

**An arbitrator has flexibility in determining procedure; decision with parties' consent to do away with cross-examination is okay; remand/remission of an arbitral award  
(Supreme Court of India)**

*Update by Editor*

Published on 5 January 2020

---

**Jagjeet Singh Lyallpuri (through legal representatives) and others v. Unitop Apartments & Builders Ltd.**

**Court:** Supreme Court of India | **Case Number:** CA No. 692 of 2016 | **Citation:** 2019 SCC OnLine SC 1541 | **Bench:** AS Bopanna & Hrishikesh Roy JJ | **Date:** 03 December 2019

---

This 3-judge bench of the Supreme Court has affirmed that the rules of procedure to be followed by an arbitral tribunal are flexible and can be agreed upon by the parties as provided under Section 19 of the Arbitration and Conciliation Act, 1996 ("ACA").

With the consent of parties, the arbitrator had decided that witnesses whose affidavits had been filed would not be cross-examined. Accordingly, he declared the evidence closed on 28 November 2009 and noted that the parties would rely on affidavits and documentary evidence.

The award was passed on 13 January 2010. Unitop filed a set-aside application which was rejected. It appealed under Section 37 of the ACA. The High Court set the award aside and remanded the matter to the arbitrator, concluding that arbitrator did not grant the parties appropriate opportunity to present evidence and cross-examination.

The Supreme Court set aside the High Court's judgment and held: –

- (a) When a challenge is raised on that ground (not allowing an opportunity to cross-examine), it would at best fall under Section 34(2) (a) (iii) ACA (that is, inability to present one's case).
- (b) The rules of procedure to be followed by an arbitral tribunal is flexible and can be agreed upon by the parties as provided under Section 19 of the ACA. The arbitrator is not bound by the Code of Civil Procedure or the Indian Evidence Act.
- (c) Having consented to the procedure, it would not be open for the respondent to approbate and reprobate to raise a different contention at this point. Estoppel applies.

[**Note:** The issue whether an award can be set aside and then remanded has been discussed in *Kinnari Mullick v. Ghanshyam Das Damani*, (2018) 11 SCC 328 (Dipak Misra, AM Khanwilkar & MM Shantanagoudar JJ). The court held that remand and set-aside are alternatives. Once it is set aside, there is nothing to remand. Then, in *Radha Chemicals v. Union of India*, Civil Appeal No. 10386 of 2018 decided on 10 October 2018 (RF Nariman & Navin Sinha JJ), the court noted "in a series of judgments culminating in *Kinnari Mullick and Another v. Ghanshyam Das Damani*, (2018) 11 SCC 328 held that the court while deciding a Section 34 petition has no jurisdiction to remand the matter to the arbitrator for a fresh decision. This was in a context where in a Section 34 petition, the court found that the point of limitation had not been decided correctly and, therefore, remanded the matter to the arbitrator in order that the point be decided afresh.

It does not appear from *Jagjeet* that any issue on set aside v. remand based on *Kinnari* or *Radha Chemicals* was raised.]