section 16 that the order for payment of wages has to be made. In *Manager, Searchlight Press, Patna* v. *Factories Inspector, Patna* (5), a Division Bench of that Court has ruled that the Payment of Wages Act applies even to cases where wages are paid monthly. The remuneration payable to a workman, which is "wages", as defined by section 2(vi) of the Payment of Wages Act, does not cease to be wages so defined merely because the wage period, on the basis of which remuneration is calculated, is a month. The provisions of section 1(6) and 4(2) show that the wage period may extend to a month.

(16) As a result of the above discussion I find that the impugned order of the Magistrate holding that the petitioner's case was not covered by section 16 read with section 18 of the Punjab Shops and Commercial Establishments Act suffers from an error apparent on the record and he has refused to exercise the jurisdiction vested in him in dealing with the petitioner's claim for payment of wages, etc., on untenable premises. I, accordingly, accept the petition and remit the case to him to proceed to deal with the petitioner's case for payment of wages and compensation in accordance with law. The petitioner will be entitled to costs of this petition against the respondents.

K.S.K.

APPELLATE CIVIL

Before Prem Chand Pandit and H. R. Sodhi, JJ.

M/s. KAPOOR NILOKHERI CO-OPERATIVE DAIRY FARM SOCIETY, *Appellant*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

First Appeal from Order No. 184 of 1965

August 4, 1969

Evidence Act (I of 1872)—Sections 3, 123 and 124—Arbitration Act (X of 1940)—Section 30—Arbitration proceedings—Question of admissibility, relevancy and claim of privilege of evidence—Arbitrator—Whether has jurisdiction to decide—Sections 123 and 124, Evidence Act—Whether can be disregarded by the arbitrator—Claim of privilege—When should it be refused by the arbitrator—Error committed by arbitrator in deciding the question of admissibility of evidence—Whether amounts to misconduct.

(5) A.I.R. 1960 Patna 33.

Held, that an arbitrator is not a regular Court bound by rigid rules of evidence and procedure, but at the same time he must follow that procedure which is consistent with natural justice and affords to the parties a fair and reasonable opportunity to place their case before him so that the controversy between them can be properly resolved. The arbitrator can decide about the admissibility of any piece of evidence and rule out the same if he finds it irrelevant or hit by the rules relating to privilege from production in a Court of law, though the Indian Evidence Act is not in its terms applicable to proceedings before him. The arbitrator has an authority to decide what is relevant or irrelevant, and may, in a proper case, refuse to take into evidence information derived from unpublished official records relating to affairs of the State except in the manner as permitted in section 123 of the Indian Evidence Act. The arbitrator will also be acting within his powers in not compelling disclosure of communications made between public officials in official confidence when he considers that public interest will suffer by any such disclosure. The provisions of law, as contained in sections 123 and 124 of the Indian Evidence Act, which are supplementary to each other, are based on broad principles of public policy which cannot be disregarded by an arbitrator simply because he does not constitute a regular Court. It is a matter of sound judicial discretion of the arbitrator and he may, in certain cases, compel the production of documents which he thinks do not contain any evidence derived from unofficial records relating to the affairs of the State or is not a communication in official confidence. (Para 12).

Held, that if a piece of evidence is so material that refusal to permit the same to be admitted in evidence amounts to denial of a real opportunity to a party to establish its case, the arbitrator must see that such evidence is produced and the officials of the State Government do not use the provisions of sections 123 and 124 of the Indian Evidence Act as a mere cloak for withholding necessary and relevant evidence only to defeat a just claim of that party. In a litigation between the State and a citizen, the latter is sometimes at a disadvantage when documentary evidence is in possession of the former and it refuses to produce the same on the alleged ground of privilege. In commercial transactions particularly, the arbitrator should compel the production of evidence which is relevant. In such transactions, a communication made by one department to another may sometimes amount to admission of liability which ordinarily it is permissible to prove and the mere fact that the State chooses to claim privilege on the alleged ground that it relates to the affairs of the State or that it is a communication in official confidence cannot justify the withholding of such an important and relevant piece of evidence before a Court or an arbitrator. The validity of the objection based on privilege is to be decided in each case and no absolute rule can be laid down. (Para 12)

Held, that an arbitrator in deciding question of admissibility of any evidence has to act honestly and judicially and if he commits an error of law that by itself is not a ground for setting aside the award, because an arbitrator is a Judge chosen by the parties and may decide rightly or

wrongly and the parties have to accept his verdict unless he is proved to be guilty of misconduct. However, if the arbitrator by wrongly deciding the question of admissibility, has kept out evidence which is material and likely to affect the decision of the case, his conduct is in violation of rules of natural justice and the award has in such a situation to be set aside. , (Para 12)

First Appeal from the order of the Court of Shri Harbans Singh, Senior Sub-Judge, Karnal, dated 25th November, 1965, passing a decree for the recovery of Rs. 73,342.43 Paise, as also for possession of the land and buildings, as stated in the award in favour of Union of India and the Punjab State against M/s. Kapur Nilokheri Co-operative Dairy .Farm Society, Nilokheri.

BHAGIRATH DASS, M. M. PUNCHHI AND S. K. HIRAJI, ADVOCATES, for the Appellant.

D. S. NEHRA, K. S. NEHRA AND S. P. GOYAL, ADVOCATES, for the Respondents.

JUDGMENT

SODHI, J.—This first appeal from order is directed against the judgment passed on 25th November, 1965, by the Senior Subordinate Judge, Karnal, who disallowing the objections preferred by the appellants made the impugned award a rule of the Court without in any way modifying or amending the same. By virtue of this award, a decree for the recovery of Rs. 73,342.43 and also for the possession of the land and buildings situate in Nilokheri, district Karnal, as referred to in the plaint, was passed. In order to appreciate the objections advanced by the appellants, it is necessary to state a few relevant facts in detail.

(2) There was a milk dairy being run by the Government in Nilokheri which had been set up as a Rehabilitation Colony to rehabilitate mostly displaced persons. It appears that somewhere in the year 1950, the Government decided to hand over the management of the dairy as a running business concern to displaced persons, who formed themselves into a Dairy Association (hereinafter called the Association). An agreement Exhibit R/1 was, therefore, executed between some displaced persons, namely, Ram Saran Dass, Jagan Nath, Gurbax Rai, Jenda Ram and Nihal Chand, acting on behalf of the Association on one side, and Administrative Officer, Nilokheri, on the other. This agreement was to come into operation with effect from 1st October, 1950. There is no dispute that the Administrative Officer was acting on behalf of the Union of India. There are

several clauses of this agreement which it is not necessary to reproduce here. It may, however, be stated that in terms of the agreement, the Association was handed over the entire business concern including agricultural land, buildings, equipments, furniture, fixtures and livestock. The Association was assured of the facilities by the administration in the matter of electricity, water-supply, procurement of raw materials, etc., so that the fodder and food for the animals to be maintained in the dairy could be made available. As a consideration for taking over the complete control and management of the dairy, the Association had to make certain payments towards the price of livestock, rent of buildings and other amenities, though these payments could be made on instalment basis. Interest at the rate of 3½ per cent was payable to the Government on the unpaid balance of the capital, cost of equipments, furniture and fixtures, and live stock, transferred to the new private enterprise. It was also provided in the agreement that the total value of the livestock, raw materials and finished goods in the godown along with bank balances will at no time fall short of the money due to the administration; and in the event of these falling short, the administration will have the powers to rescind the contract. The contract could also be rescinded if the Association closed its business for more than a week without the prior approval of the administration or assigned or sublet the contract or committed any other acts referred to in the agreement including the violation of any of the clauses thereof. Clause (D) of the agreement relates to the liability of the Association to pay certain charges to the administration. In Clause (E), it is provided that the Association shall at least maintain 80 cattle heads and if the strength of the cattle heads at any time fell below the said limit, the Association will have to relinquish the use of 1¾ acres of land for every cattle head. The Association had been given about 135 acres of reclaimed land for growing fodder and other feeds for the animals. Clause (O) and (W) are reproduced here for facility of reference:—

> "(O) That if at any time after the commencement of this contract the Administration shall for any reason whatsoever not require the continuance of this contract or fail to provide the basic facilities for the running of this business as indicated in clause 'C' above, the Administration shall give notice in writing of this fact to us. In such an event the Administration shall consider the question of paying compensation to us for any loss that we might suffer as a result thereof. The amount of compensation fixed by the Administration shall be acceptable to us without any further claim to any payment or compensation whatsoever.

(W) That you shall have the power to rescind the contract in the event of our failure to comply with any clause or clauses of this contract. In such an event we shall render ourselves liable to pay the full compensation as decided by you, which shall be binding on us. The assets created by us in this business or other personal properties owned by us individually or jointly, not connected with this business shall stand forfeited against the payment of the compensation if the amount of compensation so demands."

With the agreement Exhibit R/1 were appended certain statements as annexures in order to indicate the value for which livestock, equipment, etc., had to be transferred. The value of some of the young livestock was not taken into account whereas that of some animals in bad condition was assessed below their book value and a rebate was accordingly allowed. The total rebate came to Rs. 4,930-11-6 and this amount was deducted from the total book value of that live stock which was under some disability. As against certain cows and buffaloes whose book value was shown to be Rs. 11,941 and Rs. 35,580-1-9, respectively, the expression 'provisional' had been written in the remarks column. It may be useful to reproduce that entry here—

Item No.	Description	Total No.	Aomunt Rs.	Remarks
2.	Cows & Buffaloes			
	(a) Tharparkar	39	11,941-0-0	Provisional
	(b) Hariana	..	..	..
	(c) Nilli She-Buffaloes	47	35,580-1-9	Provisional
			Note:	The alue of young stock numbering 52 in all has not been taken into account.
				The value of the following animals which are in bad condition at the Time of transferring shall be assessed and proportionate rebate shall be given in the book value as shown below :—
				Buffaloes numbered;
				1, 2, 29, 30, 33 and 34
				....
				Rebate statement attached."

(3) The Association later converted itself into a co-operative society registered under the Punjab Co-operative Societies Act, and continued its business under the name and style of M/S Kapoor Nilokheri Co-operative Dairy Farm Society, Ltd., Nilokheri (hereinafter called the Society). As a result of the formation of the Society which was a separate juristic person incorporated under the Punjab Co-operative Societies Act, a fresh agreement was necessitated and on 5th May, 1953, the agreement Exhibit R/2 was thus executed. There was no variation in the terms and conditions operative between the parties. Some disputes subsequently arose between the parties. On an application made under section 20 of the Arbitration Act on 31st July, 1959, Shri B. L. Mago, Subordinate Judge, First Class, Patiala, was appointed the arbitrator. The Union of India and the Punjab State on one hand and the Society on the other were the contesting parties before the arbitrator. The Government claimed that the Society had not made payments of its dues whereas the case of the Society was that it was entitled to certain depreciation after the value of the livestock, which had been originally mentioned as 'provisional' according to the entries in the books of accounts, had been determined in accordance with the formula adopted by the Dairy Department of the Government keeping in view the age of the animals, its milching capacity and other relevant factors. The plea seems to have been that the word 'provisional' had been used purposely because the final price of the livestock transferred to the Society and against which the word 'provisional' had been used, was yet to be decided.

(4) On the pleadings of the parties before the Arbitrator, the following issues were framed :—

"(1) What was meant by the expression 'provisional' used in the annexures to the agreements, dated 5th May, 1953 and 1st October, 1950 ?

(2) Has the first agreement ceased to have any force in view of the second contract ?

(3) Is the claimant entitled to any depreciation ? If so, how much ?

(4) Has any of the parties committed breach of the contract ? If so, what is the effect ?

(5) To what damages, if any, is the claimant entitled ?

(6) Was the equipment returned on the specific condition that the material received will be put to auction for sale and sale-proceeds given redit to the claimant ?

(7) If so, what are the sale-proceeds ?

(8) If issue No. 6 is not proved, then what is the amount which the claimant is entitled to be credited for payment for equipment returned ?

(9) How much amount was received on account of the claims delivered to the respondents ?

(10) Was any technical guidance to be given by the respondents ?

(11) If so, what is effect of its not having been given and to what damages, if any, is the claimant entitled on that account?

(12) Whether any facilities other than laid down in the agreement were to be provided by the respondent to the claimant ?

(13) If so, were they provided and with what effect as to damages or otherwise ?

(14) What damages, if any, is the claimant entitled to because of the entire land not having been allotted to the claimant in time ?

(15) Was the land given not of agreed quality and situation ?

(16) If so, to what damages, if any, is the claimant entitled ?

(17) Was the claimant not entitled to similar treatment as to other agriculturist allottees in so far as liability for payment and for its adjustment towards rent is concerned ?

(18) Is the claimant entitled to get the land transferred ? If so; on what terms ?

(19) Should the Society be wound up for reasons given in the counter-statement of facts filed by the respondents and can the respondents raise this plea ?

(20) If issue No. 4 is proved in favour of the respondents, is the claimant bound to deliver back the land in question to the Union of India ?

(21) To what dues is the respondent entitled ?

(22) Relief."

It is not necessary for the purposes of this appeal to refer to the findings of the arbitrator on each issue. Suffice it to say that the arbitrator found that the claimant (the Society) had committed breaches of the following terms :—

"(i) The rent of the building was not paid by the claimants monthly as agreed by them,—*vide* clause D(i) of the Contract Exhibit R/2.

(ii) The claimants did not pay the total book value of the equipments, furniture and fixtures, and livestock transferred to them on instalment payment basis as agreed by them,—*vide* clause D(iv) of the contract.

(iii) The claimants failed to pay interest on monthly basis at 3½ per cent as agreed by them,—*vide* Clause D(v) of the contract.

(iv) The claimants failed to pay the cost of raw-material as agreed by them,—*vide* clause D(ix) of the contract.

(v) The claimants failed to pay the rent of agricultural land as agreed by them,—*vide* clause D(x) of the contract.

(vi) The claimants did not put the whole of the land to use for which it was given."

(5) As a result of its findings on different issues the arbitrator took the view that the Government was enitled to Rs. 97,765.43 and after deducting a sum of Rs. 14,423 which was in respect of the verified claims of the claimants, the respondents would be entitled to a sum of Rs. 83,342.43. There was another sum of Rs. 10,000 as damages which had been allowed to the claimants with the result that the liability of the Society was fixed at Rs. 73,342.43 which amount it was called upon to pay. It was not only that the Government was allowed to realise the amount of Rs. 73,342.43 from the Society, but it was further directed by the arbitrator that the property referred to in Appendices A, B and C to the agreement Exhibit R/2 shall pass to the claimants on the payment of the said amount. The land and buildings user of which was given to the Society during the term of the agreement were to revert to the Union of India and the State Government, respondents. In the course of arbitration proceedings, the appellant

Society summoned certain documents to be produced by the respondents. I must at this stage mention that the proceedings before the arbitrator were not only on the pattern of judicial proceedings but amounted to a regular trial of a suit. The documents summoned were in the custody of the Administrative Officer, Nilokheri. The list of the documents sought to be produced by the respondents is fairly long one, but we are concerned with only those documents which are mentioned at serial Nos. (i), (xv) and (xviii) of the said list. An application to summon the documents from the custody of the respondents who were parties in the proceedings before the arbitrator was made on 20th March, 1961. Reference to these documents in the application is in the following terms:—

"(i) Original letter No. 130, dated 8th December, 1954, from Shri L. C. Moudgil, Military Farm, Ambala Cantt., to Administrative Officer, Nilokheri in connection with Administrative Office No. RRN/IND/145/54/4403, dated 26th November, 1954, regarding depreciation on Milch Cattle.

(xv) Correspondence of case of depreciation on Milch Cattle forwarded to State Government,—*vide* Administrative Officer letter No. RRN/NT-145-54, dated 15th February, 1955.

(xviii) Correspondence with Karnal Dairy and case referred to Dairy Expert, Military Dairy Farm, Ambala Cantt., regarding depreciation of cattle as conveyed to Society,—*vide* Letter No. RRN/IND-145/54, dated September, 1954, to A.R. Co-operative Societies, Karnal, and copy to the claimant Society."

There is a clerical error in regard to document mentioned at serial No. (i) inasmuch as the No. is not 130 but 'L 30'.

(6) Shankar Dass, Supply Assistant in the office of the Administrative Officer, Nilokheri, appeared before the arbitrator as A.W. 8, on 1st April, 1961, and produced all these documents, but claimed privilege on behalf of the Government. He had not brought the necessary affidavit with him and the case was adjourned to enable him to do so. The necessary affidavit of Shri Suhender Singh, who was at the relevant time working as Administrative Officer, Nilokheri, was produced before the arbitrator on 19th April, 1961, and privilege

was claimed on the ground that these documents were communications made in official confidence and that by their very nature they were documents which could not be produced and were kept secret. It was stated in the affidavit that public interest would be injured by their production which would also affect freedom of free discussion, comment and communication. The arbitrator went on recording evidence and no finding was given by him on the question of privilege. On 26th May, 1962, the arbitrator passed an order adjourning the case to 15th June, 1962, and it reads as follows:—

> "The learned counsel for the claimants says that certain documents were summoned from the respondents, but they have claimed privilege. He says that that point be also decided. The parties' counsel want to argue that point as well, as they want to argue on merits. They want time. Adjourned to 15th June, 1962. at Patiala."

(7) It appears from the record of the arbitrator which is before us that he continued adjourning the case for one reason or the other and for the first time some arguments were heard on 26th August, 1962, in regard to the issue relating to privilege claimed by the respondents. In his order of 12th September, 1962, the arbitrator has stated that documents had been produced before him for scrutiny and that arguments in part had been heard on merits as well. The case was again adjourned to 30th September, 1962. Again either one counsel or the other was absent or some other reason intervened which necessitated an adjournment. In the part-heard case, arguments were again heard on 8th December, 1962, and the counsel for the parties asked for permission to file written arguments. The written arguments were filed by the Society on 12th January, 1963, when counsel for the respondents asked for a copy of the same and it was directed to be supplied. There was then again a series of adjournments till ultimately respondents' counsel also filed written arguments on 14th September, 1963. The counsel for the Society asked on 14th September, 1963, for an opportunity to file a reply to the written arguments. The order of this date has an important bearing and needs to be quoted in *extenso*:—

> "Written arguments filed. Final arguments heard for two hours. The parties have closed their arguments. The petitioners want to file reply to the written arguments filed by the respondents. They can do so with a copy to the respondents' counsel. Time for giving the award be got extended by the parties. Award will be announced

before 31st October, 1963. The parties will be informed of the date."

There is a note to the effect that the reply to the written arguments of the respondents' counsel had been received by the arbitrator on 28th September, 1963, and it was ordered to be placed on the file. There is another order of 31st October, 1963, indicating that nobody was present nor was the award ready. The award seems to have been ready on 16th November, 1963, and was announced on 30th November, 1963. The record of the proceedings does not show that the Arbitrator passed any order on the question of privilege till he finally disposed of all the issues and gave his award on 30th November, 1963. There can be no manner of doubt that till 14th of September, 1963, the whole case was yet open in the sense that even reply to the written arguments of the counsel for the respondents had to be filed. It was only on 28th September, 1963, that the arguments could be said to be complete and the case ripe for giving the award.

(8) We, however, find a separate detailed order bearing the date of 14th September, 1963, to which no reference is made in the proceedings. It is supposed to have disposed of the issue of privilege. The arbitrator allowed privilege in respect of documents at serial Nos. (xv) and (xviii) but not in the case of that at serial No. (i). He was of the opinion that the documents were in the nature of communications made by one public officer in official confidence to another and, therefore, were privileged under section 124 of the Indian Evidence Act. He, however, declined privilege in regard to document at serial No. (i) as a copy of the same had been produced before him as Exhibit A. 16 which is a forwarding letter from Shri L. C. Moudgil, Military Farm, Ambala Cantt., with which had been enclosed the standing order relating to the formula for working out depreciation of purchased cattle. The standing order is also on the record of the arbitrator marked as 'A-32'. A milch animal, according to this formula, will be depreciated in value to the extent of Rs. 150 after nine months. It undoubtedly contains some guiding principles to work out depreciation of milching animals. The documents for which privilege was allowed are on the record and one of them is actually marked as 'A-10'. This position of the arbitrator was highly inconsistent and ununderstandable. He marked the document referred to at serial No. (xviii) as Exhibit A-10, placed it on the record allowed privilege with respect to the same and at the same

time took it into consideration. This document shows only this much that the matter of depreciation had been referred to the Dairy Expert, Military Farm, Ambala Cantt., and his reply was awaited. The other document referred to at serial No. (xv) for which a privilege was allowed is correspondence of the case of depreciation on milch cattle from the Administrative Officer, Nilokheri, to the Under-Secretary to Government, Punjab, Rehabilitation Department, Chandigarh. A reference is made to the issue of depreciation and a suggestion is to be found that the dispute being of a technical nature, advice of the Dairy Expert, Ambala Cantt., was being obtained. The arbitrator had to decide as to in what context the expression 'provisional' was used in the agreements Exhibits R/1 and R/2 in regard to some livestock transferred to the Society. He considered both oral and documentary evidence including two out of three documents at serial Nos. (i) and (xviii). The attention of the arbitrator was specifically invited to the formula relating to depreciation, a copy of which is on the record as 'A-32'. It is this very formula which is referred to in the correspondence between the Administrative Officer and the Under-Secretary to Government, Punjab, Rehabilitation Department, and is mentioned at serial No. (xv) of the list of documents summoned by the Society in respect of which the privilege had been allowed. The Arbitrator was not impressed with the arguments of the Society, and was of the opinion that the expression 'provisional' as appearing in the agreements R/1 and R/2 had not been used because the parties had in mind that depreciation was to be allowed to the Society afterwards in respect of the livestock. He accordingly rejected the contention that the Society could claim any depreciation. It cannot, therefore, be reasonably contended that the Arbitrator did not consider any evidence which the parties produced before him or wanted to produce. The order of 14th September, 1963, passed by him allowing privilege with regard to two documents had no meaning when copies of those documents were before him and he had considered the substance of the same. The contention of the learned counsel for the appellant that the Society had been deprived of any opportunity to produce evidence which was in the form of a formula giving rules for determining depreciation in the value of livestock in certain circumstances is, thus, devoid of force and is indeed a cry without being hurt.

(9) Mr. Bhagirath Dass, learned counsel for the appellant Society, has vehemently contended that the Arbitrator was guilty of misconduct inasmuch as he interpolated the order of 14th September, 1963, relating to privilege being allowed when no such order had

actually been passed on the said date. In other words, the contention is that the Arbitrator ante-dated this order and placed it on the record when chronological order indicating the various proceedings of the Arbitrator shows that the question of privilege was left open till the last date. If one were to look at the record of the arbitration proceedings, it is true that the Arbitrator kept the decision on the matter of privilege pending for over two years for which there was no justification, but at the same time there is no material on the record from which a reasonable inference can be drawn that the Arbitrator misconducted himself by interpolating the order of 14th September, 1963. There was no necessity for him to do so when he had virtually considered all the documents.

(10) Learned counsel for the appellant Society has laid great stress on the evidence of Shri T. N. Sethi, Advocate of Delhi, who appeared as A.W. 1, before the trial Court and deposed that the order on the question of privilege to the production of some documents was not announced on 14th September, 1963, or on any other day in the presence of the parties or communicated to the Society or its counsel at any time. This witness, however, admitted that without reference to his brief or the arbitration file, he could not verbally state as to on which dates miscellaneous orders in other matters were announced to the parties. The order itself suffers from the infirmity that it is not written there that it had been announced. The Arbitrator, Shri B. L. Mago, who was then Senior Subordinate Judge, Ludhiana, appeared as R.W. 2 and stated on oath that the order, dated the 14th September, 1963, relating to privilege question was written and announced after oral arguments of the parties had finished on that day. He admits that he did not give any further opportunity to the parties of producing evidence after the order of 14th September, 1963, because no one asked for such an opportunity. The whole controversy between the parties, as already stated, is just about a shadow rather than substance. The Arbitrator who was a judicial officer should have, of course, stated in his order that it had been announced to the parties but it may be that, as stated by him, he might have written the order after the counsel had left. It is not necessary to determine about the truthfulness of the testimony of either the advocate or the Arbitrator because there is no real issue which necessitates such a finding nor can a specific decision be given in the absence of more material on the record. Suffice it to say that the order as to privilege has caused no injustice to the Society and it is not its case that at any stage it wanted to produce more evidence which

was not allowed by the Arbitrator. It cannot be held that the Arbitrator was guilty of any misconduct in passing the order relating to privilege on 14th September, 1963.

(11) The next contention of the learned counsel for the appellant Society is that since the law of evidence does not apply to proceedings before an Arbitrator, the latter has no jurisdiction to decide questions of privileges about the production of documents before him as envisaged in sections 123 and 124 of the Indian Evidence Act, 1872 which according to the learned counsel is the function of a Civil Court only. It is submitted that the Arbitrator not being bound by the strict rules of evidence must examine all documents though not strictly admissible in evidence in terms of the Indian Evidence Act but having a bearing on the dispute, more so when the dispute is between the State and a citizen arising out of a commercial transaction. It might not have been necessary to give a finding about this contention in view of our holding that the documents in respect of which privilege was allowed had, as a matter of fact, been considered by the Arbitrator and that no injustice can be said to have been caused to the appellants by any irregularity of procedure. This point was, however, debated before us which necessitates that it should not go unnoticed. Several authorities were cited at the bar but I need not refer to them.

(12) It is fairly well settled that an Arbitrator is not a regular Court bound by rigid rules of evidence and procedure, but at the same time he must follow that procedure which is consistent with natural justice and affords to the parties a fair and reasonable opportunity to place their case before him so that the controversy between them can be properly resolved. It is not possible to accept the contention that the Arbitrator cannot decide about the admissibility of any piece of evidence and rule out the same if he finds it irrelevant or hit by the rules relating to privilege from production in a Court of law, simply because the Indian Evidence Act is not in its terms applicable to proceedings before him. The Arbitrator has an authority to decide what is relevant or irrelevant, and may, in a proper case, refuse to take into evidence information derived from unpublished official records relating to the affairs of the State except in the manner as permitted in section 123 of the Indian Evidence Act. The Arbitrator will also be acting within his powers in not compelling disclosure of communications made between public officials in official confidence when he considers that public interest will suffer by any such disclosure. The provisions of law, as contained in sections 123 and 124

of the Indian Evidence Act, which are supplementary to each other, are based on broad principles of public policy which cannot be disregarded by an Arbitrator simply because he does not constitute a regular Court. It is a matter of sound judicial discretion of the Arbitrator and he may, in certain cases, compel the production of documents which he thinks do not contain any evidence derived from unofficial records relating to the affairs of the State or is not a communication in official confidence. If a piece of evidence is so material that refusal to permit the same to be admitted in evidence amounts to denial of a real opportunity to a party to establish its case, the Arbitrator must see that such evidence is produced and the officials of the State Government do not use the provisions of sections 123 and 124 of the Indian Evidence Act as a mere cloak for withholding necessary and relevant evidence only to defeat a just claim of any party. Each case will depend on its own facts and circumstances and the sole question to be answered would be—has the refusal of the Arbitrator to let in any particular evidence vitally affected the decision of the case so as to say that there has been a violation of the rules of natural justice. The Arbitrator has, of course, in deciding the question of admissibility of any evidence, to act honestly and judicially and if he commits an error of law that by itself would not be a ground for setting aside the award because an Arbitrator is a Judge chosen by the parties and may decide rightly or wrongly and the parties have to accept his verdict unless he is proved to be guilty of misconduct. On the other hand if the Arbitrator by wrongly deciding the question of admissibility, has kept out evidence which was material and likely to affect the decision of the case, his conduct will be in violation of rules of natural justice and the award will have to be set aside. In a litigation between the State and a citizen, the latter is some time at a disadvantage when documentary evidence is in possession of the former and it refuses to produce the same on the alleged ground of privilege. In commercial transactions, it is all the more a reason that the Arbitrator should compel the production of evidence which is relevant. In such transactions, a communication made by one department to another may some time amount to admission of liability which ordinarily it is permissible to prove and the mere fact that the State chooses to claim privilege on the ground that it relates to the affairs of the State or that it is a communication in official confidence cannot justify the withholding of such an important and relevant evidence before a Court or an Arbitrator. The validity of the objection based on privilege is to be decided in each case and no absolute rule can be

laid down. In the instant case, the Arbitrator allowed privilege but this, as already stated above, has not affected the merits of the case resulting in any injustice.

(13) It has been contended by the learned counsel for the appellants that the use of the expression "provisional" as appearing in both the agreements Exhibits R/1 and R/2 of 1st October, 1950, and 5th May, 1953, respectively, against Tharparkar and Nilli She-buffaloes indicated that the appellants were entitled to claim depreciation on the book value of these classes of animals. The Society claims that it would be entitled to a rebate of at least Rs. 33,083 if their plea as to the meaning to be given to the expression 'provisional' had been accepted by the Arbitrator. The Arbitrator considered the whole aspect of the case and came to a conclusion that the interpretation placed by the Society was not intended to be given to the word 'provisional' and that it was the book value alone that was to be taken into consideration without any question of depreciation arising. In the opinion of the Arbitrator, the appellants could not thus be entitled to any depreciation on the book value of the livestock. He has, in this connection, examined the entire evidence, both oral and documentary, that was produced before him, and it cannot be said that he committed any misconduct in not accepting such a contention raised before him. It was within the jurisdiction of the Arbitrator to decide as to what the expression 'provisional' meant in the context of the present case and he gave a decision thereon after due consideration. Even if the decision so given was erroneous, it cannot give a cause to the appellants to have the award set aside on that ground.

(14) Another contention of the appellants that the Arbitrator went beyond the reference is also devoid of force. The argument is that the Arbitrator, in terms of the agreements Exhibits R/1 and R/2 out of which the reference arose, could only decide the quantum of compensation payable to the respondents for any alleged breach or breaches of the contract and not that he could order that the land buildings and other property should revert to the Administration. According to the learned counsel, the Arbitrator went beyond his powers in allowing such a relief and ordering retransfer of the property to the Government. It has already been stated that the Arbitrator found that the appellants committed several breaches of the contract. It is provided in clause (W) of both the Agreements Exhibits R/1 and R/2 that the Administration shall have the power to rescind the contract in the event of appellants' failure to comply

with any clause or clauses of the contract. When the breaches were found to have been committed by the appellants and the Administration rescinded the contract, it was open to the Arbitrator to direct that the property and all other assets which had been transferred to the appellants, and could be retained by them only so long as they fulfilled certain conditions, should be reverted to the Administration. In our opinion, the Arbitrator acted within his jurisdiction and the scope of the reference, in directing, amongst other things, the return of the property and other assets by the appellants to the Administration. No question of the Arbitrator going beyond the reference, therefore, arises in these circumstances.

(15) No other point was urged before us.

(16) For the foregoing reasons, the appeal must fail and is hereby dismissed with no order as to costs.

(17) PANDIT, J.—I agree.

R.N.M.

REVISIONAL CIVIL

Before R. S. Narula, J.

SHORI LAL,—*Petitioner.*

versus

LT. SURINDER KUMAR MEHRA,—*Respondent.*

Civil Revision No. 260 of 1969

August 6, 1969.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 13(3)(a)(i-a) and 15(5)—Indian Soldiers (Litigation) Act (IV of 1925)—Section 3—Landlord being a member of armed forces applying for ejectment—Certificate of the prescribed authority of his serving under "special conditions"—Such certificate—Whether conclusive—Courts—Whether can adjudicate on the existence or otherwise of the special conditions—Finding of fact recorded by Appellate authority—When can be assailed in revision.

Held, that the first explanation to section 13(3)(a)(i-a) of the East Punjab Urban Rent Restriction Act, 1949, has been added for the obvious reason that it is necessary to avoid evidence being led in Courts about the existence of "special conditions" in a particular part of the country at a