



AFR
Reserved on 16.04.2026
Delivered on 05.05.2026



2026:AHC:101891-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 26448 of 2025

Sushil Kumar Prajapati

.....Petitioner(s)

Versus

Union of India and 3 others

.....Respondent(s)

Counsel for Petitioner(s) : Prem Chand Pandey
Counsel for Respondent(s) : Krishna Agarawal, A.S.G.I.

Court No. - 1

**HON'BLE AJIT KUMAR, J.
HON'BLE INDRAJEET SHUKLA, J.**

Per. Indrajeet Shukla, J.

1. Heard Sri Prem Chand Pandey, learned counsel for the petitioner and Sri Krishna Agarawal, learned counsel for the respondents.
2. Embittered with ex-parte arbitral award dated 21.05.2025 passed by Sole Arbitrator/CMM/Electrical, Eastern Railway the then Dy. CMM/ HQ/NCR/ALD, instant writ proceedings have been instituted precisely on the ground that the sole arbitrator after his transfer from 'Allahabad' to Railway Board as Director R.S.(F.), resumed the proceedings at 'Kolkata' while process for change of arbitrator was going on owing to his transfer. Further ground of challenge is resuming arbitral proceedings by changing seat of arbitration and passing an ex-parte award, without consent of the petitioner-claimant is ex-facie bad.

Maintainability of Writ Petition against Arbitral Award

3. At the threshold, learned counsel for the respondents vehemently objected to the maintainability of the present petition asserting that in

view of the availability efficacious alternative remedy by virtue of Section 34 of the Act of 1996 providing robust statutory mechanism for setting aside the arbitral award, instant writ petition bypassing that forum is absolutely unwarranted and same is not maintainable. Thus, this Court should refrain from exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, as the writ power is not intended to be a panacea for all substantive procedural issues, nor is it a substitute for statutory remedies, where the legislature has specifically carved out a specialized mechanism. The doors of the Writ Court may remain open subject judicious discretion, otherwise the sanctity of the arbitral process be undermined by such choice of forum at the end of a party. Thus, petitioner having failed to exhaust the statutory channels available to him, the present petition ought to be dismissed in limine on the ground of maintainability.

4. Countering the submissions, learned counsel for the petitioner submitted that the arbitral award in question is not only ex-parte but suffers with vice of non-compliance of the principles of natural justice and the proceedings resorted by arbitrator is wholly without jurisdiction and authority of law. Thus, the proceedings being vitiated for lack of jurisdiction and palpable breach of natural justice, this Hon'ble Court may entertain instant writ petition as a exceptional case.

5. Now we consider the preliminary objection in the light of legal eventualities on the issue. The Hon'ble Supreme Court, in the seminal case of **Whirlpool Corporation v. Registrar of Trademarks, Mumbai** reported in (1998) 8 SCC 1 has unequivocally held that the High Court may interfere, notwithstanding an alternative remedy, where the petitioner seeks the enforcement of a Fundamental Right, where there is a violation of the principles of natural justice, or where the proceedings are wholly without jurisdiction. These exceptions ensure that the doors of justice are not hermetically sealed when basic procedural fairness is at stake. The relevant paragraph of this judgement is quoted as follows:

“Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain

restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

6. Further, in **Harbans Lal Sahnia v. Indian Oil Corporation reported in (2003) 2 SCC 107** the Apex Court reiterated that the rule of exclusion of writ jurisdiction is a rule of discretion and not one of compulsion. The Court is duty-bound to weigh the pros and cons of the litigation and may choose to interfere if the facts of the case demonstrate that relegating the party to an alternative remedy would be an exercise in futility or lead to a travesty of justice. The court held that:

“In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

7. In **Mafatlal Industries Ltd. v. Union of India** reported in (1997) 5 SCC 536 B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed:

“77. ... So far as the jurisdiction of the High Court under Article 226— or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.””

8. A co-ordinate Bench of this Court in the case of **Dr.Rajeev Sinha and others Vs. Union of India and others reported in 2024 2 ADJ 594** has dealt with issue whether the arbitrator’s award should be quashed in exercise of writ jurisdiction treating the writ petition maintainable, despite the availability of an alternative remedy under Section 34 of Arbitration and Conciliation Act, 1996 (for the brevity hereinafter shall be termed as ‘Act of 1996’) and has concluded:

“.....availability of alternative remedy under Section 34 of the Act of 1996, does not have any force, in the facts and circumstances of the present case and this Court is satisfied that the instant case falls within the well recognized exceptions to the general rule of exhaustion of alternative remedies, as held above by the Supreme Court and, therefore, the present writ petition is not liable to be dismissed on this ground.”

9. In view of the above exposition of law in our considered view, cardinal principle of our constitutional jurisprudence is that a mere existence of a statutory bypass does not, and cannot, oust the inherent jurisdiction of this Court. On the contrary, such a remedy serves merely as a judicial compass, guiding the exercise of discretion rather than acting as an insuperable barrier to justice. In exceptional circumstances where the proceedings are vitiated for lack of jurisdiction or a palpable breach of natural justice. This Court must not remain a silent spectator. To hold otherwise would be to allow a procedural technicality to strangle the substantive rights of the parties in the face of manifest arbitrariness. Thus, the instant writ petition is held to be maintainable.

Factual Matrix

10. Brief facts in nutshell emerged from pleadings are recapitulated here as under:

11. The dispute arose out of claim setup by claimant/petitioner for retail order supply payment for the period between January, 2009 to June, 2009 against Agreement No.43/Med/Store/ALD/2008/Renewal of suppliers dated 30.09.2008 by Central Hospital, North Central Railway (NCR) Allahabad with the firm M/S. Laxmi Medical Agency, 452 Shahganj, Allahabad for purchase of medicines and surgical items by Railway Hospital, North Central Railway, Allahabad.

12. The petitioner claims himself to be sole proprietor of firm Laxmi Medical Agency, 452 Shahganj, Allahabad. The petitioner had set up a case that he had supplied the medicines/surgical instruments to Central Railway Hospital through license no.772, 773 which was renewed from time to time and the last renewal was issued on 20.03.1999. Petitioner

has claimed that after supply of medicines and surgical items, the bill was produced but respondent/railway authorities did not clear the dues of the same, which gave rise to a dispute.

13. The dispute is redressable through arbitration mechanism, for which written agreement was entered between parties. The relevant clause of contract viz Clause 9 and 10 of the agreement are extracted as under:

“9. In the event of any dispute between Railways and the supplier as to the respective right and obligation of the parties hereunder or meaning of any article or conditions, such dispute shall be referred to sole arbitration of an officer of the Railways who shall be nominated for this purpose by the General Manager, N.C.Rly and his decision shall be final, conclusive & binding on the parties.

10. All disputes are subject to jurisdiction of High Court or its subordinate courts in Allahabad only”

14. In terms of agreement one Ankur Chandra, the then Deputy CMM/M/NCR/Ald was appointed as sole arbitrator on 08.08.2014. The sole arbitrator entered into reference on 04.09.2014 directing claimant (petitioner) to submit statement of claim and respondents to submit their counter claim and statement of defence.

15. Petitioner being claimant, submitted his statement of claim on 20.10.2014 and respondents submitted their counter reply and statement of defence vide letter dated 09.01.2015 and thereafter, various dates were fixed, and both parties attended the arbitral proceedings at agreed venue/seat of arbitration at ‘Allahabad’.

16. The General Manager, North Central Railway vide letter no.7-MED/Arbitration/Appointment/GK dated 02.01.2018 changed the sole arbitrator and appointed Sri Gaurav Kumar, the then Deputy CMM/HQ/NCR/ALD as sole arbitrator in place of Sri Ankur Chandra, who could not conclude proceedings since he was transferred. Thereafter, newly appointed sole arbitrator Sri Gaurav Kumar was transferred to Railway Board as Director R.S.(F.) and while the process of appointment of new arbitrator was midway, the existing arbitrator Sri Gaurav Kumar resumed the arbitral proceedings after seven years at ‘Kolkata’ by putting claimant-petitioner to notice vide letter dated 21.04.2025,

requiring him to attend the arbitral proceedings at 'Kolkata' on 08.05.2025 i.e. at short notice of eight days.

17. On receiving the information on 30.04.2025 with respect to final hearing of arbitration proceedings, scheduled on 08.05.2025 through letter dated 21.04.2025, petitioner requested for change of arbitrator vide letter dated 01.05.2025 and petitioner was assured that looking to his convenience with respect to seat of arbitration, the arbitrator would be changed. The letter dated 21.04.2025 issued by sole arbitrator informing resumption of arbitral proceedings after seven years is extracted as under:

Eastern Railway

Office of the PCMM
17, N.S.Road, Fairlie Place
Kolkata-700 001
Date:21.04.2025

*No.Dy.CMM/HQ/Arb./SKP
Shri Sushil Kumar Prajapati,
576/671 (F-F-3),
Maa Kali Apartment, Shahganj,
Prayagraj, Uttar Pradesh.*

(Claimant)

*ACHD I/C (Store)
Central Hospital,
North Central Railway.
Nawab Yusuf Road, Civil Lines
Prayagraj, Uttar Pradesh..*

(Respondent)

Sub. Hearing in Arbitration case in connection with "Purchase of medicines and surgical items to Railway Hospital, Allahabad Agreement no. 43Med/Store/ALD/2008/Renewal of suppliers dated 30.09.2008.

The next hearing in the above noted case has been fixed on 08.05.2025 at 11.30 Hrs in the chamber of undersigned. Both the parties are directed to attend the hearing on the date and time fixed with all documentary evidence in support of the case.

*Since, claimant has not attended previous hearings held on 20.06.2018 and 28.11.2018, attended by respondent both the times, claimant is directed to attend the hearing on scheduled date and time **failing which the proceedings shall be held Ex-parte and decision will be taken accordingly.***

21/04/25

(Gaurav Kumar)
CMM/Sales/ER
Then Dy.CMM/HQ/NCR/ALD
Sole Arbitrator”
Contact No.9002020773

18. The request for change of arbitrator was not properly heeded to by the General Manager, North Central Railway, Subedarganj, Allahabad, despite the fact that place of arbitration at ‘Kolkata’ was inconvenient and it was not feasible for the petitioner-claimant to have attended the proceedings at a short notice of eight days.

Submission advanced on behalf of Petitioner

19. The counsel for the petitioner strenuously urged that the impugned arbitral award is not only ex-parte having been passed in gross violation of principles of natural justice but was a glaring example of arbitrariness without providing level playing field. The further submission was that the place of arbitration should not have been at ‘Kolkata’ as same was not provided in the arbitral agreement and there was no consent accorded by the petitioner-claimant for change of place of arbitration i.e. from ‘Allahabad’ to ‘Kolkata’. Thus, the arbitral award suffers with the vice of jurisdictional error and same is result of manifestation of procedural overreach and stands as a monument to the denial of natural justice.

20. The further submission advanced by learned counsel for the petitioner is that the sole arbitrator, in a display of unwarranted zeal, proceeded to adjudicate the matter ex-parte, thereby rendering the entire process flawed one. The petitioner was served with a notice for hearing at ‘Kolkata’ which was a distant forum being far from the agreed-upon seat at ‘Allahabad’. Having proceeded with such unseemly haste and that to contest the proceedings at place not mutually agreed upon, it left no room for meaningful participation by petitioner. The cavalier disregard to the principle of *audi alteram partem* is not merely a technical flaw but a fundamental subversion of the rule of law. To expect a petitioner to attend a hearing on a thinnest of margin, receiving notice on 30.04.2025

for attending proceedings on 08.05.2025 is nothing except but to ask for impossibility i.e. 'to put the cart before the horse'. Thus, award in question is a nullity in the eyes of the law.

Submissions advanced on behalf of Respondents

21. Learned counsel for the respondents has submitted that, arbitrator was appointed strictly in terms of tenets of arbitration close of agreement and the proceedings before Arbitral Tribunal were well within the knowledge of the petitioner and yet he utterly failed to appear before the Arbitration Tribunal and as such, he cannot be permitted to take advantage of his own wrongs. The Arbitral Tribunal had no option except to proceed for ex-parte award in given factual background of the case.

Analysis and Reasoning

22. We consider it first go through Section 20 of Act of 1996 that deals with place of arbitration. The provision reads as under:

“20. Place of arbitration.—(1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.”

23. Upon scrutiny of rival submissions, this Court finds that impugned arbitral award is ex parte which is in-flagrant violation of principles of natural justice inasmuch as denial of change of place of arbitration resulted non playing field for petitioner. The claimant was forced to attend the arbitration at 'Kolkata' within a short span of notice of eight days, ignoring that the jurisdiction for all disputes as per agreement was confined to 'Allahabad' and earlier the seat of arbitration remained at 'Allahabad', and admittedly it has never been altered with consent of parties.

24. With respect to change of place of arbitration, it is worth referring to the ratio laid down in the case of **Inox Renewables Ltd. Vs. Jayesh Electricals Ltd. (2021 SCC OnLine SC 2036)**. In the said case, the agreement provided for Jaipur as the seat of arbitration, but the arbitration proceedings were conducted in Ahmedabad. This conduct of ...was held by the Hon'ble Apex Court as changing the seat of arbitration by the parties by their mutual consent. However, in the case of **BBR (India) Private Limited Vs. S.P. Singla Constructions Private Limited [(2023) 1 SCC 693]**, the Apex court held that unlike in the cases of *Inox Renewables Ltd. (supra)*, in the case at hand, the seat of arbitration was not fixed by the parties but instead, by the arbitrator and that the arbitrator cannot change the seat of arbitration except when parties mutually agree for change of 'seat of arbitration' to another location. The court held thus:

".....once the jurisdictional 'seat' of arbitration is fixed in terms of sub-section (2) of Section 20 of the Act, then, without the express mutual consent of the parties to the arbitration, 'the seat' cannot be changed. Therefore, the appointment of a new arbitrator who holds the arbitration proceedings at a different location would not change the jurisdictional 'seat' already fixed by the earlier or first arbitrator. The place of arbitration in such an event should be treated as a venue where arbitration proceedings are held."

Conclusion

25. Being conscious of the fact that this Court cannot act as an appellate authority to evaluate merit of arbitral award and the power of judicial review under Article 226 of the Constitution of India is only limited to the extent of examination of decision making process, in our considered view, the impugned arbitral award in continuance of a flawed procedure and hence this award deserves to be set aside with further direction to proceed afresh in peculiar facts of this case and the case needs to be restored to the file for arbitral proceedings.

26. In view of admitted fact as emerges from pleadings on record that the place of arbitration from 'Allahabad' to 'Kolkata' was changed by arbitrator suo moto without consent/agreement of parties even without backing of any provision under agreement. Hence, change of place of

arbitration appears to subjecting petitioner to a non playing field giving unfair advantage to the railways establishment without had negotiable means to attend arbitration proceedings. Thus, the ex-parte award in question is unsustainable, accordingly, instant writ petition is **allowed**. A writ in the nature of certiorari is issued quashing the impugned award dated 21.05.2025 passed by Sole Arbitrator, CMM/Electrical, Eastern Railway the then Dy. CMM/HQ/NCR/ALD.

27. The General Manager, Northern Central Railway is hereby directed to appoint an Arbitrator after putting claimant/petitioner to notice who shall resume the arbitration proceedings from the stage it proceeded ex-parte and shall conclude proceedings within a period of three months.

28. In the event of failure of appointment of Arbitrator by the authority concerned, the parties would be at liberty to take recourse under Section 11(6) of the Act of 1996 and the proceedings would be resumed accordingly.

29. No order as to cost.

(Indrajeet Shukla,J.) (Ajit Kumar,J.)

May 05, 2026

Mohit