
(1990) 10 BOM CK 0014

In the Bombay High Court

Case No : Arbitration Petition No. 114 of 1990 in Award No. 12 of 1990

Union of India (UOI) and Others

APPELLANT

Vs

Great Eastern Shipping Co. Ltd.

RESPONDENT

Date of Decision : 11-10-1990

Acts Referred:

Arbitration Act, 1940 — Section 3, 31(1), 31(4), 32

Citation : (1991) 1 BomCR 672

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : H.G. Advani and J.B. Ramchandran, for the Appellant; S.K. Mukherji, instructed by Bhatt and Saldhana, for the Respondent

Final Decision : Dismissed

Judgement

D.R. Dhanuka, J.—This is a petition filed by Union of India and Food Corporation of India against the Great Eastern Shipping Co. Ltd., in substance a declaration that the impugned award dated 4th January 1990, made by Shri V.K. Bhandari and Capt. D.T. Ramchandran, Arbitrators is wrongly filed in this Court and in alternative for setting aside of the said impugned award. Material facts and relevant circumstances emerging from the record are as under :---

2. By a Charter Party Agreement dated 4th June, 1984 the respondents-owners chartered their vessel m.v. "JAG RAKSHAK" to the petitioners to carry 12000 metric tons of rice in bags from Burma to India on the terms and conditions set out therein. It is stated in so many words right at the top of the said charter party agreement that the said agreement was made at Bombay. The said charter party agreement recites that the said agreement was arrived at between the President of India, New Delhi and the respondents herein. Addendum No. 1 forming part of the said charter party agreement also states that the said contract was arrived at Bombay on 4th June, 1984. The respondents have their registered office at Greater Bombay. The said charter party agreement was signed by Shri D.N. Verma, Chartering Officer, Ministry of Shipping & Transport,

on behalf of and in the name of President of India. Clause 59 of the said charter party agreement contained an arbitration clause reading as under:

"59. Any dispute arising under this charter shall be settled in accordance with the provisions of Indian Arbitration Act, 1940 in India, each party appointing an Arbitrator and the two Arbitrators in the event of disagreement appointing at Umpire whose decision shall be final and binding upon the parties against each other. The union of India had entered into the said charter party agreement on behalf of the Food Corporation of India. Correspondence was carried on by Food Corporation of India on behalf of petitioners. The Food Corporation of India represented both the petitioners in the above referred arbitration proceedings.

4. By their letter dated 15th April, 1987 the respondents appointed Shri V.K. Bhandari as an arbitrator. By its memorandum dated 4th May, 1987 the petitioners appointed Capt. D.T. Ramchandran as their arbitrator. It was also stated in the said memorandum of appointment of Capt. D.R. Ramchandran that the arbitrator should give the necessary directions to the parties and enter upon the reference. A copy of the said memorandum was endorsed by Food Corporation of India to Mr. V.K. Bhandari, Co-arbitrator, Capt. D.T. Ramchandran, Co-arbitrator, respondent etc.

5. Along with its letter dated 26th June, 1987 the respondents forwarded their statement of claim, to both the arbitrators along with list of documents of reliance together with copies of relevant documents. It was stated in the last but one paragraph of the said letter dated 26th June, 1987 addressed by the respondents to both the arbitrators as under :

"We shall appreciate if you will now give direction to the respondents to submit their counter statement on receipt of which we shall submit our reply thereto, if necessary."

The Food Corporation of India filed its counter statement before both the arbitrators with their covering letter dated 6th November, 1987. The arbitrators held their meetings on 8th and 9th September, 1989 at which both the parties were represented by Counsel and detailed submissions were made as reflected in the minutes of the said meetings.

6. By their statement of claim, filed before the Arbitrators, the respondents prayed for an award against the petitioners in the sum of Rs. 2,96,278.39 and interest at the rate of 20% per annum from 27th December, 1984 till the date of the Award of the Arbitrators. It was averred in paragraph 4 of the said Statement of Claim that the petitioners had utilised lay time to the extent of 26 days 10 hours, 36 minutes in relation to loading of cargo at both the ports in Burma while laytime permissible was 17 days, 6 hours, 21 minutes. It was contended that the petitioners were liable to pay demurrage to the respondents in the sum of Rs. 3,48,729.16 P. It was averred in paragraph 5 of the Statement of Claim that the petitioners were entitled to despatch money of Rs. 2,77,541.67 only for expediting discharge of cargo at Madras i.e. by utilising lay time 4 days, 10

hours, 30 minutes as against permissible lay time of 15 days, 1 hour and 33 minutes. It was averred in paragraph 6 of the Statement of Claim that while settling the balance freight on or about 25th July, 1985 the petitioners have deducted a sum of Rs. 2,77,986.11 p. towards the despatch money instead of Rs. 2,77,541.67. In paragraph 7 of the Statement of Claim, the respondents admitted that the respondents had already received a sum of Rs. 97,876.45 towards demurrage amount from the petitioners as against their final revised claim of Rs. 3,48,729.16. In the said Statement of Claim, the respondents also averred that the petitioners had unlawfully deducted a sum of Rs. 44,981.24 p. on account of expenses alleged to have been incurred by the petitioners on account of the respondents. The respondents thus claim the above-referred accounts from the petitioners under the heading of demurrage for use of lay time in excess of lay time permissible under the contract and under the heading of refund of unlawful, deductions, etc. as indicated above. It may be stated in passing even at this stage that by its letter dated 3rd May, 1985 the respondents had informed the petitioners that the correct amount of demurrage payable by the petitioners to the respondents was computable at Rs. 3,32,268.06. The said amount was however revised and re-calculated by the respondents to be Rs. 3,48,729.16 while filing the Statement of Claim. By its counter statement dated 6-11-1987 the Food Corporation of India made a claim that the respondents be directed to pay a sum of Rs. 19,988.82 as per statement of particulars annexed thereto. By the said counter statement, the petitioners submitted that the notice of readiness must be deemed to have been accepted by the petitioners only when their vessel was granted free pratique and the lay time pertaining to loading of cargo at Bassein on 25-6-84 and at Rangoon Pilot Station on 17-7-1984. It was stated in the said counter claim by the petitioners that lay time in respect of loading of cargo at Rangoon would commence on 17-7-1984 as the vessel was granted free pratique only on 16-7-1984 although the notice of readiness was tendered by the respondents to the petitioners on 11-7-1984. By the said counter statement/counter claim the petitioners also claimed that the respondents were liable to pay much larger amount on account of discharge money to the petitioners for expeditious discharge of cargo at Madras the petitioners were liable to pay much lesser amount on account of demurrage than what was claimed by the respondents. Both the parties filed large number of documents and cited several authorities before the learned Arbitrators. In the meeting of arbitrators held on 8th and 9th September, 1989, the petitioners willingly participated without any objection or protest. During the course of the said meetings, parties and their learned Counsel made their detailed submissions on interpretation of contract, legal provisions regarding computation of lay time, factual matters, etc. as reflected in detailed minutes of these meetings. It was at no time contended before the learned Arbitrators that the time to make the award has already expired.

7. On 29-9-1989, the respondents filed Arbitration Petition No. 169 of 1989 in this Court u/s 28 of the Arbitration Act, 1940 stating therein that the arbitrators

might not be able to make their award within four months from entering upon the reference. It was averred in paragraph 8 of the said petition that u/s 28 of the Arbitration Act, 1940 that the charter party agreement dated 4-6-1984 was made between the parties at Bombay and the Food Corporation of India carried on business at Bombay. The said petition was accepted by the learned Chamber Judge on 29-9-1989. On 4-1-1990 the impugned award was made i.e. within four months from the date of entering upon the reference. The Arbitrators had entered upon the reference on 8-9-1989. On 19-3-1990 the following order was passed by Suresh, J., on Arbitration Petition No. 169 of 1989.

"No order on the petition as the same does not survive. No order as to costs."

8. On 19-1-1990 the time impugned award was filed in this Court. On 3-2-1990 the petitioner filed a petition before the High Court of Madras purporting to do so u/s 19(2) of the Arbitration Act, 1940 for a direction to the arbitrators to file the said Award in Madras. No reference was made to the earlier petition for extension of time filed by the respondents in this Court u/s 28 of the Arbitration Act in the petition filed in the High Court of Madras. By the time the said petition dated 3-2-1990 was filled before the High Court of Madras, the petitioners fully knew about the said Petition No. 169 of 1989 as the petitioners were duly served about the same.

9. This petition was accepted by the learned Chamber Judge on 30-6-1990. The petitioners took adjournment from time to time to lead evidence to substantiate their plea that no part of the cause of action has arisen at Bombay and that the said charter party agreement was in fact executed by both the parties at Delhi and that the recital made in the said charter party agreement itself to the effect that the said agreement was made at Bombay was not true. By my order dated 21st September, 1990, I adjourned the hearing of the petition for one week on application of the petitioners to lead oral evidence in the matter. No oral evidence was however led. The petitioners decided to proceed with the hearing of the matter on the basis of documents filed by the arbitrators including the charter party agreement. A copy of the abovereferred charter party agreement was marked as Exhibit "A" by consent of Counsel on both sides.

10. On 20-6-1990 the respondents took out a notice of motion for decree in terms of the award, as the petition for setting aside the award was not presented to the Chamber Judge for acceptance in time. The said motion is pending as the petition to set aside the award is still not disposed of.

11. Mr. Advani, learned Counsel for the petitioners has submitted that the learned arbitrators were not entitled to file the impugned award in this Court and this Court has no jurisdiction to receive the award. Section 31(1) of the Arbitration Act, 1940 provides that an award may be filed in any Court having jurisdiction in the matter to which the reference relates. The expression "Court" has been defined by section 2(c) of the Arbitration Act, 1940 as a Civil Court having jurisdiction to decide the question forming the subject matter of the

reference if the same had been the subject matter of a suit. Section 31(4) of the Arbitration Act reads as under :

"(4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court."

It is therefore obvious that it shall have to be considered as to whether this Court would have jurisdiction to entertain the claim which was made subject matter of the reference if the said claim had been made the subject matter of a suit. If ,material part of the cause of action had arisen in Bombay, this Court would have jurisdiction to entertain the claim of the respondents which was the subject matter of the reference if the same had been made the subject matter of civil suit. Mr. Advani, learned Counsel for the petitioner, has submitted as under :

(a) No part of the cause of action has arisen in Bombay, as according to the petitioners the chartered party agreement was made at Delhi and the cargo had to be loaded at the ports in Burma and unloaded at Madras. I shall first deal with this contention here and now. Mr. Mukherji, learned Counsel for the respondent has contended that material part of the cause of action had and has arisen Bombay as the charter party agreement was made at Bombay. The charter party agreement dated 4-6-1984 itself states that the said agreement was made at Bombay. The Addendum forming part of the said agreement also states that the said agreement was made at Bombay. It will have therefore to be presumed that the said agreement was made at Bombay. The place where the agreement is made would be a material part of the cause of action. It is not possible for me to speculate as to whether the chartering officer has come to Bombay or had signed at Delhi and who had signed first and who had signed last. The petitioners desired to lead oral evidence of the chartering officer who had signed the agreement and the matter was adjourned on few occasions for this very purpose on the application of learned Counsel for the petitioners. No oral evidence was, however, led. I, therefore, hold that the presumption arising from the contents of the admitted documents i.e. charter of party agreement dated 4-6-1984 remains un rebutted. I hold that the charter party agreement was made at Bombay. I hold that this court has jurisdiction to receive the Award.

(b) As a second limb of the same very contention as to jurisdiction of this Court to entertain the award, it was argued by Mr. advani that the Union of India concerning the charger party agreement was not commercial in nature. Since I have held that the material part of the cause of action has arisen at Bombay, it is not necessary to examine the second limb of the argument of Shri Advani and go into the question as to whether this Court would have or would not have jurisdiction to receive the award on this count whether the petitioner No. 1 carried on business at Bombay or not. In view of my finding that the material

part of the cause of action has arisen in Bombay, I must hold that the award is correctly filed in this Court. In view of this finding, I am not dealing with the authorities cited by Mr. Advani on the second limb of Mr. Advani's argument to prove that this Court has no jurisdiction to receive the award.

12. I shall now deal with the connected question u/s 31(4) of the Arbitration Act, 1940. The respondents filed petition for extension of time in this court u/s 28 of the Arbitration Act, 1940 on 29-9-1989. The said petition was filed in this Court as the Court of competent jurisdiction. The fact that the said petition was ultimately disposed of on 19-3-1990 with an order to the effect "no order on the petition as the same does not survive" makes no difference. Section 31(4) of the Arbitration Act, 1940 provides for vesting of exclusive jurisdiction in the Court of the place where first application under Arbitration Act, 1940 is filed and ouster of jurisdiction of other Courts which would have been Courts of competent jurisdiction in absence of applicability of section 31(4) of the Arbitration Act, 1940. Applying the provisions of the said section and the well settled propositions of law of interpreting said section, I hold that this Court alone had and has jurisdiction to receive the award and all subsequent applications to be made by either party under the Arbitration Act, 1940.

13. Reference was made by Mr. Advani to the Division Bench judgment of our High Court in *Union of India & another v. The Great Eastern Shipping Co. Ltd.* Bombay, reported in 1988(3) B.C.R. 485: 1988 M.L.J. 472. : . In this case Bharucha, J., speaking for the division Bench held that section 31(4) was attracted once it was found that the first application under the Arbitration Act, 1940 was made before a Court having jurisdiction to entertain the said application. It was held in paragraph 13 of the said judgment that it was not the requirement of sub-section (4) of section 31 that the application should be actually granted by the Court in which the application was made. It was further held in this case that an award may be filed in any Court having jurisdiction in the matter to which the reference relates. By virtue of the provisions contained in section 31(1) as well as section 31(4) of the Act, I hold that the award was correctly filed in this Court and all subsequent applications are also correctly filed by the parties in this Court. With respect, I do not accept the submission of Mr. Advani that the Honourable High Court at Madras has jurisdiction to receive the Award and not this Court.

14. Mr. Advani attacked the validity of the impugned award on two grounds. Mr. Advani, learned Counsel for the petitioner, contended that the impugned award was made beyond time. Mr. Advani invited my attention to section 3 of the Arbitration Act. Clause 3 of the First Schedule reads as under :

"The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow."

Mr. Advani contended that the petitioner No. 2 served the notice on the arbitrators to act on 4-5-1987 and the time of four months must be computed from that date. Mr. Advani contended that in any event the respondents had served the notice on both the arbitrators to act and letter dated 26-6-1987 when the respondents forwarded the statement of claim to the arbitrators. Mr. Advani submitted that in any event, the period of four months was liable to be computed from 26-6-1987. In my judgment, by its memorandum dated 4-5-1987 the Food Corporation of India had appointed Capt. D.T. Ramchandran as their arbitrator and a mere request to the said newly appointed arbitrator contained in the order of appointment to enter upon the reference cannot be construed as a notice to act under Clause 3 of the First Schedule to the Arbitration Act, 1940. In my judgment, letter dated 26-6-1987 addressed by the respondent to both the arbitrators forwarding their statement of claim cannot be construed as a notice on a party, calling upon the arbitrators to act within the meaning of latter part of Clause 3 of the First Schedule to the Arbitration Act. Clause 3 to the First Schedule to the Arbitration Act has been authoritatively interpreted by the highest Court of the country in *Hari Shankar Lal Vs. Shambhunath Prasad and Others*, . It was held in this case as under :

"If notice to act is given before they entered upon the reference, the four months would be computed from the date they entered upon the reference."

The arbitrators entered upon the reference only on 8th September, 1989 and the award made is in time. In this case the arbitrators had entered upon the reference on 8th September, 1989 when they held their first meeting of the arbitration and applied their mind to the merits of the claim. Counsel on both sides relied upon a Division Bench judgment of this court in *Jolly Steel Industries Pvt. Ltd., Poona Vs. Union of India and Another*, , wherein it was held that the expression "entering on the reference" within the meaning of first part of the Arbitration Act, meant that the arbitrators can be said to have entered upon the reference only when they start functioning effectively or apply their mind to the dispute. It cannot be reasonably disputed that the arbitrators entered upon the reference on 8th September 1989 and the award is made within four months from the date of arbitrators entering upon the said reference.

15. It is now time to refer to the latest judgment of the Supreme Court in the case of *State of Punjab Vs. Hardyal*, . It was held in this case that if the award was made beyond time, the parties were not estopped by their conduct from challenging the award on the ground that it was made beyond time merely because their having participated in the proceedings before the arbitrators after the expiry of the prescribed period. In this case the Honourable Supreme Court while deciding the appeal extended the time for making of the award in view of the willing participation of the parties in the proceedings without a demur and treated the award as having been made in time. The relevant portion of paragraph 14 of the said judgment reads as under :

".....No useful purpose will be served in remanding the case to the trial Court

for deciding whether the time should be enlarged in the circumstances of this case. In view of the policy of law that the arbitration proceedings should not be unduly prolonged and in view of the fact that the parties have been taking willing part in the proceedings before the arbitrator without a demur., this will be a fit case, in our opinion, for the extension of time. We accordingly extend the time for giving the award and the award will be deemed to have been given in time."

16. I have already held that in the present case the award was made in time i.e. within the period of four months from entering upon the reference and there is no need to extend the time. If, however, it is found that the impugned award is beyond time, I hereby extend the time in pursuance of the request made by the respondents in their affidavit in reply and treat the award as having been made in time. On either footing there is no merit in the contention of the petitioner that the impugned award should be set aside on the ground that the same is made beyond time. I have gone through the record of the arbitration proceedings and perused the minutes of the meetings of the arbitrators held on 8th and 9th September 1989. It is not disputed that the petitioners willingly participated in the arbitration proceedings and at no time contended that the time to make the award had already expired. I have, therefore, no hesitation in following the course which the Supreme Court followed in the above referred case. In this view of the matter, to leave no scope for any further argument, I have also extended time for the arbitrators to make the award. Time to make the award can be extended by the Court even on an oral application or even while considering application for setting aside the award or an appeal from the order passed on the said application at any stage.

17. The petitioners have assailed the award also on the ground that the impugned award suffers from an error of law apparent on the face of the award. The petitioners have alleged in paragraph 7(a) of the petition that the impugned award is contrary to the express terms of the Charter Party agreement. In paragraph 7(b) of the petition, the petitioners have alleged that under the charter party agreement, on a true interpretation of the charter party agreement the notice of readiness must be deemed to have been accepted only when the vessel was granted free pratique and fit in all respects and ready to commence loading of cargo. The petitioners have alleged that the lay time should be deemed to have commenced only on 25-6-1984 at the port of Bassein and not on 23-6-1984. The petitioners have alleged that the lay time with regard to loading at Rangoon Port is concerned, lay time should be deemed to have commenced after 16-7-1984 and not earlier as on 16-7-1984 at 13.00 hours free pratique was granted to the vessel. The petitioners have assailed the award on the ground that the claim made by the respondents against the petitioners for demurrage etc. was not supported by the charter party agreement and there was thus clear error of law apparent on the face of the record. The petitioners have also alleged in paragraph 7(g) of the petition that the respondents have reduced the claim for demurrage in correspondence to Rs. 3,32,902.06. The award is final both on facts as well as on law and is not assailable on such a ground particularly

when it is not a speaking award. The arbitrators are not bound to give reasons for making the award.

18. The following propositions of law are well settled by judgments of the Supreme Court :---

(1) It is not open to the Court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. The Arbitrators are not, bound to give any reasons in the award. The absence of reasons, the Court cannot interfere with the award.

(2) If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded, is a possible view though perhaps not the only correct view, the award cannot be examined.

(3) If there is a dispute as to interpretation of the contract, it is a matter for arbitrators to consider and Court cannot substitute its own decision.

(4) The Court had no jurisdiction to find out whether the arbitrator had acted correctly or incorrectly.

(5) The Court had no jurisdiction to substitute its own evaluation of the conclusions of law or fact and hold that the arbitrator had acted contrary to the contract when it was for the arbitrator to interpret the contract.

(6) If it was proved that the arbitrator has deliberately or otherwise ignored the parent contract and had not applied their mind at all to the relevant documents, the arbitrators could be said to be guilty of misconduct and their award could be characterised as perverse. If any authority is required for the abovereferred propositions, one may conveniently refer to the judgment of the Supreme Court in the case of *Sudarsan Trading Co. Vs. Government of Kerala and Another*, .

(7) The award cannot be assailed on the ground of error of law apparent on the face of the award unless the award contained a proposition of law as the basis of the award and the proposition of law was shown to be "apparently" and patently erroneous. The said ground would not be available when the award is a non-speaking award and no such proposition of law is to be found in the award or any other document incorporated therein so as to form part of the Award. It was held by the Supreme Court in the case of *Allen Berry and Co. Pvt. Ltd. Vs. The Union of India (UOI)*, New Delhi, .

"As the parties choose their own arbitrator, they cannot, when the award is good on the fact of it, object to the decision upon the law or the facts. Therefore, even where an arbitrator commits a mistake either in law or in fact in determining the matters referred to him, but such mistake does not appear on the face of the award or in a document appended to or incorporated in it so as to form part of it, the award will neither be remitted nor set aside notwithstanding the mistake. Mere reference to the contract in the award is not to held as incorporated it."

19. It is also well settled that the Court must lean in favour of upholding the award and the onus to challenge the award is on the party assailing the award and it is rather heavy.

20. Mr. Advani's contention based on particular interpretation of Clause 36(v) of the charter party agreement is on merits of the matter and the Court has no jurisdiction to sit in judgment over the decision of the arbitrator. If there was dispute as to jurisdiction of the arbitrators or the scope of the reference, I would have considered various clauses of the charter party agreement and interpreted the same for the limited purpose as aforesaid. In my judgment, it is not permissible for any party to raise additional grounds of challenge to the award like misconduct, fraud, improperly procuring the award etc. in absence of pleadings in that behalf in the petition. I refuse to consider the abovereferred additional grounds which are not to be found in the petition. Even on merits, I find no substance in any of the contentions raised on behalf of the petitioners.

21. Mr. Advani, learned Counsel appearing for the petitioner, has cited the following judgments in support of his contentions.

(1) Dandasi Sahu Vs. State of Orissa, .

(2) Union of India Vs. M/s. Ajit Mehta and Associates, Pune and Others, .

(3) Articles 73 and 74 from Standard Works known as Scruton on Charter parties and Bills of Lading Nineteenth Edition pages 145-147.

22. The above referred Supreme Court judgment has no application whatsoever to the issue arising in this case. In the above referred case cited by Mr. Advani the claimants had originally made a claim in the sum of Rs. 3,87,796/-. The supplemental claim made before the arbitrator amounted to Rs. 8,27,857/-. The total value of the work was not paid, according to the contractor was Rs. 25,00,156/-. Still the arbitrator awarded a sum of Rs. 31,44,437/-. In view of the above facts and other facts set out in the judgment, the Supreme Court held that the arbitrator had not applied their mind at all to the relevant documents and the relevant facts and the award was bad as also on the grounds that the amount awarded was disproportionately high. This case has nothing to do with the situation arising in this case.

23. Similarly, in my judgment, Mr. Advani cannot usefully rely on the judgment of the Division Bench of this Court in Union of India v. Ajit Mehta and Associates, Pune and others. It is obvious from paragraphs 14 of the said judgment that the arbitrator did not have even a copy of the contract with them in that case. Having regard to the gross facts of the case, the Division Bench came to the conclusion that the arbitrators had misconducted themselves and the award liable to be set aside. Even though the Court is not entitled to scrutinize the award on merits, it may be stated in passing that Mr. Advani's contention of interpretation of Clause 36(v) of the charter party agreement in light of Articles 73 and 74 from Scruton on Charter parties is not prima facie acceptable to me.

Mr. Mukherji is more than justified in submitting that the learned arbitrators interpreted the said charter party agreement finds support from the judgment of the Court of Appeal in the case known as *Delian Spirit*, reported in 1971 (1) LLR 506. It was held in that case Lord Denning speaking on behalf of the Court of Appeal that notice of readiness could be served even before free pratique was granted and in certain situations the lay time will begin to run on service of such notice. It was for the arbitrators to interpret the charter party agreement and the relevant facts and provisions of law and authorities cited before them and I cannot say that the arbitrators have misconducted themselves or that the award is improperly procured merely because the view taken by the arbitrators does not appeal to the petitioners. As against the citation relied on by Mr. Advani, Mr. Mukherji has relied on the statement of law at pages 118 and 119 formulated by the well known author Michael Brynmor Summerson in his *Standard Work on British Shipping Laws LAYTIME*, Fourth Edition. The relevant portion para, 5-12 reads as under :

"The grant of free pratique, even whereas in most cases there is no reference to it in the charterparty, is usually regarded as essential to the readiness of the ship : but its absence has been held not to disentitle the master from giving notice of readiness. In *Shipping Developments Corporations S.A. v. V/O Sojuzneft export* notice of readiness was given while the ship was at anchorage in the roads at Tuapse, but free pratique was not given until she got to her berth. It was argued that the notice of readiness was not valid. Distinguishing *The Austin Frairs*, Lord Denning M.R. said :

"I can understand that, if a ship is known to be infected by a disease such as to prevent her getting her pratique, she would not be ready to load or discharge. But if she has apparently a clean bill of health, such that there is no reason to fear delay, then even though she has not been given her pratique, she is entitled to give notice of readiness, and laytime will begin to run. That is supported by the case of the hatch covers, see *Armement Adolf Deppe v. John Robinso Co. Ltd.*.....I hold therefore that the notice of readiness was good."

24. In view of the above discussion, I dismiss the petition with costs. Mr. Mukherji has pressed for award of compensatory cost. I am not persuaded to accept the said submission although the petitioner have urged contentions. Some of which should however have been never urged. The petitioners shall pay a sum of Rs. 45,000/- as costs of this petition to the respondents. I am thankful to the Counsel on both sides for their valuable assistance.