

**Manish Vs. Sandeep**

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**Court :** Madhya Pradesh

**Decided On :** May-10-2002

**Reported in :** 2002(3)MPHT565

**Judge :** S.P. Khare, J.

**Acts :** [Contract Act, 1872](#) - Sections 27; [Constitution of India](#) - Article 19(1); [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 2

**Appeal No. :** Civil Revision No. 425/2002

**Appellant :** Manish

**Respondent :** Sandeep

**Advocate for Def. :** A.K. Sethi, Adv.

**Advocate for Pet/Ap. :** Ajay Gupta, Adv.

**Disposition :** Civil revision dismissed

**Judgement :**

ORDER

**S.P. Khare, J.**

1. This is a revision by the defendant challenging the appellate order by which the plaintiffs application for temporary injunction has been allowed and the defendant

has been restrained from conducting 'same or similar courses' as those covered by the agreement for a period of 'six months' after setting aside the order of the Trial Court which had refused to grant this interim relief.

2. It is not in dispute that the plaintiff is the proprietor of 'Professional Tutorials' and there was agreement dated 30-4-1998 between him and the defendant by which the latter was granted the franchise for the use of 'P.T. Training Courses' at Bhopal. It is stated in the agreement that the plaintiff has developed and conducts training courses called 'P.T. Training Services' which include instruction methodology, courseware, operational systems, methods and all associated expertise. The franchisee was allowed to have access to use P.T. Services for providing training to end users at Bhopal. The franchisee agreed to strictly abide by copyright restriction, regarding use and reproduction of courseware and any other written material supplied by the franchiser. The franchisee agreed not to conduct directly or indirectly training courses similar to those covered under the agreement. There was further stipulation in Clause 5 (b): 'Following expiry or termination of this agreement, by whatever reason, the franchisee agrees not to conduct 'the same or similar courses' directly or indirectly, as those covered under this agreement, for a period of six months'. This agreement was for three years. It was renewed for four years from 1-5-2001 on the same terms and conditions. The agreement could be terminated on three months' notice by either party. The defendant terminated the contract on 19-1-2002 by sending an E-mail to the plaintiff. There was no three months' notice as provided in the agreement.

3. The plaintiff's case is that the defendant has started similar courses in the name of 'Path Finder' from January, 2002 and diverted the students of Professional Tutorials to those classes. The plaintiff has filed the civil suit seeking the relief that the defendant should be restrained from doing so. In this suit the application for temporary injunction has also been filed praying for the same relief.

4. The defendant's case is that the aforesaid negative covenant being in restraint of trade or business is void as per Section 27 of the Contract Act. It is violative of the fundamental right of the defendant to carry on any trade or business guaranteed by Article 19(1)(g) of the [Constitution of India](#). The plaintiff can claim

compensation for breach of the contract, if any, but he cannot be granted the relief of injunction claimed by him.

5. The Trial Court held that the agreement in Clause 5 (b) being in restraint of trade is prima facie not enforceable and declined to grant the relief of temporary injunction. The Appellate Court held that the said agreement is not violative of Section 27 of the Contract Act and it is binding on the defendant and in that view of the matter it has set aside the order of the Trial Court and granted the relief of temporary injunction.

6. In this revision it has been reiterated on behalf of the defendant that the negative covenant in Clause 5 (b) of the agreement being in restraint of trade is void and it is unenforceable. On the other hand it is argued that keeping in view all the terms and conditions of the agreement the said covenant is for advancement of trade and not in restraint of trade.

7. Section 27 of the Contract Act provides that 'every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void'. There is an Exception to this section saving the agreement not to carry on business of which goodwill is sold. This Exception is admittedly not attracted to the present case.

8. There is freedom to every individual to carry on any lawful profession, trade or business and there is also freedom to enter into any lawful contract with anyone. The freedom of contract many times is to advance the freedom to any on the profession, trade or business. There has to be a fine balance between the two freedoms guaranteed by the law. There must be a synthesis or reconciliation between the two theories when they come in conflict with each other. The object should be to harmonise the two.

9. In *Superintendence Company of India v. Krishna Murgai*, (1981) 2 SCC 246, there was a contract between an employer and an employee by which it was provided that the employee would not be permitted to join any firm of the competitor of the employer or run a business of his own in similarity for a period of two years at the place of his last posting after he 'leaves' the company. The

employer terminated the services of the employee. It was held by the Supreme Court that the employee did not leave the company but his services were terminated by the employer and therefore, the restrictive covenant was inapplicable. A.P. Sen, J., concurring with the majority expounded the law on Section 27 of the Contract Act and held that under this provision, which is in general terms, a service contract, which has for its object a restraint of trade, whether general or partial, unqualified or qualified, extended beyond the termination of service is prima facie void. The onus rests upon the covenantee to prove that the restraint is 'reasonable'. It was further observed that there exists a difference in the nature of the interests sought to be protected in the case of an employee and of a purchaser and, therefore, as a positive rule of law, the extent of restraint permissible in the two types of cases is different. Employee covenants should be carefully scrutinised because there is inequality of bargaining power between the parties.

10. It has been observed in para 28 of the judgment that there is nothing in the wordings of Section 27 to suggest that the principle stated therein does not apply when the restraint is for a limited period only or is confined to a particular area. Again in para 35 it is stated that a contract in restraint of trade is one by which a party restricts his future liberty to carry on his trade, business or profession in such manner and with such persons as he chooses. A contract of this class is prima facie void, but it becomes binding upon proof that the restriction is justifiable in the circumstances as being reasonable from the point of view of the parties themselves and of the community. Then in para 52 it is said neither the test of reasonableness nor the principle that restraint being partial was reasonable are applicable to a case governed by Section 27 of the Contract Act unless it falls within Exception I. Then finally it has been held that under Section 27 a service covenant extended beyond the termination of service is void.

11. In *Gujrat Bottling Company Ltd. and Ors. v. Coca Cola Company and Ors.*, (1995) 5 SCC 545, the agreement in question was an agreement for grant of franchise and it was a commercial agreement. The negative stipulation was confined in its application to the period of subsistence of the agreement and the said stipulation could not be held to be in restraint of trade so as to attract the bar

of Section 27 of the Contract Act. It was held that the purpose of the said agreement is to promote the trade and the negative stipulation seeks to achieve the said purpose. It is pointed out that the rule in England now is that restraints, whether general or partial, may be good if they are reasonable and any restraint on the freedom of contract must be shown to be reasonably necessary for the purpose of freedom of trade. The Court has to decide, as a matter of law, (i) whether a contract is or is not in restraint of trade, and (ii) whether if in restraint of trade, it is reasonable. Instead of segregating two questions, the Courts have often fused the two by asking whether the contract is in 'undue restraint of trade'. It is further said that the question of reasonableness of restraint is outside the purview of Section 27 of the Contract Act and need not be gone into. The Courts in India have only to consider the question whether 'the contract is or is not in restraint of trade'. On this premise it was held that the restriction imposed therein being operative only during the period the agreement is subsisting, the said stipulation cannot be held to be 'in restraint of trade'. The principle which was culled out is 'a stipulation in a contract which is intended for advancement of trade shall not be regarded as being in restraint of trade. Similarly, except in cases where the contract is wholly one sided, normally the doctrine of restraint of trade is not attracted in cases where the restriction is to operate during the period of contract is subsisting and it applies in respect of a restriction which operates after the termination of the contract. The underlying principle governing contracts in restraint of trade is the same and as a matter of fact the Courts take a more restricted and less favourable view in respect of a covenant entered into between an employer and an employee as compared to a covenant between a vendor and a purchaser or partnership agreements'. It is further observed that 'there is a growing trend to regulate distribution of goods and services through franchise agreements providing for grant of franchise by the franchiser on certain terms and conditions to the franchisee. Such agreements often incorporate a condition that the franchisee shall not deal with competing goods. Such a condition restricting the right of the franchisee to deal with competing goods is for facilitating the distribution of the goods of the franchiser and it cannot be regarded as in restraint of trade'.

12. Now applying the principles of law laid down in the two decisions cited above to the present case it cannot be held that the stipulation in Clause 5 (b) is in restraint of trade. The defendant by entering into the franchise agreement derived the benefit of having access to the expertise developed in P.T. Training Courses. The defendant could not independently conduct training courses similar to those covered under the agreement during the subsistence of the contract. This was a valid stipulation as per law laid down in Coca Cola's case cited above. The termination of the agreement is not by the franchiser but by the franchisee. The term of the renewed agreement was for four years from 1-5-2001. The defendant unilaterally terminated the contract before its expiry. Therefore, on the facts and in the circumstances of the present case, it cannot be held that the term of the contract that the franchisee would not conduct the same or similar courses as those covered under the agreement, for a period of six months after the termination of the agreement is 'in restraint of trade' but it was for 'advancement of trade'. For smooth flow of trade and commerce and specially for business and franchise agreements such a covenant limited in point of time and for the courses covered by the agreement should be permissible and would not be in restraint of trade. It would be in overall business interest. The order passed by the Appellate Court is unassailable. Such an order of interim injunction can be granted under Order 39 Rule 2, CPC to prevent the breach of the contract.

13. The revision is dismissed.

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