

**(2004) 11 KAR CK 0055**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 54691 of 2003**

N. Sampath Kumar

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

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**Date of Decision :** 26-11-2004

**Acts Referred:**

**Citation :** (2005) 1 KCCR 27 SN

**Hon'ble Judges :** Ram Mohan Reddy, J

**Bench :** Single Bench

**Advocate :** Kumar and Kumar, S. Subhash and G. Vikram, for the Appellant;  
C.M. Desai and Arvind C. Desai, (for No. 2) and N. Devadass, SCGSC and B.  
Papegowda, ACGSC (for Nos. 1), for the Respondent

**Final Decision :** Dismissed

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## Judgement

Ram Mohan Reddy, J.—The petitioner is a licensee under the 2nd respondent, for distribution of petrol/diesel. The terms and conditions governing the said licence are reduced into writing in the memorandum of agreement dated 7th February, 1996, entered into between the parties.

2. It is the allegation of the petitioner that the anti-adulteration cell, which is not a party to this proceeding, inspected the retail outlet and submitted an inspection report, Annexure-B, pointing out to certain deficiencies detected during the inspection. Pursuant to which, the 2nd respondent issued a notice dated 10-9-2003, Annexure-C, calling upon (he petitioner to submit his explanation. The petitioner submitted his explanation dated 20th September, 2003, Annexure-D, inter alia contending that the dispensing unit might have been erratic when the delivery of the petroleum product was short by 60 ml. and that the anti-adulteration cell had not used the proper measures, resulting in an improper test. The 2nd respondent having considered the explanation offered, passed an order on 26th December, 2003, Annexure-E, suspending the supply of petrol for a period of 15 days and imposed a penalty of Rs. 5,000/-. The petitioner being aggrieved by the order, dated 26th December, 2003, Annexure-

E, is before this Court.

3. The learned counsel for the petitioner would contend that dehors an arbitration clause in the agreement, Annexure-A, the petitioner is entitled to maintain this writ petition and seek indulgence of this Court to interfere with the order at Annexure-E. It is the further contention of the learned counsel for the petitioner that it was for the 2nd respondent to have sought for arbitration of the dispute and not for the petitioner, since Clauses 13 and 14 of the agreement stipulate that the dispensing pump is owned and maintained by the Oil Company.

4. I have heard the learned counsel for the parties and perused the pleadings.

5. The only question that arises for determination in this petition is whether Clause 66 of the agreement, Annexure-A, providing for arbitration of disputes arising out of or in relation to the said agreement, to be referred to the sole arbitrator, is an efficacious and alternative remedy available to the petitioner, in the facts and circumstances of the case?

6. The agreement, Annexure "A", is a contract between the parties in the realm of private law and is not a statutory contract. A perusal of the terms and conditions of the said agreement clearly disclose that the agreement is governed by the provisions of Contract Act. It is well established law that any dispute relating to the Interpretation of the terms and conditions of the contract cannot be agitated in a writ petition, since that is a matter either for arbitration as provided by the contract or the civil Court, as the case may be.

7. The contention that the dispensing pumps are owned and maintained by the Oil Company and in terms of Clauses 13 and 14, the petitioner cannot be held responsible for the short delivery of 60 ml. of petroleum product, in my considered opinion is a matter relating to interpretation of the terms of the contract, which ought to be agitated before the arbitrator, or the civil Court. Although the provisions governing weights and measures may fall, for interpretation, while construing the terms of the contract, that by itself cannot convert the dispute into a public law issue. Being in private law regime, therefore, is outside the jurisdiction of the writ petition.

8. The contract, admittedly, at Clause 66 provides for settlement of disputes by arbitration, which reads thus :

"66. Any dispute or difference of any nature whatsoever or regarding any right, liability, act, omission or account of any of the parties hereto arising out of or in relation to this agreement shall be referred to the sole arbitration of the Managing Director of the Corporation or of some Officer of the Corporation who may be nominated by the Managing Director. The dealer will not be entitled to raise any objection to any such arbitrator on the ground that the Arbitrator is an officer of the Corporation or that he has to deal with the matters to which the contract relates or that in the course of his duties as an officer of the Corporation he had expressed views on all or any of the matters in dispute or difference, in

the event of the Arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason the Managing Director as aforesaid at the time of such transfer, vacation of office or inability to act, shall designate another person to act as Arbitrator in accordance with the terms of the agreement, such person shall be entitled to proceed with the reference from the point at which it was left by his predecessor. It is also a term of this contract that no person other than the Managing Director or a person nominated by such Managing Director of the Corporation as aforesaid shall act as arbitrator hereunder. The award of the Arbitrator so appointed shall be final, conclusive and binding on all parties to the agreement, subject to the provisions of the Arbitration Act, 1940 or any statutory modification of or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause.

The award shall be made in writing within six months after entering upon the reference or within such extended time not exceeding further four months as the sole Arbitrator shall by a writing under his own hands appoint."

9. From the above clause, what is discernible is that the Arbitrator is empowered to decide both questions of fact and that of law. The parties to the contract, having agreed upon the mode of settlement of the disputes arising therefrom, there can be no reason why they should not eke out the remedy agreed upon, rather than invoking the extraordinary jurisdiction of this Court in a writ proceeding.

10. The agreement to refer to arbitration the disputes between the parties, arising out of the contract, it appears to me to be a valid and efficacious alternative remedy, in this case, which is a weighty ground for this Court, to decline to interfere with the order impugned in exercise of writ jurisdiction.

11. The relief for issue of a writ of certiorari to quash the impugned order dated 26-12-2003 at Annexure "E", suspending sales of petroleum products for a period of 15 days and payment of Rs. 5,000/- as and by way of a penalty, is wholly misconceived. The petitioner is not seeking to enforce any of his statutory right nor a statutory obligation on the part of the respondent-Oil Company.

The writ petition is devoid of merit and is rejected.