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Government though it may be that the Government has no option in certain cases but to appoint an heir of the last holder; that they hold their office by reason of such appointment only; that they work under the control and supervision of the Government; that their remuneration is paid by the Government out of Government funds and assets; and that they are removable by the Government, and that there is no one else under whom their offices could be held. All these clearly establish that Patels and Shanbhogs hold offices of profit under the Government. In this view of the matter it has to be held that the nomination papers of Hanumanthappa, Siddappa and Guru Rao were rightly rejected by the Returning Officer and the election petition is without substance.

The appeal, therefore, succeeds and is allowed. The judgment and order of the High Court are set aside, and those of the Election Tribunal restored. The election petition is dismissed. The respondents will pay the appellant's costs throughout.

Appeal allowed.

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August 22.

HANSKUMAR KISHANCHAND

v.

THE UNION OF INDIA

(and connected appeal)

(VENKATARAMA AIYAR, GAJENDRAGADKAR and A. K. SARKAR JJ.)

Appeal to Supreme Court—Maintainability—Decision of High Court in appeal from an award—If and when a judgment, decree or order—Test—Defence of India Act, 1939 (No. XXXV of 1939), ss. 19(1)(b), 19(1)(f)—Code of Civil Procedure (Act V of 1908), ss. 109, 110.

These two appeals were preferred against the decision of the Nagpur High Court in an appeal under s. 19(1)(f) of the Defence of India Act, 1939, modifying an award of compensation made

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under s. 19(1)(b) of that Act in respect of certain premises requisitioned by the Government under 75(A) of the Rules framed under the Act. Both the parties applied for and obtained leave to appeal to the Federal Court under ss. 109 and 110 of the Code of Civil Procedure. A preliminary objection was taken on behalf of the Government that the decision of the High Court was an award and not a judgment, decree or order within the meaning of ss. 109 and 110 of the Code and as such no appeal lay therefrom :

Held, that the objection must prevail and both the appeals stand dismissed.

There could be no doubt that an appeal to the High Court under s. 19(1)(f) of the Defence of India Act from an award made under s. 19(1)(b) of that Act was essentially an arbitration proceeding and as such the decision in such appeal could not be a judgment, decree or order either under the Code of Civil Procedure or under cl. 29 of the Letters Patent of the Nagpur High Court.

Kollegal Silk Filatures Ltd. v. *Province of Madras*, I. L. R. [1948] Mad. 490, approved.

There is a well-recognised distinction between a decision given by the Court in a case which it hears on merits and one given by it in a proceeding for the filing of an award. The former is a judgment, decree or order of the Court appealable under the general law while the latter is an adjudication of a private individual with the sanction of the Court stamped on it and where it does not exceed the terms of the reference, it is final and not appealable.

There can be no difference in law between an arbitration by agreement of parties and one under a statute. A reference to arbitration under a statute to a court may be to it either as a court or as an arbitrator. If it is to it as a Court, the decision is a judgment, decree or order appealable under the ordinary law unless the statute provides otherwise, while in the latter case the Court functions as a *persona designata* and its decision is an award not appealable under the ordinary law but only under the statute and to the extent provided by it.

An appeal being essentially a continuation of the original proceedings, what was at its inception an arbitration proceeding must retain its character as an arbitration proceeding even where the statute provides for an appeal.

Rangoon Botatoung Company v. *The Collector, Rangoon*, (1912) L. R. 39 I. A. 197, *The Special Officer, Salsette Building Sites* v. *Dassabhai Bezonji*, (1912) I. L. R. 37 Bom. 506, *The Special Officer, Salsette Building Sites* v. *Dassabhai Bozanji Motiwala*, (1913) 17 C. W. N. 421, *Manavikraman Tirumalpad* v. *The Collector of the Nilgries*, (1918) I. L. R. 41 Mad. 943 and *Secretary of State for India in Council* v. *Hindusthan Co-operative Insurance Society Limited*, (1931) L. R. 58 I. A. 259, relied on.

National Telephone Company Limited v. *Postmaster-General*, [1913] A. C. 546, explained.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 224 and 225 of 1954.

Appeals from the judgment dated December 31, 1947, of the former Nagpur High Court in Misc. (First) Appeal No. 310 of 1943, arising out of the Award dated March 31, 1943, of the Court of the Arbitrator, Addl. Dist. and Sessions Judge, Khandwa.

Achhru Ram and *Naunit Lal*, for appellant (In C. A. No. 224/54) and respondent (In C. A. No. 225/54).

C. K. Daphtary, Solicitor-General for India, R. Ganapathy Iyer and *R. H. Dhebar*, for respondent (In C. A. No. 224/54) and appellant (In C. A. No. 225/54).

1958. August 22. The Judgment of the Court was delivered by

Venkatarama Aiyar J.

VENKATARAMA AIYAR J.—Both these appeals are directed against the judgment of the High Court of Nagpur passed in an appeal under s. 19(1) (f) of the Defence of India Act, 1939, hereinafter referred to as the Act.

In exercise of the power conferred by s. 75(A) of the Rules framed under the Act, the Central Government requisitioned on February 19, 1941, certain properties belonging to Hanskumar Kishanchand, the appellant in Civil Appeal No. 224 of 1954. As there was no agreement on the amount of compensation payable to him, the Central Government referred the determination thereof to Mr. Jafry, Additional District Judge, Khandwa, under s. 19(1) (b) of the Act. On March 31, 1943, Mr. Jafry pronounced his award, by which he awarded a sum of Rs. 13,000 as annual rent for the occupation of the premises. Against this award, there was an appeal to the High Court of Nagpur under s. 19(1) (f) of the Act, and that was heard by a Bench consisting of Grille C. J. and Padhye J. By their judgment dated December 31, 1947, they enhanced the annual rent payable to the appellant by a sum of Rs. 3,250, and they also allowed certain other sums as compensation for dislocation of the High School which

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was being run on the property. The appellant applied for leave to appeal against this judgment to the Federal Court under ss. 109 and 110 of the Code of Civil Procedure in respect of the amounts disallowed. A similar application was also filed by the Government with reference to the enhancement of compensation. On August 25, 1949, both these applications were granted, and a certificate was issued that the appeals fulfilled the requirements of ss. 109 and 110 of the Code of Civil Procedure. That is how the two appeals come before us. Hanskumar Kishanchand is the appellant in Civil Appeal No. 224 of 1954 and the Union of India, in Civil Appeal No. 225 of 1954.

At the opening of the hearing, a preliminary objection was taken by the learned Solicitor-General to the maintainability of Civil Appeal No. 224 of 1954 on the ground that the judgment of the High Court passed in appeal under s. 19(1) (f) was an award and not a judgment, decree or order within the meaning of ss. 109 and 110 of the Code of Civil Procedure, and that accordingly the appeal was incompetent. If this contention is right, Civil Appeal No. 225 of 1954 preferred by the Government would also be incompetent. That, of course, does not preclude the Government from raising the objection as to the maintainability of the appeal, though the result of our upholding it would entail the dismissal of Civil Appeal No. 225 of 1954 as well. We accordingly proceed to dispose of the objection on the merits.

It will be convenient at this stage to refer to the provisions of the Act bearing upon the present controversy. Section 19(1) provides that :

"Where.....any action is taken of the nature decribed in sub-section (2) of section 299 of the Government of India Act, 1935, there shall be paid compensation, the amount of which shall be determined in the manner, and in accordance with the principles, hereinafter set out.....".

Section 19(1) (a) provides for the amount of compensation being fixed by agreement, and s. 19(1) (b) enacts that :

"Where no such agreement can be reached, the Central Government shall appoint as arbitrator a

person qualified under sub-section (3) of section 220 of the above-mentioned Act for appointment as a Judge of a High Court."

Sub-section (c) of s. 19(1) provides for the appointment by the Central Government of a person having expert knowledge as to the nature of the property acquired and for the nomination of an assessor by the person to be compensated, for the purpose of assisting the arbitrator. Sub-section (e) of s. 19(1) enacts that the arbitrator in making his award shall have regard to the provisions of sub-s. (1) of s. 23 of the Land Acquisition Act, 1894, so far as the same can be made applicable. Then comes sub-s. (f), which is important for the present purpose, and it is as follows:

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

Then we have sub-s. (g), which is as follows:

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

On these provisions, the contention on behalf of the Government is that the reference under s. 19(1) (b) and the appeal under s. 19(1) (f) are all arbitration proceedings, that the decision of the High Court in the appeal is really an award, and that it is, in consequence, not appealable under ss. 109 and 110 of the Code of Civil Procedure, as they apply only to judgments, decrees or orders of Courts and not to awards. Mr. Achhru Ram, learned counsel for the appellant does not dispute that the proceedings under s. 19(1) (b) are by way of arbitration, but he contends that when once the matter comes before the High Court by way of appeal under s. 19(1)(f), it becomes a civil proceeding under the ordinary jurisdiction of the Court, and that any decision therein is open to appeal under ss. 109 and 110 of the Code of Civil Procedure. He further contends that even apart from those provisions, the appeal was competent under Cl. 29 of the Letters Patent, and that

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the certificate granted by the High Court is under that provision as well.

Before discussing the authorities cited on either side in support of their respective contentions, it will be useful to state the well-established principles applicable to the determination of the present question. When parties enter into an agreement to have their dispute settled by arbitration, its effect is to take the *lis* out of the hands of the ordinary Courts of the land and to entrust it to the decision of what has been termed a private tribunal. Such an agreement is not hit by s. 28 of the Contract Act as being in restraint of legal proceedings, because s. 21 of the Specific Relief Act expressly provides that "save as provided by the Arbitration Act, 1940, no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract...and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit." There is a similar provision in s. 28 of the Contract Act which is applicable, where the Arbitration Act is not in force. Where an arbitration is held in pursuance of such an agreement and that results in a decision, that decision takes the place of an adjudication by the ordinary Courts, and the rights of the parties are thereafter regulated by it. It is true that under the law the Courts have the authority to set aside the awards made by arbitrators on certain grounds such as that they are on matters not referred to arbitration, or that the arbitrators had misconducted themselves, or that there are errors apparent on the face of the award. But where the award is not open to any such objection, the Court has to pass a decree in terms of the award, and under s. 17 of the Arbitration Act, an appeal lies against such a decree only on the ground that it is in excess of, or not otherwise in accordance with the award. In other words, it is the decision of the arbitrator where it is not set aside that operates as the real adjudication binding on the parties, and it is with a view to its enforcement that the Court is authorised to pass a decree in terms thereof. There is thus a sharp distinction between a

decision which is pronounced by a Court in a cause which it hears on the merits, and one which is given by it in a proceeding for the filing of an award. The former is a judgment, decree or order rendered in the exercise of its normal jurisdiction as a Civil Court, and that is appealable under the general law as for example, under ss. 96, 100, 104, 109 and 110 of the Code of Civil Procedure. The latter is an adjudication of a private tribunal with the *imprimatur* of the Court stamped on it, and to the extent that the award is within the terms of the reference, it is final and not appealable. The position in law is the same when the reference to arbitration is made not under agreement of parties but under provisions of a statute. The result of those provisions again is to withdraw the dispute from the jurisdiction of the ordinary courts and to refer it for the decision of a private tribunal. That decision is an award, and stands on the same footing as an award made on reference under agreement of parties. It is for this reason that s. 46 of the Arbitration Act X of 1940 enacts that:

"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."

Nor does it make any difference in the legal position that the reference under the statute is to a Court as arbitrator. In that case, the Court hears the matter not as a Civil Court but as *persona designata*, and its decision will be an award not open to appeal under the ordinary law applicable to decisions of Courts. A statute, however, might provide for the decision of a dispute by a Court as Court and not as arbitrator, in which case its decision will be a decree or order of Court in its ordinary civil jurisdiction, and that will attract the normal procedure governing the decision of that Court, and a right of appeal will be comprehended therein. The position therefore is that if the

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reference is to a Court as *persona designata*, its decision will not be open to appeal except to the extent that the statute so provides; but that if, on the other hand, it is to a Court as Court, its decision will be appealable under the general law, unless there is something in the statute, which abridges or takes away that incident. It may be a question whether the reference to a Court under a particular statute is to it as a Court or as *persona designata*; but when once it is determined that it is to it as *persona designata*, there can be no question that its decision is not open to appeal under the ordinary law.

We shall now consider the authorities bearing on the question. On behalf of the Government, the decisions in *Rangoon Botatoung Company* v. *The Collector, Rangoon* (1), *The Special Officer, Salsette Building Sites* v. *Dossabhai Bezonji* (2), *The Special Officer, Salsette Building Sites* v. *Dassabhai Bozanji Motiwala* (3), *Manavikraman Tirumalpad* v. *The Collector of the Nilgris* (4) and *Secretary of State for India in Council* v. *Hindusthan Co-operative Insurance Society Limited* (5) were relied on as supporting the contention that the present appeals are incompetent. In *Rangoon Botatoung Company* v. *The Collector, Rangoon* (1), the facts were that certain properties had been acquired under the Land Acquisition Act of 1894, and the Collector had determined the amount of compensation payable to the quondam owners. On their objection as to the quantum of compensation, the matter was referred to the decision of the Chief Court of Burma. It was heard by a Bench of two Judges, who determined that a sum of Rs. 13,25,720 was payable as compensation. Dissatisfied with this decision, the owners preferred an appeal to the Privy Council under the provisions of the Code of Civil Procedure. A preliminary objection was taken to the maintainability of the appeal on the ground that the decision sought to be appealed against was not a judgment of Court but an award, and was therefore not appealable. In giving effect to this objection, the Board observed:

"Their Lordships cannot accept the argument or

(1) (1912) L.R. 39 I.A. 197. (2) (1912) I.L.R. 37 Bom. 506.
(3) (1913) 17 C.W.N. 421. (4) (1918) I.L.R. 41 Mad. 943.
(5) (1931) L.R. 58 I.A. 259.

suggestion that when once the claimant is admitted to the High Court he has all the rights of an ordinary suitor, including the right to carry an award made in an arbitration as to the value of land taken for public purposes up to this Board as if it were a decree of the High Court made in the course of its ordinary jurisdiction."

Shortly after this judgment was pronounced, the question arose for determination in *The Special Officer, Salsette Building Sites* v. *Dossabhai Bezonji* (1), whether a decision given by the High Court in appeal under s. 54 of the Land Acquisition Act was a judgment within Cl. 39 of the Letters Patent, so as to enable a party to appeal to the Privy Council under that provision. The applicant sought to distinguish the decision in *Rangoon Botatoung Company* v. *The Collector, Rangoon* (2) on the ground that there, the decision sought to be appealed against was that of the Chief Court of Burma, and the question of maintainability fell to be decided on the terms of the Code of Civil Procedure, whereas in the instant case, the party had a right to appeal to the Privy Council under Cl. 39 of the Letters Patent. In rejecting this contention, the High Court referred to the observations in *Rangoon Botatoung Company's Case* (2) already quoted, and observed:

"This passage shows that it is a mistake to suppose that the award made in such a case by the High Court is a decree within the ordinary jurisdiction to which the Civil Procedure Code refers; and it seems to me it would be equally erroneous to regard such an award as a final judgment or order within the meaning of clause 39 of the Letters Patent."

Leave to appeal to the Privy Council was accordingly refused. There was an application to the Privy Council for special leave in this matter, but that was also rejected, and the report of the proceedings before the Privy Council in *The Special Officer, Salsette Building Sites* v. *Dassabhai Basanji Motiwala* (3) shows that the interpretation put by the Bombay High Court in *The Special Officer, Salsette Building Sites* v. *Dossabhdi Bezonji* (1) was accepted as correct.

In *Mahavikraman Tirumalpad* v. *The Collector of the*

(1) (1912) I.L.R. 37 Bom. 506. (2) (1912) L.R. 39 I.A. 197.
(3) (1913) 17 C.W.N. 421.

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Nilgris (1), the question was whether a judgment of the High Court passed in an appeal under the Land Acquisition Act was a judgment within the meaning of Cl. 15 of the Letters Patent so as to entitle a party to file a further appeal to the High Court under that provision, and it was held, on a consideration of the authorities above referred to, that it was not. *Secretary of State for India in Council* v. *Hindusthan Co-operative Insurance Society Limited* (2) is a decision under the Calcutta Improvement Act, 1911. Under that Act, there is a tribunal constituted for determining the amount of compensation payable on acquisition of land, and under the Calcutta Improvement (Appeals) Act, 1911, an appeal is provided in certain cases from the decision of the tribunal to the Calcutta High Court. The point that arose for determination was whether the decision given by the High Court in appeal under this provision was open to further appeal to the Privy Council. In answering it in the negative, the Privy Council observed that in view of the decision in *Rangoon Botatoung Company* v. *The Collector, Rangoon* (3), there could be no right of appeal against the decision of the High Court. It further held that this conclusion was not affected by the amendment of the Land Acquisition Act, 1921, providing for an appeal to the Privy Council against the decision of the High Court under s. 54 of that Act, as that amendment could not be held to have been incorporated by reference in the Calcutta Improvement Act, 1911.

The law as laid down in the above authorities may thus be summed up: It is not every decision given by a Court that could be said to be a judgment, decree or order within the provisions of the Code of Civil Procedure or the Letters Patent. Whether it is so or not will depend on whether the proceeding in which it was given came before the Court in its normal civil jurisdiction, or *de hors* it as a *persona designata*. Where the dispute is referred to the Court for determination by way of arbitration as in *Rangoon Botatoung Company* v. *The Collector, Rangoon* (3), or where it comes

(1) (1918) I.L.R. 41 Mad. 943. (2) (1931) L.R. 58 I.A. 259.
(3) (1912) L.R. 39 I.A. 197.

by way of appeal against what is statedly an award as in *The Special Officer, Salsette Building Sites* v. *Dossabhai Bezonji* (1), *Manavikraman Tirumalpad* v. *The Collector of the Nilgris* (2) and *Secretary of State for India in Council* v. *Hindusthan Co-operative Insurance Society Limited* (3) then the decision is not a judgment, decree or order under either the Code of Civil Procedure or the Letters Patent.

Now, Mr. Achhru Ram contests this last proposition, and relies strongly on the decision in *National Telephone Company Limited* v. *Postmaster-General* (4), as supporting his position. There, the question arose on the construction of certain provisions of the Telegraph (Arbitration) Act, 1909. Section 1 thereof enacted that certain differences between the Postmaster-General and any other person should, if the parties agreed, be referred for decision to the Railway and Canal Commission constituted under an Act of 1888; and s. 2 provided that all enquiries under the reference should be conducted by the Commission in accordance with the Act of 1888. Pursuant to a reference under these provisions, the Railway and Canal Commission had determined certain disputes, and the question was whether its decision was open to appeal. Under the Act of 1888, the Commission was constituted a Court of record and an appeal lay against its decision to the Court of Appeal except on questions of fact and *locus standi*. It was held by the House of Lords that as under the Act of 1888 the reference to the Commission was to it as a Court, the reference under the Telegraph (Arbitration) Act, 1909, to that tribunal must also be held to be to it as a Court and not as a body of arbitrators, and an appeal against its decision was therefore competent. The position was thus stated by Viscount Haldane L. C.:

"When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decision likewise attaches."

(1) (1912) I.L.R. 37 Bom. 506.
(2) (1918) I.L.R. 41 Mad. 943.
(3) (1931) L.R. 58 I.A. 259.
(4) [1913] A.C. 546.

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It may be noted that it was the use of the word "arbitration" in the title to the Act that furnished the ground for the contention that the proceedings before the Commission were of the nature of arbitration. But that description, however, could not alter the true character of the reference under the Act, which was in terms to the Commission as a Court of record. In fact, there was no element of arbitration in the proceedings. It is true that under that Act there could be a reference only by agreement of parties. That, however, could not make any difference in the character of the proceedings before the Commission, as a statute can provide for the jurisdiction of the Court being invoked as a Court on the agreement of parties, as for example, on a case stated under Order 36 of the Code of Civil Procedure. There is thus nothing in *National Telephone Company Limited* v. *Postmaster-General* (1), which can be said to conflict with the law as laid down in *Rangoon Botatoung Company* v. *The Collector, Rangoon* (2) that when the reference is to a Court as arbitrator, its decision is not open to appeal.

The distinction between the two classes of cases, where the reference is to court as court and where the reference is to it as arbitrator, was again pointed out by the Privy Council in *Secretary of State for India* v. *Chelikani Rama Rao* (3). There, the question arose with reference to certain provisions of the Madras Forest Act, 1882. That Act provides that claims to lands which are sought to be declared reserved forests by the Government are to be enquired into by the Forest Settlement Officer, and an appeal is provided against his decision to the District Court. The point for decision was whether the decision of the District Court was open to further appeal under the provisions of the Code of Civil Procedure. The contention was that the reference to the District Court under the Act was to it not as a Court but as arbitrator, and that therefore its decision was not open to appeal on the principle laid down in *Rangoon Botatoung Company's Case* (2). In repelling this contention,

(1) [1913] A.C. 546. (2) (1912) L.R. 39 I.A. 197.

(3) (1916) L.R. 43 I.A. 192.

Lord Shaw observed that under the Land Acquisition Act the proceedings were "from beginning to end ostensibly and actually arbitration proceedings", but that the proceedings under the Forest Act were essentially different in character. "The claim was", he said, "the assertion of a legal right to possession of and property in land; and if the ordinary Courts of the country are seized of a dispute of that character, it would require, in the opinion of the Board, a specific limitation to exclude the ordinary incidents of litigation".

The principles being thus well-settled, we have to see in the present case whether an appeal to the High Court under s. 19(1)(f) of the Act comes before it as a Court or as arbitrator. Under s. 19(1)(b), the reference is admittedly to an arbitrator. He need not even be a Judge of a Court. It is sufficient that he is qualified to be appointed a Judge of the High Court. And under the law, no appeal would have lain to the High Court against the decision of such an arbitrator. Thus, the provision for appeal to the High Court under s. 19(1)(f) can only be construed as a reference to it as an authority designated and not as a Court. The fact that, in the present case, the reference was to a District Judge would not affect the position. Then again, the decision of the arbitrator appointed under s. 19(1)(b) is expressly referred to in s. 19(1)(f) as an award. Now, an appeal is essentially a continuation of the original proceedings, and if the proceedings under s. 19(1)(b) are arbitration proceedings, it is difficult to see how their character can suffer a change, when they are brought up before an appellate tribunal. The decisions in *The Special Officer, Salsette Building Sites* v. *Dossabhai Bezonji* (1), *The Special Officer, Salsette Building Sites* v. *Dassabhai Basanji Motiwala* (2), *Manavikraman Tirumalpad* v. *The Collector of the Nilgris* (3) and *Secretary of State for India in Council* v. *Hindusthan Co-operative Insurance Society Limited* (4) proceed all on the view that an appeal against an award continues to be part of, and a

(1) (1912) I.L.R. 37 Bom. 506.
(2) (1913) 17 C.W.N. 421.
(3) (1918) I.L.R. 41 Mad. 943.
(5) (1931) L.R. 58 I.A. 259.

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further stage of the original arbitration proceedings. In our view, a proceeding which is at the inception an arbitration proceeding must retain its character as arbitration, even when it is taken up in appeal, where that is provided by the statute.

The question whether an appeal under s. 19(1)(f) is of the nature of arbitration proceedings, and whether the decision given therein is an award came up directly for consideration in *Kollegal Silk Filatures Ltd.* v. *Province of Madras* (1) before a Bench of the Madras High Court consisting of Patanjali Sastri and Chandrasekhara Aiyar JJ. and it was held by them that the word "arbitration" in s. 19(1)(g) of the Act covered the entire proceedings from their commencement before the arbitrator to their termination in the High Court on appeal where an appeal had been preferred, and the High Court in hearing and deciding the appeal acted essentially as an arbitration tribunal. We agree with this decision that the appeal under s. 19(1)(f) is an arbitration proceeding. We must therefore hold that the decision of the High Court in the appeal under that provision is not a judgment, decree or order either within ss. 109 and 110 of the Code of Civil Procedure or cl. 29 of the Letters Patent of the Nagpur High Court, which corresponds to cl. 39 of the Letters Patent of the Calcutta, Madras and Bombay High Courts, and that, therefore, the present appeals are incompetent.

Mr. Achhru Ram finally contended that even if no appeal lay under ss. 109 and 110 of the Code of Civil Procedure or cl. 29 of the Letters Patent, it was, nevertheless, within the competence of this Court to grant leave to appeal, and that this was a fit case for the grant of such leave. He argued that the Privy Council had the power to grant leave to appeal against the decision of the Nagpur High Court in the appeal under s. 19(1)(f), that under s. 3(a)(ii) of the Federal Court (Enlargement of Jurisdiction) Act I of 1948 that power became vested in the Federal Court, and under Art. 135 it has devolved on this Court, and that in the exercise of that power we should grant leave to appeal against

(1) I.L.R. [1948] Mad. 490.

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the decision now under challenge. It is sufficient answer to this contention that the Federal Court had power under s. 3(a) (ii) to grant leave only when the proposed appeal was against a judgment, and that, under the definition in s. 2(b), meant a judgment, decree or order of a High Court in a civil case; and that on our conclusion that the decision in the appeal under s. 19(1) (f) is not a judgment, decree or order but an award, no order could have been passed granting special leave under s. 3(a) (ii).

In the result, we dismiss both the appeals as incompetent. The parties will bear their own costs in this Court.

Appeals dismissed.

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August 22.

THE STATE OF BIHAR

v.

D. N. GANGULY & OTHERS

(VENKATARAMA AIYAR, GAJENDRAGADKAR and A. K. SARKAR JJ.)

Industrial Dispute—Supersession of adjudication pending before industrial tribunal—Validity—Power of appropriate Government—Industrial Disputes Act, 1947 (XIV of 1947), s. 10(1)—General Clauses Act, 1897 (10 of 1897), s. 21.

Section 10(1) of the Industrial Disputes Act, 1947, does not confer on the appropriate Government the power to cancel or supersede a reference made thereunder in respect of an industrial dispute pending adjudication by the tribunal constituted for that purpose. Nor can s. 21 of the General Clauses Act, 1897, vest such a power by necessary implication.

It is well settled that the rule of construction embodied in s. 21 of the General Clauses Act can apply to the provisions of a statute only where the subject matter, context and effect of such provisions are in no way inconsistent with such application. So judged it is clear that that section cannot apply to s. 10(1) of the Industrial Disputes Act.

Minerva Mills Ltd. v. *Their Workmen*, [1954] S. C. R. 465, held inapplicable.