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Modification of An Arbitral Award: An Analysis

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ABSTRACT

The article aims to provide an insight upon the legal position of the courts under the Section 34 of the Arbitration and Conciliation Act 1996 to modify an arbitral award. It has been a long-standing question about the powers of the arbitrator and the courts to alter an arbitral award. The researcher suggests a balanced approach to such modification of an arbitral award, paving the way forward for the growth of the alternative dispute resolution mechanism in the country.

Keywords: Arbitration, Arbitral Award, Dispute Resolution, 1996.

I. INTRODUCTION

The power of courts to alter an award in arbitration proceedings under Section 34² of 1996 Act, which addresses applications for the setting aside of an arbitral ruling, is one of the long-standing questions. Recently, the Supreme Court, in S.V. Samudram v. State of Karnataka & Anr³, has reiterated the established legal position that the Arbitration and Conciliation Act, 1996 prohibits any attempt to "modify an award" while deciding Sections 34 and 37 petitions.

II. BACKGROUND

The Chief Conservator of Forests' office and residence in Sirsi were to be built in accordance with a contract that was signed between the Karnataka State Public Works Department (respondent) and Mr. S.V. Samudram (appellant) on January 29, 1990. The appellant was to take possession of the site on March 8, 1990, and the work was to be completed by May 6, 1992, or within 18 months (excluding the monsoon season) after the agreement date, according to the Rs. 14,86 lakhs contract. The Claimant-Appellant contended that he was unable to finish the assigned work on time because the PWD department in charge of his work consistently failed to pay him at every turn, and that additional delays resulted from site changes and the delayed delivery of materials needed for the construction.

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² Arbitration and Conciliation Act, 1996

³ [2024] 1 S.C.R. 281

III. ISSUES

Whether there was any legal reasoning for the alteration of the arbitral award made by the learned Civil Judge and subsequently upheld by the Hon'ble Karnataka High Court?

IV. OBSERVATIONS

The Hon'ble Supreme Court made the following observations and held the following:

1. Under Section 34 of the Arbitration and Conciliation Act, 1996 modification of arbitral award is prohibited. The Hon'ble Court observed the findings passed in NHAI vs. Hakeem & Anr⁴ which held that the courts lacked the authority to modify the arbitral award. The only option to cure the defects that were found in the award was to be done by setting aside the arbitral award. The legislature's primary intent is of minimising judicial intervention and due to the lack of a particular provision in the Arbitration Act that permits such modifications lends credibility to this position. Therefore, under the current arbitration law, the Indian courts proper course of action is to set aside the award, in whole or in part.
2. The case was also viewed by the Hon'ble Court from the perspective of being in violation of public policy in regard to Section 34 of the Arbitration and Conciliation Act, 1996. The court rejected the idea that the award would go against public policy and restated the conditions under which such an award could be unconstitutional in India, including, but not limited to, the following:
 - a) In cases where a statute is clearly violated by an award.
 - b) If the arbitrator's decision-making method is not judicial in nature.
 - c) In cases where rulings go against the principles of natural justice.
 - d) In cases where the decision is irrational or unfair.
 - e) A patent violation occurs when an award goes against the substantive law of India or the 1996 Act.
 - f) In cases where an award upsets the Court's morals or violates justice, it is considered to be in breach of Indian interests.
3. Application of Section 34 and 37 of the Arbitration and Conciliation Act, 1996: For its decision, the Hon'ble Court relied on the decision given in Larsen Air Conditioning and

⁴ 2021 SCC Online SC 473

*Refrigeration Company v. Union of India and Others*⁵, which established that the court has very limited and circumscribed authority under Sections 34 and 37 of the Act. Additionally, it was noted that this authority was already present in Section 15 of the previous Arbitration Act, 1940, but Parliament purposefully left it out when passing the current Arbitration Act. The ability to partially or entirely set aside an arbitral award rests with the courts, as the Hon'ble Court has already stated, but only when the requirements set out in Section 34 of the Arbitration Act have been met.

V. ANALYSIS

While Section 34 lays out the procedure for setting aside an arbitral award and Section 37 provides for the filing of appeals against the orders of the Court or Arbitrator, the support of the courts is indispensable for the effective and efficient functioning of the arbitration system.

The Hon'ble Supreme Court has correctly noted and reaffirmed, as mentioned above, that it is illegal to modify arbitral awards under Section 34 of the 1996 Act. Parliament passed this law with the goal of limiting judicial review of arbitral decisions. However, to play the devil's advocate it is pertinent to mention that the report which was submitted by the *Viswanathan Committee*⁶ has given certain recommendations in lieu of modification of arbitral awards. The recommendations state that in "exceptional circumstances" where the grounds for setting aside the arbitral award under Section 34 of the Arbitration Act have been proven there is no need to present fresh evidence and further the report suggests revising the Section 34 of the 1996 Act to give the court the authority to partially modify the arbitral award. By allowing courts to intervene and change or modify the arbitral award, this recommendation hopes to provide quicker settlement. However, another thing to keep in mind is that it makes people question the powers of arbitrators and the finality of the awards passed by them.

VI. CONCLUSION

In conclusion, the Hon'ble Supreme Court has ruled that it is illegal to modify arbitral awards under Section 34 and Section 37 of the Arbitration and Conciliation Act, 1996. The country's future ADR mechanisms necessitate a middle ground that permits the revision of arbitral verdicts under "certain circumstances", with the legislature stepping in and defining these circumstances precisely. This balanced approach is necessary for an effective and robust alternative dispute resolution system.

⁵ 2023 SCC OnLine SC 982

⁶ Viswanathan Committee Report, 2024