CASE NO.:
Appeal (civil) 2429 of 2003

PETITIONER:
U.P. State Electricity Board.

RESPONDENT:
Shiv Mohan Singh & Anr.

DATE OF JUDGMENT: 01/10/2004

BENCH:
S.B. Sinha

JUDGMENT:
J U D G M E N T
W I T H
CIVIL APPEAL NOS. 8383 TO 8386, 7005-06,
9231 TO 9234 & 9679 TO 9681 & 9683 OF 2003 AND
C.A. NOS. 14, 122, 1965, 2193 OF 2004

S.B. SINHA, J :

Section 2(z) of the U.P. Industrial Disputes Act, 1947 defines 'Workman' to mean "any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute,\005." A workman includes apprentice in terms of the said provision.

U.P. Industrial Disputes Act, 1947, is a general law. The Parliament enacted Apprentices Act, 1961 (for short 'the said Act') which is a special law. It deals with the regulation and control of training of apprentices and for matters connected therewith.

The special statute, therefore, shall prevail over the general statute having regard to the maxim "generalia specialibus non derogant [See Talcher Municipality Vs. Talcher Regulated Mkt. Committee & Anr., [(2004) 6 SCC 178].

The said Act is a complete code in itself. An apprentice, as defined in Section 2(aa) of the said Act, is a person who enters into a contract of apprenticeship for the purpose of undergoing apprenticeship training in a designated trade. Entering into a contract of apprenticeship, therefore, is the basis for attracting the provisions of the said Act.

The primal question which arises for consideration is as to whether a person who is an apprentice within the meaning of Section 2(aa) of the said Act would become a workman and, consequently, would be entitled to the benefits of various labour laws in the event of breaches of the terms of the said contract as also non-registration thereof.

It is neither in doubt nor in dispute that an 'apprentice' within the meaning of the provisions of the said Act would per se not be a workman within the meaning of Section 2(z) of the U.P. Industrial Disputes Act. It is further not in dispute that in terms of Section 18 of the Act the

apprentices being trainees and not workers would not be entitled to the benefits of provisions of any labour laws.

Section 4(1) of the said Act provides that a contract of apprenticeship will have to be executed by the employers and the apprentice before the apprenticeship training begins. Such training commences as soon as the said contract is executed. Sub-sections (4) and (5) of Section 4 of the said Act, however, provide that every contract of apprenticeship shall be sent to the Apprenticeship Advisor for registration within the period prescribed therefor whereupon, he would register the same if he is satisfied that they meet the qualifications provided in Section 3 thereof.

It is relevant to notice at this juncture that prior to amendment of the said Act in the year 1973 by Act No. 27 of 1973, Section 4 postulated that apprenticeship training would not commence till a contract of apprenticeship was entered into by and between the apprentice and the employer and the same was registered with the Apprenticeship Advisor. The provision of Section 4 of the said Act as it existed prior to 1973 assumes importance for the purpose of interpretation thereof.

It is furthermore not in dispute that the said amendment was brought about with a view to avoid delay in commencement of training of the apprentices.

Mr. R. Venkataramani, learned senior counsel appearing on behalf of the Respondents would suggest that despite such amendment the importance of the registration of the contract of apprenticeship cannot be held to be diluted having regard to the expressions used therein which are imperative in character. The learned counsel is not entirely correct.

Ordinarily, although the word "shall" is considered to be imperative in nature but it has to be interpreted as directory if the context or the intention otherwise demands. (See M/s. Sainik Motors, Jodhpur and others, Vs. State of Rajasthan, AIR 1961 SC 1480, para 12)

It is important to note that in Crawford on Statutory Construction at page 539, it is stated :

"271. Miscellaneous Implied Exceptions from the Requirements of Mandatory Statutes, In General.-Even where a statute is clearly mandatory or prohibitory, yet, in many instances, the courts will regard certain conduct beyond the prohibition of the statute through the use of various devices or principles. Most, if not all of these devices find their jurisdiction in considerations of justice. It is a well known fact that often to enforce the law to its letter produces manifest injustice, for frequently equitable and humane considerations, and other considerations of a closely related nature, would seem to be of a sufficient caliber to excuse or justify a technical violation of the law."

It is no doubt true that the Apprenticeship Advisor has certain statutory duties and functions as contained in Sections 4(5), 5, 7, 8, 9, 10, 15 and 29. It is furthermore true that Sections 19 and 20 provide for certain obligations upon the employer to obtain approval of the Apprenticeship Advisor and forward the records to the concerned authorities.

Similarly, the rules framed under Section 37 of the Act confer certain benefits upon the apprentices. If an employer fails to perform his statutory duties or deprives an apprentice from the benefits to which he is entitled to, the Apprenticeship Advisor can file an appropriate complaint before a competent court of law. In terms of Section 31 of the Act the only penalty which can be imposed upon the employer is fine which shall not be

less than one thousand rupees but may extend to three thousand rupees. Violation of the provisions of the Act, therefore, does not result in imprisonment.

A question which also arises for consideration is as to whether Section 18 of the said Act must be strictly construed.

If a contract of apprenticeship is entered into; the violation of the terms and conditions thereof, in our opinion, although may lead the penal consequences but the same would not render the contract of apprenticeship void or illegal.

In the event, the Apprenticeship Advisor obtains informations about such violations, he is entitled to take suitable steps in that behalf under the Act or the rules but he has not been conferred with any power to declare such contract of apprenticeship to be ipso facto void ab initio. Section 20 also provides resolution of disputes between an apprentice and the employer arising out of the contract of apprenticeship which shall be referred to the Apprenticeship Advisor for decision. While resolving a conflict by and between an employer and an apprentice under Section 20 of the said Act, indisputably he can issue directions which the employer will have to comply with and on his failure to do so, he would run the risk of being prosecuted in terms of Section 30 of the Act, but even in such a situation he cannot bring an end to the contract. The contract of apprenticeship like any other contract can be brought to an end by the parties thereto.

Once a contract of apprenticeship commences, the same cannot be brought to an end except in accordance with law. By reason of non-registration of the contract of apprenticeship, the same does not become a nullity. If it is to be held that by reason of non-registration of such contract of apprenticeship the contract itself comes to an end, it would be detrimental to the interest of the apprentices, which would frustrate the object of the Act.

The definition of 'Apprentice' nowhere states that an apprentice with a view to obtain the benefits of the said Act must also be registered. Section 18 of the said Act says that an apprentice shall not be a worker. It does not say that an unregistered apprentice shall be a worker.

Only because the expression "shall" has been employed in sub-section (4) of Section 4, the same may not be held to be imperative in character having regard to the fact that not only, as noticed hereinbefore, a contract of apprenticeship commences but also in view of the fact that an application for registration of apprenticeship contract is required to be made within a period of three months in terms of Rule 4B of the Apprenticeship Rules, 1962. The Act nowhere provides for the consequences of non-registration.

It is not in dispute that the list of apprentices used to be sent by the Apprenticeship Adviser himself and, thus, presumably the preliminary scrutiny in that regard had been made by the said authority. If in a given case, as noticed hereinbefore, the employer fails to get the contract of apprenticeship registered and/or fails to carry on his obligations in terms of Section 11 of the Act, he faces penal consequences in terms of Section 31 of the Act. The employer, furthermore, is liable to pay compensation for termination of apprenticeship as would appear from Rule 6 of the Apprenticeship Rules, 1962, which reads thus :

"Compensation for termination of apprenticeship.-
Whereas the contract of apprenticeship is terminated through failure on the part of any employer in carrying out the terms and conditions thereof, such employer shall be liable to pay the apprentice compensation of an amount equivalent to is three months' last drawn stipend; and when

the said termination is due to failure on the part of an apprentice in the above manner, then a training cost of an amount equivalent to his three months last drawn stipend shall be made recoverable from such apprentice or from his guardian in case he is minor."

No provision of the Act or the rules framed thereunder was brought to our notice to show that non-registration of the contract of apprenticeship or violation and/or neglect on the part of the employer to comply with the other provisions of the Act it would result in invalidation of the contract. An apprentice remains an apprentice having regard to the definition contained in Section 2(aa) of the Act and continues to work in the said capacity. His status does not change to that of a workman only because the contract has not been registered or the employer has not carried out his obligations thereunder. If such a construction is placed, an apprentice may be held to have ceased to be an apprentice if he himself defaults in performing his obligations under the contract.

Recently, in Canbank Financial Services Ltd. Vs. The Custodian and Ors. [2004 (7) SCALE 495] this Bench has held that even if a benami transaction is prohibited the same per se would not render the transaction void ab initio and illegal.

It is now well-settled principle of law that if the language used in a statute is capable of bearing more than one construction, the true meaning thereof should be selected having regard to the consequences resulting from adopting the alternative constructions. A construction resulting in hardship, non-fulfillment of the purpose for which statute has been brought in force should be rejected and should be given that construction which avoids such results.

Sub-section (4) of Section 4 of the said Act can also be held to be directory having regard to the rule laid down in Heydon's case. [(1584) 3 Co. Rep. 7a]. [See Ashok Leyland Ltd. Vs. State of Tamil Nadu & Anr., (2004) 3 SCC 1 and Ameer Trading Corporation Ltd. vs. Shapoorji Data Processing Ltd. (2004) 1 SCC 702].

The mischief rule enables the court to take into consideration the following four factors for construing an Act:

(i) What was the law before the making of the Act,
(ii) What was the mischief or defect for which the law did not provide,
(iii) What is the remedy that the Act has provided, and
(iv) What is the reason of the remedy.

The rule then directs that the courts must adopt that construction which "shall suppress the mischief and advance the remedy".

Prior to 1973, the provision for registration was mandatory in character. Only having regard to the delay which has occasioned for registration of contract of apprenticeship, the said amendment had been brought about; pursuant whereto or in furtherance whereof the contract of apprenticeship commences. If the purpose of amendment was to make the contract workable even without registration, we fail to see any reason as to why the provision should be construed as imperative in character so as to render a contract of apprenticeship a nullity which is possible to be avoided and the object thereof can be achieved by taking recourse to the penal provisions.

It may be true that rules framed under Section 37 of the Act are required to be laid before both Houses of Parliament after formulation; but even such a provision is directory in nature.

It is not a case where any of the apprentices repudiated the contract. No argument has also been advanced to the effect that the contract of apprenticeship was merely a camouflage or a ruse so as to establish that in effect and substance, while appointing a person as an apprentice, the employer has been taking work from him malafide or with a view to deprive him from the benefits of the labour legislations, nor any material in respect thereof had been brought on records.

Whether a relationship of an employer and workman or an employer and an apprenticeship had been brought about, is essentially a question of fact. The Court while determining such a dispute must consider the factual matrix involved therein in the light of the provisions of the said Act. Once it is held that a contract of apprenticeship entered into by and between the employer and the workman is a genuine one and not a camouflage or a ruse, a presumption would arise that the concerned person is not a workman.

It is one thing to say that a contract is illegal being opposed to public policy so as to render the same void in terms of Section 23 of the Indian Contract Act but it is another thing to say that by reason of breaches of the terms and conditions thereof by one of the parties it becomes voidable at the instance of the other party to the contract. If a contract is valid in law the breaches thereof would not render it invalid but the same may only enable a party thereto, who had suffered by reason of such breach, to avoid the contract. Unless the terms and conditions of a contract are avoided by a party thereto the contract remains valid and all consequences flowing therefrom would enure to the benefit of the parties thereto.

Mr. Venkataramani has relied upon a decision of the Court of Appeals in F.C. Shepherd & Co. Ltd. Vs. Jerrom [(1986) 3 All ER 589] wherein it is stated:

"If the party against whom frustration is asserted can by way of answer rely on his own misconduct, injustice results\005."

Ex facie the said decision has no application in the present case. The plea of frustration was not pleaded or established. It is one thing to specify as what would be the legal consequences of a breach of a contract but it is another thing to say that despite subsistence of a valid contract, the statutory benefits thereof shall not enure to the parties thereto. In absence of any specific provision in the statute, we are unable to accede to the submissions of the learned counsel to the effect that in the event of commission of a breach by the employer the contract of apprenticeship shall become a contract of employment. Such a novation of contract is not contemplated in law.

With a view to become a workman, not only the apprentice has to show that he comes within the purview of the definition of the term 'workman' as contained in Section 2(z) of the U.P. Industrial Disputes Act, 1947 but he must further plead and establish that his job is such which fulfills the requirements of the said term. [See Mukesh K. Tripathi Vs. Sr. Divn. Manager, LIC & Ors. \026 JT 2004 (7) SC 232 = 2004 (7) SCALE 442].

In Bruton Vs. London and Quadrant Housing Trust, [1999] 3 All ER 481, a contract of tenancy was held to be binding upon the parties even though the grantor lacked the necessary power. A housing association which itself was a licensee granted a licence which in view of the decision in Street Vs. Mountford, [1985] AC 809 was treated to be a tenancy even though the housing association, being themselves mere licensees had no power to grant a legal tenancy valid against all the world. It is, therefore, necessary to ascertain as to how the parties to the contract thought

thereabout. Ordinarily, it is impermissible in law for a party to the contract of apprenticeship to allow it to be worked out and then contend that it was a contract of employment.

In The Employees' State Insurance Corporation and Another vs. The Tata Engineering & Locomotive Co. Ltd. and Another \026 (1975) 2 SCC 835, it was held :

"The concept of apprenticeship is, therefore, fairly known and has now been clearly recognized in the Apprentices Act. Apart from that, as we have noticed earlier, the terms and conditions under which these apprentices are engaged do not give any scope for holding that they are employed in the work of the company or in connection with its work for wages within the meaning of Section 2(9) of the Act..."

Decisions are galore to show that despite a contract of apprenticeship coming to an end, the concerned workman must fulfill the eligibility criteria of appointment. (See Rajendra Singh and Others Vs. U.P. State Electricity Board, Shakti Bhawan, Lucknow and Others, 2000 (86) FLR 155, Sri Chittaranjan Das Vs. Durgapore Project Limited & Ors., 1995 (2) CLJ 388, Babulal and Others Vs. Rajasthan State Road Transport Corporation and another, 2000 (84) FLR 847 and Mitrangshu Roy Choudhary Vs. Union of India & Others, (1999) 3 SCC 649)

A Division Bench of the Gujarat High Court in Ballkhan Doskhan Joya vs. Gujarat Electricity Board [2002 (92) FLR 914], whereupon Mr. Venkataramani, relied, observed :

"\005The Central Legislature was, therefore, fully alive to the situation that an apprentice, undergoing an apprenticeship training under an apprenticeship contract duly registered, would be only a 'trainee' and not a 'workman', to which other laws in respect of labour shall not apply. Therefore, in including, in the definition of 'workman', 'apprentice' as well, the legislative intention appears to be obvious that such apprentices, who are not undergoing apprenticeship training under a duly registered 'apprenticeship contract, envisaged by the Apprentices Act, and to whom provisions of Section 18 of the said Act are not applicable, would, nonetheless, be included in the definition of 'workman' under the I.D. Act and would get all the protection of labour laws. The learned single Judge may be right in his reasoning that even after non-registration of the contract of apprenticeship, the appellant would only be a 'trainee', or an 'apprentice', as intended by the parties and he would not be an 'employee' or a 'workman', within the meaning of the Apprentices Act. Even if, as stated by the learned single Judge, the appellant, as a result of non-registration of contract of apprenticeship, is deemed to be a trainee or an 'apprentice', he would, nonetheless, be covered within the definition of 'workman' under Section 2(s) of the I.D. Act."

The ratio enunciated in the said decision appears to be self-contradictory. An apprentice cannot both be an apprentice and a workman under the 1947 Act.

Similarly, the observations made by the Patna High Court in Ram Dular Paswan and Others vs. P.O. Labour Court, Bokaro Steel City and Others [1998 (80) FLR 399] to the effect that

"The Apprentices Act does not deal with the investigation and settlement of industrial disputes between the employer and the workmen. Therefore, so far as the settlement of the industrial disputes is concerned, the I.D. Act will prevail over the Apprentices Act. If the employer takes the kind of work mentioned in Section 2(s) of the I.D. Act from the apprentice, the dispute between them has to be settled under and in accordance with the said Act. But if the apprentice does not perform such work, the I.D. Act will not apply to him. The line of demarcation between the apprentice and the workman is very clear. If and when a question as to whether an apprentice is really an apprentice or is a workman wearing the mask of an apprentice, is raised the appropriate authority/Labour Court will have to apply mind to the nature of his work. The veil has to be lifted in order to find out the reality. But such a question cannot be decided merely on the basis of apprenticeship contract or on the basis of the label, which a person wears."

does not appear to be correct, particularly for the reasons that the High Court has failed to consider that Section 20 of the 1961 Act provides for settlement of disputes. Furthermore, as observed hereinbefore, such a contention has to be specifically pleaded and established.

Moreover in terms of Section 22 of the Act, the employer has no statutory liability to give employment to an apprentice.

We are, therefore, are of the considered view that non-registration of the contract of apprenticeship would not render the same nugatory.

Subject to the foregoing supplemental reasons, I respectfully concur with the judgment of Mathur, J.