking liberty under Rule 53(2), the appellant has irrevocably abandoned its claims. The consequence under Rule 53(3)(b) is substantive and bars re-litigation of the same subject matter. This bar applies irrespective of whether arbitration is under the 1983 Act or under the 1996 Act. Furthermore, even dehors the special limitation under the 1983 Act, the appellant's claims are now time-barred under the general law of limitation, as per Section 43 of the 1996 Act. The disputes arose between 2013 and 2015, and the

invocation of arbitration in 2022 and thereafter in 2025 is clearly beyond the prescribed three-year limitation.

5.13. However, it was submitted that Respondent No.1 would have no objection, if the appellant were to file an application for recall of the withdrawal order and seek restoration of the Reference Petition before the Madhya Pradesh Arbitration Tribunal, which may be directed to be considered in accordance with law.

6. We have heard the learned Senior Counsel appearing for both sides and also perused the materials available on record.

7. The core issue in the present matter revolves around determining the appropriate forum for the adjudication of disputes arising out of the Concession Agreement dated 05.01.2012 entered into between the appellant and Respondent No.1.

8. At the outset, the learned Senior Counsel for the appellant submitted that the writ petition filed by Respondent No.1 was not maintainable against the appellant as it was directed against a private party. It is well settled that the remedy under Article 226 of the Constitution is not confined to individuals seeking enforcement of fundamental rights. Even juristic persons, including State Corporations, are entitled to invoke the writ jurisdiction for enforcement of legal rights.

However, when a State Corporation seeks relief against a private party, the maintainability of the writ petition must satisfy certain threshold requirements, namely, that the dispute involves a public law element rather than being confined to the realm of private contractual obligations, and that the private party is performing a public duty or is subject to a statutory obligation in relation to the State entity.

8.1. In the present case, Respondent No.1 is a State - owned entity and the project in question pertains to the development of Umri - Pooph - Pratappur Road under a Concession Agreement on a BOT (Toll + Annuity) basis. Although the dispute emanates from a works contract governed by the said agreement, the writ petition was not filed for enforcement of any contractual obligation.

Rather, it was filed to challenge the invocation of arbitration by the appellant under the Arbitration and Conciliation Act, 1996, despite the existence of a statutory remedy before the Madhya Pradesh Arbitration Tribunal constituted under the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983. The issue, therefore, pertained to the availability and exclusivity of a statutory dispute resolution mechanism, and not merely to the adjudication of a claim on merits arising out of a private contractual dispute.

8.2. In this context, reference was made to the decision in *Federal Bank Ltd. v. Sagar Thomas*¹⁶, wherein, this Court provided a classification of entities against whom a writ petition may be maintainable. The following paragraph is pertinent:

"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an 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."

8.3. This Court in *Binny Ltd v. Sadasivan*¹⁷, noted the distinction between public and private functions; and clarified the scope of writ jurisdiction under Article 226 in the context of private contractual disputes involving entities that may be performing public functions. The relevant paragraphs are extracted below for ready reference:

"11. It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest."

"29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for

enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, especially in view of the words used in Article 226 of the Constitution.

However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right 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. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England, 3rd Edn., Vol. 30, p.682,

"1317. 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."

Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not a State within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties."

8.4. Respondent No. 1 was incorporated on 14.07.2004 to develop, build, maintain, and operate the State Highways, District or other local body roads, expressways, and government buildings in Madhya Pradesh. Respondent No. 1 also, on contract, develops and maintains National Highways in or passing through Madhya Pradesh. The Madhya Pradesh Highways Act, 2004, repealing the 1936 Act, also reiterates the State's role in the development, construction, and maintenance of roads in the State.

Since the right to access any part of the country, with certain exceptions and restrictions under certain circumstances, is a fundamental right guaranteed under Article 19(1)(g) of the Constitution, and the right to safe, well-maintained, and motorable roads is recognised as a part of the right to life under Article 21 of the Constitution of India, it is the responsibility of the State to develop and maintain the roads directly under its control. The contract for laying of a State Highway/District Road, when assigned by the Corporation owned and run by the government, assumes the character of a public function - even if performed by a private party - and would satisfy the functionality test to sustain the writ petition.

Accordingly, in view of the statutory framework and the nature of relief sought, the writ petition involves a public law element and was thus maintainable before the High Court. The decisions relied upon by the appellant are factually distinguishable and pertain to materially different contexts. As such, they do not advance the appellant's case and have no application to the facts and legal issues involved in the present case.

9. Assailing the impugned judgment passed by the High Court, the learned Senior Counsel for the appellant submitted that the Madhya Pradesh Arbitration Tribunal constituted under the 1983 Act is competent to entertain disputes only where there is an ascertained claim exceeding Rs.50,000/-. In the present case, there is no such ascertained monetary claim raised, and hence, the appellant was not obliged to approach the said Tribunal. Further, it was submitted that Clause 44.3.1 of the Concession Agreement contains a valid arbitration clause, which entitles the appellant to invoke arbitration under the 1996 Act.

9.1. In contrast, the learned Senior Counsel for Respondent No.1 contended that the Concession Agreement relates to the construction and development of a State Highway/District Road and squarely falls within the ambit of a 'works contract' as defined under section 2(1)(i) of the 1983 Act. It was further submitted that the 1983 Act, being a special law, has an overriding effect and mandates that disputes arising out of such works contracts must be adjudicated exclusively by the Madhya Pradesh

Arbitration Tribunal.

10. It is not in dispute that the road in question is a State Highway/District Road and forms part of the assets of the State of Madhya Pradesh. Admittedly, the Concession Agreement qualifies as a "works contract". The State Legislature enacted the 1983 Act to establish a special statutory mechanism for adjudication of disputes arising out of works contracts involving the State Government or its instrumentalities, including public sector undertakings. The relevant provisions of the 1983 Act are extracted below, for better appreciation:

"Section 2 (1)(d) - "Dispute" means claim of ascertained or ascertainable money valued at Rupees 50,000 or more relating to any difference arising out of the execution or non-execution of a works contract or part thereof."

Section 2 (1)(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 building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory, work-shop, powerhouse, transformer or such other works of the State Government 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 an 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 the execution 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.

18[The agreements in writing for the execution of the work relating to construction, repair or maintenance of electric lines, water supply and sewerage/drainage system shall also be "works contract"]"

"Section 3 - Constitution of Tribunal

The State Government shall by notification constitute an Arbitration Tribunal for resolving all such disputes or differences pertaining to works contract or arising out of or connected with execution, discharge or satisfaction of any such works contract."

"Section 7 - Reference to Tribunal

(1) Either party to a works contract shall irrespective of the fact whether the agreement contains an arbitration clause or not, refer in writing the dispute to the Tribunal"

7-A Reference Petition

(1) Every reference petition shall include whole of the claim which the party is entitled to make in respect of the works contract till the filing of the reference petition but no claims arising out of any other works contract shall be joined in such a reference petition

(2) ...

7-B Limitation

(1) The Tribunal shall not admit a reference petition unless -

(a) the dispute is first referred for the decision of the final authority under the terms of the works contract; and

(b) the petition to the Tribunal is made within one year from the date of communication of the decision of the final authority: Provided that if the final authority fails to decide the disputes within a period of six months from the date of reference to it, the petition to the Tribunal shall be made within one year of the expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where no proceeding has been commenced at all before any Court preceding the date of commencement of this Act or after such commencement but before the commencement of the Madhya Pradesh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990, a reference petition shall be entertained within one year of the date of commencement of Madhya Pradesh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990

irrespective of the fact whether a decision has or has not been made by the final authority under the agreement.

(2-A) Notwithstanding anything contained in sub-section (1), the Tribunal shall not admit a reference petition unless it is made within three years from the date on which the works contract is terminated, foreclosed, abandoned or comes to an end in any other manner or when a dispute arises during the pendency of the works contract:

Provided that if a reference petition is filed by the State Government, such period shall be thirty years.

Section 20 - Bar of jurisdiction of Civil Court.-

(1) As from the date of the constitution of the Tribunal and notwithstanding anything contained in Arbitration Act, 1940 (No.10 of 1940) or any other law, for the time being in force, or in any agreement or usage to the contrary, no Civil Court shall have jurisdiction to entertain or decide any dispute of which cognizance can be taken by the Tribunal under this Act.

10.1. It is thus evident that Section 2(1)(i) of the 1983 Act defines 'works contract' to expressly include concession agreements executed by the State or its instrumentalities, regardless of whether direct financial support from the State is involved. Section 7 clearly mandates that all disputes arising from such works contract shall be referred to the Madhya Pradesh Arbitration Tribunal, even if the agreement contains an arbitration clause to refer the dispute under any enactment. The Arbitration and Conciliation Act, 1996 repealed the Arbitration Act, 1940.

The 1940 Act was in force when the Madhya Pradesh Arbitration Tribunal Act, 1983 came into force. The reference contemplated under the 1983 Act implies that the claims covered by the Act shall be decided only by the Tribunal constituted under its provisions, when it comes to a works contract with the State Government, an instrumentality of the State, or a State Corporation. The Arbitration and Conciliation Act, 1996 came into force on 22nd August, 1996.

A reading of sub-sections (3), (4), and (5) of Section 2 of the 1996 Act also illustrates that reference to a special tribunal under a special enactment would survive, irrespective of the existence of a mechanism under the 1996 Act. Further, we do not see any repugnancy between the enactments. Section 20 of the Act, 1983 imposes a bar on the jurisdiction of civil Courts, thereby reinforcing the exclusive and overriding nature of the statutory mechanism established under the 1983 Act.

11. In *Viva Highways Ltd (supra)*, a Full Bench of the Madhya Pradesh High Court categorically held that where an agreement qualifies as a "works contract" under Section 2(1)(i) of the 1983 Act, and the dispute falls within the scope of Section 2(1)(d), the reference to the Madhya Pradesh Arbitration Tribunal constituted under Section 3 of the 1983 Act is mandatory, notwithstanding the presence of any arbitration clause in the agreement. The relevant portion of the Full Bench decision is extracted below:

"82. On the basis of foregoing analysis, we may summarize our conclusions as under:

(i) If an agreement by whatever name called falls within the definition of "works contract" and difference between the parties is covered in the definition of 'dispute' as defined under the Adhinyam of 1983, it has to be referred for adjudication before the Tribunal constituted under Section 3 of the Adhinyam of 1983.

(ii) In view of statutory provision of Section 7 of the Adhinyam of 1983, even in cases where the parties have incorporated a clause in such agreement regarding resolution of dispute by some other forum or under the Act of 1996, the forum subject to (i) above, would be the Tribunal under the Adhinyam of 1983. This conclusion, however, will presently not include the cases of terminated contract, which aspect is pending consideration before a Larger Bench of the Supreme Court. The decision of Larger Bench will draw the curtains on this aspect.

(iii) The judgment of *Jabalpur Corridor (supra)* reported in 2014 (2) MPLJ 276 and *Ashoka Infrayways Ltd. (supra)* reported in 2016 (2) MPLJ 685 are overruled.

(iv) The substituted definition of "works contract" is clarificatory in nature, hence it will be retrospective in operation.

(v) The words "claim of ascertained money" have a definite connotation and therefore only such difference arising out of execution or non-execution of a 'works contract' which are related with claims

of above nature will be covered under Section 2(1)(d) of the Adhiniyam of 1983".

11.1. The correctness of the aforesaid judgment was challenged before this Court in SLP (C) No. 17070 of 2017 and SLP (C) Nos.1635-1637 of 2018, both of which were dismissed. As a result, the legal position laid down in Viva Highways stands affirmed. It is also pertinent to note that the appellant herein was a party to those very proceedings before this Court and is thus fully aware of the binding nature of the ruling.

11.2. While the learned Senior Counsel for the appellant has attempted to distinguish the decision in Viva Highways on the ground that the appellant's claims are not "ascertained", such an argument is untenable. The list of claims filed by the appellant clearly discloses a quantified monetary claim of Rs.280.1566 crores, which was specifically pleaded in the reference petition. This squarely falls within the definition of "dispute" under Section 2(1)(d) of the 1983 Act, which includes both ascertained and ascertainable monetary claims. The list of claims is reproduced below for better understanding:

Claim No.

Description

Amount (in crores)

1. Damages under clause 4.2 of Concession Agreement 0.736
2. Damages under clause 10.3.4 of Concession Agreement 0.235
3. Compensation for re-working of GSB/WMM and preparation of sub grade due to decision beyond contract and delayed appointment of I.E 8.63
4. Additional work done as per instructions of Independent Engineer 13.43
5. Revision of rates in cost of working due to delay in completion, due to changed time of execution 7.07
6. Extra cost of utility duct, private land acquisition cost, cost of Non-destructive testing and cost of six extra Hume pipe culverts:
 - i) Cost of construction of Utility Ducts
 - ii) Acquisition of land for ROW by Concessionaire
 - iii) Cost for Non-destructive testing
 - iv) Construction of 6 additional Hume pipe Culverts
- 0.27
- 0.05
- 0.06
- 0.28
7. Extra cost of carriage due to collapse of the Major Bridge in Km. 9+600 of the Project stretch 0.65
8. Loss of Two Annuities (Bonus) 13.94
9. Loss of Toll Revenue due to delay in achieving COD and thereafter collapse of Bridge 8.83
10. Loss of Two Annuities 13.94
11. Idling charges of Manpower and Machinery 31.21
12. Additional Bank Interest 13.22
13. Loss of profit to EPC contractor due to delay in completion of work 10.67
14. Amount recovered from 1st Annuity due to non-sanction of EOT beyond 20.05.2015 to 04.07.2015 (45 days) 0.1656
15. Amount deducted under negative change of scope 1.43
16. Bank Charges and interest (Market interest deposit interest) on margin money of performance security retained beyond contract 0.32

17. Interest on delayed release of Annuities (1st 2nd and 3rd Annuity) 0.76
 18. Additional expenditure on completion of Punch List item 0.46
 19. Loan installment amount of bank which could not be paid till date due to delayed payments of Annuity by MPRDC 15.00
 20. Loss of further business 138.80
 21. Declaring award of grant of extension of time for 941 days against 335 days approved by MPRDC in light of letter No. UPP/MDR/MPRDC/2012/HQ-11, dated 30.04.2014 and UPP MDR MPRDC/2012 HQ-21 dated 20.06.2015 0
 22. Cost of Litigation As per award
 23. Interest antelite, pendentelite and future As awarded by the Tribunal
- TOTAL 280.1566

11.3. It is well settled that a claim which can be determined through evidence and quantification falls within the ambit of the term 'ascertained'. Furthermore, post Viva Highways, the Legislature amended section 2(1)(d) of the 1983 Act to expressly include "unascertained" money claims within the definition of "dispute". This amendment was enacted precisely to override the restrictive interpretation of "ascertained" claims and to expand the Tribunal's jurisdiction to cover all monetary disputes - whether ascertained or not.

11.4. In this context, reference may be made to the decision in *Gangotri Enterprises Ltd v. Madhya Pradesh Road Development Corporation*¹⁹, where this Court observed that:

"3. We consider it appropriate to clarify that the expression "ascertained money" as used in Section 2(d) of the 1983 Act will include not only the amount already ascertained but the amount which may be ascertained during the proceedings on the basis of claims/ counter claims of the parties."

11.5. Further, in *M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors* (supra), a three-Judge Bench of this Court reaffirmed that in the context of a "works contract" in Madhya Pradesh, the 1983 Act has overriding effect over the 1996 Act. The relevant paragraphs are extracted below for ease of reference:

"3. The appellants raised objection that the matter being covered by a special State Act, namely, M.P. Madhyastham Adhikaran Adhiniyam, 1983 ("the M.P. Act", in short), the application under Section 11 of the Arbitration and Conciliation Act, 1996 could not be entertained. The High Court, however, overruled the said objection relying upon the judgment of this Court in *VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB* [VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB, (2011) 13 SCC 261: (2012) 3 SCC (Civ) 468].

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.

7. Taking up appeal on merits, we find that the High Court proceeded on the basis of the judgment of this Court 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] which has been held to be per incuriam. The M.P. Act cannot be held to be impliedly repealed.

8. We are, thus, in agreement with the proposed opinion of Hon'ble Ganguly, J. in para 42 of the reported judgment which reads 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. 509, para 42)

"42. Therefore, appeal is allowed and the judgment of the High Court which is based on the reasoning of VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB [VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB, Misc. Appeal No. 380 of 2003, order dated 5-3-2003 (MP)] is set aside. This Court holds the decision in VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB [VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB, (2011) 13 SCC 261: (2012) 3 SCC (Civ) 468] has been rendered in per incuriam. In that view of the matter the arbitration proceeding may proceed under the M.P. Act of 1983 and not under the Arbitration and Conciliation Act, 1996."

The appeal is accordingly disposed of."

11.5.1. In a recent decision in Gayathri Project Ltd v. M.P. Road Development Corporation Ltd²⁰, this Court reiterated the exposition of law laid down in L.G. Chaudhary in clear terms, as follows:

"38

i. Where the arbitration proceedings are still underway, but no statement of defence has been filed, there it would be open for the parties to raise an objection of lack of jurisdiction in view of the applicability of MP Act, 1983. The parties will also be at liberty to approach the High Court by way of a petition under Article 227 of the Constitution for seeking a transfer of the arbitration proceedings to the M.P. State Arbitration Tribunal under the MP Act, 1983.

ii. Where the arbitration proceedings are still underway, but statement of defence has already been filed i.e., the relevant stage for raising an issue of jurisdiction is already crossed, there it would not be open for the parties to raise an objection of lack of jurisdiction in view of the applicability of MP Act, 1983. Furthermore, in such scenarios since the arbitration proceedings have already commenced and made substantial progress, it would not be appropriate to transfer such proceedings to the M.P. State Arbitration Tribunal under the MP Act, 1983, and the better course of action would be to let the arbitration proceedings conclude.

iii. As per L.G. Chaudhary (II) (supra) where the arbitration proceedings have concluded and an award has been passed, and if no objection to the jurisdiction in view of the applicability of MP Act, 1983 was taken at the relevant stage then such an award cannot be annulled only on the ground of lack of jurisdiction.

iv. Any award passed by an arbitral tribunal under the Act, 1996, where otherwise the MP Act, 1983 was applicable, such an award may be challenged or assailed in terms of Section 34 and thereafter Section 37 of the Act, 1996 and other relevant provisions thereunder.

v. Any award passed by an arbitral tribunal under the Act, 1996, where otherwise the MP Act, 1983 was applicable, such an award must be executed in terms of the MP Act, 1983 and the relevant provisions thereunder.

vi. Where the objection based on applicability of the MP Act, 1983 had been raised in the written statement or statement of defence, but the parties never took steps towards challenging the jurisdiction of the arbitral tribunal under Section 16 of the Act, 1996 or where such plea of jurisdiction was turned down in view of the position of law that was prevailing prior to L.G. Chaudhary (II) (supra) i.e., such challenge to the jurisdiction was decided prior to the date of pronouncement of L.G. Chaudhary (II) (supra), then even in such cases, as per the decision of this Court in Modern Builders (supra), the award should not be disturbed or set-aside only on the ground of lack of jurisdiction."

11.6. Likewise, in *State of Chhattisgarh v. KMC Constructions Ltd* (supra), this Court set aside the appointment of an arbitrator under the 1996 Act, holding that when a statutory mechanism under the 1983 Act exists, even a court order under the 1996 Act cannot prevail, and parties must be relegated to the jurisdiction of the Madhya Pradesh Arbitration Tribunal. The relevant paragraphs are extracted below for ready reference:

"In view of judgment of this Court in *Madhya Pradesh Rural Road Development Authority and Anr. v. L.G. Chaudhary Engineers and Contractors*, (2012) 3 SCC 495 and the order passed by this Court on 8th March, 2018 in the same matter, the M.P. Arbitration Tribunal constituted under the M.P. Madhyastham Adhikaran Adhiniyam, 1983, (M.P. Act) has the exclusive jurisdiction to deal with the dispute in question. Accordingly, the impugned direction under Section 11 of the Arbitration and Conciliation Act, 1996 cannot be sustained and is set aside. The parties are relegated to M.P. Arbitration Tribunal which may decide the dispute as per provisions of M.P. Madhyastham Adhikaran Adhiniyam, 1983 (M.P. Act)"

11.7. In *ARSS Damoh - Hirapur Tolls Pvt. Ltd v. M.P. Road Development Corporation* (supra), this Court refused to allow private arbitration to continue where a works contract was involved, and directed the transfer of the pending arbitration proceedings to the Madhya Pradesh Arbitration Tribunal, thereby upholding the exclusive statutory forum.

11.8. Similarly, in *Madhya Pradesh Rural Road Development Authority v. Backbone Enterprises Limited* (supra), this Court once again reinforced the exclusive jurisdiction of the Madhya Pradesh Arbitration Tribunal in matters arising from works contracts covered by the 1983 Act.

11.9. Given that the present Concession Agreement pertains to the construction of a State Highway situated entirely within the State of Madhya Pradesh and was awarded by Respondent No.1, a State-controlled entity, the agreement clearly qualifies as a "works contract" under section 2(1)(i) of the 1983 Act. Consequently, the dispute arising therefrom falls within the exclusive jurisdiction of the Madhya Pradesh Arbitration Tribunal.

11.10. In view of the above statutory framework and judicial pronouncements, the Arbitration and Conciliation Act, 1996 stands excluded by operation of law in such matters. The private arbitration proceedings initiated by the appellant are therefore, non est in law, and the proper forum for adjudication is the Madhya Pradesh Arbitration Tribunal established under the 1983 Act.

12. It is further not in dispute that the appellant had, in 2018 initiated Reference Case No.61 of 2018 before the Madhya Pradesh Arbitration Tribunal and had obtained issuance of notice. While the said reference was pending, the appellant simultaneously invoked arbitration under Clause 44.3.1 of the Concession Agreement and initiated private arbitration proceedings before the ICADR (Respondent No. 2) under the 1996 Act. This parallel invocation of remedies is impermissible in law and squarely hit by the doctrine of election and estoppel. A party cannot pursue two mutually inconsistent remedies under different legal regimes arising from the same cause of action.

12.1. Even otherwise, Clause 44.3.1 of the Concession Agreement to the extent it purports to permit private arbitration, is inoperative insofar as it seeks to override the statutory mandate of the 1983 Act. For proper appreciation, the relevant clauses relating to arbitration in the Concession Agreement are extracted below:

"44.3 Arbitration 44.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 44.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 44.3.2. Such arbitration shall be held in accordance with the Rules of

Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Bhopal and the language of arbitration proceedings shall be English.

44.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

44.3.3 The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 44 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and MPRDC agree and undertake to carry out such Award without delay.

44.3.4 The Concessionaire and MPRDC agree that an Award may be enforced against the Concessionaire and/or MPRDC, as the case may be, and their respective assets wherever situated.

44.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

44.4 Adjudication by Regulatory Authority or Commission In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Concessionaire and the MPRDC, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 44.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or high Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law."

12.2. It is trite law that parties cannot contract out of a statutory obligation enacted in furtherance of public interest. In *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd*²¹, this Court held that arbitration is not permissible where the legislature has reserved adjudication of disputes to a special forum. The relevant observation is as follows:

"35. The Arbitral Tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the Arbitral Tribunals is excluded either expressly or by necessary implication.

Adjudication of certain categories of proceedings are reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by public fora (courts and tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under Section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes."

13. The appellant's submission that both parties intended to arbitrate under the 1996 Act carries no legal weight. The object and scheme of the 1983 Act is to channel all disputes arising from works contracts involving the State and its instrumentalities into a specialized statutory forum to ensure uniformity, efficiency, and public accountability.

This intent is also reflected in Clause 44.4 of the Concession Agreement, which acknowledges that in the event of constitution of a competent statutory forum, such forum would override the contractual arbitration clause. Although it was argued that the Madhya Pradesh Arbitration Tribunal was not expressly contemplated under Clause 44.4, the existence of the Tribunal under the prevailing law and its exclusive jurisdiction cannot be contractually overridden or ignored.

13.1. Accordingly, the attempt of the appellant to invoke Clause 44.3.1 of the Concession Agreement and re-agitate the issue of private arbitration - already settled in *Viva Highways* and affirmed by this Court - is barred by the doctrine of constructive res judicata and amounts to an abuse of the process of law. The appellant is estopped from challenging the binding nature of *Viva Highways*, having itself been a party to the earlier SLP proceedings, wherein the said judgment was upheld.

14. Additionally, the appellant's conduct in withdrawing the reference petition before the Madhya Pradesh Arbitration Tribunal, without seeking liberty to re-agitate the claims, and simultaneously initiating proceedings under the 1996 Act, constitutes forum shopping. This conduct, aimed at circumventing the statutory mechanism and reviving abandoned claims, is tainted with mala fides and deserves to be deprecated.

15. Further, the appellant's claims - which arise from events dating back to 2013-2015 - are also barred by limitation under Section 43 of the 1996 Act read with the Limitation Act, 1963. The belated invocation of arbitration in 2022, and its continuation in 2025, is thus clearly time-barred and legally unsustainable.

16. In view of the above, we find no infirmity in the reasoning or conclusion of the High Court in quashing the private arbitration proceedings and reaffirming the exclusive jurisdiction of the Madhya Pradesh Arbitration Tribunal established under the 1983 Act to adjudicate disputes arising from works contract involving the State or its instrumentalities.

17. At this juncture, it is to be noted that the appellant had voluntarily withdrawn the Reference Petition No.61 of 2018 under Rule 53(3)(b) of the M.P Arbitration Tribunal Regulations without seeking liberty to re-file the same. Rule 53 of the Madhya Pradesh Madhyastham Adhikaran Regulations, 1985, deals with the withdrawal and adjustment of references and reads as follows:

"53. Withdrawal and adjustment of references -

(1) At any time after the institution of a reference, the petitioner may as against all or any of the respondents abandon his reference or abandon a part of his claim.

(2) Where the Tribunal is satisfied -

(a) that a reference must fail by reason of some formal defect, or (b) that there are sufficient grounds for allowing the petitioner to institute a fresh reference for the subject matter of such reference or part of a claim; it may, on such terms as it thinks fit, grant the petitioner permission to withdraw from such reference or such part of the claim with liberty to institute a fresh reference in respect of the subject matter of such reference or such part of the claim.

(3) Where the petitioner (a) abandons any reference or part of claim under sub-regulation (1); or

(b) withdraws from a reference or part of a claim without the permission referred to in sub-regulation (2); he shall be liable for such costs as the Tribunal may award and shall be precluded from instituting any fresh reference in respect of such subject matter or such part of the claim."

In terms of the statutory mandate under Rule 53(3)(b), once a reference is withdrawn without obtaining liberty to re-agitate the same, the appellant stands precluded from initiating a fresh reference on the same subject matter. This substantive bar also applies to any attempt to pursue the same claims before alternative fora.

17.1. Nonetheless, considering the nature of the dispute and in the interests of justice, and in view of the submission made by the learned Solicitor General appearing for Respondent No.1, we are of the opinion that the appellant can be permitted to seek revival of Reference Petition No.61 of 2018 before the Madhya Pradesh Arbitration Tribunal.

18. Accordingly, we direct the appellant to file an application to recall the withdrawal order dated 08.02.2023 and seek restoration of Reference Petition No.61 of 2018 within two weeks from the date of receipt of a copy of this judgement. Upon such filing, the Madhya Pradesh Arbitration Tribunal shall consider the application on its own merits and pass appropriate orders, within a further period of two weeks. If the Tribunal allows the restoration, the Reference Petition shall be disposed of on merits, in accordance with law, after affording reasonable opportunity of hearing to both parties, preferably within four months from the date of restoration.

19. This appeal stands disposed of in the above terms. There shall be no order as to costs.

20. Pending application(s), if any, also stand disposed of.

.....J. [J.B. Pardiwala]

.....J. [R. Mahadevan]

New Delhi;

July 30, 2025.

1 Hereinafter referred to as "the High Court"

2 For short, "ICADR"

3 For short, "the 1983 Act"

4 SPL(C) Nos.2625-2627 of 2025

5 (2013) 10 SCC 136

6 (2012) 4 SCC 307

7 For short, "the 1996 Act"

8 2017 SCC OnLine MP 1448

9 For short, "the CPC"

10 (2018) 10 SCC 826

11 (2018) 10 SCC 839

12 2018 SCC OnLine SC 3899

13 (2018) 15 SCC 660

14 (2020) 15 SCC 706

15 (2011) 5 SCC 532

16 (2003) 10 SCC 733

17 (2005) 6 SCC 657

18 Notification No.17/E/85/96/XXI-B(II)-21 Dt.4.11.1996 of Govt. of M.P. Law Deptt.

19 (2018) 16 SCC 296

20 2025 SCC OnLine SC 1136

21 (2011) 5 SCC 532

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