



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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GAYATRI BALASAMY V. ISG NOVASOFT TECHNOLOGIES LTD.: **BETWEEN ARBITRAL FINALITY AND JUDICIAL PRAGMATISM**

By Sakshi Pandey

Introduction

Indian arbitration jurisprudence has long been animated by a simple yet difficult question: once an arbitral tribunal has spoken, how far should courts be permitted to intervene?[1] The Constitution Bench decision in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd*[2]. attempts to answer that question, but in doing so it opens another. While the Court sought to resolve the controversy surrounding the power of courts to modify arbitral awards under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996[3], the judgment ultimately reveals a deeper tension between statutory fidelity and judicial pragmatism.

At first glance, the ruling appears sensible. Few would argue that parties should be forced into fresh arbitral proceedings merely because an award contains a clerical mistake or a severable defect.[4] Yet, as one moves through the reasoning of the Court, a more uncomfortable question emerges: can a power that Parliament never expressly granted be justified simply because it appears efficient? The judgment is therefore not merely about modification of arbitral awards. It is about the limits of judicial creativity in a legal regime deliberately designed to restrict judicial intervention.

The significance of the decision lies precisely in this contradiction. The Court insists that it is preserving arbitral autonomy while simultaneously enlarging judicial authority. Whether those two positions can comfortably coexist remains the central question running through the case.

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1. Arbitration and Conciliation Act, 1996, § 5
 2. *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, Civil Appeal arising out of SLP (C) Nos. 15336–15337 of 2021, decided on 30 Apr. 2025 (SC0).
 3. Arbitration and Conciliation Act, 1996, §§ 34, 37.
 4. *Gayatri Balasamy*, supra note 2, ¶¶ 49–54.

Facts and Background

The dispute arose out of employment-related proceedings involving *Gayatri Balasamy and ISG Novasoft Technologies Ltd.* During the course of litigation, arbitral proceedings resulted in an award that became the subject of challenge before the courts. While adjudicating the matter, the Supreme Court identified a broader legal issue transcending the facts of the individual dispute, whether the Arbitration and Conciliation Act permits courts to modify arbitral awards while exercising powers under Sections 34 and 37.

The controversy stemmed from the wording of Section 34, which allows a party to apply for setting aside an arbitral award^[5]. The Act does not expressly confer any power to modify or vary an award^[6]. Consequently, the Court was called upon to determine whether such a power could nevertheless be implied from the statutory framework.

Issues Before the Court

The principal questions before the Constitution Bench were:

1. Whether courts have the power to modify arbitral awards under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996.
2. Whether the power to partially set aside an award includes the power to modify it.
3. Whether permitting modification would undermine the principle of minimal judicial intervention in arbitration.
4. To what extent courts may interfere with post-award interest, clerical errors, and severable portions of arbitral awards.

Decision of the Court

The Court held that Sections 34 and 37 confer a **limited power of modification** upon courts. However, this power does not transform courts into appellate authorities capable of reappreciating evidence or reconsidering the merits of the dispute. Rather, modification is permissible only in exceptional circumstances where judicial intervention is necessary to ensure justice and avoid unnecessary rounds of arbitration. [7]

5. *Arbitration and Conciliation Act, 1996, § 34.*

6. *Id.* § 34.

7. *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, supra note 2, ¶ 85.

The Court identified four situations where modification may be exercised:

1. Severing invalid portions of an otherwise valid award.
2. Correcting clerical, computational, or typographical mistakes apparent on the face of the record.
3. Modifying post-award interest in appropriate cases.
4. Exercising the Supreme Court's powers under Article 142 to do complete justice.

Reasoning of the Court

The majority's reasoning was grounded in the objectives of arbitration itself. According to the Court, arbitration is intended to provide a speedy and cost-effective alternative to conventional litigation[8]. A rigid interpretation restricting courts to setting aside awards would often compel parties to initiate a fresh round of arbitration, thereby defeating the very purpose of the arbitral process. [9]

The Court rejected the argument that modification and setting aside are entirely distinct powers. While acknowledging that the two remedies produce different consequences, it observed that partial setting aside of an award often results in practical modification of the award itself. Consequently, a limited power of modification can be viewed as inherent within the power to partially set aside an award.

The Court further emphasized that judicial modification is fundamentally different from appellate review. Modification does not permit reconsideration of facts or reassessment of

evidence. Rather, it is confined to situations where the correction follows inevitably from the record and does not require an examination of the merits[10].

The judgment also relied on the doctrine of implied powers. Referring to precedents such as *Grindlays Bank Ltd. v. Central Government Industrial Tribunal*, [11] the Court held that every judicial body possesses ancillary powers necessary to effectively discharge its functions.

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8. *Gayatri Balasamy*, supra note 2, ¶¶ 31–35.
 9. Arbitration and Conciliation Act, 1996, Statement of Objects and Reasons; *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552
 10. *Gayatri Balasamy*, supra note 2, ¶¶ 44–46.
 11. *Grindlays Bank Ltd. v. Central Government Industrial Tribunal*, 1980 Supp SCC 420.

Accordingly, courts may correct obvious errors in arbitral awards even where such powers are not expressly stated in the statute. With regard to remand under Section 34(4), the Court clarified that remand and modification serve distinct purposes. Where uncertainty exists or further fact-finding is required, courts should remit the matter to the arbitral tribunal rather than modify the award themselves. Modification is appropriate only where the error is apparent and correction can be made with certainty.

Critical Analysis

The judgment is at its strongest when it confronts the practical realities of arbitration. The Court correctly recognizes that setting aside an entire award because of a minor computational error is often disproportionate. In commercial disputes, delay itself can become a form of injustice. By permitting limited modifications in cases involving clerical mistakes, severable portions of awards, and post-award interest, the Court attempts to ensure that arbitration remains efficient rather than self-defeating.[12]

Yet the real difficulty begins where the Court's pragmatism meets the text of the statute.

Section 34 authorizes courts to "set aside" an award. It does not authorize them to modify one. This omission is not accidental.[13] The Arbitration Act was drafted on the

understanding that courts would exercise only narrowly circumscribed powers of review. Throughout the judgment, the Court repeatedly emphasizes that modification is not equivalent to appellate review. But the question is not whether modification resembles an appeal. The question is whether the statute permits modification at all.

Here the reasoning appears somewhat circular. The Court argues that because partial annulment is permissible, a limited power of modification must necessarily follow. However, severing an invalid portion from an award and actively altering the terms of that award are conceptually distinct exercises. The judgment occasionally treats these powers as if they naturally overlap, even though they rest on different legal foundations. The distinction is subtle, but it is crucial.

12. *Gayatri Balasamy*, *supra* note 2, ¶ 85.

13. UNCITRAL Model Law on International Commercial Arbitration, 1985, art. 34.

The Court's reliance on implied powers doctrine presents another difficulty. Certainly, courts possess ancillary powers necessary to effectively exercise their jurisdiction. However, arbitration law has always been characterized by deliberate legislative restraint. Section 5 of the Act expressly limits judicial intervention except where specifically provided[14]. Against that backdrop, implying additional powers becomes a far more delicate exercise than the Court perhaps acknowledges.

One senses that the Bench was driven by a legitimate concern for efficiency. The problem, however, is that efficiency can be a dangerous interpretive tool. Once courts begin reading powers into statutes because such powers would produce better outcomes, the boundary between interpretation and legislation starts to blur. The judgment therefore succeeds in solving a practical problem while simultaneously creating a constitutional one.

A further weakness lies in the Court's attempt to define the limits of its newly recognised power. The judgment repeatedly describes modification as "limited", "restricted", and "exceptional"[15]. These assurances are comforting, but they are also frustratingly vague. What exactly constitutes a manifest error? When does severance become modification? At what point does correcting an award begin to resemble reconsidering it? The Court provides broad principles but few concrete answers.

This uncertainty may prove to be the most significant legacy of the decision. Future courts will inevitably be required to draw lines that the Constitution Bench itself declined to draw. Ironically, a judgment intended to settle the law may generate a fresh wave of litigation concerning the scope of judicial modification.

The discussion on post-award interest illustrates this problem particularly well[16]. The Court reasons that arbitrators cannot foresee future circumstances and therefore courts should possess a limited power to alter post-award interest rates. The logic is appealing. However, once courts begin reassessing components of an award based on subsequent developments, the distinction between correction and substantive review becomes increasingly difficult to maintain. The judgment acknowledges this risk but never fully resolves it.

14. *Arbitration and Conciliation Act, 1996*, § 5

15. *Gayatri Balasamy*, *supra* note 2, ¶¶ 44–46, 55–58, 85.

16. *Gayatri Balasamy*, *supra* note 2, Part IX; ¶ 85(III).

There is also an interesting tension running beneath the surface of the judgment. The Court repeatedly invokes arbitral finality as a foundational value, yet much of its reasoning is premised on distrust of that very finality. The recognition of modification powers reflects an implicit belief that some awards ought not be left untouched, even when they survive the traditional grounds of challenge. This tension is never expressly admitted, but it shapes the entire decision.

Perhaps the most fascinating aspect of the judgment is that it ultimately reflects a shift in judicial philosophy. Earlier decisions approached arbitration through the lens of statutory limitation: if the Act did not expressly confer a power, courts could not exercise it. *Gayatri Balasamy* adopts a different approach. It views arbitration through the lens of functional justice, asking not merely what the statute says but what the statute ought to achieve. Whether this transition strengthens Indian arbitration law or weakens its predictability remains uncertain.[17]

The judgment therefore leaves the reader with a paradox. It champions arbitral autonomy while expanding judicial oversight. It seeks to reduce litigation while creating new questions for future courts. And it insists that modification is a narrow exception, even though the boundaries of that exception remain undefined. These tensions does not necessarily make the decision incorrect. They do, however, make it far more controversial than the Court appears willing to acknowledge.[18]

17.O.P. Malhotra & Indu Malhotra, *The Law and Practice of Arbitration and Conciliation* 1684–1690 (4th ed. 2022).

18. Gary B. Born, *International Commercial Arbitration* 3721–3725 (3d ed. 2021).