

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arb. Appeal No.161 of 2026

Date of decision:11.08.2026

National Highway Authority of India	...Appellant.
-------------------------------------	---------------

Versus

Banshi Ram & another	...Respondents.
----------------------	-----------------

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?¹

For the appellant : Mr. Sumeet Raj Sharma, Senior Advocate with Mr. Santosh Kumar, Advocate.

For the respondents : Mr. Aman Parth Sharma and Mr.Rishabh Negi, Advocate, for respondent No.1.

Romesh Verma, Judge (oral):

1. The present appeal arises out of the order as passed by the learned District Judge, Bilaspur dated 30.05.2024, whereby after accepting the application under Section 34 of the Arbitration and Conciliation Act, 1996 as filed by the present respondents/landowners, the award as passed by the Arbitrator have been quashed and set aside and the matters have been remanded back to the learned Arbitrator with a direction to decide the same afresh.

Whether reporters of Local Papers may be allowed to see the judgment?

2. The facts of the case are that the present appellant-NHAI initiated process for acquisition of lands owned and possessed by the present respondents. The land of the present respondents situated at Village Patta, Tehsil Sadar and at Village Malyawar, Tehsil Ghumarwin, District Bilaspur, H.P., came to be acquired for the expansion of NH-21 and in that respect notifications under Section 3(A) of the National Highways Act were issued on 22.05.2012. Further notifications under Section 3D of the National Highways Act came to be notified on 15.12.2012. The competent authority/CALA after assessing the compensation amount, passed the awards, whereby the market value of the land was assessed at Rs. 7,00,000/- per bigha for all kinds of land irrespective of classification for Village Malyawar.

3. The landowners feeling dissatisfied by the awards as passed by the competent authority/CALA, preferred application under Section 3G(5) of the National Highway Act, 1956 before the Divisional Commissioner exercising the power of Arbitrator under the Act. The learned Arbitrator partly allowed the application filed by the landowners and enhanced the compensation amount from Rs.7,00,000/- to Rs.10,00,000/- per bigha. The claimants were also held entitled for 30% solatium on entire amount of compensation and 9% interest on the enhanced amount from the date of taking possession of land till deposit.

4. Feeling dissatisfied, the landowners filed application under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award as passed by the Arbitrator before the learned District Judge, Bilaspur. The learned District Judge, while assessing the material placed on record came to the conclusion that since the present respondents had produced on record awards relating to the adjacent villages, therefore, it was incumbent upon the learned Arbitrator to have considered the veracity and authenticity of the awards proximate to time and place. It has further been held that the present appellant did not adduce any evidence in support of its contention. The counter claim filed by Sheela Devi & others in Arbitration No.47 of 2024 was allowed and vide common order cases were remanded back to decide the same afresh.

5. Feeling dissatisfied by the impugned order as passed by the learned District Judge, the present appellant has approached this Court by filing the instant appeal under Section 37 of the Arbitration and Conciliation Act, 1996.

6. It is contended by Shri Sumeet Raj Sharma, learned senior counsel, assisted by Shri Santosh Kumar, learned counsel for the appellant, that the impugned order as passed by the learned District Judge is erroneous and liable to be quashed and set aside. He submits that as per the provisions of the Act, the learned District Judge could not have remanded the matter in its entirety to the Arbitrator. It

is further contended that in case the learned District Judge was of the opinion that any evidence or clarification is required, in that event, he could have sought report from the Arbitrator, but he could not remand the matter in entirety for decision afresh.

7. On the other hand, Mr. Aman Parth Sharma, learned counsel appearing for the respondents/landowners has defended the impugned order as passed by the learned District Judge and he submits that the impugned order does not call for any interference by this Court.

8. I have heard learned counsel for the parties and have also gone through the material placed on record carefully.

9. The provisions of Section 34 of the Arbitration and Conciliation Act read as under: -

“34. Application for setting aside arbitral award. —(1)

Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application 1 [establishes on the basis of the record of the arbitral tribunal that]—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to

arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations,

[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]

10. As per the provisions of Section 34, sub-section (4) of the Act, it is crystal clear that on receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award. The aforesaid provisions are very specific and unambiguous, the orders of remand as passed by the learned District Judge are against the statutory provisions of the Act. The Hon'ble Apex Court in catena of judgments has held that the court while deciding a Section 34 petition has no jurisdiction to remand the matter to the arbitrator. The Court can defer the hearing of the application filed under Section 34 setting aside the award on a written request made by a party to the arbitration proceedings to facilitate the Arbitral Tribunal by resuming the arbitral proceedings or to take such other action as in the opinion of Arbitral Tribunal will eliminate the grounds for setting aside the arbitral award. The quintessence for exercising power under this provision is that the arbitral award has not been set aside. Further, the challenge to the said award has been set up under Section 34 about the deficiencies in the arbitral award which may be curable by allowing the Arbitral Tribunal to take such measures which can eliminate the grounds for setting aside the arbitral award. No

power has been invested by the Parliament in the Court to remand the matter to the Arbitral Tribunal except to adjourn the proceedings for the limited purpose mentioned in sub-section 4 of Section 34. The Hon'ble Apex Court in ***Kinnari Mullick and another vs. Ghanshyam Dass Damani***, (2018)11 SCC 328, has held as under:-

“15. On a bare reading of this provision, it is amply clear that the Court can defer the hearing of the application filed under [Section 34](#) for setting aside the award on a written request made by a party to the arbitration proceedings to facilitate the Arbitral Tribunal by resuming the arbitral proceedings or to take such other action as in the opinion of Arbitral Tribunal will eliminate the grounds for setting aside the arbitral award. The quintessence for exercising power under this provision is that the arbitral award has not been set aside. Further, the challenge to the said award has been set up under [Section 34](#) about the deficiencies in the arbitral award which may be curable by allowing the Arbitral Tribunal to take such measures which can eliminate the grounds for setting aside the arbitral award. No power has been invested by the Parliament in the Court to remand the matter to the Arbitral Tribunal except to adjourn the proceedings for the limited purpose mentioned in [sub-section 4 of Section 34](#). This legal position has been expounded in the case of [McDermott International Inc.](#) (supra) (206) 11 SCC 181. In paragraph 8 of [the said decision](#), the Court observed thus: (Bhaskar Industrial Case, 2016 SCC OnLine Kar 8330)

“8.....parliament has not conferred any power of remand to the Court to remit the matter to the arbitral tribunal except to adjourn the proceedings as provided under sub-section (4) of [Section 34](#) of

the Act. The object of sub-section (4) of [Section 34](#) of the Act is to give an opportunity to the arbitral tribunal to resume the arbitral proceedings or to enable it to take such other action which will eliminate the grounds for setting aside the arbitral award.” (emphasis supplied)

16. *In any case, the limited discretion available to the Court under [Section 34\(4\)](#) can be exercised only upon a written application made in that behalf by a party to the arbitration proceedings. It is crystal clear that the Court cannot exercise this limited power of deferring the proceedings before it suo moto. Moreover, before formally setting aside the award, if the party to the arbitration proceedings fails to request the Court to defer the proceedings pending before it, then it is not open to the party to move an application under [Section 34\(4\)](#) of the Act. For, consequent to disposal of the main proceedings under [Section 34](#) of the Act by the Court, it would become functus officio. In other words, the limited remedy available under [Section 34\(4\)](#) is required to be invoked by the party to the arbitral proceedings before the award is set aside by the Court.*

17. *In the present case, the learned Single Judge had set aside the award vide judgment dated 07.03.2014. Indeed, the Respondent carried the matter in appeal before the Division Bench. Even if we were to assume for the sake of argument, without expressing any opinion either way on the correctness of this assumption, that the appeal was in continuum of the application under [Section 34](#) for setting aside of the award and therefore, the Division Bench could be requested by the party to the arbitral proceedings to exercise its discretion under [Section 34\(4\)](#) of the Act, the fact remains that no formal written application was filed by the Respondent before the Division Bench for that purpose. In other words,*

the Respondent did not make such a request before the learned Single Judge in the first instance and also failed to do so before the Division Bench rejected the appeal of the Respondent.

18. *In the case of MMTC (supra) 2008 SCC OnLine Mad 584, the Madras High Court, while dealing with the purport of [Section 34\(4\)](#) of the Act in paragraph 22 (C) of the reported judgment, observed thus:*

“(C).....On the other hand, [Section 34\(4\)](#) of the new Act, does not prescribe any condition precedent on the substance of the matter but prescribes three procedural conditions namely that there should be an application under [Section 34\(1\)](#) of the new Act and that a request should emanate from a party and the Court considers it appropriate to invoke the power under [Section 34\(4\)](#) of the new Act.”

Again, in paragraph 22 (e) (IV) of the reported judgment, it observed thus:

“But under the 1996 Act, the Court has only two sets of powers after the award is pronounced viz.,

(i) to set aside the award under [Section 34\(2\)](#); or

(ii) to adjourn the proceedings to enable the arbitral tribunal to resume the proceedings or take such other action as in the opinion of the tribunal will eliminate the grounds for setting aside the arbitral award.”

19. *In the case of [Raitani Engineering Works Pvt. Ltd.](#) (supra) 2015 OnLine Gau 494, the Gauhati High Court, placing reliance on the decision in MMTC (supra) in paragraph 8 of its decision, observed thus:*

“But unfortunately in the present case, the award given by the arbitration panel on 13.07.2012 was quashed in its entirety and the appeal under [Section 34](#) is no more pending before the Court. Therefore, invoking the powers conferred under sub-section (4) of [Section 34](#) of the Arbitration Act to facilitate the arbitration panel to take rectificatory steps is not an option in this matter. Moreover neither of the contesting party in this dispute have applied for an additional award and therefore it may not be appropriate to direct the arbitration panel to re-decide on the six undecided claims of the contractor.”

11. To the similar effect, the Hon’ble Apex Court in **Civil Appeal No. 10386 of 2018**, decided on 10.10.2018, titled as **Radha Chemicals vs. Union of India**, after relying upon the aforesaid judgment *Kinnari Mullick and Another vs. Ghanshyam Das Damani* has held that the Court while deciding a Section 34 petition has no jurisdiction to remand the matter to the Arbitrator for fresh decision.

The Hon’ble Apex Court has held as under: -

“5. This Court in a series of judgments culminating in [Kinnari Mullick and Another vs. Ghanshyam Das Damani](#), (2018) 11 SCC 328 held that the court while deciding a Section 34 petition has no jurisdiction to remand the matter to the Arbitrator for a fresh decision. It is, therefore, clear that the learned Single Judge’s judgment is contrary to this judgment as a result of which both the judgments of the Single Judge as well as the Division Bench have to be set aside.

12. The Hon'ble Apex Court in **Gayatri Balasamy vs. ISG Novasoft Technologies Ltd., (2005)7 SCC 1** while dealing with the aforesaid exposition of law has held as under:-

“55. In the same vein as these judgments, we hold that inadvertent errors, including typographical and clerical errors can be modified by the court in an application under Section 34. However, such a power must not be conflated with the appellate jurisdiction of a higher court or the power to review a judgment of a lower court. The key distinction between Section 33 and Section 34 lies in the fact that, under Section 34, the court must have no uncertainty or doubt when modifying an award. If the modification is debatable or a doubt arises regarding its appropriateness, i.e., if the error is not apparent on the face of the record, the court will be left unable to proceed, its hands bound by the uncertainty. In such instances, it would be more appropriate for the party to seek recourse under Section 33 before the tribunal or under Section 34(4).

VI. To Modify or to Remit? Addressing the court's quandary.

56. As elucidated above, if a fog of uncertainty obscures the exercise of modification powers, the courts must not modify the award. Instead, they should avail their remedial power and remand the award to the tribunal under Section 34(4). Under the sub-section, either party—whether the one challenging the award under Section 34 or the one defending against such a challenge—may request the court to adjourn the proceedings for a specified period. If the court deems it appropriate, it may grant such an adjournment, allowing the arbitral tribunal to resume proceedings or take necessary corrective measures to eliminate the grounds for setting aside the award. Thus, Section 34(4) provides a second opportunity for a party to seek recourse through arbitral channel.

57. However, the power of remand permits the court only to send the award to the tribunal for reconsideration of specific aspects. It is not an open-ended process; rather, it is a limited power, confined to limited circumstances and issues identified by the court. Upon remand, the arbitral tribunal may proceed in a manner warranted by the situation – including recording additional evidence, affording a party an opportunity to present its case if previously denied, or taking any other corrective measures necessary to cure the defect. In contrast, the exercise of modification powers does not allow for such flexibility. Courts must act with certainty when modifying an award – like a sculptor working with a chisel, needing precision and exactitude. Therefore, the argument that remand powers make modification unnecessary is misconceived. They are distinct powers and are to be exercised differently.

58. Section 34(4), derived from the Model Law, is discretionary in nature. This is evident from the use of the word “may” in the provision. The Court may invoke this power when it identifies a defect in the award that could lead to its setting aside. In such cases, the court may seek to prevent this outcome by granting the arbitral tribunal an opportunity to rectify the defect.

59. While it is not appropriate to establish rigid parameters or a straitjacket formula for the exercise of this power, it is clear that Section 34(4) does not authorize the arbitral tribunal to rewrite the award on merits or to set it aside. Rather, it serves as a curative mechanism available to the tribunal when permitted by the court. The primary objective is to preserve the award if the identified defect can be cured, thereby avoiding the need to set aside the award. Accordingly, a court may not grant a remand when the defect in the award is inherently irreparable. A key consideration is the proportionality between the harm caused by the defect and the means available to remedy it.

60. While exercising this power, the court must also remain mindful that the arbitral tribunal has already rendered its

decision. If the award suffers from serious acts of omission, commission, substantial injustice, or patent illegality, the same may not be remedied through an order of remand. Clearly, there cannot be a lack of confidence in the tribunals' ability to come to a fair and balanced decision when an order of remit is passed.

61. *Thus, an order of remand should not be passed when such order would place the arbitral tribunal in an invidious or embarrassing position. Additionally, remand may be inappropriate when it does not serve the interests of the parties, particularly in time-sensitive matters or where it would lead to undue costs and inefficiencies. Once an order of remand is granted, the arbitral tribunal has the authority to vary, correct, review, add to, or modify the award. Notably, under Section 34(4), the tribunal's powers, though confined, remain nonetheless substantial. This stands in contrast to the court's narrow role under the rest of Section 34.*

62. *This Court, in **Kinnari Mullick and Another v. Ghanshyam Das Damani**, referred to and laid down the preconditions for exercising the power of remand under Section 34(4). It held that the court cannot exercise the power of remand suo motu in the absence of a written request by one of the parties. Secondly, once an application under Section 34(1) has been decided and the award set aside, the court becomes functus officio and cannot thereafter remand the matter to the arbitral tribunal. Consequently, the power under Section 34(4) cannot be invoked after the court has disposed of the Section 34(1) application.*

63. *We are unable to accept the view taken in Kinnari Mullick (supra), which insists that an application or request under Section 34(4) must be made by a party in writing. The request may be oral. Nevertheless, there should be a request which is recorded by the court. We are also unable to agree that the request must be exercised before the application under Section 34(1) is decided. Section 37*

(Annexure A) permits an appeal against any order setting aside or refusing to set aside an arbitral award under Section 34. To this extent, the appellate jurisdiction under Section 37 is coterminous with, and as broad as, the jurisdiction of the court deciding objections under Section 34. Hence, the contention that the tribunal becomes functus officio after the award is set aside is misplaced. The Section 37 court still possesses the power of remand stipulated in Section 34(4). Of course, the appellate court, while exercising power under Section 37, should be mindful when the award has been upheld by the Section 34 court. But the Section 37 court still possesses the jurisdiction to remand the matter to the arbitral tribunal.

64. Our reasoning does not breach the principle of party autonomy. Neither does it confer appellate powers on the courts. Instead, it adheres strictly to the parameters stipulated in Sections 34 and 37 of the 1996 Act. The power of the appellate court in civil proceedings under Order XLI of the Code, is as broad as that of a trial court, both in terms of facts and law. Contrastingly, the court's authority under Sections 34 and 37 of the 1996 Act is limited by the silhouette of Section 34.

*65. In **Dyna Technologies Private Limited v. Crompton Greaves Limited**, this Court emphasized that the issuance of a reasoned award is not a mere formality under the 1996 Act. For an award to be termed "reasoned", it must meet three essential yardsticks: it must be proper, intelligible, and adequate. The purpose behind Section 34(4) is clear: it allows for an award to become enforceable after granting the tribunal an opportunity to cure any defects. This power is exercisable when the arbitral tribunal has failed to give any reasoning or the award exhibits gaps in reasoning and these defects can be cured, thereby preventing unnecessary challenges. The underlying intent is to provide an effective, expeditious forum for addressing curable defects, which Section 34(4) facilitates.*

.....

.....
 224. Now turning to Section 34(4), it reads as follows:-

“34.(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.”

225. Section 34(4) occurs in sequence after 34(1), 34(2), 34(2A), 34(3). After recourse is made under Section 34(1) and the Court has applied the rigors of 34(1), (2), (2A), the Court would be fairly clear as to whether any ground has been made out for setting aside the arbitral 102 award or not. At this stage, Section 34(4) comes into the picture and provides that:-

- (i) On receipt of an application under sub-section (1), the Court may;*
- (ii) Where it is appropriate and it is so requested by a party;*
- (iii) Adjourn the proceedings for a period of time determined by it;*
- (iv) In order to give the arbitral Tribunal an opportunity;*
- (v) To resume the arbitral proceedings or to take such other action as in the opinion of arbitral Tribunal will eliminate the grounds for setting aside the arbitral award.*

226. It must be noticed that all that the Section mentions is a request being made and there is no prescription that the request should be in writing. In this regard, the holding in *Kinnari Mullick & Anr. vs. Ghanshyam Das Damani*, (2018) 11 SCC 328 to the effect that discretion available under Section 34(4) to give an opportunity to the arbitrator can be exercised only upon a written application made in that behalf by a party is not the correct legal position. To that extent *Kinnari Mullick (supra)* does not lay down the correct law.

227. *It cannot be disputed that ordinarily the stage of Section 34(4) would arise when the Court has put the award through the test of fire under the prior clauses of Section 34 and entertains the opinion that there are grounds for setting aside the arbitral award. At this stage, in given cases where it considers appropriate and a request is made by a party even orally, the Court may adjourn the proceeding for a period of time in order to give the arbitral Tribunal an opportunity to resume the arbitral proceeding or to take such other action as in the opinion of the arbitral Tribunal will eliminate the grounds for setting aside the award. The Court shall in the order indicate its reasons for entertaining the opinion and as to why it considers that there are grounds for setting aside the arbitral award. Ordinarily, it will be the award holder, who will be the respondent in the Section 34 application, who will be interested in sustaining the award. The very fact that he is stoutly defending the award is a clear indication that he wants the award to be sustained and grounds, if any, which exist to set aside the award are eliminated. The grounds may be of different hues.”*

14. The Hon’ble Apex Court again dealt with said provisions in ***McDermott International Inc. vs. Burn Standard Co. Ltd. and Ors., (2006)11 SCC 181.***

15. The aforesaid legal position as pronounced by the Hon’ble Apex Court clearly held that the learned District Judge does not have the power to remand the matter. The provisions of Section 34, sub-section 4 of the Act lay down the parameters under which eventually, the District Judge has to act in accordance with law. The fact remains that the learned District Judge in the present case could not have remanded the matter in its entirety.

16. Without touching the merits of the case, this Court is of the opinion that the impugned order passed by the learned District Judge, is against the legal principles of law as laid down by the Hon'ble Apex Court. Consequently, this Court has no other option, but to quash and set aside impugned order and remit the case to the learned District Judge with direction to decide the same in view of the exposition of law as laid down by the Hon'ble Apex Court, in accordance with law. Ordered accordingly.

17. The parties undertake to appear before the learned District Judge, Bilaspur on **14.09.2026**. It is also made clear that in case any of the respondents fails to appear before the learned District Judge, on the aforesaid date, appropriate notice be issued for their service.

18. Since the respondents/landowners have lost their lands, therefore, learned District Judge is requested to make an endeavour to decide the case expeditiously.

19. With the aforesaid observations, the present appeal is disposed of accordingly. Pending applications, if any, also stand disposed of.

(Romesh Verma)
Judge

11th August, 2026
(vt)