

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

IA NO. 2 in CIVIL APPEAL NO. 4198 OF 2000@@
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M/s Hindustan Petroleum Corporation Ltd. & Anr. Appellants/
Applicants

Versus

Industrial Catering Services P. Ltd. Respondent

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In the instant case, an application had been filed under Section 11 of the Arbitration & Conciliation Act, 1996 for appointment of an Arbitrator. The Single Judge of the High Court of Judicature, Andhra Pradesh at Hyderabad appointed Mr. Justice T.N.C. Rangarajan as a Sole Arbitrator. An appeal was filed against the same which was dismissed by the Division Bench. A further appeal was filed in this Court. By order dated 24th July, 2000, a Bench of this Court came to the conclusion that it was the provisions of the Arbitration Act, 1940, which would apply to these proceedings and consequently, the order passed by the Single Judge under Section 11(6) of the 1996 Act had to be quashed. This Court then directed appointment of Mr. Justice T.N.C. Rangarajan as a Sole Arbitrator. In the order it was stated that this power was being exercised under Article 142 of the Constitution of India.

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It appears to us that once this Court came to the conclusion that to the arbitration proceedings which were initiated by the filing of an application in the High Court for the appointment of an Arbitrator the Arbitration Act, 1940, was applicable, therefore, the wrong mentioning of the Act cannot make the said application as being without jurisdiction. The Court had the power under Section 20 of the Arbitration Act, 1940 to appoint an Arbitrator. Once this court decided that it was the old Act and not the 1996 Act which was applicable, then normally the consequence would have been to send the case back to the High Court for appointment of an Arbitrator under the 1940 Act. It was only then, instead of sending the case back, this Court appointed the same Arbitrator. Once it was held that it is the 1940 Act which was applicable to the proceedings which

were initiated not in this Court but in the High Court, it would automatically follow that provisions of Section 31(4) of the Arbitration Act would apply which clearly provides that it is only that Court which will have jurisdiction in which an application was filed for the first time. It could not be said that the application before the High Court for appointment of an Arbitrator

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was wrongly filed. This being so, in our opinion, the objections which have been filed under Sections 30 and 33 to the award which had been made can only be decided by the High Court of Judicature, Andhra Pradesh at Hyderabad, in view of the provisions of Section 31(4) of the Arbitration Act.

We, accordingly, direct the record of this case to be transferred to the Andhra Pradesh High Court who shall proceed in deciding the objections under Sections 30 and 33 in accordance with law. Record of the Arbitrator along with the award should be transmitted to the High Court at the earliest. We hope that the High Court will dispose of the matter as expeditiously as possible.

IA is disposed of.

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.....J
(B.N. KIRPAL)

.....J
(Y.K. SABHARWAL)

New Delhi;
January 29, 2002.

.....J
(K.G. BALAKRISHNAN)