PRINCIPLE OF SUFFICIENCY OF NOTICE UNDER THE STANDARD FORM OF CONTRACT: AN ANALYSIS OF JUDICIAL PERSPECTIVE

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Introduction:

The law of contract is that branch of the law which lays down basic general principles to be observed by the parties entering into contract and determines the circumstances in which a promise shall be legally binding on the person making it.

The principal characteristic of the law of contract is the principle of party autonomy, wherein it is for the parties to determine the terms and nature of an agreement and the function of the Court is to ascertain and to give effect to the rights and obligations to which the parties have agreed upon. Since the consent of parties is sine qua non of every contract,[1] there is lesser chance contract leading dispute, unless the consent is not a free consent.[2] This situation often exists in Standard Form of Contract.

Meaning:

Before understanding the role of Judiciary in protecting the rights and enforcing obligations under the Standard Form Contract, it is important to understand the meaning of same.

A standard-form contract is otherwise known as standardized contract. Standard-form contract is usually a preprinted contract containing set clauses. Such contract is mostly used by a business or within a particular industry by making slight additions or modifications in order to meet the specific situation. Since a standard-form contract favors the drafting party, they can amount to adhesion contracts. Unforeseeable contingencies affecting performance, such as strikes, fire, and transportation difficulties can be taken care of with the help of standard-form contract.[3]

Judicial perspective:

A dispute in standard form of contract often arise on the ground of absence of free consent. In order to protect the interest of parties affected by the lack of proper notice the common law courts have evolved the principle of 'Sufficient Notice.' Under the principle if a person is aware of terms of the contract at the time or before making the contract, he is bound by the terms otherwise if he is not aware of the terms and conditions of the contract he is not bound by them. In an English Courts decision,[4] it laid down necessity of existence of following essentials in order to seek courts intervention.

(i) One party was at a serious disadvantage in relation to the second party and the second party knew, or should have known in the circumstances, that this was so;

(ii) the second party has exploited or taken advantage of this situation; and

(iii) the resulting contract is unconscionable or oppressive.

Stressing on the free consent, House of Lords in a celebrated decision held that,[5] It is the duty of a party to a contract delivering a document to give adequate notice to the offeree of the printed terms and conditions. Where this is not done, the Courts view is that the acceptor will not be bound by the terms. The plaintiff could not be said to have accepted a term which he has not seen, of which he knew

nothing and which is not in any way ostensibly connected with that which is printed and written upon the face of the contract presented to him. [6]

In *Parker V. South Eastern Railway Company*[7] the plaintiff deposited a bag in a cloak-room at the defendants' railway station. He received a paper ticket which read "see back". On the other side were printed several clauses including a condition that:

"The company will not be responsible for any package exceeding the value of £10. The plaintiff presented his ticket on the same day but his bag could not be found. He claimed £24 10s as the value of his bag and the railway company pleaded the limitation clause in his defence. The plaintiff admitted that he knew there was writing on the ticket, but stated that he had not read it, and did not know or believe that the writing contained conditions.

Court reaffirmed with earlier decision in *Henderson* and held that,

i) If the person receiving the ticket did not see or know that there was any writing on the ticket, he is not bound by the conditions.

ii) If he knew there was writing, and knew or believed that the writing contained conditions, and then he is bound by the conditions.

iii) If he knew there was writing on the ticket, but did not know or be Have that the writing contained conditions, nevertheless he would be bound, if the delivering of the ticket to him in such a manner that he could see there was writing upon it, was reasonable notice that the writing contained conditions.

The principle of Notice laid down under these two decisions is known as the principle of "reasonable sufficiency of notice" and is followed in many subsequent decisions.[8]

In *Parker* v *Southeastern Railway* Co.[9], court held that, where reasonably sufficient notice of the existence of the terms is given, it would be no defense to say that the plaintiff was illiterate or otherwise unable to read.

DENNING LJ in *Spruling* v *Bradshaw*[10] stated that: "The more unreasonable a clause is, the greater the notice which must be given of it. Some clauses would need to be printed in *red ink with a red hand* pointing to it before the notice could be held to be sufficient."

In *McCutcheon V. David MacBrayne*[11]*, court* recognized custom as an exemption to the principle of sufficient notice and held that, "The common law view is that, for a trade custom to form an implied term of a contract, the custom must be generally accepted by those doing business in the particular trade in the particular place, and be so generally known that an outsider making reasonable enquiries could not fail to discover it."

Indian position

In India the Courts of law could declare a contract void or voidable only if it falls under one or other provision (i.e. sections 16, 19-A, 23, 27 and 28) of the Indian Contract Act 1872.

The principle of sufficient notice has been recognized by the *Rajasthan High Court in Singhal Transport V. Jesaram*[12]. In this case Court held that, "wherever, on the face of the goods, tickets words to the effect for conditions see back" are printed the person concerned is a matter of law held to be bound by the conditions subject to which the ticket is issued whether he takes care to read the conditions if they are printed on the back or to ascertain them if it is stated on the back of the ticket where they are to be found. Where on the other hand the words printed on the face of the ticket do

not indicate that the ticket is issued subject to certain conditions but there are merely words to the effect "see back" then it is question of fact whether or not the carrier did that which was reasonably sufficient to give notice of the condition to the person concerned. If however, conditions are printed on the back of the ticket, but there are no words at all on the face of it to draw the attention of the person concerned to them then it has been held he is not bound by the conditions.

In *International Oil Co. V. Indian Oil Corp.,*[13] there was a contract of agency to supply Kerosene between the plaintiff and the defendant. The defendant reserved a right under to contract to cancel the plaintiff's dealership at any time without assigning any reason. On cancellation of the agency by the defendant, the plaintiff filed a suit. The suit was decreed on the ground that the term in the contract to cancel the dealership of the plaintiff, was an unfair term. In appeal filed by the defendant the only question that arose for consideration before the High Court was whether the Indian Oil Corporation can terminate the agency with the plaintiff without any notice.

The Madras High Court held that such a clause in the contract is absolutely illegal, irregular and void. It is unfair on the part of the corporation to terminate the agency without due regard to the equities of an agent and without just provocation to cancel.

In M/s *Road Transport Corporation V. M/s Kirloskar Brothers Ltd.*[14] the question that arose for consideration before Bombay High Court was whether a consignment note which was not signed either by the consignee or by the consignor operates as a special contract given though the carrier had not brought such terms specifically to the notice of the consignor or consignee? The Division Bench of the Bombay High Court said that the most important question that has to be answered is: Did the defendant do what was sufficient to draw the plaintiffs attention to the relevant condition before the contract was concluded? In the facts of the present case the last condition was to restrict the jurisdiction to a particular Court out of the two Courts having concurrent jurisdiction. The consignment note must be signed by the consignor and consignee and constitute a contractual document or at least must be identified as an integral part of the contractual document. In case of unsigned document and unsigned consignment notes containing clauses limiting the liability of the carriers as well as excluding the jurisdiction of certain Courts and restricting it to specific Courts only, such clauses, terms or conditions must be brought to the notice of the consignor of the goods.

Application of Principle of notice in Contract of Employment

Central Inland Water Transport Corporation Ltd. v. *Brojo Nath Ganguly*[15]

In this case the appellant was a Government Company. There was another company carrying the same business as the Central Inland Water Transport Corporation, a scheme of arrangement was made between the said Corporation and that company with the approval of the High Court of Calcutta. Under the scheme of arrangement, an officer of the company could accept the job in the Corporation or in the alternative, leave the job and receive a meager amount by way of compensation. Rule 9(i) of the relevant Rules of the Corporation provided that the services of officers could be terminated by giving three months' notice. The petitioner's service was terminated and he challenged this rule as arbitrary under Article 14 of the Constitution and alleged that a term in contract of employment of this kind entered into a by a private employer which was unfair, unreasonable and unconscionable was bad in law.

Giving decision in an Appeal, the SC held that, clause (i) of Rule 9 of the "Service Discipline and Appeals Rules 1979" of the Central Inland Water Corporation Ltd. is void under Section 23 of

the Indian Contract Act, 1872 as being opposed to public policy and is also Ultra Vires Article 14 of the Constitution of India to the extent that it confers upon the Corporation the right to terminate the employment of a permanent employee by giving him three months' notice in writing or paying him the equivalent of three months' basic pay and dearness allowance in lieu of such notice.

Court in this rightly observed that,

"*The Court said the above principle would apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties or where the inequality is the result of circumstances, whether of the creation of the parties or not, or where the weaker party is in a position in which he could obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them or where a man had no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in the prescribed or standard form or to accept a set of rules as part of the contract, however, unfair, unreasonable and unconscionable a clause in that contract or form or rules might be.*"

The ratio of *Brojo Nath's* case was upheld in *Delhi Transport Corporation V. D.T.C. Mazdoor Congress*[16] case. The majority view was taken by four judges and minority view by Sabyasachi mukharji C.J. The Supreme Court held that there is no hesitation to conclude that the impugned Regulation 9(b) of the Regulations is arbitrary, unjust, unfair and unreasonable offending Article 14, 16(1) 19(l)(g) and 21 of the Constitution. It is also opposite to the public policy and thereby is void under Section 23 of the Indian Contract Act, 1872.[17]

In a similar case involving the question of termination of employment, the Division Bench of the Supreme Court held that conferment of "permanent" status on an employee guarantees security of tenure. It is now well settled that the services of a permanent employee, whether employed by the Government, or Government Company or Government instrumentality or Statutory Corporation or any other "Authority" within the meaning of Article 12, cannot be terminated abruptly and arbitrarily, either by giving him a month's or three months' notice or pay in lieu thereof or even without notice, notwithstanding that there may be a stipulation to that effect either in the contract of service or in the certified Standing Orders.[18]

Conclusion :

The principle of requirement of sufficient notice under the standard form of contract and the prevention of misuse of same by the parties in dominant position (for ex. Corporations, govt. agencies and authorities, as it was a case in *Brajo Nath*) is fine example of justice done on the merits of the case.

In the words of honorable SC, "As new situations arise the law has to evolve in order to meet the challenge of such new situations. Law cannot afford to remain static. The Court has to evolve new principles and lay down new norms which arise in highly industrialized economy. Therefore, when new challenges are thrown open, the law must grow as a social engineering to meet the challenges and every endeavor should made to cope with the contemporary demands to meet socio-economic challenges under rule of law and have to be met either by discarding the old and unsuitable or adjusting legal system to changing socio-economic scenario."[19] The above mentioned judicial pronouncements are no doubt have addressed the ever changing needs of socio economic conditions and have prevented misuse of contractual privileges by the dominating parties and set guiding principle to the prevent the same in future.

(Endnotes)

1 The doctrine of contract has two key aspects: that every person is free to enter into a contract with any person they choose and to contract on any terms they want.

2 For detais, see Ss. 14 to 22, Indian Contract Act, 1972

3 Available at, http://definitions.uslegal.com/s/standard-form-contract/, accessed on 09th Dec., 2015

4 Available at, http://shodhganga.inflibnet.ac.in:8080/jspui/bitstream/10603/52359/13/13_chapter%205.pdf, accessed on 09th Dec., 2015

5 *Henderson* v. *Stevenson, (1875)2HLSCApp.470.*

6 In this case the plaintiff bought a steamer ticket on the face of which was these words only: "Dublin to Whitehaven"; on the back there were printed some conditions, one of which excluded the liability of the company for loss, injury or delay to the passenger or his luggage. The plaintiff had not seen the back of the ticket, nor was there any indication on the face of the ticket about the conditions on the back. The plaintiff's luggage was lost in the shipwreck caused by the fault of the company's servants. He was held entitled to recover his loss

7 (1877)2CPD416

8 See for ex. *Chapelton V. Barry Urban District Council* (1940)1 All ER 356*; Richardson, Spence & Co. V. Rowntree* (1894) A.C. 217*; Sugar V. London Midland and Scottish Railway Company* (1941)1 All ER 172*; Olley V. Marlborough Court Ltd.* (1949) 1 All ER 127*; Thornton V. Shoe Lane Parking Ltd.* (1971)1 All ER 686*; Interfoto Picture Library Ltd. V. Stiletto Visual Programmes Ltd.,* (1988)1 All ER 348*, etc.*

9 [1877] 2 CPD 416

10 [1956] 1 WLR 461

11 (1964)1 All ER 430

12 AIR 1968 Raj-89

13 AIR 1969 Mad. 423

14 AIR 1981, Bom. 229

15 AIR 1986 S.C. 1571

16 AIR 1991 S.C. 101

17 Ibid, para 280

18 In *Uptron India Ltd. V. Shammi Bhan,* AIR 1998 S.C. 1681

19 M *C. Mehta V. Union of India,* (1980) 4 SCC1