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MP-4818-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA,
ACTING CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 14th OF AUGUST, 2026

MISC. PETITION No. 4818 of 2026

M/S HINDUSTAN STEEL WORK CONSTRUCTIN LTD

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

Shri Navneet Shukla - Advocate for petitioner.

Dr. S. S. Chouhan - Government Advocate for respondent/State.

.....
WITH

MISC. PETITION No. 4819 of 2026

M/S HINDUSTAN STEEL WORKS CONSTRUCTION LTD

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

Shri Navneet Shukla - Advocate for petitioner.

Dr. S. S. Chouhan - Government Advocate for respondent/State.

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ORDER

Per. Pradeep Mittal J.

This common order shall govern the disposal of M.P. No. 4818/2026 and M.P. No. 4819/2026, since both petitions are filed under Article 227 of the Constitution of India by the same petitioner, arise out of the very same



work order dated 24.04.2001, and raise identical questions of law and fact. M.P. No. 4818/2026 is directed against the order dated 18.05.2026 passed by the M.P. Madhyastham Adhikaran, Bhopal (“the Adhikaran”) in M.J.C. No. 19/2023, whereby the Adhikaran refused to recall its earlier order dated 24.05.2010 passed in Reference Case No. 80/2009, and refused to restore that reference for a fresh hearing on merits. M.P. No. 4819/2026 is directed against the connected order dated 18.05.2026 passed by the Adhikaran in M.J.C. No. 20/2023, whereby the Adhikaran refused to recall its earlier order dated 07.06.2010 passed in Reference Case No. 16/2009, and refused to restore that reference for a fresh hearing on merits. For the sake of convenience, facts are taken from M.P. No. 4818/2026.

The short question in this petition is this: can a reference case, which was dismissed for want of jurisdiction in the year 2010, be restored today, after a gap of about thirteen years, only because the legal position on jurisdiction has since changed? For the reasons given below, this Court holds that it cannot be restored, and the petition is dismissed.

FACTS

2. The petitioner is a Government of India undertaking and a registered PWD contractor. It was given the work of constructing the Bhopal-Sehore by-pass road, along with a railway over-bridge, vide work order dated 24.04.2001. Clause 29 of the agreement laid down a step by step procedure for settling disputes, first before the Superintending Engineer, then an appeal to the Chief Engineer, and finally arbitration by a departmental “Arbitration Board”. Clause 29 also stated in clear words that “the provision



of the Arbitration Act, 1940 and the rules made thereunder for the time being in force shall apply to the arbitration proceedings under this clause.” It may be noted here that the Arbitration Act, 1940 had already been repealed since 22.08.1996, nearly five years before this agreement was even signed.

3. Disputes arose. The petitioner filed Reference Case No. 80/2009 before the Adhikaran, claiming Rs. 4,40,78,911/-. A connected case, Reference Case No. 16/2009, was also filed before the Adhikaran for the over-bridge and connected packages of the very same work, claiming Rs. 20,57,23,000/-; that case is not directly before this Court in M.P. No. 4818/2026 but forms part of the same background and is the subject-matter of the connected M.P. No. 4819/2026.

4. This Court notes that the connected petition, M.P. No. 4819/2026, arises out of the very same work order dated 24.04.2001. The petitioner therein had filed Reference Case No. 16/2009 before the Adhikaran, claiming Rs. 20,57,23,000/-, which was similarly dismissed for want of jurisdiction by order dated 07.06.2010, relying on the very same decision in VA Tech Escher Wyass Flovel Ltd. (supra). It may also be noted, on a perusal of the record of Reference Case No. 16/2009, that the claim placed before the Adhikaran had itself followed the procedure prescribed by Clause 29 of the agreement in full, the claim was first submitted to and scrutinised by the Superintending Engineer, who forwarded it to the Chief Engineer, the final authority, by his letter dated 21.09.2007, the petitioner thereafter pursued the Chief Engineer for a decision, and upon the Chief Engineer rejecting the claim by his letter dated 07.10.2008 (received by the petitioner



on 03.11.2008), the Reference Petition was filed before the Adhikaran within the limitation prescribed under Section 7-B of the Adhiniyam of 1983. There is, therefore, no infirmity of the kind that would independently oust the Adhikaran's jurisdiction on the ground of an incomplete reference under Clause 29, the only infirmity that in fact existed, and which formed the basis of the dismissal, was the one recorded in the order dated 07.06.2010 itself, namely, that Clause 29 being an arbitration clause, the matter lay outside the Adhikaran's jurisdiction and within the Arbitration and Conciliation Act, 1996. The petitioner thereafter obtained appointment of the very same Sole Arbitrator, Shri P. Sampat, in Arbitration Case No. 110/2010 vide order dated 13.01.2012, and followed an identical procedural course participation in arbitration, termination of proceedings, challenge under Section 37 of the Act of 1996 in the connected Arbitration Appeal No. 27/2015, withdrawal thereof on 13.07.2023, and filing of M.J.C. No. 20/2023 under Section 17-A of the Adhiniyam on 23.09.2023 seeking recall of the order dated 07.06.2010 and restoration of Reference Case No. 16/2009. By order dated 18.05.2026, the Adhikaran dismissed M.J.C. No. 20/2023 on identical grounds. Since both matters arise from the same work order, the same arbitration clause, the same chain of proceedings, and raise identical questions of law and fact, this Court disposes of both petitions by this common judgment.

5. By order dated 24.05.2010 (Annexure P/5), the Adhikaran dismissed Reference Case No. 80/2009. It relied on the Supreme Court's decision in VA Tech Escher Wyass Flovel Ltd. v. M.P.S.E. Board & Anr., 2010 Arb.W.L.J. 116 (SC), and held that since Clause 29 was an arbitration



clause, the Adhikaran had no jurisdiction and only the Arbitration and Conciliation Act, 1996 would apply. The petitioner was given liberty to seek its remedy under the 1996 Act.

6. Following this, the petitioner filed an application under Section 11(6) of the 1996 Act before this Court, registered as Arbitration Case No. 109/2010. By order dated 13.01.2012 (Annexure P/6), a learned Single Judge of this Court examined Clause 29 independently, not merely because the Adhikaran had said so. The Court applied the test laid down in *Ravikant Bansal v. M.P. Road Development Corporation*, S.L.P. (C) No. 18867/2011, decided on 29.07.2011, which says that if an agreement specifically provides for arbitration under the Adhiniyam of 1983, then the Adhikaran alone has jurisdiction. On going through Clause 29, this Court held that it did not specifically provide for arbitration under the Adhiniyam of 1983 and, on this independent finding, appointed Shri P. Sampat, retired Engineer-in-Chief, as the Sole Arbitrator under the 1996 Act.

7. It is important to note that this order dated 13.01.2012 was passed after the Supreme Court had already decided *M.P. Rural Road Development Authority & Ors. v. L.G. Chaudhary Engineers and Contractors*, 2012 Arb.W.L.J. 1 (SC), the very judgment on which the petitioner today builds its entire case. The order dated 13.01.2012 was never challenged by the petitioner in any court and has become final between the parties.

8. Before the Sole Arbitrator, the petitioner filed its statement of claim on 01.06.2012. The respondents raised objections to jurisdiction, which the Arbitrator rejected on 20.04.2013. The respondents raised the



objection again under Section 16 of the 1996 Act on 15.12.2014, and this too was rejected by the Arbitrator on 10.02.2015. But then, by a fresh order dated 02.05.2015, the same Arbitrator reversed his own earlier view and held that only the Adhikaran had jurisdiction, and terminated the arbitration.

9 . The petitioner challenged this termination order by filing Arbitration Appeal No. 27/2015 under Section 37 of the 1996 Act before the learned District Judge, Bhopal. The prayer in that appeal was to quash the order dated 02.05.2015 and direct the Arbitrator to continue the arbitration and pass the award. The grounds taken in that appeal were only procedural that the Arbitrator had already decided the jurisdiction question twice in the petitioner's favour and could not go back on it, and that a Tribunal appointed by the High Court under Section 11 could not reopen the question under Section 16. The relevant part of the appeal reads:

“7.1 ...the question of jurisdiction is already decided by the Hon'ble Arbitral Tribunal on 20/04/2013 and again on 10/02/2015 and such decision cannot be reversed back... 7.2 ...the Hon'ble Arbitral Tribunal is constituted by the Hon'ble High Court of M.P. exercising its jurisdiction u/s-11 of Arbitration & Conciliation Act, 1996...”

10. This Court finds it important that this appeal, filed in 2015, three years after the decision in L.G. Chaudhary (2012), does not mention that judgment even once. It does not say anywhere that the Adhikaran, and not the 1996 Act Tribunal, was the correct forum. The whole appeal is based on the position that the 1996 Act arbitration was correct and should continue.

11 . This appeal remained pending for more than eight years. On



13.07.2023, the petitioner's counsel referred to paragraphs 14 and 16 of the Supreme Court's later decision in L.G. Chaudhary, (2018) 10 SCC 826, and asked to withdraw the appeal so that it could be presented before the Adhikaran. The order sheet of that date (Annexure P/10) records only this much:

“Since the applicant party voluntarily wishes to withdraw their appeal, the said appeal is returned to them. The original appeal application along with the documents... should be returned to the applicant, and their acknowledgment should be taken on record.”

12. This order does not give the petitioner any liberty to go to the Adhikaran. It does not say that the appeal was being withdrawn because the 1996 Act forum was wrong from the start. It simply records that the petitioner wanted to withdraw the appeal, and the papers were returned.

13. Thereafter, on 23.09.2023, the petitioner filed M.J.C. No. 19/2023 before the Adhikaran under Section 17-A of the Adhiniyam of 1983, asking for the order dated 24.05.2010 to be recalled and Reference Case No. 80/2009 to be restored thirteen years and four months after the order it wants recalled (24.05.2010 to 23.09.2023), and eleven years and eight months after this Court's own order dated 13.01.2012.

14. By the impugned order dated 18.05.2026, the Adhikaran dismissed M.J.C. No. 19/2023 on three grounds: (i) it has no power to review or recall its own order, (ii) there is an unexplained delay of about eleven years; and (iii) once the petitioner chose to pursue the 1996 Act remedy right up to a Section 37 appeal, it cannot now come back to the Adhikaran. This



order is under challenge.

15. It is submitted for the petitioner that the order dated 24.05.2010 was based only on VA Tech Escher Wyass Flovel Ltd. (supra), which has since been held per incuriam by the Supreme Court, first in 2012 and then by a larger Bench in (2018) 10 SCC 826. It is submitted that an order based on a judgment later declared per incuriam cannot stand, and that the power to recall such an order is available under Section 17-A of the Adhiniyam. It is further submitted that the petitioner pursued the 1996 Act remedy in good faith, on the Adhikaran's own direction, and is entitled to exclude that entire period under Section 14 of the Limitation Act, 1963. It is urged that treating over a decade of bona fide litigation as “delay” is unfair and leaves a genuine claim of over Rs. 4 crores without any decision on merits.

16. On the above facts and submissions, the following points arise for consideration:

(i) Does Section 17-A of the Adhiniyam of 1983 give the Adhikaran power to recall its order dated 24.05.2010 ?

(ii) What is the effect of this Court's own order dated 13.01.2012, which was never challenged ?

(iii) Is the delay of about thirteen years explained by the petitioner's own conduct ?

(iv) Can the petitioner take the benefit of Section 14 of the Limitation Act, 1963 ?

(v) Does the later per incuriam finding, by itself, allow the 2010 order to be reopened now ?



(vi) Whether the petitioner, having had available to it an appropriate remedy for adjudication of the very question of jurisdiction, by way of Arbitration Appeal No. 27/2015 under Section 37 of the Act of 1996, and having voluntarily given up that remedy without obtaining any adjudication thereon, can now be permitted to reagitate the same question by way of an application for recall before the Adhikaran ?

Point (i)

17. Section 17-A of the Adhiniyam of 1983 reads as under:

“17-A. Inherent powers. Nothing in this Act shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such order as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal: Provided that no interim order by way of injunction, stay or attachment before award shall be granted: Provided further that the Tribunal shall have no power to review the award including the interim award.”

18. The second proviso to this Section is plain and simple, the Adhikaran cannot review its own award, and an award, under the Explanation to Section 19 of the same Adhiniyam, “shall include an interim award”. The order dated 24.05.2010 finally closed Reference Case No. 80/2009, it did not merely decide a small point in an ongoing case, it ended the case itself. Calling the present request a “recall” instead of a “review” does not change what is actually being asked for the petitioner wants the very same reference brought back to life and heard again on merits. That is a review in substance, whatever name is given to it. Section 17-A does not permit this. The Adhikaran gave a wrong reason (it referred to Order 47 Rule



1 of the Code of Civil Procedure, which does not directly apply to Adhikaran proceedings), but its final conclusion, that it cannot recall the 2010 order, is correct, because the real bar is the second proviso to Section 17-A itself.

Point (ii)

19. There is a second and, in the opinion of this Court, more important reason why restoration cannot be granted. The question of which forum has jurisdiction, the Adhikaran under the 1983 Adhiniyam, or an Arbitral Tribunal under the 1996 Act was not decided by the Adhikaran alone. It was independently decided by this Court itself, between the same parties, in its order dated 13.01.2012 in A.C. No. 109/2010. This Court, at that time, read Clause 29 on its own, applied the test from Ravikant Bansal (supra), and held that the 1996 Act applied. This order was passed after the 2012 decision in L.G. Chaudhary was already available. The petitioner never challenged this order dated 13.01.2012, not by appeal, not by review, not in any other way. It has become final between the parties.

20. This being so, the Adhikaran cannot now restore Reference Case No. 80/2009 as if this Court's own final order dated 13.01.2012 did not exist. The Adhikaran works under the general supervision of this Court under Section 19 of the Adhiniyam. It cannot pass an order that goes against a final, unchallenged order of this very Court on the identical question between the identical parties. This point alone is sufficient to uphold the impugned order.

Point (iii)

21. The petitioner says it acted bona fide throughout. The record



does not support this. The petitioner itself filed the Section 11(6) application in 2010. It filed its statement of claim before the Arbitrator in 2012. It successfully opposed the respondents' jurisdiction objections, twice, on 20.04.2013 and again on 10.02.2015. When the Arbitrator reversed himself in 2015, the petitioner did not go to the Adhikaran. Instead, it filed a Section 37 appeal asking the District Judge to direct the Arbitrator to continue under the 1996 Act.

22. This appeal was filed in 2015, three years after the decision in L.G. Chaudhary (2012) was already reported. If the petitioner genuinely believed in 2012 that only the Adhikaran had jurisdiction, there was no reason to file this appeal in 2015 asking for the 1996 Act arbitration to continue. As already noted, the appeal does not mention L.G. Chaudhary or the Adhiniyam of 1983 even once. The petitioner kept pressing this appeal for eight more years, eight years and two months, to be precise, from the order dated 02.05.2015 to its withdrawal on 13.07.2023 and withdrew it only after the arbitration route had failed. This is not the conduct of a party acting in good faith under a genuine mistake about the correct forum. It is the conduct of a party that chose one forum, fought hard in it for over a decade, and turned to the other forum only after the first one did not work out.

23. It is a settled principle that a party cannot approbate and reprobate, that is, a party cannot accept a position when it suits it, and reject the same position when it does not suit it (R.N. Gosain v. Yashpal Jain, (1992) 4 SCC 683; Nagubai Ammal v. B. Shama Rao, AIR 1956 SC 593). That is exactly what has happened here.

**Point (iv)**

24. Section 14 of the Limitation Act, 1963 allows exclusion of time spent prosecuting, in good faith and with due diligence, a proceeding in a wrong forum, where that forum was unable to entertain it for want of jurisdiction. Two things stand in the petitioner's way here.

25. First, as shown above, the petitioner did not act with due diligence or in good faith. It actively fought to keep the 1996 Act arbitration alive for years after it knew, or ought to have known, of the change in law. Section 14 cannot help a party that made a deliberate choice and only reversed it when that choice failed.

26. Second, in *M.P. Steel Corporation v. Commissioner of Central Excise*, (2015) 7 SCC 58, the Supreme Court held that the word “court” in Section 14 takes its meaning from the words “civil proceeding” used before it, and does not, as such, cover proceedings before a quasi-judicial Tribunal. The Adhikaran is such a Tribunal. At best, only the general principle behind Section 14 can be considered, not the Section itself, and even that general principle requires due diligence, which is missing here, as shown in Point (iii) above.

27. It is also relevant that this very Adhiniyam has its own limitation scheme. Section 7-B of the Adhiniyam reads, in relevant part:

“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... and (b) the petition to the Tribunal is made within one year from the date of communication of the decision of the final authority... (2-A) ...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...”

28. Similarly, Section 19 of the Adhiniyam, which gives this Court the power of revision over the Adhikaran's awards, allows condonation of delay only within its own limited proviso, on “sufficient cause” a scheme this Court, in State of M.P. v. Anshuman Shukla, has held to exclude even Section 5 of the Limitation Act, 1963. The Adhiniyam of 1983, therefore, is a self-contained law with its own strict time-limits. It does not readily allow a general provision like Section 14 of the Limitation Act to be used to reopen a matter after eleven or thirteen years.

Point (v)

29. It is true that VA Tech Escher Wyass Flovel Ltd. (supra), on which the 2010 order was based, has since been held per incuriam. But this does not mean every old order based on it can now be reopened, however old, and however the party concerned behaved in the meantime. A later finding that a judgment was per incuriam applies going forward, to pending and future matters. It is not an unlimited ground to reopen closed matters years later, especially when the party asking for reopening was not simply following the old (wrong) law by mistake, but was itself actively litigating under that very law for years even after the correct legal position became known. If this were allowed, then every time a precedent is overruled, all old orders based on it could be reopened without any time-limit, which the law of limitation does not permit.



30. It may also be mentioned, without resting the decision on this point alone, that if the petitioner believed the order dated 24.05.2010 to be wrong, its correct remedy was a revision to this Court under Section 19 of the Adhinyam of 1983, which allows condonation of delay for sufficient cause. This remedy was never used, not in 2010, not in 2012 after L.G. Chaudhary, and not at any time before 2023.

Point (vi)

31. There is a further aspect that reinforces the conclusion already reached on Points (ii) and (iii). Two orders on the question of jurisdiction stand on this record: the first, the order of the Adhikaran dated 24.05.2010, declining jurisdiction; and the second, the order of the learned Sole Arbitrator dated 02.05.2015, whereby the Arbitrator reversed his own earlier view, held that jurisdiction lay with the Adhikaran alone, and terminated the arbitral proceedings. The order dated 24.05.2010 was never put in issue by the petitioner in any proceeding and has attained finality. The order dated 02.05.2015 was put in issue, but only by way of Arbitration Appeal No. 27/2015 filed under Section 37 of the Act of 1996. An order terminating arbitral proceedings for want of jurisdiction is open to challenge under Section 37(1)(a) read with Section 16(2) and (3) of the Act of 1996, and not, as such, under Section 34, which is confined to a challenge to an arbitral award.

32. It was precisely this appeal, and this forum, where the very question the petitioner now seeks to reagitate before the Adhikaran could have been finally and authoritatively decided. The Hon'ble Supreme Court



has, in *Gayatri Project Ltd. v. M.P. Road Development Corpn. Ltd.*, (2025) 10 SCC 750, held that an objection to jurisdiction founded on the applicability of the Adhinyam of 1983 may be raised and examined at the stage of proceedings under Section 34, and, by parity of reasoning, Section 37, of the Act of 1996, even where no such objection was raised before the Arbitral Tribunal under Section 16(2), and further that it is open to a party to approach the High Court under Article 227 of the Constitution for transfer of the proceedings to the State Arbitration Tribunal. Arbitration Appeal No. 27/2015 was, therefore, the appropriate remedy, and the appropriate stage, at which the petitioner could have pressed this very jurisdictional question to a conclusive determination.

33. The petitioner did not do so. On 13.07.2023, at its own instance, after the appeal had remained pending for approximately eight years and two months (02.05.2015 to 13.07.2023), the petitioner voluntarily withdrew it without any adjudication on the jurisdiction question and without any liberty being reserved to approach another forum, as recorded in the order sheet reproduced in paragraph 11 above. This withdrawal came after the correct legal position had already been settled, first in 2012 and again, more emphatically, in *L.G. Chaudhary*, (2018) 10 SCC 826. A party that voluntarily gives up an available and appropriate remedy one specifically recognised by the Supreme Court as the proper stage for raising this very objection with the correct legal position already known to it, cannot be permitted to reopen the same question, thirteen years and four months after the original order of 24.05.2010 and eleven years and eight months after this



Court's own order dated 13.01.2012, by resort to a forum, the Adhikaran, whose power under Section 17-A does not extend to recall or review in these circumstances, as already held in Point (i) above.

34. It is not disputed that the a proceeding had instituted before the Madhyastham Tribunal Bhopal, Tribunal has passed an order that the Tribunal has no jurisdiction to hear the dispute. Petitioner honoured the order of Madhyastham Tribunal and got an order of appointment of arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996. Arbitration Tribunal examined the case and gave a finding that the jurisdiction to hear the dispute is with the Madhyastham Tribunal Bhopal. Against that order petitioner filed an appeal under Section 37(1)(a) read with Section 16(2) and (3) of the Arbitration and Conciliation Act, 1996, before the District Court Bhopal. In that situation the jurisdiction could have been decided by the District Court Bhopal under Section 37 of the Act and proceeding may transfer to the Madhyastham Tribunal Bhopal or in case of passing adverse order petitioner may approach before the High Court under Article 227 of the Constitution, but later that appeal has been withdrawn by the petitioner. In view of the above the petitioner loses this opportunity by withdrawing the appeal under Section 37 of the Act, 1996. In present scenario the order of Arbitration Tribunal Bhopal gets conformity, hence law does not permit Madhyastham Tribunal Bhopal to reopen the proceeding which has also got conformity prior to Arbitration Tribunal. We find no error in the order of Madhyastham Tribunal Bhopal.

35. For the above reasons, this Court holds: (i) Section 17-A of the



Adhiniyam of 1983 does not allow the Adhikaran to recall its order dated 24.05.2010, since that order finally closed the reference and its recall is, in substance, a review, which the second proviso to Section 17-A bars (ii) the question of forum stands finally decided between the same parties by this Court's own unchallenged order dated 13.01.2012 (iii) the petitioner did not act with due diligence or in good faith between 2012 and 2023, and instead pursued the 1996 Act remedy right up to a Section 37 appeal, abandoning it only after it failed (iv) Section 14 of the Limitation Act, 1963, and the principle behind it, therefore do not help the petitioner; (v) the later per incuriam finding against VA Tech Escher Wyass Flovel Ltd. does not, by itself, permit reopening of an order that has been final for over a decade in these circumstances; and (vi) the petitioner, having had available to it the appropriate remedy of Arbitration Appeal No. 27/2015 under Section 37 of the Act of 1996 precisely the stage at which the Hon'ble Supreme Court in Gayatri Project Ltd. (supra) has held such a jurisdictional objection is to be raised and examined voluntarily withdrew that appeal without obtaining any adjudication on the point, and cannot now be permitted to resurrect the very same question before a forum, the Adhikaran, that has no power to entertain it by way of recall. The impugned order dated 18.05.2026 does not suffer from any jurisdictional error or perversity that would call for interference under Article 227 of the Constitution of India.

36. This Court is conscious that the petitioner, a Government of India undertaking, has been unable to get its claim decided on merits despite litigating since 2009. That is unfortunate. But this alone cannot override the



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settled position on finality of orders and limitation. It will be open to the petitioner to pursue any other remedy available to it in law; nothing said in this order shall be treated as closing any such remedy.

37. In the result, both M.P. No. 4818/2026 (arising out of M.J.C. No. 19/2023, Reference Case No. 80/2009) and M.P. No. 4819/2026 (arising out of M.J.C. No. 20/2023, Reference Case No. 16/2009) are dismissed. There shall be no order as to costs in either petition.

(VIVEK RUSIA)
ACTING CHIEF JUSTICE

(PRADEEP MITTAL)
JUDGE

Praveen