CGHC010446862026 2026:CGHC:47908

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 1433 of 2026

1 - South Eastern Coalfields Ltd. Through Chairman-Cum-Managing Director, Secl, Seepat Road, Bilaspur (C.G.)

2 - General Manager (Civil) Secl, Seepat Road, Bilaspur (C.G.)

3 - General Manager Secl, Gevra Area, Post Gevra, District Korba (C.G.).

... Petitioner(s)

versus

M/s Shyam Lal Agrawal, Contractor Through Its Partner Anand Agrawal, R/o A-401, Maruti Solitaire, Kachna Road, Khamardih, Raipur (C.G.)

... Respondent(s)

(Cause-title taken from Case Information System)

For Petitioner(s) : Mr. Harpreet Singh Ahluwalia, Advocate.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J.

Order on Board

20/11/2026

1. The present petition has been filed under Article 227 of the Constitution of India, assailing the order dated 08.09.2026 passed by the learned Commercial Court (District Judge Level), Nava Raipur (in short, the "Commercial Court") in Execution Case No. 29/2025, whereby the learned Executing Court has disposed of the objection (I.A. No. 02/2026) regarding limitation for execution of the award dated 18.09.2010.

2. The petitioner's case is that the arbitral award was passed on 18.09.2010 in favour of the respondent by the sole arbitrator, whereby

an amount of Rs. 42,29,600/- was awarded in favour of the respondent. The petitioner challenged the award dated 18.09.2010 by filing an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “Arbitration Act”), which was filed on 16.12.2010 and ultimately came to be dismissed on 18.04.2017. Thereafter, the petitioner filed an appeal before this Court under Section 37 of the Arbitration Act, which was also dismissed on 17.06.2025. Thereafter, the respondent/award holder initiated execution proceedings, being Execution Case No. 29/2025, on 16.09.2025 before the learned Commercial Court, seeking enforcement of the arbitral award dated 18.09.2010 and recovery of the awarded amount of Rs. 42,29,600/- along with interest of Rs. 56,86,436/- accrued on the principal sum from 18.09.2010 to 18.08.2025. In the execution proceedings, the petitioner raised an objection regarding the maintainability of the execution proceedings on the ground of limitation, contending that the same were barred by limitation as provided under Article 136 of the Limitation Act, 1963. The said objection was rejected by the learned Commercial Court. Hence, this petition.

3. Mr. Harpreet Singh Ahluwalia, learned counsel appearing for the petitioner, would submit that the learned Executing Court has misconstrued the unamended Section 36 of the Arbitration Act. It is submitted that the learned Executing Court proceeded on the premise that the unamended provision created an embargo upon execution of an arbitral award until expiry of the period for filing an application under Section 34 of the Arbitration Act, or where such application had been filed, until its rejection. Such interpretation is contrary to the law

declared by the Hon’ble Supreme Court in **Hindustan Construction Company Ltd. v. Union of India**, (2020) 17 SCC 324, wherein the effect of the unamended Section 36 of the Arbitration Act was considered and it was held that mere filing of a petition under Section 34 of the Arbitration Act did not result in an automatic stay of the arbitral award. It is submitted that the Hon’ble Supreme Court also overruled the earlier decisions taking the contrary view and clarified the legal position concerning the effect of filing a Section 34 application.

4. He would also submit that the learned Commercial Court has erred in excluding the period from 18.09.2010 to 23.10.2015 while computing the limitation for execution of the arbitral award dated 18.09.2010. The execution application was instituted only on 16.09.2025, beyond the period of twelve years prescribed under Article 136 of the Limitation Act, 1963. The pendency of proceedings under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, by itself, could not furnish any statutory basis for excluding the aforesaid period, particularly in view of the law declared by the Hon'ble Supreme Court in Hindustan Construction Company Ltd. v. Union of India. The learned Commercial Court could not extend the statutory period of limitation merely on equitable considerations or on the ground that the award-holder had acted in accordance with the legal position prevailing at the relevant time. Therefore, the execution application was liable to be dismissed as barred by limitation.

5. I have heard learned counsel for the petitioner and perused the documents annexed with the petition as well as the impugned order.

6. The issue of limitation for initiating execution proceedings in respect of an arbitral award passed prior to the amendment incorporated in

Section 36 of the Arbitration and Conciliation Act, 1996, with effect from 23.10.2015, has already been decided by this Court vide order dated 14.05.2026 passed in W.P.(227) No. 590 of 2026, in the following terms:-

> "11. The main question for determination is the time from which the period of twelve years prescribed under Article 136 of the Limitation Act, 1963 begins to run for the execution of an award made on 24.06.2013, where the application under Section 34 of the Arbitration Act challenging the award was filed before the Arbitration and Conciliation (Amendment) Act, 2015 (in short, "the Amendment Act of 2015") and remains pending.
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> 12. It is necessary here to note the provision of Section 36 of the Arbitration Act, as it stood before 23.10.2015, which reads as under:-
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> > "36. Enforcement.- Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court."
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> 13. The then-prevailing provision came to be considered by the Hon'ble Supreme Court in **National Aluminium Co. Ltd. v. Pressteel & Fabrications (P) Ltd.**, (2004) 1 SCC 540, wherein it was held that mere filing of an application under Section 34 operated as an automatic stay on the enforcement of the arbitral award, irrespective of the merits of the challenge and without any discretion vested in the Court to permit enforcement during the pendency of such proceedings. The said position was reiterated in **National Buildings Construction Corpn. Ltd. v. Lloyds Insulation (India) Ltd.**, (2005) 2 SCC 367, and **Fiza Developers and Inter-Trade (P) Ltd. v. AMCI (India) Pvt. Ltd.**, (2009) 17 SCC 796, and continued to hold the field during the period relevant to the present case.
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> 14. The aforesaid legal position was also noted by the Law Commission of India in its 246th Report submitted in August, 2014. The Law Commission expressed concern that the automatic suspension of an arbitral award merely upon filing of an application under Section 34 substantially impeded the successful party from realizing the benefit of the award. It, therefore, recommended an amendment to Section 36 of the Arbitration Act so as to do away with the automatic bar on enforcement arising from the mere filing of a Section 34 application.

15. Pursuant to the aforesaid recommendation, Section 36 of the Arbitration Act was substituted by the Arbitration and Conciliation (Amendment) Act, 2015, with effect from 23.10.2015. The substituted provision reads as under:

> "36. Enforcement. - (1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.
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> (2) Where an application to set aside the arbitral award has been filed in the Court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.
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> (3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing…"

16. Section 26 of the Amendment Act of 2015 contains the transitional arrangement governing the applicability of the amendments. It stipulates that, save where the parties otherwise agree, the Amendment Act shall not apply to arbitral proceedings commenced before 23.10.2015, whereas it shall apply to arbitral proceedings commenced on or after the said date. Significantly, the transitional provision refers specifically to “arbitral proceedings” and does not expressly deal with proceedings before the Court, including applications under Sections 34 and 36 of the Arbitration Act arising out of an arbitral award.

17. The applicability of the amended Section 36 to proceedings under Section 34 which were instituted and remained pending prior to 23.10.2015 was authoritatively considered by the Hon’ble Supreme Court in **Board of Control for Cricket in India v. Kochi Cricket Private Limited and Others,** 2018 (6) SCC 287. The Court interpreted Section 26 of the 2015 Amendment Act and held that the provision draws a distinction between “arbitral proceedings” and “court proceedings” arising therefrom. The restriction contained in the first part of Section 26 was held to operate only in respect of arbitral proceedings commenced before 23.10.2015 and not to court proceedings, including proceedings under Section 34. The Court accordingly held that the amended Section 36 of the Arbitration Act would govern the enforcement of an arbitral award notwithstanding

that the Section 34 proceedings had been instituted prior to 23.10.2015. In para 39, it has been observed that:-

> “39. Section 26, therefore, bifurcates proceedings, as has been stated above, with a great degree of clarity, into two sets of proceedings arbitral proceedings themselves, and court proceedings in relation thereto. The reason why the first part of Section 26 is couched in negative form is only to state that the Amendment Act will apply even to arbitral proceedings commenced before the amendment if parties otherwise agree. If the first part of Section 26 were couched in positive language (like the second part), it would have been necessary to add a proviso stating that the Amendment Act would apply even to arbitral proceedings commenced before the amendment if the parties agree. In either case, the intention of the legislature remains the same, the negative form conveying exactly what could have been stated positively, with the necessary proviso. Obviously, "arbitral proceedings" having been subsumed in the first part cannot re-appear in the second part, and the expression "in relation to arbitral proceedings" would, therefore, apply only to court proceedings which relate to the arbitral proceedings. The scheme of Section 26 is thus clear: that the Amendment Act is prospective in nature, and will apply to those arbitral proceedings that are commenced, as understood by Section 21 of the principal Act, on or after the Amendment Act, and to court proceedings which have commenced on or after the Amendment Act came into force.”

18. The Hon’ble Supreme Court further held that the substituted Section 36 regulates the mode and conditions governing enforcement of an arbitral award before the Court and is, therefore, procedural in nature, rather than a provision affecting any substantive right of the parties arising from the arbitration. Consequently, the amended Section 36 was held applicable to court proceedings pending on 23.10.2015, including proceedings under Section 34, irrespective of the date on which the arbitral proceedings or the Section 34 proceedings had commenced. Thus, the applicability of the amended Section 36 to pending court proceedings flows from its procedural character and the interpretation placed by the Supreme Court on Section 26 of the 2015 Amendment Act, which does not extend the restriction contained in its first part to proceedings before the Court.

19. Subsequently, the Arbitration and Conciliation (Amendment) Act, 2019 introduced Section 87 into the Arbitration Act, with effect from the date on which the said Amendment Act received the assent of the President. The newly inserted provision reads as under:

> "87. Unless the parties otherwise agree, the amendments made to this Act by the Arbitration and Conciliation (Amendment) Act, 2015 shall—
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> (a) not apply to--
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> (i) arbitral proceedings commenced before the commencement of the Arbitration and Conciliation (Amendment) Act, 2015;
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> (ii) court proceedings arising out of or in relation to such arbitral proceedings irrespective of whether such court proceedings are commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015;
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> (b) apply only to arbitral proceedings commenced on or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 and to court proceedings arising out of or in relation to such arbitral proceedings."

20. At the same time, Section 15 of the 2019 Amendment Act omitted Section 26 of the 2015 Amendment Act with retrospective effect from 23.10.2015. Read together with Section 87, the amendment sought to restore the pre-2015 legal position in respect of court proceedings arising out of arbitral proceedings commenced before 23.10.2015. Consequently, the automatic stay regime was sought to be applied to such proceedings irrespective of the date on which the related court proceedings were instituted, thereby seeking to undo the effect of the law declared in **Kochi Cricket** (supra) and revive the position under the unamended Section 36.

21. The validity of Section 87, along with the retrospective omission of Section 26 of the 2015 Amendment Act, was subsequently examined by the Hon'ble Supreme Court in **Hindustan Construction Co. Ltd.** (supra). The Hon'ble Supreme Court struck down Section 87 and the omission of Section 26 as manifestly arbitrary and violative of Article 14 of the Constitution. In the course of its consideration, the Court also clarified that the earlier interpretation of Section 36, under which mere filing of a Section 34 application resulted in an automatic stay of enforcement, was not a correct interpretation of the unamended provision; the decisions adopting such construction, including **National Aluminium** (supra) and the decisions following it, were held to be per incuriam. In Hindustan Construction Co. Ltd. (supra) it has been held that:-

> "38. Thus, the reasoning of the judgments in NALCO[1] , and Fiza Developers & Inter-Trade (P) Ltd. Z being per

1 (2004) 1 SCC 540

> incuriam in not noticing Sections 9, 35 and the second part of Section 36 of the Arbitration Act, 1996, do not commend themselves to us and do not state the law correctly. The fact that NALCO has been followed in National Buildings Construction Corpn. Ltd. v. Lloyds Insulation (India) Ltd. does not take us any further, as National Buildings Construction Corpn. Ltd. in following NALCO, a per incuriam judgment, also does not state the law correctly. Thus, it is clear that the automatic stay of an award, as laid down by these decisions, is incorrect. The resultant position is that Section 36-even as originally enacted-is not meant to do away with Article 36(2) of the UNCITRAL Model Law, but is really meant to do away with the two bites at the cherry doctrine in the context of awards made in India, and the fact that enforcement of a final award, when read with Section 35, is to be under the CPC, treating the award as if it were a decree of the court.
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> 41. Given the fact that we have declared that the judgments in NALCO, National Buildings Construction Corpn. Ltd. and Fiza Developers[2] have laid down the law incorrectly, it is also clear that the amended Section 36, being clarificatory in nature, merely restates the position that the unamended Section 36 does not stand in the way of the law as to grant of stay of a money decree under the provisions of the CPC."

22. The Hon'ble Supreme Court further observed that Section 87 was manifestly arbitrary as it sought to revive the very mischief of automatic stay which the 2015 Amendment, pursuant to the recommendations of the 246th Law Commission Report, had intended to eliminate, without any discernible justification for such retrospective revival. Accordingly, Section 87 and the omission of Section 26 were struck down in their entirety. The Court, in **Hindustan Construction Co. Ltd.** (supra), clarified that:

> "66. The result is that Kochi Cricket judgment will therefore continue to apply so as to make applicable the salutary amendments made by the 2015 Amendment Act to all court proceedings initiated after 23-10-2015."

23. Consequently, upon Section 87 being struck down, the legal position declared in **Kochi Cricket** (supra) continues to hold the field. The substituted Section 36 is, therefore, applicable to court proceedings relating to enforcement of arbitral awards, including proceedings under Sections 34 and 36, instituted or pending on or after 23.10.2015, irrespective of the date on which the arbitral proceedings commenced, the

2 (2009)17 SCC 796

award was made, or the application under Section 34 was instituted. The protection contained in the first part of Section 26 of the 2015 Amendment Act remains confined to the arbitral proceedings themselves, which, where commenced prior to 23.10.2015, continue to be governed by the law applicable at the commencement of such proceedings.

24. Against the aforesaid legal backdrop, two distinct issues arise for consideration, which require to be separately examined. The first is whether the mere filing of an application under Section 34 operated, in law, as an automatic stay upon enforcement of the arbitral award. This issue stands conclusively answered in the negative by the judgment in **Hindustan Construction** (supra). The second, and distinct, issue is as to when the award became enforceable for the purposes of Article 136 of the Limitation Act, namely, the point in time from which the award-holder acquired the legal right to seek execution of the award. The determination of the latter issue requires examination of the legal position governing enforceability during the intervening period, notwithstanding the subsequent declaration in **Hindustan Construction** (supra).

25. The further question, therefore, is as to what remedy was legally available to an award-holder in the factual and legal circumstances prevailing in 2013 or 2015, prior to the pronouncement of **Hindustan Construction** (supra) in 2020. The question of the correct legal interpretation of the unamended Section 36, as subsequently declared by the Hon'ble Supreme Court, is distinct from the question of the remedy that was actually available to an award-holder during the period when the earlier judicial interpretation held the field. The answer to one question cannot, by itself, be determinative of the other.

26. Insofar as the period commencing from 23.10.2015 is concerned, the position emerges directly from **Kochi Cricket** (supra), without the necessity of invoking the subsequent judgment in **Hindustan Construction** (supra). Since the present proceedings were pending on 23.10.2015, the substituted Section 36 governed their enforcement. Under Section 36(2), the mere pendency of an application under Section 34 did not render the award unenforceable; enforcement could be stayed only upon an express order passed on a separate application seeking such stay. In the absence of any material showing that such an application was made or any order of stay was granted, the award was legally capable of being enforced from 23.10.2015. Accordingly, for the purposes of Article 136 of the Limitation Act, the period of limitation commenced from 23.10.2015.

27. During the period from 24.06.2013 to 22.10.2015, the law declared in **National Aluminium** (supra) and the decisions following it held the field and was binding upon all Courts by

virtue of Article 141 of the Constitution. Consequently, an application seeking enforcement of the award during the said period would have been governed by that prevailing interpretation of Section 36 and would have encountered the embargo recognised therein. The subsequent declaration in **Hindustan Construction** (supra) that the earlier line of decisions was rendered per incuriam does not retrospectively alter the legal remedy that was available to the award-holder during the period when those decisions constituted the binding law. The subsequent correction of the legal position, therefore, cannot be construed as having conferred upon the award-holder a remedy which, under the law then prevailing and binding on the Courts, could not have been effectively pursued.

28. The distinction assumes significance in the context of Article 136 of the Limitation Act, which prescribes the commencement of limitation from the date on which the decree or order "becomes enforceable", and not necessarily from the date on which it is passed. The Hon'ble Supreme Court in **Deep Chand v. Mohan Lal**, (2000) 6 SCC 259, **Hameed Joharan v. Abdul Salam**, (2001) 7 SCC 573, and **Akkayanaicker v. A.A.A. Kotchadainaidu**, (2004) 12 SCC 469, has explained that the relevant date is the point in time from which the decree-holder acquires the legal right and practical ability to enforce the decree. Although those cases dealt with impediments arising from the terms of the respective decrees, the underlying principle is equally relevant where enforcement is rendered unavailable by a binding rule of law. In the present case, during the period from 24.06.2013 to 22.10.2015, the prevailing and binding interpretation of Section 36 placed an absolute embargo upon enforcement of the award during the pendency of the Section 34 proceedings. Thus, the award-holder could not have effectively invoked the process of execution during that period. The principle embodied in the maxim *lex non cogit ad impossibilia* (the law does not compel a person to do the impossible) also supports the conclusion that a period during which enforcement was legally unavailable ought not to be reckoned as a period during which the award was capable of being enforced for the purposes of Article 136 of the Limitation Act.

29. The aforesaid conclusion also draws support, by way of analogy, from Section 15(1) of the Limitation Act, 1963, which excludes from computation the period during which execution of a decree remains stayed by an injunction or order. The provision reflects the broader principle that a period during which the enforcement of an adjudicated right is legally interdicted should not operate to the prejudice of the person entitled to enforce it. In the present case, from 24.06.2013 to 22.10.2015, the award-holder was governed by a binding judicial interpretation of Section 36 under which enforcement of the award during the pendency of proceedings under

Section 34 stood effectively foreclosed. The subsequent declaration in **Hindustan Construction** (supra), holding that the earlier interpretation did not correctly state the law, cannot retrospectively render the remedy of execution practically available during the period when such remedy stood judicially barred. Accordingly, the said period deserves to be excluded while determining the date on which the award became enforceable for the purposes of Article 136 of the Limitation Act.

30. The aforesaid construction is also consistent with the object underlying the 2015 Amendment. The 246th Report of the Law Commission of India had specifically noticed that the then prevailing regime of automatic stay upon the filing of a Section 34 application had "virtually paralyzed" the successful party from realizing the benefit of the award. If limitation under Article 136 were nevertheless permitted to run during the very period in which enforcement of the award was judicially foreclosed, the award-holder could be deprived of the fruits of an award solely by the passage of time during the pendency of the challenge. Such an interpretation could lead to a situation where, notwithstanding the ultimate rejection of the Section 34 challenge and the consequent affirmation of the award, the award becomes incapable of execution merely because the challenge remained pending for more than twelve years, without any corresponding default on the part of the award-holder. The consequence would be particularly incongruous where the delay in disposal of the Section 34 proceedings is attributable, wholly or substantially, to the award-debtor itself. Such a construction would permit the pendency of a statutory challenge to operate, by mere efflux of time, as a means of defeating an otherwise enforceable award, which would be inconsistent with the legislative object underlying the amendments to Sections 34 and 36 and cannot be readily attributed to Parliament in the absence of clear language to that effect.

31. The aforesaid interpretation also accords with the underlying object of the law of limitation, which is to require diligence in pursuing enforceable rights and to prevent stale claims, rather than to defeat a right during a period when its enforcement is legally unavailable. Where the right in question remains subject to adjudication in proceedings lawfully instituted and pursued before the competent forum, it would be incongruous to construe limitation in a manner that extinguishes the remedy of enforcement before the adjudicatory process itself has culminated. Where the language of a statutory provision reasonably admits of more than one interpretation, the construction resulting in an anomalous or inequitable consequence, and frustrating the scheme of the statute, is ordinarily to be avoided. In the present case, permitting the period under Article 136 to expire while the challenge to the award remained pending, and while enforcement was governed by the prevailing legal regime,

would result in the award-holder losing the remedy of execution without any default attributable to it. Such a consequence, in the absence of clear statutory language compelling it, cannot be regarded as consistent with the scheme of Sections 34 and 36 of the Arbitration Act read with Article 136 of the Limitation Act.

32. This Court is conscious that equitable considerations or mere hardship cannot, by themselves, furnish a ground for extending or altering a period of limitation prescribed by statute. The principle of limitation, however, operates on the premise that the remedy sought to be exercised was legally available to the party during the period sought to be computed. In the present case, the award-holder cannot be said to have remained inactive or negligent during the period in question; rather, enforcement of the award was governed by a binding judicial interpretation which rendered such enforcement unavailable during the pendency of the Section 34 proceedings. The period during which the remedy stood so foreclosed, therefore, stands on a different footing from a case where an enforceable right was available but was not pursued. To reckon that period against the award-holder would, in substance, attribute to it a failure to exercise a remedy which the Courts, bound by the prevailing law, were not competent to permit.

33. For the reasons recorded hereinabove, this Court holds that the arbitral award became enforceable, for the purposes of Section 36(2) of the Arbitration Act, with effect from 23.10.2015, when the substituted provision came into force and operated in terms of the law declared in **Kochi Cricket** (supra). The period from 24.06.2013 to 22.10.2015, during which enforcement of the award stood effectively foreclosed by the binding judicial interpretation then prevailing, cannot be reckoned for determining the commencement of limitation under Article 136 of the Limitation Act. Accordingly, the period of twelve years prescribed under Article 136 commenced from 23.10.2015 and would expire on 23.10.2027. Since the execution petition has been instituted before expiry of the said period, the same is within limitation. The objection raised by the award-debtor on the ground of limitation is, therefore, rejected.

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44. Accordingly, the impugned order dated 17.03.2026 passed by the learned Commercial Court (District Judge Level), Nava Raipur, in Execution Case No.35 of 2025, insofar as it rejects the objections raised by the petitioner, does not call for interference in the exercise of the supervisory jurisdiction of this Court. The petition is accordingly **dismissed**.

7. Since the facts and issue involved in the present case is identical to that of **WP2227 No.590/2026**, this appeal may also be dismissed in the same terms.

8. Having considered the rival submissions made by learned counsel for the petitioner and having gone through the materials on record, it is evident that the facts and issue involved in this petition is identical to **WP227 No. 590/2026,** this Court deems it appropriate not to take a view other than what has been taken in **WP227 No. 590/2026,** decided on 14.05.2026.

9. Accordingly, the present writ petition is **dismissed** in terms of the order dated 14.05.2026 passed by this Court in **WP227 No. 590/2026.**

Sd/-

(Ravindra Kumar Agrawal)
Judge

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