

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

(Special Original Jurisdiction)

MONDAY, THE SECOND DAY OF JANUARY

TWO THOUSAND AND TWENTY THREE

PRESENT

THE HON'BLE SRI JUSTICE B.VIJAYSEN REDDY

WRIT PETITION NO: 38036 OF 2022

Between:

Sneha Shamarthi, D/o Anand Shamarthi, R/o 8-2-686/6D, Road No.12, Banjara Hills,
Hyderabad 500 034.

...PETITIONER

AND

1. The State of Telangana, Represented by its Principal Secretary, Home Department, Secretariat, Hyderabad
2. The Commissioner of Police, Basheerbagh, Hyderabad.
3. The Assistant Commissioner of Police, Mahakali Police Station, Secunderabad
4. Mr. B. Ramesh, S/o not known to the Petitioner, The Assistant Commissioner of Police, Mahankali Police Station, Secunderabad.
5. The Station House Officer, Mahankali Police Station, Secunderabad
6. Mr. Srinivasulu, S/o. Not known to the Petitioner, Station House Officer, Mahankali Police Station, Secunderabad
7. Hindustan Petroleum Corporation Limited, Represented by its Chairman and Managing Director, Having its Registered office at 17, Zamshed Ji Tata Road, Mumbai 400 002.
8. Hindustan Petroleum Corporation Limited, Represented by its General Manager, Door No.5-9-58/B, 7th Floor, South Central Zone, Parishrama Bhavan, Fateh Maidan Road, Basheerbagh, Hyderabad 500 029.
9. Hindustan Petroleum Corporation Limited, Represented by its Deputy General Manager, 9-1-130/1, Retail Office, Sebastian Street, S.D.Road, Secunderabad 500003.
10. Mr.Yetenderpal Singh, S/o. Not known to Petitioner, Deputy General Manager, HPCL, 9-1-130/1, Retail Office, Sebastian Street, S.D.Road, Secunderabad 500003.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to please issue an order, direction or writ, more particularly in the nature of Writ of Mandamus thereby declaring the action of Respondent No. 2 to 6 under the influence and in collusion with Respondent No. 7 to 10 in harassing, threatening and illegally dispossessing the Petitioner from HPCL Outlet at M/s.HSD Auto Care Centre, 1-1-5/1, R.P Road, (Rashtrapathi Road), Secunderabad 500003, highhandedly along with unsocial elements and threatening the Petitioner and her family members with dire consequences and life threat as illegal, arbitrary, unjust, unconstitutional and in violation of Article 14, 19, 21 and 300A of Constitution of India and against the principles of natural justice and consequently direct the Respondent No. 7 to put the petitioner herein back in possession of said outlet M/s. HSD Auto Care Centre, 1-1-5/1, R.P Road, (Rashtrapathi Road), Secunderabad 500003.

IA NO: 2 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to pass an order directing Respondent No. 2 to 6 to produce the CCTV footage of the CCTV Cameras of 07.10.2022 from the Mahakali Police Station i.e. Respondent No. 5 within a period of 3 days.

IA NO: 3 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct Respondent No. 2 to provide security to the Petitioner and her family members from Respondent No. 3 to 10.

IA NO: 4 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct Respondent No. 7 to 10 produce CCTV Footage of the outlet being recorded at their premises from their installed CCTV Camera of 07.10.2022 of the outlet within a period of 3 days.

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to pass an order directing Respondent No. 2 to 6 to produce the CCTV footage of the CCTV Cameras of 07.10.2022 from the main road right opposite the outlet and the CCTV Cameras at the signals within a period of 3 days.

IA NO: 5 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct Respondent No. 7 to put the petitioner herein back in possession of said outlet M/s.HSD Auto Care Centre, 1-1-5/1, R.P Road, (Rashtrapathi Road), Secunderabad 500003.

Counsel for the Petitioner: **SRI SURESH SHIV SAGAR**

Counsel for the Respondents: **GP FOR HOME (TG)**

The Court made the following:

HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.38036 OF 2022

ORDER: (ORAL)

This writ petition is filed to declare the action of respondent Nos.2 to 6 in harassing, threatening and illegally dispossessing the petitioner from Hindustan Petroleum Corporation Limited (HPCL) outlet situated at M/s. HSD Auto Care Centre, 1-1-5/1, Rashtrapathi Road, Secunderabad, by colluding with respondent Nos.7 to 10 as being illegal, arbitrary and violative of Articles 14, 19 and 21 of the Constitution of India.

2. Heard the learned counsel for the petitioner, the learned Assistant Government Pleader for Home and Mr. M. Surender Rao, learned Senior Counsel appearing on behalf of Mr. B. Mayur Reddy, learned counsel for HPCL, and perused the material available on record.

3. The case of the petitioner is that *vide* letter dated 12.02.2018 followed by formal agreement dated 08.03.2018, she was appointed as service provider of HPCL Company Owned and Company Operated (COCO) outlet situated at Rashtrapathi Road, Secunderabad, in pursuance of paper advertisement dated 01.03.2017. The tenure of the contract was for three years i.e., from 01.03.2018 to 28.02.2021. According to the petitioner, she has furnished bank guarantee of Rs.40,00,000/-. Further, the petitioner has invested Rs.50,00,000/- for

running the outlet. Due to Covid-19 pandemic, the petitioner could not do business though the pump was being run by observing covid protocol. Several representations were submitted by the petitioner to respondent Nos.7 to 9 for extension of agreement. As there was lock down in the entire country and many post Covid issues encountered, the petitioner could not recover the investment she has made in the outlet. As there was no action on the representations submitted by the petitioner, W.P.No.4758 of 2021 was filed and the same was disposed of by order dated 01.03.2021 directing respondent No.7 to consider the representation of the petitioner. Subsequently, another representation was submitted. Thereafter, respondent Nos.7 to 9 extended the contract period for 17 days i.e., from 13.03.2021 to 31.03.2021 and subsequent to that, on technical reasons, the contract period was extended till 30.04.2021. The petitioner states that other outlets were run by the licencees by giving reasonable extension. The contract period of an outlet by name NSI, Kushaiguda, was extended for a period of six months. Several representations were submitted thereafter seeking extension of licence of the petitioner beyond 30.04.2021.

4. It is stated that as per clause 49 of the agreement dated 08.03.2018, the petitioner approached Arbitrator Mr. Vishwanath Sarma on 19.02.2021 to intervene in the matter. However, the said

Arbitrator did not give any reply and the counsel for respondent Nos.7 to 9 sent reply rejecting the claim of the petitioner stating that there is no dispute referable to the Arbitrator. The petitioner relied on office memorandum dated 13.05.2020 issued by the Ministry of Finance permitting the parties to the contract to invoke the forcemajeur clause under the Disaster Management Act, 2005 and it is submitted that it is a matter of dispute and the same has to be decided by the Arbitrator. The petitioner filed AOP.No.6 of 2021, under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act'), before the I-Additional Chief Judge, City Civil Court at Secunderabad, wherein ad-interim injunction order was passed on 28.04.2021. Respondent No.7 through respondent No.9 filed appeal in CMA.No.248 of 2021 challenging the order dated 28.04.2021 passed by the trial Court. In the said CMA, a Division Bench of this Court passed interim order dated 14.06.2021 granting interim stay of the impugned order passed by the trial Court only to the extent of permitting the 2nd respondent therein to exercise rights under the contract between the parties in respect of the suit schedule property including the right for supplies of petroleum products by the appellant.

5. It is stated that simultaneously, the petitioner filed an application under Section 11 (6) of the Act, for appointment of Arbitrator, and the same was numbered as Arbitration Application No.112 of 2021.

Subsequently, by order dated 25.07.2022, CMA.No.248 of 2021 was disposed of directing the trial Court to pass orders within four weeks. Consequently, AOP.No.6 of 2021 was heard and the same was dismissed by order dated 26.08.2022. Challenging the same, CMA.No.494 of 2022 was filed and the same was dismissed by order dated 17.11.2022.

6. Learned counsel for the petitioner submitted that Arbitration Application No.112 of 2021 filed under Section 11 (6) (c) of the Act was allowed by order dated 27.09.2022 and an Arbitrator was appointed.

7. Today, the learned Senior Counsel appearing for the respondent Nos.7 to 10 informed this Court that a copy of the order dated 17.11.2022 passed in CMA.No.494 of 2022 is uploaded in the High Court website. Learned Senior Counsel submitted that the petitioner is a licensee and she does not have any right to continue in the outlet after expiry of her licence period. The licensee does not have rights equivalent to a tenant. Having considered all the contentions raised by the petitioner and examining the terms and conditions of the licence and settled legal position, AOP No.6 of 2021 filed by the petitioner under Section 9 of the Act and CMA No.494 of 2022 filed under

Section 37 of the Act came to be dismissed, thus, the writ petition is not maintainable.

8. In reply thereto, the learned counsel for the petitioner submitted that even if the petition filed before the trial Court and the appeal filed before the appellate Court challenging the order of the trial Court have been rejected, it does not give right to the respondent HPCL to forcibly dispossess the petitioner and more particularly, the police do not have any role to play and the police acted highhandedly in forcibly dispossessing the petitioner. The petitioner has kept her gold ornaments in the outlet premises. Thus, the matter requires to be enquired into. The CCTV footages also have been produced before this Court to prove that the petitioner was thrown out of the premises by police and with the help of anti-social elements.

9. With the consent of the learned Senior Counsel, CCTV footages produced before this Court by the learned counsel for the petitioner have been watched by this Court and it reveals there was a commotion in the subject retail outlet premises, but nothing objectionable is found.

10. According to the learned Senior Counsel, on a representation submitted by the HPCL authorities for taking over the possession of the subject retail outlet, as a precautionary measure, the authorities have reported to the police, pursuant to which police constables were

sent to the outlet to see that there is no untoward incident and to ensure that there is no break down of law and order.

11. In the background facts and circumstances, the relief sought in the writ petition cannot be granted, more particularly since the substantive relief claimed by the petitioner in AOP.No.6 of 2021 and CMA No.494 of 2022 have been rejected. The petitioner, being unsuccessful in the substantive proceedings, cannot be permitted to ventilate her grievance in the present writ petition. Admittedly, the petitioner is a licensee and, as contended by the learned Senior Counsel appearing for HPCL, there is no order protecting the possession of the petitioner. As it is stated that Arbitration Application No.112 of 2021 is allowed and Arbitrator is appointed, the petitioner is entitled to seek any relief including damages, recovery of possession of retail outlet, extension of lease, loss of articles etc., if so advised, before the Arbitrator. There are no merits in this writ petition.

12. Accordingly, the writ petition is dismissed. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the writ petition stand closed.

SD/-MOHD.SANAULLAH ANSARI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to SRI. SURESH SHIV SAGAR Advocate [OPUC]
2. Two CCs to GP FOR HOME (TG) ,High Court for the State of Telangana. [OUT]
3. Two CD Copies

HIGH COURT

BVR, J

DATED: 02/01/2023



ORDER

WP.No.38036 of 2022

WRIT PETITION IS
DISMISSED OF WITHOUT COSTS