

(2003) 04 AP CK 0029
In the Andhra Pradesh High Court
Case No : A.A. No. 79 of 2001

K. Venkateswarlu

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 23-04-2003

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(8), 85

Citation : (2003) 4 ALD 651 : (2003) 4 ALT 724 : (2003) 3 ARBLR 440

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : B.V. Narasimha Reddy, Special Power of Attorney Holder, for the Appellant; K. Venkateswarlu and Government Pleader for Arbitration, for the Respondent

Judgement

T. Ch. Surya Rao, J.—The applicant seeks the appointment of a second arbitrator.

2. The facts lie in a narrow compass: The applicant entered into a contract with the first respondent-State for execution of the, "earthwork excavation and forming embankment from Km. 235.000 to Km. 236.000 of Kakatiya Canal of S.R.S.P." under an agreement No. 29/83-84 dated 25.10.1983 for Rs. 1,39,69,934/-.

3. During the course of execution of the work and after its completion certain disputes arose between the applicant and the respondents 1 and 2. Therefore, the applicant referred the disputes to the first respondent in his letter dated 12.10.1989. However, the first respondent rejected the said dispute under his letter dated 24.11.1989. The applicant invoked the arbitration clause by requesting the panel of arbitrators as envisaged in the agreement to enter upon the reference under his letter dated 4.12.1989. The applicant received a letter dated 30.12.1989 purportedly from the convenor wherein inter alia the names and designations of the other two arbitrators were indicated as Sri Mirza Athar, Joint Secretary to Government, Finance and Planning Department, Secretariat Building, Hyderabad, and Sri B.Lavakusa Rao, Director of Accounts, Srisailem

Project, Kurnool District. The convenor-arbitrator asked both the parties to submit their claim statement and counter respectively before the dates mentioned therein.

4. It is the further case of the applicant that the so-called convenor-Arbitrator was in fact the Engineer-in-Chief (Administration) but not the Engineer-in-chief, Investigation. There was no such post of Engineer-in-chief, Investigation in litigation and CAD Department. The second arbitrator suggested by the said convenor was Joint Secretary to Government, whereas the Arbitration clause in the agreement provides for a Deputy Secretary, Finance and Planning Department. Under the circumstances, the applicant gave a notice to the first respondent in his letter dated 21.1.1990 requesting him to concur with the appointment of a sole arbitrator by selecting any one from the three retired Judges of the High Court of Andhra Pradesh. However, the first respondent rejected the said contention of the applicant in his letter-dated 7.2.1990. The applicant therefore, filed O.P. No. 196 of 1990 in the Court of the II Additional Judge, City Civil Court, Hyderabad, requesting for appointment of an independent and qualified person as a sole arbitrator. However, O.P. No. 196 of 1990 was dismissed on 4.8.1997 in terms of the judgment reported in Government of A.P. and Others Vs. N.V. Choudary and Another, . Meanwhile, the Arbitration and Conciliation Act, 1996 ("the New Act" for brevity) came into force with effect from 16.8.1996.

5. It is the further case of the applicant that since the respondents did not constitute the panel of arbitrators and did not inform the constitution of the said panel of arbitrators pursuant to the direction of the Full Bench of the High Court of Andhra Pradesh, the arbitral proceedings did not commence under the Arbitration Act, 1940 ("the Old Act"-for brevity). Therefore, the provisions of the New Act would apply. Since the Act envisages that the arbitral procedure should be fair, efficient and capable of meeting the needs of the specific arbitration and inasmuch as the designated officials, being employees of the respondent Government are not independent persons, the arbitration clause relating to the constitution of Arbitration Tribunal incorporated in the agreement is hit by Section 23 of the Contract Act, 1872 and hence it is void. The applicant therefore, issued a notice dated 16.6.2000 to the first respondent duly appointing Sri Justice V.Bhaskara Rao, as the first arbitrator requesting him to appoint an independent and impartial person- preferably a retired Judge of the High Court of Andhra Pradesh as the second arbitrator. The first respondent by his letter dated 2.8.2000 rejected the request of the applicant. That letter was received beyond the 30 days period. Therefore, it is deemed under law that the first respondent has waived its right to object the appointment of an independent and impartial person as the second arbitrator. Hence this application.

6. The case of the respondents inter alia in the counter was that, since the dispute arose out of an agreement dated .25.10.1983, the Old Act applied, but not the New Act. The applicant himself invoked the arbitration clause. Then he

was asked to submit his statement before the panel of arbitrators, the applicant gave a notice to the first respondent asking to concur with the appointment of sole arbitrator and since the stand of the applicant was contrary to the arbitration clause in the agreement it was not considered. O.P.No. 196 of 1990 filed by the applicant was rightly dismissed in terms of the Full Bench Judgment of the A.P. High Court and the same became final. Thereafter the applicant did not approach the convenor of the panel of arbitrators nor the Court for making the panel certain or altered. Having kept quiet for a long time, the applicant's claim is barred by limitation. The arbitration proceedings in fact were commenced with the letter dated 12.12.1989, whereunder the convenor of the panel of arbitrators required the applicant to submit his claim statement. The arbitral clause in the agreement provides for a panel of three arbitrators in the capacity of their respective designations and officers and not to be identified by their names as contended by the applicant. The Engineer-in-Chief, Investigation was also in-charge of administration and hence there was no discrepancy in the designation.

7. The points, therefore, that arise for my determination are:

- (1) Whether the arbitration proceedings were in fact commenced as pleaded by the respondents?
- (2) Whether it is incumbent on the Court to appoint a panel of three arbitrators as per the arbitral agreement?
- (3) Whether a second arbitrator can be appointed as requested by the applicant?
- (4) To what relief?

Point No. 1:

8. As can be seen from the factual matrix, there has been a dispute arising out of the contract entered into between the parties inter se. It is discernible from the letter dated 12.10.1989 whereunder the applicant referred the matter to the first respondent; the letter No. Ts/T4/702/16141-42 dated 24.11.1989 whereunder the first respondent rejected the dispute; the letter dated 4.12.1989 whereunder the applicant invoked the arbitration clause and requested the panel of arbitrators to enter upon a reference: and the letter No. ENG/Arb/KV/ 89 dated 30.12.1989 purportedly received from Sri L.R. Kapur, the Engineer-in-Chief, mentioning inter alia the names of the other two arbitrators, that the applicant invoked the arbitral clause in the agreement for the resolution of the dispute arising out of the contract entered into in between himself and the respondents. After having received the letter from the convenor and known the identity of the other two arbitrators, the applicant issued a notice to the first respondent dated 21.1.1990 requesting it to concur with the appointment of a sole arbitrator by selecting any of the three retired Judges of the High Court of Andhra Pradesh as suggested by him inter alia in his letter. The reason assigned therein was that the convenor who wanted to enter upon the reference was in fact not the designated arbitrator from the panel and the other two arbitrators as indicated in the letter

dated 30.12.1989 sent by the convenor led to the uncertainty as to the identity of the panel of arbitrators. The first respondent rejected the request of the applicant for the appointment of a sole arbitrator in its letter dated 7.2.1990. O.P. No. 196 of 1990 filed by the applicant assailing the said order eventually ended in dismissal by an order dated 4.8.1997 passed by the learned II Additional Judge, City Civil Court, Hyderabad. That order has become final.

9. The question to be decided in the first instance as set forth hereinabove is as to whether the arbitrators commenced the proceedings or not. It is obvious from the letter dated .4.12.1989 addressed by the applicant to the panel of arbitrators requesting them to enter upon a reference and by a letter dated 30.12.1989 addressed by the panel of arbitrators to the applicant as well as the second respondent informing both of them inter alia that reference was entered upon by the arbitrators on 30.12.1989 while requesting the claimant to furnish his claim statement and the respondent to file his counter and thereupon the claimant-applicant to submit his rejoinder by 28.2.1990. In the letter dated 30.12.1989 addressed by the panel of arbitrators it has been mentioned that the dates of hearing will be fixed after receipt of the documents. Although, this letter was dated 30.12.1989 it was signed on 3.1.1990. Hence, it can be said without any hesitation that on or after 3.1.1990 when the applicant and the second respondent received the copies of the said letter the arbitral proceedings were in fact commenced.

10. This then takes us to consider whether the proceedings continued thereafter or stopped and what is its effect. In this regard, it is appropriate here to consider Sections 8, 9, and 11 of the Old Act. While Section 8 deals with the powers of the Court to appoint an arbitrator or umpire; Section 9 deals with the power of the party to appoint a new arbitrator or in certain cases a sole arbitrator; and Section 11 deals with the power of the Court to remove the arbitrator or umpire in certain circumstances. These three sections inter alia deal specifically with the powers of the Court as well as the party to appoint an arbitrator and the conditions under which the Court or the party can appoint an arbitrator or umpire, as the case may be. One such condition where the Court can appoint an arbitrator is that if the appointed arbitrator or umpire neglects or refuses to act, as can be seen from Clause 1(b) of Section 8. Similarly where the arbitration agreement provides that a reference shall be to two arbitrators one to be appointed by each party and if either of the appointed arbitrators neglects or refuses to act, the party who appointed him may appoint a new arbitrator in his place and, therefore, the power is given to the party to appoint a new arbitrator in the event of either of the arbitrators neglects or refuses to act, as can be from Clause (a) of Section 9. An explanation has been appended underneath the proviso to Clause (b) of Section 9. This explanation elucidates the situation further that if the arbitrator or umpire after a request by either party to enter on and proceed with the reference does not within one month comply with the request his conduct would constitute a neglect or refusal to act within the meaning of Sections 8 and 9. Section 11 deals with the power of the Court to

remove the arbitrators. This Section reads that the Court can remove an arbitrator or umpire on an application filed by the party when the arbitrator fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award. This provision, therefore, clearly envisages that the arbitrators should proceed with the resolution of the dispute and make every endeavour to complete the proceedings by using all reasonable dispatch. A combined reading of all these provisions would show that there shall not be any neglect or refusal on the part of the arbitrators and they shall proceed with the reference by making every effort to conclude the proceedings within a reasonable dispatch. If there is any neglect on the part of the arbitrator or if he does not conduct the proceedings within a reasonable time and complete the same, it entails the removal of the arbitrator and appointment of a new arbitrator either by the Court or by the party to the reference.

11. Here is a case where although the panel of arbitrators did in fact commence the proceedings by issuing the letter dated 30.12.1989 to the applicant and the second respondent asking them to file their respective statements and documents, there has been no action on their part subsequent thereto. The subsequent letter addressed by the applicant on 21.1.1990 to the respondent requesting him to concur and communicate the same as expeditiously as possible, with the appointment of a sole arbitrator out of the three retired Judges named therein inter alia, shall not cause any hindrance to the proceedings to be taken up by the arbitrators. Notwithstanding such an approach on the part of the applicant, still having regard to the fact that the applicant himself wanted them to make a reference, the arbitrators are obliged to proceed with the proceedings and compel the same within a reasonable dispatch. It is not shown before me that there has been any stay granted or injunction issued by the Court in O.P. No. 196 of 1990 filed by the applicant directing the panel of arbitrators not to proceed with the proceedings. Therefore, the pendency of O.P. No. 190 of 1996 before the learned II Additional Judge, City Civil Court, Hyderabad, could not have stopped reasonably the proceedings before the arbitrators. In this case, O.P. No. 196 of 1990 was dismissed on 4.8.1997. Even subsequent to the orders passed in O.P. No. 196 of 1990, there has been no action on the part of the panel of arbitrators, nearly for a period of three years as discussed hereinabove. So this reasonably constitutes, in my considered view, the necessary negligence on the part of the panel of arbitrators and shows the lack of necessary intention to proceed with the proceedings within a reasonable dispatch.

12. These two grounds entail removal of arbitrators or give the necessary power to the party or to the Court to appoint a new arbitrator. In the instant case, the applicant after having waited three years after disposal of O.P. No. 196 of 1990 issued a notice dated 16.6.2000 to the second respondent requesting him inter alia to appoint a second arbitrator while nominating a retired Judge of the High Court of A.P. as the first arbitrator. This notice obviously has been given in accordance with the provisions contained in Section 11 of the New Act.

13. The further question that crops up for determination at this juncture is that inasmuch as the proceedings were commenced under the Old Act by the panel of arbitrators, is it a case where the provisions of Old Act would continue to govern or the provisions of New Act would apply. During the pendency of O.P. No. 196 of 1990 the New Act came into force with effect from 16.8.1996. Section 85 is the repeal and saving provision under the New Act. The Old Act was repealed under the New Act. However, the provisions of the Old Act shall apply in relation to the arbitral proceedings, which in fact have been commenced before the advent of New Act notwithstanding such repeal. The provisions of New Act would apply to arbitral proceedings, which commenced on or after the advent of New Act. Although arbitral proceedings were commenced by the panel of arbitrators under the Old Act, having regard to the neglect on the part of the arbitrators and lack of reasonable dispatch, the proceedings would not be reasonably continued. Such neglect on the part of the arbitrators gives the necessary cause of action to either of the parties to initiate the proceedings for appointment of new arbitrators, either sole arbitrator or panel of arbitrators.

14. As discussed by me hereinabove and with reference to the factual matrix in this case, there has been every negligence on the part of the arbitrators in continuing the proceedings having commenced the same way back in the month of January, 1990. For that reason alone, it cannot be said that the proceedings were pending by the time of advent of New Act. Here is a case where the applicant issued a notice dated 16.6.2000 requesting the second respondent to appoint a second arbitrator while nominating inter alia the first arbitrator by him. Since under law, the proceedings, which were commenced under the Old Act, are deemed to have been neglected and thereby closed, in my considered view, it cannot be said that there are pending proceedings by the date of the advent of New Act. Therefore, for the reasons mentioned hereinabove, the provisions of New Act would apply to the present case.

Points No. 2 and 3:

15. Apropos the question as to whether a sole arbitrator shall be appointed; or a second arbitrator as requested by the applicant shall be appointed; or whether it is a case where the agreement between the parties inter se a panel of three arbitrators shall be appointed; Section 11 of the New Act is apt here to be considered. The provision insofar as relevant for the present purposes may be extracted hereunder thus:

"11. Appointment of arbitrators :--(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

(2) Subject to Sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(3) Failing any agreement referred to in Sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding

arbitrator.

(4) If the appointment procedure in Sub-section (3) applied and,--

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,

the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(5) Failing any agreement referred to in Sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitration within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(6) Where, under an appointment procedure agreed upon by the parties,--

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(7) to (12) - Not necessary"

16. A perusal of the above excerpted provision shows that it deals with the appointment of arbitrators by the Chief Justice or his designate. It provides that the parties are free to agree on a procedure for appointing the arbitrator or arbitrators, who may be of any nationality unless otherwise agreed upon. If they fail to agree on such procedure, in an arbitration by three arbitrators each party shall appoint one arbitrator and the two arbitrators so appointed must appoint the third arbitrator. But if the party fails to appoint an arbitrator within thirty days from the date of request by the other party nor the two arbitrators so appointed by the parties fail to agree on the third arbitrator within thirty days of their appointment, the party may request the Chief Justice to nominate an arbitrator. If the parties failed to have an agreement on a procedure for appointing an arbitrator in an arbitration with a sole arbitrator and the parties failed to agree on an arbitration within thirty days from the date of receipt of a request by one party to the other, the Chief Justice or his designate shall nominate the arbitrator at the request of the party. However, where the parties agreed upon an appointment procedure but fail to act as required by the

procedure or the two arbitrators so appointed fail to reach an agreement pursuant to the procedure or a person or institution fails to perform any function in accordance with that procedure, at the request of the party the Chief Justice or his designate may take necessary measure unless the agreement provides other means for securing the appointment. But, there is nothing in the section which provides for the appointment of panel of arbitrators by the Chief Justice once the party fails to act upon the request made by the other party for the appointment of an arbitrator in accordance with the procedure agreed upon within the time stipulated.

17. The learned Government Pleader for Arbitration seeks to place reliance upon a Full Bench Judgment of this Court in *Government of Andhra Pradesh v. N.V. Chowdhary* referred to supra. It is axiomatic that that case was dealt with under the provisions of Old Act. The Full Bench was of the view that where the arbitration clause prescribes a panel of three arbitrators and where the panel of arbitrators comprises three designated officials, even if one official whose designation is not in conformity with the designation of the arbitrator as required in the panel, the panel could not be said to be vague. The Full Bench further held that even if the panel was held to be vague, the Court should refer the dispute to a panel of incumbents satisfying the designations mentioned in the agreement and not to a sole arbitrator and that too a non-official and technically unqualified arbitrator. The Court was of the further view that merely because the panel consists of designated officials they cannot be treated as biased by virtue of their office in favour of the State unless bias is pleaded and proved by the party.

18. The learned Government Pleader refers to a recent Division Bench Judgment of this Court in *State of A.P. and Another Vs. K. Sambasiva Raju*, It was held that when the agreement envisaged appointment of a panel of arbitrators, appointment of sole arbitrator by the Court is not proper. While holding so, the Division Bench sought to place reliance upon the earlier Full Bench judgment of this Court referred to supra and another judgment of the Apex Court in *Government of Andhra Pradesh v. Masthan Rao* 1994 (1) APLJ (SC). In *Masthan Rao's* case, the matter was referred to a panel of three arbitrators for settlement but the matter remained pending and was not disposed of expeditiously and, therefore, the contractor made an application before a Civil Court for the appointment of a single arbitrator. When that application was opposed by the State on the premise that the arbitrators had not defaulted in doing their duty and in any event the sole arbitrator could not be appointed by the Court in view of the agreement between the parties inter se in regard thereto, the learned Subordinate Judge overruling the objection appointed a retired Chief Engineer as a sole Arbitrator. The Apex Court having regard to the facts of that case felt that that was a fit case where the matter should be entrusted to the incumbents of three posts mentioned in the agreement and in that view of the matter it did not decide the question as to whether the arbitrators had neglected to conduct the arbitration proceedings justifying the appointment of an arbitrator or arbitrators by the Court. All the three judgments referred to supra were rendered under the

provisions of the Old Act.

19. In *Datar Switchgears Ltd. Vs. Tata Finance Ltd. and Another*, , the Apex Court held that if one party demands the opposite party to appoint an arbitrator and the opposite party does not make an appointment within thirty days of the demand, the right to appointment does not get automatically forfeited after expiry of 30 days. If the opposite party makes an appointment even after thirty days of the demand but before the first party has moved the Court u/s 11, it would be sufficient. Only then the right of the opposite party ceases. Therefore, the opposite party cannot insist that a panel of arbitrators shall be appointed by the Chief Justice or his designate as per the appointment procedure agreed upon by the parties inter alia in the contract or agreement.

20. Coming to the instant case, it is a case where, in my considered view, the agreement between the parties ceases to be in existence and the provisions of Section 11 of the New Act proprio vigore comes into operation. There is nothing in Section 11, which ordains the Chief Justice or his designate to appoint a panel of arbitrators in the case where the dispute is to be resolved by a panel of arbitrators as per the agreement.

21. A Constitution Bench of the Apex Court in *Konkan Railway Corporation Ltd. and Another Vs. Rani Construction Pvt. Ltd.*, , while dealing with the provisions of Section 11 of the New Act, held in para 18 thus:

"There is nothing in Section 11 that requires the party other than the party making the request to be noticed. It does not contemplate a response from that other party. It does not contemplate a decision by the Chief Justice or his designate on any controversy that the other party may raise, even in regard to its failure to appoint an arbitrator within the period of thirty days. That the Chief Justice or his designate has to make the nomination of an arbitrator only if the period of thirty days is over does not lead to the conclusion that the decision to nominate is adjudicatory. In its request to the Chief Justice to make the appointment the party would aver that this period has passed and, ordinarily, correspondence between the parties would be annexed to bear this out. This is all that the Chief Justice or his designate has to see."

In Para 19 it has been further held thus:

"As we see it, the only function of the Chief Justice or his designate u/s 11 is to fill the gap left by a party to the arbitration agreement or by the two arbitrators appointed by the parties and nominate an arbitrator. This is to enable the Arbitral Tribunal to be expeditiously constituted and the arbitration proceedings to commence. The function has been left to the Chief Justice or his designate advisedly, with a view to ensure that the nomination of the arbitrator is made by a person occupying high judicial office or his designate, who would take due care to see that a competent, independent and impartial arbitrator is nominated."

22. It is obvious, therefore, that the function of the Chief Justice or his designate

in an application filed u/s 11 of the New Act is not adjudicatory but only administrative and has to see that an arbitrator is appointed without touching the controversies raised by the opposite party.

23. A Division Bench of this Court in *Union of India Vs. Vengamamba Engineering Co., Juputi, Krishna Dist. and another*, , in para 29 held that once the existence of an arbitration clause is not disputed, the Court, having regard to the decision of the Apex Court in the first *Konkan Railway Corporation's* case, has no option but to make appointment of the arbitrator as quickly as possible. However, in terms of the provisions of 1996 Act, even the authority after filing of an application u/s 11(6) of the Act forfeits his right to appoint an arbitrator and such right exclusively vests in the Court.

24. In *State of West Bengal Vs. M/s. Naional Builders*, , the Apex Court although dealing with the provisions under the Old Act held thus:

"Even where an authority is named by office to be the sole arbitrator but he refused to act then the jurisdiction to appoint another arbitrator vests in the Court. Since arbitration clause of the agreement in the instant case does not indicate that the parties did not intend to supply the vacancy the Court can assume jurisdiction u/s 8(1)(b) to appoint another arbitrator. Basis for assuming such jurisdiction is that the clause is rendered inoperative. Where the agreement provides for appointment of a specific person either by name or by designation and that person refuses to act then the question of appointing him again cannot arise. Refusal by such a person results in the agreement clause ceasing to operate. When two parties agree for appointment of "A" or "B" by name or designation and the person so named refuses to act then the agreement shall be deemed to have exhausted itself. The person so named having refused to act he cannot be asked again to arbitrate. That would be contrary to the very basis of arbitration that no one can be forced to act against his free will. It would also be contrary to the agreement and if there is no agreement to appoint another person, the only remedy is to approach the Court to exercise its statutory power and appoint another arbitrator. Same result follows where the arbitration clause empowers the sole arbitrator either to arbitrate himself or to nominate anyone else." [Emphasis is supplied]

25. Having regard to the fact that the agreement between the parties for appointment of a panel of three arbitrators ceases to be in operation, the Court can appoint an arbitrator. It need not necessarily be again a panel of three arbitrators either by designation as mentioned in the agreement or different arbitrators. As can be seen from Sub-section (8) of Section 11 of the New Act the Chief Justice or his designate while appointing an arbitrator shall have due regard to the qualifications required of the arbitrator by the agreement of the parties and other considerations as are likely to secure the appointment of an independent and impartial arbitrator. Wide discretion has, therefore, been conferred upon the Chief Justice or his designate by the New Act to appoint a suitable arbitrator. In that view of the matter, there is no need to appoint again a

panel of arbitrators. The problem can also be viewed in a different angle. If it is only to fill up the gap left by the party where the applicant has already nominated his arbitrator and the respondent refused to nominate his arbitrator where the agreement between the parties inter se envisages the resolution of the dispute by three arbitrators, the Court can appoint at the request of the party one arbitrator and the two arbitrators shall have to appoint third arbitrator. In the event again both the arbitrators failed to agree upon the third arbitrator, the parties have to approach the Court again to nominate the third arbitrator. Under the scheme as can be seen from Section 11 of the New Act, the Chief Justice or his designate shall appoint an arbitrator at the request of the party where the other party fails to appoint an arbitrator within thirty days from the date of the request to do so; or where the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment. Therefore, it is obvious that the scheme has not envisaged the appointment of a panel of three arbitrators. Once the agreement in that regard ceases when the party fails to agree upon the same, the Chief Justice or his designate is free to appoint a sole arbitrator even in respect of the matters where the party agreed upon to have the dispute resolved by a panel of three arbitrators. Therefore, the parties need not approach the Court twice. For the foregoing reasons, I am of the considered view that it is not required of under the New Act to appoint a panel of three arbitrators again having due regard to the fact that the parties agreed upon to have the dispute resolved by a panel of three arbitrators.

26. Coming to the instant case, the applicant having nominated his arbitrator approached this Court for the appointment of a second arbitrator. In view of the contingency, as discussed by me hereinabove, again the parties may approach this Court to appoint a third arbitrator in the event of the two arbitrators so appointed failing to reach an agreement as regards the appointment of third arbitrator. Such a stance on the part of the applicant cannot be permitted. The applicant in his letter dated 21.1.1990 addressed to the second respondent requested the second respondent to concur with the appointment of a sole arbitrator while suggesting three names. Having taken that stand, I am afraid, it is not open to him to nominate a first arbitrator and then request the Court to appoint a second arbitrator leaving the things again to chaos. It is not a case where, as discussed by me hereinabove, a panel of three arbitrators shall have to be appointed for the resolution of the dispute. Therefore, the request of the applicant to appoint a second arbitrator being contrary to his own stand cannot be accepted. It is a case where the facts and circumstances warrant a sole arbitrator is to be appointed by the Court.

Point No. 4:

27. For the foregoing reasons, this Arbitration Application is ordered and Sri Justice T. Ranga Rao (Retd.) is appointed as a sole arbitrator for resolution of the dispute between the parties inter se. The sole arbitration is at liberty to fix his own fees.