

Form No. J.(2)
Item Nos.13 & 14
Court No. 1
KS/RP/PG

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 12.02.2026

DELIVERED ON: 12.02.2026

CORAM:

**THE HON'BLE CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

F.M.A.T. (ARBAWARD) 4 of 2025

Cooch Behar Tea Company Limited

Vs.

The National Highways Authority of India & Anr.

With

F.M.A.T. (ARBAWARD) 6 of 2025

National Highways Authority of India

Versus

Cooch Behar Tea Company Limited & Anr.

Appearance:-

Mr. Bikramaditya Ghosh

Mr. Ved Rai

Mr. Mayank Bhandari

Mr. Vivek Saha

Mr. Binayak Bandhopadhyay

.....For the Appellant

in F.M.A.T. (ARBAWARD) 4 of 2025

Mr. Bikramaditya Ghosh

Mr. Ved Rai

Mr. Mayank Bhandari

Mr. Vivek Saha

Mr. Binayak Bandhopadhyay

.....For the Respondent No.1

in F.M.A.T. (ARBAWARD) 6 of 2025

Mr. Joyjit Choudhury, Ld. A.A.G.

Mr. Nabankur Paul

.....For the State

Ms. Supriya Singh

.....For the Respondent (NHAI)
in F.M.A.T. (ARBAWARD) 4 of 2025

Ms. Supriya Singh

.....For the Appellant (NHAI)
in F.M.A.T. (ARBAWARD) 6 of 2025

JUDGEMENT (ORAL):

PER, SUJOY PAUL, CJ.:-

1. These appeals take exception to the order passed by the learned District Judge. Parties are at loggerheads on the legality, validity and propriety of the order dated 20th May, 2025 in Misc. Judicial Arbitration Case No. 15 of 2024 passed by the learned District Judge, Coochbehar. By this order, the application filed under Section 34 of the Arbitration and Conciliation Act 1996 (in short “Arbitration Act”) by the National Highway Authority of India (NHAI) was decided by the learned District Judge.

ADMITTED FACTS :

2. The relevant facts for adjudication of this matter are that the Cooch Behar Tea Company Limited filed WP No.1857 of 2023 before this Court seeking direction to disburse the compensation. An interlocutory order dated 18.08.2023 was passed by the learned Single Judge directing the Competent Authority of Land Acquisition (in short “CALA”) to send a fresh

estimate for tea bushes and shed-tree by 10 days from the date of communication of this order to the NHAI. In the same matter on 15.12.2023, a detailed order was passed and certain directions were issued. Thereafter in purported compliance of the order passed by this Court on 18.08.2023 in WPA 1857 of 2023, the Special Land Acquisition Officer, Cooch Behar sent a letter dated 25.08.2023 to the Project Director, NHAI, Alipurduar and informed that the estimate placed earlier be considered and the required amount of compensation i.e. Rs.6,54,34,051/- be placed at the earliest.

3. In the said writ petition, Cooch Behar Tea Company Limited placed reliance on the estimate dated 11.08.2016 wherein the same amount was determined. This Court in WPA 1857 of 2023 while passing the order dated 15.12.2023 permitted the parties to take recourse of Section 3G(5) of National Highways Act 1956.
4. In turn, NHAI approached the learned Arbitrator against the aforesaid estimate/determination in case no.LA-2CB-01/2024. The learned Arbitrator after hearing the parties, passed the order dated 05.03.2024 and opined that the estimate for compensation to Cooch Behar Tea Company under LA Case No.LAP 02 & 03/NH/2011-12 for 21.07 acres in mouza-

Barasolmari, JL No.63, P.S. Ghoksadanga, District-Coochbehar was determined and sent to NHAI by CALA on 11.08.2016 but the application under Section 3G(5) of NH Act, 1955 has been received from the NHAI on 08.01.2024 which is barred by limitation under the Limitation Act, 1963. Thus, the arbitration failed which resulted into filing of the instant application under Section 34 of the Arbitration Act before the learned District Judge.

5. The learned District Judge after hearing the parties passed the impugned order dated 20.05.2025 and held that the order impugned passed by the learned Arbitrator does not fall within the definition of "Award" under the Act and, therefore, the application under Section 34 cannot be entertained. However, on the question of limitation, the learned District Judge took a different view and after considering the order passed by the High Court on 15.12.2023 (supra) it was held that the limitation started after passing of the said order by this Court on 15.12.2023 and, therefore, the learned Arbitrator erred in counting the limitation from 2016. Thus, on the point of limitation, the learned District Judge took a different view than the view taken by the learned Arbitrator.

CONTENTION OF APPELLANT/COOCH BEHAR TEA COMPANY LTD.:

6. Sri Ghosh, learned counsel for appellant/Cooch Behar Tea Company Limited submits that under the NHA Act, there is no statutory limitation prescribed for the purpose of submitting the claim of compensation and therefore, Article 137 of the Limitation Act will hold the field. The said Article prescribes a statutory limitation of three years. By taking this Court to section 3G(5) of NHA Act, learned counsel submits that if amount is determined by competent authority under the different subsections of section 3G, either of the parties aggrieved, may approach the arbitrator against such determination. He submits that determination estimate was prepared by competent authority/CALA on 11.08.2016. This determination remained as such because even after the order passed by this Court on 18.08.2023 in W.P. No. 1857 of 2023, the said estimate was neither reconsidered/recalculated nor changed. Heavy reliance is placed on the language employed in the letter dated 25.08.2023 (Annexure-'M') wherein it was stated that the estimate placed earlier be considered. Thus, it is argued that the earlier estimate, which was, as such approved, the validity and correctness of such estimate or determination must be tested

within limitation from the date when such determination was made i.e. on 11.08.2016 and not the date when this Court issued the direction on 18.08.2023. Thus, on the point of limitation, learned District Judge erred in relying upon the order of this Court dated 18.08.2023.

7. Furthermore, Sri Ghosh submits that if the stand taken by the NHAI in the subsequent order dated 15.12.2023 is examined, it will be clear that the said point made in the previous order dated 18.08.2023 has lost much of its shine. Thus, limitation has to be counted from 11.08.2016, the date of estimate and not from 18.08.2023, the date, when this Court issued a direction.

CONTENTION OF NHAI & STATE :

8. Learned counsel for the State and NHAI supported the order impugned passed by learned District Judge to the extent it relates to the point of limitation. It is common ground that the direction to send a fresh estimate in the order dated 18.08.2023 makes it clear that whatever estimate will be made, will fall within the ambit of '**fresh estimate**'. The said estimate was issued on 25.08.2023 and therefore, limitation has to be counted either from 18.08.2023 or from 25.08.2023.

9. So far the finding of impugned order, wherein the learned District Judge opined that the order of arbitrator dated 05.03.2024 is not an award and therefore, cannot be challenged under section 34 is concerned, learned counsel for NHAH has placed reliance on various provisions of Arbitration Act. It is submitted that if section 31 and its sub-sections are perused carefully and the contents of the order passed by the learned arbitrator, it will be clear that necessary ingredients for attracting section 31 of Arbitration Act are available. Thus, the character of the order dated 05.03.2024 brings it within the purview of 'award'. The nomenclature/heading of order is insignificant and what is material is the content and character of the order.
10. She placed reliance on the judgment of this Court in ***F.M.A.T. 1319 of 2015 (The India Trading Company vs. Hindusthan Petroleum Corporation Ltd.)*** to contend that if a final order is passed by the arbitrator, which can operate in future as per principle of *res judicata* or constructive *res judicata*, the order fulfills the requirement of an award.
11. A Delhi High Court judgment reported in ***AIR Online 2019 Del. 347 (M/s. Cinevistaas Ltd. Vs. M/s. Prasar Bharti)*** is relied

upon to submit that the nature of order falls within the ambit of 'award', which can be called in question under section 34 of the Arbitration Act.

12. Lastly, she placed heavy reliance on the judgment of Supreme Court in the case of **Indian Farmers Fertilizer Cooperative Limited (IFFCO) vs. Bhadra Products** reported in **(2018) 2 SCC 534** to submit that even if the arbitrator rejected the claim on the ground of limitation, said order is indeed an award and can be called in question under section 34 of the Arbitration Act.
13. In the rejoinder submission, Sri Ghosh submits that the judgment of **Indian Farmers Fertilizer Cooperative Limited (supra)** is overruled by Supreme Court in the judgment reported in **Uttarakhand Purv Sainik Kalyan Nigam Limited vs. Northern Coal Field Limited** reported in **(2020) 2 SCC 455**. On more than one occasions, he vehemently argued that subsequent Bench in **Uttarakhand Purv Sainik Kalyan Nigam Limited (supra)** overruled the judgment of **Indian Farmers Fertilizer Cooperative Limited (supra)**, It is strenuously contended that if arbitrator rejected the arbitration proceeding on the ground of limitation, the application under

section 34 is not maintainable. Instead, the remedy is under section 37 of the Arbitration Act.

14. No other point is pressed by learned counsel for the parties. We have heard the parties at length and perused the record.

FINDINGS:

Question of Limitation:

15. During the course of argument, it was not disputed by the parties that under the NH Act, no statutory limitation is prescribed and therefore, limitation is to be decided as per Article 137 of the Limitation Act. This point is already considered by various High Courts. Reference may be made to the judgment of (i) ***National Highways Authority of India vs. Raghuram Suvarna & Anr.*** reported in **2021 SCC OnLine Kar 15918** (ii) ***M/s. Cinevistaas Ltd. Vs. M/s. Prashar Bharti*** reported in **AIRONLINE 2019 DEL 347** (iii) ***T. Yunis vs. National Highways Authority of India & Ors.*** reported in **ILR 2012 KAR 6055** (iv) ***Ghanshyam Gupta vs. State of M.P. & Ors.*** reported in **2022 SCC OnLine MP 764** and (iv) ***Writ Petition No. 13266 of 2023 (Smt. Sarvesh Rajput)***.
16. Thus, it is not in dispute that as per Article 137, the statutory limitation is three years for challenging the determination made

by CALA in the arbitration proceedings. The parties have taken a diametrically opposite stand on the starting point of three years. As noticed above, the tea company's stand is that limitation is to be counted from the date of estimate/determination by CALA on 11.08.2016, whereas the stand of State and NHAI is that the starting point of limitation must be the date of order of this Court dated 18.08.2023 or the date of issuance of consequential letter i.e. 25.08.2023. This quagmire needs to be dealt with carefully.

17. Section 3G (5) reads thus:

“3G. Determination of amount payable as compensation. -

(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2)....

(3)....

(4)....

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.” [Emphasis supplied]

18. A plain reading of sub-section (5) makes it clear that if any party is aggrieved by the determination made by CALA under relevant sub-sections of section 3G, the application may be filed by aggrieved party before the arbitrator for the purpose of correct

determination of the amount. Sub-Section 6, in no uncertain terms, makes it clear that the provisions of Arbitration Act shall apply to every arbitration under this Act.

19. Admittedly, the N.H.A.I. was aggrieved with the determination and, therefore, it decided to assail it in arbitration proceedings and because of that, Case No.LA-2CB-01/2024 commenced. In the said case, the learned Arbitrator opined that the limitation has to be counted from 11.08.2016 i.e. the date of determination/estimate by CALA.
20. In order to wriggle out of this limitation, the principal argument of learned counsel for State and NHAI is based on an interlocutory order passed by learned Single Judge on 18.08.2023 passed in WPA 1857 of 2023. The learned Single Judge directed respondent no.3/CALA to send the fresh estimate for tea bushes and shed trees by 10 days to the NHAI. The expression “fresh estimate” used by learned Single Judge became foundation for the argument that any determination made thereafter must be treated as “fresh determination” providing the starting point of limitation from that day. The argument at the first blush appears to be attractive but lost its complete shine when the order is examined carefully with the

subsequent order dated 15.12.2023 passed in the same case. In the said date, the argument of NHAI, upon receiving instruction was that their client shall deposit the determined compensation amount with the competent authority. It was further argued and recorded that amount of compensation so determined by the CALA is not accepted and they intend to challenge it under Section 3G(5) of the Act of 1956. Thus, the NHAI took a clear stand that amount has already been determined by CALA, which is not acceptable to it.

21. So far order dated 25.08.2023 is concerned, in our considered judgment, this order does not give them a new starting point of limitation for the simple reason that it was made clear that the estimates placed earlier be considered and required amount of compensation be placed at the earliest.
22. The record shows that the earlier estimate prepared by CALA on 11.08.2016 was never revisited or reconsidered. The said determination and amount, as such, was accepted in the letter dated 25.08.2023. Thus, even if, learned Single Judge observed on 18.08.2023 regarding fresh estimate, no such fresh estimate was ever made. Thus, the earlier estimate dated 11.08.2016 gives the starting point for limitation. Counting from this date,

the three years were over before the arbitration proceedings/application were filed. Thus, we find no fault in the finding of the learned Arbitrator that the claim under Section 3G (5) was barred by time.

23. The learned District Judge, who has taken a contrary view impressed with the order dated 18.08.2023 has committed an error of fact and law. In our considered opinion, neither in the order dated 18.08.2023 nor in the subsequent order dated 15.12.2023, the learned single Judge gave any specific direction regarding relaxation for counting the limitation. The order of learned Single Judge dated 18.8.2023 does not infuse fresh blood or flesh for the purpose of counting limitation. The learned Single Judge nowhere directed about relaxation of period of limitation. This is well settled that courts must not pass order which is contrary to law. **[See : 1994(1) SCC 175 (State of Punjab vs. Renuka Singla); AIR 2002 SC 629 (Karnataka SRTC vs. Ashrafulla Khan); AIR 2010 SC 1099 (Manish Goel vs. Rohini Goel) and 2018(12) SCC 279 (Union of India vs. Concord Fortune Minerals India Pvt. Ltd.)]**. Thus, limitation has to be counted as per Article 137 of the Limitation Act from the date of original estimate dated 11.08.2016. We order accordingly.

ORDER OF ARBITRATOR IS AN AWARD ?

24. Another limb of argument is relating to the decision of the learned District Judge where he declined interference under Section 34 of Arbitration Act on the ground that the order impugned passed by learned Arbitrator dated 05.03.2024 is not an award.
25. Learned counsel for appellant has rightly placed reliance on Section 31 of Arbitration Act, which deals with forms and contents of an arbitral award and made it clear that in the order of Learned Arbitrator that requirement of various sub-sections of Section 31 are satisfied. Thus, the order must be treated as an 'award'.
26. Ms. Supriya Singh, learned counsel for NHAI placed reliance on the judgment of Supreme Court in ***Indian Farmers Fertilizer Cooperative Limited (supra)***, in this regard. Interestingly, in ***Indian Farmers Fertilizer Cooperative Limited (supra)***, one of the questions was relating to the decision of Arbitrator deciding the question of limitation. The Apex Court opined that the said decision falls within the ambit of interim award and can be assailed under Section 34 of the Arbitration Act.

27. In various text books the authors have formed opinion about the nature and ingredients of the award. In International Arbitration [Chapter 9. Award in Nigel Blackaby, Constantine Part asides, et al., Redfern and Hunter on International Arbitration (Sixth Edition), 6 edition: Kluwer Law International, Oxford University Press 2015 pp. 501-568] a similar distinction is drawn between an award and decision such as procedural orders and directions. It is observed that an award has finality attached to a decision on a substantive issue. Paragraph 9.08 in this context reads as follows:

"9.08 The term "award" should generally be reserved for decisions that finally determine the substantive issues with which they deal. This involves distinguishing between awards, which are concerned with substantive issues, and procedural orders and directions, which are concerned with the conduct of the arbitration. Procedural orders and directions help to move the arbitration forward; they deal with such matters as the exchange of written evidence, the production of documents, and the arrangements for the conduct of the hearing. They do not have the status of awards and they may perhaps be called into question after the final award has been made (for example as evidence of "bias", or "lack of due process")." [Emphasis supplied]

*In Centrotrade Minerals and Metal Inc. v. Hindustan Copper Ltd., **(2017) 2 SCC 228**, the Supreme Court had, inter alia, referred to the passages from Comparative International Commercial Arbitration Kluwer Law International, 2003 and Redfern and Hunter on International Arbitration (sixth edition) and observed as under:-*

"9....The distinction between an award and a decision of an Arbitral Tribunal is summarized in Para 24-13 [Chapter 24: Arbitration Award in Julian D.M. Lew, Loukas A. Mistelis, et al., Comparative international Commercial arbitration]. It is observed that an award:

(i) concludes the dispute as to the specific issue determined in the award so that it has res judicata effect between the parties; if it is a final award, it terminates the tribunal's jurisdiction;

- (ii) disposes of parties' respective claims;
- (iii) may be confirmed by recognition and enforcement;
- (iv) may be challenged in the courts of the place of arbitration

28. In the case of IFFCO (Supra) it was held that :

8. "The language of Section 31(6) is advisedly wide in nature. A reading of the said sub-section makes it clear that the jurisdiction to make an interim arbitral award is left to the good sense of the Arbitral Tribunal, and that it extends to "**any matter**" with respect to which it may make a final arbitral award. The expression "**matter**" is wide in nature, and subsumes issues at which the parties are in dispute. **It is clear, therefore, that any point of dispute between the parties which has to be answered by the Arbitral Tribunal can be the subject-matter of an interim arbitral award.**

"15. Tested in the light of the statutory provisions and the case law cited above, **it is clear that as the learned arbitrator has disposed of one matter between the parties ie. the issue of limitation finally, the award dated 23-7-2015 is an "interim award" within the meaning of Section 2(1)(c) of the Act and being subsumed within the expression "arbitral award" could, therefore, have been challenged under Section 34 of the Act.**

(Emphasis Supplied)

29. In view of this propositions propounded by the authors and the judgment of the Supreme Court in the case of **Indian Farmers Fertilizer Cooperative Limited (supra)**, it is clear line noonday that the question of limitation falls within the ambit of the interim award/award, Hence, in the instant case there is no reason to take a different view. In the case of **Indian Farmers Fertilizer Cooperative Limited (supra)** it was an interim award because the learned Arbitrator in that case passed the interim order/award deciding the question of limitation whereas in the instant case the learned Arbitrator in its final order decided the

question of limitation and dismissed the arbitration case on that score alone. Thus, following the *ratio decidendi* of **Indian Farmers Fertilizer Cooperative Limited (supra)**, in our opinion, the learned District Judge was not right in holding that the order of the Arbitrator does not fulfill the requirement of an award.

30. So far, reliance of Mr. Ghosh, learned advocate for the Coochbehar Tea Company Limited on the case of **Uttarakhand Purv Sainik Kalyan Nigam Limited (supra)** is concerned, suffice it to say that a careful reading of this judgment makes it clear that the Supreme Court neither expressly nor impliedly overruled its previous judgment in the case of **Indian Farmers Fertilizer Cooperative Limited (supra)**. The Apex Court although referred the said judgment of **Indian Farmers Fertilizer Cooperative Limited (supra)** in para 7.14 but did not overrule it in any manner. This is trite that a judgement is an authority for what has been actually decided and not what is logically flowing from it. [See : AIR 1968 SC 647 (State of Orissa vs. Sudhasu Sekhar Misra); 2006(1) SCC 368, 275 (D) (Union of India vs. Major Bahadur Singh); 2007 (5) SCC 571 (U.P. Co-operative Federation Ltd. & Ors vs. L.P. Rai); AIR 1976 SC 1766

(Regional Manager vs. Pawan Kumar Dubey); AIR 1987 SC 1073 (Ambica Quarry Works vs. State of Gujarat); 2000 (2) MPLJ 491 (FB) (Archana Kumar Vs. Purendu Prakash Mukherjee); 2003 (2) SCC 111-E (Bhavnagar University vs. Palitana Sugar Mill) and 2003 (3) SCC 485-B (Chachal Goyal (Dr.) vs. State of Rajasthan). Thus, this argument must fail.

31. As a result, the order dated 05.03.2024 passed by the Arbitrator on the point of limitation is affirmed. Contrary view taken by the learned District Judge on the point of limitation in order dated 20.05.2025 is set aside. The order of the learned District Judge is also set aside wherein it was held that the order passed by the Arbitrator does not fall within the ambit of 'award' and the application under Section 34 of the Arbitration Act is not tenable.
32. We direct accordingly.
33. Urgent certified website copies of this judgment, if applied for, be made available to the parties upon compliance with the requisite formalities.

(SUJOY PAUL, C.J.)

I agree.

(PARTHA SARATHI SEN, J.)

