

**\*HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**+ C.C.C.A.No.177 of 2004**

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**% Dated 29.01.2016**

**Between:**

**# M/s. Zee Entertainment Enterprises Limited,**  
**Rep. by its Assistant Vice President,**  
**Legal, Continental Building**  
**and others** **...Appellants/Defendant Nos.1 and 3**

**and**

**\$ Syed Inam Ur Rahaman** **....Respondent/plaintiff.**

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**Indru Bai Chandani,**  
**Director (H.R.) and another** **....Respondents/Defendants 3 and**  
**4.**

**! Counsel for the appellant** **: Sri Vedula Venkataramana**

**^ Counsel for 1<sup>st</sup> respondent** **: Sri A. Tulsi Raj Gokul**

**Counsel for 2<sup>nd</sup> and 3<sup>rd</sup> respondents : None**

**< GIST** **: ---**

**>HEAD NOTE** **: ---**

**? Cases referred:** **:**

1. AIR 1986 SC 1571
2. AIR 1991 SC 101
3. 1974 (1) WLR 1308
4. (2005)6 SCC 657
5. AIR 1977 SC 745
6. AIR 1976 SC 888

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**C.C.C.A.No.177 OF 2004**

**JUDGMENT:**

The sole plaintiff who is the 1<sup>st</sup> respondent to the appeal filed the suit O.S.No.47 of 2002 on the file of the XI Additional Chief Judge (Fast Track Court) City Civil Court, Hyderabad against four defendants

of whom the appellants M/s Zee Entertainment Enterprises Limited, Siti Cable Network Private Limited are the defendants 1 and 3 and 2<sup>nd</sup> defendant is one Indru Bai Chandani, Director(H.R.) of 1<sup>st</sup> defendant and 4<sup>th</sup> defendant is the Director of 3<sup>rd</sup> defendant. The 3<sup>rd</sup> and 4<sup>th</sup> defendants are shown as proforma parties and they are the respondents 2 and 3 in the appeal. The suit was filed seeking the reliefs to declare the action of the defendants contained in the letter dated 06.09.2001 terminating the services of the plaintiff invoking Clause 16 of the appointment order dated 05.09.95, is wrongful and illegal as opposed to public policy and also for damages against the defendants to a sum of Rs.20lakhs with interest at 24%p.a. from the date of the suit till the date of realization as a consequential relief to the main prayer that the termination of services of the plaintiff was wrongful and to grant such other reliefs.

2. The averments in brief in the plaint are that the plaintiff by name Syed Inam Ur Rahaman was appointed as Business Manager vide Ex.A.1 letter dated 05.09.1995 issued by the 3<sup>rd</sup> defendant-Siti Cable Network Private Limited now represented by the 4<sup>th</sup> defendant as its resident Manager posted under said 3<sup>rd</sup> defendant within the State of A.P. and it is covered by the contractual terms of appointment with 17 clauses. He worked later as directed under the 1<sup>st</sup> defendant in Bombay w.e.f. 01.04.2000 covered by Ex.A.2 till transferred back to Hyderabad under Ex.A.3,dated 29.11.2000 while he was so working, not even for any allegations against his performance much less as a measure of disciplinary action, while appreciating his performance as above satisfying with positive remark, however, claimed terminated by invoking clause 16 of the contract of employment with three months' notice of termination from the alleged option both the employer and employee got to do so.

3. The suit claim was opposed by the defendants by filing written

statement of D.1 adopted by the D.2 and D.3, leave about the D.4 did not file any separate written statement much less adopted. It is averred that of D.3-Siti Cable Network having its registered office at New Delhi is a subsidiary of D.1- M/s Zee Entertainment Enterprises Limited which is engaging of Cable Network operations, and distribution of films through cable and satellite channel and D.1 and D.3 are not one and the same entity as alleged by the plaintiff but are independent entities and they are justified in serving the termination notice under Ex.A.4 in view of the closure of the UTN channel w.e.f. July, 2001 for not able to generate work to continue and by invoking clause 16 which includes with three months' notice of termination and sought for dismissal of the suit saying plaintiff is not entitled to the relief of declaration much less the other relief of damages with interest.

4. The trial Court therefrom having formulated and settled as many as 8 issues of which issue No.6 is as to the entitlement of the relief of declaration and consequential relief of damages, besides issue No.5 and 7 are on maintainability of the suit reliefs and existence of cause of action or not and issue No.3 besides 1 and 2 as consequential to it of the appointment and authority to terminate respectively for D.3 by D.1 and having answered the two issues mainly placing reliance upon the expressions of the Apex Court in **Central Inland Water Transport Corporation Limited Vs. Brojonath**<sup>[1]</sup> two Judge Bench, that was referred in the subsequent Constitution Bench expression in **Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress**<sup>[2]</sup> and by quoting the expressions from Delhi Transport Corporation supra which relied upon the observations of **Lord Diplock in A Schroeder Music publishing Company Limited Vs. Macaulay (formerly instore)**<sup>[3]</sup> and the observations of Justice Madon which includes reference as to distress, circumstances and conditions of one prevails upon the other in a dominating position can be construed irrespective of there is consensus *ad idem* as opposed to public policy dragnet u/sec.23 of

the Contract Act to grant the relief and therefrom concluded of the plaintiff entitles to the damages as claimed in the suit by estimation of Rs.20lakhs with interest thereon from date of suit at 6% p.a. till realization.

5. The defendants 1 and 3 as referred supra maintained the present appeal impugning said findings and conclusions arrived by the trial Court with contentions in the appeal that once clause 16 is a private contractual obligation with consensus *ad idem* enables not only the employer if at all but also the employee to leave the entity if he chooses when contemplated with three months notice and the same is neither arbitrary nor unreasonable nor inequitable much less opposed to public policy and there is nothing to say the same is hit by Section 23 of the Contract Act, apart from no cause of action to maintain civil suit for its maintainability, much less to grant the discretionary relief of declaration of the said termination is hit by Section 23 of the Contract Act or to award any damages and the damages arrived are also unsustainable and baseless with no reason or rationale and thereby sought for setting aside the trial Court's decree and judgment supra and by dismissing the suit claim.

6. The learned counsel for the appellants /defendants 1 and 3 in support of the appeal contention placed reliance on the subsequent expression of the Apex Court (two Judge Bench) in **Binny Ltd. Vs. V.Sadasivan**<sup>[4]</sup> where particularly at paras-25,26, 29 to 33 observed that the matters are prone to writ jurisdiction only when there is any element of public sector contract of employment and not for any private bodies in saying the principles of natural justice and violation of the Section 23 of the Contract Act and Article 14 of the Constitution of India with reference to the respective rules, cannot be applied to the private bodies and ultimately observed in deciding the issue is not prone to a writ jurisdiction of the private employee impugning the termination but for to invoke any civil remedy or to approach other fora

like labour Court. It is the submission of the learned counsel for the appellant therefrom that the trial Court went wrong in placing reliance on the two expressions of the Apex Court in *Central Inland and Delhi Transport Corporation supra* which are in respect of either public employee or in a civil suit in relation to a college formed as a society for termination of the employee and not in private sector and not within the meaning of State for writ jurisdiction and those decisions have no applications to the present facts.

7. Whereas, it is the contention of the learned counsel for the 1<sup>st</sup> respondent/plaintiff by supporting the trial Court's judgment in saying once the trial Court arrived in its conclusions within the discretionary exercise of declaration from maintainability of the civil suit within the meaning of Section 42 of the Specific Relief Act if not even otherwise under Section 9 of C.P.C. as a suit of civil nature and so far as that discretionary exercise of the trial Court concerned, there are limitations particularly in service matters on the appellate authorities to interfere merely because some other view is possible, unless it comes to the conclusion on wrongful exercise of discretion, by relying upon in **Mysore State Road Transport Corporation Vs. Mirza Khasim Ali Beig** <sup>[5]</sup> at para 18 and also the other expressions in support of the conclusions arrived by the trial Court from *Central Inland and Delhi Transport Corporation supra* and from the expression of the Apex Court in **Executive Committee of Vaish Degree college, Shamli Vs. Laxmi Narain** <sup>[6]</sup> (three judge Bench) in relation to private employee though it prohibits reinstatement under the Section 14(b) of the Specific Relief Act, damages can be awarded for wrongful termination of service.

8. Heard as referred supra at length and perused the material on record.

9. Now the points for consideration to decide the appeal are:

I) Whether the civil suit lies and the relief granted by the trial Court in awarding damages including on the quantum for the termination while holding the termination is hit by Section 23 of the Contract Act, is unsustainable and it requires any interference by this Court and if so, to what extent this Court while sitting in appeal can interfere?

II) To what relief?

**Point No.I:**

10. The facts not in dispute are that the plaintiff was appointed as a business manager in the 3<sup>rd</sup> defendant entity-Siti Cable Network Private Limited as per Ex.A.1 letter dated 05.09.1995 and while so working was terminated with three months' notice invoking clause 16 of the appointment order under Ex.A.1 by Ex.A.4 by the 1<sup>st</sup> defendant. It is one of the contentions therefrom that is also answered by the trial Court in saying once it is the contest of the defendants in the written statement of D.1 and D.3 are separate entities D.3 having been appointed if at all terminate is only by D.3, and not by D.1 and that is enough to say therefrom of termination is not pursuant even to the private contract much less to invoke clause 16 of the contract and thus the termination is not legal; apart from same also opposed to the public policy even governed by the contractual terms. There is substance to the conclusion, though not in so many specific words by the trial Court.

11. Coming to the other aspects covered by rival contentions, the two expressions that is of Vaish Degree college(three Judge Bench) and Mysore State Road Transport Corporation(two Judge Bench) supra clearly speak and spelt out the declaratory relief in service matters are maintainable. No doubt specific relief Act provisions are not exhaustive, however, that does not mean even a suit of civil nature otherwise not falling within the scope of Section 34 of the Specific Relief Act, won't lie for not impliedly or expressly taking away the jurisdiction of a civil Court. It is not a contention either from the written

statement or grounds of the appeal much less from any of the expressions referred supra including of the appellant of Binny supra to say there is a bar to civil suit. In Binny supra even in the case of private bodies, it is not prone to writ jurisdiction much less to construe strictly the application of Article 14 of the Constitution of India or basic principles of natural justice, but for otherwise to govern by contractual terms and to consider the scope of Section 23 of the Contract Act therefrom, if at all, opposed to public policy. Though it is one of the contentions of the learned counsel for the appellants (D.1 and D.3 of the suit) of the contractual terms when equitably speak, either of the employer and employee can invoke when the employer invoked the clause 16 and terminated with three month's notice, there is nothing to say opposed to public policy from the facts and circumstances showing employee did not leave the job all through after appointment by working hard and still employer terminated him and from that the employee could not secure a suitable employment suffice to say, the employer is in a dominant position in upperhand and exercised the discretion unjustly, that too, when the employee has been sincerely working with clear track record with unblemished service and not even terminated for any misconduct and misdemeanor in the course of his employment and that too the so called entity issued the termination order is not even the entity that appointed as can be seen by keeping Exs.A.1 and A.4 in juxtaposition, besides same not even in dispute but for to say another sister concern to whom if at all transferred was not continuing there as was re-transferred back to the entity appointed i.e. D.3, apart from if at all to terminate is only by D.3,D.1 has no right undisputedly being an independently and separate entity to give order of termination, same is illegal and also opposed to public policy including contra to the terms of the clauses 1 to 16 of the contract of employment under Ex.A.1.

12. Therefore, so far as that finding of the trial Court concerned, even trial Court referred to the expressions of Central Inland and Delhi

Transport Corporation supra which are in relation to public employment there in Delhi Transport Corporation(particularly) the principle laid down by **Lord Diplock in A Schroeder Music publishing Company Limited supra referred and relied which principle** equally applies herein, so also the observations in saying, not even under direct undue influence, it can be implied if any of the dominance of employer that is prone to the dragnet of Section 23 of the Contract as opposed to public policy from such distress situation prevailed in the position of the employee when compared to the upperhand of the employer to consider. Apart from it, the two expressions in Mysore State Transport and Vaish Degree college supra also speak of a claim by a private employee, civil law remedy is sustainable but for to say declaratory relief is discretionary to exercise sparingly. Here from the expressions once the discretion was exercised by the trial Court, for this Court while sitting in appeal, there is nothing to interfere for nothing to say any wrongful exercise of the discretion so far as that finding of the trial Court of the termination is not legal and opposed to Public policy under Section 23 of the Contract Act. Hence said finding of the trial Court requires confirmation even by considering the expression of Binny supra placed reliance by the appellants from its saying the private employment contracts which govern by contractual obligations prove to dragnet of public policy principle.

13. Next coming to the quantum of compensation arrived by the trial Court of Rs.20lakhs with interest at 6% p.a. is excessive and unsustainable concerned, no doubt in the plaint there is a calculation more particularly at para-6 in saying the age of the plaintiff as on the date of termination notice under Ex.A.4 was about 45 years in claiming there could be at least 12 years of service remained and in saying as on the date of termination he was drawing undisputedly Rs.45,430/- per month and therefrom even estimated for 4 years of the salary

payable at that rate it can be arrived of Rs.20lakhs. In fact, as pointed out by the appellant neither in the plaint nor in the plaintiff's evidence much less in the arguments before the trial Court, it was not raised much less pleaded of plaintiff could not get any alternative employment and remained idle totally with no any earnings or avocation and became burden to somebody with any basis for it but for saying the plaintiff could not secure an equivalent employment. Thus, it is not even a case of specific plea of he could not be in some other avocation to get any means. Once that also requires consideration in arriving the quantum of damages, even from possessing earning capacity not in dispute, even 50% therein as capacity of getting alternative source of earning taken consideration, what the trial Court granted of Rs.20lakhs requires to reduce to Rs.10lakhs and but for that there is nothing to interfere with the trial Court's decree and judgment by sitting against.

Point No.II:

14. Accordingly and in the result, the appeal is allowed in part by confirming the order of termination as illegal and opposed to public policy and consequently from entitlement to reasonable sum as damages to be arrived by some guess work and from what the trial Court arrived of Rs.20,00,000/-(Rupees twenty lakhs only) is excessive by reducing to 50% therein awarded towards damages Rs.10,00,000/-(Rupees ten lakhs only) by confirming the rate of interest awarded thereon. Needless to say any amount so far paid or deposited can be withdrawn, if not withdrawn and if not paid, or partly paid, to pay the whole or the remaining balance within three months from today. There shall be no order as to costs of the appeal. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

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Dr. B. SIVA SANKARA RAO, J

Date: 29.01.2016

Note: L.R. copy to be marked.  
b/o. Vvr

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[\[1\]](#) AIR 1986 SC 1571

[\[2\]](#) AIR 1991 SC 101

[\[3\]](#) 1974 (1) WLR 1308

[\[4\]](#) (2005)6 SCC 657

[\[5\]](#) AIR 1977 SC 745

[\[6\]](#) AIR 1976 SC 888