

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No. 151/2009**

% **8th May, 2017**

INDIAN TELEPHONE INDUSTRIES LTD. Appellant

Through : Mr. Rajinder Dhawan, Mr. B.S.
Rana, Mr. Hans Raj Singh,
Advocates.

versus

SURINDER MOHAN Respondent

Through : Mr. Manoj Joshi, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? YES

VALMIKI J. MEHTA, J (ORAL)

1. This regular second appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit. The impugned judgment of the First Appellate Court dated 25.7.2009 dismisses the first appeal filed by the appellant/defendant. The Trial Court vide its judgment dated 30.09.1977 had decreed the suit filed by the respondent/plaintiff and held that the termination order dated 27.11.1969 issued by the appellant/defendant terminating the Apprenticeship Contract of the respondent/plaintiff was illegal.

2. The facts of the case are that the respondent/plaintiff filed the subject suit in December, 1973, and plaint of which was amended

subsequently, and the relief claimed as per the amended plaint was for declaring the termination order dated 27.11.1969 as illegal. Though, there is no further relief, the effect of grant of decree of the respondent/plaintiff by declaring the termination order of 27.11.1969 as illegal results in continuation of the Apprenticeship Contract of the respondent/plaintiff with the appellant/defendant.

3. The courts below have held that the termination of services under the Apprenticeship Contract of the respondent/plaintiff by the appellant/defendant is invalid because the same is in violation of the standing orders and also is in violation of principles of natural justice because the inquiry which was conducted against the respondent/plaintiff was hit by the principles of *audi alteram partem*.

4. There was also an issue raised by the appellant/defendant with respect to suit being barred by time inasmuch as the suit was filed in December, 1973 for challenging the termination order of November, 1969, however, the subsequent discussion will show that this aspect is immaterial for the determination of the issue in the suit and the present appeal, and therefore, this Court assumes the suit to be within limitation.

5. The Apprenticeship Contract dated 5.5.1967 entered into between the parties is an admitted document and was exhibited as

Ex.P2 before the trial court. This Apprenticeship Contract Ex.P2 is reproduced in its entirety and which reads as under:-

“ARTICLES OF AGREEMENT made this fifth day of (month) May One Thousand Nine Hundred and Sixty seven between (Name) Surinder Mohan Kareer aged twenty two yrs. son of Sh. Ram Lall and permanently residing at 14/3, Channa Market, Karol Bagh, New Delhi-5 (hereinafter referred to as “Apprentice” of the One Part) and INDIAN TELEPHONE INDUSTRIES LTD., having registered office at Dooravani nagar, Bangalore District (hereinafter referred to as the “Company” of the SECOND PART).

Whereas the Company has arranged a course of training “in Engineering” at its Factory in Doorvani nagar, Bangalore District, with the main object of training selected number of suitable and qualified persons in the production, maintenance, sales and or design development of the product of the company.

AND WHEREAS the Apprentice has agreed to undergo the aforesaid training subject to the terms and conditions hereinafter specified.

Now these presents witness and it is hereby agreed as follows:-

- I. The Apprentice shall be bound to
 - (a) serve the company as an Apprentice from the day of twenty sixth (date) May (month) Nineteen hundred and sixty seven for a period of Two years and/or such further extended period as may be deemed necessary during which term the Apprentice shall duly and faithfully serve the Company according to his skill and ability in all lawful business and demean and behave himself honestly, orderly and obediently in all things towards the Company.
 - (b) to promptly obey and abide by all the rules, standing orders and Regulations of the Company and of its authorized officers, representative and employees
 - (c) to conceal and in no way to reveal the secrets of the Company’s business or the business of its customers.
 - (d) not to do or commit or suffer to be done or committed waste, damage or other injury to the property or goods of the company or to lend such property or goods to any person without the consent of the Company.
 - (e) to serve the Company for a minimum period of three years after the successful completion of the Apprenticeship course in respect of which employment the Company reserves the option to employ the Apprentice but with no guarantee.
 - (f) to compensate the company for any and all expenses incurred either if the Apprentice fails to complete successfully the period of training and/or if the Apprentice fails to serve the Company as mentioned in the above Clause I(a), and commits a breach of agreement by resignation or abandonment before the expiry of the period of his apprenticeship.
 - (g) to obey and abide by all the rules, regulations and standing orders of the company with regard to Apprentice/employee in the matter of hours of work, leave, overtime and other matters.
- II. The Apprentice shall pay to the Company a non-refundable amount of Rupees. Eleven and Twenty five paise before executing this

Apprenticeship Agreement, to cover the cost of stamp fee and other incidental charges and deposit a sum of Rupees Twenty Five on the Execution of the Agreement as Security Deposit for all facilities such as tools, books and other equipment that may be provided by the Company to the Apprentice. This amount of deposit shall be refunded on the satisfactory surrender of the tools, books and equipment at the completion of the period of training successfully and satisfactory, service as contemplated in Clause I in general and in particular the sub-clauses (a), (e) and (f) of Clause I that is to say at the end offive years from the date hereof.

III. The apprentice shall further arrange to deposit during the period two years apprenticeship and subsequent service period Three years by way of deduction from his income including the wages/stipends/salary and dearness allowances if any monthly to the extent of 20% per centum of his wages/ stipends/said income bearing no interest which shall be accumulated and refunded only after completion of apprenticeship and after satisfactory service for the prescribed period of three years as contemplated in clause I (e) ie to say at the end of five years from the date hereof. The company shall have the right to forfeit the deposit without any notice mentioned above if the company is satisfied that the apprentice has not fulfilled the terms of the agreement.

IV. The company will provide the apprentice with a suitable course of instructions and a syllabus of training. He shall be informed annually his progress of training by a report apart from other periodical reports, if any.

V. The company will pay monthly stipend to the apprentice during the period of training, subject to the condition that his work, conduct and progress are satisfactory as follows:

(i) First year.....Rs.115/-per month/-

Second year.....Rs.One hundred and fifteen only

Plus the usual dearness allowance (applicable)

Third yearRupees One hundred and forty only per month/day

VI. The company does not guarantee any employment at any time permanent or temporary after the satisfactory completion of the training course but in no case of inability on the part of the company to absorb the apprentice immediately on occupation of the training course the company may arrange to keep his name in the company's record for possible future consideration.

VII. The company shall during the period of apprenticeship have a right and power:

(a) to extend the period or terms of apprenticeship at the same rate of stipend as contained in clause (i) or

(b) to cancel the agreement and /or

(c) to suspend or dismiss the apprentice

For any valid reasons such as unsatisfactory work, conduct or progress or breach on the part of the apprentice of any of the terms and conditions hereof or of any of the rules and regulations of the company, for the time being in force in which event, the apprentice shall reimburse the company for the expenditure incurred by it in connection with the training of the apprentice in pursuance of this agreement.

VIII. In the event of the apprentice completing his training successfully, the company will issue a certificate to that effect. The company will not be

responsible for any interruption or stoppage of this contract due to causes beyond its control.

IX. The company shall have the right to recover at its discretion any losses or any money due to the company referred above from the apprentice without any prejudice to any other remedy the company may adopt for recovering the same.

X. No suit arising out of this agreement shall be filed against the company except in the competent courts situated in the city of Bangalore in Mysore State.

In witness whereof, the said Surender Mohan, the party of the first part and Sri Mahabir Sarut on behalf of the company hereunto set their respective hands the day and year above written signed by the said party of the first part Surender Mohan

Presence of witness signature 5.5.67

Sd by the said

Personnel Manager/

For and on behalf of the company.

Sd/-
Personnel Manager,
INDIAN TELEPHONE INDUSTRIES LTD.”
(underlining added)

6. The reference to the aforesaid contract shows that the Apprenticeship period of contract was of two years commencing from 26.5.1967 and with entitlement to give further extension as the appellant/defendant deemed fit. As per para VI of this Apprenticeship Contract dated 5.5.1967 the appellant/defendant did not guarantee any temporary or permanent employment to the respondent/plaintiff after the period of completion of the Apprenticeship Contract. Para VII of the Apprenticeship Contract provides for right of termination of the Apprenticeship Contract during the period of the Apprenticeship Contract, on account of reasons such as unsatisfactory work or unsatisfactory conduct or other breaches on the part of respondent/plaintiff.

7. A detailed order was passed by this court on 19.9.2016 with respect to the issue which would require discussion/decision in the present case and also of the applicability of the Apprentices Act, 1961, and this detailed order dated 19.9.2016 reads as under:-

Order dated 19.9.2016

“1. This regular second appeal filed under Section 100 CPC impugns the judgments of the courts below whereby the respondent's/plaintiff's suit for declaration for declaring the termination order dated 27th November 1969 as illegal and void, has been decreed.

2. It is seen that admittedly the contract of employment of the respondent/plaintiff with the appellant/defendant was as per the Articles of Agreement dated 5th May 1967/Ex.P2 and which is infact an apprenticeship agreement.

3. How the relationship between an apprentice and the employer of the apprentice is to be governed is provided under the Apprentices Act, 1961.

4. In case the Apprentices Act applies to the apprentice contract in question, then the disputes between the parties have necessarily to be looked into in terms of the provisions of the Apprentices Act, 1961. It is however seen that there is no defence or any pleading that parties are governed or not governed by the Apprentices Act, 1961. If parties are governed by the Apprentices Act, 1961, because the Act in question stands extended to the appellant/defendant/Indian Telephone Industries Ltd. by virtue of Section 1(4) of the Act, then, this Court will have to apply the provisions of this Act because the law of the land has to be applied irrespective of the fact as to whether or not parties have taken such a pleading.

5. Counsel for the appellant/defendant will therefore file an affidavit within four weeks as to whether or not the appellant/defendant is governed by the Apprentices Act, 1961 and if so under which notification in the official gazette.

6. I may note that if the Apprentices Act, 1961 applies then some of the provisions which would be relevant would be Section 7(1), Section 18, Section 20, Section 22 and Rule 6 of the Rules framed under the Act because these provisions provide for a specific period only with respect to apprenticeship, as to whether the appellant was bound to give employment to the respondent/plaintiff when read with the contract Ex.P2 dated 5th May 1967, what is the effect of breach of contract by the appellant/defendant with its consequences and finally as to if civil suit would at all lie because disputes have to be determined by statutory authorities under Section 20 of the Act and once statutory authority decides the dispute then any challenge thereto cannot be by filing of a suit but would have to be by filing of a writ petition as recently held by this Court in the case of **Union of India & Ors. v. Shri Ishwar Singh RSA 26/2016** decided on 5th September 2016.

6. Let the appellant file an affidavit within four weeks in terms of the present order attaching the relevant gazette notification as to the appellant being covered or not being covered by the Apprentices Act. Reply be filed by the respondent within four weeks thereafter.

7. This order is passed by me in exercise of powers under Order 41 (27) CPC read with Section 165 of the Indian Evidence Act inasmuch as this issue goes to the root of the matter including as regards parties being governed or not by the Apprentices Act including the consequences thereof, as also whether the civil court would or would not have jurisdiction because of the provisions of the Act.

8. List on 18th November 2016.”

(underlining added)

8. Pursuant to the aforesaid order dated 19.9.2016, the appellant/defendant has filed its affidavit dated 1.12.2016 bringing on record the factum of the appellant's/defendant's company being covered by the Apprentices Act, 1961 inasmuch as this affidavit makes reference to the notification of the Government of India dated 12.2.1962 including therein, the communication companies such as the appellant/defendant. This Gazette Notification dated 7.9.1963 as a result of which appellant/defendant would be governed by the Apprentices Act, 1961 has been attached with the affidavit of appellant/defendant dated 1.12.2016.

9. An order passed by the learned Single Judge of this court on 25.1.2017 records that the respondent/plaintiff had stated that there was no requirement for the respondent/plaintiff to file a reply to the affidavit filed by the appellant/defendant. This was done because

obviously the appellant/defendant is indubitably covered and governed by the Apprentices Act, 1961.

10. At the time, when this appeal was admitted for hearing, a learned Single Judge of this Court framed the following substantial questions of law:-

“(i) Whether the suit of the respondent/plaintiff was barred by limitation or the respondent/plaintiff was entitled to the benefit of Section 14 of the Limitation Act in relation to the conciliation proceedings which were abandoned?

(ii) Whether the suit as filed by the respondent/plaintiff to seek a declaration simpliciter was maintainable in view of Section 34 of the Specific Relief Act, and the effect of the liberty granted by the Supreme Court in SLP (C) No. 20971/2006 on 11.12.2006, if any?

(iii) Whether the respondent was entitled to the declaration as sought in the suit?”

11. In exercise of my powers conferred under the Proviso of Sub-Section (5) of Section 100 CPC, I reframe the required substantial question of law which is to be answered in this second appeal as under:-

“Whether at all the suit of the respondent/plaintiff seeking in effect the continuation of services by seeking declaration as illegal the termination order dated 27.11.1969 was at all maintainable in view of the relevant provisions of the Apprentices Act?”

12. The relevant provisions which would be required for consideration are Sections 7, 18, 20 and 22 of the Apprentices Act and these provisions read as under:-

“Section 7. Termination of apprenticeship contract - (1) The contract of apprenticeship shall terminate on the expiry of the period of apprenticeship training.

(2) Either party to a contract of apprenticeship may make an application to the Apprenticeship Adviser for the termination of the contract, and when such application is made, shall send by post a copy thereto to the other party to the contract.

(3) After considering the contents of the application and the objections, if any, filed by the other party, the Apprenticeship Adviser may, by order in writing, terminate the contract, if he is satisfied that the parties to the contract or any of them have or has failed to carry out the terms and conditions of the contract and it is desirable in the interests of the parties or any of them to terminate the same:

Provided that where a contract is terminated-

(a) for failure on the part of the employer to carry out the terms and conditions of the contract, the employer shall pay to the apprentice such compensation as may prescribed;

(b) for such failure on the part of the apprentice, the apprentice or his guardian shall refund to the employer as cost of training such amount as may be determined by the Apprenticeship Adviser.

(4) Notwithstanding anything contained in any other provision of this Act, where a contract of apprenticeship has been terminated by the Apprenticeship Adviser before the expiry of the period of apprenticeship training and a new contract of apprenticeship is being entered into with a employer, the Apprenticeship Adviser may, if he satisfied that the contract of apprenticeship with the previous employer could not be completed because of any lapse on the part of the previous employer, permit the period of apprenticeship training already undergone by the apprentice with his previous employer to be included in the period of apprenticeship training to be undertaken with the new employer.

Section 18. Apprentices are trainees and not workers.- Save as otherwise provided in this Act,-

(a) every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be trainee and not a worker; and

(b) the provisions of any law with respect to labour shall not apply to or in relation to such apprentice.

Section 20. Settlement of disputes.- (1) Any disagreement or dispute between an employer and an apprentice arising out of the contract to apprenticeship shall be referred to the Apprenticeship Adviser for decision.

(2) Any person aggrieved by the decision of the Apprenticeship Adviser under sub-section (1) may, within thirty days from the date of communication to him of such decision, prefer an appeal against the

decision to the Apprenticeship Council and such appeal shall be heard and determined by a committee of that Council appointed for the purpose.

(3) The decision of the Committee under subsection (2) and subject only to such decision, the decision of the Apprenticeship Adviser under subsection (1) shall be final.

Section 22. Offer and acceptance of employment- (1) Every employer shall formulate its own policy for recruiting any apprentice who has completed the period of apprenticeship training in his establishment.

(2) Notwithstanding anything in sub-section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract:

Provided that where such period of remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable, and the period or remuneration so revised shall be deemed to be the period of remuneration agreed to between the apprentice and the employer.” (underlining added)

13. These aforesaid sections, especially Sections 7(1) and 22, when read with the Apprenticeship Contract which has been reproduced above shows that ordinarily an Apprenticeship Contract comes to an end on efflux of time. In this case, the Apprenticeship Contract expired by efflux of time on 26.5.1969 inasmuch as the Apprenticeship Contract was for a period of two years w.e.f. 26.5.1967. Though, the respondent/plaintiff thereafter continued as an apprentice, it is not clear as to for what period the Apprenticeship Contract was extended, and for the sake of the present decision, I would take that the Apprenticeship Contract was extended for a period of two more years from 26.5.1969.

14. The issue is that even if there is an illegal termination of the apprenticeship during the period of Apprenticeship Contract, what would be the relief which an apprentice would be entitled to. The provision of Section 7(1) of the Apprentices Act is that the Apprenticeship Contract terminates on the expiry of the training period contract with Sub-Sections (2) & (3) thereof providing for termination of the contract during the term of the Apprenticeship Contract. In this regard Sub – Section (3) Proviso (a) makes it clear that the maximum entitlement of an apprentice, whose Apprenticeship Contract has been illegally terminated is to seek compensation. This aspect is indeed relevant in the present case moreso because the contract in question admittedly contains para VI clearly stating therein that the apprentice, after the expiry of the Apprenticeship Contract period, will not be entitled to either permanent or temporary employment with the appellant/defendant. Therefore, the courts below have committed a clear cut gross illegality and perversity, thus raising a substantial question of law, in not applying the provisions of Section 7(3) Proviso (a) of the Apprentices Act inasmuch as the entitlement of an apprentice on illegal termination is not for continuation of the Apprenticeship Contract but only for compensation. In fact, the judgments of the courts below also result in a complete and gross illegality because after

holding the termination of contract to be illegal, the courts below have not specified what would be the outer limit of the period of employment of the respondent/plaintiff as an apprentice with the appellant/defendant company. The effect of the impugned judgment is to continue with the Apprenticeship Contract of the respondent/plaintiff with the appellant/defendant for all times to come. Obviously, this relief so granted was completely against the claim in the plaint as also the respective provisions of the Apprentices Act, including Section 7(3) Proviso (a) i.e even assuming the contract could not have been validly terminated and had to expire by normal efflux of time under Sub- Section (1) of Section 7 of the Act or after an extended period, even in such circumstances, the entitlement of the respondent/plaintiff would only be to the apprenticeship fee as specified in the Apprenticeship Contract or monetary compensation, and there could not be any relief granted of continuation of the Apprenticeship Contract of the respondent/plaintiff, and that too for an interminable period of time.

15. I may note that as per the provision of Section 20 of the Apprentices Act, there is a provision for settlement of disputes by the Apprenticeship Adviser and which decision would include a decision on the disputes which are the subject matter of Section 7(3) Proviso (a)

of the Apprentices Act, and in this case the parties had undergone this procedure, but there was no settlement between the parties. In any case, the failure of settlement would not mean an entitlement to the respondent/plaintiff for any relief larger than what is otherwise provided by the Apprenticeship Contract and when read with the relevant provisions of the Apprentices Act as already reproduced above.

16. Also because of the provision of Section 22 of the Apprentices Act, and read with Para VI of the Apprenticeship Contract, there was no entitlement of the respondent/plaintiff to secure either temporary or permanent employment with the appellant/defendant after completion of the period of his employment as an apprentice and hence the period of employment of the respondent/plaintiff with the appellant/defendant has necessarily to come to an end at the expiry of the period of apprenticeship.

17. It is unfortunate that the present litigation has now continued for 43 years no less. For the entitlement of the respondent/plaintiff of a few thousand rupees, innumerable man-hours, as also actual monies running into lacs of rupees of the appellant/defendant have been spent, and, what to talk of the valuable

judicial time which has been spend in deciding the case which has in fact reached to this level of the High Court.

18. I may also note that almost around 1½ years back, there was a talk of compromise whereby the appellant/defendant had without prejudice to its rights offered a sum of Rs.5,00,000/- to the respondent/plaintiff in full and final settlement of the claims of the respondent/plaintiff, and which figure in the opinion of this Court was inflated probably a 100 times over the legal claim of the respondent/plaintiff, but the respondent/plaintiff however did not accept this offer, and hence this appeal has to be decided on merits.

19. In view of the above discussion, the substantial question of law is answered in favour of the appellant/defendant and it is held that the judgments of the courts below are completely perverse and wholly illegal, and are therefore set aside. Suit of the respondent/plaintiff seeking declaration of quashing of the termination order and therefore of continuation of the respondent/plaintiff as an apprentice with the appellant/defendant for an interminable period being completely misconceived and against the provisions of the Apprentices Act is dismissed/rejected. Although, I was inclined to impose costs of at least Rs.50,000/- upon the respondent/plaintiff for

continuing this litigation for more than 42 years, however, taking a lenient view, no costs are imposed.

20. This second appeal is allowed and disposed of in terms of the aforesaid discussion.

MAY 08, 2017
Jyoti matta

VALMIKI J. MEHTA, J

