

(2024) 11 KL CK 0110

High Court Of Kerala

Case No: AR No. 136 Of 2024

M/s Kripa Fuels

APPELLANT

Vs

Hindustan Petroleum
Corporation Ltd

RESPONDENT

Date of Decision: Nov. 14, 2024

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 11
- Indian Partnership Act, 1932 - Section 19(2), 19(2)(a)

Hon'ble Judges: G.Girish, J

Bench: Single Bench

Advocate: V.Biju Joseph, Gopikrishnan Nambiar M, K.John Mathai, Joson Manavalan, Kuryan Thomas, Paulose C. Abraham, Raja Kannan, E.K.Nandakumar

Final Decision: Dismissed

Judgement

G.Girish, J

1. This petition under section 11 of the Arbitration and Conciliation Act, 1996 (for short "the Act") is filed by one Sibi Alex in the name of a

partnership firm "M/S.Kripa Fuels" consisting of two partners. The signatory to this petition claims to be the financial partner of the above

partnership firm where in the other partner is arraigned as 2nd respondent. The 1st respondent is a public sector undertaking involved in the

distribution of petroleum products.

2. According to the petitioner, disputes are subsisting in between Sibi Alex and the 2nd respondent in connection with the conduct of business of the

above said partnership firm. It is the further allegation of the petitioner that the 1st respondent, which had entered into Annexure-A2 dealership

agreement with the above said partnership firm, is now refusing to deliver petroleum products to the petrol pump run by the partnership firm at

Udayamperoor, under the instigation of the 2nd respondent. The 1st respondent is also said to have made arrangements for the take over of the petrol

pump from the dealer ~M/S.Kripa Fuels™. The above act of the 1st respondent is said to be in violation of the terms and conditions of Annexure-

A2 dealership agreement. In the light of the above disputes between the signatory to this Arbitration Request and the respondents, Annexures-A3 and

A4 notices are said to have been issued by him to the respondents seeking their co-operation for the resolution of the dispute by way of arbitration as

provided in the partnership deed and dealership agreement. Alleging inaction on the part of the respondents to the above effort of the signatory to this

petition, the present Arbitration Request has been filed by him in the name of the partnership firm ~M/S.Kripa Fuels™.

3. The 1st respondent appeared through its Standing Counsel, and filed counter affidavit strongly challenging the right and authority of the signatory to

this Arbitration Request to seek the appointment of an Arbitrator for and on behalf of the partnership firm. According to the 1st respondent, the 2nd

respondent was appointed as a dealer of the 1st respondent in the year 2006 under a special scheme for financial assistance to SC/ST allottees for

conducting retail outlet of petroleum products at Udayamperoor. In the year 2012, the 2nd respondent is said to have approached the 1st respondent

and sought the induction of Mr.Sibi Alex, the signatory to this Arbitration Request, as a partner with 25% share in the partnership firm constituted by

them for the conduct of the retail outlet under the name and style M/S.Kripa Fuels. It is the further statement of the 1st respondent in their counter

affidavit that the 2nd respondent has complained to the 1st respondent about cheating perpetrated by the above said Sibi Alex leading to the ouster of

second respondent from the management of the above said partnership firm. The 2nd respondent is also said to have approached various authorities

like the National Commission for Scheduled Castes, Kerala Legislative Assembly Committee for the Welfare of Scheduled Castes and Scheduled

Tribes etc. against the fraudulent acts of the above said Sibi Alex. It is pointed out by the 1st respondent that the present Arbitration Request is not

maintainable in view of the bar contained in Section 19(2) of the Indian Partnership Act, 1932.

4. The 2nd respondent appeared in person and submitted that the present Arbitration Request has been filed in the name of the partnership firm

“M/S.Kripa Fuels” without his concurrence, by the person by name Sibi Alex who defrauded him. The 2nd respondent also submitted that he

had preferred complaints before various authorities against the dubious act of the above said Sibi Alex who managed to whisk away the petrol pump

allotted to him by the 1st respondent under a scheme meant for the welfare of Scheduled Castes and Scheduled Tribes. According to the 2nd

respondent, two criminal cases are pending against the above said Sibi Alex, on the complaints preferred by him, in connection with the cheating,

forgery and criminal breach of trust committed by the said person.

5. Heard the learned counsel for the petitioner, learned Standing Counsel for the 1st respondent and the 2nd respondent who made submissions in

person.

6. As rightly pointed out by the learned Standing Counsel for the 1st respondent, the present Arbitration Request is prima facie not maintainable in

view of the bar contained under Section 19(2)(a) of the Indian Partnership Act, 1932. As per the aforesaid provision of law, there is no implied

authority for a partner, in the absence of any usage or custom of trade to the contrary, to submit a dispute relating to the business of the firm to

arbitration. In the case on hand, there is absolutely nothing in Annexure-A1 partnership deed authorising the 2nd partner Sibi Alex to prefer application

for the appointment of Arbitrator for resolving the disputes between the partnership firm and third parties. The signatory to this Arbitration Request

has not stated anything to discern that there existed any usage or custom of trade which would confer him implied authority to submit a dispute relating

to the business of the firm to arbitration. Therefore, Mr.Sibi Alex, the 2nd partner in Annexure-A1 partnership deed, cannot invoke Clause 40 of

Annexure-A2 dealership agreement and seek the appointment of an Arbitrator, without the concurrence of the 2nd respondent who is the only

remaining partner of the partnership firm “M/S.Kripa Fuels”. As the 2nd respondent has appeared before this Court in person, and submitted

that the present Arbitration Request has been moved without his knowledge and concurrence, the signatory to this Arbitration Request is proscribed

by Section 19(2)(a) of the Indian Partnership Act, 1932 from invoking Clause 40 of Annexure-A2 dealership agreement for the appointment of an

Arbitrator for the resolution of the dispute with the 1st respondent.

7. As far as the present case is concerned, the signatory to this Arbitration Request who claims to be the financial partner of the two member

partnership firm by name "M/S.Kripa Fuels", had approached this Court seeking the resolution of disputes with the 2nd respondent in connection

with the management of the partnership firm, and also the disputes with the 1st respondent in connection with the dealership agreement signed with

the partnership firm, through the appointment of an Arbitrator. Such a composite Arbitration Request cannot be sustained due to multiple reasons. It

has to be stated at the outset that the present Arbitration Request in the name of the partnership firm "M/S.Kripa Fuels" with the 1st partner

arraigned as the 2nd respondent, is apparently ill-drafted. This is because of the reason that the partnership firm "M/S.Kripa Fuels", arraigned as

the petitioner, cannot have legal existence without the inclusion of the 1st partner. In other words, once M/S.Kripa Fuels is arraigned as the petitioner

to this Arbitration Request, the 1st partner Mr.V.K.Krishna Das has to be considered as included as the petitioner in this proceedings since the above

said partnership firm cannot have existence in the absence of the above said person who is one among the two partners of that firm. In the same

proceedings, the 1st partner Mr.V.K.Krishna Das has been arraigned in his capacity as the 2nd respondent. Thus, the Arbitration Request is seen

framed attributing dual character to Mr.V.K.Krishna Das as the petitioner as well as the 2nd respondent. The aforesaid anomaly in the drafting of this

Arbitration Request, is a fatal defect which would strike on the root of its maintainability.

8. The present Arbitration Request suffers from another defect in its framing due to the joinder of the disputes in between the two partners, and the

disputes of the partnership firm with the 1st respondent, a third party, in a single proceedings, and seeking the appointment of an Arbitrator for the

resolution of both the above issues. The appointment of an Arbitrator to resolve both the above issues in the same proceedings would definitely lead to turmoil and confusion. Therefore, the present Arbitration Request would fail due to that reason as well. The question of resolving the issues between the partnership firm "M/S.Kripa Fuels" and the 1st respondent through the appointment of an Arbitrator as provided under Annexure-A2 dealership agreement, could be considered only after the issues in between the partners are set at right, and the said partnership firm is represented by a proper person in the arbitration proceedings to be taken up against third party. In that view of the matter, this Arbitration Request cannot be entertained.

Resultantly, the petition stands dismissed.