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## GAYATRI BALASAMY V. ISG NOVASOFT TECHNOLOGIES LIMITED

~ *Shivansh Sharma*

### INTRODUCTION

The ruling of *Gayatri Balasamy v M/s ISG Novasoft Technologies Limited*<sup>1</sup> is crucial in the history of Indian arbitration law. This case was decided by a Constitution Bench of the Supreme Court composed of five judges of the Court (4:1) and marks the end of a controversy: whether a court, exercising its supervisory jurisdiction over arbitration awards pursuant to the provisions of Section 34 of the Arbitration and Conciliation Act, 1996<sup>2</sup> (the “Act”) has any power to modify an arbitration award, or whether the only jurisdiction of the courts to review an arbitration award is to set aside arbitration awards on the limited basis set out in the Act. In reaching its conclusion on this question, the Court was faced with issues related to judicial efficiency, arbitral autonomy, party autonomy and India's obligations under UNCITRAL Model Law on International Commercial Arbitration.<sup>3</sup> Although the ruling does provide a much-needed pragmatic resolve to the dispute before the Court, it does raise serious questions regarding the integrity of the arbitration process and the position of India as an arbitration friendly jurisdiction.

### FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The litigation stems from a dispute between Gayatri Balasamy, who held the position of Vice President of M&A Integration Strategy at ISG Novasoft Technologies Limited, and ISG Novasoft Technologies Limited (the “Company”). In July of 2006, Balasamy resigned from

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<sup>1</sup> *Gayatri Balasamy v. M/s ISG Novasoft Techs. Ltd.*, 2025 INSC 605 (India).

<sup>2</sup> Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

<sup>3</sup> UNCITRAL Model Law on International Commercial Arbitration, U.N. Doc. A/40/17, annex I (1985), as amended, U.N. Doc. A/61/17, annex I (2006).

her position, citing sexual harassment by the Company's CEO; however, her resignation had not been accepted and there were additional letters of termination and cross-complaints sent after her resignation was expected to take effect. Following a lengthy process involving parallel criminal proceedings, the parties were directed to arbitration, where Gayatri Balasamy was awarded compensation of INR 2 crores.

Dissatisfied with the quantum of the award, Balasamy approached the Madras High Court under Section 34 of the Act.<sup>2</sup> A single judge, relying on expansive precedents including *McDermott International Inc. v. Burn Standard Co. Ltd.*<sup>4</sup> and *ONGC v. Saw Pipes Ltd.*<sup>5</sup>, read an inherent modification power into Section 34 and enhanced the compensation by INR 1.6 crore. The Division Bench, in a subsequent appeal, decided that the prior increase was wholly excessive, rejected all reasoning behind it and lowered the increase to only 50,000 rupees. Subsequently, Balasamy filed a special leave petition to appeal with the Supreme Court of India. In February 2024, a three-judge panel made reference to a larger panel because they found a lot of conflicting opinions on the issue. Thereafter a five-judge bench consisting of Chief Justice Sanjiv Khanna heard arguments and delivered its decision on April 30, 2025.

## ISSUES BEFORE THE COURT

The Constitution Bench was tasked with answering four questions: (i) whether courts under Sections 34 and 37 of the Act possess power to modify an arbitral award; (ii) if so, whether such power is confined to severable awards; (iii) whether the broader power to set aside an award subsumes the lesser power to modify it; and (iv) whether a modification power can be judicially read into Section 34.

## THE MAJORITY HOLDING

The majority opinion, authored by Chief Justice Sanjiv Khanna and Justices B.R. Gavai, Sanjay Kumar, and Augustine George Masih, held that courts possess a limited power to modify arbitral awards under Sections 34 and 37.<sup>6</sup> The majority identified four circumstances in which modification is permissible: (i) severance of the "invalid" portion from the "valid" portion of a severable award; (ii) correction of clerical, computational, or typographical errors apparent on the face of the record; (iii) modification of post-award interest; and (iv) invocation of Article

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<sup>4</sup> *McDermott Int'l Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181 (India).

<sup>5</sup> *Oil & Nat. Gas Corp. v. Saw Pipes Ltd.*, (2003) 5 SCC 705 (India).

<sup>6</sup> Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

142 of the Constitution of India<sup>7</sup> to do “complete justice,” to be exercised with great care and caution.

They derived the power of severance from the proviso to Section 34(2)(a)(iv).<sup>8</sup> Applying the maxim *omne majus continet in se minus*, the greater power contains the lesser, the Bench held that the authority to partially set aside an award included the power to modify its severable components. The power to correct manifest errors was located in Section 34 as an ancillary and incidental judicial function, buttressed by the principle drawn from *Grindlays Bank Ltd. v. Central Government Industrial Tribunal*<sup>9</sup> that every court retains an inherent power of procedural review distinct from a review on the merits. Regarding Article 142, the majority affirmed its availability to bring prolonged litigation to an end but expressly cautioned that it could not be deployed to rewrite the award or modify it on the merits of the dispute.

## THE DISSENT

Justice K.V. Viswanathan authored a robust 129-page dissent grounded in legislative history, and the foundational principles of arbitration. He argued that the legislature's deliberate omission of any modification power from the Act, in sharp contrast to its express inclusion in the Arbitration Act, 1940<sup>10</sup>, reflected a policy choice aligned with the UNCITRAL Model Law.<sup>11</sup> He drew a sharp distinction between setting aside and modification: whereas the former is a supervisory act of judicial annulment, the latter constitutes a judicial substitution of the tribunal's reasoning or outcome, which is inherently appellate in character. The dissent further cautioned that Section 5 of the Act, a non-obstante clause limiting judicial intervention to what is explicitly permitted under Part I, foreclosed any implied modification power. He further argued that Article 142 of the Constitution cannot be invoked to override substantive statutory limitations, citing the Constitution Bench's own reaffirmation in *Shilpa Sailesh v. Varun Sreenivasan*.<sup>12</sup>

## CRITICAL ANALYSIS

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<sup>7</sup> India Const. art. 142.

<sup>8</sup> Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

<sup>9</sup> *Grindlays Bank Ltd. v. Central Gov't Indus. Tribunal*, (1981) 1 SCC 420 (India).

<sup>10</sup> Arbitration Act, 1940, No. 10, Acts of Parliament, 1940 (India).

<sup>11</sup> UNCITRAL Model Law on International Commercial Arbitration, U.N. Doc. A/40/17, annex I (1985), as amended, U.N. Doc. A/61/17, annex I (2006).

<sup>12</sup> *Shilpa Sailesh v. Varun Sreenivasan*, (2023) 10 SCC 1 (India).

The majority's reasoning, while driven by genuine concerns about procedural inefficiency is doctrinally strained in several respects.

## 1. IMPLIED POWER AND DOCTRINAL COHERENCE

The application of *omne majus continet in se minus* conflates distinct judicial acts. Setting aside an arbitral award is a supervisory act of annulment, whereas modifying it substitutes the tribunal's findings with the court's own assessment. These powers do not exist on the same normative continuum. As Gary B. Born argues, the UNCITRAL Model Law deliberately restricts courts to annulment rather than revision because revision undermines arbitration's core advantage of finality.<sup>13</sup> The majority's implied-power analysis overlooks this logic. Jurisdictions permitting modification generally do so through explicit statutory authorization. The United Kingdom's Arbitration Act 1996<sup>14</sup> expressly authorizes courts to vary awards in limited circumstances, and Singapore's International Arbitration Act<sup>15</sup> provides similar authority. By adopting the UNCITRAL Model Law<sup>16</sup>, India intentionally omitted any amendment power. Reading such authority back by implication erodes the statutory structure and violates principles of textual interpretation.

## 2. ARTICLE 142 AND THE RISK OF JUDICIAL OVERREACH

The invocation of Article 142 as one of the grounds for modification is perhaps the judgment's most problematic contribution. Article 142 is a residual provision enabling the Supreme Court to do complete justice in extraordinary circumstances. The decision in *Supreme Court Bar Association v. Union of India*<sup>17</sup> had established that Article 142 cannot be exercised in a manner that contravenes the substantive scheme of an applicable statute. In empirical scholarship examining all Article 142 decisions from 1950 to 2023, Ram Mohan and Venkitesh<sup>18</sup> documented that the provision is already invoked far more frequently than its drafters anticipated, with arbitration-related invocations forming a growing category. Permitting post-award modification of interest and compensation through Article 142, absent any statutory

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<sup>13</sup> Gary B. Born, *International Commercial Arbitration* 3422–29 (3d ed. 2021).

<sup>14</sup> Arbitration Act 1996 (UK), c. 23, § 69

<sup>15</sup> International Arbitration Act 1994 (Sing.), cap. 143A.

<sup>16</sup> UNCITRAL Model Law on International Commercial Arbitration, U.N. Doc. A/40/17, annex I (1985), as amended, U.N. Doc. A/61/17, annex I (2006).

<sup>17</sup> *Sup. Ct. Bar Ass'n v. Union of India*, (1998) 4 SCC 409 (India).

<sup>18</sup> M.P. Ram Mohan & Vijay V. Venkitesh, *The Supreme Court of India's Use of Inherent Power Under Article 142 of the Constitution: An Empirical Study*, 37 *Nat'l L. Sch. India Rev.* 1 (2025).

authorization, converts an extraordinary constitutional remedy into a routine appellate tool and directly imperils the non-obstante clause of Section 5 of the Act.

### **3. THE INSTITUTIONAL ARBITRATION PARADOX**

The acknowledgment that typographical and computational error corrections are already available under most institutional arbitration rules, including Rule 54.1 of the SIAC Rules 2025<sup>19</sup> and Rule 36(1) of the ICC Rules 2021<sup>20</sup>, undermines the case for judicial modification. As observed in *Redfern and Hunter on International Arbitration*,<sup>21</sup> the hallmark of mature arbitration practice is the self-sufficiency of institutional mechanisms to manage error correction without external assistance. If such mechanisms already adequately address clerical errors, the justification for courts to assume that function independently is materially weakened, and the better policy prescription is to encourage institutional arbitration rather than expand court powers.

### **4. IMPLICATIONS FOR INDIA'S ARBITRATION ECOSYSTEM**

From the perspective of India's aspirations as an international arbitration hub, the judgment sends an ambiguous signal. One of arbitration's defining attractions, and the principal reason sophisticated commercial parties choose it over litigation, is the finality of awards. As Fali S. Nariman observed,<sup>22</sup> the confidence of international parties in Indian arbitration depends critically on courts demonstrating consistent restraint. A regime in which courts can modify awards, even on a limited basis, introduces unpredictability that may deter foreign counterparties from choosing an Indian seat. Furthermore, the resulting potential for satellite litigation, whereby parties dissatisfied with an award routinely pursue judicial modification rather than accepting the tribunal's decision, threatens to severely erode these foundational efficiencies. The dissent's belief that reform must come from legislation, and not judicial innovation, highlights the need for Parliament to amend the Act as mirrored in UK and Singapore, providing more certainty and much-needed procedural efficiency.

### **CONCLUSION**

The ruling in *Gayatri Balasamy* case signifies a milestone development in Indian arbitration law. The majority, guided by pragmatism, attempted to restrict its authority for modification

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<sup>19</sup> SIAC, Arbitration Rules of the Singapore International Arbitration Centre r. 54.1 (2025).

<sup>20</sup> ICC, Rules of Arbitration of the International Chamber of Commerce r. 36(1) (2021).

<sup>21</sup> Nigel Blackaby et al., *Redfern and Hunter on International Arbitration* 562–71 (6th ed. 2015).

<sup>22</sup> Fali S. Nariman, *India and International Arbitration*, 41 *Geo. Wash. Int'l L. Rev.* 367 (2009).

only to instances that have been “clearly defined”. However, the rationale behind it highlights a stark juxtaposition of judicial authority against the literal interpretation of the Act and its UNCITRAL origins.

Contrastingly, the dissenting opinion is based on the notion that the majority opinion fosters a counter-productive framework. To provide clarity and restore public confidence in the contemporary arbitration ecosystem, the legislature must step in to codify judicial modification, establishing clear parameters and explicit safeguards for its application. Although the Balasamy decision resolved one issue regarding modifications to an arbitration award, it also created numerous new questions.