

IN BRIEF

DO INDIAN COURTS NOW HAVE THE POWER TO MODIFY ARBITRAL AWARDS?



Introduction

The recent judgement of the Supreme Court in *Gayatri Balasamy v. ISG Novasoft Technologies*¹ (Gayatri Balasamy) has sparked a huge debate amongst the legal circle regarding the power vested in the “Court” to modify an arbitral award. This judgment marks a shift in the balance between autonomy of arbitral proceedings and the extent of judicial intervention.

The Journey So Far

Section 34 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) provides for setting aside an arbitral award, on a limited set of grounds. The Supreme Court has consistently held that the arbitral tribunal is the master of evidence and therefore the scope of judicial intervention is confined to the limited grounds under Section 34 of the Arbitration Act. Section 37 provides for an appeal against an order passed under Section 34, and the authority of the courts under Sections 34 and 37 of the Arbitration Act is limited by the silhouette of Section 34. The Supreme Court in *ONGC Limited v. Saw Pipes Limited*² has laid down the circumstances under which the court can interfere with an arbitral award.³

Pertinently, the Legislature has deliberately removed Sections 15 and 16 of the Arbitration Act, which permitted the Courts to modify an award making the intention of the legislature clear as regards the power of the courts to modify arbitral awards.⁴

Prior to *Gayatri Balasamy*, the Supreme Court in *Project Director, NHAI v. M Hakeem*⁵, had the occasion to decide whether the power to set aside an arbitral award included the power to modify an arbitral award. The Supreme Court held that “if one were to include the power to modify an award in Section 34, one would be crossing the Lakshman Rekha and doing what, according to the justice of a case, ought to be done.” The Supreme Court further held that the award can either be set aside or remanded to the arbitral tribunal and that the Parliament very clearly did not intend to make any provision for any power of modification of an award in Section 34 of the Arbitration Act. This judgment led to an anomalous situation where several courts, even where the award was severable, proceeded to set aside the entire award for the reason that a portion of the award was in violation of Section 34. For instance, if the finding on a certain aspect of interest was negative, the courts were setting aside the award in its entirety.

After nearly four years of this judgment, the Supreme Court in the *Gayatri Balasamy* case has once again embarked on examining the legal controversy which rests on whether Indian Courts are jurisdictionally empowered to modify an arbitral award and to what extent.

The Background of the Case

Gayatri Balasamy filed a petition under Section 34 of the Arbitration Act before the Madras High Court, being aggrieved by the quantum of compensation awarded in the arbitral award against her employer, i.e., ISG Novasoft Technologies. The Madras High Court held that the power to modify an award was inherent in Section 34 and modified the award by increasing the amount awarded to Gayatri Balasamy, which was confirmed by the Division Bench of the Madras High Court in an appeal preferred by the employer under Section 37 of the Arbitration Act. On further appeal to the Supreme Court, the matter was referred to a larger bench for consideration of the questions of law relating to the powers of the Court under Sections 34 and 37 of the Arbitration Act to modify an arbitral award. The majority judgment of the Supreme Court was authored by the Hon’ble Chief Justice of India Justice Sanjiv Khanna, which held that the Court has a limited power under

¹ 2025 SCC Online SC 986

² (2003) 5 SCC 705

³ Subsequently, the Legislature amended Section 34 of the Act by amending the Act in 2015, which now more or less provides the very same circumstances as the grounds for

an interference of an arbitral award.

⁴ S.V. Samudram v. State of Karnataka, (2024) 3 SCC 623

⁵ (2021) 9 SCC 1

Sections 34 and 37 of the Arbitration Act to modify the arbitral award. However, the dissenting opinion by Justice K.V. Viswanathan observed that the Court does not have the power to modify the arbitral award under Section 34 and 37 of the Arbitration Act.

An Analysis of the Judgement

Majority View

The Supreme Court has held that the power of judicial review under Section 34 inherently includes a limited power to modify the award within the confines of Section 34. Courts must act with certainty when modifying an award – like a sculptor working with a chisel, needing precision and exactitude⁶. 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). The power should not be exercised where the effect of the order passed by the Court would be to rewrite the award or modify the award on merits⁷, observed the Supreme Court. The Supreme Court has held that the limited power to modify the arbitral award under Section 34 and 37 of the Arbitration Act can be exercised under the following circumstances:

- When the award is severable, by severing the “invalid” portion from the “valid” portion of the award - the power of partial setting aside can be exercised only when the valid and invalid portion can be clearly segregated, particularly in relation to liability and quantum without any correlation between valid and invalid parts. The Supreme Court has added a caveat that not all awards can be severed or segregated into separate silos. The “valid” and “invalid” portion must not be interdependent or intrinsically connected as then the award cannot be set aside in part.
- Correction of any errors – To correct any clerical, computational or typographical errors which appear erroneous on the face of the record, notwithstanding Section 33 of the Arbitration Act, provided that such modification does not necessitate a merits-based evaluation. The Supreme Court has affirmed that the power to rectify manifest errors are inherent to the Court under Section 34 even when not explicitly granted by the legislature.
- Post award interest – Post award interest is inherently future-oriented and depends on facts and circumstances that unfold after the award is issued and therefore courts under Section 34 have the authority to intervene and modify the post-award interest if the facts and circumstances justify such a change. The Court while altering the interest rate must be cautious and mindful not to overstep its role unless there are compelling and well-founded reasons. In exercising this power, the Court is not acting in an appellate capacity but rather under limited authority, as the Act stipulates a standard post-award interest rate.
- Supreme Court’s Power under Article 142- The power under Article 142 can be exercised where it is required and necessary to bring the litigation or dispute to an end and this power should not be exercised where the effect of

order passed would be to rewrite the award or modify the award on merits. This would not only help in ending prolonged litigation but would also save the parties considerable time and expense.

Dissenting View

While this was the majority judgment, it is relevant to take note of Justice K.V. Viswanathan’s dissenting opinion which has held that the power to modify is not a lesser power subsumed in the power to set aside and that the judgment in Hakeem (supra) in so far as it holds that a Section 34 court has no power to modify the award lays down the correct law⁸. The Section 34 Court, unless expressly authorized by law cannot modify or vary the award since it will be tantamount to exercising the power of merits review⁹. Contracting parties will have grave uncertainties as they would not be sure of how the matter will play out when it reaches the apex Court¹⁰. Modification or variation of the award in the absence of an express legislative sanction would be tantamount to courts usurping the power of the arbitrator.¹¹

Pertinently, Justice K.V. Viswanathan has observed that modification and severance are two different concepts and that while modification is not permitted under Section 34, severance of the award falling foul of Section 34 is permissible in exercise of powers under Section 34¹². This “dissenting view” though doesn’t appear to be dissenting in real sense and it affirms the majority view that it is permissible of a court under section 34 to sever the portion of the award which falls foul of Section 34 and validates the other portion which, to a limited extent can be termed as modification of the award. While exercising powers under Section 34, Court cannot change, vary, or qualify “arbitrary awards” as it strikes at the very core and root of the ethos of the arbitration process and will breach a pre-eminent prohibition in the Arbitration Act.¹³

Conclusion

The judgment in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd* has undoubtedly settled the issue with respect to the power of the Court to modify arbitral awards in exercise of its powers under Section 34 and 37 of the Arbitration Act. However, since the power to modify an arbitral award is not expressly stipulated under the Arbitration Act, the Supreme Court has cautiously circumscribed this power with reference to the existing legal framework to ensure that the objective of the Arbitration Act is not defeated. However, it remains to be seen if such judicial intervention will undermine the effectiveness of the arbitration process given the uncertainties that may follow.

⁶ Para 56 of Gayatri Balasamy
⁷ Para 84 of Gayatri Balasamy
⁸ Para 157 of Gayatri Balasamy
⁹ Para 89 of Gayatri Balasamy

¹⁰ Para 144 of Gayatri Balasamy
¹¹ Para 90 of Gayatri Balasamy
¹² Para 157 of Gayatri Balasamy
¹³ Para 113 of Gayatri Balasamy

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