

28.01.2025.
Item No. 1.
Court No. 13
ap

**F.M.A. No. 1239 of 2021
With
I.A. No. CAN 1 of 2021**

Satya Prakash & Anr.

Versus

M/s. Hindustan Petroleum Corporation Ltd. & Ors.

Mr. Sankar Biswas,
Mr. Aniket Mitra,
Ms. Ananya Adhikary.

...For the appellant.

Mr. Soumya Majumder, Id. Sr. Advocate
Mr. Apurba Kumar Ghosh,
Mr. Rudranil Ghosh.

...For the respondents.

1. The instant intra court appeal is directed against the judgment and order dated 6th April, 2021 passed by a learned Single Judge of this Court in W.P.A. No. 4862 of 2008. The prayers made in the writ petition are as follows:

“(a) Writ in the nature of Mandamus commanding the respondents, their servants and agents to rescind, recall, quash the impugned decision being the communication dated 4/3/2008, as in annexure “P15”, and any steps taken, if any, in pursuance thereof.

(b) Writ in the nature of Mandamus for a declaration that the petitioners are entitled to be treated as regular dealer on regular basis or alternatively cancel the so-called “deed of lease” executed on 26/3/2004, as in Annexure “P-10” and release the plots of lands;

(c) Writ in nature of Mandamus for a declaration that the so-called lease deed was nothing but a part of

an arrangement for dealership on regular basis in favour of the petitioners;

(d) Writ in nature of Certiorari directing the respondents to certify and transmit the relevant records in connection with this case so that conscionable justice may be administered by quashing the same;

(e) RULE NISI in terms of prayers (a), (b), (c) & (d) above;

(f) An ad-interim order be passed restraining the respondents, their servants, agents from disconnecting the present system to run the outlet (petrol pump at Kanchrapara More) and further from taking any steps in terms of the impugned decision as communicated vide letter dated 4/3/2008 as in Annexure "P-15" till the disposal of the Rule;"

2. The brief facts relevant to the instant case are that the writ petitioner no.1 is the uncle of the petitioner no.2. Pursuant to a Notice Inviting Tender dated 17th October, 2002 by the HPCL, the petitioner No.1 offered total 21 cottahs of land ad measuring 18000 sq. ft. located at Kalyani Expressway, Kapamore on the National Highway.

3. The land was offered for setting up of a Company Owned and Company Operated (COCO) Retail Petroleum Product Outlet by the respondent HPCL. Pursuant thereto, the petitioners' bid was found favourable by the HPCL on 15th November, 2002. The petitioners thereafter purchased the land between 30th May, 2003 and 11th June, 2003. The petitioners claimed to be a Raiyat under the West Bengal Land Reforms Act, 1955 and obtained conversion of the land

for commercial use. All the local permissions from the local authorities including District Magistrate, Prodhan of Gram Panchayat and other authorities were also obtained by the appellants/writ petitioners.

4. On 26th March, 2004, the petitioners entered into a registered lease agreement of the land for 30 years with the respondent no.1. The Pump was thereafter set up sometime in the year 2006 and the petitioner no.2 was awarded the labour contract for supply to the Retail Petroleum Outlet on 1st December, 2006.

5. It is averred in the writ petition that the entire submission of bid, purchase of land and the lease agreement were based on an assurance of one N.A. Biswas, the respondent no.4 in the instant proceeding, who was the then Chief Regional Manager (Retail) of the HPCL, that the petitioners would be allotted Dealership of the Petrol Pump eventually. No document, however, has been produced by the appellants/petitioners either in the pleadings before the learned Single Judge or before this Court to that effect. There are only averments made in the writ petition and the stay application before this Court to that effect.

6. Sometime on 4th March, 2008, the Labour Supply Contract with the petitioner no.2 was terminated by the HPCL and a new person was engaged. The writ petition was filed immediately

thereafter with the prayers already set out hereinabove. At the ad interim stage when the writ petition was moved, an order of stay of the termination of Labour Contract was passed by a learned Single Judge of this Court. The petitioner no.2 thereafter continued as Labour Contractor until the impugned order was passed dismissing the writ petition. HPCL, in the meantime, had filed an application for vacating the interim order.

7. In the affidavit-in-opposition to the writ petition, HPCL contended that due to a change of policy of the Central Government, implemented through the Oil Companies, the COCO Retail Outlet business would be phased out and all existing COCO Outlet would be made available to the general public with due emphasis for reservation to Ex-Serviceman, Scheduled Caste, Scheduled Tribes and Other Backward Classes and other Categories.

8. The subject COCO Outlet of HPCL was allotted to a third party in the year 2021 after the writ petition was dismissed.

9. The learned Single Judge found that there was no promissory estoppel on the HPCL in the facts of the case. The alleged assurance of the said Mr. N.A. Biswas was not enforceable or binding on the respondent no.1. No case of promissory estoppel, equitable estoppel or legitimate expectation as recognized by the Hon'ble Supreme Court of India in

the case of ***Mohd. Janal – Vs. – Union of India*** reported in ***(2014) 1 Supreme Court Cases 201*** was found available to the petitioners in the facts of the present case. The learned Single Judge also found that the change of policy of the respondents could not confer any cause of action on the petitioners. The learned Single Judge found that the termination of the Labour Contract was as per the terms and conditions of the said contract dated 1st December, 2006 extended from time to time until 2008.

10. Learned Counsel, Mr. Sankar Biswas for the appellants has argued at length before this Court against the order of the learned Single Judge. He has submitted that it is essentially on the promise of Mr. N.A. Biswas that the petitioner no.1 purchased and entered into a lease agreement with the HPCL for 30 years. Such promise was to the effect that the petitioners would be allotted Dealership of the Petrol Pump, eventually.

11. It is next argued that Mr. N.A. Biswas was made a party respondent to the writ petition and in the instant appeal and no affidavit-in-opposition has been filed controverting such allegation. He further submitted that the HPCL is bound by the averments against Mr. N.A. Biswas in the writ petition. He also submitted that the Retail Outlet could not, therefore, have been allotted to any third person even after change of policy of the HPCL.

12. It is argued that by reason of the change of policy, the agreement of lease stood terminated automatically. HPCL could not allot the Petrol Pump Outlet to any third party except the petitioners. The petitioners should, therefore, be given back possession of their land.

13. Reliance in this regard is placed firstly on the decisions of ***R.P. Kapur & Ors. – Vs. – Sardar Pratap Singh Kairon & Ors.*** reported in ***AIR 1961 Supreme Court 1117***, particularly paragraph 19 thereof and the case of ***Ashok Kumar – Vs. – Raj Gupta & Ors.*** reported in ***(2022) 1 Supreme Court Cases 20***, particularly paragraph 18 thereof on the proposition that the allotment of the Retail Outlet after change from COCO Model to a third party would amount to an unconscionable bargain and hence the lease agreement should be terminated.

14. Reliance is also placed on the decision of the Hon'ble Supreme Court of India in the case of ***Central Inland Water Transport Corporation Limited & Anr. – Vs. – Brojo Nath Ganguly & Anr.*** reported in ***(1986) 3 Supreme Court Cases 156***, particularly paragraph 89 thereof and the case of ***Pioneer Urban Land and Infrastructure Limited – Vs. – Govindan Raghavan*** reported in ***(2019) 5 Supreme Court Cases 725***, particularly paragraph 6.7 thereof.

15. Mr. Biswas lastly relies upon a decision of the Hon'ble Supreme Court of India in the case of ***State of***

Karnataka - Vs. - State of Tamil Nadu & Ors.

reported in ***(2018) 4 Supreme Court Cases 1***, particularly paragraphs 119 to 124 thereof.

16. This Court has very carefully considered the arguments of the learned Counsel for the appellants, the decision of the learned Single Judge and the arguments of the Counsel for the HPCL. This Court notes with anguish that since 2008 and until the year 2021, the petitioner no.2 has been able to continue with the Labour Contract due to an interim order passed by this Court. The said conduct by itself constitutes a gross illegality on the part of the petitioners. As to why HPCL has not chosen to prefer an appeal against the said interim order, is intriguing. HPCL appears to have been satisfied with the application for vacating the interim order. Even the said application was not pursued until final hearing of the writ petition.

17. Be that as it may, the petitioner no.2 has unduly and unconscionably benefitted from an interim order from this Court for a period of about 13 years. It does not lie in the mouth of the person benefiting in the manner indicated above to utter scriptures on the principles of unconscionable bargains and legitimate expectation.

18. This Court has carefully scrutinized the Labour Contract in question. Although paragraph 6 of the contract has mentioned as the basis for termination,

the power of HPCL to terminate the contract, is in Clause 17 thereof. The petitioner no.2 had consciously entered into the Labour Supply Contract with the HPCL knowing fully well that the latter reserved to itself the right to terminate the contract with one month notice without indicating any reason therefor. HPCL's termination of contract in the facts and circumstances of the present case, therefore, cannot be faulted.

19. On the question of any right or a legitimate expectation on the part of the petitioners for being allotted the Retail Dealership, this Court notes that the lease agreement between the petitioner no.1 and the HPCL is purely a private contractual arrangement. There is no mention of any right to the retail distributorship in such lease.

20. If the petitioner no.1 is aggrieved by any violation of the terms and conditions of the lease, the termination thereof and a civil suit for eviction is the only and appropriate remedy. This Court sees no public element whatsoever in execution of the lease by the petitioner no.1 with the HPCL.

21. In so far as the change of policy and subsequent allotment of the COCO Outlet to third party is concerned, the petitioners have not been able to demonstrate any vested right in claiming allotment of the said Retail Dealership. The question of any relief under Article 226 of the Constitution of India,

therefore, does not and cannot arise. The invocation of high prerogative writ in a purely private and commercial contract is not permissible unless there is any public element attached or violation of any public law is demonstrated by the parties, which this Court has not been able to decipher.

22. In so far as the decision cited by the petitioners, this Court notes that in the case of **R.P. Kapur (supra)** the Hon'ble Supreme Court of India was considering a fact where allegation was made by the writ petitioners therein, inter alia, against a Chief Minister of the State of Punjab, to the effect that it is at the instance of the Chief Minister that criminal and civil proceedings were instituted against them. The petitioners specifically alleged that the Chief Minister was unhappy with the fact that the petitioners refused to do his bidding. When the Chief Minister did not respond to the allegations, the Hon'ble Supreme Court of India held that the allegations against him must be deemed to be true and correct. It was held that the allegations could have been controverted by the Chief Minister or any person authorized by him. It appears that the rights under Article 21 of the Constitution of India are involved in the said case and the allegations were against the Chief Minister of the State. The said case has no manner of application in the facts and circumstances of the present case.

23. In so far as the decision in the case of **Ashok Kumar (supra)** is concerned, the facts were that a DNA Test was ordered by a Civil Court in respect of paternity of the appellant. Upon refusal of the appellant to undergo such DNA Test, adverse inference was drawn against him. The dicta in paragraph 18 of the said decision would have no manner of application to the facts of the instant case.

24. In the **Brojo Nath Ganguly** decision (*supra*) and **Pioneer Urban Land and Infrastructure Limited (supra)** which cited with the approval of paragraph 89 of the decision of **Brojo Nath Ganguly (supra)**, equally would have no application in the facts of the instant case. In the **Brojo Nath Ganguly's** decision (*supra*), the Hon'ble Supreme Court of India dealt with a case of a Clause in a contract which empowered the employer to unilaterally terminate the same. The employee therein did not have any option than to accept the contract. It is in this backdrop that the Supreme Court has held that a Clause of such nature constituted an unlawful bargain between a powerful employer and a meek employee.

25. In the **Pioneer Urban Land and Infrastructure Limited** decision (*supra*) the Supreme Court was considering the rights of a purchaser of a residential flat vis-a-vis the conduct of the builder therein. The issue was under the provisions of the Consumer Protection Act, 1986. The buyer of the flat

unit was found in a weaker bargaining position and the Supreme Court held that he could not be compelled to deliver the flat without compensation for the delay. The facts of the said case are distinguishable and, therefore, the said decision cannot come to the aid of the petitioner.

26. The last decision cited by learned counsel for the appellant being ***State of Karnataka -Vs.- State of Tamil Nadu & Ors.*** reported in ***(2018) 4 Supreme Court Cases 1*** concerned a inter-State water dispute. It is in the peculiar facts of the said case of agreements between the State of Karnataka and State of Tamil Nadu that the principle of unconscionable term of contract was addressed under paragraphs 119 to 124 of the said decision. The facts of the said case, being wholly and completely different from the facts of the instant case, the observation of the Supreme Court cannot come to the aid of the petitioner.

27. In the instant case, the petitioner no.1 entered into the lease agreement being fully aware and conscious of the terms and conditions thereof. There is no document, assurance or promise on the part of the HPCL or the said N. A. Biswas or any other employee of the HPCL produced by the petitioner to indicate any assurance on the part of the HPCL that the petitioner would be allotted the dealership of the retail outlet.

28. The lease agreement for setting up the Coco unit by the HPCL was a standalone document,

transferring property rights to the extent indicated therein to the HPCL. As already stated hereinabove it is only for violation of any terms and conditions of the lease that the petitioner can avail the benefits and rights conferred on him under the Transfer of Property Act i.e. the termination and eviction. Such a prayer and relief cannot be granted by a Writ Court, more so in a purely private and commercial contract between two independent parties.

29. There was no compulsion whatsoever on the petitioner no.1 to enter into any lease with the HPCL. The petitioner did so voluntarily on the basis of some arrangement that he claims against the said N.A. Biswas. The petitioner may, if he so desires, demonstrate any such assurance and compromise, enforce the same against he said N.A. Biswas before a civil forum.

30. In the opinion of this Court the writ petition itself should not have been entertained in the first place by the Single Bench. The question of passing any interim order, therefore, did not and cannot arise. The writ petitioner no.2, having illegally obtained an interim order and enjoyed the same for a period of 13 years has, caused loss and inconvenience to the HPCL. The practice of obtaining interim orders at the ad interim stage and compromising the private contractual rights of a respondent has been

deprecated by the Supreme Court on a number of instances.

31. For the reasons stated hereinabove, FMA 1239 of 2021 fails and is hereby dismissed.

32. In view of dismissal of the appeal itself, the connected application being CAN 1 of 2021 shall also stand dismissed.

33. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)