PETITIONER:
NIRANJAN SHANKAR GOLIKARI

Vs.

RESPONDENT:
THE CENTURY SPINNING AND MFG. CO. LTD.

DATE OF JUDGMENT:
17/01/1967

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
BACHAWAT, R.S.

CITATION:
1967 AIR 1098 1967 SCR (2) 378
CITATOR INFO :
R 1980 SC1717 (6,15,19,23)

ACT:
Indian Contract Act (9 of 1872), s. 27--Public policy--Restraint on alternative employment during contracted period of service when justified.

HEADNOTE:
The appellant joined the service of the respondent company as Shift Supervisor and was given training in the manufacture of tyre cord yarn. The contract was for five years and it was stipulated that during the said period the appellant would not work in similar capacity in any other concern and would maintain secrecy as to the technical aspects of his work. However, shortly after completing his training the appellant joined a rival concern at higher emoluments. The respondent company thereupon filed a suit for an injunction against the appellant restraining him from working elsewhere as a shift Supervisor in the manufacture of tyre cord yarn or in similar capacity and from divulging the trade secrets of the respondent company. The injunction was granted. His appeal before the High Court having failed, the appellant came to this Court under Art. 136 of the Constitution. It was contended on his behalf that the covenant was against public policy within the meaning of s. 27 of the Indian Contract Act, that it was unreasonable, and that it was unnecessary for Safeguarding the trade interest of the company.
HELD: The appeal must fail.
(i) Negative covenants operative during the period of employment when the employee is bound to serve his employer exclusively are not to be regarded as restraint of trade and therefore do not fall under s. 27 of the Contract Act. A negative covenant that the employee would not engage himself in trade or business or would not get himself employed by any other master for whom he would perform similar or substantially similar duties is not a restraint of trade unless the contract as aforesaid is unconscionable or excessively harsh or unreasonable or one-sided [389 F]
Caselaw considered.
In the present case the injunction issued against the appellant was restricted as to time, the nature of the

employment and as to area and could not therefore be said to be too wide or unreasonable or unnecessary for the protection of the interests of the respondent company. [389 G-H]

(ii) There is nothing to prevent a court from granting a limited injunction to the extent that is necessary to protect the employers's interests where the negative stipulation is not void. The rule against severance applies only to cases where the covenant is bad in law, and it is only in such cases that the court is precluded from severing the good from the bad [390 D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2103 of 1966.

Appeal by special leave from the judgment and order dated April 28, 1966 of the Bombay High Court in First Appeal No. 526 of 1965.

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A. K. Sen, Rameshwar Dial and A. D. Mathur, for the appellant.

S. V. Gupte, Solicitor-General, R.P. Bhatt, R. A. Gagrat, G.L Sanghi and B. R. Agarwala, for the respondent.

The Judgment of the Court was delivered by

Shelat, J. This appeal by special leave is against the judgment and order of the High Court of Maharashtra confirming an order of injunction against the appellant.

The respondent company manufactures amongst other things tyre cord yarn at its plant at Kalyan known as the Century Rayon. Under an agreement dated January 19, 1961 Algemene Kunstzijde Unie of Holland (hereinafter referred to as AKU) and Vereinigte Clanzstoff Fabrikan AG of West Germany (hereinafter referred to as VCF) agreed to transfer their technical know-how to the .respondent company to be used exclusively for the respondent company's tyre cord yarn plant at Kalyan in consideration of 1,40,000 Deutsche Marks payable to them by the respondent company. Clause 4 of that agreement provided that the Century Rayon should keep secret until the termination of the agreement and during three years thereafter all technical information, knowledge know-how, experience, data and documents passed on by the said AKU and VCF and the Century Rayon should undertake to enter into corresponding secrecy arrangements with its employees. The respondent company thereafter invited applications for appointments in its said plant including appointments as Shift Supervisors. On December 3, 1962 the appellant sent his application stating therein his qualifications. By its letter dated March 1, 1963 the respondent company offered the appellant the post of a Shift Supervisor in the said tyre cord division stating that if the appellant were to accept the said offer he would be required to sign a contract in standard form for a term of five years. On March 5, 1963 the appellant accepted the said offer agreeing to execute the said standard contract. On March 16, 1963 he joined the respondent company and executed on that day the said contract Ex. 28.

Clause 6 of the agreement provided

"The employee shall during the period of his employment and any renewal thereof, honestly, faithfully, diligently and efficiently to the utmost of his power and skill

(a)

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(b) devote the whole of his time and energy exclusively to the business and affairs of the company and shall not engage directly or indirectly in any business or serve .Whether as principal, agent, partner or employee or in any other capacity either full time or part time in any business whatsoever other than that of the company."

Clause 9 provided that during the continuance of his employment as well as thereafter the employee shall keep confidential and prevent divulgence of any and all information instruments, documents, etc., of the company that might come to his knowledge. Clause 14 provided that if the company were to close its business or curtail its activities due to circumstances beyond its control and if it found that it was no longer possible to, employ the employee any further it should have option to terminate his services by giving him three months' notice or three months' salary in lieu thereof. Clause 17 provided as follows :

"In the event of the employee leaving, abandoning or resigning the service of the company in breach of the terms of the agreement before the expiry of the said period of five years he shall not directly or indirectly engage in or carry on of his own accord or in partnership with others the business at present being carried on by the company and he shall not serve in any capacity, whatsoever or be associated with any person, firm or company carrying on such business for the remainder of the said period and in addition pay to the company as liquidated damages 'an amount equal to the salaries the employee would have received during the period of six months thereafter and shall further reimburse to the company any amount that the company may have spent on the employee's training."

The appellant received training from March to December 1963 land acquired during that training, knowledge of the technique, processes and the machinery evolved by the said collaborators as also of certain documents supplied by them to the respondent company which as aforesaid were to be kept secret and in respect of which the respondent company had undertaken to obtain secrecy undertakings from its employees. According to the evidence, the appellant as a Shift Supervisor was responsible for the running of Shift work, control of labour and in particular with the specifications given by the said AKU.

No difficulty arose between the appellant and the respondent company until about September 1964. The appellant thereafter remained absent from the 6th to the 9th October 1964 without obtaining leave therefor. On the 10th October, he took casual leave. On

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October 12, he applied for 28 days'. privilege leave form October 14, 1964. Before that was granted he absented himself from the 14th to the 31st October, 1964. On October 31, he was offered salary for 9 days that he had worked during that month. On November 7, 1964, he informed the respondent company that he had resigned from October 31, 1964. The respondent company by its letter of November 23, 1964 asked him to resume work stating that his said resignation had not been accepted. On November 28, 1964 the appellant replied that he had already obtained another

employment.
It is clear from the evidence that in October he was negotiating' with Rajasthan Rayon Company at Kotah which was also manufacturing tyre cord yarn and got himself employed there ,at a higher salary of Rs. 560/- per month than what he was getting from the respondent company. The respondent company thereupon filed a suit in the court at Kalyan claiming inter alia an injunction restraining the appellant from serving in any capacity whatsoever or being associated with any person, firm or company including the said Rajasthan Rayon till March 15, 1968. The Company also claimed Rs. 2410/- as damages being the salary for six months, under Clause 17 of the said agreement and a perpetual injunction restraining him from divulging any or all information, instruments, documents, reports, trade secrets, manufacturing process, knowhow, etc. which may have come to his knowledge. The appellant,. while admitting that he was employed as a Shift Supervisor, denied that he was a specialist or a technical personnel asserting that his only duty was to supervise and control labour and to report deviations of temperature etc. He also alleged that the said agreement was, unconscionable, oppressive and executed under coercion and challenged its validity on the ground that it was opposed to public policy. He challenged in particular clauses 9 and 17 of the said agreement on the ground that whereas clause 9 was too wide as-it was operative not for a fixed period but for life time and included not only trade secrets but each and every aspect of information, clause 17 precluded him from serving elsewhere in any capacity whatsoever which meant a restraint on his right to trade or to carry on business, profession or vocation and that such a term was unnecessary for the protection of the respondent company's interests as an employer.
The Trial Court on a consideration of the evidence led by the parties held : (1) that the respondent company had established that the appellant had availed himself of the training imparted by the said AKU in relation to the manufacture of tyre cord yarn, the operation of the spinning machines and that he was made familiar with their know-how, secrets, techniques and information; (2) that his duties were not merely to supervise labour or to report
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deviations of temperature as alleged by him; (3) that the said agreement was not void or unenforceable;- (4) that he committed breach of the said agreement; (5) that as a result of the said breach the respondent company suffered loss and inconvenience and was entitled, to damages under clause 17 and lastly that the company was entitled to an injunction. On these findings the Trial Court passed the following order

> "(1) The injunction is granted against the defendant and he is restrained from getting in the employ of or being engaged or connected as a Shift Supervisor in the Manufacture of tyre cord yam or as an employee under any title discharging substantially the same duties as a Shift Supervisor in Rajasthan Rayon, Kotah or any other company or firm or individual in any part of India for the term ending 15th March 1968.
>
> (2) The defendant is further restrained during the said period and, thereafter, from divulging any of the secrets, processes or information relating to the manufacture of tyre cord yam by continuous spinning process

obtained by him in the course of and as a result of :his employment with the plaintiffs."

It is clear that the injunction restrained the appellant only from serving as a. Shift Supervisor and in a concern manufacturing tyre' cord yarn; by, continuous spinning process or as an employee under any designation substantially discharging duties of a Shift Supervisor. It was also confined to the period of the agreement and in any concern in India manufacturing tyre cord yarn.

In the appeal filed by him in the High Court, the plea taken by him as to undue influence and coercion was given up. The High Court, agreeing with the Trial Court, found that the evidence of Dr. Chalishhazar, Mehta and John Jacob established that the appellant had been imparted training for about nine months during the course of which information regarding the special processes and details of the machinery evolved by the said collaborators had been divulged to him. It also found that as a result of his getting himself employed in the said rival company, not only the benefit of training given to him at the cost of the respondent company would be lost to it but that the knowledge acquired by him in regard to the said continuous spinning process intended for the exclusive use of the respondent company was likely to be made available to the rival company which also was interested in the continuous spinning process of tyre cord. The High Court further found that though the machinery employed by the said Rajasthan Rayon might not be the same as that in the respondent company's

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plant the know-how which the appellant acquired could be used for ensuring continuous spinning yarn. The High Court further found that Rajasthan Rayon started production of tyre cord yam from January 1965, that is, two or three months after the appellant joined them along with two other employees of the respondent company, that the Cumulative effect of the evidence was that the appellant had gained enough knowledge and experience in the specialised continuous spinning process in the tyre cord yarn division of the respondent company and that it was evident that he left the respondent company's employment only because the said Rajasthan Rayon promised him a more lucrative employment. The High Court concluded that it was not difficult to imagine why the appellant's services were considered useful by his new employers and that the apprehension of the respondent company that his employment with the rival company was fraught with considerable damage to their interest was well-founded and justified its prayer for an injunction restraining him from undertaking an employment with the said rival manufacturers.

As regards the challenge to the validity of clauses 9 and 17, the High Court held that though the said agreement was with the respondent company and the company carried on other businesses as well, the employment was in the business of Century Rayon. The appellant was employed as a Shift Supervisor in that business only, the training given to him was exclusively for the spinning department of the tyre cord division and his letter of acceptance was also in relation to the post of a Shift Supervisor in that department. The High Court therefore concluded that Clauses 9 and 17 related only to the business in the tyre cord division and therefore restraints contained in those clauses meant prohibition against divulging information received by the appellant while working in that Division and that clause 17 also meant a restraint in relation to the work carried on in the said

spinning department. Therefore the inhibitions contained in those clauses were not blanket restrictions as alleged by the appellant, and that the prohibition in clause 17 operated only in the event of the appellant leaving, abandoning or resigning his service during the term of and in breach of the said agreement. On this reasoning it held that clause 17, besides not being general, was a reasonable restriction to protect the interests of the respondent company particularly as the company had spent considerable amount in training, secrets of know-how of specialised processes were divulged to him and the foreign collaborators had agreed to disclose their specialised processes only on the respondent company's undertaking to obtain corresponding secrecy clauses from its employees and on the guarantee that those processes would be exclusively used for the business of the respondent company. Furthermore, Clause 17 did not prohibit the appellant even from seeking similar employment from any other manufacturer after

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the contractual period was over. The High Court lastly found that there was no indication at all that if the appellant was prevented 'from being employed in a similar capacity elsewhere he would be forced to idleness or that such a restraint would compel the appellant to go back to the company which would indirectly result in specific performance of the contract of personal service.

Counsel for the appellant raised the following three contentions : (1) that the said agreement constituted a restraint on trade and was therefore opposed to public policy, (2) that in order to be valid and enforceable the covenant in question should be reasonable in space and time and to the extent necessary to protect the employer's right of property and (3) that the injunction to enforce a negative stipulation can only be granted for the legitimate purpose of safeguarding the trade secrets of the employer. He argued that these conditions were lacking in the present case and therefore the respondent company was not entitled to the enforcement of the said stipulation.

As to what constitutes restraint of trade is summarised in Halsbury's Laws of England (3rd ed.) Vol. 38, at page 15 and onwards. It is a general principle of the Common Law that a person is entitled to exercise his lawful trade or calling as and when he wills and the law has always regarded jealously any interference with trade, even at the risk of interference with freedom of contract as it is public policy to oppose all restraints upon liberty of individual action which are injurious to the interests of the State. This principle is not confined to restraint of trade in the ordinary meaning of the word "trade" and includes restraints on the right of being employed. The court takes a far stricter view of covenants between master and servant than it does of similar covenants between vendor and purchaser or in partnership agreements. An employer, for instance, is not entitled to protect himself against competition on the part of an employee after the employment has ceased but a purchaser of a business is entitled to protect himself against competition per se on the part of the vendor. This principle is based on the footing that an employer has no legitimate interest in preventing an employee after he leaves his service from entering the service of a competitor merely on the ground that he is a competitor. (Kores Manufacturing Co. Ltd. v. Kolak Manufacturing Co. Ltd.(1). The attitude of the courts as regards public policy however has not been inflexible. Decisions on public policy have been subject to change and development with the change in

trade and in economic thought and the general principle once applicable to agreements in restraints of trade have been considerably modified by later decisions. The rule now is that restraints 'whether general

(1) [1959] Ch. 108,126.

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or partial may be good if they are reasonable. A restraint upon freedom of contract must be shown to be reasonably necessary for the purpose of freedom of trade. A restraint reasonably necessary for the protection of the covenantee must prevail unless some specific ground of public policy can be clearly established against it. (E. Underwood and Son Ltd. v. Barker (1). A person may be restrained from carrying on his trade by reason of an agreement voluntarily entered into by him with that object. In such' a case the general principle of freedom of trade must be applied with due regard to the principle that public policy requires for men or full age and understanding the utmost freedom of contract and that it is public policy to allow a trader to dispose of his business to a successor by whom it may be efficiently carried on and to afford to an employer an unrestricted choice of able assistants and the opportunity to instruct them in his trade and its secrets without fear of their becoming his competitors. (Fitch, v. Dewes)(2). Where an agreement is challenged on the ground of its being a restraint on trade the onus is upon the party supporting the contract to show that the restraint is reasonably necessary to protect his interests. Once, this onus is discharged, the onus of showing that the restraint is nevertheless injurious to the public is upon the party attacking the contract. (See Cheshire's Law of contract, (6th ed.) 32.8, Mason v. Provident Clothing and Supply Co. Ltd.(3). and A. G. of Common wealth of Australia v. Adelaide Steamship Co. Ltd.(4).

The courts however have drawn a distinction between restraints applicable during the term of the contract of employment and those that apply after its cessation. (Halsbury's Laws of England (3rd ed.) Vol. 38, p. 31). But in W. H. Milsted and Son Ltd. v. Hamp(5) where the contract of service was terminable only by notice by the employer, Eve J. held it to be bad as being wholly one-sided. But where the contract is not assailable on any such ground, a stipulation therein that the employee shall devote his whole time to the employer, and shall not during the term of the contract serve any other employer would generally be enforceable. In Gaumont Corporation v. Alexander(6) clause 8 of the agreement provided that

> "the engagement is an exclusive engagement by the corporation of the entire service of the artiste for the period mentioned in clause 2 and accordingly the artiste agrees with the corporation that from the date hereof until the expiration of her said engagement the artiste

(1) [1899] 1 Ch. 300 C.A.
(3) [1913] A.C. 724
(5) [1927] W.N. 233.
M1 Sup Court/67-11
(2) [1921] 2 A.C. 158,162-167,
(4) [1913] A.C. 781 796.
(6) [1936] 2 All.E.R. 1686.

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> shall not without receiving the previous consent of the corporation do any work or perform or render any services whatsoever to

any person firm or company other than the corporation and its sub-lessees".

On a contention that this clause was a restraint of trade, Porter J. held that restrictions placed upon an employee under a contract of service could take effect during the period of contract and are not in general against public policy. But the learned Judge at p. 1692 observed that a contract would be thought to be contrary to public policy if there were a restraint, such as a restraint of trade, which would be unjustifiable for the business of the claimants in the case. He however added that he did not know of any case, although it was possible, there might be one, where circumstances might arise in which it would be held that a restraint during the progress of the contract itself was an undue restraint. He also observe that though for the most part, those who contract with persons and enter into contracts which one might for this purpose described as contracts of service, have generally imposed upon them the position that they should occupy themselves solely in the business of those whom they serve but that it would be a question largely of evidence how far the protection of clauses of that kind would extend, at any rate during the existence of the contract of service. Therefore, though as a general rule restraints placed upon an employee are not against public policy, there might, according to the learned Judge, be cases where a covenant might exceed the requirement of protection of the employer and the court might in such cases refuse to enforce such a covenant by injunction. In William Robinson and Co. Ltd. v. Heuer(1) the contract provided that Heuer would not during this engagement without the previous consent in writing of William Robinson & Co., "carry on or be engaged directly or indirectly, as principal, agent, servant or otherwise, in any trade, business or calling, either relating to goods of any description sold or manufactured by the said W. Robinson & Co. Ltd., ...or in any other business whatsoever." Lindley M.R. there observed that there was no authority whatsoever to .show that the said agreement was illegal, that is to say, that it was unreasonable or went further than was reasonably necessary for the protection of the plaintiffs. It was confined to the period of the engagement, and meant simply that "so long as you are in our ,employ you shall not work for anybody else or engage in any other business". There was, therefore, according to him, nothing unreasonable in such an agreement. Applying these observations Branson J. in Warner Brothers Pictures v. Nelson(2) held a covenant ,of a similar nature not to be void. The defendant, a film artist, entered into a contract with the plaintiffs, film producers, for fifty-two weeks, renewable for a further period of fifty-two weeks

(1) [1898] 2 Ch. 451.

(2) [1937] 1 K.B. 209.

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at the option of the plaintiffs, whereby she agreed to render her exclusive service as such artist to the plaintiffs, and by way of negative stipulation not to render, during the period of the contract, such services to any other person. In breach of the agreement she entered into a contract to perform as a film artist for a third person. It was held that in such a case an injunction would issue though it might be limited to a period and in terms which the court in its discretion thought reasonable.

A similar distinction has also been drawn by courts in India and a restraint by which a person binds himself during the term of his agreement directly or indirectly not to take

service with any other employer or be engaged by a third party has been held not to be void and not against section 27 of the Contract Act. In Brahmaputra Tea Co. Ltd. v. Scarth(1) the condition under which the covenantee was partially restrained from competing after the term of his engagement was over with his former employer was held to be bad but the condition by which he bound himself during the term of his agreement, not, directly or indirectly, to compete with his employer was held good. At page 550 of the report the court observed that an agreement of service by which a person binds himself during the term of the agreement not to take service with any one else, or directly or indirectly take part in, promote or aid any business in direct competition with that of his employer was not hit by section 27. The Court observed:

> "An agreement to serve a person exclusively for a definite term is a lawful agreement, and it is difficult to see how that can be unlawful which is essential to its fulfilment, and to the due protection of the interests of the employer, while the agreement is in force."

(See also Pragji v. Pranjiwan(2) and Lalbhai Dalpathbhai and Co v. Chittaranjan Chandulal Pandva(3). In Deshpande v. Arbind Mills Co.(4) an agreement of service contained both a positive covenant, viz., that the employee shall devote his whole-time attention to the service of the employers and also a negative covenant preventing the employee from working elsewhere during the term of the agreement. Relying on Pragji v. Pranjiwan(2), Charlesworth v. MacDonald(5), Madras Railway Company v. Rust,(6) Subba Naidu v. Haji Badsha Sahib(7) and Burn & Co; v. MacDonald(8) as instances where such a negative covenant was enforced, the learned Judges observed that Illustrations (c) and (d) to section 57 of the Specific Relief Act in terms recognised such contracts and the existence of negative covenants therein and that therefore the

(1) I.L.R. (XI) Cal. 545.
(3) A.I.R. 1966 Guj 189.
(5) I.L.R. 23. Bom. 103.
(7) I.L.R. 26 Mad. 168.
(2) 5 Dom. L.R. 872.
(4) 48 Bom. L.R. 90.
(6) I.L.R. 14 Mad. 18
(8) I.L.R. 36 Cal. 354.

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contention that the existence of such a negative covenant in a service agreement made the agreement void on the ground that it was in restraint of trade and contrary to section 27 of the Contract Act had no validity.

Counsel for the appellant, however, relied on Ehrman v. Bartholomew(1) as an illustration where the negative stipulation in the contract was held to be unreasonable and therefore unenforceable. Cleuse 3 of the agreement there provided that the employee shall devote the whole of his time during the usual business hours in the transaction of the business of the firm and shall not in any manner directly or indirectly engage or employ himself in any other business, or transact any business with or for any person or persons other than the firm during the continuance of this agreement. Clause 13 of the agreement further provided that after the termination of the employment by any means, the employee should not, either on his sole account or jointly with any other person, directly or indirectly supply any of the then or past customers of the firm with wines etc. or

solicit for orders any such customers and should not be employed in any capacity whatsoever or be concerned, engaged or employed in any business of a wine or spirit merchant in which any former partner of the firm was engaged. Romer J. held these clauses to be unreasonable on the ground that clause 3 was to operate for a period of 10 years or for so much of that period as the employer chose and that the word "business" therein mentioned could not be held limited by the context to a wine merchant's business or in any similar way. So that the court, while unable to order the defendant to work for the plaintiffs, is asked indirectly to make him do so by otherwise compelling him to abstain wholly from business, at any rate during all usual business hours. The other decision relied on by him was Mason v. Provident Clothing and Supply Co. Ltd.(2). This was a case of a negative covenant not to serve elsewhere for three years after the termination of the contract. In this case the court applied the test of what was reasonable for the protection of the plaintiffs' interest. It was also not a case of the employee possessing any special talent but that of a mere canvasser. This decision, however, cannot assist us as the negative covenant therein was to operate after the termination of the contract. Herbert Morris v. Saxelby(3) and Attwood v. Lamont(4) are also cases where the restrictive covenants were to apply after the termination of the employment. In Commercial Plastics Ltd. v. Vincent(5) also the negative covenant was to operate for a year after the employee left the employment and the court held that the restriction was void inasmuch as it went beyond what was reasonably necessary for the protection of the employer's legitimate interests.

(1) [1898] 1 Ch. 571.
(3) [1916] A.C. 688.
(2 [1913] A. C. 724.
(5) 3 AII.E.R. 546. (4) [1920] 3 K.B. 571.

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These decisions do not fall within the class of cases where the negative covenant operated during and for the period of employment as in Gaumont Corporation's Case(1) and Warner Brothers v. Nelson(2) where the covenant ws held not to be a restraint of trade or against public policy unless the agreement was wholly one-sided and therefore unconscionable as in W.H. Milsted and Son Ltd. v. Hamp(3) or where the negative covenant was such that an injunction to enforce it would indirectly compel the employee either to idleness or to serve the employer, a thing which the court would not order, as in Ehrman v. Bartholomew(4). There is, however, the decision of a Single Judge of the Calcutta High Court in Gopal Paper Mills v. Malhotra(5), a case of breach of a negative covenant during the period of employment. This decision, in our view, was rightly distinguished by the High Court as the period of contract there was as much as 20 years and the contract gave the employer an arbitrary power to terminate the service without notice if the employer decided not to retain the employee during the three years of apprenticeship or thereafter if the employee failed to perform his duties to the satisfaction of the employer who had absolute discretion to decide whether the employee did so and the employer's certificate that he did not, was to be conclusive as between the parties. Such a contract would clearly fall in the class of contracts held void as being one sided as in W.H. Milsted and Son Ltd. v. Hamp(3). The decision in Gopal Paper Mills v. Malhotra(5) therefore cannot further the appellant's case.

The result of the above discussion is that considerations

against restrictive covenants are different in cases where the restriction is to apply during the period after the termination of the contract than those in cases where it is to operate during the period of the contract. Negative covenants operative during the period of the contract of employment when the employee is bound to serve his employer exclusively are generally not regarded as restraint of trade and therefore do not fall under section 27 of the Contract Act. A negative covenant that the employee would not engage himself in a trade or business or would not get himself employed by any other master for whom he would perform similar or substantially similar duties is not therefore a restraint of trade unless the contract as aforesaid is unconscionable or excessively harsh or unreasonable or one sided as in the case of W.H. Milsted and Son Ltd.(3). Both the Trial Court and the High Court have found, and in our view, rightly, that the negative covenant in the present case restricted as it is to the period of employment and to work similar or substantially similar to the one carried on by the appellant when he was in the employ of the respondent company was reasonable and necessary for the protection of the company's interests and not such

(1) [1936] 2 All E.R. 1686. (2) [1937] 1 K.B. 209.
(3) [1927] W. N. 233. (5) A. 1. R. 1262 Cal. 61.(4) [1898] 1 Ch. 671.

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as the court would refuse to enforce. There is therefore no validity in the contention that the negative covenant contained in clause 17 amounted to a restraint of trade and was therefore against public policy.

The next question is whether the injunction in the terms in which it is framed should have been granted. There is no doubt that the courts have a wide discretion to enforce by injunction a negative covenant. Both the courts below have concurrently found that the apprehension of the respondent company that information regarding the special processes and the special machinery imparted to and acquired by the appellant during the period of training and thereafter might be divulged was justified; that the information and knowledge disclosed to him during this period was different from the general knowledge and experience that he might have gained while in the service of the respondent company and that it was against his disclosing the former to the rival company which required protection. It was argued however that the terms of clause were too wide and that the court cannot sever the good from the bad and issue an injunction to the extent that was good. But the rule against severance applies to cases where the covenant is bad in law and it is in such cases that the court is precluded from severing the good from the bad. But there is nothing to prevent the court from granting a limited injunction to the extent that is necessary to protect the employer's interests where the negative stipulation is not void. There is also nothing to show that if the. the negative covenant is enforced the appellant would be driven to idleness or would be compelled to go back to the respondent company. It may be that if he is not permitted to get himself employed in another similar employment he might perhaps get a lesser remuneration than the one agreed to by Rajasthan Rayon. But that is no consideration against enforcing the covenant. The evidence is clear that the appellant has torn the agreement to pieces only because he was offered a higher remuneration. Obviously he cannot be heard to say that no injunction should be granted against him to enforce the negative covenant which is not opposed to public policy. The

injunction issued against him is restricted as to time, the nature of employment and as to area and cannot therefore be said to be too wide or unreasonable or unnecessary for the protection of the interests of the respondent company.

As regards Clause 9 the injunction is to restrain him from divulging any and all information, instruments, documents, reports etc. which may have come to his knowledge while he was serving the respondent company. No serious objection was taken by Mr. Sen against this injunction and therefore we need say no more about it.

The appeal fails and is dismissed with costs.

G.C. Appeal dismissed

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