



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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Whether a violation of Indian law that does not constitute a fundamental policy be raised as a ground for setting aside the arbitral award?

By: Tisha Sharma, 24th March 2024

In Indian arbitration law, the grounds for setting aside an arbitral award are given in Section 34(2) of the Arbitration and Conciliation Act, 1996 (herein after the act). In the act one of the grounds are related to violation of the public policy of India, it explicitly mentions three specific scenarios: fraud or corruption, violation of specific sections (75 or 81), and contravention of the fundamental policy of Indian law.

The critical question that emerges for our consideration right now is: Can a mere violation of Indian law, not amounting to a breach of the fundamental policy, be a valid ground for setting aside an arbitral award? The answer lies within the statutory framework and judicial interpretations.

Section 34(2) of the act does not explicitly state that the awards should be set aside based solely on the violation of any Indian law. The legislative intent appears to limit the scope of challenges to those situations that seriously affect public policy or crucial legal principles in the Indian legal system. Judicial decisions, especially after the 2015 Amendment, further support this concept. The amendments brought make it very clear which grounds apply to domestic and international arbitrations.

The interpretation and evolution of the terms “public policy of India” and “fundamental policy of Indian law” have been crucial in shaping the scope of arbitration law in the country.

In the landmark case of *Renusagar Power Company Limited v. General Electric Company* (1993), the Supreme Court stated that an arbitral award violating the Foreign Exchange Regulation Act, 1973 (FERA) and disregarding orders of superior courts would violate the

public policy of India and the fundamental policy of Indian law. The court emphasized that a mere violation of law wouldn't be sufficient; there must be an additional element.

More than a decade later the Supreme Court's decisions in *Ssyangyong Engineering and Construction Co. Ltd. v. National Highway Authority of India* (2019) and *Vijay Karia and Ors. v. Prysmian Cavi E Sistemi SRL and Ors.* (2024) clarified the limited scope of the "fundamental policy of Indian law." The court transferred it to the *Renusagar* understanding, focusing on FERA violations and disregarding superior court judgments. The Delhi High Court in *Cruz City 1 Mauritius Holdings v. Unitech Limited* (2015) narrowed the definition further, emphasizing that a mere violation of an enactment does not necessarily breach the fundamental policy of Indian law. This approach was recognized by the Supreme Court in *Vijay Karia*, which emphasized that a violation must involve a breach of a legal principle or legislation so basic to Indian law that it cannot be compromised.

The judgments underscore that "fundamental policy" refers to the core values of India's public policy, encompassing statutes and enduring principles followed by the courts. Importantly, the courts clarified that a breach must extend beyond mere contravention of a law and touch upon the fundamental values and principles forming the bedrock of the nation's legal system. The decisions contribute to a more nuanced understanding of the grounds for challenging arbitral awards, aligning with legislative intent and international practices.

In essence, the current legal situation is that a mere violation of Indian law, without constituting a breach of the fundamental policy, may not be an individual ground for setting aside an arbitral award.