

Y.K. Sethi Vs. Basf India Limited and ors.

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Court : Delhi

Decided On : Aug-11-2009

Reported in : (2010)ILLJ493Del

Judge : S. Muralidhar, J.

Acts : [Indian Contract Act, 1872](#) - Sections 14, 19, 19A and 23; [Constitution of India](#) - Articles 12, 14 and 226; [Limitation Act, 1963](#) - Schedule - Article 58; [Companies Act, 1956](#) - Sections 617; Service, Discipline and Appeal Rules, 1979 - Rule 9(1)

Appeal No. : CS (OS) 1761/2006

Appellant : Y.K. Sethi

Respondent : Basf India Limited and ors.

Advocate for Def. : Ashwani Kumar and ; Akshay Sahai, Advs.

Advocate for Pet/Ap. : Pardeep Gupta and; Suresh Bharti, Advs

Disposition : Petition dismissed

Judgement :

S. Muralidhar, J.

1. This is a suit for declaration that an order dated 4th July 2006 passed by the defendants terminating the services of plaintiff is liable to be set aside with all consequential benefits. The plaintiff has also claimed Rs. 1 crore as damages together with interest at 24% p.a. with effect from the date of filing of the suit.

2. By an order dated 11th April 2008 this Court permitted the plaintiff to amend the prayer clause for a declaration that Clause 8 of the appointment letter dated 11th July 1997 is void under Section 23 of the [Indian Contract Act, 1872](#) and Article 14 of the [Constitution of India](#).

3. After completion of pleadings, this Court by an order dated 26th November 2008 framed the issues. The first issue was whether Clause 8 of the appointment letter dated 11th July 1997 is null and void in view of Section 23 of the [Indian Contract Act, 1872](#). The court further directed that this issue should be treated as a preliminary issue. The submissions of counsel for the parties have been heard on this issue.

4. Counsel for the plaintiff refers to the appointment letter dated 11th July 1997 and in particular Clauses 7 and 8 which read as under:

7. Superannuation: You will retire from the services of the Company on the attainment of 60 years of age.

8. Notice of termination: After confirmation, this appointment is terminable by giving three months notice on either side or three months basic salary in lieu thereof.

It is submitted that there is a specific averment in ground (B) that due to unemployment the defendant company prevailed upon the plaintiff and forcibly incorporated the said Clause 8 in the appointment letter against the will and wishes of the plaintiff.

5. On the strength of the judgment of the Supreme Court in Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly : (1986) 3 SCC 156, it is submitted that the said Clause 8 is opposed to public policy and therefore violates Section 23 of the [Indian Contract Act, 1872](#). Reference is also made to Section 14

of that Act which defines `free consent. It is submitted that in the context of the present case the consent of the plaintiff was given on account of the undue influence of the employer and therefore the consent was not free. It is submitted that such a contract contained thereof by undue influence is also voidable in terms of Section 19 and 19A of the same Act. It is submitted by the learned Counsel for the Plaintiff that with the plaintiff having averred that he was prevailed upon to agree to the letter of appointment, the burden of showing that the clause in question is not opposed to the public policy shifts to the Plaintiff. It is accordingly submitted that the preliminary issue should be answered in favour of the Plaintiff and against the Defendants.

6. Learned Counsel for the defendants submits that the appointment letter of 1997 incorporated a paragraph which gave an option to the employee to sign the duplicate of the letter after full and mature consideration, in agreement and acceptance of the terms and conditions. It is submitted that this is a standard form of contract where an appointment in the private sector is made terminable by giving three months notice or three months basic salary in lieu of notice. Therefore, there is nothing unconscionable about such a clause in the contract. It is submitted that the judgment of Central Inland Water Transport Corporation Limited (*supra*) was in the context of public employment particularly given that the corporation in the said case was covered under the definition of State under Article 12 of the Constitution.

7. It is further submitted by learned Counsel for the Defendants that the limitation for seeking a declaration was three years in terms of Article 58 of the Schedule of the [Limitation Act, 1963](#). As the appointment letter is dated 11th July 1997, the suit having been filed in 2006 is clearly barred by limitation as far as this prayer is concerned.

8. Having considered the submissions of learned Counsel for the parties, it appears to this Court that the Plaintiff has been unable to show that Clause 8 of the appointment letter dated 11th July 1997 is opposed to public policy and is therefore violative of Section 23 of the [Indian Contract Act, 1872](#). The burden on the Plaintiff to show that Clause 8 is opposed to public policy cannot be

discharged by a mere averment that the defendant had prevailed upon the Plaintiff and forcibly incorporated the said Clause 8 in the appointment letter against the will and wishes of the Plaintiff. The appointment letter dated 11th July 1997 incorporated a specific paragraph which reads as under:

If you agree after full and mature consideration, with the terms and conditions, kindly sign the duplicate of this letter signifying your agreement and acceptance of the same.

9. There is no averment in the plaint that the plaintiff signed the duplicate of the letter signifying his acceptance of the terms and conditions duress. By letter dated 16th January, 1998 the plaintiffs services were confirmed and he was given promotion from time to time. The letter of termination dated 4th July 2006 was a termination simpliciter. The relevant portion of the said letter reads as under:

As per Clause 8, of your contract of employment dated 11th July 1997, we wish to inform you that the said contract of employment is being terminated with immediate effect i.e. 4th July 2006. The salary in lieu of notice period alongwith other statutory payment including unavailed leave to your credit will be credited to your account.

10. At no point in his entire tenure of over 9 years of employment, did the Plaintiff make an issue of Clause 8 of the letter of appointment. The plea that a certain clause is unconscionable only because it gives no option to the employee to accept such a clause has to be based upon some factual foundation. The plaintiff has to be specific as to in what manner and at the instance of whom the Plaintiff was compelled to accept such a clause. On a reading of the plaint there is no such factual foundation that has been laid to enable this Court to adjudicate whether in fact in the context and setting in which it appears, Clause 8 of the letter dated 11th July 1997 is hit by Section 23 of the Contract Act.

11. The decision in Central Inland Water Transport Corporation Limited (supra) involved a Government company which answered the description of a company under Section 617 of the [Companies Act, 1956](#). A challenge was made in the said case in writ petitions under Article 226 of the Constitution of validity of Rule 9(1) of

the Service, Discipline and Appeal Rules, 1979. Two questions were formulated by the Supreme Court for consideration as reflected in para 1 of the judgment. These read as under:

(1) Whether a government company as defined in Section 617 of the [Companies Act, 1956](#), is the State within the meaning of Article 12 of the Constitution?

(2) Whether an unconscionable term in a contract of employment is void under Section 23 of the [Indian Contract Act, 1872](#), as being opposed to public policy and, when such a term is contained in a contract of employment entered into with a government company, is also void as infringing Article 14 of the Constitution in case a government company is the State under Article 12 of the Constitution.

12. There can be no manner of doubt that the question concerning Section 23 of the Act was considered in *Brijo Nath Ganguly*. However, the employer was a Government company that answered the description of State within the meaning of Article 12. Question 2 also indicates that the issue concerning unconscionable term of contract in terms of Section 23 of the Act was in the context of Article 14 of the Constitution in case a government company is the State under Article 12 of the Constitution. The attempt therefore to apply the ratio of *Central Inland Water Transport Corporation Limited* to all employees in the private sector, is, in the considered view of this Court is misconceived. For employees in the private sector, when an employee comes forward to challenge a clause in the letter of appointment on the ground of it being opposed to public policy, such challenge will have to be preceded by some factual foundation. The Plaintiff has not been able to lay any such factual foundation in the instant case.

13. Accordingly, issue No. 1 is answered against the plaintiff. In view of the decision on Issue No. 1 none of the other reliefs are capable of being granted. As regards the plaintiffs claim for provident fund and other terminal benefits, an order to this effect has been passed by this Court on 11th April 2008 in IA No. 10208/2006. In addition it is reiterated by the learned Counsel for the defendant that all terminal benefits admissible to the plaintiff in terms of the appointment letter dated 11th July 1997 and the letter dated 4th July 2006 will be made available to the plaintiff if he approaches the defendants.

14. The suit is accordingly dismissed with costs. Records be consigned.

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