
(1967) 11 PAT CK 0002
In the Patna High Court
Case No : A.F.O.O. No. 85 of 1962

Union of India (UOI)

APPELLANT

Vs

Ramdas Oil Mills

RESPONDENT

Date of Decision : 27-11-1967

Acts Referred:

Arbitration Act, 1940 — Section 16, 17, 20, 25, 29
Civil Procedure Code, 1908 (CPC) — Section 34, 9
Contract Act, 1872 — Section 73
Defence of India Rules, 1962 — Rule 21, 22

Citation : AIR 1968 Patna 352

Hon'ble Judges : Shambhu Prasad Singh, J; Ramratna Singh, J

Bench : Division Bench

Advocate : Lalnarain Sinha and L.M. Sharma, for the Appellant; R.S. Chatterji and S.S. Rakshit, for the Respondent

Final Decision : Partly Allowed

Judgement

Ramratna Singh, J.—This appeal is directed against the order of the District Judge of Singhbhum acting as an arbitrator u/s 19 of the Defence of India Act, 1939, and determining the compensation payable by the Union of India, requisitioning the property belonging to Messrs. Ramdas Oil Mills at Jameshedpur for the military. The possession of this property was made over to the Officer Commanding Workshops, India Army Corps on the 1st March, 1942, who remained in possession thereof upto the 1st August 1940. The property was released on the 2nd, August, 1946. When the proprietors of the mills took over the same. The property consisted of buildings, in which the machineries of the mills were located, residential quarters, offices, sheds and other structures. After some correspondence between the Central Government and the proprietors of the mills, an agreement was arrived at to settle the amount of compensation payable by the Government to the owners of the property on the 2nd, April, 1953 (Ext. A). The relevant clauses of the agreement are the following:--

"(1) The Government shall pay a lump sum of Rs. 15,000 in full settlement of the

claim for compensation on account of loss sustained due to sudden stoppage of business; cost of removal of machineries and plants; cost of re-installation of machineries; rump sum compensation on account of re-establishment of business etc.

(2) The Government shall pay a sum of Rs. 1650 per month as rent for the requisitioned property so long it remained in possession of the Government.

(3) The Government shall pay electric, water charges and telephone charges etc.

(4) The Government shall pay 91 per cent of the ground rent as well as some contribution towards the services of municipal nature.

(5) The requisitioned property shall be restored to the owners by the Government in its present condition, subject to natural wear and tear.

(6) After the termination of the period of requisition the said premises, with all buildings, structures, fittings and fixtures including machineries, electrical plants, overhead and underground electric and water lines with all their equipments, shall be handed over to the owners in as good a condition in which they were taken on the date of requisition and the Government shall be liable to damages, destruction or deterioration of any or all of the properties, machineries, or plants etc for whatever causes.

(7) Should any dispute or difference arise out of or concerning the subject matter of the agreement of any Clause thereof, the same shall be referred to an arbitrator to be appointed by the Government and the decision of such arbitrator shall be conclusive and binding on the parties thereto. (The provisions of Arbitration Act, 1940 shall apply to such arbitration)."

To this agreement, a list of the structures and machineries taken over by the military authorities was appended; and item (7) of this list consisted of 36M/2-type quarters pucca built with pucca roof having compound walls also situated on the eastern enclosures of the mill premises. One room, however, of the main building remained in possession of the owners of the mills, even after the 1st March, 1942, because the machineries thereof being complicated could not be removed and that room was locked up by the owners.

2. On the allegation of the owners of the mills that, at the time of taking back possession of the requisitioned property, it was found that extensive damages had been done to the same and a list of such damages (Ext. 1) was prepared by one Capt. H. Das, A. D. H. O. Lands, Hirings and Disposals, in presence of the Sub-divisional Officer, M.E.S. Mechanical and Electrical and the representatives of the owners of the mills (hereinafter referred to as the claimants); there was correspondence between the claimants and the Government in respect of such damages; and the maximum offer made by the Government, viz., Rs. 10,500 for the same was not accepted by the claimants. Hence, the dispute was referred to the District Judge of Singhbhum for arbitration.

3. On the statements of the respective cases of the parties, the arbitrator framed seven issues and gave his findings thereon. Being dissatisfied with the findings, the Union of India preferred this appeal and the claimants also filed a cross-objection.

4. Mr. R. S. Chatterji, who appeared for the claimants, raised a preliminary objection to the maintainability of the appeal on the ground that, inasmuch as no objection was filed by the Union of India as contemplated by Sections 17 and 30 of the Indian Arbitration Act, 1940, they had no right of appeal. In this connection, he relied on Clause (7) of the agreement, according to which the provisions of the Arbitration Act, 1940, shall apply to such arbitration, and the decision of the arbitrator shall be conclusive and binding on the parties to the dispute. But the Act of 1940 cannot apply to such a case for several reasons, and the last sentence of Clause (7) of the agreement is ultra vires of Section 19 of the Defence of India Act, 1939. It was conceded that the compensation had to be determined in the instant case under that Section and the arbitrator had, therefore, been appointed under that very section.

Sub-section (1) of Section 19 provides that the amount of compensation payable "shall be determined in the manner, and in accordance with the principles hereinafter set out"; and then several clauses are mentioned; Clause (a) lays down that, where the amount of the compensation can be fixed by agreement, it shall be paid in accordance with such agreement. According to clause (b), if no such agreement can be reached, the Central Government shall appoint as an arbitrator a person qualified for appointment as a Judge of a High Court. Clause (c) is not relevant. Clause (d) requires that at the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation. Clauses (e) to (G) are reproduced below:--

"(e) The arbitrator in making his award shall have 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.

(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 amount prescribed in this behalf by rules made by the Central Government.

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

Sub-sections (2) and (3) empowered the Central Government to make rules for the purpose of carrying into effect the provisions of this section. The provisions in the rules will also be of help in deciding the preliminary objection. It was conceded that, according to the rules, the procedure to be followed in arbitrations under this Section shall be that laid down in the Civil Procedure

Code. It is manifest that the argument of Mr. Chatterji that the decision of the arbitrator is final and conclusive, according to Clause (7) of the agreement, cannot be sustained in view of Clause (f) of Section 19(1) of the Act of 1939, which provide for an appeal to the High Court against the award of an arbitrator, except in cases where the amount thereof does not exceed an amount prescribed in this behalf by the rules, because it was conceded that the amount of compensation awarded in this case by the arbitrator is much in excess of the amount prescribed for this purpose.

It is then, remarkable that the Act of 1940 does not contemplate an appeal against the award of an arbitration. The Act contemplates three kinds of arbitration - (i) arbitration without intervention of the court, when a dispute is referred to one or more arbitrators by an arbitration agreement (Chapter II of the Act) and (ii) arbitration with the intervention of the court, when there is no suit pending, where an application is made to file in court an arbitration agreement (Chapter III of the Act): and (iii) arbitration in a pending suit, when parties make an application to the court for order of reference to arbitration (Chapter IV of the Act). In the first case, after the award is signed it has to be filed in a civil court having jurisdiction to decide the dispute. In the other two cases also, the award has to be submitted to a similar Court (see sections 20 and 25).

There are other provisions in the Act, according to which objections may be filed to the award of any class submitted to the court and the court has to decide the objections and make the award with necessary modifications a rule of the court or set aside the award. Thus, according to the Act of 1940, in a case where the arbitrator is a person different from the presiding officer of the court, an appeal lies against the decision of the court but not against the decision of the arbitrator. In this connection, sections 46 and 47 of the Act of 1940 are also relevant. Section 46 reads as follows:--

"The provisions of this Act, except, Sub-section (1) of Section 6 and Sections 7, 12, 36 and 37, shall apply to every arbitration under any other enactment for, the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration "agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder."

"Subject to the provisions of Section 46, and save in so far as is otherwise provided by any law for the time being in force" the provisions of this Act shall apply to all arbitrations and to all proceedings thereunder:

Provided that an arbitration award otherwise obtained may with the consent of all the parties interested be taken into consideration as a compromise or adjustment of a suit by any Court before which the suit is pending."

The words underlined by me (here in " ") in these sections are significant and, therefore, Clause (g) of Sub-section (1) of Section 19 of the Act of 1939

becomes very relevant. On account of this clause, nothing in law "for the time being in force" shall apply to arbitrations u/s 19. Mr. Chatterji conceded that there is no provision in the Act of 1939 or any rule made u/s 19 thereof which makes the Act of 1940 applicable to the arbitration in question. But he submitted that the words "for the time being in force" do not include any law which was made after the Act of 1939; and in support of this argument, he cited the decision in *East India Film Studios Vs. P.K. Mukherjee and Others*, .

He submitted further that the provisions of Section 19 of the Act of 1939 are not inconsistent with the Act of 1940 and that Clause (a) of Section 19(1) gave wide powers to the Deputy Commissioner of Singhbhum, who entered into the agreement in question on behalf of the Central Government and, therefore, he was competent to make the provisions of the Act of 1940 applicable to the present dispute, as he did in Clause (7) of the agreement. But Clause (a) has to be read with the other clauses of Sub-section (1) of Section 19; and a reading of all the clauses together leads to the only conclusion that the Deputy Commissioner was not competent to do so, inasmuch as this provision regarding applicability of the Act of 1940 is inconsistent with at least Clauses (f) and (g) of the sub-section.

5. The decision in the case of *East India Film Studios Vs. P.K. Mukherjee and Others*, by Bose, J., of the Calcutta High Court supports the contention of Mr. Chatterji that the wordings of Section 46 of the 1940 Act extend the provisions of that Act to arbitrations initiated u/s 19 of the 1939 Act. In that case the learned Judge interpreted the expression "for the time being in force" in these two sections as referring to the law existing on the date of commencement of the two respective Acts. There can be no dispute about his Lordship's observation that this expression may refer either to a particular point of time or to several periods of time, and the interpretation that has to be adopted in any particular case must depend upon the context in which the expression occurs. This observation finds support from *Burrow's Words and Phrases*. Volume 2, at page 326 and *Stroud's Judicial Dictionary*, Volume 4 (1953 edition) at page 3030.

Stroud has said, on the basis of some English authorities, that this expression "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 referred to an indefinite state of facts which would arise in the future and which may (and probably will) vary from time to time." In *Gokul Chand De and Others Vs. Gopi Nath Dey and Others*, , which has been referred to by Bose, J. it was held by a bench of the Calcutta High Court in construing a deed of trust, that this expression which occurred in the document should, in the context, be construed as referring to the different periods of time whenever a question of succession would arise and it did not mean at a given point of time.

But even assuming, for the sake of argument, that the expression in Section 46 of the 1940 Act refers to a law actually in force when the Act was passed, it does not help Mr. Chatterji, because the provisions of this Act are inconsistent with the

Defence of India Act, 1939, and the rules made thereunder. It has already been pointed out that under the Act of 1940, the award of the arbitrator has to be filed in or submitted to the civil court concerned. u/s 13 of that Act, the arbitrators or umpire have the power, inter alia, to state a special case for the opinion of the court on certain questions and make the award conditional or in the alternative; and u/s 14, finally, the award has to be signed and filed in the court. The court has u/s 15, the power to modify or correct an award, where it appears that part of the award is upon a matter not referred to arbitration; or where the award is imperfect in form, or contains any obvious error or it contains a clerical mistake or an error arising from an accidental slip or omission.

As laid down in Section 16, the court may from time to time remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration in certain specified circumstances. As provided in Section 17, where the court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or set aside the award, it shall 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 23 empowers the court to extend the time for making the award. u/s 30, an award of an arbitrator can be set aside only if the court is of opinion that the arbitrator has misconducted himself or that the 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 or that the award has been improperly procured or is otherwise invalid. u/s 37, all the provisions of the Indian Limitation Act shall apply to arbitrations as they apply to proceedings in court. Under paragraph 3 of the First Schedule to the 1940 Act, the arbitrators are required to make their award within four months after entering on the reference or after having been called upon to act by notice from any party to the arbitration agreement or within the extended time.

5A. It has already been pointed out that an arbitrator appointed u/s 19 of the Defence of India Act has not to submit his award to the civil court, nor has it to be filed in such a court; rather, the award given by the arbitrator binds the parties, unless it is set aside or modified by the High Court on appeal. The relevant provisions of Section 19 of this Act have been seen earlier. The rules made under that Section are contained in notification No. 1593-C dated the 26th May, 1943. Some of the rules show the distinction between the two Acts. According to rule 4, if the arbitrator neglects or refuses to act, or is incapable of acting or dies, the State Government shall appoint some other person in his place. Under rule 7, the arbitrator shall have the like powers and shall follow the like procedure as the court has and follows in the exercise of the ordinary original civil jurisdiction under the Code of Civil Procedure, 1908.

Under rule 15, the arbitrator shall keep a record of the proceedings but such record need not be a "verbatim" record. According to rule 16, every party to a

reference shall do all the acts necessary to enable the arbitrator to make a iust award and shall not wilfully do or cause or allow to be done any act to delay or to prevent the arbitrator from making an award. Under rule 17, after taking into consideration all the relevant matters with regard to a reference, the arbitrator shall make his award within such time or may be fixed in this behalf by the State Government, which may extend the said time in a particular case Under rule 18, when the arbitrator has made his award he shall sign it and shall give notice in writing to the parties to the reference of the making and signing thereof and shall also send a copy of the award to the person to be compensated and forward to the Collector, the award in original together with the records of the proceedings.

Rule 20 lays down that any appeal against the award of the arbitrator shall be preferred within six weeks of the receipt by the parties of the notice referred to in rule 18; but no appeal shall lie against an award where the amount does not exceed Rs. 5000 as a single payment or Rs. 250 a month. According to rule 21, the award of the arbitrator shall be enforceable in the same manner and to the same extent as a decree of the civil court and the arbitrator shall be deemed to be a court. This rule is very important, because the arbitrator become the court in such cases. Rule 22 empowers the State Government, on receipt of an application by any of the parties, to remove an arbitrator who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award, or who has been guilty of any misconduct in the course of or in connection with the proceedings and, where the arbitrator is removed the State Government shall appoint another arbitrator in his place. This rule is also important, because the State Government not the court alone can remove the arbitrator.

6. It is clear from a reading of the provisions of Section 19 of the Defence of India Act, 1939 and the rules made thereunder that this Section is a self-contained enactment, like the Land Acquisition Act of 1894, from a comparison of these provisions and those of the 1940 Act, it is manifest that the former provisions are absolutely inconsistent with those of the 1940 Act and they cannot be administered simultaneously It is, then, remarkable that the arbitrator appointed u/s 19 of the 1939 Act takes the place of a court, and there is no question of any civil court modifying or setting aside the award or pronouncing a judgment on his award; rather, there is an appeal against the arbitrator's award to the High Court which alone can vary it. Even the provisions of the Limitation Act do not apply to a case u/s 19 of the 1939 Act, as has been held by a bench of the Madras High Court in *Kollegal Silk Filatures v. Province of Madras*. AIR 1949 Mad 39

In that case, their Lordships said that the words of exclusion in Clause (g) of Subsection (1) of Section 19 are very wide and must cover the Limitation Act as to which the saving provision is to be found in this Section or the rules made thereunder and the word "arbitrations" in Clause (g) covers the entire

proceedings from their commencement before the arbitrator to their termination in the High Court on appeal, where an appeal is preferred. When we put a question during the arguments to Mr. Chatterji what he had to say about the applicability or otherwise of the Act of the provisions of the Limitation Act to the arbitrations u/s 19 of the 1939 Act, he frankly stated that he could not say anything about the same. In *S. Ranganathan and Others Vs. A. Krishnayya, Arbitrator, Lloyds Road Area Town Planning Scheme and Another*, , another bench of the Madras High Court considered the applicability of the provisions of the 1940 Act to an arbitration under the Madras Town Planning Act 1920.

Their Lordships said: It is doubtful whether Section 46 of the Arbitration Act covers an arbitration under the Madras Act which does not require the arbitrator to make an award but it required to give a decision which is appealable. Assuming, however, that Section 46 applied to the Madras Act, it can only apply in so far as the 1940 Act is not inconsistent with the other Act; but the Madras Act is inconsistent in important respects and, therefore, the exception contained in Section 46 of the 1940 Act takes the Madras Act out of its purview. It was further held that it cannot be said that an appeal from the award of the arbitrator under the Madras Act only lies when the objection is one falling within Section 30 of the 1940 Act. The Madras Act and the Limitation Act were, however, existing at the time of the commencement of the 1940 Act and, therefore these decisions of the Madras High Court cannot be construed to have aid down that the expression "for the time being inforce" occurring in Section 46 of the 1940 Act would also cover a law which was enacted after its commencement.

That is why the decision of Bose, J., of the Calcutta High Court with regard to the interpretation of Section 46 has been assumed to be correct for the sake of argument. But I, respectfully, differ from the views of Bose, J., because the words "as if the arbitration were pursuant to an arbitration agreement" and as if that other enactment were an arbitration agreement occurring in Section 46 clearly show that "any other enactment" referred to in the first part of that Section is one which merely provides for the reference of a dispute to arbitration and not to a self-contained enactment like, Section 19 of the Defence of India Act, 1939 and the rules made thereunder.

6A. I am also of the opinion that the expresion for the time being in force" occurring in Section 47 of the 1940 Act as also in Sub-section (1)(g) of Section 19 of the 1939 Act refers to enactments existing at the time of the commencement of the former Act as well as those made thereafter. It could not have been the intention of the framers of Clause (g) of Sub-section (1) of Section 19 to limit the provision thereof only to the laws existing at the commencement of the 1939 Act, because they must have anticipated at the time they framed the same that enactments made in future might affect the provisions of Section 19; and they must have also anticipated that the arbitrations contemplated by that Section would take a long time to be disposed of by the arbitrators and, an appeal by the High Court, inasmuch as disputes regarding compensation would

arise only after requisitions and acquisitions would be made from time to time, so long as the award lasted.

It is, then, remarkable that the Arbitration Act, 1940, substantially re-enacted the law which existed earlier in the Second Schedule to the CPC and the Arbitration Act of 1899. The operation of the latter Act was limited to the Presidency towns and to such other areas as it might be extended by the then appropriate Provincial Government. The scope of the 1899 Act was confined to arbitration by agreement, without intervention of a court; and the said Second Schedule dealt with arbitrations outside the scope of that Act and related, for the most part, to arbitration in suits, though arbitration without intervention of a court was also briefly provided for. The said Second Schedule also contained an alternative method, whereby the parties to a dispute or any of them might file their arbitration agreement before a court which, after a certain procedure, refers the matter to an arbitrator.

The 1940 Act merely consolidated and standardised the law relating to arbitration throughout British India, in its detail. So far as Section 47 of the 1940 Act is concerned, even assuming, for the sake of argument, that the expression "for the time being in force" occurring therein refers to only existing enactments, this interpretation cannot help Mr. Chatterji because Section 19 of the 1939 Act and the rules made thereunder were existing at the time of the commencement of the 1940 Act. It has already been found that Section 46 of the 1940 Act does not affect in any manner Section 19 of the 1939 Act and, therefore, the words "subject to the provisions of Section 46 occurring in Section 47 are not material for the present case and, in view of the remaining words of Section 47, the provisions of the 1940 Act cannot affect in any manner those of Section 19 of the 1939 Act and the rules made thereunder. Our concluded opinion, therefore, is that none of the provisions of the 1940 Act applies to arbitrations u/s 19 of the 1939 Act.

7. Mr. Chatterji also relied on Section 28 of the Indian Contract Act and the decisions under that Section in *Chait Ram v. Briddi Chand*, ILR 42 Cal 1140 (AIR 1916 Cal 689) and *Ganges Manufacturing Co., Ltd. v. Indra Chand*, ILR (1906) Cal 1169; but they are not at all relevant, in view of our finding that Section 19 of the 1939 Act and the rules made thereunder constitute a self-contained Code.

8. In view of the foregoing discussion, it must be held that the provisions of the Arbitration Act, 1940 do not apply to the instant case and the award of Mr. M. P. Verma could not be challenged u/s 16, 17 or any other Section of that Act and that an appeal lies against the award directly to the High Court, in view of the provisions of Section 19 of the Defence of India Act. The jurisdiction of the High Court, on appeal, in this case is, therefore, not limited to the matters contained in rules 16, 17 and 30 to 32 of the 1940 Act. The view is fortified by an observation of the Supreme Court in *Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property*, . Their Lordships observed:

"Like all courts of appeal exercising general jurisdiction in civil cases, the respondent has been constituted an appellate court in words of the widest amplitude and the legislature has not limited his jurisdiction by providing that such exercise will depend on the existence of any particular state of facts. Ordinarily, a court of appeal has not only jurisdiction to determine the soundness of the decision of the inferior court as a court of error, but by the very nature of things it has also jurisdiction to determine any points raised before it in the nature of preliminary issues by the parties. Such jurisdiction is inherent in its very constitution as a court of appeal. Whether an appeal is competent, whether a party has "locus standi" to prefer it, whether the appeal in substance is from one or another order and whether it has been preferred in proper form and within the time prescribed, are all matters for the decision of the appellate court so constituted."

In the instant case, too, there is no limitation on the powers of the High Court as an appellate authority u/s 19 of the 1939 Act and the rules made thereunder; and this court can examine all the matters relevant to the decision of the appeal and the cross objection filed by the parties. Mr. Chatterji's preliminary objection, therefore, fails.

9. Mr. Lalnarain Sinha argued, in the alternative, that even assuming that the provisions of the Arbitration Act applied to the arbitration in question, this appeal lies because the arbitrator has usurped the jurisdiction of the court contemplated by the 1940 Act; and he relied on some decisions in support of this argument. In *Hurrish Chander Chowdhary v. Kali Sundari Debia* (1882) 10 IA 4 (PC) it was held that if in such exercise of judicial discretion a Judge usurps jurisdiction, which he does not possess, that alone would be a valid ground of appeal. A bench of the Calcutta High Court said in *Gangadhar v. Shekharbasini*, AIR 1917 Cal 320 that, where jurisdiction is usurped by a court in passing an order against which an appeal would lie if it had been passed with jurisdiction, an appeal against the order cannot be defeated on the ground that the order was made without jurisdiction; and for this proposition of law reliance was placed on several decisions, including the decision of the Judicial Committee in *Minakshi Naidu v. Subramanya Sastri*, (1886) 14 IA 160 (PC).

A bench of the Madras High Court in *Abdul Rahiman Sahib and Another and Bhanu Bibi Vs. Ganapathi Bhatta*, held that an appeal lay against an order by which the District Judge purported to issue an attachment and appoint a receiver under Sections 492 and 503 of the old Civil Procedure Code, in a proceeding under the Guardians and Wards Act, 1890, under which the court has no power to issue such attachment or appoint a receiver. Their Lordships took this view as they treated the impugned order as having been really passed under the aforesaid sections of the Civil Procedure Code. In coming to this decision, their Lordships relied on the decision of the Privy Council in the aforesaid case of *Hurrish Chander Chowdhary* (1882) 10 IA 4 (PC). In *Sarish Chandra Roy v. Roy Banomali Rai*, (1904) 14 Mad LJ 185, a compromise decree had been passed for

partition, and one of the parties applied for the appointment of Commissioner. This application was rejected on ground that it was barred by limitation. Their Lordships of the Madras High Court took the view that this order was appealable u/s 244 of the old Civil Procedure Code, and such appeal was not taken away by the fact that the Court rejecting the application wrongly assumed the existence of a decree to be executed. Here too, their Lordships relied on the Privy Council decision in the case of Hurrish Chunder Choudhary, (1882 10 I A 4 (PC)). No decision to the contrary had been pointed out by Mr. Chatterji and, therefore, the contention of Mr. Sinha must prevail.

10. Regarding the merits, it would be convenient to take up each issue separately. Issue No. 1 reads thus:

"Is the claimant entitled to any compensation for damage to the building?"

The claim regarding damages to buildings, omitting the claim in respect of machineries and electrical goods, would come to Rupees 20,422/8/-. Though the deposing claimant admitted that account books were maintained in respect of the construction and repairs to the buildings and other appurtenances of the mill, no such account has been produced. One Mr. Mukharji, an employee of the Tata Company, was appointed as commissioner by the arbitrator to estimate the loss incurred by the claimants. He is witness No. 3 and his report is Ext. 8. The estimate given by him in respect of damages to buildings comes to Rs. 24,209; but the arbitrator has rightly rejected the same, because Mr. Mukharji has enhanced the amount of damages arbitrarily by 100 to 250 per cent, without giving any material in his report, or in the letter forwarding his estimate, to support the rates calculated by him for 1946-47.

According to the relevant terms of the agreement, the requisitioned property was to be restored by the Government to the claimants "in its present condition, subject to natural wear and tear and in as good a condition in which they were taken on the date of requisition". The arbitrator has, therefore, rightly rejected the contention of the claimants that the figures for 1946-47 should be accepted; and Mr. Chatterji's contention before us to the same effect must also be rejected. On behalf of the Government, a report (Ext. F) had been prepared by a military officer regarding the damage to the buildings at the time they were handed over to the claimants. The Government accordingly offered Rupees 6545 on this account to the claimants. The learned arbitrator has, however, allowed Rs. 10,000 on this score on the ground that, for repairing those damages, the claimants would not have got the materials at the rate prevailing in 1942, i.e. when the requisition was made.

But this amount has been arbitrarily fixed. In the absence of better evidence, therefore, the claimants are entitled to Rs. 6545, the amount offered by the Government before the arbitrator on this account, i.e., on the admission of the Government Mr. Sinha, however, submitted that no compensation should be allowed on this account, as the same is covered by Rupees 15,000 which the

Government agreed to pay in a lump sum under Clause (1) of the agreement in full settlement of the claim for compensation on account of the loss sustained due to sudden stoppage of business, etc. But the items mentioned in Clause (1) for the full settlement of which Rupees 15,000 was agreed to be paid do not include the damages to the requisitioned property, which are covered by Clauses (5) and (6) of the agreement.

11. In support of his contention that the rates of 1946 ought to have been taken into consideration, Mr. Chatterji relied on the provisions of Section 73 of the Indian Contract Act read with Illustrations (f) and (1) thereto; but the same do not apply to the instant case, as there was no question of breach of any contract.

12. He also relied on provisos (f) and (m) to Section 108 of the Transfer of Property Act which deals with the rights and liabilities of the lessor and the lessee. He submitted that in the instant case the claimants were the lessors and the Government was the lessee and, therefore, the Government is liable to pay reasonable damages, which must be calculated on the basis of the prices prevailing in 1946. In support of this contention, he relied on a decision of the Supreme Court in *Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI)*, and on a decision in *Bejoy Chandra Sinha Vs. Howrah Amta Light Railway Co. Ltd.* by their Managing Agents, Martin and Co., . But neither Section 108 of the Transfer of Property Act, nor these decisions are relevant to the instant case, as it is governed by Section 19 of the Defence of India Act and the rules made thereunder which constitute a complete Code.

13. Issue No. 2 reads thus:

"Are the claimants entitled to any compensation for alleged removal of the G. I. Pipes?".

The claim of the claimants on this account was Rs. 20,000 and the arbitrator has allowed Rs. 8,000. Out of the claimed amount, Rs. 3,000 is in respect of the water reservoir, and the learned arbitrator has rightly said that this item is covered by the damage to buildings. Commissioner Mr. Mukherji allowed 5,500 r. ft. of G. I. pipes of four dimensions, and the amount calculated by him for this was Rs. 13,360/6/-. He admitted, however, that he calculated this amount on the basis of the prices prevailing at the time he was appointed Commissioner. There is no material on the record to show the prices prevailing in 1942 or 1946. One Capt. Dev of the military department inspected the damages and submitted his report (Ext. 8) dated the 27th January (the year is not mentioned).

Cap. Dev allowed a sum of Rs. 210 on this account and that was the offer made on behalf of the Government to the claimants. The case of the claimants is that after getting back possession of the requisitioned property, they made the necessary repairs to the buildings and machineries and laid down pipes for running the mills; but, they have not produced the account books which would have shown the length of the pipes used, the price of the pipes and the cost of laying them. There is no material on the record to show what sort of damages

were done to the pipes, though there is a vague statement to the effect that there were signs of removal of pipes; but there is no material to show the length of the pipes removed or the quantity of the pipes damaged. The learned arbitrator has, on the basis of the site plan (Ext. 5) of Ramdas Oil Mills, come to conclusion that 2112 r. ft. of Pipes might have been required to run on all sides in order to connect the various buildings; but even he has said that there is no evidence as to how far the water pipes had been taken inside the rooms of each building.

Still, he has added 388 r. ft. to 2112 r. ft. and brought the total to 2500 r. ft. and allowed Rs. 8,000 for this quantity of pipe. It was contended by Mr. Chatterji on the basis of ground No. 11 of the cross-objection that the finding of the arbitrator that G. I. pipes were only 2500 r. ft. long is based on no evidence, and, therefore, it should not be accepted. On the other hand, Mr. Sinha submitted that the damage done to the pipes was also covered by the sum of Rs. 15,000 mentioned in Clause (1) of the agreement; but it is clear from Clauses (5) and (6) thereof that the compensation for damages done to the water lines and other fittings and fixtures would be separate from the compensation mentioned in Clause (1). Mr. Sinha also joined hands with Mr. Chatterji in challenging the amount of compensation allowed by the arbitrator under this head.

There is absolutely no basis for the amount of Rs. 8,000 assessed by him and it is absolutely arbitrary. It is, therefore, to be seen whether there is any material for the assessment of compensation on this account. The length of the pipes as 2112 r. ft. calculated by the arbitrator is based on some material and we can safely act on it; but the addition of 388 r. ft. more by the arbitrator is arbitrary and must be ignored. Capt. Dev had allowed on behalf of Government Rs. 200 for 166 r. ft. of G. I. pipes and we can safely act on this admission, even though he had not been examined in court. Hence, the compensation for 2112 r. ft. would be Rs. 2556.62 P, and that will be a fair amount of compensation under this head, instead of Rs. 8,000 allowed by the arbitrator.

14. Issue No. 3 is in respect of compensation for the alleged removal of the electrical wirings and fittings. This Item consists of two parts; the first part relates to damages done to the machineries and the second part to damages to electrical wirings and fittings. Compensation for such damages is also not included in Clause 1 of the agreement (Ext. A). In the agreement, a list of the machineries which was handed over to the military authorities was appended at the end; and almost all the machineries were at the time of making over charge of the requisitioned property to claimants, found either broken or without, some parts which were missing, as will appear from a comparative list, incorporated in his judgment by the arbitrator of the Hems contained in Ext. A and captain Das's report (Ext. J). dated 2-8-1946.

15. The claimants estimated the damages to machineries at Rs. 6400 and those to electrical goods at Rs. 7188/8/-. The claimants did not adduce any evidence as to whether the machineries could work or not after the broken parts were

repaired and the missing parts supplied. Instead, they claimed full price for each item of the machineries and the electrical goods. On the other hand, Captain Dev assessed the price of the machineries and the electrical goods on the basis of M. E. S. rates at Rs. 7210/- (Ext. 8). He, however, thought that, inasmuch as the machineries must have been worn out by constant use for so many years, only 25 per cent of the price, i. e. Rs. 1810/8/-, should be allowed under this head. But the reduction suggested by Dev is not based on any material. The claimants produced a letter, Ext. 6 (b), from one Radheyshyam Gupta of the firm Arfun Lal Banwari Lal, quoting the price of electrical goods in 1946-47.

He, however, admitted in his evidence that he had not noted the name of any particular company from whose printed price list he had given the figures. One Sri Ramlal Verma, an electrical foreman of Tinsplate Co., was examined as a court witness, and he also gave an estimate of the compensation for the damages; but even in a case where repair to a particular machinery will be sufficient to work it, he gave the full price of the item. The learned arbitrator has allowed Rs. 7000 for the loss and damages to machineries and electrical goods as against Rs. 13,578/8/- claimed by the claimants. But, as contended by Mr. L. N. Sinha, this amount is also arbitrary. In the absence of a better material, therefore, I would allow Rs. 7210/- as compensation on these two counts.

16. In respect of the damages to electrical wirings and fittings, the claimants claimed Rs. 20,000/-. The first commissioner, Mr. N. Basu, who is witness No. 2 for the claimants, had made an estimate of the damages; but we have the rates from memory, though there were printed lists in the Tata company in respect of the relevant items. He also admitted that the life of the ordinary wiring in a house is ten years and that of the wirings exposed to sun and rain is five years. The second commissioner, Mr. R. L. Verma estimated the compensation for the damages at a little over Rs. 33,000, and he calculated the cost of the electrical wirings and replacement as also the cost of four items which were electrical machines, as appears from the Captain's report.

Mr. Verma admitted that he had not taken into consideration the price of old materials still found in the building and he did not allow any depreciation in respect of old materials which might be still in use. He estimated the total cost of present fittings at Rs. 10,000 to Rs. 11,000. There is no satisfactory evidence as to the extent of electrification of the premises which existed at the time the Government took over possession of the requisitioned property. Although one of the claimants, who is witness No. 5, said that electrical fittings were done gradually since 1922 or thereabout and that there might be khata accounts to show the price of electrical goods and cost of fittings required for the buildings as also the cost of partial refitting, none of these records in possession of the claimants was produced.

Mr. Basu admitted in his evidence that all electrical wirings, both inside and outside, must have run out their life of utility, while Mr. Verma made his estimate on the assumption that there was a perfect set of electrical fittings in all the

buildings. The military Captain assessed the compensation for the internal wiring at Rs. 1220 and for the external wiring at Rs. 648; but he thought that nothing should be allowed to the claimants on account of the fact that the wires had run out their utility. Instead, he suggested that a gift of 25 per cent of his estimate, i.e. Rs. 567 should be made to the claimants who had helped in the war efforts. In the circumstances, the learned arbitrator has allowed Rs. 2,000 as compensation in respect of the damages to the electrical wirings and fittings.

Mr. Chatterji, however, submitted that, if the electrical goods and fittings, even though old, had been removed by the military personnel, their replacement must be by new ones and the price of new goods and fittings at the rates prevailing in 1946-47 should have been allowed. But it is obvious that compensation for damages to, or removal of, old goods and fittings which had been in use for a sufficiently long time cannot be equal to the compensation for new goods and fittings. Even Rs. 2000 allowed by the arbitrator is arbitrary; and, therefore, in the absence of a material, I would allow Rs. 1868/- (the amount estimated by Dev) as compensation on this count.

17. Issue No. 4 is in respect of the rent for 36 menial M/2-type quarters. As stated earlier, in the list of buildings and machineries taken over by the military authorities appended to the agreement item No. 7 is 36 menial M/2-type quarters, pucca built with pucca roofs having compound walls also situated on the eastern enclosures of the mill premises. It is admitted that these quarters do not lie within the compound wall of the mill premises, though they are just outside the same. On behalf of the Government, it was said that the military authorities did not occupy any of these quarters; but the learned arbitrator has rightly observed that, inasmuch as they formed part of the requisitioned property and the claimants were not told subsequently that they were being released from requisition, the Government is liable to pay compensation for the same.

The next argument on behalf of the Government is that such compensation is included in the lump sum compensation mentioned in Clause 1 of the agreement. But the forwarding letter of the Deputy Commissioner dated 3-7-1942 and the report dated 27-6-1942 as also the calculation made by the Assistant Engineer in respect of the plinth area and the evidence of this Engineer, who has been examined as witness No. 1 for the claimants, show that neither the lump sum compensation mentioned in Clause 1 of the agreement, nor the annual rental mentioned in Clause 2 thereof included the rental for these 36 quarters. This witness has stated that in making the valuation he did not take into account these quarters or their plinth areas. It is thus clear that these quarters were left out by the mistake of both the parties. Hence, the learned arbitrator has taken the correct view that compensation in the shape of rent should be allowed separately for these quarters.

18. In respect of such compensation, the claimants adduced evidence to show that after the release of the requisitioned property by the military authorities, the police-department took 19 of these sets of quarters on rent at Rs. 8 per month.

The learned arbitrator has not accepted this rate of rent for calculating compensation on the ground that fixation of rent at the time of creation of the tenancy depends upon the free will of the landlord and tenant concerned and, therefore, he thought that Rs. 5 per month for each set of quarters would be sufficient compensation. This estimate is, however, arbitrary; and in the absence of better evidence in respect of the letting value of these sets of quarters in 1942 or thereabout, it will be fair to allow Rs. 8 per month for each set as compensation to the, claimants. The requisition lasted for 53 months and, therefore, the amount of compensation should be Rs. $8 \times 36 \times 53 = \text{Rs. } 15,264/-$.

19. Issue No. 5 relates to the claim of the claimants to the rent for the vacant land lying outside the compound wall, over which the military had put some temporary structures and installed their kitchens. The claim is at the rate of Rs. 50/- per month. Admittedly, this vacant land is outside the compound wall of the mill premises, and it was not included in the requisitioned property. Hence, the learned arbitrator has rightly rejected the claim of the claimants, which is Rs. 2650 in respect of this item. Mr. Chatterji tried to bring this item within the words "should any dispute or difference arise out of or concerning the subject matter of the agreement or any Clause thereof" in Clause 7 of the agreement. But I am unable to accept this interpretation.

20. Issue No. 5 is in respect of the claim for interest on the amount of compensation. The claimants claimed interest at 6% per annum on the amount claimed by them as compensation with effect from the 2nd. August, 1956, when the requisitioned property was handed over to the claimants. The Government had offered Rupees 10, 500 in lump sum as compensation for the damages caused to the different articles; but even that amount was not accepted under protest by the claimants. But, on the ground that the claimants are businessmen and that they did not accept the said amount even under protest, the learned arbitrator has allowed interest at 3 per cent per annum simple from the date of the notice u/s 80 of the CPC i.e. from the 9th August, 1957 to the date of the judgment. i.e. the 1st. March, 1962.

21. Mr. Chatterji has submitted that the rate of interest claimed should have been allowed for the said period. No question, however, of payment of any interest after the 1st March, 1962, arises as Mr. Chatterji said that the claimants had received the principal amounts allowed by the arbitrator as also the interest after the judgment. He submitted that, inasmuch as the terms of the agreement and the differences between the parties which were referred to the arbitrator are wide enough to include interest also, the learned arbitrator was justified in granting interest. He further submitted that illustration (n) to Section 73 of the Indian Contract Act entitled the claimants to get interest by way of damages.

22. On the other hand, Mr. Lalnarain Sinha submitted that no interest could have been allowed, as the same would amount to damages upon damages. I am unable to agree with Mr. Chatterji that the terms of the agreement or the differences which were referred to the arbitrator included the question of interest

on the amount of compensation or damages; nor, in my opinion, illustration (n) to Section 73 of the Contract Act applies to the instant case which is an arbitration u/s 19 of the Defence of India Act, 1939 in respect of the requisition of a property.

23. A large number of decisions were cited by either party, viz, Surjan Singh Vs. The East Punjab Government, ,Associated Oil Mills Ltd. v. Provincial Govt. of Madras, AIR 1948 Mad 256, District Collector of Krishna Vs. Pulavarthi Viswanadam and Others, , The Province of Bengal Vs. Pawn Kissen Law and Co., , Union of India v. Motilal, AIR 1962 Pat 384 at p, 392, Union of India (UOI) Vs. West Punjab Factories Ltd., , Seth Thawardas Pherumal Vs. The Union of India (UOI), , Union of India (UOI) Vs. Bungo Steel Furniture (Pr.) Ltd., , Bungo Steel Furniture Pvt. Ltd. Vs. Union of India (UOI), and Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore, .

The first four decisions relate to requisition of properties under the Defence of India Act; and the principle laid down therein is: Where it is damages, no interest can be awarded, but where it is the equivalent of property, then interest can be awarded. Hence, in the case of acquisitions, interest can be awarded for the period from the date of delivery of possession to the date of deposit or payment of compensation or price of the acquired property on the analogy of payment of interest by the purchaser under a voluntary transfer in respect of the balance purchase money which the purchaser had not paid after taking possession of the property. On the other hand, no interest is payable on the amount of compensation in respect of the requisitioning of property.

It is remarkable in this connection that Section 19 (1) (e) (i) of the Defence of India Act lays down that the, arbitrator in making his award shall have regard to the provisions of Section 23(1) of the Land Acquisition Act, 1894, so far as the same can be applicable; but it does not provide for the taking into consideration of the relevant provisions of the Act of 1894 in respect of interest permissible on the acquisition of property under the same. The case of Associated Oil Mills Ltd., AIR 1948 Mad 256 was one of requisition; and no interest was allowed. It was also held in that case that the provisions of Section 34 of the CPC could not apply in respect of compensation under S. 19 of the Defence of India Act. It is true that, according to rule 7 of the rules made u/s 19, the arbitrator is required to follow the procedure contained in the CPC like a court, but Section 34 does not deal with the procedure; rather, it is a substantive provisions empowering the civil Court to allow interest at reasonable rate in certain cases.

Of the remaining decisions, it is sufficient to deal with two decisions of the Supreme Court. It was held in the Union of India (UOI) Vs. West Punjab Factories Ltd., that no interest can be allowed on damages, or, in other words, on the amount of compensation in the instant case. In Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore, , the decision in the case of Seth Thawardas Pherumal Vs. The Union of India (UOI), and several other decisions of that court were considered. It was held that, in terms, Section 34 of the Code does not

apply ordinarily to arbitrations, but if it was an implied term of the reference to arbitration in the suit that the arbitrator would decide the dispute according to law and would give such relief with regard to pendente lite interest as the court would give if it decided the dispute, the power of the arbitrator in this respect was not fettered.

It may be noted that in the case before their Lordships all the disputes in the suit, including the dispute as to whether the respondent was entitled to pendente lite interest had been referred to the arbitrator for his decision. This difference was pointed out by their Lordships in distinguishing the observation in the case of Seth Thawardas Pherumal Vs. The Union of India (UOI), that Section 34 of the Code did not apply even in arbitration proceedings under the Act of 1940, because an arbitrator is not a court within the meaning of the Code, nor does the Code apply to arbitrators, and, but for Section 34, even a court would not have the power to give interest after the suit. Mr Chatterji cited the case of Union of India (UOI) Vs. Bungo Steel Furniture (Pr.) Ltd., in order to distinguish the said observation in the case of Seth Thawardas Pherumal Vs. The Union of India (UOI), . No decision by the Supreme Court was, however, given in respect of interest on appeal which was decided in Bungo Steel Furniture Pvt. Ltd. Vs. Union of India (UOI), . But in order to clear any impression that may be created by the Calcutta decision, Mr. Sinha cited Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore, . It is, therefore, beyond any dispute now that, unless the question of interest is also referred to the arbitrator for decision even under the Act of 1940, the arbitrator cannot award any interest. In the instant case, neither the terms of the agreement (Ext. A) nor the reference to the arbitrator indicates that both the parties agreed to refer the question of interest also for the decision of the arbitrator appointed u/s 19 of the Defence of India Act.

24. In view of the foregoing discussions, therefore, the claimants in the instant case are not entitled to any interest on the amount of compensation allowed; and the finding of the learned arbitrator allowing interest to the claimants must be set aside.

25. Issue No. 7 reads thus: "Is the report signed by Capt. Das binding on the Government?" The learned arbitrator decided that it is binding on the Government. This issue was not argued in this Court. It appears that at the time of handing over the requisitioned property to the claimants a list of damages had been prepared by them, and it had been signed by Capt. Das. Evidence was adduced on behalf of the claimants that Capt. Das had checked up the list personally and prepared his report (Ext. 1). Neither party was able to secure the attendance of Capt. Das before the arbitrator. On behalf of the Government, it was submitted that the Captain did not assess the damages himself and, as he was made to sign on a report already prepared by the claimants, he had no authority to bind the Government concerning any loss to the claimants,

In this connection, the arbitrator has referred to the report of one Mr. Grewal, S.

D. O. B/A Disposal, Jamshedpur Division. In this report, the various items of damages had been mentioned together with the probable cost in making good the loss. The report of Capt. Das had been made the basis of the assessment by Mr. Grewal. In two letters to the Deputy Commissioner, the claimants had referred to the report of Capt. Das, but no objection had been taken to the same. In these circumstances, the learned arbitrator decided the issue in favour of the claimants. It cannot, therefore, be said that the finding of the arbitrator is wrong.

26. Mr. Chatterji raised a new ground in this court that the arbitrator had not made any evaluation of potentialities, as required u/s 23(1) of the Land Acquisition Act, 1894, particularly, in respect of the 36 sets of quarters. In Haji Mohammad Ekramul Haq Vs. The State of West Bengal, it was held that the value of all potentialities is to be ascertained by the arbitrator u/s 19 of the Defence of India Act as best as he can from the materials before him, without indulging in feats of imagination. In the instant case, however, except in respect of 36 sets of quarters for which I have allowed higher rate of rent as compensation, there is absolutely no material on the basis of which the value of potentialities could be ascertained. Hence, this contention of Mr. Chatterji falls.

27. In view of the foregoing findings, the claimants are entitled, besides the amounts mentioned in Clauses (1) to (4) of the agreement (Ext. A), to the following amounts in respect of the claims discussed in different issues;

Issue no. 1 -- 6545/- Issue no. 2 -- 2556.62 P. Issue no. 3 -- 9078/- Issue no. 4 -- 15264/- Issues 5 and 6 -- Nil.

The decree drawn up in terms of the arbitrator's award shall be modified accordingly. Thus, the appeal is allowed in respect of claims covered by issues Nos. 1, 2 and 6 while the cross objection is allowed in respect of the claims covered by issues nos. 3 and 4. Parties will bear their own costs.

Shambhu Prasad Singh, J.

28 1. I agree to the order proposed but would like to add some observations of my own on certain matters. According to me there can be no doubt that the expression "for the time being in force" in Section 46 of the Arbitration Act of 1940 refers to enactments existing at the commencement of the Act and but for the inconsistency pointed out by my learned brother, provisions of 1940 Act could apply to the arbitrations under the Defence of India Act of 1939. It was the meaning of the same expression in Section 1900 of the Defence of India Act on which counsel for the parties really differed. I entirely agree with my learned brother that that expression also covered the enactments which came into force after the commencement of that Act.

29. The learned Advocate General advanced his arguments as to usurpation of jurisdiction in reply to a question put by me why the agreement between the parties (Ext. A) should not be treated as an agreement fixing the compensation under Clause (a) of Section 19 of the Defence of India Act?" He contended that

even if it be assumed that the agreement was under Clause (a), the Arbitrator who was appointed under Clause (c) of the said Section usurped the jurisdiction by actually deciding the dispute and making his award under Clause (e) and as such an appeal to this Court against his award was maintainable under Clause (f). In my opinion the contention of the Advocate General is well founded.

30. It may not be quite correct to say that the claimants were not entitled to be compensated according to the price prevailing in 1946-47. The lost or damaged articles could be replaced only after the release of the property on 1st of August, 1946 and prices prevailing at that time ought to be taken into account in fixing the compensation. But unfortunately for the claimants, the materials placed by them on the record as to the prices prevailing in 1946-47 are not reliable and they have to be ignored.