
(2010) 05 DEL CK 0098
In the Delhi High Court
Case No : Writ Petition (C) 7695 of 1999

Apeejay School

APPELLANT

Vs

Sh. Darbari Lal and Others

RESPONDENT

Date of Decision : 28-05-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 28
Civil Procedure Code, 1908 (CPC) — Section 10
Constitution of India, 1950 — Article 226
Delhi School Education Act, 1973 — Section 11(6), 2, 25, 29, 8
Industrial Disputes Act, 1947 — Section 10, 25, 25F

Citation : (2010) 170 DLT 608 : (2010) 5 SLR 647

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rajesh Goyal, Yashmeet and H.L. Tiku, for the Appellant; Harish Malhotra, Amicus Curiae, R.K. Modi and Arun Birbal, Advs./Co. Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner school has preferred this writ petition challenging the order dated 26th November, 1999 of the Labour Court in a reference of an industrial dispute at the instance of the respondents 1 to 3. The respondents 1 to 3 claimed to be the employees (non-teaching) of the petitioner school and contended that the petitioner was neither issuing them identity cards nor giving them any legal benefits and asking them to render duties under fictitious names and on their refusal to do so, the petitioner school had refused work to them.

2. The petitioner contended before the Labour Court that it was a recognized private unaided school within the meaning of the Delhi School Education Act, 1973 (School Act); that Section 8(3) of the said Act provides the remedy of appeal before the Delhi School Education Tribunal (School Tribunal) to any employee of the school against any order of dismissal, removal or reduction in

rank; that in view of the existence of the specific remedy provided in the School Act, the Labour Court had no jurisdiction to entertain the dispute.

3. The Labour Court vide order impugned in this petition held that though the respondents may be having the right of appeal before the School Tribunal but they also had the right to challenge their termination on the various grounds available to them under the Industrial Disputes Act (I.D. Act). It was further held that the right of appeal before the School Tribunal did not debar the employee of a school from raising a dispute under the I.D. Act. Aggrieved therefrom the present petition was preferred. This Court vide *ex parte* order dated 23rd December, 1999 which continues to be in force, while issuing notice of the petition stayed further proceedings before the Labour Court. The respondents failed to appear in spite of notice. Rule was issued on 25th September, 2000 and the interim order made absolute. The respondents have not appeared thereafter also.

4. The petition was however dismissed for non prosecution on 4th January, 2007. CMs No. 1524-25/2010 have been filed by the petitioner for restoration and for condonation of delay in applying for the same. Notice of the said applications was also issued to the respondents and served. The respondents still failed to appear. In the circumstances, the respondents were proceeded against *ex parte* on 21st April, 2010 and the senior counsel for the petitioner heard on the applications. The applications for condonation of delay in applying for restoration and for restoration of the writ petition were allowed on 21st April, 2010 and the senior counsel for the petitioner heard on merits.

5. The senior counsel for the petitioner on that date contended that till prior to the setting up of the School Tribunal, the Labour Courts / Industrial Tribunal had jurisdiction. He further contended that the School Tribunal had been set up as per the directions of the Supreme Court contained in para 64 of the judgment in *T.M.A. Pai Foundation v. State of Karnataka* 2002 (8) SCC 481. It was / is the contention of the senior counsel for the petitioner that considering the status of the educational institutions and the nature of duties which employees and teachers of educational institutions are required to perform, need was felt for setting up of the School Tribunal and directions in this regard were issued. It was further contended that the very fact that the Supreme Court directed the setting up of the School Tribunals in spite of the remedy under the I.D. Act and / or the Civil Court being available, was indicative that after the setting up of the School Tribunal, the same has exclusive jurisdiction over disputes between a School and its employees / teachers.

6. The senior counsel for the petitioner had on that date also invited attention to:

(i) The Managing Committee of Geeta Bal Bharti Senior Secondary School and Another Vs. Director of Education and Others, where the Division Bench of this Court in para 42 of the judgment reiterated that the School Tribunal is a specialized Tribunal.

(ii) Jitender Kumar Vs. Director of Education and Others, where a Single Judge of this Court held a writ petition to be not maintainable owing to the alternate remedy of appeal available before the School Tribunal.

(iii) Dharamvir Singh v. NCT of Delhi 150 (2008) DLT 735 where also a Single Judge of this Court took the view that the remedy of a writ petition to this Court was not a proper remedy in view of the existence of the School Tribunal.

However, neither of the said judgments deals with the matter in question i.e. whether the jurisdiction u/s 10 of the I.D. Act has become barred because of the setting up of the School Tribunal.

7. The senior counsel for the petitioner on that date had also drawn attention to Section 25 of the School Act which bars the jurisdiction of the Civil Court in matters, in relation to which any authority appointed under the Act is empowered by the Act to exercise such power.

8. This Court however finding:

(i) That Section 25 (supra) bars only the jurisdiction of the Civil Court and not of the Industrial Adjudicator.

(ii) That Section 8(3) of the School Act providing for the remedy of appeal to the School Tribunal does not have a non obstante clause.

(iii) That the same question had arisen in Apeejay School Vs. Gopi Chand and Others, but had remained unanswered owing to the parties consenting to go to the School Tribunal.

(iv) That a Single judge of this Court in Management of Mahavir Senior Model School Vs. Shri Ram Surat Mishra has observed that even if the I.D. Act applies and the employee can raise a dispute which can be referred to the Industrial Tribunal, the application of the School Act and the Rules is not excluded by the Industrial Disputes Act.

(v) That Section 28 of the Administrative Tribunals Act, 1985 which also though excluding the jurisdiction of the Court in relation to matters with respect where to jurisdiction was vested in the Administrative Tribunal, saves the jurisdiction of the Industrial Adjudicators.

and considering that the legal question involved is of general importance and likely to affect other schools / their employees, appointed Mr. Harish Malhotra, Senior Advocate as Amicus Curiae & Mr. Arun Birbal, Advocate as Co-Amicus Curiae to assist the Court.

9. The senior counsel for the petitioner Mr. H.L. Tikku, Mr. Harish Malhotra, senior counsel / Amicus Curiae & Mr. Arun Birbal, advocate / Co-Amicus Curiae have been heard.

10. Further Submissions of Mr. H.L. Tikku, senior counsel for the petitioner

(i) The School Act and the I.D. Act are social legislations; while the I.D. Act applies to all workmen, the School Act applies to a class carved out of the said workmen i.e. to the workmen employed in schools only. The School Act is thus a special legislation.

(ii) That notwithstanding the remedies in the I.D. Act, a remedy for the employees of Schools was created in the School Act which is a subsequent legislation. Section 2(h) of the School Act includes in the definition of "employee" not only the teachers but also every other person working in the school.

(iii) The School Act provides a speedier / summary remedy for redressal of the grievances of the employees of the school. Per contra, the procedure for redressal of grievances under the I.D. Act is longer and more time consuming with the employees being first required to go for conciliation and the adjudication being dependent upon the reference being made by the appropriate government.

(iv) That a legislation for a special class necessarily excludes a general legislation.

(v) Attention is invited to the proposed amendment of 1982 to Section 2(j) of the I.D. Act, to exclude from the definition of "industry", the schools and educational institutions besides hospitals etc. It is contended that the reasons for the said amendment being not brought in force till now were stated by the government in the counter affidavit filed in Union of India (UOI) Vs. Shree Gajanan Maharaj Sansthan, It is contended that the amendment has not been brought into force merely for the reason of there being no alternative proper adjudicatory machinery in force qua employees of hospitals also sought to be excluded from the definition of industry in Section 2(j) of the Act. It is contended that it being the legislative intent and the alternative adjudicatory mechanism qua schools being already existent in the School Act, this Court should, even without the amendment being brought in force, read the provisions in consonance with the spirit of the amendment. It is contended that most of the States have Educational Acts and School Tribunals; that the schools were in fact not amenable to the Industrial Adjudicator till they fell within the definition of industry as pronounced in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . Attention is also invited to Court on its own Motion v. All India Institute of Medical Sciences (2002) 7 AD (Delhi) 530 where the Division Bench of this Court noted the proposed amendment of 1982 to Section 2(j) of the Act and held that the employees of hospitals were being treated as a class apart from the other workmen.

(vi) As far as the judgment in Management of Mahavir Senior Model School (supra) is concerned, it is contended that the Single Judge of this Court in that case solely relied upon Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others, which was a case relating to Tamil Nadu which did not have an Education Act and hence the provision of alternative remedy was not available and in those circumstances, the remedy of the I.D. Act was held to be available to the employees of the

educational institutions.

(vii) Attention is also invited to the Full Bench judgment of this Court in *Daulat Ram and Others Vs. Union of India (UOI) and Others*, where also a writ petition filed by the employees of the School was held to be not maintainable for the reason of the alternative remedy under the I.D. Act being available. It is however contended that the Full Bench did not consider the remedy of appeal to the School Tribunal.

(viii) On the proposition that a special Statute bars the remedy under the general Statute, the following judgments are cited:

(a) *G.V. Sreerama Reddy and Another Vs. Returning Officer and Others*, where procedure prescribed under the Representation of the People Act was held to override the general procedure prescribed in CPC.

(b) *Maya Mathew Vs. State of Kerala and Others*, laying down that where a later special law is repugnant to or inconsistent with an earlier general law, the later special law will prevail over the earlier general law.

(c) *General Manager, Telecom Vs. M. Krishnan and Another*, laying down that a special law overrides the general law and the remedy under the general law is by implication barred.

(d) *Ratan Lal Adukia and Another Vs. Union of India*, on the doctrine of implied repeal.

(e) *Gobind Sugar Mills Ltd. Vs. State of Bihar and Others*, laying down that the special enactment will override the general enactment.

(f) *Delhi Transport Corporation Vs. D.D. Gupta and Others*, holding the jurisdiction of the Labour Court to be barred for the reason of the existence of a special remedy under the Payment of Wages Act.

(g) *Jitender Kumar (supra)* to contend that if the employee is an employee of the society managing the school, the provisions of the I.D. Act will apply but if the employee is an employee of the school recognized under the School Act, the provisions of the School Act would apply.

(h) *Shashi Gaur Vs. NCT of Delhi and Others*, where the writ petition was held not maintainable for the reason of existence of an alternative remedy under the School Act (though clarified that jurisdiction under Article 226 not excluded)

11. Contentions of Mr. Harish Malhotra, Senior Advocate / Amicus Curiae

(i) That the school has no unfettered discretion in the matter of employment and termination of employment. Therefore, the employees of a school form a class apart.

(ii) In *Management Committee of Montfort Senior Secondary School Vs. Shri Vijay Kumar and Others*, the School Tribunal has been held to be a judicial

authority.

(iii) Section 29 of the School Act enables the Central Government to remove difficulties. It is contended that the Central Government was empowered under the said provision to remove the difficulty aforesaid, though within limited period after commencement of the Act.

(iv) That the Labour Court is a Civil Court for certain purpose and thus the bar u/s 25 of the School Act to the jurisdiction of the Civil Court would apply to the jurisdiction of the Labour Court also.

(v) That the reasoning given by the Labour Court of the Industrial Adjudicator exercising original jurisdiction and the School Tribunal exercising appellate jurisdiction is defective. Attention is invited to the provisions of the DDA Act, 1957 and the DMC Act, 1957 where also, though the remedy prescribed is described as appellate, but the same has been held to bar the jurisdiction of the Court of original jurisdiction also.

(vi) In Gopi Chand (supra), even though on concession, but the award was set aside and the parties relegated to the School Tribunal. It is urged that had the Court been not satisfied with the non applicability of the I.D. Act, the question of setting aside of the award would not have arisen.

(vii) In Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, the applicability of the Delhi Rent Control Act was held to be barred in view of the special legislation relating to public premises in the Public Premises Act, 1971.

For the reasons aforesaid, the remedy of appeal before the School Tribunal provided in the School Act, was contended to bar the remedy before the Industrial Adjudicator under the I.D. Act.

12. Submissions of Mr. Arun Birbal, Advocate / Co-Amicus Curiae

(i) Attention at the outset is invited to the recent judgment dated 26th April, 2010 in CM (M) No. 43/2009 titled Sardar Patel Vidyalaya v. G.P. Srivastava (of the same Judge who had pronounced the judgment in Management of Mahavir Senior Model School (supra)) laying down that the Labour Court has no jurisdiction over matters covered by Section 8 of the School Act.

(ii) To hold the workmen employed in a school to be outside the ambit of the I.D. Act would have the effect of divesting such workmen of the benefits of several beneficial provisions in the I.D. Act viz. Section 25F etc. and of which there is no equivalent in the School Act.

(iii) That there is no repugnancy between the two Acts and the two work in their respective spheres; that the two legislations have been enacted in exercise of powers under different entries in the VIIth Schedule of the Constitution.

(iv) That the position is otherwise than as contended by the other two counsels. It is the I.D. Act which is the special legislation and the School Act is the general

legislation. The Supreme Court has held the I.D. Act to be a special enactment, its purpose being to relieve the workman from the rigours of CPC. Attention is invited to Section 11(6) of the School Act making the provisions of the CPC applicable to the appeals before the School Tribunal.

(v) While the School Tribunal is governed by the provisions of the Limitation Act, the Industrial Adjudicator is not.

(vi) The Industrial Adjudicator, for the sake of expediency is empowered to hold the inquiry into the alleged act of misconduct itself while the School Tribunal is not and upon finding the preceding domestic enquiry to be bad will have to necessarily remand the matter.

(vii) That Section 8(3) of the School Act only prescribes the remedy of appeal to the Tribunal against the actions of dismissal, removal or reduction in rank, all the other disputes between the employees and the management of the school will have to necessarily go to the Industrial Adjudicator under the I.D. Act and thus it is not as if the jurisdiction of the Industrial Adjudicator has been completely taken away.

(viii) That Parliament cannot be held to have intended to divest the workmen employed in the school of the benefits of the I.D. Act without having expressly said so till now.

(ix) That the two remedies are not in derogation to each other and have to be construed harmoniously. The workman has a right to elect either of the two remedies. Attention is invited to the Management of The Management of M/s Shafiq Memorial Higher Secondary School, Bara Hindu Rao, Delhi Vs. Sh. Padam Kant Saxena, Presiding Officer Labour Court No. IX, Tis Hazari, Delhi and Another, where the award of the Industrial Adjudicator was set aside though not on the ground of I.D. Act being not applicable but on the ground that the award was inconsistent with the provisions of the School Act which was applicable to the employer in that case.

(x) Attention is invited to Prabhu Dayal Public School v. Prahlad WP(C) No. 3260/1996 decided on 29th July, 2008 where it was held that I.D. Act and the School Act operate in their own spheres and in case of overlapping, subject to the rule of repugnancy and subject to the rule that the special Act overrides the general Act, every attempt has to be made to give effect to the statutory provisions of the two enactments; in that case, it was held that the School Tribunal ought to have decided in accordance with the principles of the I.D. Act.

(xi) It is contended that the Single Judge who has delivered seemingly conflicting judgments in Management of Mahavir Senior Model School (supra) & Sardar Patel Vidyalaya (supra), changed his view in Sardar Patel Vidyalaya only for the reason of the judgment of the Division bench of this Court in Sonica Jaggi v. Lieutenant Governor LPA No. 196/2008 decided on 14th August, 2008. Attention was invited to the judgment in Sonica Jaggi (supra) which was a case of a

teacher and for the relief of fixation of her salary. It was contended that the observations in Sonica Jaggi owing where to the Single Judge has changed his view in Sardar Patel Vidyalaya are in the said context and not in the context of the I.D. Act.

(xii) Attention is also invited to the Constitution Bench judgment in Bangalore Water Supply & Sewerage Board (supra) to contend that the Constitution Bench has expressly held a school to be an industry and the provisions of the I.D. Act to be applicable thereto. It is contended that in view of the clear observations of the Constitution Bench of the Supreme Court in the said judgment that the provisions of the I.D. Act are applicable to schools, this Court ought not to hold that the provisions of I.D. Act are not applicable to employees of a school for the reason of the provisions aforesaid of the School Act.

(xiii) It is further contended that the beneficial provisions of the I.D. Act are enforceable by the authorities constituted under the said Act only and the benefit of the said provisions cannot be given by the other fora. Reliance in this regard is placed on Chief Engineer, Hydrel Project and Others Vs. Ravinder Nath and Others, The same judgment is also relied upon to contend that there is nothing wrong in two remedies being available and it being left to the aggrieved workman to choose his remedy by election. (xiv) Reliance is also placed on Chandrakant Tukaram Nikam and Others Vs. Municipal Corporation of Ahmedabad and Another, where the policy of law underlying the ID Act and other enactments concerning the workmen was emphasized. It was held that the Courts and Tribunals created by the I.D. Act are not shackled by the procedural laws nor is their award and because of their informality, the workmen and their representatives can themselves prosecute or defend their cases; these forums are empowered to grant such relief as they think just and appropriate and which powers are not available to the other fora. It is contended that the School Tribunal where the provisions of the CPC are applicable and where representation through lawyers is not prohibited cannot be a substitute for the foras constituted under the I.D. Act.

(xv) Reference is also made to Management Committee of Montfort Senior Secondary School (supra) reiterating that as a general principle, where two remedies are available under the law, one of them should not be taken as operating in derogation of the other.

(xvi) The learned Amicus Curiae has also drawn attention to Agra District Cooperative Bank Ltd. v. Labour Court, UP AIR 2001 SC 2396 holding that when a question of employment arises, certainly it cannot be said that the doors of the Labour Court are shut because of the provisions of arbitration in the Cooperative Societies Act. It was further held that if parties avail of a remedy in one of the jurisdictions, that proceeding must be pursued to its logical end and should not be given up in the middle to start another proceeding under another enactment. The Amicus Curiae however hastened to inform that the Supreme Court in Ghaziabad Zila Sahkari Bank Ltd. v. Addl. Labour Commissioner AIR 2007 SC

(Suppl.) 425 has taken a contrary view.

(xvii) It was further submitted that the view of the Punjab & Haryana High Court as well as of the Gujarat High Court also is that the remedy of School Tribunal does not deprive the workmen employed in the school of the remedy under the I.D. Act. Reference in this regard is made to *Hindu Kanya Mahavidyalaya v. The Presiding Officer, Labour Court, Gurdaspur*, CW(P) 6495/1987 of the High Court of Chandigarh decided on 2nd July, 2009 and to *Arjunbhai Amritbhai Naik v. State of Gujarat* (2000) 4 Gujarat Law Reporter 239. It is further informed that there is a conflict of opinion on this point in the Bombay High Court and the matter has been referred to the Full Bench of that High Court. Reliance is placed on *Satyawadi Pimple and another Vs. Sow. Aruna Narwade and another*, laying down that the non teaching employees of a school have the dual remedy of the School Tribunal and the I.D. Act and the teaching staff has the remedy only before the School Tribunal and on *Adarsha Shikshan Sanstha v. Jaiprakash Ramvilas Lohia* WP(C) No. 4756/1996 of the Aurangabad Bench of the High Court at Bombay decided on 14th October, 2009 holding that in view of the special legislation covering employees of private school, the remedy is to approach the School Tribunal and not the Labour Court.

(xviii) To meet the argument that the remedy under the I.D. Act is an uncertain remedy requiring a reference to be made, it is contended that at least in so far as Delhi is concerned, as per the local amendment the dispute can be raised directly before the Industrial Adjudicator even without the reference through the process of the conciliator and the appropriate government.

13. Submissions in Rejoinder of Mr. H.L. Tikku, Sr. Advocate for the Petitioner.

(i) Once a person decides to work for a school, he should be deemed to have given up his rights / remedies under the I.D. Act.

(ii) That the labour issues relating to schools are to be guided by the provisions of the School Act only.

(iii) Section 8(3) of the School Act has been held in para 41 of *Kathuria Public School* (supra) to have wider ramifications than of merely dealing with termination.

(iv) The rules under the School Act make special provisions with respect to the employees of the schools. Attention in this regard is invited to Rule 47. On enquiry, as to what is the corresponding provision in the School Act to Section 25F of the I.D. Act, protecting the rights of a workman who has worked for 240 days in a preceding year, the senior counsel for the petitioner contends that the benefit of the said provision can be given by the School Tribunal also. It is further contended that Section 8(3) & (4) of the School Act, by requiring the school to obtain the approval of the Directorate of Education before taking any action of dismissal / removal / reduction in rank or suspension of an employee, provide an additional protection to the workmen and owing whereto the workmen /

employees of the school do not require the protection under the I.D. Act.

14. In the opinion of this Court, the first question which arises for consideration is whether Section 25 of the School Act, barring the jurisdiction of the Civil Court, bars the jurisdiction of the Industrial Adjudicator also. The question is no longer *res integra*. The Supreme Court in *Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others*, , in the context of Section 166(1) of the Gujarat Co-operative Societies Act, 1961 barring the jurisdiction of the Civil or Revenue Court in respect of disputes required to be referred to the Registrar held that the bar was only to the jurisdiction of the Civil Court or the Revenue Court and not of the Labour Court or any Industrial Tribunal constituted under the I.D. Act to adjudicate industrial disputes. The language was held to clearly indicate the intention of the Legislature not to oust the jurisdiction of the Industrial Adjudicator to determine claims and industrial disputes which cannot be adjudicated by the ordinary Civil Courts.

15. Also, in *National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara*, the bar of Section 10 of the CPC was held to be referable to a suit instituted in a Civil Court and it was held that the proceedings before the Labour Court cannot be equated with the proceedings before the Civil Court; it was further held that the Civil Court and the Labour Court are not courts of concurrent jurisdiction.

16. In view of the aforesaid, I conclude that there is no express bar in the School Act to the jurisdiction of the Industrial Adjudicator under the I.D. Act.

17. That takes me to the next question, as to whether the jurisdiction of the Industrial Adjudicator under the I.D. Act can be said to be impliedly barred by the School Act. The strongest argument of the senior counsel for the petitioner, in the opinion of this Court, is of the Legislature itself by the amendment of 1982 (though not enforced as yet) having intended to exclude the schools from the ambit of the I.D. Act. However, the fact remains that for whatsoever reason, the said amendment has not been brought into force as yet. The question which arises is, whether in spite of the amendment having not been brought into force, the Court can interpret the existing provisions in the Statute in the spirit of the proposed amendment. That would further amount to this Court bringing into force the amendment which the Legislature / Executive in its wisdom has not chosen to bring into force for the last over quarter of a century.

18. The question whether the Court can issue a mandamus directing the Executive to notify the Act / Amendment came up for consideration in *Common Cause Vs. Union of India (UOI) and Others*, where in relation to the Delhi Rent Act, 1995, the Supreme Court held that when the legislature itself had vested the power in the Central Government to notify the date from which the Act would come into force, then, the Central Government is entitled to take into consideration various facts while considering when the Act should be brought into force or not and no mandamus can be issued to the Central Government to issue

the notification bringing the Act into force. Again in *Ajay Goswami Vs. Union of India (UOI) and Others*, , it was reiterated that it is not open to the Court to issue any direction to Parliament to legislate. Even otherwise, the law consistently has been that the Court cannot recast or re-frame the legislation for the very good reason that it has no power to legislate and that the courts shall decide what the law is and not what it should be (Reference in this regard may be made to *Union of India and another Vs. Deoki Nandan Aggarwal, & State of Kerala Vs. Mathai Verghese and Others*,

19. Thus notwithstanding the proposed amendment to exclude the applicability of the I.D. Act to the schools, this Court would consider the School Act and the I.D. Act as they stand today and decide this lis accordingly and not in the spirit of the proposed amendment. It may however be highlighted that the very fact that amendment to exclude the applicability of the I.D. Act to schools is proposed, admits that till such amendment is brought into force, all provisions of the I.D. Act including the mechanism provided therein for resolution of disputes apply to schools such as the petitioner.

20. Moreover, the implied repeal of the applicability of the I.D. Act to the employees of the school can be inferred only if the School Act is found to be equivalent to the I.D. Act in so far as the protection of the rights of the workmen is concerned. However, it is not found so. The remedy of appeal before the School Tribunal under the School Act is a remedy necessarily as before the Civil Court and no further rights than of the Civil Court have been given to the School Tribunal under the School Act. With respect to the powers of the Civil Court, the Supreme Court in *Apollo Tyres Ltd. Vs. C.P. Sebastian*, has held that there are many powers which the Labour Court or the Industrial Tribunal enjoy which the Civil Court does not enjoy; for example, the power to enforce contracts of personal service, to create contracts, to change contracts etc. It was further held that these things can only be done by the Labour Court or Industrial Tribunal but cannot be done by a Civil Court. There is nothing in the School Act to show that such powers have been conferred and / or can be exercised by the School Tribunal. The effect thus, of excluding the jurisdiction of the Industrial Adjudicator for the reason of the remedy of appeal before the School Tribunal under the School Act, would necessarily be to the detriment of the workmen and take away from the workmen the rights given to them under the I.D. Act. This Court in *Usha Sahai Vs. Delhi School Tribunal and Others*, has noticed that the right to file an appeal has been conferred by the School Act and is circumscribed by the period of limitation prescribed therein for preferring the appeal and from which it follows that after the expiry of that period, the right to file the appeal shall stand extinguished. I may add that, conversely, no period of limitation is prescribed for raising a dispute before the Industrial Adjudicator and the Industrial Adjudicator also is not circumscribed by any such limitation for allowing a claim.

21. Though Mr. Arun Birbal, Co-Amicus Curiae has contended that the view of the

Gujarat High Court is that the remedy of the School Tribunal does not deprive the workman employed in the school from the remedy under the I.D. Act but I find that a Division Bench of the Gujarat High Court in *Saurashtra University Karmachari Parivar Vs. Saurashtra University* on an interpretation of Section 7(3) of the Gujarat Universities Services Tribunal Act, 1983 barring the jurisdiction of any other person, officer or authority to entertain a dispute which the Tribunal constituted under the said Act was entitled to entertain, held that the jurisdiction of the Industrial Adjudicator was barred because of the constitution of the Gujarat Universities Services Tribunal. However, as aforesaid, the bar therein was not only to the jurisdiction of the Civil Court but also to the jurisdiction of any other person, officer or authority. I also find another Single Judge of the Bombay High Court in *Registrar, University of Mumbai Vs. Lata Bhor and Another*, has held that once the services of non teaching staff are terminated either by way of dismissal or termination or reduction in rank, it is the School Tribunal alone which would have exclusive jurisdiction and only if there is no termination then the Industrial Court on the ground of apprehended termination would still have jurisdiction.

22. The argument raised by the senior counsel for the petitioner of Section 8(3)&(4) requiring the school to take approval of the Directorate of Education before terminating the services or suspending the employee is also now not available with respect to the employees of private unaided recognized schools and with respect whereto the Division Bench of this Court in *Kathuria Public School (supra)* has held, such approval to be not necessary. In that view of the matter, if the provisions of the I.D. Act otherwise admittedly applicable to the workmen employed in the schools are also denuded, the workmen employed in the schools would be left in a very vulnerable position. The extension of the jurisdiction of the School Tribunal, as held in *Kathuria Public School* was however circumscribed by another Division Bench in *Sonica Jaggi (supra)*. Even otherwise, the School Tribunal has to decide the lis in accordance with the general law / civil law and which as aforesaid does not empower the Tribunal to grant reliefs to the workman as the Industrial Adjudicator is. The contention of the senior counsel for the petitioner that the School Tribunal can also enforce the rights of the workmen under the I.D. Act is also not tenable. The rights conferred under the I.D. Act on the Industrial Adjudicator cannot be exercised by other fora as per the judgment in *Chief Engineer, Hydel Project (supra)* relied upon by Mr. Arun Birbal, Co-Amicus Curiae. I also find that the Supreme Court in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, has unequivocally held that enforcement of rights and liabilities created under the I.D. Act cannot be done by a Civil Court and that the Civil Court will have no jurisdiction to even grant a decree or injunction to prevent the threatened injury on account of alleged breach of contract, if the contract is one which is recognized by and enforceable under the I.D. Act only. Civil Courts, as also the School Tribunal, would have jurisdiction to enforce the rights under the Civil / General law only and not any rights and liabilities under the special law as the

I.D. Act.

23. The Supreme Court in T.M.A. Pai Foundation suggested setting up of an Educational Tribunal only for the reason of remedy of "Civil Court" being inappropriate. The remedy available to such of the staff / employees of School who are covered by the I.D. Act, of approaching the Industrial Adjudicator was not considered.

24. The cases of multiple jurisdictions for adjudication of disputes are not unknown. This Court in Jai Singh and Another Vs. Secretary Law and Judicial and Others, has held that law recognizes that there can be concurrent remedies with a right of choice. There is no general principle in law that only one remedy should be available. There is thus no inherent inconsistency in the two remedies being available to a workman and to curb / negate which malady this Court is required to find reasons.

25. The judgments cited by the senior counsel for the petitioner on this aspect are mostly where a remedy of a writ petition has been held to be barred owing to the existence of an alternative remedy. However a writ remedy is essentially a discretionary remedy and which discretion is not exercised where an alternative efficacious remedy is available. The said principle though not applicable, even if applied, in view of the finding above that the remedy before the School Tribunal is not an equally efficacious to the remedy before the Industrial Adjudicator, would not apply. Else it is also not a situation where there is any inconsistency or remedy under one law has to necessarily give way to the other. When as per the two statutes, the benefit of both can be availed of, there is no reason for the Court to intervene and hold that benefit of only one is available. The Division Bench of this Court in Ankur Exports Pvt. Ltd. Vs. Monopolies and Restrictive Trade Practices Commission and Others, has dealt in detail with this aspect and also of when election is required to be made.

26. The Supreme Court in General Manager, Telecom supra (qua the Telegraph Act and the Consumer Protection Act) and in Ratan Lal Adukia supra (qua the Railways Act and the CPC), found one of the statutes to be a complete code and the legislative intent of two sets of provisions being not expected to apply simultaneously. However, in the present case, neither is the School Act found to be a complete code nor any legislative intent to exclude the I.D. Act from the provisions of the School Act. Rather the proposed amendment of 1982 shows otherwise. Similarly, in D.D. Gupta (supra), the Court had found inconsistency between the I.D. Act and the Payment of Wages Act. No repugnancy between the I.D. Act and the School Act has been shown. In Ashoka Marketing Ltd. (supra), the provisions of the Rent Act were held to be excluded by the PP Act for the reason of the PP Act having been enacted to deal with the mischief of rampant unauthorized occupation of public premises. The School Act has not been enacted for any such mischief or owing to applicability of the I.D. Act.

27. Though in view of the recent dicta in Sardar Patel Vidyalaya (supra) of a

Single Judge of this Court, judicial propriety demanded the reference of the matter to the Division Bench but in view of the same Single Judge in Management of Mahavir Senior Model School (supra) having taken a contrary view, need was not felt for the same and it was deemed expedient to render a finding on the controversy.

28. The remedy under the I.D. Act has apparently been considered to be of sufficient importance for the legislature, in 1985, while enacting the Administrative Tribunals Act to save the said remedy. The Administrative Tribunals Act was also enacted to provide a specialized fora for employees of the government / government undertakings. The same can be equated to the School Act. When the remedy of the I.D. Act is expressly saved by such a special legislation, I do not find any ground to deprive such valuable remedy to the workmen employed in the schools.

29. I, therefore, hold that the jurisdiction of the Industrial Adjudicator under the I.D. Act is not barred in relation to disputes raised by workmen employed in the schools and covered by the School Act. Resultantly, no error can be found in the order of the Labour Court rejecting the preliminary objection raised by the petitioner. Though the institution of the present petition has considerably delayed the decision on the industrial reference but the respondents 1, 2&3 having chosen not to contest, the petition is dismissed with no order as to costs.

30. Before parting with the case, I would also like to express my appreciation for the invaluable assistance rendered by Mr. Harish Malhotra, Senior Advocate and Mr. Arun Birbal, Advocate who on the request of this Court, and to the prejudice of their otherwise precious time, have rendered their invaluable assistance enabling this Court to consider the matter from a wide perspective.