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Supreme Court of India re-affirms that principles of natural justice and public policy of India must be upheld despite the limited scope of judicial interference in challenge to an arbitral award

In a significant ruling, the Hon'ble Supreme Court of India ("Supreme Court"), in *SEPCO Electric Power Construction Corporation vs. GMR Kamalanga Energy Limited*¹, has re-affirmed that under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), the scope of interference with an arbitral award is narrow. However, the principles of natural justice and the public policy of India are paramount and cannot be ignored or sidelined. The Supreme Court also interpreted Section 28(3) of the Arbitration Act and held that an arbitral tribunal, being a creature of a contract itself, cannot travel beyond its mandate to rewrite the terms of the contract.

Brief facts

1. The appellant, SEPCO Electric Power Construction Corporation ("SEPCO"), entered into an agreement for Civil Works and Engineering, Erection, Testing and Commissioning ("CWEETC Agreement") with GMR Kamalanga Energy Limited ("GMRKE"), as an Engineering, Procurement and Construction Contractor. The CWEETC Agreement was executed for construction of 3 (three) coal-fired thermal power plants of 350 (three hundred and fifty) Mega Watt each, at Kamalanga, Odisha ("Project").
2. As disputes arose between the parties under the CWEETC Agreement, which also contained an arbitration clause, SEPCO issued a notice of arbitration against GMRKE leading to constitution of a 3 (three) member arbitral tribunal. The parties submitted their claims and counterclaims before the arbitral tribunal.
3. Upon adjudication of the disputes, an arbitral award dated September 7, 2020, was passed where certain claims of both parties were allowed, to the net effect of GMRKE becoming liable to pay approximately INR 995,00,00,000 (Indian Rupees nine hundred and ninety-five crore) to SEPCO ("Award").
4. Assailing the Award, GMRKE moved an application before the High Court of Orissa under Section 34 of the Arbitration Act on the ground of unfair treatment of parties. The Learned Single Judge rejected the arguments of GMRKE and upheld the Award ("Section 34 Judgment").
5. Thereafter, GMRKE moved the Division Bench of the High Court of Orissa under Section 37 of the Arbitration Act, in appeal against the decision of the Learned Single Judge. The Division Bench allowed the appeal and set aside the Award on finding, *inter alia*, that:

¹ 2025 SCC OnLine SC 2088 / 2025 INSC 1171 (decided on 26 September 2025)

- a) the arbitral tribunal based its analysis and findings on mistaken facts as it ignored the 'No Waiver' and 'No Oral Modification' clauses, as contemplated in the CWEETC Agreement;
 - b) the Learned Single Judge wrongly affirmed the Award despite admitting that the decision of the arbitral tribunal on the issue of waiver of contractual notices was based on scant or no evidence; and
 - c) the Award was passed in disregard of binding precedents.
6. The judgment passed by the Division Bench ("**Impugned Judgment**") was challenged by way of a special leave petition before the Supreme Court by SEPCO.

Issues

The Supreme Court dealt with the below issues:

1. whether the Award was correct in determining oral waiver and/or equity estoppel as against the terms of the contract?
2. whether discriminatory treatment of parties by the arbitral tribunal amounts to violation of Section 18 of the Arbitration Act and denial of natural justice, thus mandating setting aside of the Award?
3. what is the extent and scope of judicial review exercisable under Sections 34 and 37 of the Arbitration Act?

Findings and analysis

While affirming the Impugned Judgment and upholding the decision of the Division Bench to set aside the Award and the Section 34 Judgment, the Supreme Court made the following observations:

Re: The scope and authority of the arbitral tribunal is bound by the terms of the agreement (Section 28(3) of the Arbitration Act)

The arbitral tribunal upheld the assumed waiver of the mandate of contractual notice - despite explicit provisions of the CWEETC Agreement to the contrary - and thus varied the milestone conditions provided under the said Agreement. The Supreme Court observed that such act on the part of the arbitral tribunal amounted to modification of the terms of the contract.

Section 28(3) of the Arbitration Act casts an explicit duty on a tribunal to resolve disputes in accordance with the terms of the contract and trade usages applicable to the transaction. An arbitrator lacks the power to deviate from the terms of the contract while making an award.

Existence and powers of an arbitrator arise out of the agreement between the parties. The terms of the agreement serve as the fundamental basis for the procedure to be adopted by the arbitral tribunal.

Deviation from Section 28(3) of the Arbitration Act is a valid ground for challenging an arbitral award, as it is the primary duty of arbitrators to enforce promises parties have made, and to uphold contract sanctity.

The Division Bench rightly exercised judicial oversight on erroneous and untenable interpretation of terms of the CWEETC Agreement in the Award.

Re: Principles of natural justice *vis-à-vis* equal treatment of parties.

The arbitral tribunal had unfairly construed the waiver clauses in favour of SEPCO and then went on to apply a different interpretation of the same waiver clauses to the counterclaims of GMRKE.

GMRKE was also not given an opportunity to lead evidence on the issue of waiver (which was decided against it).

When a party is unable to analyse, comment or argue on a contention raised by the other party, it is a breach of natural justice and thereby, also a violation of the most fundamental notions of justice. Arbitral decisions must adhere to the principles of natural justice.

On the issue of discriminatory treatment of parties, the Supreme Court analysed Section 34 of the Arbitration Act. The grounds available to a party to challenge an India-seated international commercial arbitration specifically includes the ground – ‘unable to present the case’ – under Section 34(2)(a)(iii) of the Arbitration Act.

In consonance with the above, the Supreme Court held that unequal treatment of parties would fall within the ambit of ‘lack of full opportunity’ under Section 18 of the Arbitration Act which contemplates that the parties must be treated with equality and each party will be given a full opportunity to present his case.

The Division Bench, thus, correctly held that it cannot turn a blind eye to a glaring example of unequal treatment.

Re: Scope of Sections 34 and 37 of the Arbitration Act

Section 34 of the Arbitration Act provides for limited judicial intervention on the grounds envisaged therein.

Under Section 34, no independent evaluation is permitted on the merits of an award and a court under Section 37 of the Arbitration Act can only determine whether the court under Section 34 of the Arbitration Act has travelled beyond the parameters of the scope therein.

Relying on *Project Director, National Highways Authority of India vs. M. Hakeem*², it was held that courts would ideally reevaluate the substantive arguments on the merits of an award only when the limited grounds laid down under Section 34 of the Arbitration Act are triggered or fulfilled. This interference would be mandated when the perversity so identified in the award goes to the root of the matter.

Section 37 of the Arbitration Act is akin to a second appeal under the Code of Civil Procedure, 1908. As such, a court exercising the mandate of Section 37 of the Arbitration Act ought to employ caution and reluctance to alter the concurrent findings of a Section 34 court. However, where the findings in an award are such as would shock the conscience of the court and the grounds for setting aside the award get triggered, then the award would have to be tested beyond the ‘limited’ scope of judicial interference under Section 37.

Conclusion

1. The Supreme Court has reaffirmed that an arbitral tribunal, being a creature of a contract, cannot travel beyond its mandate and rewrite the terms of such contract.
2. In the present case, the arbitral tribunal acted in violation of principles of natural justice by discriminating between the parties. In this background, the Supreme Court concluded that discriminatory treatment is not compatible with the basic notions of justice.
3. The Supreme Court also re-affirmed the following established principles in matters of challenge to an arbitral award:
 - a) the scope under Section 37 of the Arbitration Act is inherently limited or narrower than Section 34 of the Arbitration Act. Thus, the question of re-interpreting the contract with an alternative view does not arise. However, at the Section 37 stage, interference with a decision given by a Section 34 court is justified when the Section 34 court has failed to appreciate the gross violations of the basic principles of adjudication of a dispute;
 - b) while the latent violations of basic principles may not mandate interference, but direct omissions of the mandate of Sections 18 and 28(3) of the Arbitration Act are clearly patent and *prima facie* violations; and

² (2021) 9 SCC 1

- c) courts cannot be made a mere spectator to an attack on the fundamental policy of Indian law and the same allows for reappreciation of the arbitral award by a Section 37 court.
- 4. On application of the above principles, it was concluded that despite the limited scope of interference, the Division Bench was obliged to interfere with the arbitral award.
- 5. The judgment reinforces several critical and significant principles, including the following:
 - a) while courts must respect party autonomy and finality in arbitration, they cannot ignore fundamental violations of natural justice and public policy. Arbitral proceedings must operate within the framework of fundamental legal principles, contractual boundaries and natural justice; and
 - b) equal treatment of the parties in arbitral proceedings is vital, and each party must be given full opportunity to present its case.

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