

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER  
AND  
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA  
CIVIL MISCELLANEOUS APPEAL No.377 OF 2006**

**JUDGMENT:** (Per Hon'ble Dr. Justice Shameem Akther)

This appeal, under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act'), is filed by the appellants/BSNL, aggrieved by the judgment and decree, dated 18.10.2005, passed in O.P.No.1873 of 2002 by the learned XIV Additional Chief Judge, City Civil Court, Hyderabad, whereby, the subject O.P. filed by the appellants/BSNL, under Section 34 of the Act, seeking to set aside the Award, dated 16.06.2002, passed by the respondent No.2/Arbitrator, was allowed in part and dismissed in part.

2. Heard Ms. T. Bala Jayasree, learned Standing Counsel appearing for the appellants/BSNL; Sri Chetluru Sreenivas, learned counsel for the respondent No.1, and perused the record.

3. The operative portion of the impugned judgment, dated 18.10.2005, reads as follows:

“In the result, the petition is allowed in part and dismissed in part. The Award is modified as follows:

- i) The department/petitioner shall pay Rs.20 lakhs as compensation.
- ii) The award with regard to refund of bank guarantee of Rs.1,66,872/-, expenses of bank commission, costs of the award and interest at 15% per annum from 6.8.1999 till the date of the award and at 18% per annum thereafter, is confirmed.”

4. Further, in the penultimate paragraph of the impugned judgment, the Court below observed as follows:

“19. ... So, in the absence of the material, the Arbitrator is not at all justified in awarding the compensation at Rs.80,00,000/-. Hence, it is reduced to Rs.20 lakhs. The Arbitrator is justified in awarding refund of the bank commission of Rs.1,66,872/- and also the interest at 15% per annum on the amounts awarded.”

5. Both the learned counsel have raised several contentions before this Court in relation to the material placed on record, particularly with regard to the respondent No.2/Arbitrator arriving at a conclusion to grant compensation of Rs.80,00,000/- by way of Award, dated 16.06.2002, and the Court below reducing the said compensation to Rs.20,00,000/-. A dispute is raised with regard to the power of the Court below under Section 34 of the Act to modify the Award passed by the Arbitrator.

6. The learned counsel for respondent No.1 would contend that such modification is allowed in terms of the judgment rendered by the Honourable Apex Court in **Dyna Technologies Private Limited v. Crompton Greaves Limited**<sup>1</sup>. Paragraph Nos.42 and 43 of the said judgment read as follows:

“42. From the facts, we can only state that from a perusal of the award, in the facts and circumstances of the case, it has been rendered without reasons. However, the muddled and confused form of the award has invited the High Court to state that the arbitrator has merely restated the contentions of both parties. From a perusal of the award, the inadequate reasoning and basing the award on the approval of the respondent herein cannot be stated to be appropriate considering the complexity of the issue involved herein, and accordingly the award is unintelligible and cannot be sustained.

43. In any case, the litigation has been protracted for more than 25 years, without any end for the parties. In totality of the matter, we consider it appropriate to direct the respondents to pay a sum of Rs.30,00,000 (Rupees thirty lakhs only) to the appellant in full and final settlement against Claim 2 within a period of 8 weeks, failing which the appellant will be entitled to interest at 12% p.a. until payment, for providing quietus to the litigation.”

7. In the aforementioned judgment, the Honourable High Court while exercising original jurisdiction was pleased to modify the Award passed by the Arbitrator. As seen from the conclusion

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<sup>1</sup> (2019) 20 SCC

reached by the Honourable Apex Court, the said modification has not been upheld by it, however, considering the facts and circumstances of the case and the material intricacies involved therein, the Honourable Apex Court ultimately directed the respondents therein to pay a sum of Rs.30,00,000/- to the appellant therein in full and final settlement against Claim 2 within a period of 8 weeks, failing which the appellant will be entitled to interest at 12% per annum until payment, for providing quietus to the litigation.

8. It is also apt to state that recently, the Honourable Apex Court has put a quietus to the issue of modification of arbitral awards in the case between **Project Director, National Highways No.45E and 220, National Highways Authority of India v. M.Hakeem and another<sup>2</sup>**. The Honourable Apex Court dealt with the issue in extenso and after referring to various cases, concluded that an arbitral award cannot be modified by a Court of law under Section 34 of the Arbitration and Conciliation Act. Relevant observations of the Honourable Apex Court are as follows:

- Section 34 of the Arbitration Act, envisages limited judicial interference on extremely limited grounds not dealing with the merits of an award. As such, the limited remedy under Section 34 is co-terminus with a limited right i.e., either setting aside of the award or remand the matter to the Arbitrator under circumstances mentioned in Section 34.
- Under the Arbitration regimes of England, United States, Canada, Australia and Singapore there are express provisions permitting variation of an award unlike Section 34 of the Arbitration Act.
- Section 34 of the Arbitration Act is not on the same pedestal as Section 115 of the Code of Civil Procedure since Section 34 does not grant the Court the power to make “such order as it thinks fit”; this phrase is missing in Section 34 which only highlights the legislative intent behind limited scope of judicial interference under Section 34.
- There is a distinction between constitutional interpretation and statutory interpretation. Purposive construction of statutes and any creative interpretation of statutes has its limits, insofar as the Court can iron out the creases in a statute but not alter the very fabric of the statute itself.
- If one were to include the power to modify an award in Section 34, one would be crossing the ‘*Lakshman Rekha*’.
- Parliament very clearly intended that no power of modification of an award exists in Section 34 of the Arbitration Act. It is only for Parliament to amend the aforesaid provision in the light of the experience of the Courts in the working of the Arbitration Act, and bring it in line with other legislations the world over.

9. Here, in the instant case, the Arbitrator *vide* Award, dated 16.06.2002, directed the appellants/BSNL to complete the execution of the contract within six months from the date of the

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<sup>2</sup> (2021) 9 Supreme Court Cases 1

Award, failing which, in the alternative, was pleased to grant compensation of Rs.80,00,000/- and bank commission of Rs.1,66,872/- with interest to the respondent No.1. Aggrieved by the same, the appellants/BSNL preferred the subject O.P., under Section 34 of the Act, and the Court below *vide* the impugned judgment, dated 18.10.2005, modified the Award, as indicated above. As held by the Hon'ble Apex Court in **National Highways Authority's** case (supra 2), such modification is not permitted. The Court, while exercising original jurisdiction under Section 34 of the Act has to either set aside the Award or uphold the same, but it has no power to modify the Award. Since, the Court below has modified the Award passed by the Arbitrator, as indicated above, the impugned judgment is liable to be set aside.

**10.** Accordingly, the appeal is allowed and the impugned judgment and decree, dated 18.10.2005, passed in O.P.No.1873 of 2002, by the learned XIV Additional Chief Judge, City Civil Court, Hyderabad, are set aside. Consequently, the subject O.P.No.1873 of 2002 is restored to its file for disposal afresh, in accordance with law. The Court below is directed to dispose of the subject O.P.No.1873 of 2002 afresh, in accordance with law,

within a period of three (3) months from the date of receipt of a copy of this order, after affording opportunity to both the parties on record.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

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**Dr. SHAMEEM AKTHER, J**

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**NAGESH BHEEMAPAKA, J**

Date: 07.12.2022  
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