

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.20046 & 20297 OF 2018

COMMON ORDER:

Since the issue involved in both these writ petitions and the parties are one and the same, they are being heard together and disposed of by way of this Common Order.

2. W.P.No.20046 of 2018 is filed with the following prayer:

“.....to issue any writ or order or writ of mandamus more particularly one in the nature of direction for not reconstituting the Petitioner No.1 firm with the respondent No.1 Corporation as illegal and arbitrary and consequently direct the respondent No.1 to reconstitute the petitioner No.1 firm and pass such other order or orders...”

W.P.No.20297 of 2018 is filed with the following prayer:

“....to issue any writ or order or writ of mandamus more particularly one in nature of direction to set aside the letter dated 20.04.2018 and pass such other order or orders....”

3. It is the case of the petitioners in both these Writ Petitions the 1st petitioner firm was established in the year 1974 by the then partners Cheela Jagadeeshwar (expired), Cheela Harinatham (Expired), Cheela Prabhakar, Cheela Kishan along with 2nd petitioner, by taking dealership of supply of Petroleum products from the Hindustan Petroleum Corporation Limited (HPCL)-1st respondent. Subsequently, Cheela Prabhakar has retired from said partnership firm and 2nd petitioner is the existing partner and continued the business. While so, in the year 2015, the petitioners 2 to 4 and respondents 2 & 3 joined as new partners in 1st petitioner firm on 01.04.2015. Subsequently, due to differences arose between the petitioners 2 to 4 and respondents 2 & 3, the

3rd respondent addressed legal notice to the Axis Bank, Kamareddy for freezing the account of the 1st petitioner firm and also a letter to the 1st respondent calling for the records of the 1st petitioner firm. After resolving the disputes, the respondents 2 & 3 retired from 1st petitioner firm by executing retirement Deed dated 29.09.2016 and also executed No Objection Certificate for reconstitution of the partnership firm with the 1st respondent and that the other two children of 2nd respondent i.e., Shylaja and Vinay Kumar also gave their No Objection for the reconstitution of the 1st petitioner firm. When the petitioners 2 to 4 applied for reconstitution of the firm with the 1st respondent on 05.07.2017, the 1st respondent addressed letter dated 08.08.2017 to the petitioners 2 to 4, at the instigation of 3rd respondent, directing them to submit some documents for reconstitution stating that the respondents 2 and 3 were forced to sign the retirement deed forcefully. Aggrieved by the attitude of the respondents 2 & 3, 2nd petitioner filed a private complaint against them before the Judicial Magistrate of First Class at Kamareddy and same was referred to Police Station Kamareddy, vide Cr.No.104 of 2018 under Sections 420, 384 and 509 IPC dated 28.03.2018. It is stated that again on 20.04.2018, the respondents 2 & 3 along with antisocial elements tried to obstruct the petitioners 2 to 4 from attending the business. The Petitioners 2 to 4 also filed suit in O.S.No.27 of 2018 before the Senior Civil Judge, Kamareddy for perpetual injunction restraining the respondents 2 & 3 from interfering with the business of the petitioners. The 1st

respondent has stopped the process of reconstitution of the 1st petitioner firm. Aggrieved by the same, present writ petition is filed.

4. Though notices is served on the respondents 2 & 3, there is no representation on their behalf.

5. Heard Sri M.Govind Reddy, learned counsel for the petitioners and Sri B.Mayur Reddy, learned Standing Counsel for the 1st respondent-HPCL.

6. In this case, it is to be seen that admittedly, 1st petitioner firm was established in the year 1974 with five partners including the 2nd petitioner. When some of the partners expired, the 1st petitioner firm was reconstituted with the petitioners 2 to 4 and respondents 2 & 3 on 01.04.2015. However, due to disputes arose between the parties, the respondents 2 & 3 retired from partnership firm and executed registered retirement deed on 29.09.2016 along with No objection certificate for reconstituting the firm with the 1st respondent. Even before execution of retirement deed and no objection for reconstitution of partnership firm with the 1st respondent, the 3rd respondent addressed letter dated 29.02.2016 to the Branch Manager, Axis Bank, Kamareddy to freeze the account of the 1st petitioner firm. However, the 3rd respondent again addressed letter dated 14.03.2016 stating that all the disputes arose between the partners of the partnership firm were resolved and requested to treat the earlier complaint as withdrawn and also requested to allow the partners i.e., petitioners 2 & 3 and 3rd respondent to operate the account.

Subsequently, 3rd respondent also addressed letter to the 1st respondent on 12.09.2016 making allegations against the petitioners 2 & 3 and also requested to take action against them. Thereafter, the respondents 2 & 3 executed registered retirement deed on 29.09.2016. While the petitioners 2 to 4 addressed letter dated 05.07.2017 to the 1st respondent for reconstitution of the 1st petitioner firm, the 1st respondent, at the instigation of 3rd respondent, addressed letter dated 08.08.2017 directing the petitioners to furnish some documents for reconstitution of the firm stating that the respondents 2 & 3 were forced to sign the retirement deed.

7. It is pertinent to note that after giving complaint against the petitioners 2 to 4 to the 1st respondent on 12.09.2016, the respondents 2 & 3 executed registered retirement deed on 29.09.2016. It is not in dispute that the respondents 2 & 3 also gave no objection certificates along with other children of the 2nd respondent and late Cheela Kishan, i.e. Cheela Vinay Kumar and Cheela Shylaja. The 3rd respondent also executed retirement certificate on 20.09.2016 stating as follows:

“That I am the one of the Member/partner of Partnership Deed dated 01.04.2015. Since then I was actively participated in the day to day affairs of the Firm i.e., Namely M/s.Balaji Service Station, Kamareddy, Kamareddy District.

That due to my unwillingness to continue business to participate in the day to day affairs of the firm. Therefore, I deem it to fit and proper to retire from the Partnership and accordingly I declare through this letter my unwillingness to continue as Partner/Member in the firm and confirmed my retirement from the partnership.

That in view of the above reason mentioned supra I also declare that I have No claims, objections over the business and properties of M/s.Balaji Service Station, Kamareddy town & District by Re-constituting with the following members.

1. Cheela Bhasker, S/o.Ch.Rajaiah.
2. Cheela Pushpavathi, W/o.Ch.Bhaskar.
3. Cheela Narendra, S/o.Ch.Jagadeeshwar.

That I hereby agree and give my consent for Re-constitution of partnership deed without any coercion undue influence, threat or any force from anybody much less the family members of Cheela's family."

A perusal of the aforesaid retirement certificate executed by the 3rd respondent, it is clear that he has executed the Retirement deed on 29.09.2016 and also for reconstitution of the 1st petitioner firm, without any coercion and undue influence from anybody including the family members of the Cheela's family. Therefore, it cannot be said that the respondents 2 & 3 were forced to sign the retirement deed. Even if the assertion of the respondents 2 & 3, is considered as true, they ought to have challenged the said retirement deed in an appropriate forum. As already observed supra, inspite of serving notices, there is no representation on behalf of respondents 2 & 3.

8. That being so, even after execution of registered retirement deed on 29.09.2016, when the 3rd respondent obstructing the business of the petitioners 2 to 4, they lodged private complaint against respondents 2 & 3 with the Judicial Magistrate of First Class at Kamareddy and same was referred to Police Station, Kamareddy vide Crime No.104 of 2018.

9. The facts narrated in the affidavit filed in support of the Writ Petition were also not disputed by the learned Standing Counsel for the 1st respondent and no counter affidavit is filed denying the same. It is the specific contention of the learned Standing Counsel for the 1st respondent that since there are disputes between the petitioners 2 to 4 and respondents 2 & 3, they could not reconstitute the 1st petitioner firm with petitioners

2 to 4, as such, impugned letter dated 20.04.2018 was issued to the petitioners 2 to 4 and respondents 2 & 3 to settle the disputes between them, failing which, they will be constrained to stop supplies to the 1st petitioner firm. As already observed supra, the contents of registered retirement deed dated 29.09.2016 are un-rebutted, as the respondents 2 & 3 neither choose to enter appearance nor filed any counter affidavit rebutting the contents of the affidavit filed in support of the Writ Petition.

10. Learned Standing Counsel for the 1st respondent while relying on the judgments reported in **State of M.P v. M.V.Vyavsaya¹, and Empire Jute Company Ltd., v. Jute Corporation of India²**, submits that when disputed questions of fact and law are involved, this court instead of entertaining the Writ Petitions, should have left the parties to avail remedy under the arbitration clause that existed in the contract. But the fact remains that the respondents 2 & 3, in spite of receiving notices, failed to enter appearance. As I already observed supra, there is no dispute with regard to execution of registered retirement deed by the respondents 2 & 3, no objection certificates for reconstitution of the 1st petitioner firm by the petitioners 2 to 4. Even if the assertion that the respondents 2 & 3 were forced to sign retirement deed, it is for them to agitate the same before the appropriate forum of law. As on today, the registered retirement deed executed by the respondents 2 & 3 is in force and same is holding the field. The 1st respondent is only concerned with the reconstitution of the

¹ (1997) 1 Supreme Court Cases 156

² (2007) 14 Supreme Court Cases 680

firm with petitioners 2 to 4 in view of retirement deed dated 29.09.2016 in view of Clause 3.5 of Policy Guidelines for Reconstitution of Retail Outlet Dealerships.

In view of above facts and circumstances, the impugned letter dated 20.04.2018 of the 1st respondent is set aside and 1st respondent is directed to reconstitute the 1st petitioner firm with petitioners 2 to 4 in view of registered retirement deed dated 29.09.2016 executed by respondents 2 & 3 and the 1st respondent is also directed to continue the supplies to the 1st petitioner firm.

Accordingly, both the Writ Petitions are allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, shall stand closed.



A.RAJASHEKER REDDY, J

26-09-2018.
kvs

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY



W.P.Nos.20046 & 20297 of 2018

Date: 26.09.2018

kvs

