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Gayatri Balaswamy v. ISG Novasoft Technologies Ltd.

(2025 INSC 605)

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Introduction

The Hon'ble Supreme Court of India in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* adjudicated on a question that was pending for a long time – whether the Courts are jurisdictionally empowered to modify arbitral awards under the Arbitration and Conciliation Act, 1996 ("Act") and if yes, to what extent. In a 4:1 majority judgement, authored by Hon'ble Justice Sanjiv Khanna, the Court held that it only has limited power to modify arbitral awards under the Act. It held that the Courts which have the power to set aside the awards under the Act also have the power to modify the award, but only in limited circumstances. This upholds the objective of the Act, which stipulates minimal judicial intervention. However, the sole dissenting judgement authored by Hon'ble Justice K.V. Viswanathan held that Section 34 does not allow the Courts to modify an arbitral award. He further held that even Article 142 of the Constitution of India, 1949, cannot be invoked to modify an arbitral award.

Factual Background

The appellant herein, i.e., Gayatri Balasamy, was an employee with the respondent herein, i.e., ISG Novasoft Technologies Ltd., and was appointed as the Vice President in the M&A Integration Strategy department. In 2006, she resigned, citing sexual harassment against the CEO. However, the same was not accepted. Instead, she was issued three termination letters in the course of one year. Later, she lodged a criminal complaint under the erstwhile Indian Penal Code, 1860, and the Tamil Nadu Prohibition of Women Act, 1998. The matter reached

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the Supreme Court, where it was referred to arbitration, in which the appellant was awarded Rs. 2 crore by the Arbitral Tribunal. Aggrieved by the same, Gayatri Balasamy moved the High Court of Madras to set aside the award, stating that all her issues were not considered by the Arbitral Tribunal.

The High Court of Madras modified the award of the Tribunal by adding compensation of Rs. 1.6 crore in addition to the Rs. 2 crore award. The award was then modified by the Division Bench of the Madras High Court, stating that the compensation awarded was excessive and did not have any arithmetic logic. The compensation was thereby reduced from Rs. 1.6 crore to Rs. 50,000. Aggrieved by the same, Gayatri Balasamy moved the Hon'ble Apex Court through a Special Leave Petition (SLP).

Proceedings before the Hon'ble Supreme Court & Issues Framed

The case was first heard by a three-judge bench which, via an order dated 20th February 2024, directed that the SLP be placed before the Chief Justice of India for passing appropriate orders. The constitutional bench had before it the following issues –

1. Whether Sections 34 and 37 of the Act empower the Courts to modify an arbitral award?
2. If the Courts have the power to modify arbitral awards, whether such power be exercised only when the award is severable and a part of it can be modified?
3. Whether the power to set aside an award, being a larger power under Section 34 includes the power to modify, and if yes, to what extent?
4. Whether the power to modify an award can be read into the power to set aside an award under Section 34 of the Act?
5. Whether this Court has, in several previous judgements related to arbitral awards, either modified or accepted the modification under consideration?

Decision

The judgement authored by the then Chief Justice of India, Hon'ble Justice Sanjiv Khanna, held that the Courts have the power to modify arbitral awards but only in limited circumstances. The Court expressly has laid out the limited circumstances as detailed below.

The Court held that an award can be modified when the award is severable, where the "invalid" portion of the award can be severed from the "valid" portion. It held that the authority to sever is an inherent power of the Court while setting aside the award. The Court applied the doctrine of *omne majus continet in se minu*s (greater power includes the lesser) applies where the power to set aside the award includes the power to modify in part rather than its entirety. However, if the "valid" and "invalid" are legally and practically inseparable, then an award cannot be modified.

The Court held that when there is any clerical, computational, or typographical errors that are erroneous on the face of the record, then an award can be modified. Section 33 of the Act empowers an arbitrator to correct an arbitral award on limited grounds, including when there are computational, typographic, or clerical errors. It held that a Court reviewing an award under Section 33 has the authority to rectify the aforesaid errors provided such modification does not result in a need for a merit-based evaluation.

The next issue before the Court was whether it held the power to declare or modify interest, and especially post-award interest? It held in the affirmative and stated that post-award interest can be modified in certain circumstances. It held that arbitral tribunals, while awarding interest, cannot foresee future issues and circumstances that may arise, and hence the Court has power under Section 34 to modify post-award interest if the facts and circumstances justify the same. However, the Courts must be cautious not to modify unless there are well-founded reasons to do so. It has limited authority.

With respect to invoking Article 142 of the Constitution of India, it held that the power has to be exercised with great care and caution and within the limits of constitutional power. It held that the power must not be used where it would result in rewriting the award or modification of the award on merits. However, when it is necessary, it can be invoked, which would result in the end of protracted litigation and saving of time and money of the parties.

Analysis

The concept of modification of arbitral awards is one riddled with conflicting and divergent opinions of the Court. The Court, in the initial part of the judgement, has listed out previous conflicting judgements of the Apex Court relating to the modification of arbitral awards. In *Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India*[2], the Apex Court held that the Court cannot interfere merely because a "judicial approach" is lacking by the arbitrator. Further, in *Project Director, NHAI v. M. Hakeem*[3], the Apex Court held that Section 34 and Section 37 of the Act do not allow modification of arbitral awards. However, in *Tata Hyrdoelectric Power Supply Co. Ltd and Ors. v. Union of India*[4], the Court modified the effective date of application of the interest rate. Further in *Oil and Natural Gas Corporation Limited v. Western GECO International Limited*[5], it held that an award may be modified or set aside if it fails to draw an inference that is manifestly untenable and results in gross miscarriage of justice. Hence, there are divergent opinions on whether the Court has the power to modify arbitral awards, which led to the current judgement where the Court upheld the limited power to modify awards.

It can be observed that the Courts have consistently highlighted that it has to be cautious when it is dealing with a challenge to an award under Section 34 of the Act. In jurisdictions such as Singapore, the UK, and Australia, their respective legislations permit modification of awards in limited circumstances. It is to be noted that the model UNICTRAL law on which this Act is based does not contemplate modification of awards. Interestingly, the erstwhile Arbitration Act, 1940 provided the power to the Courts to modify awards under certain specific circumstances under Section 15 of the Act. However, on the enactment of the 1996 Act, which was based on the UNICTRAL law, this approach shifted since the model law did not have provisions for the modification of the award. Thus, it can be stated that the legislature has deliberately not incorporated a section akin to Section 15 of the erstwhile 1940 Act, which reiterates its objective to minimize judicial intervention.

The Court, through this judgement, will lead to certain positive outcomes. With the power to modify awards, it would certainly result in reducing re-arbitration as the Courts themselves

[2] (2019) 15 SCC 131
[3] (2021) 9 SCC 1
[4] (2003) 4 SCC 172
[5] (2014) 9 SCC 263

can correct errors, resulting in lesser delays. This would also make the arbitrators more cautious while drafting awards in anticipation of Court intervention. However, the judgement does not specify in detail the limited circumstances in which an award can be modified. It states that it can be modified when there is an error apparent on the face of the record. However, this has not been detailed and left open-ended. The judgement also specifies that the Court has the power to modify any manifest errors, provided it does not result in a merit-based evaluation. However, this has not been defined, which may result in judicial overreach by correcting errors that may be merit-based. Separating "valid" and "invalid" claims also would become a challenge, as arbitral awards usually award a consolidated amount. The Courts would then have to go into a fact-finding exercise to separate these claims, potentially resulting in delays which defeat the purpose of the Act.

The silence of the legislature not to invoke a section like Section 15 of the Arbitration Act, 1940, which expressly allowed for modification in the current act, in my opinion, is a clear signal that the Courts do not have power to interfere with awards otherwise than it is expressly provided under the Act. The silence of the legislature must be considered as a prohibition. It is important to note that setting aside and modification of the award are two different concepts. While the former does not delve into judicial reasoning, the latter inevitably involves going into the merits of the award, which defeats the objective of the Act. The Courts hence have to tread carefully when they modify awards so as not to interfere or defeat the purpose for which the Act was enacted.

Conclusion

The judgement has held that limited modification of arbitral awards is allowed and necessary by Courts, which is a significant and conclusive shift from the catena of judgements that gave out divergent opinions regarding the same. The judgement has paved the way for the Courts to intervene and modify awards while also respecting arbitral autonomy by allowing it to do so only in limited circumstances. This is a welcome change, which, if used effectively, will significantly reduce re-arbitration or fresh litigation. The legislature must also take this into account and take legislative action in order to reduce the ambiguity with respect to the

modification of arbitral awards. Going forward, it would be interesting to see how Courts balance in order not to hamper arbitral autonomy and the objectives the Act seeks to achieve.