

STATE BANK OF PATIALA
v.
ROMESH CHANDER KANOJI AND ORS.

FEBRUARY 24, 2004

[V.N. KHARE, C.J., S.B. SINHA AND S.H. KAPADIA, JJ.]

Service Law:

Voluntary Retirement Scheme—State Bank of Patiala Voluntary Retirement Scheme—Clauses 5, 8, 9(i)—Employees opting for Voluntary Retirement Scheme—Withdrawal of application after closure of Scheme—Refusal by Bank—Justification of—Held: Scheme is an invitation to offer and not an offer—It gives locus poenitentiae to an employee to withdraw by the date of closure of scheme after which mode of acceptance would apply—Hence, employees precluded from withdrawing from the Scheme after its closure—Contract Act, 1872.

In terms of the ratio laid down by three Judge Bench of this Court in *Bank of India v. O.P. Swarnakar's* case employee is ensured in State Bank of India Voluntary Retirement Scheme(SBIVRS) the right of withdrawal within the period specified. In *State Bank of Patiala v. Jagga Singh's* case the Division Bench of this Court held that State Bank of Patiala being subsidiary of State Bank of India, and that Clause (8) of SBPVRs giving opportunity to the employee to withdraw being similar to clause (7) of SBIVRS, allowed Bank's appeal in terms of *O.P. Swarnakar's* case.

In the instant case, State Bank of Patiala, subsidiary of State Bank of India, published their Voluntary Retirement Scheme (SBPVRs) drawn up in the light of the guidelines issued by the Indian Banks Association. The Scheme was to open on February 15, 2001 and was to close on March 1, 2001. Clause (5) of the scheme gave 15 days time to the employees to opt for the scheme, clause (8) gave two months to the management to work out the scheme, and clause 9(i) provided the general conditions and that the applications once made cannot be withdrawn. Respondents applied under the SBPVRs. However, they withdrew their application for voluntary retirement. Bank did not allow the respondents to withdraw from the scheme as the withdrawal was made after the date of the closure of the Scheme. Respondents filed writ petition

A challenging the decision of the bank. High Court quashed the SBPVRS and allowed the writ petitions holding that even if it is assumed that the scheme was validly framed, employee could withdraw his option before the same is accepted and effectively enforced.

B The question which arose for consideration in these appeals is with regard to the determination of scope of judgment of this Court in the case of *Bank of India v. O.P. Swarnakar and State Bank of Patiala v. Jagga Singh*.

C Respondent-employees contended that clause 9(i) of SBPVRS was similar to clause 10.5 of the scheme of other nationalized banks inasmuch as it provided that application once made cannot be withdrawn; and that in the case of *Jagga Singh* Division Bench of this Court did not notice that clause 9(i) of the SBPVRS was dis-similar to SBIVRS, which gave employee an opportunity to withdraw, thus the judgment of *Jagga Singh* needs reconsideration.

D Allowing the appeals, the Court

E HELD: 1.1. Voluntary Retirement Schemes are basically funded schemes. Under such schemes, time is given to every employee to opt for voluntary retirement and similarly time is given to the management to work out the scheme. The management is required to create a fund which depends upon number of applications, the cost of the scheme, liability which the scheme would impose on the bank and such other variable factors. If the employees are allowed to withdraw from the scheme at any time after their closure, it would not be possible to work out the scheme as all calculations of the management would fail. [621-B-C]

F 1.2. SBPVRS is an invitation to offer and not an offer. Therefore, Clause 5 of SBPVRS gives *locus poenitentiae* to the employee to withdraw by 1.3.2001 after which the mode of acceptance contemplated by clause 8 of the SBPVRS would apply and the bank will proceed to vet the applications. [621-C, E]

G 1.3. Each scheme for the purposes of enforceability is required to be read as a whole. Reading clauses 5, 8, and 9(i), it is clear that employees are precluded from withdrawing from the SBPVRS after the closure of the scheme on 1.3.2001. [622-A; 621-G]

H *Bank of India v. O.P. Swarnakar and Ors.*, [2003] 2 SCC 721, held applicable.

State Bank of Patiala v. Jagga Singh, [2004] 2 SCC 201 referred to. A

Chitty on Contracts 28th Edition, p.125; Halsbury's Laws of England 4th Edition, p.133, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1252-1254 of 2004. B

From the Judgment and Order dated 3.4.2002 of the Punjab and Haryana High Court in C.W.P. Nos. 4273, 4180 and in C.W.P. No. 4647 of 2001.

Anil Kumar Sangal and Ms. Bhakti Pasricha for the Appellant.

Huzefa Ahmadi, Ms. Karuna Nundy, Nakul Dewan, K.K. Gupta and Ms. Meenakshi Arora for the Respondents. C

The Judgment of the Court was delivered by

KAPADIA, J. Leave granted. D

The question in these appeals concerns determination of the scope of the judgment of this Court in the case of *Bank of India and Ors. v. O.P. Swarnakar and Ors.*, reported in [2003] 2 SCC 721 as also the judgment of this Court in the case of *State Bank of Patiala V. Jagga Singh* decided on 13.3.2003 in Civil Appeal No. 2341 of 2003. E

The dispute lies within a narrow compass. State Bank of Patiala, subsidiary of State Bank of India, issued a circular No. PER/VRS/48 dated 20th January 2001 publishing their Voluntary Retirement Scheme (hereinafter referred to as 'the SBPVRs') drawn up in the light of the guidelines issued by the Indian Bank Association. The object of The SBPVRs *inter alia* was to downsize the existing strength of the employees and to increase profitability. The scheme was to open on February 15, 2001 and it was to close on 1st March, 2001 (inclusive of both days). The applications under the SBPVRs were to be accepted during the period when the scheme was to remain open between 15th February 2001 to 1st March 2001. Clauses (5), (8) and (9)(i) of the scheme are relevant for the purpose of deciding this matter and accordingly, they are quoted herein below:- F G

5. Period

The scheme will remain open during the period 15th February H

A 2001 to 1st March 2001 (inclusive both days) with an option to the Bank to close early/extend the scheme without assigning any reasons. The applications for Voluntary Retirement under the SBPVRS will be accepted during this period only.

8. Other features

B The Bank intends to control the outflow of personnel according to its requirements. Towards this end, Bank retains the discretion to limit the number of employees to be allowed to retire in each category of staff viz. offices/clerical-cash/subordinate, to be covered under SBPVRS. As such, the Bank will have the sole discretion as to the
C acceptance or the rejection of the request for retirement under SBPVRS depending upon the requirements of the Bank. For the purpose of exercising discretion in this regard, category wise lists of eligible applicants would be prepared in descending order of their age and applications of employees coming in higher age groups above cut-off
D age would be accepted; the cut-off age in each category will of course depend upon the acceptable number of employees who can be permitted to retire.

E No voluntary retirement shall be deemed to have come into effect unless the decision of the Competent Authority has been communicated in writing, which will be convened within a maximum period of two months after the date of closure of receipt of applications i.e. 01.3.2001.

9. General conditions

F (i) Staff members desirous of availing benefits under the scheme will have to submit a written application to the Competent Authority, through proper channel, in the specified format, within the period for which the scheme is kept open (i.e. 15.02.2001 to 01.03.2001). *The application once made cannot be withdrawn and the same will be treated as irrevocable.* While making application, the employee will be required to declare the name of
G nominee, to whom the payment may be made in the event of death of an VRS optee after the competent authority has accepted his VRS application but before payment has been effected.

(emphasis supplied)"

H To complete the chronology of events, respondents herein applied under

the SBPVRS between 15th February 2001 and 1st March 2001. Respondent No. 1 withdrew his application for voluntary retirement on 3/5th March, 2001. Similarly, respondent No. 2 withdrew his application for voluntary retirement on 2nd March 2001. Respondent No. 3 withdrew his application for voluntary retirement on 5th March, 2001. However, on 3rd April, 2001, the bank refused permission to the said respondents to withdraw from the scheme since their withdrawal was made after the date of the closure of the scheme on 1st March, 2001. The decision of the bank not to allow the respondents to withdraw from the scheme came to be challenged by way of Writ Petition before the High Court along with several other writ petitions involving the same question. By common judgment dated 3rd April, 2002, the High Court allowed the writ petitions by quashing the SBPVRS itself. The High Court held that even if it is assumed for the sake of argument that the scheme was validly framed, it would still be open to an employee to withdraw his option before the same came to be accepted and effectively enforced. Being aggrieved, the Bank has come by way of appeal to this Court.

In the case of *Bank of India v. O.P. Swarnakar*, (supra) a similar question arose for determination, namely, whether an employee having once opted for voluntary retirement pursuant to a voluntary retirement scheme is precluded from withdrawing his offer/opting out from the scheme? This Court in the above judgment found that there was difference between the voluntary retirement scheme framed by State Bank of India (hereinafter referred to as 'SBIVRS') on one hand and the voluntary retirement scheme framed by nationalized banks. The difference in the two schemes was that in the case of SBIVRS, an opportunity of 15-days was given to the employee-applicant to withdraw from the scheme whereas under the voluntary retirement scheme of nationalized banks no such opportunity was given. In the case of voluntary retirement scheme framed by nationalized banks, clause 10.5 stipulated that it will not be open for an employee to withdraw his request for voluntary retirement after having exercised such option. In the circumstances, this Court took the view that the case of State Bank of India stood on different footing *vis-a-vis* schemes framed by other nationalized banks. The reasons for the difference are contained in para 92 of the said decision, which reads as under:-

“However, the case of the State Bank of India stands slightly on a different footing. Firstly, the State Bank of India had not amended the scheme. It, as noticed here before, even permitted withdrawal of

A the application after 15th February. The scheme floated by the State
Bank of India contained a clause (clause 7) laying down the mode the
manner in which the application for voluntary retirement shall be
considered. The relevant clause as referred to herein before creates an
enforceable right. In the event the State Bank failed to adhere to its
B preferred policy, the same could have been specifically enforced by
a court of law. The same would, therefore, amount to some
consideration."

C It is evident from above that in the case of SBIVRS, where there is
a specific provision for withdrawal, the employee must exercise his option
within the time specified; and in case of nationalized banks where there was
no provision to withdraw (and in fact the scheme forbade withdrawal), the
withdrawal must be effected prior to acceptance by the bank. Therefore, in
terms of the ratio laid down by this Court, the employee is ensured under
SBIVRS the right of withdrawal the specified period.

D The decision of this Court in *Bank of India v. O.P. Swarnakar*, (supra)
is dated 17th December, 2002. The decision was given by a three-Judge
Bench of this Court. A similar question came before the Division Bench of
this Court once again in the case of *State Bank of Patiala v. Jagga Singh*, by
way of Civil Appeal No. 2341 of 2003. It was held by the Division Bench
E that State Bank of Patiala was a subsidiary of State Bank of India; that clause
8 of SBPQRS was similar to clause 7 of SBIVRS; that clause 8 of SBPQRS
also gave opportunity to the employee to withdraw and consequently the
appeal filed by State Bank of Patiala was allowed in terms of the decision in
the case of *Bank of India v. O.P. Swarnakar*, (supra). The decision in the
case of *Bank of India v. O.P. Swarnakar*, has since been followed in several
F cases.

In the present matter, the question is once again sought to be re-agitated.
Mr. Ahmadi, learned counsel appearing on behalf of the respondents herein
contended that clause 9(i) of SBPQRS, quoted above, was similar to clause
10.5 of the scheme of other nationalized banks inasmuch as it provided that
G application once made cannot be withdrawn. It was submitted that clause 9(i)
of the said SBPQRS has not been noticed by the Division Bench of this Court
in its judgment in the case of *State Bank of Patiala v. Jagga Singh*, (supra).
It was contended that clause 9(i) of the SBPQRS was dis-similar to SBIVRS,
which gave opportunity to the employee to withdraw and consequently the
H judgment of the Division Bench of this Court in *State Bank of Patiala v.*

Jagga Singh (supra) needs reconsideration.

We do not find any merit in the above argument. It is important to bear in mind that schemes in question are basically funded schemes. Under such schemes, time is given to every employee to opt for voluntary retirement and similarly time is given to the management to work out the scheme. Clause (5) of the SBPVRS gave 15 days time to the employees to opt for the scheme and under clause (8) a period of two months is given to the management to work out the scheme. Since the said schemes are funded schemes, the management is required to create a fund. The creation of the fund would depend upon number of applications; the cost of the scheme; liability which the scheme would impose on the bank and such other variable factors. If the employees are allowed to withdraw from the scheme at any time after their closure, it would not be possible to work out the scheme as all calculations of the management would fail. In the case of *Bank of India V. O.P. Swarnakar* (supra) the SBIVRS is held to be an invitation to offer. Following the said judgment, we hold that SBPVRS is an invitation to offer and not an offer. Clause 5 of the said SBPVRS *inter alia* states that the scheme will remain open during the period 15.2.2001 to 1.3.2001 whereas rule 8 thereof provides for mode of acceptance by the management. It is in the light of rules 5 and 8 that one has to read clause 9(i) which provides for general conditions and under which it is provided that application once made cannot be withdrawn. In *Chitty on Contracts* (28th Ed. Page 125), the learned author states that "an offer may be withdrawn at any time before it is accepted. That this rule applies even when the offeror has promised to keep the offer open for a specified time, for such a promise is unsupported by consideration." Therefore, clause 5 of SBPVRS gives locus poenitentiae to the employee to withdraw by 1.3.01 after which the mode of acceptance contemplated by clause 8 of the SBPVRS would apply and the bank will proceed to vet the applications. As stated above, the bank needs time to ascertain its liability, it is required to find out the cost of creation of a separate fund which in turn depends on the number of applications and if the employees are permitted to withdraw after the date of closure it would be impossible for the bank to implement the scheme. Therefore, clause 5 gives time to the employee to withdraw by 1st March 2001 and the bank is given time of two months thereafter to complete the designated mode of acceptance (See. Halsbury's Laws of England, 4th Edition page 133). Reading clauses 5, 8 and 9(i), it is clear that employees are precluded from withdrawing from the SBPVRS after the closure of the scheme on 1.3.2001.

A Subject to above, we hold that State Bank of Patiala is a subsidiary of State Bank of India; that the SBPVRS is similar to SBIVRS and consequently, the judgment of this Court in the case of *Bank of India v. O.P. Swarnakar* (supra) squarely applies to the facts of this case. We may clarify that each scheme for the purposes of enforceability is required to be read as a whole.

B Accordingly, the appeals are allowed in terms of the decision of this Court in *Bank of India v. O.P. Swarnakar*, (supra) and the impugned judgment of the High Court is set aside with no order as to costs.

N.J.

Appeals allowed.