



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

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

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THE PROJECT DIRECTOR, NHAI V. M HAKEEM (2021)

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I. INTRODUCTION

The Case of Project Director, NHAI v. M. Hakeem & Anr.¹ is one of the landmark judgments in the Arbitration and Conciliation Act, 1996.² Indian arbitration jurisprudence, setting the scope of judicial intervention under Section 34 of this act. The case arose from land acquisitions proceedings under the National Highway Act 1956,³ where landowners challenged arbitral awards determining compensation for their land. The two judge bench comprising Justice R.F. Nariman and Justice B.R.Gavai delivered a landmark judgment and drew the “Lakshman Rekha” on court power and held that courts do not have the power to modify arbitral awards under Section 34.⁴ Courts can only set aside an award on limited grounds provided in the Act. The judgment strengthened India’s pro-arbitration approach and restricted judicial intervention.

II. FACTS OF THE CASE

The case involved multiple appeals relating to land acquisitions for the construction and expansion of national highways under Section 3A of the National Highway Act, 1956.⁵ The authority acquired land from villagers in Tamil Nadu from 2009 onwards.⁶ The competent officer fixes compensation based on government guideline values. The compensation awarded was extremely low, ranging from 46.55

¹The Project Director, Nat'l Highways No. 45E and 220, Nat'l Highways Auth. of India v. M. Hakeem & Anr., (2021) 9 SCC 1 (India).

²Arbitration and Conciliation Act § 34, No. 26 of 1996, INDIA CODE (1996).

³National Highways Act § 3A, No. 48 of 1956, INDIA CODE (1956).

⁴The Project Director, NHAI v. M. Hakeem, (2021) 9 SCC 1, ¶ 23 (India).

⁵National Highways Act § 3A, No. 48 of 1956, INDIA CODE (1956).

⁶The Project Director, NHAI v. M. Hakeem, (2021) 9 SCC 1, ¶ 3 (India).

⁶Id. at ¶ 4.



to 83.15 Rs. Per square meter in some cases. Because of this the landowners sought arbitration under section 3G of this Act. However, the district collector did not significantly increase the compensation and mostly approved the earlier amount fixed by the authority.

The landowner then challenged these arbitral awards in District and Session Courts under section 34 of the Act.⁷ The district court upheld that the compensation amount was inadequate and increased it subsequently. In some cases compensation was raised to Rs. 645 per square meter after considering the sale deeds and market value of the land.⁸ NHAI approached the Madras High Court, but the High Court upheld the District court's decision and relied on the earlier ruling in *Gayatri Balaswamy v. ISG Novasoft Technologies Ltd.*⁹ And held that courts could modify arbitral awards under section 34.¹⁰ Unsatisfied with High Court interpretations, NHAI appealed before the Supreme Court of India to decide whether courts actually have the power to modify arbitral awards under the section 34 of this Act.

III. ISSUE BEFORE THE COURT

The main issue before the Supreme Court of India was whether a court has power under section 34 of the Arbitration and Conciliation Act, 1996 to "set aside" an arbitral includes power to modify or change that award.

The second issue was whether the High court was correct in treating statutory arbitration under the National Highway Act differently from normal consensual arbitration and, on the basis, allowing courts to modify arbitral awards.¹¹

IV. ARGUMENT ADVANCED

A. Arguments of NHAI

The Solicitor General, appearing for NHAI, contended that section 34 of the Act is based on UNCITRAL Model Law,¹² which aims to keep court interference in arbitration to a minimum. He pointed out that the old Arbitration Act, 1940¹³ under section 15 and 16 court had power to modify or correct the awards. However after

⁷Arbitration and Conciliation Act § 34, No. 26 of 1996, INDIA CODE (1996).

⁸Id. at ¶ 5.

⁹Gayatri Balaswamy v. ISG Novasoft Techs. Ltd., 2014 SCC OnLine Mad 6568 (India).

¹⁰The Project Director, NHAI v. M. Hakeem, (2021) 9 SCC 1, ¶ 6 (India).

¹¹The Project Director, NHAI v. M. Hakeem, (2021) 9 SCC 1, ¶ 12 (India).

¹¹Id. at ¶ 13.

¹²UNCITRAL Model Law on Int'l Com. Arb., U.N. Comm'n on Int'l Trade Law, 40th Sess., U.N. Doc. A/40/17, Annex I (June 21, 1985).

¹³Arbitration Act §§ 15, 16, No. 10 of 1940, INDIA CODE (repealed 1996).



the amendment of this act in 1996 this power was intentionally removed by legislatures.

He also argued under section 34, courts can only set aside an arbitral award or send the matter back to the arbitral tribunal under Section 34 (4).¹⁴ Courts can not change or replace arbitration decisions with their own. And the decision made by Madras HC wrongly relied on *Gayatri Balaswamy v. ISG Novasoft Technologies Ltd.* Because the Supreme Court already made it clear that the court cannot re-examine the facts of dispute under Section 34.¹⁵

B. Arguments of the Landowners

On the other side, landowners argued that the arbitration process under NHAI was unfair. They claimed that government appointed arbitrator officers simply approved earlier fixed low compensation without properly considering the evidence.¹⁶ And therefore, if courts were not allowed to modify the awards, landowners would be left without any real remedy.

The landowners further argued that NHAI had accepted enhanced compensation in many similar cases and had not challenged those decisions. Since NHAI is considered "State" under Article 12 of Constitution,¹⁷ it should act fairly, and consistently instead of selectively filing appeals. They supported the High Court's decision and stated that the court should have the power to modify awards in statutory and non-consensual arbitration matters to ensure fairness and justice.¹⁸

V. COURT'S REASONING AND JUDGMENT

The Supreme Court of India conducted an extensive analysis of Section 34 and its legislative history. The court observed that Section 34 is not an appeal provision and the court has limited power to set aside arbitral awards on specified grounds mentioned in the act.¹⁹ The word "Resource" mentioned in Section 34 (4), courts can only send the matter back to an arbitral tribunal to remove only the defect in awards; courts themselves cannot change or rewrite the arbitral award.

The court also stressed that section 34 is based on UNCITRAL model Law, which

¹⁴ Arbitration and Conciliation Act § 34(4), No. 26 of 1996, INDIA CODE (1996).

¹⁵ *MMTC Ltd. v. Vedanta Ltd.*, (2019) 4 SCC 163 (India).

¹⁶ *The Project Director, NHAI v. M. Hakeem*, (2021) 9 SCC 1, ¶ 8 (India).

¹⁷ INDIA CONST. art. 12.

¹⁸ *The Project Director, NHAI v. M. Hakeem*, (2021) 9 SCC 1, ¶ 9 (India).

¹⁹ *Id.* at ¶ 15.

¹⁹ *Id.* at ¶ 16.

¹⁹ *Id.* at ¶ 17.

¹⁹ *Id.* at ¶ 18.



also does not allow courts to interfere or modify the awards. The Hon'ble court compared Indian arbitral law with the other countries' arbitral law like England, USA, Canada, Australia and Singapore.²⁰ Where statutes specifically grant courts power to modify in arbitral awards however Indian laws do not contain such provisions, the court concluded that parliament intentionally denied courts this power. And also rejected the argument that power under section 34 is similar to section 115 of Civil procedure code.²¹ As CPC expressively allows courts to pass any order they think fit, whereas Section 34 does not contain any such wordings.²² The court further noted that in the old Arbitration Act 1940 court had a power to modify or correct awards; however this power was deliberately removed in Amendment of 1996 to make Indian arbitration law in line with international standards.²³

Justice R. F. Nariman observed that giving courts the power to modify under Section 34 would mean to 'Crossing the Lakshman Rekha' in other words, courts would go beyond the limits set by Parliaments and effectively create new law through judicial legislation.²⁴ The court made it clear that only Parliament can grant such powers.

The court also clarified that the modification of awards by the Supreme Court were made using Article 142 of the Constitution,²⁵ which gives the court special powers to do complete justice. This does not mean that ordinary courts have modification power under the Section 34 of Arbitration Act.²⁶

However, despite disagreeing with the reasoning of the High Court, the Supreme Court refused to interfere with the final outcomes of the cases. Using its power under Article 136 of the Constitution,²⁷ the Court dismissed NHAI's appeals.²⁸ The Court observed that the National Highway Authority of India had behaved inconsistently because it had accepted enhanced compensation in many cases without filing appeals.²⁹ And also observed that it would be unfair to send matter back to fresh arbitration after such a long delay. Especially when a government

²⁰Id. at ¶ 21.

²¹Code of Civil Procedure § 115, No. 5 of 1908, INDIA CODE (1908).

²²The Project Director, NHAI v. M. Hakeem, (2021) 9 SCC 1, ¶ 19 (India).

²³Id. at ¶ 20.

²⁴Id. at ¶ 23.

²⁴Id.

²⁵INDIA CONST. art. 142.

²⁶The Project Director, NHAI v. M. Hakeem, (2021) 9 SCC 1, ¶ 24 (India).

²⁷INDIA CONST. art. 136.

²⁸The Project Director, NHAI v. M. Hakeem, (2021) 9 SCC 1, ¶ 26 (India).

²⁹Id. at ¶ 27.



appointed arbitrator might again grant inadequate compensations. Therefore, while the Supreme Court held that courts cannot modify arbitral awards under Section 34, it still allowed landowners to retain the enhanced compensations on equitable grounds.³⁰

VI. CRITICAL ANALYSIS

The judgment in *The Project Director, NHAI v. M. Hakeem & Anr.* is widely appreciated for bringing clarity to Arbitration Law. By clearly stating that courts cannot modify awards under Section 34, and strengthen the principle of minimal judicial interference, which is the foundation of the Arbitration and Conciliation Act, 1996. This misinterpretation also aligns with the UNCITRAL Model Law and strengthens the autonomy of arbitration law in India.

The judgment also tackles a long-standing issue in Indian arbitration practice; courts often acted like appellate courts by re-examining merits and disputes under Section 34. By drawing a line that the court has limited grounds to intervene, specifically mentioned in the Statute.³¹ This promotes finality of arbitration awards and prevents use of Section 34 as a hidden appeal process.³²

At the same time, the decision also reveals a serious hidden problem in statutory Arbitrations under the NHAI. In most of the cases, arbitrators are government appointed officers who may simply approve inadequate compensation without independent reasonings. In these situations, landowners are at a disadvantage because they have little control over the process. Although the Court showed sympathy towards the affected landowners in present cases, the broader fairness in compulsory statutory arbitration still remains unresolved.³³

The court also clarified Article 142 of the Constitution which empowered Supreme Courts to do justice and grant substantive relief. However the lower courts remain restricted by Section 34 of the Act. So only the Supreme Court has extraordinary powers while other courts remain with limited powers.³⁴ This may lead

³⁰Id. at ¶ 28.

³¹*McDermott Int'l Inc. v. Burn Standard Co.*, (2006) 11 SCC 181 (India).

³²*Ssangyong Engg. & Constr. Co. v. NHAI*, (2019) 15 SCC 131 (India).

³²*The Project Director, NHAI v. M. Hakeem*, (2021) 9 SCC 1, ¶ 23 (India).

³²*Renusagar Power Co. v. Gen. Elec. Co.*, (1994) Supp (1) SCC 644 (India).

³²*The Project Director, NHAI v. M. Hakeem*, (2021) 9 SCC 1, ¶ 25 (India).

³²Id. at ¶ 24.

³²Id. at ¶ 23.

³³National Highways Act, No. 48 of 1956, INDIA CODE (1956).

³⁴*Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Techs. Pvt. Ltd.*, 2021 SCC OnLine SC 157



to uncertainty and could require further legal developments in the future.

VII. CONCLUSION

The Project Director, NHAI v. M. Hakeem & Anr. is a landmark judgment in Indian Arbitration law. The Supreme Court held that the court cannot modify arbitration awards under Section 34 of Arbitration and Conciliation Act, 1996, and can only set aside on limited grounds. The judgment strengthened the principle of minimal judicial interference and aligned Indian arbitration law with international standards.

At the same time, the case highlighted concern regarding fairness in statutory Arbitrations under National Highway Act, where government appointed arbitrators may disadvantage landowners. Overall, the judgment reinforces arbitral finality while also indicating the need for reforms to ensure fairness, justice and neutrality in the statutory arbitration process.³⁵

(India).

³⁵ Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, INDIA CODE (2016).

