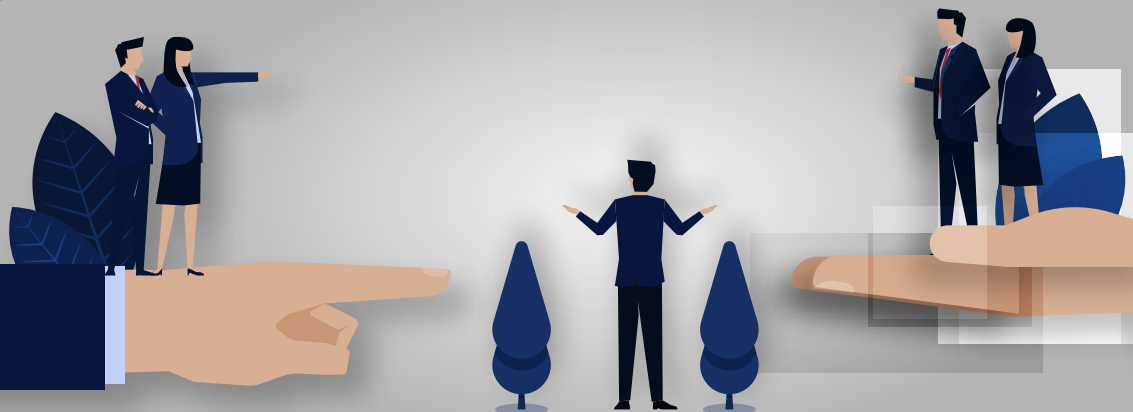


July 2021



Supreme Court holds that courts cannot modify arbitral awards under Section 34 of the Act¹

Brief Facts

A Division Bench of the High Court at Madras had disposed of a set of appeals by the National Highways Authority of India (“NHAI”) laying down that in so far as arbitral awards made under the National Highways Act, 1956 (“NHAI Act”) are concerned, Section 34 of the Arbitration and Conciliation Act, 1996 (“Act”) must be interpreted so as to permit modification of awards, in order to enhance the amount of compensation awarded by arbitral tribunals. Aggrieved by this pronouncement, NHAI approached the Supreme Court in appeal, challenging the legal position taken by the High Court.

NHAI’s primary contention was that the power of a Court under Section 34 of the Act is extremely limited and is restricted to either setting aside or remitting the award to the arbitral tribunal. Therefore, it argued that the power is wholly unlike that which is available to the appellate authority under the Land Acquisition Act, 1984, and does not extend to modifying, varying or altering an award.

In light of the divergent views taken by High Courts on the scope of Section 34 of the Act in this regard, the Supreme Court admitted NHAI’s petition in order to settle this issue.

Issue

Whether the power of a Court to set aside an arbitral award under Section 34 of the Act includes the power to modify the award?

Judgment

The Supreme Court held that Courts do not have the power to modify an arbitral award under Section 34 of the Act. Observing that an arbitral award can only be challenged under specific grounds mentioned in sub-sections (2) and (3) of Section 34, the Court held that Section 34 is not to be considered as a regular appellate provision, as it is extremely limited in its nature and scope. Further, the Court observed that the only recourse available to courts is to set aside or remit the award to the tribunal and they cannot assume any additional powers. Thus, the Court held that the limited right available to courts is co-terminus with the limited remedy available to parties, namely to set aside the award or remit the matter. In this vein, the Court reiterated its reasoning in **McDermott International Inc. v. Burn Standard Co. Ltd.**,² that the scheme of Section 34 is aimed at minimising the supervisory role of courts.

The Court further highlighted that any interpretation that favours the inclusion of a power to modify, revise or vary an award would disregard the UNCITRAL Model Law on International Commercial Arbitration, 1985 (“UNCITRAL Model Law”), on which the Act is based. Sections 15 and

In this Issue

Brief Facts

Issue

Judgment

Analysis





16 of the Arbitration and Conciliation Act, 1940 expressly conferred courts with the power to modify or correct an award under specified circumstances. However, the (1996) Act departed from this approach and adopted the UNCITRAL Model Law *dicta* of limited judicial interference. Accordingly, the Court held that there is a clear indication that the Parliament did not intend to confer Courts with any power of modification under Section 34.

Further, the Court held that to assimilate the powers under Section 34 with Section 115 of the Code of Civil Procedure, 1908 (“CPC”) would be fallacious. The Court observed that Section 115 of the CPC expressly sets out the three grounds on which a revision may be entertained and states that the High Court may make “*such order as it thinks fit*”. The Court held that the latter phrase is missing in Section 34 of the Act and cannot be read in, given the legislative scheme of the Act.

Lastly, the Court observed that the scheme of arbitration under the NHA Act and the National Highways Laws (Amendment Act), 1997 may often lead to perverse results, as the arbitrator who is an officer unilaterally appointed by the Central Government, only rubber-stamps compensation. However, the Court declined to further address the issue as the constitutional validity of these statutes was not challenged. Nonetheless, in order to prevent any grave injustice, the Court refused to interfere in the current matter on facts, or to set aside or remand the award to the arbitral tribunal.

Analysis

With this decision, the Supreme Court has conclusively settled the debate on whether Courts can modify an arbitral award under Section 34 of the Act. In holding that a Court cannot modify, vary or alter an award under Section 34, the Court upheld the fundamental principle of minimal judicial interference that underscores the Act and reiterated India’s pro-arbitration stance with a welcome clarification as to the scope of judicial powers. It is important to note that the Supreme Court has observed that the present judgment does not bar the exercise of its extraordinary powers under Article 142 of the Constitution of India in order to achieve complete justice between parties.

Endnotes

1 Authored by Gauhar Mirza, Partner, Manavendra Gupta and Adya Joshi, Associates; *The Project Director, National Highway No. 45E and 220 and National Highways Authority of India v. M. Hakeem & Anr.*, Civil Appeal No. 2756 of 2021 arising out of SLP(C) 13020 of 2020, Supreme Court, judgment dated 20 July 2021.

Coram: R.F. Nariman and B.R. Gavai, JJ.

2 *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181.

In this Issue

Brief Facts

Issue

Judgment

Analysis

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