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THE PROJECT DIRECTOR, NATIONAL HIGHWAYS NOS. 45E AND 220, NATIONAL HIGHWAYS AUTHORITY OF INDIA

V.

M. HAKEEM AND ORS.¹

~Parv Pitaliya

Jurisdiction	:	Supreme Court of India
Date of Judgement	:	20 July 2021
Hon'ble Judges/ Coram	:	Rohinton Fali Nariman & B.R Gavai
Legal provisions	:	Section 34 & 37 of the Arbitration and Conciliation Act, 1996

INTRODUCTION

In this case, several petitions were filed and joined together by the Supreme Court which has brought the clear meaning of court powers under section 34 of the Arbitration and Conciliation Act, 1996² (Hereinafter referred to as the Arbitration Act). The apex court held that there should be minimal court intervention in arbitral awards as mentioned under the said statute. Hence this case clears the shadow that revolves around this issue.

FACTS OF THE CASE

A competent authority is the Special District Revenue Office (SDRO) which is authorized to make decisions about the amount that needs to be compensated for the lands that are used under the National Highway Act, of 1956³. The act states that if either party is unhappy with the

¹ The Project Director, NHAI v. M. Hakeem and Anr., AIR 2021 SC 3471.

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

³ The National Highway Act, 1956, No. 48, Acts of Parliament, 1956 (India).

amount the competent authority decides, the matter will go for arbitration. While giving one of the orders for compensation of land authority used the guideline value of said land instead of considering sale deeds of other similar lands. This results in a lower and meager compensation, but the arbitral tribunal held it to be just and fair.

District Court: Due to this order many petitions were filed under section 34 of the arbitration act to modify and overturn the tribunal's decision. After considering the contentions, the court raised the compensation amount to Rs 645 per square meter because the amount decided by the tribunal was meager and also held that section 34 of the act provides for modifying the award, not just the dismissal.

Madras High Court: An Appeal was filed in the high court under section 37 of the Arbitration Act⁴ challenging the order of the lower court. but this court upheld the order given by the lower court and said that the court was competent to modify the arbitral award under the act.

Supreme Court: An appeal was further filed by the National Highway Authority of India for an order to overturn the orders given by lower courts and high courts.

LEGAL ISSUES

- Whether the power of the court to modify an award be included under section 34 of the Arbitration and Conciliation Act, 1996?

CONTENTIONS

❖ Appellants

The counsel for the appellants argued that an appellate court can only overturn or refuse the ruling of the arbitration tribunal and cannot modify the arbitral award under section 34 of the Arbitration Act. The learned counsel contended that the competent authority, set up under section 3(a) of the National Highway Laws (Amendment) Act, 1997 (hereinafter referred to as National Highways Act), determines the amount payable for compensation, which if not acceptable to either NHAI or the land owner, can resort to arbitration by filing an application to the Central Government. The arbitrator is appointed by the Central Government and then the provisions of the Arbitration Act apply subject to the provisions of the National Highways Act. The National Highways Act provides for a speedy procedure by allowing the challenge to arbitral award only

⁴ The Arbitration and Conciliation Act, 1996, § 37, No. 26, Acts of Parliament, 1996 (India).

under section 34 of the Arbitration Act. The power of the appellate court under the said section is not similar to that under the Land Acquisition Act, of 1894⁵. Under section 34 of the said Act, the appellate court can only set aside or remit the award and cannot decide on the merits of the award. The counsel for the appellant referred to Section 15 of the Arbitration Act, of 1940⁶, which explicitly provided the power to amend the awards. Still, the present ACT of 1996 is based on the UNCITRAL Model Law on International Commercial Arbitration, 1985,⁷ which limited the court's power to remit or set aside the arbitral awards.

❖ Respondents

The learned senior counsel for the respondents contended that the NHAI, being a 'State' under Article 12 of the Indian Constitution,⁸ is discriminating against certain individuals/land-owners under Article 14.⁹ The NHAI, as pointed out by the counsel, had given the compensation in certain cases before the concerned court in compliance with the judgment of the learned District Judge and has filed no appeal. Thus, NHAI has filed the appeal against certain District Judge judgments and not against others. Hence the appeals should be dismissed on this ground. They, further argued that if section 34 is interpreted in the manner given by the appellants, then the District Judge can only set aside an award and there would be no remedy against the unjust awards as the fresh arbitration proceeding will be before the same bureaucracy. The counsel relied on the proceedings of the Madras High Court in *Gayatri Balaswamy v ISG Novasoft Technologies Ltd*¹⁰, which distinguished between consensual arbitration and government-appointed arbitrators who only approve compensation granted by other government officials.

JUDGMENT

The Supreme Court, in this case, decided that section 34 of the Arbitration Act provides limited justifications to overrule the arbitral award under sections 34(2) and 34(3). It is based on the UNCITRAL Model and the legislature wants to ensure minimum interference of the court in

⁵ The Land Acquisition Act, 1894, No. 1, Acts of Parliament, 1894 (India).

⁶ The Arbitration Act, 1940, § 15, No. 10, Acts of Parliament, 1940 (India).

⁷ UNCITRAL Model Law on International Commercial Arbitration, 1985.

⁸ INDIA CONST. art. 12.

⁹ INDIA CONST. art. 14.

¹⁰ *Gayatri Balaswamy v. ISG Novasoft Technologies Ltd*, [2014] SCC Online Mad 6568.

arbitration proceedings. The court also relied on *SsangYong Engg & Construction Co. v. NHAI*¹¹ and *Renusagar Co. Ltd. v. General Electric Co.*¹² to conclude that the challenge under Section 34 will not be on the merits of the award. The court also referred to *McDermott International Inc. v. Burn Standard Co.*¹³, which says that the present Arbitration Act only provides the court with limited power of directing and not analyzing the arbitral awards, and can intervene only in cases of violations of principles of natural justice. The court relied upon the Delhi High Court's judgment in *Cybernetics Network Pvt. Ltd v Bisquare Technologies Pvt. Ltd.*¹⁴ in which it was said that the court's jurisdiction under section 34 is not as appellate jurisdiction and thus, cannot deal with cases already settled by the Arbitration Tribunal. The court concluded that section 34 could not be interpreted to include judges' power to amend, revise, change, or modify the awards. The court, thus, stated that legislative intent should be kept in mind while deciding such cases. The legislature had no intent to provide any authority to amend the arbitral awards.

The court also observed that some parties were awarded compensation based on the District Court's judgment and thus, others have been discriminated. The court also observed that the legislature cannot award different compensation on the grounds that a different public purpose is to be achieved.

ANALYSIS OF THE JUDGEMENT

It is a clear position that the arbitral awards under section 34 cannot be modified nor can be challenged on the merits. Thus, the court's power has been restricted. The previous section 15 of the Arbitration Act which provided the power to the court to modify the award was overturned. The legislature wanted to limit the court's intervention in Arbitration proceedings. The case can be interpreted in many ways. Firstly, section 34 prohibits modification of arbitral award and challenging it on the basis of merits. The Supreme Court, in this case, clarified the court's jurisdiction under section 34 and shifted the burden of amending the current law to the legislature. The court proposed to amend the law to include the court's power to modify the award since the parties, dissatisfied with the award, will first appeal in the court which might result in setting aside the award giving rise to fresh arbitration proceedings. Thus, it would be

¹¹ *SsangYong Engg & Construction Co. v. NHAI*, [2019] 4 SCC 163.

¹² *Renusagar Co. Ltd. v. General Electric Co.*, [1994] Supp (1) SCC 644.

¹³ *McDermott International Inc. v. Burn Standard Co.*, [2006] 11 SCC 181.

¹⁴ *Cybernetics Network Pvt. Ltd v Bisquare Technologies Pvt. Ltd.*, 2012 SCC OnLine Del 1155.

practical if courts were given the power to amend the arbitral award. The court also affirmed the earlier observation to keep legislative intent in mind while interpreting a statute.