

**(1968) 01 BOM CK 0011**

**In the Bombay High Court**

**Case No : Arbitration Petition No. 62 of 1967**

Dinshaw Manekji Petit

APPELLANT

Vs

G.B. Badkas and Others

RESPONDENT

**Date of Decision : 25-01-1968**

**Acts Referred:**

Arbitration Act, 1940 — Section 14, 14(2), 17, 46  
Constitution of India, 1950 — Article 226  
Defence of India Act, 1939 — Section 19, 19(1)  
Defence of India Rules, 1962 — Rule 13, 9  
Government of India Act, 1935 — Section 299(2)

**Citation : AIR 1969 Bom 151 : (1968) 70 BOMLR 632**

**Hon'ble Judges : Nathwani, J**

**Bench : Single Bench**

**Advocate : G.A. Thakker and R.J. Bhatt, for the Appellant; H.M. Seervai, General, T. Andhyarujina and Kenia, for the Respondent**

## **Judgement**

1. This is an application u/s 14(2) of the Arbitration Act, 1940, for an order directing the first Respondent, who was appointed an arbitrator under S. 19 of the Defence of India Act, 1939, to file in the Court an award made by him on 12th August 1967.

2. The first Respondent did not appear at the hearing of the application. The learned Advocate General, however, who appeared for Respondents Nos. 2 and 3, raised a preliminary objection to the maintainability of the present petition. He submitted that the Court has no jurisdiction to order the first Respondent to file the Award for two reasons, firstly, S. 19(1) (g) of the Defence of India Act excludes the operation of the Arbitration Act to arbitration held u/s 19 of the Defence of India Act, and secondly, even assuming that the Arbitration Act applies to such arbitrations, by reason of Section 46 of the said Act, the provisions of Section 14(2), being inconsistent with the provisions of the said Section 19 and rules made thereunder, will not apply to an award made under the said Section 19. Mr. Thakker, the learned Counsel for the petitioner, disputed

the validity of both these contentions and maintained that the present application was competent u/s 14(2) of the Arbitration Act.

3. The facts of the case are not in dispute. The petitioner and others were at all material times the trustees of a trust created by the late Sir Dinshaw Manekji Petit (2nd Baronet) under a declaration of trust dated 17th January 1931, and as such were owners/lessees of a property situate at Tardeo. Malbar Hill Division (hereinafter referred to as the Petit Mills Estate). The petitioner is the sole surviving trustee of the said trust. Respondents Nos. 4 to 7 as the Trustees of Indenture of Settlement dated 29th March 1923, were the lessors, and the petitioner and other trustees of the said trust dated 17th January 1931 the lessees of a portion of the Petit Mills Estate admeasuring about 64,000 square yards. By an order dated 1st April 1942, issued by the Collector of Bombay, under Rule 79 of the Defence of India Rules the Petit Mills Estate was requisitioned. Subsequently, however, by another order dated 28th October 1942, issued by the Collector of Bombay under Rule 75A of the Defence of India Rules the Petit Mills Estate was acquired. The Collector of Bombay offered and the trustees of the said trust dated 17th January 1931 accepted under protest and without prejudice to their rights and contentions a sum of Rupees 22,49,770 as compensation for the acquisition of the Petit Mills Estate. The trustees thereafter filed a suit in this Court, being suit No. 1669 of 1945, against the Dominion of India and the then province of Bombay for a declaration that they were the owners of the suit lands and for possession and other reliefs. The said suit was dismissed and thereupon an appeal was filed by the trustees, which appeal was also dismissed by the Appellate Court. The trustees then filed an appeal to the Supreme Court of India, being Appeal No. 241 of 1955. By a Consent Order obtained on 14th September 1960 disposing of the said appeal in the Supreme Court it was inter alia, provided that the Government of Maharashtra should pay to the Trustees as solatium 15 per cent of the said sum of Rs. 22,49,770 and that the amount of compensation, if any, payable to the Trustees as fair market value of the said property over and above the said sum of Rs. 22,49,770 should be determined by arbitration as and in the manner provided by Section 19 of the Defence of India Act and the rules made thereunder, and that in the event of the trustees being awarded any compensation as fair market value of the said property in excess of the said sum of Rs. 22,49,770 the Government of Maharashtra should pay to the Petitioner such additional compensation as also further amount equal to 15 per cent of the additional amount of compensation so awarded.

4. Accordingly the Government of Maharashtra paid to the Trustees the solatium after deducting costs, and also appointed the first respondent as an arbitrator to determine the amount of further compensation, if any, payable to the trustees. The first respondent made and published his award on 12th August 1967 and gave notice thereof to the parties on the same day. It is not disputed that by his Award the first respondent has disallowed the entire claim of the petitioner for compensation in excess of the said sum of Rs. 22, 49, 770 and for further

amount by way of solatium. The petitioner by his Attorney's telegram dated 8th September 1967 requested the first Respondent to file his Award in this Court. As the first respondent did not do so, the petitioner as the sole surviving trustee of the said trust has filed this petition on 11th September 1967 for directing the first Respondent to file or cause to be filed the Award in this Court. The first respondent did not file his appearance and remained absent. On behalf of respondents Nos. 2 and 3, however, an affidavit in reply was filed on 24th November 1967, by one Shriram V. Harshe, Under Secretary to the Government of Maharashtra, contending that S. 14(2) of the Arbitration Act did not apply to the said Award made under S.19 of the Defence of India Act, 1939. Though the Petitioner applied for time for filing an affidavit in rejoinder no such affidavit was filed.

5. The learned Advocate General in support of his preliminary objection that clause (g) of Section 19(I) of the Defence of India Act excludes the application of the Arbitration Act submitted that the words "law for the time being In force" used in the said clause (g) refer not only to laws that were in operation at the time of the passing of the Defence of India Act, but also to law that may be passed in future thereafter and is in force at the time when the question of applicability of such to arbitration under the said section 19 arises, and, therefore, even though the Arbitration Act came into force after the passing of the Defence of India Act, i.e. on 1st July 1940, it falls within the purview of the said words in Section 19(I)(g) with the result that the Arbitration Act does not apply to arbitrations under the said S. 19. The learned Advocate General also invited my attention to a decision of the Calcutta High Court, in East India Film Studios Vs. P.K. Mukherjee and Others, wherein the said words "law for the time being" in Section 19 (1) (g) have been construed by Bose, J. as referring only to law actually in existence at the time of the passing of the said Defence of India Act. The learned Advocate General, however, submitted that the observations in Calcutta case in regard to the construction of the said words were obiter and that, in any event, the learned Judge had overlooked important matters of context in construing the said words. Mr. Thakker for the petitioner on the other hand, submitted that the said clause (g) of Section 19(1) does not exclude the application of Arbitration Act to arbitrations u/s 19 of the Defence of India Act and raised a two-fold argument, Firstly, he argued that on a proper construction of Section 19(1)(g) the provisions of any other law which are not to apply thereunder are only those which relate to the assessment or fixation by an arbitration of the actual amount of compensation to be paid by the Government for compulsory acquisition of property but no law in so far as it relates to other matters relating to such arbitration is excluded, and as the Arbitration Act relates to matters other than the fixing of the amount of compensation, it is not excluded by the said clause (g) of Section 19 (1) and that if he were right in his submission on the true scope of Section 19(1), the question of construing the said words "law for the time being in force" in clause (g) would not arise in as much as it would not then matter the present case whether the said words

referred only to law in existence at the time of coming into force of the Defence of India Act or whether they covered also other law which came into force subsequently. Secondly, in the alternative, he argued that on a proper construction the said words "law for the time being force" refer only to the law actually in existence on 29th September 1939, when the Defence of India Act came into operation, and as the Arbitration Act came into force subsequently on 1st July 1940, the Arbitration Act does not fall within the ambit of the said words. In support of his construction of the said words he strongly relied on the case of East India Film Studios Vs. P.K. Mukherjee and Others, and submitted that the decision therein was not obiter and that this Court should follow the same as laying down the correct law.

6. In order to appreciate these rival contentions it is necessary to set out fully Section 19 of the Defence of India Act. Section 19 runs as follows:

19(1) "Where under" Section 19A or by or under any rule made under this Act any action is taken of the nature described in sub-section (2) of Section 299 of the Government of India Act, 1935, there shall be paid compensation, the amount of which shall be determined in the manner, and in accordance with the principles hereinafter set out, that is to say:-

(a) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement.

(b) Where no such agreement can be reached, the Central Government shall appoint as an arbitrator a person qualified under sub-section (3) of Section 220 of the above mentioned Act for appointment as a Judge of a High Court.

(c) The Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property acquired, to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose.

(d) At the commencement of the proceeding before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinion is a fair amount of compensation.

(e) The arbitrator in making his award shall have regard to:-

(i) the provisions of sub-section (1) of S. 23 of the land Acquisition Act, 1894 so far as the same can be applicable; and

(ii) whether the acquisition is of a permanent or temporary character:

Provided that where any property requisitioned under any rule made under this Act is subsequently acquired u/s 19A or any such rule the arbitrator in any proceedings in connection with such acquisition shall, for the purposes of the provisions of the said S. 23, take into consideration the market value of the property at the date of its requisition as aforesaid and not at the date of its subsequent acquisition.

(f) An appeal shall lie to the High Court against an award of an arbitrator except in cases where the amount thereof does not exceed an amount prescribed in this behalf by rules made by the Central Government.

(g) Save as provided in this section and in any rules made thereunder, nothing in any law for the time being in force shall apply to arbitrations under this section.

(2) The Central Government may make rules for the purpose of carrying effect the provisions of this section.

(3) In particular and without prejudice to the generality of the foregoing powers such rules may prescribe:

(a) the procedure to be followed in arbitrations under this section

(b) the principles to be followed in apportioning the costs of proceedings before the arbitrator and on appeal.

(c) the maximum amount of an award against which no appeal shall lie".

7. The first question to be considered is whether the Arbitration Act applies to arbitrations u/s 19 of the Defence of India Act, and the answer thereto depends upon the true scope and meaning of clause (g) of the said section 19(1). The said clause (g) provides that save as provided therein, nothing in any law shall apply to "arbitrations" under the said section 19. In other words, the operative part of the said clause (g) excludes the application of other laws to "arbitrations" under the said section. Now, Mr. Thakker's first contention in this behalf was that the provisions of law excluded by the said Clause (g) are only those which relate to the actual assessment of the amount of compensation for acquisition of property and none others. i.e. only those referred to in S. 19(1)(e), with the result that other provisions of law relating to arbitration apply to arbitrations held under the said Section 19. In my opinion there is no merit whatsoever in this contention and must be rejected as being opposed to the language of the said clause (g) itself. The said Clause (g) in terms provides that nothing in any law shall apply to "arbitrations" under the said Section 19. It does not say that nothing in any law shall apply to principles for fixing the actual amount of compensation under the said Section 19. The said Section 19(1) itself provides that when any action is taken of the nature described in Section 299(2) of the Government of India, Act, 1935, there shall be paid compensation, the amount of which shall be determined in the manner and in accordance with the principles, thereafter set out, i.e. in clauses (a) to (g). Whereas clause (e) of the said Section 19(1) lays down the manner of the determination of the amount of compensation, clauses (b), (c), (d), (f) and (g) deal with other matters for determining such compensation by arbitration. Thus, the said clause (b) provides for an appointment of arbitrator by the Central Government and for qualifications of such arbitrator, sub-clause (c) empowers the Government and the person to be compensated to nominate person to assist the arbitrator, sub-clause (d) deals with statements by the Government and the person to be compensated about

what in their respective opinion is the fair amount of compensation and sub-clause (f) provides for an appeal to the High Court against the award of an arbitrator except in cases where the amount thereof does not exceed the prescribed amount. Sub-section (2) of Section 19 empowers the Central Government to make rules for the purpose of carrying into effect the provisions of Section 19 and sub-clause (a) of Section 19(3) provides that such rules may prescribe the procedure to be followed in arbitrations under this section Further the opening words in clause (g), viz. "save as provided in this section and in any rules made thereunder<sup>1</sup>", indicate that the scope of the provisions of law that are not applicable to arbitrations under the said Section 19 is not restrained (restricted ?) only to the principle for fixing the actual amount of compensation but extends also to all matters referred to in the said Section 19 and the rules made thereunder. Lastly, as already stated, the manner of fixing the amount of compensation is provided for in clause (e) of Section 19(1) which requires an arbitrator to make his award having regard to (i) the provisions of sub-section (1) of Section 23 of the Land Acquisition Act, 1894, so far as the same can be applicable and (ii) whether the acquisition is of a permanent or temporary character. If in enacting the said clause (g) of Section 19(1) the legislature only intended that the manner of determining the amount of compensation laid down in Section 19(1)(e) should not be affected by any other law the same could well have been stated in the said clause (e) itself. I, therefore, hold that the law which is not to apply to arbitration under the said Section 19(1)(g) covers all matters relating to arbitrations referred to in the said Section 19 and rules made thereunder and is not restricted merely to the manner of determining the amount of compensation laid down in the said clause (e) of Section 19(1).

8. Coming next to the meaning to be attributed to the words "law for the time being in force," in the said clause (g) the learned Advocate General contended that the natural import of the words "for the time being" indicate indefinite future state of thing, and in support cited a passage from Stroud's Judicial Dictionary, (3rd Edition) Vol. IV page 3030, which is as follows:

"The phrase "for the time being" may, according to its context, mean the time present, or denote a single period of time, but its general sense is that of time indefinite, and refers to an indefinite state of facts which will arise in the future, and which may (and probably will) vary from time to time *Ellison v. Thomas* (1881) 31 LJ Ch 867 and (1862) 32 LJ Ch 32; *Coles v. Pack* (1869) LR 5 CP 65, See also *Re Gunter's Settlement Trusts*, (1949) Ch 502".

He, therefore, submitted that in their ordinary sense the said words "law for the time being in force" refer not only to law in force at the time of the passing of the Defence of India Act, but also to any other law that may be passed subsequently, and which is in force at the time when the question of the applicability of such law to arbitrations held under the said Section 19 arises. There was some argument before me whether the said words in their general sense bear the meaning given in Stroud's Judicial Dictionary. Mr. Thakker for the

petitioner argued that the two cases, viz. (1861) 31 UCh 867 and (1862) 32 UCh 32 and (1869) 5 CP 65 cited by Stroud do not bear out the said meaning and relying on the decision of the Calcutta High Court in *East India Film Studios v.P. K. Mukherjee* submitted that the said words had to be construed according to their context, and that in the present case the said words so construed refer only to law in force at the time when the Defence of India Act came into force. It is, however, not necessary to consider the cases cited in Stroud's Judicial Dictionary, as in my opinion, apart from the literal meaning, construing the said words "for the time being" in clause (g) according to their context they are capable of reasonably bearing the only meaning sought to be placed thereon by the learned Advocate General.

9. Turning then to the context, as the said words "for the time being" in Section 19(1)(g), qualify the words "law in force" the learned Advocate General stressed the scheme and purpose of the said Section 19 and rules made thereunder and submitted that the Legislature intended to provide thereunder a complete self-contained code for determining compensation by arbitration in respect of compulsory acquisition of property made by or on behalf of the Central Government. Section 299(2) of the Government of India Act, 1935 (corresponding to Article 31(2) of the Constitution of India) cast a constitutional obligation for payment of compensation for compulsory acquisition of property. The said Section 19 recognizes and affirms the said obligation to pay compensation and provides that the amount of such compensation shall be determined in the manner, and in accordance with the principles set out therein, and empowers the Central Government to make rules inter alia prescribing the procedure to be followed in arbitration for carrying into effect the provisions of the said section. Now, the provisions of various clauses of section 19(1) have been summarised above, but in this context the provisions of sub-clause (f) are of special relevance. They provide for an appeal to the High Court against an award except in cases where the amount thereof does not exceed the prescribed limit.

10. In pursuance of the powers entrusted to the Provincial Governments to make rules u/s 19(2)(3) the then Government of Bombay made certain rules on 21st July 1943. Rule 2 of the said Rules provides that when the amount of compensation cannot be fixed by agreement, the person to be compensated may submit an application to the Provincial Government for a reference to the arbitration for determining the amount of compensation payable to him. Rule 3 deals with the statement regarding compensation and particulars of property acquired, to be stated in the application. Rule 4 provides that on receipt of the application, the Provincial Government may make enquiries and then refer it to an arbitrator to be appointed under 5. 19(1)(b) of the said Act. Rule 5 deals with the fixation of the date, time and place for holding an inquiry by the arbitrator. Rules 6 and 7 provide for the hearing to be given by the arbitrator to the parties and their legal advisers. Rule 8 provides that the arbitrator shall after hearing the parties and holding enquiries, if any, make an award within 60 days from the

date of reference and forward a copy of the award to the parties concerned. Rule 9 provides that subject to any appeal made to the High Court the award shall be final and binding on the parties. Rule 10 originally provided that the maximum amount of award against which no appeal shall lie shall be Rupees 5,000, subsequently, however, on 19th June 1944, the rule was amended and the limit of maximum amount raised to Rs. 25,000. Rule 11 refers to the period of limitation within which an appeal is to be filed against the award. Rule 12 provides for costs of the award. Rule 13 provides that save as otherwise provided in the foregoing rules or in Section 19 of the said Act the procedure to be followed in arbitration under these rules shall be in accordance so far as may be with the provisions of Sections 13(1), (C), (D), (E), 14(1), 27, 28(1), 30(a) and (c), Sections 41(a), 42 and 43 of the Arbitration Act, provided that (a) reference to Court in clause (a) of Section 41 and where it occurs for the first time in Section 43(1) shall be construed as reference to the arbitrator. I shall later deal in detail with the provisions of the said Rules 9 and 13 in connection with the alternative argument of the learned Advocate General about the scheme of Section 19 and rules made thereunder being inconsistent with the Arbitration Act. But at this stage reference is made to the contents of the said rules in the context of the argument that by the said Section 19 and the rules to be made thereunder the legislature intended to lay down a complete code for determining compensation by arbitrator in respect of compulsory acquisition of property.

11. In this connection it is also important to notice the opening words of Section 19(1)(g), viz. "save as provided in this section and in any rules made thereunder". These words show that further action by way of making rules is contemplated and by such rules any other provisions of law relating to arbitration for the time being in force if thought proper may be applied with or without modifications to arbitrations under the said Section 19.

12. In my opinion, it is clear from the provisions of section 19, and the said rules made thereunder, that the legislature intended to make a complete code for determining compensation by arbitration u/s 19 and no other law was to affect the provisions of that Code. It is true that in the said Section 19 or the rules made thereunder there is no provision to the effect that an award will be enforceable as a decree of a Civil Court. It may, however be that such a provision was considered unnecessary in view of the fact that as it is the Government who has to pay the amount of compensation and that too in the discharge of their constitutional liability to do so, it was considered that they would comply, with the award, or in case of an appeal, with the decision of the High Court and no occasion would arise for party to enforce the terms of the award for payment of compensation against the Government. In any event omission of such a provision in the said Section 19 and rules thereunder, in my opinion, does not detract from their constituting a complete code so far as determination of the amount of compensation by arbitration is concerned as it was not disputed before me that a person to whom compensation is awarded by an award made under the said Section 19, can enforce the award by filing a suit to recover the amount of



compensation and since 1950 even by filing a petition for a Writ of Mandamus under Art. 226 of the Constitution.

13. The learned Advocate General by way of context also referred to the legislative history of the law of arbitration. At the time of passing of the Defence of India Act in 1939 there was no law of arbitration applicable to statutory arbitrations. Prior thereto law of arbitration was substantially contained in two enactments, viz., the Indian Arbitration Act (IX of 1899) and the Second Schedule to the Code of Civil Procedure, 1908. The operation of the Act of 1899 was limited to the Presidency towns and was liable to be extended to other areas by appropriate Provincial Government. Its scope was confined to arbitration by agreement without intervention of the Court. The second schedule to the CPC dealt with arbitration outside the operation and scope of the Act of 1899 and related in most parts to arbitrations suits, though arbitrations without the intervention of the Court was also briefly provided for. A bill to consolidate and amend the law relating to arbitrations was published in the Government of India Gazette Part V, pages 129 onwards on 26th July 1939. Sub-section (3) of the said bill stated that the Indian Arbitration Act, 1940, would come into force on 1st July 1940, and it did in fact come into force on that day. Section 46 of the Arbitration Act for the first time made applicable other provisions of the Indian Arbitration Act, 1940, to statutory arbitrations to the extent mentioned therein. The learned Advocate General, therefore contended that as at the time of coming into force of the Defence of India Act on 29th September 1939 there were in force the said two enactments relating to arbitrations neither of which applied to arbitrations u/s 19 of the Defence of India Act, it would be futile to construe the said words "law for the time being in force" as referring to law in force at the time of passing of Defence of India Act, viz. the said two enactments. Further at the time of the passing of the Defence of India Act, 1939 the legislature could not have been unaware of the said Bill to consolidate and amend the law relating to arbitrations which was to come into force on 1st July 1940, and whereby the provision was made for the first time by Section 46 thereof for applying the other provisions of the Arbitration Act to statutory arbitrations to the extent mentioned therein. It was submitted that in view of the said legislative history the said words "law for the time being in force" should be construed as covering law, which came into force subsequently, i.e., after the passing of the Defence of India Act. Mr. Thakker for the Petitioner, on the other hand, merely contented himself by saying that the said clause (g) was enacted only out of abundant caution and the provision so made should not prevent the Court from construing the said words "law for the time being in force", as referring only to law in force at the time when the Defence of India Act came into force. In my opinion the legislative history of arbitration law supports learned Advocate General's construction of the said words, and petitioner's contention is untenable also on the ground that it is opposed to the well-known rule of construction that Court should avoid a construction which would render any part or words of the statute redundant.

14. As regards the case of East India Film Studios Vs. P.K. Mukherjee and Others, the Advocate General submitted that the decision of the learned Judge on the construction of the said words "law for the time being in force" was obiter and that in any event the said decision was not correct inasmuch as the learned Judge overlooked the aforesaid legislative history referred to by him. He also drew my attention to another subsequent case of the Calcutta High Court in Karnaphuli Jute Mills Ltd. Vs. Union of India (UOI), where a contrary view to that in the first case is expressed, viz., the Arbitration Act does not apply to arbitrations u/s 19 of the Defence of India Act or the rules thereunder. He, however, candidly stated that In the second Calcutta case no mention of the earlier Calcutta case was made nor any reasons given in support of the said view and therefore the subsequent Calcutta case could not be said to have affected the authority of the earlier case. On the other hand Mr. Thakker for the petitioner in support of his contention has mainly relied upon the case of East India Film Studios Vs. P.K. Mukherjee and Others, . In my opinion, in East India Film Studios Vs. P.K. Mukherjee and Others, the question of applicability of Arbitration Act to arbitrations u/s 19 of the Defence of India Act did not arise in such a manner as to require a decision thereof by the learned Judge and therefore the said decision is obiter. Even otherwise the said decision, is not binding on this Court. As, however, the judgment of the learned Judge is a considered one and as Mr. Thakker strongly relied on the said decision in support of his contention. I think it necessary to deal with the same in detail.

15. The facts in the Calcutta case were as follows: In 1942 certain property of the petitioner was requisitioned by the Government of West Bengal under Defence of India Act. By an order made on 20th June 1944 a reference to arbitration was made under S. 19 of the Defence of India Act for determining compensation to be paid to the petitioner. By an order made on 27th February 1950 one J. C. Majumdar Additional District Judge, Alipur, was appointed as arbitrator by the Government of West Bengal. While Mr. Majumdar was proceeding with the Arbitration his authority as arbitrator was revoked or cancelled by an Order made by the Government on 24th November 1951.

16. The petitioner made a representation to the Government for revoking the said order but the Government refused to do so, and by an order made on 22nd December 1951, respondent No.4 was appointed as an arbitrator in place of Mr. Majumdar. The petitioner, therefore, filed an application under Art 226 of the Constitution for an appropriate writ directing the respondents Nos. 1 and 2 to withdraw or cancel the said order dated 24th November 1951 revoking the appointment of the said arbitrator. On behalf of the Government it was denied that the authority of Mr. Majumdar as arbitrator was revoked as alleged and it was pointed out that respondent No. 4 was appointed as arbitrator inasmuch as he was appointed Additional District and Sessions Judge in place of Mr. Majumdar. The learned Judge held that in the circumstances of the case there was no provision for revocation of the authority of an arbitration in S. 19, or the rules made thereunder. It appears to me that the decision in the case, with

respect to the learned Judge, could have been rested on the above ground and the impugned Order dated 22-12-1951 held as bad as having been made without jurisdiction and it was unnecessary to raise the further question whether the Arbitration Act, 1940, applied to arbitrations under S. 19 of the Defence of India Act, and, if so, whether the authority of Mr. Majumdar to act as an arbitrator could only be revoked or cancelled by Court under S. 5 of the Arbitration Act. The learned Judge, however, raised the question whether the Arbitration Act fell within the purview of the expression "law for the time being in force" in S. 19 (1) (g) of the Defence of India Act, and accepted the following proposition viz:-

"It appears from these decisions, that the expression (is for the time being) may refer either to a particular point of time or to several periods of time and the interpretation that is to be adopted in any particular case must depend upon the context in which the expression occurs." (Para 16)

The learned Judge, however, instead of considering the context in which the said expression is used proceeded to give his decision as follows:-

"It appears to me that the words have reference only to the laws which were actually in existence at the time the Defence of India Act came into force".

17. The learned Judge, however, added that:-

"The intention was to keep the arbitration under the Defence of India Act unaffected by any other law having any bearing upon the subject. In other words, the object of the framers of the Defence of India Act was to make S. 19 of the Act a self-contained code so far as arbitrations for assessment of compensation in respect of requisitioned lands were concerned".

18. The learned Judge referring to the rules made under S. 19 also observed that they indicated that the said S. 19 was intended to be a complete code by itself. Later on, still, he categorically observed that :-

"The rules, by their exhaustive treatment of the possible situations with regard to an arbitration have tried to make S. 19 as complete a code as possible".

Now with respect, I agree with the learned Judge that the object of S. 19 and the rules thereunder is to make a complete self-contained code for arbitration for determining compensation and to keep the arbitration under the said S. 19 unaffected by any other law having any bearing upon the subject. But in view of the said object of legislature, it would follow that not only the law bearing upon the subject in force at the time of passing of the Defence of India Act but such law that comes into force even subsequently should not apply to arbitrations under the said S. 19. In my opinion again with respect, the decision of the learned Judge is in conflict with his own conclusion that the object and purpose of the legislature in enacting the said Section 19 and the rules thereunder is to provide a complete, self-contained code. Further, the attention of the learned Judge does not seem to have been drawn to the legislative history of arbitration law. Again the learned Judge gave the expression "for the time being in force"

occurring in Section 46 of the Arbitration Act the same meaning which he gave to the said expression in Section 19 (1) (g), with the result that the said Section 46 would apply to arbitrations under those laws only which were already in force at the time when the Arbitration Act came into operation, i.e. on 1st July 1940, and not to arbitrations under laws which came into force subsequently. In my opinion, however, such a construction is untenable as no principle can be suggested on the basis of which the legislature could have drawn such a distinction between laws made before and after the Arbitration Act for applying the provisions thereof to such laws. If the legislature had intended to refer in Section 19 (1) (g) of the Defence of India Act or in Section 46 of the Arbitration Act to law in force only at the time of coming into force the Defence of India Act or the Arbitration Act, it could have easily expressed that intention by using the word "now" therein instead of the words "for the time being". For all these reasons, I am unable to agree with the interpretation put up by the learned Judge on the said words "law for the time being" in Section 19(1) (g). All the above considerations lead me to the conclusion that the said words "law for the time being in force" in Section 19(I)(g) refer to any law bearing upon the subject of arbitration which is in force at the time when the Question of applicability of that law to arbitration u/s 19 of the Defence of India Act arises and covers any such law which came into force even after the passing of the Defence of India Act. The Arbitration Act therefore falls within the ambit of the said words "law for the time being in force" in Section 19 (I)(g) and its provisions do not apply to an award made under the said S. 19.

19. Assuming that I am wrong in the view I have taken, I proceed to consider the alternative argument of the learned Advocate General that even if the application of the Arbitration Act to arbitrations u/s 19 of the Defence of India Act is not excluded by clause (g) of the said Section 19 (1). Section 14(2) of the Arbitration Act is in consistent with the provisions of the said section 19 and rules made thereunder, and therefore, by reason of the exception in Section 46 of the Arbitration Act it does not apply to an award made under the said Section 19.

20. In order to appreciate this contention it is necessary to consider the effect and inter-action of some of the Provisions of Arbitration Act and of the said section 19 and rules made thereunder.

21. Section 46 of the Arbitration Act, so far as it is material lays down that the Provisions of the Arbitration Act, shall apply to every Arbitration under any other enactment for the time being in force, except in so far as the Arbitration Act is inconsistent with the other enactment or with any rules made thereunder. Section 14(2) of the Arbitration Act, so far as it is material, provides that the Arbitrator shall, if so directed by the Court cause the award or a signed copy of it to be filed in Court and the Court shall thereupon give notice to the parties of the filing of award. After an award is filed in Court under the said section 14(2), the Court is seized of the matter and may modify it u/s 15, or remit it to the arbitrator for reconsideration u/s 16, or may set it aside under S.17 on any one

or more of the grounds set out in Section 30 of the said Act

22. Sections 17 and 30 of the Arbitration Act are material and are as follows:-

Section 17: Judgment in terms of award:

"Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with the award".

Section 30: "An Award shall not be set aside except on one or more of the following grounds, namely:

(a) that an arbitrator or umpire has misconducted himself or the proceedings:

(b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid u/s 35;

(c) that an award has been improperly procured or is otherwise invalid."

Reference is already made to the provisions of Section 19 of the Defence of India Act and the rules made thereunder, but in this context the provisions of Section 19(1)(e) and Rules 9, 10 and 13 of the said Rules are important. The said Section 19(1) (e) provides for an appeal to the High Court against an award except where the amount thereof does not exceed an amount prescribed by rules. Rule 9 is as follows:

"Subject to any appeal made to the High Court the award shall be final and binding on the parties concerned and the persons if any claiming under them".

Rule 10 provides a sum of Rs.25,000 as the maximum amount of an award against which no appeal shall lie.

23. Rule 13 runs as follows:

"Save as otherwise provided in the foregoing rules or in Section 19 of the said Act the procedure to be followed in arbitration under these rules shall be in accordance so far as may be with the provisions of clauses (a) and (c) to (e) of Section 13, sub-section (1) of Section 14, Section 27, sub-section (1) of Section 28, clauses (a) and (c) of Section 30, clause (a) of Section 41, Section 42 and Section 43 of the Arbitration Act, 1940. provided that (a) reference to court in clause (a) of Section 41 and where it occurs for the first time in sub-section (1) of Section 43 shall be construed as reference to the arbitrator and (b) reference to Court in sub-section (1) of Section 28 shall be construed as reference to the provincial Government".

It would be noticed that clauses (a) and (c) to (e) of Section 13 of the Arbitration Act enumerate the various powers an arbitrator has in relation to an arbitration proceeding before him.

23A. Section 14(1) requires an arbitrator to sign an award after he has made it and give notice thereof to the parties. Section 27 empowers an arbitrator to make an interim award. Section 28(1) empowers the Court only to enlarge time for making an award. Clauses (a) and (c) of Section 30 are already set out hereinabove. Clause (a) of Section 41 applies the provisions of Civil procedure Code, 1908, to all proceedings before the Court, and to all appeals, under the Arbitration Act. Section 42 deals with the service of notice by party or arbitrator. Section 43 empowers the Court to issue process for appearance before arbitrator. The above provisions of Arbitration Act are expressly made applicable by the said Rule 13 to arbitrations held u/s 19 of Defence of India Act, but the important thing to observe about the said Rule 13 is the proviso thereto, whereby the reference to Court in clause (a) of Section 41 and where it occurs for the first time in Section 43(1) is to be construed as reference to the arbitrator, and the reference to Court in Section 28(1) is to be construed as reference to the provincial Government

24. The learned Advocate General submitted that the provisions of Sections 14(2), 15, 16 and 17 of the Arbitration Act are wholly inconsistent with, and therefore, excluded by, the provisions of Section 19(1) (e) of the Defence of India Act and the said Rules 9 and 13 made under the said Section 19. In this context, he also reiterated his argument that the scheme and purpose of the said Section 19 and the rules made thereunder is to provide a separate complete code to determine by arbitration the amount of compensation for compulsory acquisition of property, and stressed that under the scheme so framed the jurisdiction of civil Court is completely ousted except by way of an appeal to the High Court. He strongly relied on the provisions of the said Rule 9 whereby an award is made final subject only to an appeal to the High Court where the amount of the Award exceeded the prescribed limit and contended that the said Rule 9 by necessary implication excluded the jurisdiction of the Court under the Arbitration Act to modify, or to remit for reconsideration or to set aside, an award. He further argued that though the said Rule 13 extends the provisions of clauses (a) and (c) of Section 30 of the Arbitration Act to arbitrations under the said Section 19 and confers a power on a party to have an award set aside on any of the grounds mentioned in the said clauses (a) and (c) of Section 30, the said rule is to be read with the provisions of Rule 9, and so read a party has a right to set aside an award on any of the said grounds only in an appeal against the award to the High Court and not otherwise. In other words, he contended that the combined effect of the said Rules 9 and 13 is to enlarge the powers of the High Court as an appellate Court u/s 19(1)(e) of the Defence of India Act to set aside an award on any of the grounds mentioned in the said clauses (a) and (c) of Section 30, Mr. Thakker for the petitioner conceded that in a case where an appeal lies against an award the right to set it aside on any one or more of the

grounds mentioned in the said clauses (a) and (c) of Section 30 can be exercised only by way of resorting to the machinery laid down in the Arbitration Act. He, however, contended that even in a case where no appeal lies against an award by reason of the amount thereof not exceeding the prescribed limit either party has a right under the said Rule 13 to have an award set aside on any of the grounds mentioned in the said clauses(a) and (c) of Section 30, and for that purpose a party has a right under the said Section 14(2) to apply to the Court for directing an arbitrator to file his Award in Court. He argued, that the Court should construe the said Rules 9 and 13 in such a manner as to avoid repugnancy between the said rules and unless the provisions of the said rules are reconciled by construing them as contended for by him grave injustice would be done to a party in a case where no appeal lies, even though the arbitrator who is a nominee of Government was guilty of grave misconduct like bribery, and had deliberately awarded an amount against which no appeal lies. He further contended that omission to include Section 14(2) in the said Rule 13 was not material as a right to approach a Court u/s 14(2) was merely incidental to the right of a party under the said Rule 13 to have an award set aside on any of the grounds mentioned in the said clauses (a) and (c) of Section 30. He submitted that if the said Rules 9 and 13 were construed in the aforesaid manner, there could be no inconsistency between the said rules and Section 14(2) of the Arbitration Act. In support of his contention Mr. Thakker called in aid certain rules of construction of statutes, viz. that whenever it is sought to establish that there is a repugnancy between two competing statutes there is always a presumption in favour of the validity of both statutes and therefore endeavour has to be made to reconcile the two and that the exclusion of Civil Court will not be lightly inferred unless such exclusion is explicitly expressed or clearly implied, and cited three cases of this Court, namely: (1) Abdul Majid Haji Mahomed Vs. P.R. Nayak, ,Shivaji Bhara & Co. v. Kanji Vasanji 51 Bom LR 515=AIR 1949 Bom 337 and (3) M/s. Khimji Poonja & Co. v. N. Ramanlal & Co. 62 Bom LR 277-AIR 1960 Bom 532.

25. In my opinion, there is no substance in Mr. Thakker's contention. In the first place the language of the said Rules 9 and 13 is plain and admits of but one meaning and therefore the task of interpreting and reconciling the provisions of the said rules can hardly be said to arise. At the outset it is important to observe the opening words of Rule 13, viz; "Save as otherwise provided in the foregoing rules or in Section 19 the provisions, inter alia, of clauses (a) and (c) of section 30 of the Arbitration Act expressly saves the provisions of Rule 9, which make an award final and binding on the parties subject to an appeal to the High Court. The provisions of the said rule 9 therefore prevail over those of the said rule 13 and the right to have an award set aside can be exercised by a party only in consonance with the provisions of Rule 9 i.e. by way of an appeal to the High Court when an appeal lies. As already noted the said rule 13 by applying the provisions of Section 41(a) of the Arbitration Act to arbitration proceedings under the said Section 19 has provided that the CPC shall apply to all appeals under the

said Section 19. The High Court as a Court of Appeal u/s 19(1)(f) can exercise only such powers as are confided to it under CPC and the grounds of appeal must be as arise from the pleadings and evidence and therefore the High Court as such appellate Court cannot go into questions of misconduct, like bribery, on the part of an arbitrator. The combined effect of Rules 9 and 13 is therefore to enlarge the grounds of appeal by allowing a party to have an award set aside on any grounds mentioned in clauses (a) and (c) of Section 30 of the Arbitration Act. If, however, the amount of an Award does not exceed the prescribed limit no appeal lies and the award becomes final and binding on the parties, and in such a case there is no right to a party under the said Rule 13 to have an award set aside on any of the grounds mentioned in clauses (a) and (c) of Section 30.

26. The next question is whether apart from the said rules framed u/s 19 of the Defence of India Act, a party has a right to have an award set aside under the Arbitration Act. Now u/s 17 of the Arbitration Act, a Court may set aside an award after it is filed in Court. Therefore, the question is whether the provisions of S. 17 of the Arbitration Act, in so far as it empowers to set aside an award are inconsistent with the provisions of Section 19(l)(e) of the Defence of India Act and the said Rules 9 and 13 as contended for by respondents Nos. 2 and 3. In this connection, reference is already made to the proviso to the said Rule 13 whereby the reference to Court in Section 28(1) clause (1) of Section 41 and Section 43(1) of the Arbitration Act is substituted by reference to the Provincial Government or the Arbitrator as therein mentioned. It would also be seen that the said Rule 13 does not apply to arbitrations u/s 19 of the Defence of India Act, the provisions of clause (b) of Section 13, Section 14(2) and (3) and clause (b) of Section 30 of the Arbitration Act and thus excludes the jurisdiction of the Court in matters covered by the said provisions of the Arbitration Act. Lastly in this context, the learned Advocate General emphasised the scheme and object of Section 19 of the Defence of India Act and the rules framed thereunder. I have already expressed my view that the legislature by enacting the said Section 19 and for providing for making rules thereunder intended to provide a complete separate code for arbitration under the said Section 19. In this connection I may refer to the following two cases cited by the learned Advocate General in support of his contention, viz. (i) Nanda Kishore Goswami and Another Vs. Bally Co-operative Credit Society, Ltd. and Others, and (ii) G.I.P. Railway Employees Co-operative Bank Ltd. Vs. Bhikhaji Merwanji Karanjia, . In AIR 1943 Cal 255 the respondent society had commenced two separate execution proceedings on the basis of two awards obtained against the appellants under Rule 22 of the rules framed u/s 43 of the Co-operative Societies Act (Act II of 1912). The appellants raised a contention that in view of the provisions of Section 46 of the Arbitration Act, it was necessary for the respondent society to get a judgment and decree upon the award u/s 17 of the Arbitration Act before it could be enforced as a decree. Mukherjee J. referred to the provisions of sub-rules (1) to (6) of Rule 22 framed u/s 43 of the Co-operative Societies Act. The said sub-rules (1) to (6) laid down the mode of appointing arbitrator and the entire procedure to be followed



down to the stage where the award became final and conclusive. Sub-rule (5) gave an aggrieved party a right to appeal against the award of the arbitrator to the Registrar himself. The learned Judge found that the whole scheme of the said provisions was to oust the jurisdiction of the Civil Court through the arbitration proceedings and that the machinery and the procedure indicated by the said provisions was totally inconsistent with the provisions contained in Chapter II of the Arbitration Act. In the other case of *G.I.P. Railway Employees Co-operative Bank Ltd. Vs. Bhikhaji Merwanji Karanjia*, the Petitioner was a company registered under the Bombay Co-operative Societies Act (Bombay Act VII) of 1935. The respondent was an employee of the petitioner company. The petitioner company at first suspended and later terminated respondent's service. A dispute arose between the parties and the respondent approached the Registrar of Co-operative Societies and after some correspondence the dispute was referred to arbitration u/s 54 of the Bombay Co-operative Societies Act. As the petitioner contended that there was no dispute touching the business of the petitioner company and as the respondent declined to withdraw the proceedings before the Registrar, the petitioner Company filed an application u/s 33 of the Arbitration Act wherein it contended that by reason of Section 46 of the Arbitration Act, the provisions with regard to arbitration in the Bombay Co-operative Societies Act became an arbitration agreement within the meaning of Section 33 of the Arbitration Act, and that it was open to the petitioner company to challenge the validity of such agreement u/s 33. Chagla J. (as he then was) considered the provisions of Sections 54, 54A, and 56 and 57 of the Bombay Co-operative Societies Act with regard to arbitration and observed that the Bombay Co-operative Societies Act set up a special Court with a special jurisdiction and with special powers to try matters referred to in Section 54 and proceeded to consider whether there was anything in the Arbitration Act which was inconsistent with the provisions of the said sections of the Bombay Co-operative Societies Act which would not entitle the petitioner company to present a petition for a declaration that the Arbitration agreement was invalid. His Lordship held that looking to the scheme of the said sections dealing with arbitration it was clear that all matters relating to the arbitration proceedings were to be determined by the authorities set up by the Bombay Co-operative Societies Act and the question of the validity of the Award referred to in Section 33 of the Arbitration Act was to be decided by the Special Court set up under the Bombay Co-operative Societies Act, and not by this Court as provided in Section 33 of the Arbitration Act.

27. As regards these two cases Mr. Thakker for the petitioner contended that they did not support the contention of the learned Advocate General as the decisions in these cases rested on the respective provisions of the Co-operative Societies Acts set out therein. No particular provisions of rules under the said Act were, however, pointed out which could distinguish these cases from the present case. In my view, the ratio of these two cases apply to the present case. In these cases the question of application of the provisions of Arbitration Act to the statutory arbitrations by reason of Section 46 of the said Act arose and the

decisions show that in order to render any provisions of the Arbitration Act inconsistent with any other enactment providing for arbitration within the meaning of Section 46 of the Arbitration Act the whole scheme of the latter enactment is material and may be looked at to see whether it creates thereby a special self-contained code for arbitration and thus by necessary implication excludes the jurisdiction of Civil Court under the Arbitration Act as being inconsistent with the said scheme of the other enactment. In my view the whole scheme and object of Section 19 of the Defence of India Act and the rules thereunder is to create a special forum by way of arbitration including an appeal to the High Court for determining the amount of compensation in respect of compulsory acquisition of property by Government and to exclude the jurisdiction of the Civil Court under the Arbitration Act.

28. For these reasons I hold that the provisions of Ss. 14 (2) and 17 of the Arbitration Act are wholly inconsistent with the provisions of Section 19 and the rules made thereunder. As regards the authorities cited by Mr. Thakker it is not necessary to consider them as Section 46 of the Arbitration Act itself provides that other provisions of the said Act to the extent that they are inconsistent with other statutory provisions relating arbitration will not apply to such statutory arbitration, and no question of construction by way of reconciling the provisions of two separate Acts or of saving the jurisdiction of civil Court arise in the present case. As regards the misconduct of an arbitrator in the illustrative case given by Mr. Thakker, it need only be said that the arbitrator is to be presumed to perform his duty properly, and that in any event, the argument based on ground of injustice in a conceivable case is of no avail in construing the said Rules 9 and 13 and Sections 14(2) and 17 of the Arbitration Act which are not at all ambiguous.

29. In the result the respondents Nos. 2 and 3 succeed in their preliminary objection that the Court has no jurisdiction to entertain this application u/s 14(2) of the Arbitration Act. The petition is, therefore, dismissed with costs. The petitioner will pay taxed costs to respondents Nos. 2 and 3 two counsel allowed. As respondents Nos. 4 to 7 are not concerned with the present dispute between the petitioner and respondents Nos. 2 and 3 and yet at the hearing supported respondents Nos. 2 and 3 they shall bear their own costs.

30. Petition dismissed.