



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04<sup>TH</sup> DAY OF SEPTEMBER, 2019

BEFORE

**THE HON'BLE MR.JUSTICE P.B. BAJANTHRI**

**W.P. NO.33210/2016 (BDA)**

**BETWEEN:**

IL&FS ENGINEERING AND CONSTRUCTION  
COMPANY LTD.,  
FORMERLY MAYTAS INFRA LTD.,  
A COMPANY REGISTERED UNDER THE  
COMPANIES ACT 1956  
HAVING ITS REGISTERED OFFICE  
AT SANALI INFO PARK,  
CYBER TOWERS,  
DOOR NO.8-2/120/113/3/4F,  
ROAD NO.2, BANJARA HILLS,  
HYDERABAD-500 033,  
TELANGANA STATE  
REPRESENTED BY  
MR. PRABHAKAR REDDY  
KOYA MANAGER,  
LEGAL AND CONTACTS  
MANAGEMENT DEPARTMENT.

... PETITIONER

(BY SRI. THIRUVENGADAM B.C., ADV.,)

**AND:**

1. GOVERNMENT OF KARNATAKA  
BY ITS SECRETARY,  
MINISTRY OF HOUSING  
AND URBAN DEVELOPMENT  
VIDHANA SOUDHA,  
BENGALURU 560001.

2. BANGALORE DEVELOPMENT AUTHORITY  
REPRESENTED BY ITS CHAIRMAN  
T. CHOWDIAH ROAD,  
KUMARAPARK WEST,  
BENGALURU-560020.

... RESPONDENTS

(BY SRI. B.J. ESHWARAPPA, AGA FOR R1  
SRI M. AJAY KUMAR, ADV, FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-1 GOVERNMENT OF KARNATAKA TO WIND UP THE BANGALORE DEVELOPMENT AUTHORITY FOR NON PAYMENT OF AWARD DATED 31.3.2014 (ANNEXURE-B) AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 21.08.2019 AND COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

In the instant petition, petitioner has sought for the following relief:

*'To direct the first respondent Government of Karnataka to wind up the Bangalore Development Authority for non payment of award dated 31.03.2014 (Annexure- B).*

*To appoint an official liquidator to take over the assets of the Bangalore Development Authority and discharge its liabilities.*

2. Brief facts of the case are that petitioner is reputed company in the business of infrastructure construction. Earlier it was known as Maytas Infra Private Limited and it is now changed as IL & FS Engineering and Construction Company Ltd., It was registered under the Companies Act, 1956. The petitioner is stated to have executed number of projects over a period of two decades. Thus, petitioner had a rich experience. In this background, petitioner and 2<sup>nd</sup> respondent-Bengaluru Development Authority (for short 'BDA') entered into contract on 09.12.2005 for the construction of six lane outer- ring road with a two lane service road on either sides, connecting Mysore Road and Magadi Road from Kilometre 51.880 to Kilometer 56.700. The contract price was agreed upon for a sum of Rs.53,53,50,000/- which is in terms of contract executed among the petitioner and BDA. The contract period is for 18 months. It was for the period from 19.12.2005 and 18.6.2007. The petitioner is stated to have completed the project in terms of the contract.

3. The petitioner had certain disputes with the BDA during the execution of work. In terms of provision in the contract to invoke arbitration proceedings, it had filed CMP No.60/2012 before this Court. This Court on 26.6.2012 appointed sole arbitrator to resolve the dispute among the petitioner and BDA. Sole Arbitrator of the Arbitral Tribunal proceeded to pass an award on 31.3.2014 while awarding a sum of Rs.19,97,42,927/- and interest amount a sum of Rs.15,97,39,612/-. The 2<sup>nd</sup> respondent-BDA did not settle the payment in terms of the award. In this regard, the petitioner sent a communication on 27.5.2014 to release payment along with interest for the period in effecting payment. Further, a bill was raised for a sum of Rs.36,05,11,539/- and the BDA released a sum of Rs.20,00,00,000/- and Rs.11,49,03,813/- on 12.8.2014 and 26.8.2014, respectively. The BDA refused to pay the balance amount of Rs.05,07,45,298 on the score that due to certain deduction value added tax @ 5.5% instead of 4% under the contract's General Conditions Clause 2.32.2 as on 31.7.2005. Further, BDA withheld

a sum of Rs.1,42,00,000/- in terms of advice of the office of the Controller of Accounts and Auditor General without furnishing any details. In this background, petitioner further made a communication on 23.3.2016 (Annexure-H) demanding release of withheld payment. Since there was no response, the present petition seeking for direction to the 1<sup>st</sup> respondent-Government of Karnataka to wind up the BDA for non-compliance payment of award dated 31.3.2014 and further to appoint Official Liquidator to take over assets of the BDA and discharge its liabilities.

4. Learned counsel for the petitioner vehemently contended that BDA has failed to implement the award in full, unnecessarily certain amounts have been withheld which is contrary to the contract executed among the petitioner and BDA. Therefore, BDA is to be wind up while appointing the Official Liquidator. Learned counsel for the petitioner submitted that BDA is like a State Government company in view of sub Section 2 of Section 3 of the Bangalore Development

Authority Act, 1976 (for short 'Act 1976'). Learned counsel for the petitioner stressed his argument that BDA- authority shall be a body corporate. Therefore, it is a State Government Company. There is a total failure on the part of the BDA in not complying the arbitral award which has attained finality among the petitioner and BDA. BDA is bound by the arbitration award and has failed to pay the dues of the petitioner in terms of the award. Consequently, BDA is liable for winding up. In support of the petitioner's contention he relied on two decisions:

- (i) Municipal Commissioner of Dum Dum Municipality and others Vs. Indian Tourism Development Corporation and others reported in (1995) 5 SCC 251 - (para Nos.10 and 34)
- (ii) State of Jharkhand and another Vs. Harihar Yadav and others reported in (2014) 2 SCC 114 – (para No.52)

5. Learned counsel for the petitioner further contended that conduct of the BDA is required to be considered for the purpose of winding up. BDA being the local authority of the State Government it should be model authority. Being a Governmental agency, while handling administration like execution of developmental work which should meet the social justice and fairness in each and every action. As is evident from the dates and events of the matter. There is a complete failure on behalf of the BDA in not settling the petitioner's due in terms of the contract executed read with award in the arbitral proceedings. Therefore, BDA- local authority is liable for wound up.

6. Per contra, learned counsel for the respondent-BDA raised a preliminary issue that BDA is a local authority. No doubt, under sub Section 2 of Section 3 of the Act, 1976 the word 'body corporate' has been incorporated that does not give the status of a state company. Ingredients to determine company are not forthcoming under the Act, 1976 so as to attract the

provisions of the Companies Act, 1956 (for short Act, 1956) for winding up.

7. Learned counsel for the BDA vehemently contended that writ petition is not maintainable, in seeking winding up. Undisputedly, there was a dispute among the petitioner and BDA in respect of the execution of a contract which has attained finality in the arbitral proceedings and award has been passed on 31.3.2014. If there is any dispute in implementation of the award by the BDA, petitioner has remedy of execution of the award dated 31.3.2014 before the appropriate Forum. It is not that BDA has not implemented the award dated 31.3.2014. The BDA has deducted certain statutory amount towards tax etc., after due settlement, which are in accordance with law. If the petitioner is still aggrieved, it has a remedy before the appropriate Forum in raising the dispute or execution of the award. The present petition is nothing but arm twisting of BDA to settle the alleged dispute. Therefore, the petitioner has not made out a case. The



cited decisions supra, have no assistance to the petitioner in any manner unless and until the BDA-local authority is fit into the definition of a Government - company. Therefore, petition is to be liable to be dismissed.

8. Heard Learned counsel for the parties.

9. Before advertng to the contention of the parties, it is necessary to reproduce statement of objects, reasons and few provisions of the Act, 1976 and Act, 1956.

Statement of objects and reasons of the Act, 1976 reads as under:

At the conference of the Ministers for Housing and Urban Development held at Delhi in November 1971, it was agreed that a common Authority for the development of metropolitan cities should be set up.

Bangalore City with its population (as per last census) is a Metropolitan City. Different Authorities like the City of Bangalore Municipal Corporation, the City

Improvement Trust Board, the Karnataka Industrial Area Development Board, the Housing Board and the Bangalore City Planning Authority are exercising jurisdiction over the area. Some of the functions of these bodies like development, planning, etc., are overlapping creating thereby avoidable confusion, besides hampering co-ordinate development. It is therefore, considered necessary to set up a single authority like the Delhi Development Authority for the city areas adjacent to it which in course of time will become part of the City.

For the speedy implementation of the above said objects as also the 20 point programme and for establishing a co-ordinating Central Authority, urgent action was called for. Moreover the haphazard and irregular growth would continue unless checked by the Development Authority and it may not be possible to rectify or correct mistakes in the future.

It was therefore necessary to issue the measure in the form of an Ordinance.

The Bill seeks to replace the said Ordinance.

Section 2 of Act, 1976 relates to definitions:

2(a) - Authority means the Bangalore Development Authority constituted under Section 3;

(l) "Government" means the State Government.

(n) - "Local Authority" means a municipal corporation or a municipal council constituted or continued under any law for the time being in force;

(s) - All other words and expressions used herein but not defined shall have the meaning respectively assigned to them in the City of Bangalore Municipal Corporation, Act, 1949,

Section 3 - Constitution and incorporation of the authority - (1) As soon as may be after the date of commencement of this Act, the Government shall, by notification, constitute for the Bangalore Metropolitan Area an authority to be called the Bangalore Development Authority.

(2) The authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power, subject to the provisions of this Act to acquire, hold and dispose of property both movable and immovable and to contract and shall by the said name sue or be sued.

14. Objects of the Authority – The objects of the authority shall be to promote and secure the development of the Bangalore Metropolitan Area and for that purpose the authority shall have the power to acquire, hold, manage and dispose of movable and immovable property, whether within or outside the area under its jurisdiction, to carry out building, engineering and other operations and generally to do all things necessary of expedient for the purpose of such development and for purposes incidental thereto.

34. Power of Authority to order work to be carried out or to carry it out itself in default.

– (1) the authority may.-

(a) if any person who applies for permission under Section 32 and is permitted expressly by it to carry out himself the works relating

to the forming of the extension or layout or the making of a street, does not so carry it out; or

(b) if any private street or part thereof is not leveled, paved, metalled, flagged, channeled, sewerred, drained, conserved or lighted to the satisfaction of the authority by notice, require the person forming the extension or layout or the owners of such street or part and the owners of buildings and lands fronting or abutting on such street or part, including in cases where the owners of the land and of the building, thereon are different, the owners both of the land and of the building, to carry out any work which, in its opinion, may be necessary and within such time as may be specified in such notice.

(2) if any such work is not carried out within the time specified in the notice under sub - Section (1), the authority may, if it thinks fit execute itself or cause it to be executed and the expenses incurred shall be paid by the persons or owners referred to in sub-section (1) in such proportions as may be determined by the authority. Such

expenses may be recovered from the persons concerned as if they were arrears of land revenue.

Section 75. Dissolution of the Authority – (1) The Government may, by notification, declare that with effect from such date as may be specified in the notification, the authority shall be dissolved:

Provided that no such declaration shall be made by the Government unless a resolution to that effect has been moved in and passed by both Houses of the State Legislature.

(2) With effect from the date specified in the notification under subsection (1).-

(a) all properties, funds, and dues which are vested in and realisable by the authority shall vest in and be realizable by the Government;

(b) all liabilities enforceable against the authority shall be enforceable against the Government to the extent of the

properties, funds and dues vested in and realized by the Government.

(3) Nothing in this section shall affect the liability of the Government in respect of loans or debentures guaranteed under sub – section (5) of Section 39.

Sub Section (7) of Section 2 of the Companies Act, 1956 reads as under:

“body corporate” or “Corporation” includes a company incorporated outside India but (does not include –

- (a) a Corporation sole;
- (b) a co-operative society registered under any law relating to co-operative societies; and
- (c) any other body corporate (not being a company as defined in this Act- which the Central Government may, by notification in the official gazettee, specify in this behalf;

(10) “company” means a company as defined in Section 3;

(18) “Government Company” means a Government company within the meaning of section 617;

Section 3 reads as under:

Definitions of “company”, “existing company”, “private company” and “public company”. – (1) In this Act, unless the context otherwise requires, the expressions “company”, “existing company”, “private company” and “public company” shall, subject to the provisions of sub-section (2), have the meaning specified below:

(i) “company” means a company formed and registered under this Act or an existing company as defined in clause(ii);

10. It is necessary to examine the ingredients for winding up of a company.

*19. Certain important chronicles and contours to be kept in the mental radar, before reaching the conclusion in a winding up petition can be articulated as under:*



(1) *The remedy under section 433 in general and under clause (e) in particular is not a matter of right; as such, and it is the discretion of the company court. It does not confer any right on any person to seek order that the company should be wound up. It is a provision empowering the court by a statutory provision to pass an order of winding up in an appropriate case.*

(2) *Merely because any one of the circumstances enumerated in section 433 of the Companies Act exists, the court is not bound to order winding up of the company. Nobody can aspire to wind up the company as a matter of course. The court has wide power and discretion. In this connection, inability to pay debts is required to be judged from various sets of facts and circumstances. It may also be stated that inability to pay debts in all cases, ipso facto, could not be construed as an appropriate case for winding up.*

(3) *A debt is money which is payable or will be payable in future by reason of a person's obligation. The expression "debt" would refer to liability to pay and it rests on certain contingencies, conditions and*

*causalities. Even if the debt is proved and even if the inability to pay the debt is also shown, it is not a launching pad, in all cases, for a successful winding up order. Inability may arise for a variety of reasons and the court is obliged to consider whether the inability is the outcome of any deliberate or designed action or mere temporary shock and effect of economy and market. In a given case, it may happen that a party may become unable to pay its debts for a while, but that by itself is not a criterion for exercise of the power to wind up, ipso facto.*

*(4) It is necessary for the company court to consider the financial status, strength and substratum of the company, in the overall context. It is possible, at times, that there may be a cash crunch. It may be also, possible, at times, that there is temporary cash crisis despite high sales and heavy turnover and, therefore, in such a situation, mere disability or only on the ground of inability to pay would not constitute a ground empowering the court to wind up the company.*

(5) *If the company is an ongoing concern having regular business and employment of employees, the court cannot remain oblivious to this aspect. The effect of winding up would be of putting an end to the business or an industry or an entrepreneurship and, in turn, resulting in loss of employment to several employees and loss of production and effect on the larger interest of the society.*

(6) *Even dividend declared by the company regularly and having profit in the light of the profit and loss account, though temporarily, there may be inability to pay the debt or in the case of any eventuality, the company is unable to make the payment of dues and that by itself could not be construed as a ground to wind it up.*

(7) *Winding up of a company, as such, is nothing but a commercial death or insolvency and, therefore, the company court is obliged to take into consideration not only the temporary inability, or disability to make the payment of debts, but the entire status and position of the company in the market.*

(8) *When grounds on which the winding up order can be denied, upon an evaluation of the facts of the case, after admission, exist from the record already placed before the court, it would be a sound exercise of discretion to reject the petition instead of admitting it. This view is very much celebrated.*

(9) *Inability to pay debts in terms of section 433(e) read with section 434(1)(a), demand of the debt would raise a presumption as to inability to pay its debts. But such a presumption is rebuttable. Such a presumption may be rebutted on existing material and what evidence is sufficient depends on the facts and circumstances of the case.*

(10) *If the company has shown considerable growth in a reasonable span and is a growth oriented enterprise, even in a case of temporary inability would not be sufficient to drive it to winding up.*

(11) *Though, ordinarily, an unpaid creditor may aspire for an order of winding up, the "ex debito justitiae" rule is not of*

*inflexible mandate, but is, as such a matter of discretion of the court.*

*(12) Section 433 is also indicative of the fact that even if one or more grounds mentioned in section 433 exist, it is not obligatory for the court to make an order of winding up. The court has discretionary power. The court must in each case exercise its discretion in deciding whether in the circumstances of the case, it would be in the interest of justice to wind up the company. It is a well known rule of prudence that even in a case where indebtedness to the petitioning person is undisputed, the court does not pass an order for winding up where it is satisfied that it would not be in the larger interest of justice to wind up the company.*

*(13) It is also well settled that a winding up order shall not be made on a creditor's petition, if it would not benefit him or the company's creditors in general.*

*(14) The court is also obliged to consider that it would be in the interest of justice to give the company some time to come out of the momentary financial crisis*

*or any other temporary difficulty as winding up is a measure of last resort.*

*(15) Winding up course cannot be adopted as a recourse to recovery of the debt.*

*(16) The court must bear in mind one more celebrated principle and consider whether the company has reached a stage where it is obviously and plainly and commercially insolvent, that is to say, that its assets are such and its existing liabilities are such as to make the court feel clearly satisfied that current assets would be insufficient to meet the current liabilities, along with other principles.*

*(17) It is also necessary to consider whether the respondent-company has become defunct or has closed its business, for quite some time, whether it is commercially insolvent. For the purpose of finding commercial insolvency, a mere look into the financial data is relevant to examine about its soundness. In all matters relating to winding up, the court may have regard to the wishes of the creditors and contributories and may, if*

*necessary, ascertain their wishes appropriately. If the company is solvent, the wishes of the contributories would carry more weight as they are persons, mainly, interested in the assets.*

*(18) The element of public policy in regard to commercial morality has, likewise, to be taken into account before determining the winding up issue. The court has also to consider the purpose and policy behind sections 443 and 557 of the Companies Act.*

*(19) Winding up is the last thing the court would do and not the first thing to do having regard to its impact and consequences. Winding up of a company would ensue :*

*(a) closing down of a company which is engaged in production or manufacture or which provides some services;*

*(b) it would throw out of employment numerous persons and result in gross hardship to the members of families of the employees;*



*(c) loss of revenue to the State by way of collection of taxes which otherwise should have been collected, on account of customs, excise duties, sales tax, income-tax, etc.;*

*(d) scarcity of goods and diminishing of employment opportunities*

*(20) A winding up petition has to be submitted in the prescribed form highlighting all the facts and emphasising the inability of the company to pay its debts. The form prescribed under the Companies (Court) Rules, clearly, indicates that the petitioner should, provide all the necessary material particulars. The petitioner is obliged to show that the financial status or the monetary substratum or the commercial viability of the company has gone so low and down that winding up is obviously, and evidently, unavoidable.*

*(21) It is a settled proposition of law that a winding up petition is not a legitimate means of seeking to enforce the payment of a debt which is disputed by the company, bona fide. A winding up*



*petition ought not to be aimed at pressurising the company to pay the money. Such an attempt would be nothing but tantamount to blackmailing or stigmatizing the concerned company by abusing the process of the court.*

*(22) A winding up petition is not an appropriate mode enforcing bona fide disputed debts and it is nothing but misuse and abuse of the process of the court.*

*(23) A winding up petition is not an alternative form for resolving the debt dispute. In certain cases disputes are such that they are fit for resolving through the civil court rather than through the company court.*

*(24) What is bona fide and what is not is a question of fact. The expression "bona fide" would mean genuine, in good faith and when a dispute is based on substantial grounds or when a defence is probable and with some substance, it is a bona fide dispute. It must be strictly noted that a winding up petition is not an alternative to a civil suit.*

11. In view of the above analysis of provisions of the Act, 1976 r/w the Act 1956 and ingredients to determine company, BDA – Local Authority, definition of local authority is not forthcoming in the Companies Act, 1956 so as to examine the body corporate.

12. Question for consideration in the present petition is ‘whether BDA is a company or not?’

13. Before examining whether BDA is a company or not, it is appropriate to examine the meaning of the ‘local authority’. It is evident from Companies Act, 1956, there is no reference to local authority. In the absence of expression ‘local authority’ is not defined in Companies Act, 1956, one must therefore, turned to the General Clauses Act to ascertain the meaning of the expression. Section 3(31) definition of local authority is as follows:

*Local authority shall mean a Municipal Committee, District Board, Body of a Port Commissioners or other authority legally entitled to, or entrusted by the Government*

*with, the control or management of a municipal or local fund.*

14. Definition of 'local authority' in Section 3(31) of the General Clauses Act defines that on appropriate and careful examination of the language of Section 3(31) suggests that an authority, in order to be a local authority, must be like nature and character as a Municipal Committee, District Board or Body of Port Commissioner, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a Municipal Committee, District Board or Body of Port Commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a Municipal Committee, District Board, or Body of Port Commissioners, but, possessing one essential feature, namely, that it is legally entitled to or entrusted by the Government with, the control and management of a municipal or local fund. What then are the distinctive attributes and characteristics, all or many of which a Municipal Committee, District Board or Body of Port Commissioners shares with any other local authority?

First, the authorities must have separate legal existence as corporate bodies. They must not be mere governmental agencies but must be legally independent entities. They must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. They must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of the dependence may vary considerably but, an appreciable measure of autonomy there must be. They must be entrusted by statute with such governmental functions and duties as are usually entrusted to municipal bodies, such of those connected with providing amenities to the inhabitants of the locality, like health and education services, water and sewerage, town planning and development, roads, markets, transportation, social welfare services etc., In other words, broadly we may entrusted with the performance of civic duties and functions which would otherwise be governmental duties and functions. What

is essential is that control or management of the fund must vest in the authority. In the case of Municipal Corporation of Delhi Vs. Birla Cotton Mills reported in AIR 1968 SC 1232 held as under:

*Local Bodies are subordinate branches of Governmental activity. They are democratic institutions managed by the representatives of the people. They function for public purposes and take away a part of the government affairs in local area. They are political subdivisions and agencies which exercise a part of State functions. As they are intended to carry on local self-government the power of taxation is a necessary adjunct to their other powers. They function under the supervision of the Government.*

15. Perusal of various provisions in the Act, 1976 there is a reference to 'local authority' meaning, thereby local authority functioning in the area discharging the multiplicity of civil function. Combined reading of definition of local authority under the Act, 1976 r/w Section 3(31) of the General Clauses Act, BDA is enrolled with all the usual attributes and

characteristics of the local authority and there is no reason to hold that it is not a local authority. Therefore, the contention of the petitioner that BDA is a Governmental company cannot be appreciated in view of the fact that local authority is not forthcoming in the Companies Act, 1956 and BDA is not registered under Act, 1956, so as to attract winding up of proceedings against BDA. 'Local authority' definition cannot be imported from any other statute so as to read in the act, 1956.

16. Learned counsel for the petitioner's cited decision namely State of Jharkhand (supra) (para No.52) has no assistance to the petitioner's grievance as it relates to what would be social justice with reference to our constitution and a State should be a model employer and everyone is accepted to show fairness in the State action.

17. In the case of Municipal Corporation of Dum Dum Municipalities and others (supra) para Nos.10 and 34 interpretation of Section 3 of the Companies Act

therein and in para No.34 Supreme Court referred to Western Coalfields Ltd., Vs. Special Area Development Authority reported in (1982) 1 SCC 125, wherein extract of para No.34 reads as under:

34. *Reference may be made in this connection to the decision of this Court in Western Coalfields Limited v. Special Area Development Authority (1982 (1) S.C.C.125). Certain government companies incorporated under the Companies Act, the entire share capital whereof was held/owned by the Government of India claimed exemption from State taxation under Article 285(1) of the Constitution. The said plea was rejected by this court holding that merely because the entire share capital is owned by the Government of India it cannot be held that companies themselves are owned by the Government of India. It was observed that the companies which are incorporated under the Companies Act have a corporate personality on their own distinct from that of the Government of India and that the lands and buildings are vested in and owned by the companies whereas the*



*Government of India only owns the share capital. Reliance was placed upon certain decisions of this Court including the decision in Andhra Pradesh State Road Transport Corporation. We are of the opinion that the said principle applies equally in the case of a statutory corporation. The statutory corporation is constituted by or under a statute as against the companies (including government companies) which are registered under and governed by Indian Companies Act, 1956.*

Reading of the aforesaid para, it is crystal clear that the statutory Corporation is constituted by or under a statute as against the companies (including Government companies) which are registered under and Governed by Indian Companies Act, 1956. In the present case, undisputed facts are that BDA-local authority is not one of the Governmental company and it is not Registered as Government Company under the Act, 1956. Therefore, the cited decision has no assistance to the petitioner's case.



18. Learned counsel for the respondents contended that BDA is not a company and petitioner has an alternative remedy in respect of implementation of the award. In the guise of implementation of the award in full, the present petition has been filed in order to harass and blackmail the BDA. Moreover, the petitioner could not apprise this Court that BDA - local authority is one of the Governmental company and it has failed to satisfy the ingredients to determine Governmental company. In the absence of BDA - local authority is a Governmental company and it is a registered company under the Act, 1956 sub Section (2) of Section 18, Government Company means a Government company within the meaning of Section 617 of the Act, 1956. At this stage, it is to be noted that sub-Section 3(e) of the Land Acquisition Act, 1894 provides for definition of 'Company' whereas similarly BDA Act, 1976 do not deal with definition of 'Company'. Consequently, the word 'Company' cannot be imported from any other statute in order to bring in the purview of BDA Act, 1976, petitioner has not made out a case.

In view of these factual and legal aspects, petitioner is not entitle to the relief sought in the present petition.

19. Accordingly, writ petition stands dismissed with cost of Rs.50,000/- (Rupees fifty thousand only). Cost shall be remitted in the Chief Minister's flood Relief fund within a period of eight weeks from today.

Sd/-  
JUDGE

BS