
(1989) 11 MP CK 0029

In the Madhya Pradesh High Court

Case No : Civil Revision No. 246 of 1989

Administrator, Municipal Corporation, Durg and Others

APPELLANT

Vs

Jainco Designers and Executors, Durg

RESPONDENT

Date of Decision : 17-11-1989

Acts Referred:

Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 — Section 2(1)
Municipal Corporation Act, 1956 — Section 423(1)

Citation : AIR 1991 MP 233 : (1991) ILR (MP) 417 : (1991) JLJ 226 : (1993) 1
MPJR 407 : (1991) 36 MPLJ 352 : (1991) MPLJ 352

Hon'ble Judges : S.K Jha, C.J;K.M. Agrawal, J;Faizanuddin, J

Bench : Full Bench

Advocate : S.C. Pandey, for the Appellant; J.P. Sanghi, for the Respondent

Judgement

S.K. Jha, C.J.

The order in this case shall also govern the disposal of Civil Revisions Nos. 245/89 and 247/89 between the same parties.

Petitioner No. 1 in each of these three cases, is the Administrator, Municipal Corporation, Durg. The opposite party M/s. Jainco Designers and Executors is a partnership firm. A works contract was entered into between the parties. A dispute thereafter arose. The opposite party contractor filed a reference petition u/s 7 of the M. P. Madhyastham Adhikaran Adhiniyam, 1983 (No. 29 of 1983), for recovery of Rupees 4,41,491.03, being the amount of the first, third and fourth R.A. bills already passed including security deposits, earnest money and for Rs. 84,346,95 as interest ante lite, to tailing in all Rs. 5,25,838.25. The works contract was for construction of shopping complex at new bus stand, Indira Market, Durg.

In August, 1987, the Administrator of the Municipal Corporation in question was functioning, the Corporation having been superseded u/s 422 of the M. P. Municipal Corporation Act, 1956. On 21-9-88, the opposite party served a notice

on the Administrator, petitioner No. 1, of the dispute in question which was sought to be referred to the Arbitration Tribunal under the 1983 Act. On 15-11-1988, the dispute was taken over for arbitration by the Arbitration Tribunal under the provisions of that Act. The case was registered before the Arbitration Tribunal as Case No. 65 of 1988. Before the Tribunal, the petitioners here who were respondents there, stated :

"that the respondents (petitioners in the Civil Revision Application), have never alleged that this Tribunal has no jurisdiction to decide the dispute between the parties. The respondents' submission is that according to the M. P. Madhyastham Adhikaran Adhiniyam, this Tribunal has power to resolve all disputes or differences pertaining to works contract, arising out of or connected with execution, discharge or satisfaction of any such works contract. Works contract is defined in Section 2(i)....."

When these Civil Revision Applications were taken up for hearing before a Division Bench of this Court, it was argued on behalf of the Administrator that the said dispute with regard to execution etc. of the works contract in question could not be gone into or adjudicated by the Arbitration Tribunal under the 1983 Act, as the Municipal Corporation was not a public undertaking either owned or controlled by Government within the meaning of Section 2(1)(g) of the 1983 Act. The point was entertained by the Division Bench, but with regard to the question which was raised, a difference of opinion was recorded by B. C. Varma, J. on one hand and D. M. Dharmadhikari, J. on the other. Varma, J. held that the Arbitration Tribunal had no jurisdiction to decide the dispute. On the contrary, Dharmadhikari, J. held that it had jurisdiction and that, therefore, the application needed to be decided on merits. On this difference of opinion, these cases have been referred to this Full Bench.

We think going into the controversy which has been sought to be raised by the petitioners will be an exercise in futility on the facts and circumstances of these cases; in a more appropriate case perhaps it may have to be decided. But in the instant cases, keeping the following facts in mind, it is neither necessary, nor expedient to go into this question.

The relevant facts for this purpose may be enumerated thus :

"When the notice was served, the Administrator was in charge of the Corporation and performing the duties and functions enjoined under the Municipal Corporation Act, for the Durg Municipal Corporation, Notice had been served on him and a dispute had been raised when the Administrator was still there the Administrator is still very much there even on the present day. The Administrator did not -- perhaps rightly so -- challenge the jurisdiction of the Arbitration Tribunal. Not only that, but it was also given in writing before the Tribunal on behalf of the Administrator and other petitioners that they had never challenged the jurisdiction of the Tribunal to decide the dispute between the parties. On the contrary, they categorically stated that the Tribunal had power to resolve all the

disputes or differences pertaining to the works contract in question."

We have said rightly so for the simple reason that the provisions of Section 423(3) of the M.P. Municipal Corporation Act, 1956 are very clear and unequivocal. Section 423(3) runs thus :

"423. (1) and (2)

(3) The Administrator of the City shall be subject to the control of the Government and such other person or persons as it may direct and shall be subject also to all other restrictions....."

In this context, it is also relevant to note that Section 423(2) states that the person or the Committee of persons appointed u/s 423(1)(b) shall be called the Administrator of the City and he shall sue and be sued in the name of the Administrator of the City in contra-distinction with the name of the Municipal Corporation.

The Administrator of the City, therefore, it shall be seen, is fully under the control of the Government. The dispute between the Administrator and the opposite party is, therefore, squarely covered by the express language of Section 2(1)(g) of the 1983 Act. Administrator is a statutory body controlled by the State Government. That is the end of the matter, dehors the question as to whether he had acquiesced in the jurisdiction of the Arbitration Tribunal or not. Deciding the question, therefore, in this case would be merely academic. It is left to be decided later in a more appropriate case. Suffice it to say that in so far as the present Civil Revisions are concerned, they will have to be decided on merits on an assumption that here is a dispute with regard to works contract between the contractor on one hand and a statutory body controlled by the State Government. It would have repetition to highlight that the petitioners had, in unequivocal terms, given out to the Arbitration Tribunal that the Tribunal had the jurisdiction to decide these dispute. That should be the end of the matter.

The cases shall now go back to an appropriate Division Bench to be decided on merits. No order as to costs of this Full Bench hearing.