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CASE COMMENT: GAYATRI BALASAMY V. ISG NOVASOFT TECHNOLOGIES LTD.

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Citation	2024 SCC Online SC 1681
Court	Supreme Court of India
Bench	CJI Sanjiv Khanna, Justice B.R. Gavai, Justice P.V. Sanjay Kumar, Justice K.V. Viswanathan, Justice Augustine George Masih
Parties	Appellant – Gayatri Balasamy, Former Vice President (M &A Integration Strategy) at ISG Novasoft Technology Ltd. Respondent- ISG Novasoft Technology Ltd.

INTRODUCTION:

This is a landmark case of the Supreme Court of India dealing with the scope of Judicial power to modify arbitral awards under the Arbitration and Conciliation Act, 1996¹. Our Arbitration Law is based on the principles of minimal judicial intervention, party autonomy, and finality of the arbitral awards. When courts are confronted with arbitral awards that are largely valid but suffer from limited defects requiring modifications, the viewpoints of Courts divided into two different standings, where some decisions strictly denied arbitral modification power to rest with the general courts, while other decisions permitted limited alteration in the interest of justice. Here, confusion and uncertainty arose, and therefore, the Supreme Court constituted a Constitutional bench to settle the law over this matter and provide a balance between arbitral autonomy and judicial oversight.

¹ The Arbitration and Conciliation Act, No. 26 of 1996, § 34, Act of Parliament 1996 (India).

Background and Case Facts:

Gayatri Balasamy, Vice President of ISG Novasoft Technology Ltd., tendered her resignation, alleging that she was subjected to sexual harassment by the Chief Executive Officer of the company during her tenure. The Company, however, refused to accept her resignation but subsequently issued multiple termination letters to her. This dispute resulted in the Appellant filing a complaint under IPC, 1860, and the Tamil Nadu Prohibition of Harassment of Women Act, 1988, while the Company also filed a criminal complaint of defamation and extortion against the petitioner. At first, the parties were referred to arbitration, where the arbitral tribunal awarded the Appellant a sum of two crore rupees. The arbitral award was challenged before the Madras High Court under Section 34 of the 1996 Act, where the Single Judge awarded Balasamy an additional 1.6 crore rupees, but it was subsequently reduced by the division bench holding that the Single Judge had exceeded permissible limits of judicial intervention. The appellant then approached the Supreme Court through a special leave petition, where the case was heard by the division bench, which then referred the case to the constitutional bench, as this case involved a crucial question of law.

Issues:

1. “Whether the powers of the Court under Sections 34 and 37 of the 1996 Act will include the power to modify an arbitral award?”
2. “If the power to modify the award is available, whether such power can be exercised only where the award is severable, and a part thereof can be modified?”
3. “Whether the statutory power to set aside an arbitral award inherently includes the power to modify the award, and if so, to what extent?”
4. “Whether the judgment of this Court in *Project Director NHAI vs. M. Hakeem*², followed in *Larsen Air Conditioning and Refrigeration Company vs. Union of India*³, and *SV Samudram vs. State of Karnataka*⁴, lay down the correct law, as other benches of two Judges (in *Vedanta Limited vs. Shenzden Shandong Nuclear Power Construction Company Limited*⁵, *Oriental Structural Engineers Pvt. Ltd. vs. State of Kerala*⁶, and

² (2021) 9 SCC 1

³ (2023) 15 SCC 472

⁴ (2024) 3 SCC 623

⁵ (2019) 11 SSC 465

⁶ (2021) 6 SCC 150

*M.P. Power Generation Co. Ltd. vs. Ansaldo Energia Spa*⁷) and three Judges (in *J.C. Budhraj vs. Chairman, Orissa Mining Corporation Ltd.*⁸, *Tata Hydroelectric Power Supply Co. Ltd. vs. Union of India*⁹, and *Shakti Nath vs. Alpha Tiger Cyprus Investment Ltd.*¹⁰ of this Court have either modified or accepted modification of the arbitral awards under consideration?”

Provisions:

- Section 34 of the 1996 Act allows parties to challenge an arbitral award by filing an application at Court to set it aside under specific circumstances (parties under some incapacity, the arbitration agreement is invalid under the law, the party making the application was not given proper notice of appointment of an arbitrator, and more).
- Section 37 of the 1996 Act empowers the authorised Court to hear appeals from original decrees of the Court passing the order. Section 37(1)(c) specifically mentions setting aside or refusing to set aside an arbitral award under section 34.

Decision:

By a 4: 1 majority, the Bench held that a court does possess limited power to alter an award under Section 34 & 37 of the 1996 Act, which does not violate the principle of party autonomy. However, the Court made it unequivocally clear that this power is exceptional and narrow limited to these four situations: (1) where the invalid part is severable; (2) where there is a manifest clerical or computational error; (3) where post-award interest requires adjustment for equity; and (4) where the Supreme Court exercises its power under Article 142 of the Constitution to secure complete justice. Also, directed that the judges must not reconsider the merits of the dispute. This judgment also recognised the inherent power of the court under Article 142 of the Constitution to modify an award. Justice Viswanathan had a dissenting opinion where he asserted that permitting modification of an arbitral award risks judicial overreach. He stated that the Parliament deliberately omitted modification powers under Section 34 and that the Courts should not be filling legislative gaps based on convenience, as this would alter the legislative framework and party autonomy. It held that the power to modify

⁷ (2018) 16 SCC 661

⁸ (2008) 2 SCC 444

⁹ (2003) 4 SCC 172

¹⁰ (2020) 11 SCC 685

involves the court entering into an adjudication on the merits of the dispute, which is qualitative of an appellate function, whereas the powers under Section 34 are not appellate powers and do not allow for adjudication of the merits of the case.

Reasoning:

- **Interpretation of Section 34-** Section 34, which talks about setting aside of arbitral award, does not expressly prohibit modification; therefore, it does not automatically prohibit a limited corrective jurisdiction of alteration or modification of awards, especially in cases where partial setting aside would rather lead to unnecessary delay, expense, or injustice.
- **Review of judicial landscape before this case-** In this case, the Constitutional Bench overruled the narrower view adopted in *Project Director NHAI vs. M. Hakeem*¹¹, followed in *Larsen Air Conditioning and Refrigeration Company vs. Union of India*, *SV Samudram vs. State of Karnataka*, and similar cases that limited judicial role to setting aside without modification. Cases like *Vedanta Limited vs. Shenzden Shandong Nuclear Power Construction Company Limited*¹², *Oriental Structural Engineers Pvt. Ltd. vs. State of Kerala*¹³, *M.P. Power Generation Co. Ltd. vs. Ansaldo Energia Spa*¹⁴, *J.C. Budhraj vs. Chairman*¹⁵, *Orissa Mining Corporation Ltd.*, *Tata Hydroelectric Power Supply Co. Ltd. vs. Union of India*, and *Shakti Nath vs. Alpha Tiger Cyprus Investment Ltd.* accepted modification of orders; the same was reflected in the present case, but to the extent of limited modification in exceptional and narrowly defined situations.
- **Doctrine of Severability** – This was one of the significant aspects, as the court in this case relied upon the doctrine of severability. The Court held that where an arbitral award contains distinct and independent parts, a Court may sever the invalid portion and uphold the valid remainder. Such severance may, though, amount to modification, but it should not constitute a review of merits in the case. Modification can therefore be applied only where the invalid portion can be separated from the valid portion, and

¹¹ (2021) 9 S.C.C. 1 (India).

¹² (2018) 11 S.C.C. 465 (India).

¹³ (2021) 6 S.C.C. 150 (India).

¹⁴ (2018) 16 S.C.C. 661 (India).

¹⁵ (2008) 2 S.C.C. at 450.

where the separation is impossible, the court cannot modify it and can only set aside the award.

- ***Omne majus continent in se minus***- This maxim states “the greater power includes the lesser power”. Since courts can set aside the award fully or partially, they can also modify the award without setting it aside.
- **Correction of Errors**- Arbitral awards may contain clerical, typographical, or computational errors. In such a case, the Courts are allowed to rectify such obvious mistakes, preventing unnecessary remand or fresh arbitration proceedings.
- **Post-Award Interest** – The Court held that under exceptional cases where the interest rate is manifestly arbitrary, excessive, or contrary to law, the judicial modification of post-award interest may be permissible.
- **Article 142 of the Constitution** – The Supreme Court affirmed, invoking Article 142 in rare cases to modify an arbitral award in order to do complete justice. However, such power has to be exercised with extreme restraint without rewriting the substantive terms of the award.
- **No merits review**–The majority in their decision that modification does not mean reassessment of facts, law, or evidence, or substituting its own reasoning qua the merits of the dispute. Also, modifications under section 34 should not rewrite awards. If the court attempted to act contrary to this, it would violate the foundational principle of arbitration.

CONCLUSION:

Gayatri Balasamy v. ISG Novasoft Technologies Ltd.¹⁶ is a landmark constitutional arbitration judgment that clarifies the scope and limits of judicial powers to modify arbitral awards under Indian Law. The Constitutional Bench of the Supreme Court adopted a middle path embedded within sections 34 and 37 of the 1996 Act, recognizing limited modification powers at the same time, stressing adherence to minimal intervention. Also, this decision draws a constitutional and statutory boundary where the courts may correct, sever, or adjust an award, but may not rewrite it or engage in merits review of the award. This judgment ensures that the function of the judiciary is limited to a corrective mechanism rather than a superior supervisory override,

¹⁶ (2014) 11 S.C.C. 383 (India).

reinforcing arbitral autonomy and finality as the governing principles in the dispute resolution system.

