
JUDICIAL MODIFICATION OF ARBITRAL AWARDS IN INDIA: A CASE NOTE ON GAYATRI BALASAMY V. M/S ISG NOVASOFT TECHNOLOGIES LTD.

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ABSTRACT

This case note discusses the decision of the Constitution Bench in the case of *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* and highlights the deviation from the narrow perspective taken by the Court in *NHAI v. M. Hakeem*. The case note discusses the majority's acceptance of the limited power to amend arbitral awards according to Section 34 and Section 37 of the Arbitration and Conciliation Act, 1996. It further compares the majority view with the textual perspective adopted by the dissenting opinion. The note argues that while the judgment addresses practical concerns of procedural efficiency, it also raises questions regarding statutory interpretation and judicial intervention. The paper further examines the implications of the decision for the future development of arbitration law in India.

Keywords: Arbitration and Conciliation Act, 1996; Section 34; Arbitral Awards; Judicial Modification; Judicial Intervention; Arbitral Autonomy; *Gayatri Balasamy*; *NHAI v. M. Hakeem*.

I. INTRODUCTION

The relationship between judicial oversight and arbitral autonomy has remained one of the most debated issues in Indian arbitration law. The Arbitration and Conciliation Act, 1996,¹ formulated on the basis of UNCITRAL Model Law,² was meant to reduce judicial interference, maintain party autonomy, and ensure that arbitral awards were binding. However, the Indian courts have had to face questions regarding the scope of their power under Section 34 in setting aside an award without modifying it.

*NHAI v. M. Hakeem*³ became the controlling authority regarding this point for many years. The Supreme Court of India interpreted Section 34 in a restrictive manner, thereby holding that courts could only set aside arbitral awards and had no jurisdiction to modify them. Although such a practice facilitated limited judicial interference, it posed certain difficulties in situations where there were minor flaws in awards that needed fixing without conducting further arbitration proceedings.

In *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*⁴, a five-judge Constitution Bench, by a 4:1 majority, established that courts had limited jurisdiction to amend arbitral awards under Sections 34 and 37 of the Act. This paper presents the facts of the case, highlights the court's analysis and arguments, and explores some of its potential implications, focusing particularly on how the judgment breaks new ground compared to *M. Hakeem*.

II. FACTS OF THE CASE

The present case, that of *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, emerged as a result of the employment relationship between Gayatri Balasamy and ISG Novasoft Technologies Limited ("ISG"). Gayatri Balasamy was appointed as Vice President (M&A Integration Strategy) at ISG on 27 April 2006. Soon after, serious disputes arose between Ms. Balasamy and the management of the company.

On 24 July 2006, Ms. Gayatri Balasamy resigned from the company, claiming that she was sexually harassed by Mr. Krishna Srinivasan who served as Chief Executive Officer of the

¹ The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

² UNCITRAL Model Law on International Commercial Arbitration, U.N. Doc. A/40/17, annex I (1985), amended by U.N. Doc. A/61/17, annex I (2006).

³ *National Highways Authority of India v. M. Hakeem*, (2021) 9 SCC 1 (India).

⁴ *Gayatri Balasamy v. M/S ISG Novasoft Technologies Ltd.*, 2025 INSC 605 (India).

company. Following her resignation, disputes concerning her employment status arose between both parties and resulted in the issuance of three separate termination notices by ISG against Ms. Balasamy. Ms. Balasamy lodged criminal cases against the CEO of the company under the Indian Penal Code, 1860⁵ and the Tamil Nadu Prohibition of Harassment of Women Act, 1998.⁶ In return, ISG and Srinivasan filed criminal cases against Ms. Balasamy accusing her of defamation and extortion.

Following various litigations, the Supreme Court of India finally referred the matter to arbitration to be settled completely. The arbitral tribunal, partially ruling in favour of Balasamy, ordered ISG to pay a compensation amount of INR 2 crore. Displeased with such compensation amount as well as with other rejected claims, Balasamy filed an application before the Madras High Court challenging the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996.⁷

The Single Judge increased the compensation amount by another INR 1.6 crore. Upon appeal, the Division Bench drastically reduced the compensation amount to INR 50,000, stating that the modification carried out by the Single Judge was “excessive and onerous.” Balasamy challenged this decision before the Supreme Court of India. In view of conflicting precedents relating to the extent of the power of modification of arbitral awards under Sections 34 and 37 of the Act, a three-judge bench in February 2023 decided to refer the matter to a larger bench. Thus, a Constitution Bench consisting of five judges was constituted in January 2024, headed by Chief Justice of India, Sanjiv Khanna.

III. ISSUES BEFORE THE COURT

Considering the fact that there were different judicial interpretations about the extent of powers vested in courts with regard to Section 34 of the Arbitration and Conciliation Act, 1996, the Constitution Bench had to decide on the extent of judicial powers in respect of arbitral awards. It framed the following four important questions of law:

1. Whether the court has powers to modify an arbitral award under Section 34 and/or 37 of the

⁵ The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India) (repealed 2024) (applicable as facts arose in 2006).

⁶ The Tamil Nadu Prohibition of Harassment of Women Act, 1998 (Tamil Nadu Act No. 46 of 1998) (India).

⁷ The Arbitration and Conciliation Act, 1996, § 34, No. 26, Acts of Parliament, 1996 (India).

Act;

2. If the said power is available, whether it must be exercised only in case of an award which is not severable;
3. Whether setting aside an arbitral award is wider than modifying or varying the award and, if so, to what extent; and
4. Whether an implied power to modify an arbitral award arises under Section 34 of the Act.

IV. LEGAL BACKGROUND AND CONFLICTING PRECEDENTS

Indian law concerning arbitration, before the landmark judgment of the Constitution Bench in the case of *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, exhibited a great deal of inconsistency when it came to the power to modify arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996.

It is for the first time in the case of *McDermott International Inc. v. Burn Standard Co. Ltd.*⁸, that the strict approach was adopted by the Supreme Court wherein it was observed that under Section 34 of the Act, the power of courts does not extend to modifying or altering arbitral awards, but only setting them aside. The point stressed here was that the 1996 Act had consciously limited the scope of interference by courts in the arbitral process.

The same position was reiterated in *NHAI v. M. Hakeem*⁹, wherein a three-judge bench adopted a strict approach to Section 34 and declared that the absence of statutory provisions for modification was a deliberate choice of Parliament. The Supreme Court pointed out that unlike the previous Arbitration Act, 1940, under which courts enjoyed broader powers of alteration of arbitral awards, Parliament deliberately omitted such powers in the 1996 Act.

Despite the decisions in *McDermott* and *M. Hakeem*, there was persistent judicial inconsistency at the High Court level where courts in certain cases continued to modify arbitral awards by severing invalid portions, correcting errors, and modifying interest rates.

⁸ *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181 (India).

⁹ *National Highways Authority of India v. M. Hakeem*, (2021) 9 SCC 1, ¶¶ 18–22 (India). See also The Arbitration Act, 1940, No. 10, Acts of Parliament, 1940 (India) (repealed).

Such conflict in judicial doctrine and practice left Indian arbitration jurisprudence in a considerable state of confusion with respect to the modification powers under Sections 34 and 37. It was in this context that the Constitution Bench in *Gayatri Balasamy* was called upon to resolve the issue.

V. THE MAJORITY OPINION

Chief Justice Sanjiv Khanna, delivering the judgment of a majority of four judges in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, held that the power to modify arbitral awards is a limited one, conferred by Sections 34 and 37 of the Arbitration and Conciliation Act, 1996. However, the majority made it clear that this limited power cannot be exercised by the court as if it were an appellate authority reviewing arbitral awards.

According to the Court, there are four specific instances in which modification of an award can be considered:

(i) Severability of the Award

The majority noted that when a portion of an arbitral award found to be invalid is severable from the rest of the award, courts may sever the invalid portion but retain the remaining part of the award. In this context, the majority invoked the maxim *omne majus continet in se minus*, meaning that the greater power includes the lesser. According to the majority, as Section 34 provides for setting aside of the entire award, it necessarily follows that this power would include the lesser power of partial setting aside or severing of the award.

Moreover, reliance was placed on the proviso to Section 34(2)(a)(iv),¹⁰ where an award might deal with matters outside the scope of arbitration.

(ii) Correction of Manifest Errors

The majority also recognised the inherent power of courts to correct manifest errors apparent from the face of the record, including clerical, typographical, or computational errors. The Court referred to *Grindlays Bank Ltd. v. Central Government Industrial Tribunal*¹¹, wherein it

¹⁰ The Arbitration and Conciliation Act, 1996, § 34(2)(a)(iv), No. 26, Acts of Parliament, 1996 (India).

¹¹ *Grindlays Bank Ltd. v. Central Government Industrial Tribunal*, (1980) 1 SCC 420 (India).

was stated that procedural justice allows correction of patent errors which does not entail re-examination of the evidence or reconsideration of the dispute.

(iii) Modification of Post-Award Interest

The Court also recognised the limited power of modifying post-award interest, especially where either of the following two conditions is met: a portion of the award has been set aside; or the interest awarded is excessive. Such an exercise of power is only corrective in nature and not appellate in character.

(iv) Exercise of Powers under Article 142

The majority further recognised the plenary powers of the Supreme Court under Article 142 of the Constitution¹² to render complete justice. However, such powers were stated to be available only to the Supreme Court and not to the High Courts exercising jurisdiction under Sections 34 and 37 of the Act. Moreover, the majority emphasised that such powers should be exercised sparingly and with caution.

More importantly, the majority pointed out that recognising a limited power of modification does not turn Section 34 proceedings into an appellate procedure. Courts cannot conduct a fresh appraisal of the evidence, substitute the arbitral tribunal's findings, or intervene on the ground that some other interpretation seems more appropriate.

VI. THE DISSENTING OPINION

Justice K.V. Viswanathan, in his dissenting opinion¹³ rejected the majority's interpretation of Section 34 of the Arbitration and Conciliation Act, 1996. He took a purely textual approach and argued that courts cannot arrogate to themselves powers which have been deliberately withheld by the legislature. It was observed that in contrast to the Arbitration Act, 1940,¹⁴ the 1996 Act did not grant any powers to courts to modify arbitral awards.

The dissent also objected to the interpretation given by the majority regarding the interpretation of the proviso to Section 34(2)(a)(iv). It was pointed out that while the severance of an invalid

¹² India Const. art. 142.

¹³ *Gayatri Balasamy v. M/S ISG Novasoft Technologies Ltd.*, 2025 INSC 605 (India) (Viswanathan, J., dissenting).

¹⁴ The Arbitration Act, 1940, No. 10, Acts of Parliament, 1940 (India) (repealed).

portion of an award may lead to deletion of such an invalid portion, modification of an award would lead to alteration of the conclusions reached by the tribunal.

Finally, it was pointed out that India being a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards¹⁵ means only two options were available to the court under the Convention: recognition and enforcement of foreign awards, or refusal to recognise or enforce such awards.

Accordingly, Justice Viswanathan was of the view that the jurisdiction exercised under Section 34 is confined to two courses of action, namely, either upholding the arbitral award or setting it aside.

VII. CRITICAL ANALYSIS

The majority opinion in this case can be considered a pragmatic attempt to resolve a significant procedural issue in arbitration law. Under the rigid stance adopted in *M. Hakeem*, even trivial or isolated flaws in an otherwise valid arbitral award could force the parties to recommence arbitral proceedings, resulting in unnecessary delay and expense. By recognising the limited power of modification, the Court sought to enhance procedural efficiency without turning Section 34 proceedings into appeal proceedings.

Nonetheless, this decision gives rise to certain questions relating to statutory interpretation. The Arbitration and Conciliation Act, 1996 does not expressly confer any right to modify an arbitral award, and Section 5 only permits judicial intervention where explicitly provided for in the Act. Consequently, the majority relied on implied powers as opposed to express powers conferred by legislation. This lack of a legislative basis may create problems of certainty and predictability, especially in relation to international commercial parties.

Comparatively, jurisdictions such as the United Kingdom¹⁶ and Singapore¹⁷ have enacted legislation which allows limited modification of arbitral awards. However, in India, such power has been attained by way of judicial interpretation. This reliance on implied powers, rather than

¹⁵ Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38 [hereinafter New York Convention].

¹⁶ Arbitration Act 1996, c. 23, § 69 (UK) (permitting limited appeals on questions of law arising from arbitral awards).

¹⁷ International Arbitration Act 1994 (Rev. Ed. 2020), § 24, First Schedule art. 34 (Sing.).

statutory text, may undermine legal certainty for international commercial parties who expect a rules-based framework.

On the other hand, the majority sought to prevent unwarranted interference by limiting the right to modify only to cases of severance of an invalid portion, correction of clerical or computational error, modification of post-award interest, and exceptional application of Article 142. The Court made it clear that reassessment of the evidence and substitution of the tribunal's reasoning will not be allowed.

With regard to Article 142, however, courts should exercise caution. Even though the Court confined its application to exceptional cases, the very nature of this provision makes it prone to uncertainty in terms of its future application. Courts should ensure that Article 142 does not become a residual power to expand the scope of judicial intervention.

VIII. IMPLICATIONS FOR INDIAN ARBITRATION LAW

The judgment in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* has some significant implications for the development of Indian arbitration law.

First, the judgment settles the long debate about the extent of judicial powers under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996. The judgment acknowledges that the courts have limited power to modify arbitral awards in certain circumstances.

Second, the judgment is likely to increase procedural efficiency. In view of the stringent approach taken in *NHAI v. M. Hakeem*, parties used to seek annulment of awards even for trivial errors. This resulted in costly and lengthy re-arbitration process. The acknowledgement of limited modification powers can help avoid this situation.

Third, the judgment calls for legislative reforms. The issue having arisen because of statutory ambiguity and judicial inconsistencies, Parliament can consider amendment of the Arbitration and Conciliation Act, 1996 to explicitly provide the scope of judicial powers to modify arbitral awards, similar to the United Kingdom and Singapore.¹⁸

¹⁸ Law Commission of India, Amendments to the Arbitration and Conciliation Act 1996, Report No. 246 (Aug. 2014).

IX. CONCLUSION

The judgment in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* marks a significant development in Indian arbitration jurisprudence. It creates an exception to the rigid principles laid down in *NHAI v. M. Hakeem*.

While the majority took a pragmatic approach in allowing intervention in cases of minor/severable errors, the dissent adopted a strict textual approach, emphasizing the need for strictly adhering to the letter of law and its spirit. The true impact of the judgment will depend on how the four types of modifications acknowledged by the Constitution Bench will be interpreted in future cases.

It should, however, be noted that in the final analysis, the judgment reaffirms the need for legislative intervention. While the Constitution Bench settled the point of dispute, certainty in Indian arbitration can only be achieved through legislative means.