

SUPREME COURT OF INDIA

Madhya Pradesh State Road Transport Corporation

Vs.

Manoj Kumar & Anr.

C.A.No.4437 of 2009

(A.K.Sikri and R.K.Agrawal, JJ.,)

29.08.2016

JUDGMENT

A.K.Sikri, J.,

SLP (Civil)No.27670 of 2011

1. Leave granted in the special leave petitions.
2. The appellant Madhya Pradesh State Road Transport Corporation (for short, the 'Corporation') is a public sector undertaking of the State of Madhya Pradesh and undertakes the work of carrying passengers from one place to another within and outside the State of Madhya Pradesh. As the appellant Corporation was running into losses, the State Government obtained permission from the Department of Road Transport & Highways of the Ministry of Shipping, Road Transport & Highways, Government of India for winding up of the appellant Corporation. This permission was given by the Government of India on March 23, 2005 with the following directions:

“The State Government shall ensure and be fully responsible for ensuring compliance of any existing/future orders passed by various court including Tribunal in any/all matters relating to MPSRTC. The State Government is also advised to safe guard the interest of employees of MPSRTC.”

3. Considering the closure of the Corporation, the Managing Director, vide S.No. 1452 (Karmik-2)Stha-B/2005, Order No. 28, introduced a Scheme called as Voluntary Retirement from Service (for short, 'VRS') for the employees of the Corporation. The said Scheme was to come into force from July 01, 2005. The relevant clauses, for the purpose of the instant appeals, are as under:

“4. Scheme: (i) All the candidates - employees, shall be permitted to give their option under this Scheme upto 1.8.2005 in Form (ka), along with in Form Kha.

Nomination Form shall also have to be filled up. The Management shall have this right, that they may on the basis of the reasons to be given in writing, but without intimating any reason to the applicant, may accept the Voluntary Retirement from Service or reject, against which no provision of any appeal, relief shall be vested.

(ii) In the following matters, on receipt of the option of Voluntary Retirement from Service, on the basis of merits, decision shall be taken for consideration: (ka) Whether against the employee concerned of the Corporation, Administrative action is either pending or is 'anudhyat'.

(Kha) Where, in any criminal court, any proceeding is pending, or in any Court, is in process before hand.

(ga) Employee, who in the normal course has given the resignation letter from the service of the Corporation, or has given.

(gha) Employee, who against the Corporation has initiated judicial action, or is going on, and till such action is not rejected or finished by the Court. (kha) Application for option presented after dated 1.8.2005.

(iii) Under the Scheme, the option once given by the employee, shall not be permissible to be changed or taken back.

(iv) The Management, by accepting once, the Voluntary Retirement from Service of which employee has intimated to the employee, in this respect, then he shall not be entitled to employment on contract, or otherwise in service of the State Government, or in the Service of the Corporation, or in its attached Company, active Companies, i.e. the employee in this scheme, in the Public Service, as defined, shall not be entitled to ask for employment.

xx xx xx

As per clause 4(1) of the said Scheme, the option was to be given till 1.8.2005. In other words one month time was given to decide either to opt for VRS Scheme or not to opt. Clause 4(ii) of the order clearly provided that “under the Scheme, the option once given by the employee, shall not be permissible to be changed or taken back.” ”

4. It becomes manifest from the provisions of the aforesaid Scheme, it provided certain conditions and also a specific form in which the application/option for VRS under the Scheme was to be made. Further, one of the conditions in the VRS Scheme was that once the application form for opting VRS is submitted, it would not be open to the applicant to withdraw the same. This Scheme was declared open on July 01, 2005 and was to last till August 01, 2005. It may also be stated at this stage that though in this VRS Scheme there

was no indication that the last date for submission of the application can be extended, on October 12, 2006, an order was passed amending certain provisions of the original Scheme which was promulgated vide Order No. 28 dated July 01, 2005. Essentially, there was only one amendment, namely, extending the last date of submission of the application upto October 28, 2006. Other provisions/ conditions of the original Scheme had to remain unaltered. With this amendment, those employees who had not opted under the Scheme by the earlier stipulated date,

i. e. August 01, 2005, were provided another opportunity to give their option for VRS. As would be noticed hereinafter, one of the arguments is as to whether a new Scheme was promulgated or it was an extension of the earlier Scheme. This aspect becomes significant because of the reason that as per the original Scheme last date for making application was August 01, 2005 and the Scheme came to an end on that date. The 'extension' given is much thereafter, i.e. on October 12, 2006. Thus, there was no Scheme in operation from August 02, 2005 to October 11, 2006. As this argument needs serious consideration and will have to be necessarily addressed at the appropriate place, we would like to reproduce hereunder the Order dated October 12, 2006 by which the time was extended till October 28, 2006. The same reads as under:

“Sl.No. 1919/Karmik/Ek/Swi.Se.Ni/06 Dated 12.10.2006

ORDER

Subject: Order No. 28 (Voluntary Retirement from Service Scheme 2005) - in connection with. For giving option in the order No. 28 issued by the Managing Director, of Part Ka, Kha, in para 4(ii), (kna) the last date has been given as 01.08.2005. After consideration and after consent by the State Government, this paragraph is amended as hereunder:

“(kna) Application for option presented after dated 28.10.06” .

2. The rest of the provisions/conditions issued vide order No. 28 of the Managing Director, with regard to Voluntary Retirement from Service 2005, shall remain as before.

3. Those employees, by whom option under this Scheme has not been presented in the past and now want to present their option, under this Scheme, then they can present the option, about V.R.S. under the conditions of Managing Director Order No. 28.

Sd/-

Managing Director”

5. The respondents/employees in all these appeals had submitted their applications for voluntary retirement within the span of original period fixed under the Scheme, i.e. between

July 01, 2005 and August 01, 2005. Other common factor in all these appeals is that before their applications could be accepted, they had sought withdrawal of their option. However, requests for withdrawal of the options were made after August 01, 2005, i.e. after the expiry of the original Scheme. However, their requests for withdrawal were not entertained and on the contrary applications for VRS submitted by these employees were accepted. In order to make it abundantly clear, we clarify that this happened after these respondents had submitted their affidavits withdrawing their options under the VRS Scheme. These respondents were, accordingly, relieved from the organisation on the afternoon of July 31, 2005.

6. These respondents challenged the aforesaid action by contending that once they had withdrawn their application for VRS, there was no question of going ahead with the option of VRS and accepting the same. Therefore, the action of the Corporation was unwarranted and contrary to law. All these employees approached the High Court of Madhya Pradesh and filed respective writ petitions challenging the aforesaid action of the Corporation.

7. While contesting these writ petitions, plea taken by the Corporation was that as per the specific provision contained in the VRS Scheme itself, there was a clear prohibitory clause putting an embargo on the rights, if any, of these employees from withdrawing their applications and, therefore, move on the part of these respondents to withdraw their option to take voluntary retirement was inconsequential and the Corporation was empowered to go ahead by accepting the applications for VRS.

8. The learned Single Judge of the High Court dismissed these writ petitions accepting the plea of the Corporation. It was held that the applications for withdrawal of VRS could only be moved within the validity period of the Scheme and in those cases where applications for withdrawal was submitted after August 01, 2005, this could not be done by the concerned employees. Writ appeals came to be filed before the Division Bench of the High Court by the aggrieved employees. The Division Bench, vide the impugned judgment, decided all these appeals together and allowed them holding that it is always permissible for an employee to withdraw the option under VRS before it is accepted. The High Court has proceeded on the basis that such a VRS Scheme calling for options is an invitation to offer. Application submitted by an employee opting under this Scheme qua voluntary retirement amounts to an offer and only on the acceptance of such an offer by the employee, a deal gets concluded and such an offer can, therefore, always be withdrawn before it is accepted. For this proposition, the High Court referred to and relied upon judgments of this Court in *Bank of India & Ors. v. O.P. Swarnakar etc¹* and concluded as under:

“14. From the aforesaid enunciation of law, there is no scintilla of doubt that an offer made by an employee ipso facto would not amount to resignation in praesenti and the offer can be withdrawn during the validity period. Learned Single Judge, as is perceivable, has dismissed some of the writ petitions and required some of the writ petitioners to seek redressal under the industrial law as the scheme was valid upto 1.8.2005. At this juncture, it is appropriate to mention that the conclusion arrived at by the learned Single Judge in this regard cannot be found fault with as the scheme

in question, at the time of delivery of judgment, was valid upto 1.8.2005. Presently, the scheme is valid upto 31.7.2007. The said fact is not disputed by Mr. Shobhit Aditya, learned Counsel for the Corporation. As the validity period of the Scheme has been extended, the said validity would relate back to the date of inception of the Scheme and it cannot be said that jural relationship between the employees and the employer has come to an end. Therefore, the employees were entitled in law to withdraw their option for voluntary retirement within the validity period and as the validity period has been extended and they have withdrawn their option they should be deemed to be in service. Be it noted that none of the appellants has accepted any kind of benefit under the voluntary retirement scheme. Some of them are continuing in service. The employees who are continuing in service should be allowed to continue till the jural relationship between the employees and the employer comes to an end as per law. The appellants who are not in service should be reinstated in service and they shall reap all the consequential benefits.”

9. It becomes manifest from the reading of the three Judge Bench judgment of this Court in O.P. Swarnakar that such a VRS Scheme is held to be contractual in nature. The Court, thus, held that provisions of the Indian Contract Act, 1872 would apply, which provisions categorically lay down that an offer made by a person can be withdrawn by him before its acceptance. However, an endeavour was made by the learned senior counsel appearing for the Corporation to argue that the judgment in O.P. Swarnakar should not have been followed by the High Court in view of the specific clause in the Scheme to the effect that an application once given cannot be withdrawn. He submitted that the High Court, in the process, ignored the mandate of law laid down by this Court in *State Bank of Patiala v. Romesh Chander Kanoji & Ors*². wherein this Court held as under:

“9. We do not find any merit in the above argument. It is important to bear in mind that the 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 SBPVRS gave fifteen 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 the 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 its 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* [(2003) 2 SCC 721 : 2003 SCC (L&S) 200] 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 Edn., p. 125), the learned author states that:

“an offer may be withdrawn at any time before it is accepted. That this rule applies even though 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 1-3-2001 after which the mode of acceptance contemplated by clause (8) of 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 1-3-2001 and the Bank is given time of two months thereafter to complete the designated mode of acceptance (see *Halsbury's Laws of England*, 4th Edn., p. 133). Reading clauses (5), (8) and (9)(i), it is clear that employees are precluded from withdrawing from SBPVRS after the closure of the Scheme on 1-3-2001.”

10. On that basis, it was argued that it was not open to the respondents to withdraw their application after August 01, 2005, which was the last date stipulated in the application and thereby disturb the equilibrium and the very creation of the Fund that was created depending upon the number of applications; the cost of the Scheme; liability which the Scheme would impose and other variable factors etc. It was also argued that the judgment in *O.P. Swarnakar* related to batch of matters of nationalised banks where the facts and questions were different. The significant distinguishing factor was that there was no closure of any of the nationalised banks, which was the prime motive for introducing the VRS Scheme by the Corporation.

11. Second argument, in the alternative, was that even if the judgment in *O.P. Swarnakar* is to be applied, it was specifically held in that case that option of voluntary retirement can be withdrawn by the last date on which the application is to be submitted. In the instant case, these options were withdrawn after the stipulated date. It was pointed out that the High Court did not accept this plea on the ground that since the last date was extended from August 01, 2005 to October 28, 2006 and the applications for withdrawal were not submitted from the said date, the withdrawal applications would be treated as having been submitted before the expiry date mentioned in the Scheme. The learned senior counsel for the Corporation argued with ardor that this was an erroneous approach on the part of the High Court inasmuch as the original VRS Scheme promulgated vide order No. 28 dated July 01, 2005 never mentioned any clause for extension of the Scheme and once these employees opted under the said Scheme they were very well informed that the last date is August 01, 2005. It was also submitted that the amendment was carried out for specific purpose, namely, to give opportunity to those who had not yet opted under the Scheme and, therefore, such an

extension in the date could not enure to the benefit of those who had already opted and for whom the last date was August 01, 2005.

12. Learned counsel who appeared for the respondents in these appeals submitted that the position in law was crystal clear as stated in O.P. Swarnakar and even in Romesh Chander Kanoji, relied upon by the Corporation, and made a fervent plea to this court to accept the approach adopted by the High Court in the impugned judgment. They also pointed out that Romesh Chander Kanoji, in fact, specifically referred to and relied upon O.P. Swarnakar, which was a three Judge Bench judgment. It was also argued that even thereafter the principle of O.P. Swarnakar has been applied by this Court consistently and following judgments are cited in support:

“(i) *Food Corporation of India and others v. Ramesh Kumar*³

(ii) *New India Assurance Company Limited v. Raghuvir Singh Narang and another*⁴ “

13. To begin with, we deem it appropriate to consolidate, with required astuteness, various legal principles touching upon the issue at hand, which are sparged in various judgments, and then apply those principles to the facts in these cases. Though much case law has emerged, reference to few judgments, which take into consideration the earlier cases as well, would suffice. Since the High Court has referred to the judgment in the case of O.P. Swarnakar, we deem it apt to initiate the discussion with that judgment, which is also earliest of the four judgments we are going to refer to.

14. In O.P. Swarnakar, which was a judgment rendered by a three Judge Bench of this Court, various nationalised banks were the appellants and batch of matters pertaining to these banks were decided. The State Bank of India, constituted under the State Bank of India Act, 1955 and other banks taken over under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 adopted in the year 2000 separately but similar schemes known as the “Employees Voluntary Retirement Scheme” . The question involved in those appeals was whether an employee opting for voluntary retirement under the said Schemes was precluded from withdrawing that offer. The Scheme adopted by the State Bank of India differed from the Scheme of the other nationalised banks inasmuch as that scheme permitted withdrawal of the applications for voluntary retirement by February 15, 2001. The said Scheme was applicable in relation to employees who on the date of application had completed 15 years of service or 40 years of age. The period during which the said Scheme was to remain operative varied from bank to bank. However, in case of the Punjab National Bank, the said Scheme was to remain in operation from November 1, 2000 to November 30, 2000. Para 10.5 of the said Scheme barred an employee from withdrawing the request made for voluntary retirement after once exercising the option. Other sub-paras of para 10 provided that a request for voluntary retirement would not take effect unless accepted by the competent authority who would have absolute discretion to accept or reject that request. The said Scheme prescribed a particular procedure for making an application for seeking

voluntary retirement. A large number of employees submitted their applications, out of whom a small number of employees withdrew their offer. Despite withdrawal of their offer, the same was accepted. In some cases, offers, despite withdrawal thereof, were accepted after the expiry of the operation period of the Scheme. Writ petitions were filed in various High Courts to challenge the acceptance of the employees' applications by the banks despite their withdrawal. Before the Punjab & Haryana High Court, the validity of the said Scheme also was challenged. Some writ petitioners sought issuance of a writ of mandamus to the respective banks to pay unto them their lawful dues strictly in terms of the Scheme. The High Court held that:

“(i) the said Scheme was not a valid piece of subordinate legislation as Sections 19(1) and 19(4) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 had not been complied with, (ii) even assuming the said Scheme to be valid, it was open to an employee to withdraw his option before the same had been accepted and effectively enforced, and (iii) since the Scheme was invalid, no relief could be granted in the writ petitions seeking any benefits under the Scheme. The Bombay High Court and other High Courts held that clause 10.5 of the said Scheme was not operative as the employees had an indefeasible right to withdraw their offer before the same was accepted. The Uttarakhand High Court dismissed a writ petition as not maintainable on the ground that the petitioner had bound himself by the terms not to withdraw the application for voluntary retirement.”

15. Eschewing the discussion on other aspects which are not relevant for these cases, insofar as issue at hand is concerned, the Court held that the Scheme was floated with a purpose of downsizing all employees. Such a Scheme, although may incidentally be beneficial also to the employees, but was primarily beneficial to the banks. The ultimate aim and object of floating such a Scheme was for the purpose of effective functioning of the banks so as to enable them to compete with private banks. On the other hand, the Court also remarked that though bank employees do not enjoy the 'status' as in the case of Government employees, nevertheless, they do enjoy security of their employment inasmuch as these nationalised banks were 'States' within the meaning of Article 12 of the Constitution. The banks, therefore, cannot take recourse to 'hire and fire' for terminating the services of the employees. They are required to act fairly and strictly in terms of the norms laid down therefor. Their actions in this behalf must satisfy the test of Articles 14 and 21. Proceeding therefrom, the Court took the view that a contract of employment is also a subject matter of contract and insofar as the question whether the VRS Scheme was an offer/proposal or merely an invitation to offer is essentially a question of fact. The Court further discussed the law relating to 'offer' and 'acceptance' with the observations that it could not be stated in simplistic form. In the context of the VRS, however, the Court applied this law of contract by deducing the following conclusions:

- (i) The banks treated the application from the employees as an offer which could be accepted or rejected.

(ii) Acceptance of such an offer was required to be communicated in writing.
(iii) The decision making process involved application of mind on the part of several authorities.

(iv) The decision making process was to be formed at various levels.

(v) The process of acceptance of an offer made by an employee was in the discretion of the competent authority.

(vi) The request of voluntary retirement would not take effect in praesenti but in future.

(vii) The bank reserved its right to alter/rescind the conditions of the Scheme. Thus, the nationalised banks in terms of the Scheme had secured for themselves an unfettered and unguided right to deal with the jural relationship between themselves and their employees. It was held that the Scheme constituted invitation to an offer and not an offer. As a fortiori, the application submitted by an employee was to be treated as offer/proposal of the employee, and when accepted by the bank it would constitute a 'promise' within the meaning of Section 2(b) of the Indian Contract Act, 1872 and only then the promise becomes an enforceable contract. On this analogy, the Court held that since employees had withdrawn their offer before it was accepted, they had a right to do so. However, the Court found that the case of State Bank of India stood slightly on a different footing as it had not amended the VRS Scheme and even permitted withdrawal of applications by February 15, 2001. Also, the Scheme floated by the State Bank of India contained clause (7) which laid down the mode and manner in which application for voluntary retirement was to be considered and this clause created an enforceable right. The Court noted that in the event the State Bank of India failed to adhere to its preferred policy, the same could have been subsequently enforced by the Court of law and, therefore, it would amount to some consideration. On this basis, insofar as appeals of State Bank of India are concerned, the same were allowed but appeals of nationalized banks were dismissed. Following passages from this judgment capture the essence of the legal principle laid down:

“113. The submission of the learned Attorney-General that as soon as an offer is made by an employee, the same would amount to resignation in praesenti cannot be accepted. The Scheme was in force for a fixed period. A decision by the authority was required to be taken and till a decision was taken, the jural relationship of employer and employee continued and the employees concerned would have been entitled to payment of all salaries and allowances etc. Thus it cannot be said to be a case where the offer was given in praesenti but the same would be prospective in nature keeping in view of (sic) the fact that it was come into force at a later date and that too subject to acceptance thereof by the employer. We, therefore, are of the opinion that the

decisions of this Court, as referred to hereinbefore, shall apply to the facts of the present case also.

114. However, it is accepted that a group of employees accepted the ex gratia payment. Those who accepted the ex gratia payment or any other benefit under the Scheme, in our considered opinion, could not have resiled therefrom.

115. The Scheme is contractual in nature. The contractual right derived by the employees concerned, therefore, could be waived. The employees concerned having accepted a part of the benefit could not be permitted to approbate and reprobate nor can they be permitted to resile from their earlier stand.”

16. Next decision, in the chronology, which we want to refer to is the case of Romesh Chander Kanoji. This is also a judgment rendered by a three Judge Bench, in which case of O.P. Swarnakar was specifically referred to and discussed. The principle laid down in O.P. Swarnakar was explained and in the process the Court noticed different outcomes insofar as State Bank of India is concerned vis-a-vis nationalised banks. This distinction was brought out and explained by this Court in the following manner:

“6. 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 within the specified period.”

17. The Court thereafter referred to its earlier judgment of this Court in *State Bank of Patiala v. Jagga Singh*⁵ wherein the Court held that since State Bank of Patiala was a subsidiary of State Bank of India and the Schemes were similar, the decision in O.P. Swarnakar, so far as it related to the State Bank of India, would be applicable to State Bank of Patiala as well. The counsel appearing for the employees in this case sought to distinguish *Jagga Singh*. However, this contention was repelled and in the process observation which was made by the Court need a glance. It is, thus, reproduced below:

“9. We do not find any merit in the above argument. It is important to bear in mind that the 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 SBPVRS gave fifteen 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 the 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 its 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* [(2003) 2 SCC 721 : 2003 SCC (L&S) 200] 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 Edn., p. 125), the learned author states that

“an offer may be withdrawn at any time before it is accepted. That this rule applies even though 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 1-3-2001 after which the mode of acceptance contemplated by clause (8) of 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 1-3-2001 and the Bank is given time of two months thereafter to complete the designated mode of acceptance (see *Halsbury's Laws of England*, 4th Edn., p. 133). Reading clauses (5), (8) and (9)(i), it is clear that employees are precluded from withdrawing from SBPVRS after the closure of the Scheme on 1-3-2001.”

18. The aforesaid two judgments pertained to nationalised banks or State Bank of India/its subsidiaries. Issue was discussed again in respect of a public sector undertaking in the case of *Food Corporation of India & Ors. v. Ramesh Kumar*. In the said case, clause VIII (d) of the VRS Scheme framed by the Food Corporation of India was to the following effect:

“Once an employee submits his application for voluntary retirement under this scheme to the competent authority, it shall be treated as final and it is not open to the employee to withdraw the same. The competent authority within notice period (3 months) shall take a decision to accept or reject the request and shall communicate the same to the official concerned.”

On facts, it was found that the offer of voluntary retirement given by the employee was withdrawn before its acceptance. The Court held that it could be so done following *O.P. Swarnakar* and *Romesh Chander Kanoji*. Paragraph 8 of the said judgment discusses the position as under:

“8. Now adverting to the present Scheme of Food Corporation, Para 8 clearly stipulates that the incumbent has no right to revoke the same and the Management will decide the same within three months. That means the Management still has three months' time to consider and decide whether to act upon the offer given by the incumbent or not. But if the incumbent revokes his offer before the Corporation accepts it then in that case, the revocation of the offer is complete and the Corporation cannot act upon that offer. In the present case there is one more additional factor which is that the Management has to take a decision within three months. Therefore, once the revocation is made by the incumbent before three months then in that case the Corporation cannot act upon the offer of voluntary retirement unless it is accepted prior to its withdrawal. In the present case, it is clear that the incumbent had given an offer for voluntary retirement on 13-9-2004 and he revoked his offer on 27-9-2004 but the same was accepted on 9-11-2004 i.e. after the revocation of his offer. In view of the law laid down by this Court in State Bank of Patiala [(2004) 2 SCC 651 : 2004 SCC (L&S) 428] the incumbent has already revoked his offer before it could be accepted. Therefore, in this view of the matter, the approach of the High Court appears to be correct and does not require any interference. The revocation made by the incumbent on 27-9-2004 of his offer of retirement cannot be acted upon as he has revoked it before the Corporation could act upon it. Hence, we are of the opinion, that the view taken by the High Court is correct. Consequently, all the three appeals are dismissed but without any order as to costs.”

19. In *New India Assurance Company Ltd. v. Raghuvir Singh Narang & Anr.*, this Court again reiterated that such schemes were contractual in nature and the provisions of the Indian Contract Act, 1872 would apply and the offer could be withdrawn any time before its acceptance. What is important is that this Court culled out the principles laid down in *O.P. Swarnakar* in para 22 of its judgment, which we reproduce below:

“22. The effect of the decision in *Swarnakar* can be summarised thus:

(i) If a contractual scheme provides that the voluntary retirement by exercise of option by the employee will come into effect only on its acceptance by the employer, it will not create any enforceable right in the employee to claim SV retirement. Any term in such a scheme that the employee shall not withdraw from the option once exercised, will be an agreement without consideration and therefore, invalid. Consequently, the employee can withdraw the offer (that is option exercised) before its acceptance. But if the contractual scheme gives the option to an employee to voluntarily retire in terms of the scheme and if there is no condition that it will be effective only on acceptance by the employer, the scheme gives an enforceable right to the employee to retire, by exercising his option. In such a situation, a provision in the contractual scheme that the employee will not be entitled to withdraw the option once made, will be valid and binding and consequently, an employee will not be entitled to withdraw from the option exercised.

(ii) Where the scheme is statutory in character, its terms will prevail over the general principles of contract and the provision of the Contract Act. Further, there will be no question of any “consideration” for the condition in the scheme that the employee will not withdraw from the option exercised. Subject to any challenge to the validity of the scheme itself, the terms of the statutory scheme will be binding on the employees concerned, and once the option is exercised by an employee to voluntarily retire in terms of the retirement package contained in the scheme, the employee will not be entitled to withdraw from the exercise of the option, if there is a bar against such withdrawal.”

20. Reading of the aforesaid judgments would clearly demonstrate that in those cases where the Scheme is contractual in nature (and not statutory in character as was seen in State Bank of India's case), provisions of the Indian Contract Act would apply. The VRS Scheme floated by the employer would be treated as invitation to offer and the application submitted by the employees pursuant thereto is an offer which does not amount to resignation in praesenti and the offer can be withdrawn during the validity period. This would be the position even when there is a clause in the Scheme that offer once given cannot be withdrawn at all. However, exception to this principle is that in such cases offer is to be withdrawn during the validity period of the Scheme and not thereafter even when if it is not accepted during the period of the Scheme. That is the clear mandate of Romesh Chander Kanoji. The rationale which is given for carving out this exception is contained in para 9 of the said judgment, which has already been reproduced above. To put it pithily, what is highlighted is that such schemes are funded schemes and time is given to every employee to opt for voluntary retirement. Because these are funded schemes, the Management is required to create a fund. The creation of this fund depends upon a number of applications; the cost of the Scheme; liability which this Scheme would impose on the employer and such other variable factors. In this situation, if the employees are allowed to withdraw from the Scheme at any time even after its closure, it would not be possible to work out the Scheme as all calculations of the employer would fail.

21. In the present case, the Corporation had floated the Scheme because of the reason that it has virtually stopped transport business and the purpose of the Scheme was to benefit itself by shrinking the strength of the employees as with no transport business need for such employees is not there. Here also, the Scheme provided that once the option is given, the same cannot be withdrawn. Following the dicta in the aforesaid judgments, as noted above, it is clear that notwithstanding this clause, the employees had a right to withdraw the offer during the validity period but not thereafter. This legal principle is even taken note of by the High Court as well in the impugned judgment. The High Court has, however, held that though the Scheme was valid up to August 01, 2005, but validity was extended up to July 31, 2007, the employees could withdraw their offers before July 31, 2007. Further, as in all these cases where the offer was withdrawn before July 31, 2007, the High Court has dismissed the appeals of the Corporation herein.

22. At this juncture, therefore, other issue that gains importance and needs to be decided is: whether validity of the Scheme was extended up to July 31, 2007 and the employees could withdraw their offer before this date or the date on which the initial scheme expired, i.e. August 01, 2005 and the withdrawal thereafter was not permissible?

23. To decide this question, let us recapitulate some salient facts. Scheme in the first instance was floated on July 01, 2005. It clearly mentioned that those interested to opt for the Scheme would give their options by August 01, 2005 and not thereafter. It was categorically provided that application for option presented after August 01, 2005 shall not be considered. Para 4(iii) also provided that the option once given by the employee shall not be permitted to be changed or taken back. Sub para (viii) of para 4 provided for settlement of dues of the employee on acceptance of such an Scheme. This Scheme came to an end on August 01, 2005. There was no extension of the Scheme during its currency or even immediately thereafter. More than one year thereafter,

“i. e. on October 12, 2006, the appellant Corporation gave another opportunity to those who had not submitted the applications earlier, to submit the options by October 28, 2006. We have already reproduced, in toto, the order dated October 12, 2006. In the first blush, it may give an impression that the initial date of August 01, 2005 stands extended till October 28, 2006. However, a little closer scrutiny and analysis of the factual background narrated above amply demonstrates that it is not a case of extension of the original Scheme. Reason is simple and can be found in the fact that there was a big gap/hiatus between August 1, 2005 and October 12, 2006. Earlier Scheme had come to an end on August 01, 2005, naturally no employees submitted or could submit applications after August 01, 2005 under the Scheme. There was no VRS Scheme in operation from August 2, 2005 to October 11, 2006. It is only on October 12, 2006, another opportunity was given to the rest of the employees to submit their applications and the period during which such an application for voluntary retirement could be submitted was from October 12, 2006 to October 28, 2006. This small window was opened for a period of 17 days for those employees who had not submitted their applications and they were afforded another chance. At the same time, the main reason was to attract more such employees to opt for VRS as the Corporation had decided to close down its operations and wanted its employees to take an honorable exit with 'golden handshake'. Therefore, there is an acquity and sharpness in the submissions of the Corporation that it cannot be treated as extension of the earlier Scheme. In fact, instead of promulgating the VRS Scheme all over again, easy way was found by making amendment in a particular clause stating that application presented after October 28, 2006 shall not be considered. Another significant feature which has to be kept in mind is that between August 01, 2005 and October 12, 2006, applications of many employees had been accepted and many out of them had even been offered their terminal dues. Thus, we find that there are two distinct groups of employees who had submitted their applications for VRS. First group was the one which exercised its option between July 01, 2005 to August 01, 2005. Second set of employees are those who submitted their options when another

chance was given to them, i.e. from October 12, 2006 to October 28, 2006. In view thereof, insofar as first set of employees are concerned, they could withdraw their option, before it was accepted, by August 01, 2005 and not thereafter. Likewise, those who submitted their options in the second phase could withdraw the same before October 28, 2006. A chart was submitted before us giving the status of the applications that were submitted by various employees/respondents in these appeals. This chart indicates that some of the employees belonging to the first group had withdrawn their offer before August 01, 2005. They had right to do so. Acceptance of their offer after the withdrawal would be of no consequence. However, those employees who withdrew their offers after August 01, 2005 could not do so and, therefore, the Corporation was within its right to accept their offers. Likewise, those employees belonging to the second category who had withdrawn their offers before October 28, 2006 were entitled to withdraw their offers as those were not accepted by that date. However, the withdrawal after October 28, 2006 when Scheme was closed would be of no consequence.

24. When we apply the aforesaid test to the facts of this case, we find that insofar as those employees who fall in the first category are concerned, they had withdrawn their offer after August 01, 2005, except one Mr. Dinesh Chand Yadav, who is respondent No.1 in the Civil Appeal arising out of Special Leave Petition (Civil) No. 14874 of 2010. Therefore, from this batch, only he is entitled for reinstatement with back wages, as he has also filed an undertaking, in terms of this Court's order dated May 12, 2016, to the effect that he is not gainfully employed during the relevant period. Likewise, employees falling in the second category had withdrawn their offer after October 28, 2006, except Mr. Sukhram and Mr. Ram Sharan Rathore, both respondents in the Civil Appeal arising out Special Leave Petition (Civil) No. 14594 of 2010. However, these respondents failed to comply with this Court's order dated May 12, 2016. They are, therefore, entitled for reinstatement without back wages.

25. Accordingly, Civil Appeal arising out of Special Leave Petition (Civil) No. 14874 of 2010 qua Mr. Dinesh Chand Yadav and Civil Appeal arising out of Special Leave Petition (Civil) No. 14594 of 2010 are dismissed. In the case of all other respondents, their application for withdrawal post the tenure of the Scheme would be of no consequence. The direction of the High Court reinstating these respondents/employees is, therefore, found to be contrary to law and is hereby set aside, resulting into allowing all other appeals of the Corporation.

26. In the facts and circumstances of this case, there shall be no order as to costs.

Judgment Referred.

¹*C.A.No.854 of 2002*

²*AIR 2004 SC 2016*

³*(2007) 8 SCC 0141*

⁴*(2010) 5 SCC 0335*

⁵*(2004) 5 SCALE 0455*