

IS INTERFERENCE OF THE COURTS UNDER SECTION 34 AND 37 OF THE ARBITRATION AND CONCILIATION ACT, 1996, LIMITED IN REALITY?



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INTRODUCTION

Arbitration has proved itself to be the successful alternative to traditional ways of dispute resolution in India. Owing to growing burden of cases on the judiciary causing inadvertent delays and uncertainty in judicial reasonings, it has emerged as the go-to method for commercial dispute resolution in India. India has made a 23 place jump to 77 in 2019 ‘World Bank Rankings for Doing Business’ in “Enforcing Contracts” attributed to a growing trend in Arbitration and Government’s push for the same.

Time and again, there has been debates and discussions regarding the interference of the Courts under Section 34 and 37 of the Arbitration and Conciliation Act. The question arises: **Is interference of the Courts limited in reality? This article explores the nuanced aspects of Court intervention under these Sections, shedding light on whether the legislative intent for limited interference aligns with the practical application.**

Section 34 of the Arbitration and Conciliation Act provides a recourse to the Courts for setting aside arbitral awards. The explicit language of this Section outlines the grounds on which an award may be set aside. However, the legislative intent behind Section 34 suggests a limited and restrained approach to Court interference, promoting the finality and efficiency of arbitral awards.

Section 34(2) (a) of the Arbitration and Conciliation Act, 1996, mentions certain grounds on account of which the Court can set aside the arbitral award, if the party proves that:

- I. a party was under some incapacity,
- II. the arbitration agreement is not valid in accordance with the law to which the parties to the Agreement have subjected it
- III. no proper notice of the appointment of the arbitrator or the proceeding had been given to it
- IV. the dispute dealt by the arbitral award does not fall within the terms of the submission to arbitration, or the award contains a decision beyond the scope of the submission to arbitration.
- V. the composition of the tribunal was not in accordance with the agreement of the parties.

Section 37 of the Act addresses appeals from orders made by the Court under Section 34. The legislative scheme, as apparent from Section 37, reinforces the principle of limited interference. An appeal can only be

made with the leave of the Court, and such leave is granted only if the Court is satisfied that the case involves a substantial question of law. Underlining the usual hands-off approach of Courts in arbitration awards, seen as a sacred intent to keep interference to a minimum, some interesting cases have gone to the doors of the judiciary seeking relief from the disputes arising out of arbitration awards.

NATIONAL HIGHWAYS AUTHORITY OF INDIA V. GVK JAIPUR EXPRESSWAY (P) LTD.¹

This appeal was filed u/s 37 of the Act, challenging the judgement passed by the Hon'ble Single Judge of the High Court of Delhi u/s 34. Here the Arbitration Tribunal rejected GVK's claim and held that NHAI did not need to issue a 'change of scope' order under the concession agreement also rejecting the claims regarding compensation for construction of additional lanes. On the challenge by GVK under Section 34, the Hon'ble Single Bench set aside the award on the grounds that it was against the express terms of the Concession Agreement.

The Hon'ble Division Bench in setting aside the Single Judge's judgement *inter alia* stated the following things:

- If the arbitral tribunal has given reasons for its findings and the same is a plausible view, the court should not in exercise of its jurisdiction u/s 34 of the Arbitration Act interfering with the award
- On analysing the findings of the tribunal, the construction of additional toll lanes to relieve traffic is within the scope of the Concession Agreement, as it is an Operation and Maintenance undertaking necessary to ensure smooth flow of traffic.
- Non-consideration of a clause of the Concession Agreement cannot be called as an error which is opposed to the fundamental policy of Indian law, nor it can be said to be patently illegal. The tribunal has presented a plausible view.
- The Court while deciding this placed reliance on the landmark Supreme Court judgement in *Dyna Technologies*² reiterating the limited scope of the judiciary under section 34 of the Arbitration Act.

NATIONAL HIGHWAYS AUTHORITY OF INDIA V. PROGRESSIVE CONSTRUCTIONS LTD.³

In this notable case before the Hon'ble Delhi High Court, the National Highways Authority of India (NHAI) filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996. The challenge targeted an arbitral award of 21st February 2019, resolving disputes arising from an agreement dated 8th September 2005 between NHAI and Progressive Constructions Limited. NHAI challenged the award under Section 34 of Arbitration Act only on 4 claims - claim nos. 5, 10, 14 and 19.

Key details on the 4 claims:

- Claim 5: Extra amount paid to banks for extending bank guarantees - Rs. 3,40,69,195. Tribunal awarded Rs. 2,64,09,462 despite noting no evidence filed to support amount.
- Claim 10: Extra charges for continuing base camp - Rs. 50,00,000. Tribunal awarded Rs. 10,00,000 despite no details filed to support claim.
- Claim 14: Loss due to unauthorized deduction of entry tax - Rs. 51,66,398. Full amount awarded though no evidence regarding figures given.
- Claim 19: Payment for work done on non-BOQ items - Amount claimed unspecified. Tribunal awarded Rs. 8,00,000 despite lack of details to quantify claim.

¹ National Highways Authority of India v. GVK Jaipur Expressway (P) Ltd., 2023 SCC OnLine Del 3790

² Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1

³ National Highways Authority of India v. Progressive Constructions Ltd., 2023 SCC OnLine Del 2514

The Hon'ble Delhi High Court held that even though the arbitral tribunal admitted there wasn't enough proof for the claims, it still gave certain amounts to the claimant. This makes the case fall under the limited jurisdiction of Section 34 of the Act because the award was made without enough evidence. The Hon'ble Delhi High Court accordingly set aside the arbitral award dated 21.02.2019 with respect to Claim Nos. 5, 10, 14 and 19, while disposing of NHAI's petition.

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY V. ENGINEERING INDIA LTD.⁴

This appeal arises from the order passed by the Hon'ble Single Bench of the Delhi High Court, in which the High Court while partly allowing the challenge regarding the counter-claim, refused to set aside the arbitral award as same was said to be not patently illegal, or against the fundamental policy of Indian Law.

The Hon'ble Division Bench while partly allowing the appeal *inter alia* stated the following things:

- The arbitrator is the final arbiter on facts as well as law, and the same is not amenable to interference either under Section 34 or Section 37 of the Act. The court shall intervene only when the finding of the arbitrator is contrary to the terms of the contract or *prima facie* perverse.
- The Court is not sitting as a Court of Appeal over the award of the Arbitral Tribunal; therefore, they have refused to re-assess the evidence related to computation of external development charges.
- If the matter is remanded for fresh adjudication with regards to rate of interest, it would be contrary to the objectives of the Arbitration Act. Such act would actually lead to more litigation.
- To promote the 'finality of arbitration awards' the court accepted the argument of the appellant's counsel and modified the order of the Single Judge to the extent that appellants are also entitled to the same rate of interest as awarded by the arbitrator to the respondent on the counter claim.

CONCLUSION

Arbitration presents new avenues in dispute resolution mechanism in India. It has become the default setting for commercial dispute resolution in India. With the growing burden on the judiciary, arbitration is the viable way to reach a quick, mutually agreeable solution to commercial disputes.

In navigating the labyrinth of Sections 34 and 37 of the Arbitration and Conciliation Act, the delicate balance between legislative intent and practical application becomes evident. While the statutory framework envisions limited Court interference, the dynamic nature of dispute resolution occasionally leads to exceptions.

The cases highlighted serve as cautionary reminders that the Courts, despite the legislative intent, may step in under specific circumstances. As arbitration continues to evolve, a nuanced understanding of these Sections becomes crucial for practitioners and scholars alike. Ultimately, the quest for equilibrium between legislative design and real-world complexities shapes the landscape of arbitration jurisprudence in the Indian legal system.

⁴ Guru Gobind Singh Indraprastha University v. Engineering India Ltd., 2021 SCC OnLine Del 2778