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Supreme Court of India holds that objection to improper constitution of arbitral tribunal cannot be raised after participation in proceedings

The Supreme Court of India (“**Supreme Court**”) in *Municipal Corporation of Greater Mumbai vs. R.V. Anderson Associates Limited*¹ considered whether a party that participates in arbitral proceedings without raising a timely objection can subsequently challenge the arbitral award on the ground that the arbitral tribunal was improperly constituted. The Supreme Court examined the scope of challenge under Sections 34² and 37³ of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) and held that objections relating to the composition of the arbitral tribunal must be raised at the earliest stage of the proceedings. A party that proceeds with arbitration without raising such objections is deemed to have waived its right to challenge the tribunal’s constitution at a later stage.

Brief facts

1. The Municipal Corporation of Greater Mumbai (“**MCGM**”) invited proposals for consultancy services relating to upgrading sewerage operations and maintenance under a World Bank-funded project.
2. The respondent, R.V. Anderson Associates Limited, a Canadian engineering firm, was selected as the successful bidder in association with PHE Consultants, Mumbai. An agreement dated September 18, 1995 was executed between the parties.
3. The project had a duration of 72 (seventy-two) months and involved consultancy services for upgrading and managing sewerage infrastructure. The respondent completed the work and submitted its final report on June 20, 2001.
4. Disputes subsequently arose regarding payment of outstanding dues. In a meeting held on October 24, 2002, most of the respondent’s claims were rejected by MCGM, except for certain partial payments made in February 2004.
5. As the dispute remained unresolved, the respondent invoked the arbitration clause in the agreement by issuing a notice dated August 9, 2005, nominating its arbitrator and calling upon MCGM to appoint its nominee arbitrator.
6. MCGM appointed its nominee arbitrator on October 18, 2005. During this period, the parties also explored settlement through conciliation and mediation, and the arbitration proceedings were initially kept in abeyance.

¹ 2026 SCC OnLine SC 35, (decided on March 11, 2026)

² Section 34 of the Arbitration and Conciliation Act, 1996 provides the limited grounds on which a court may set aside an arbitral award, such as incapacity of parties, invalid arbitration agreement, procedural irregularity, or conflict with the public policy of India. It does not permit re-appreciation of evidence or review on merits, and the court’s role is confined to supervisory judicial review of the award.

³ Section 37 of the Arbitration and Conciliation Act, 1996 provides for appealable orders in arbitration proceedings. It allows appeals against orders such as granting or refusing interim measures, setting aside or refusing to set aside an arbitral award, and accepting or rejecting jurisdictional pleas, while barring any second appeal except to the Supreme Court.

7. As settlement efforts failed, arbitration proceedings resumed and a 3 (three) member arbitral tribunal was constituted in accordance with the arbitration clause in the agreement. Both parties participated in the proceedings without raising any objection regarding the tribunal's constitution.
8. After considering the claims and counterclaims of the parties, the arbitral tribunal passed an award dated June 5, 2010 granting relief in favour of the respondent.
9. Aggrieved by the award, MCGM filed a petition under Section 34 of the Arbitration Act before the Bombay High Court ("**Bombay HC**") seeking to set aside the award. Among other grounds, it contended that the arbitral tribunal had been improperly constituted.
10. MCGM argued that under Clause 8.3(b) of the agreement, once a period of 30 (thirty) days had expired, the co-arbitrators had no authority to appoint the presiding arbitrator. According to the clause, the presiding arbitrator could only have been appointed by the Secretary-General of the International Centre for Settlement of Investment Disputes (ICSID), Washington D.C.
11. The Single Judge of the Bombay HC dismissed the challenge and upheld the arbitral award.
12. MCGM then filed an appeal under Section 37 of the Arbitration Act, which was also dismissed by the Division Bench of the Bombay HC.
13. Aggrieved by these concurrent findings, MCGM approached the Supreme Court challenging the award and the judgments of the High Court.

Issue

Whether a party that participated in arbitral proceedings without raising any timely objection could subsequently challenge the arbitral award under the Arbitration Act on the ground that the arbitral tribunal had been improperly constituted?

Findings and analysis

The Supreme Court upheld the arbitral award and affirmed the judgments of the Bombay HC. The Supreme Court held that the objections raised by MCGM were unsustainable under the scheme of the Arbitration Act, particularly because MCGM had participated in the arbitration proceedings without raising any timely objection to the constitution of the arbitral tribunal.

Waiver of objection to arbitral tribunal constitution

The Supreme Court held that under the scheme of the Arbitration Act, objections relating to the composition or jurisdiction of an arbitral tribunal must be raised at the earliest stage of the proceedings. A party that knowingly participates in arbitration without raising such objections is deemed to have waived its right to challenge the arbitral tribunal's constitution at a later stage.

The Supreme Court emphasised that the Arbitration Act reflects a clear legislative policy against permitting parties to participate in arbitration proceedings and subsequently challenge the process only after receiving an unfavourable award.

Participation in arbitration and acquiescence

The Supreme Court rejected MCGM's contention that the tribunal had been improperly constituted. It observed that MCGM had actively participated in the constitution of the tribunal by appointing its nominee arbitrator and had continued to participate in the arbitration proceedings without raising any contemporaneous objection.

In these circumstances, the Supreme Court held that MCGM could not subsequently challenge the validity of the

tribunal in proceedings seeking to set aside the award.

Limited scope of judicial review

The Supreme Court also rejected MCGM's objections relating to the interpretation of contractual provisions and the quantification of claims. The Supreme Court reiterated the settled principle that courts exercising jurisdiction under Sections 34 and 37 of the Arbitration Act do not sit in appeal over arbitral awards.

The courts cannot reassess evidence or reinterpret contractual provisions merely because another view is possible. The Supreme Court relied on earlier decisions including:

1. *Consolidated Construction Consortium Ltd. vs. Software Technology Parks of India*⁴; and
2. *SEPCO Electric Power Construction Corporation vs. GMR Kamalanga Energy Limited*⁵.

These cases reiterate that judicial intervention in arbitral awards must remain limited and that arbitral autonomy must be respected.

Tribunal's findings on merits

The Supreme Court observed that the arbitral tribunal had carefully examined the contractual terms, the evidence produced by the parties, and the consultancy services rendered by the respondent. The arbitral tribunal had recorded detailed findings regarding the respondent's entitlement to payment for services performed under the agreement.

The Supreme Court held that these findings could not be interfered with in the absence of patent illegality or violation of public policy.

Scope of the arbitration agreement

The Supreme Court also rejected the argument that the award went beyond the scope of the arbitration agreement. It held that the claims adjudicated by the tribunal arose directly from disputes concerning payment under the consultancy agreement and therefore clearly fell within the ambit of the arbitration clause.

Statutory framework under Sections 4 and 16 of the Arbitration Act

The Supreme Court reiterated that the objections relating to the composition or jurisdiction of an arbitral tribunal must be raised within the timeline prescribed under Section 16(2) of the Arbitration Act, i.e., before the submission of the statement of defence.

If such an objection is not raised within the prescribed time, a statutory waiver under Section 4 of the Arbitration Act would apply, and the party would be deemed to have waived its right to challenge the tribunal's composition.

Conduct of the parties

The Supreme Court further clarified that where a Section 16 challenge is raised within the prescribed timeline, the party is not automatically barred from pursuing such a jurisdictional objection. However, the conduct of the parties during the arbitration proceedings may still be relevant.

The courts and tribunals may examine whether the party's conduct indicates acquiescence or acceptance of the arbitration mechanism.

⁴ 2025 INSC 574

⁵ 2025 INSC 1171

Concurrent findings of the High Court

The Supreme Court noted that both the Single Judge and the Division Bench of the Bombay HC had correctly applied the limited scope of judicial interference under Section 34 of the Arbitration Act.

Both courts had independently examined the objections raised by MCGM and had concluded that none of the statutory grounds for setting aside the award were made out.

Conclusion

The Supreme Court's decision reinforces the principle that procedural objections relating to the composition or jurisdiction of an arbitral tribunal must be raised at the earliest opportunity. A party that participates in arbitration proceedings without raising such objections cannot later challenge the award on those grounds after an unfavourable outcome.

The ruling reaffirms the limited scope of judicial review under the Arbitration Act and underscores the importance of finality, party autonomy and procedural discipline in arbitration proceedings. By emphasising the doctrine of waiver under Sections 4 and 16 of the Arbitration Act, the Supreme Court has reiterated that arbitration cannot be treated as a forum where parties participate fully and subsequently challenge the process only after the award is rendered.

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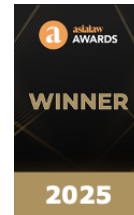
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