



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

MISCELLANEOUS FIRST APPEAL NO. 6525 OF 2016 (AA)

BETWEEN:

1. THE UNION OF INDIA
REP BY ITS GENERAL MANAGER,
SOUTH WESTERN RAILWAY,
(FORMERLY SOUTHERN RAILWAY),
CHIEF ENGINEER, WORKS BRANCH,
CONSTRUCTION,
HEAD QUARTERS OFFICE,
KESHAVAPURA, HUBBALI - 580 023
2. THE CHIEF ADMINISTRATIVE OFFICE
CONSTRUCTION,
SOUTH WESTERN RAILWAY,
18, MILLERS ROAD,
BENGALURU - 560 001.

...APPELLANTS

(BY SRI. KUSHAL GOWDA ADVOCATE FOR
SRI. ABHINAY. Y.T., ADVOCATE)

AND:

1. SRI. KOTHARI SUBBARAJU
S/O. VENKATA RAJU,
AGED ABOUT 48 YEARS,
RAILWAY CONTRACTOR,
R/AT NO. 79-7-4,
OFFICIAL COLONY,
CHAMALANAGAR,
RAJAMANDRY,
ANDRAPRADESH 533103.

REP BY HIS POWER OF ATTORNEY HOLDER
SRI. K. SATHYANARAYANA RAJU





2. G P KOSTA
PRESIDING ARBITRATOR,
CHIEF ENGINEER,
SOUTH WESTERN RAILWAY,
KESHAVAPURA, HUBALLI - 580 023.

3. R. RAJANNA
CO. ARBITRATOR,
CCRS RETIRED, FLAT NO. 3,
RAMAPRIUA,
AE-172, 11TH MAIN ROAD,
ANNANAGAR, CHENNAI - 600 040.

4. SMT. MANJULA RANGARAJAN
CO. ARBITRATOR,
FA & CAO,
INTEGRATED COACH FACTORY,
AYYANAVARAM, CHENNAI - 600 040

...RESPONDENTS

(R1 AND R2 ARE SERVED AND UNREPRESENTED;
V/O DATED 21.11.23 SERVICE OF NOTICE TO
R2 AND R4 IS DISPENSED WITH)

THIS MFA FILED UNDER SECTION 37(1)(c) OF THE
ARBITRATION AND CONCILIATION ACT, 1996, AGAINST THE
ORDER DATED 31.03.2016, PASSED IN A.S.NO.39/2008, ON
THE FILE OF THE XXXIII ADDITIONAL CITY CIVIL AND
SESSIONS JUDGE, BENGALURU CITY(CCH-33), PARTLY
ALLOWING THE APPLICATION FILED UNDER SECTION 34 OF
ARBITRATION AND CONCILIATION ACT.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

**ORAL JUDGMENT**

The present appeal is filed by the Union of India challenging the order dated 31.03.2016 passed in A.S.No.39/2008 on the file of XXXIII Addl. City Civil and Sessions Judge, Bengaluru City (CCH-33), thereby the learned District Judge has modified the arbitral award insofar as claim Nos.3, 4 and 5.

2. The dispute arose between the appellant and respondents was referred to the arbitration and learned Arbitrator has passed the award allowing the claims made by the respondents. Respondent No.1 being the railway contractor has challenged the arbitral award before the Court of District Judge by invoking Section 34 of the Arbitration and Conciliation Act, 1996. The Court of District Judge in A.S.No.39/2008 has passed the order modifying claim Nos.3, 4 and 5 by enhancing the amount. Thus, the order passed by the arbitral tribunal is partly set aside and modified in respect of claim Nos.3, 4 and 5.



3. In this appeal, notice was served on the respondents, but they remained absent.

4. Learned counsel for the appellant submitted that the learned District Judge while acting on Section 34 of Arbitration and Conciliation Act, 1996, does not have power to modify the arbitral award and except the grounds enumerated under Section 34 of Arbitration and Conciliation Act, 1996, the arbitral award cannot be set aside or modified. Therefore, submitted that it is opposed to the principle of law laid down by the Hon'ble Supreme Court in the case of ***S.V.Samudram Vs. State of Karnataka*¹**.

5. In the present case, the dispute was referred to the arbitral tribunal and the arbitral tribunal has passed the award. Against that, the railway contractor has preferred the suit in A.S.No.39/2008 before the Court of District Judge and the Court of District Judge has partly

¹ LAWS(SC)-2024-1-16



set aside the award passed by the arbitral tribunal and modified claim Nos.3, 4 and 5.

6. The learned District Judge is not sitting as the Appellate Authority on the award passed by the arbitral tribunal. The grounds for setting aside the order of arbitral tribunal are as per the stipulations enumerated under Section 34 of Arbitration and Conciliation Act, 1996, but not on other grounds. There is no power vested with the learned District Judge to modify the award passed by the arbitral tribunal. The Hon'ble Supreme Court in the case of **S.V.Samudram** (stated supra), at paragraph Nos.14, 15, 16 and 17 observed as follows:

(13.) The Judgment and Order of the learned Civil Judge was dtd. 22/4/2010.

(14.) The position as to whether an arbitral award can be modified in the proceedings initiated under Ss. 34/37 of the A&C Act is no longer res integra. While noting the provisions, more specifically, Sec. 34(4) of the A&C Act; the decisions rendered by this Court, including the principles of international law enunciated in several decisions recorded in the treatise "Redfern and Hunter on International Arbitration, 6th Edition", this Court in National Highways



Authority of India v. M. Hakeen and Another (2021) 9 SCC 1 (2-Judge Bench), categorically held that any court under Sec. 34 would have no jurisdiction to modify the arbitral award, which at best, given the same to be in conflict with the grounds specified under Sec. 34 would be wholly unsustainable in law. The Court categorically observed that any attempt to "modify an award" under Sec. 34 would amount to "crossing Lakshmem Rekha".

(15.) On the exact same issue we may also note another opinion rendered by this Court in Dakshin Judge Bench) in the following terms:- Haryana Bijli Vitran Nigam Limited v. Navigant Technologies Private Limited (2021) 7 SCC 657 (2-Judge bench) in the following terms:-

"44. In law, where the court sets aside the award passed by the majority members of the Tribunal, the underlying disputes would require to be decided afresh in an appropriate proceeding. Under Sec. 34 of the Arbitration Act, the court may either dismiss the objections filed, and uphold the award, or set aside the award if the grounds contained in sub- Sec. (2) and (2-A) are made out. There is no power to modify an arbitral award. In McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Ine. v. Burn Standard Co. Ltd., (2006) 11 SCC 181], this Court held as under: (SCC p. 208, para 52)

"52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court



is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

(Emphasis Supplied)

(16.) The principle stands reiterated as late as 2023 in Larsen Air Conditioning and Refrigeration Company v. Union of India and Others 2023 SCC On Line 982 (2-Judge Bench).

(17.) We may notice certain principles to be considered in adjudication of challenges to arbitration proceedings of this nature. It is a settled principle of law that arbitral proceedings are per se not comparable to judicial proceedings before the Court (Dyna Technologies Private Limited v. Crompton Greaves Limited (2019) 20 SCC 1 (3-Judge Bench)). The Arbitrator's view, generally is considered to be binding upon the parties unless it is set aside on certain specified grounds. In the very same decision taking note of the opinion as is in "Russel on Arbitration", reiterated the need for the Court to look at the substance of the findings, rather than its form, stood reiterated and the need for adopting an approach of reading the award in a fair and just manner, and



not in what is termed as "an unduly literal way". All that is required is as to whether the reasons borne out are intelligible or not for adequacy of reasons cannot stand in the way of making the award to be intelligibly readable.

7. Therefore, as per Section 34 of Arbitration and Conciliation Act, 1996, the Court of District Judge has to consider the arbitration suit in accordance with the grounds enumerated in the said provision, otherwise not. The Court of District Judge is not the Appellate Authority over the award passed by the arbitral tribunal. Interference with the award passed by the arbitral tribunal shall only be in accordance with the stipulations enumerated under Section 34 of Arbitration and Conciliation Act, 1996, otherwise not. If there is any grounds are there, to set aside the arbitral award that shall be in consonance with the conditions enumerated under Section 34 of Arbitration and Conciliation Act, 1996, otherwise not.



8. There is no power vested with the Court of District Judge to modify or alter the arbitral award as if could be done in the appeal. Therefore, the Court of District Judge while considering the arbitration suit filed under Section 34 of Arbitration and Conciliation Act, 1996, as if considered it as an appeal against the arbitral award that is not permissible as per law. Therefore, the order passed by the Court of District Judge is liable to be set aside.

9. Accordingly, I proceed to pass the following

ORDER

- (i) The appeal is ***allowed***.
- (ii) The order dated 31.03.2016 passed in A.S.No.39/2008 on the file of XXXIII Addl. City Civil and Sessions Judge, Bengaluru City (CCH-33), is hereby set aside and consequently, A.S.No.39/2008 is hereby dismissed.



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(iii) No order as to costs.

SD/-
(HANCHATE SANJEEVKUMAR)
JUDGE

PB

List No.: 1 Sl No.: 53