
(2006) 02 JH CK 0063
In the Jharkhand High Court
Case No : W.P.S. No. 5478 of 2005

Binod Kumar Khetan

APPELLANT

Vs

The Hindustan Copper Limited and Others

RESPONDENT

Date of Decision : 16-02-2006

Acts Referred:

Contract Act, 1872 — Section 6

Citation : (2006) 109 FLR 343 : (2006) 1 JCR 426

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : P.C. Tripathy, M. Upadhayay and P.K. Pandey, for the Appellant; P.K. Sinha and M. Sinha, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application, the petitioner has prayed for quashing the order dated 25.8.2005, whereby he has been relieved from the service of the respondents-Company under the Voluntary Retirement Scheme.

2. Petitioner's case is that in the year 2002 respondents- Hindustan Copper Limited introduced Voluntary Retirement Scheme 2002 with effect from 1.3.2002 for a period of 15 days i.e. till 15.3.2002. Petitioner opted for the voluntary retirement but the same was rejected by the respondents. Petitioner again opted for voluntary retirement under the Voluntary Retirement Scheme re-introduced by the respondent- Company in January 2003, but no decision was taken by the Respondent-authority. Petitioner, therefore, withdrew his option by sending letter-dated 23.2.2003. It is contended that respondents were willing to accept the option given by the petitioner and kept the matter pending for the entire 2003-04 and never responded to the letter of the petitioner dated 23.2.2003. All of a sudden despite the withdrawal of the option given by the petitioner, respondents arbitrarily issued a letter dated 25.8.2005 relieving the petitioner from the service of the Company at the close of working hours on the same date.

3. Respondent-Company filed counter affidavit stating inter alia that in the Office Order by which application for voluntary retirement was invited, it was categorically mentioned that Management reserves the right to accept or reject the application for voluntary retirement. On 18.1.2003 petitioner as Manager (material) submitted his application for Voluntary Retirement Scheme through proper channel. The same was received on 18.1.2003 and was forwarded to Head Office for appropriate action. Petitioner submitted his Voluntary Retirement Scheme application exercising option given under Rule 7.3 and 7.4 of the scheme and he made special request that he may be released by the end of March 2003. The

said application dated 18.1.2003 was forwarded by the Executive Director to the Chairman-cum-Managing Director on the same day. The matter was discussed at the Head Office level and it was decided and confirmed that respondent will be able to release the persons seeking voluntary retirement. Further case of the respondent is that before approval of voluntary retirement, it was imperative to obtain clearance from the Chief Manger (Vigilance), On 17th August, 2005 the Chief Manager (Vigilance), Head Office had given clearance vide memo dated 5th August, 2005. This was finally approved by the Chairman-cum-Managing Director on 19th August, 2005. The Deputy G.M. (P&A) Head Quarter communicated the same by FAX dated 20th August, 2005 to the Acting G.M./ICC, Ghatsila and finally by fax dated 29th July, 2005, it has been decided to accept the voluntary retirement sought for by the petitioner. The FAX message was received by ICC, Ghatsila on 22nd August, 2005. On 25th August, 2005, the Chief Manager (Personnel) communicated to the petitioner that his request for voluntary retirement has been accepted and accordingly he was relieved from the service of the Company.

4. The admitted facts which emerge from the pleadings of the parties are that in the year 2002, the respondent-Company came with Voluntary Retirement Scheme, 2002 effective from 1.3.2002 till 15.3.2002. Petitioner opted for voluntary retirement under the said scheme but the same was rejected by the Corporation. Respondent-Company again reintroduced the Voluntary Retirement Scheme in January 2003. Petitioner submitted application on 18.1.2003 for voluntary retirement under the said scheme. According to the respondents, the said application of the petitioner was accepted on 19.8.2005 by the Chairman of the Corporation and a Fax to that effect was sent on 22.8.2005 to their Ghatsila office and from there the impugned letter of acceptance was communicated to the petitioner on 25.8.2005. Petitioner said to have withdrew his option for voluntary retirement on 23.2.2003.

5. In the instant case, the moot question which falls for consideration is as to whether the offer of the petitioner/employee has been legally and validly accepted by the Company and whether offer made by the petitioner has been rightly withdrawn before the acceptance was communicated to the petitioner.

6. At this juncture, it would be most appropriate to quote some of the

paragraphs of the counter affidavit filed by the respondent-Company. Paragraphs 8 and 9 of the counter affidavit reads as under :

Para 8--That on 18.1.2003, the petitioner as Manager (Material) submitted his application for VRS through proper channel. The same was received at ICC on 18th January, 2003 and was forwarded to Head Office for appropriate action. The petitioner submitted his VRS application exercising option given under Rule 7.3 and 7.4 of the scheme and he made special request that he may be released by the end of March, 2003.

(Emphasis given)

Para 9.--That as aforesaid, the said application was received by the head of the department on the same date. The GM/Executive Director forwarded the said application to the Chairman-cum-Managing Director at the head Office.

7. Paragraph 17 of the counter affidavit is also worth to be herein below :

Para 17.--It is clarified that during the period of operation of the VRS from 1.3.2002 to 15.3.2002, his VRS application was not accepted and request for VRS was treated as rejected in terms of the communication made in the office order No. CPD/AW/15.1/2002 dated 22.5.2002.

8. It is, therefore, abundantly clear that petitioner submitted his application for voluntary retirement exercising option with a request that he may be released by the end of March 2003. His application remained pending for more than 2-1/2 years and during this period no communication was made by the respondent to the petitioner whether his offer was accepted or not?

9. It is now well settled law that Voluntary Retirement Scheme is not a proposal or an offer but an invitation to the employees to submit their applications and exercise their option. The application submitted by the employees constitute an offer. It is equally well settled that an application by the employee to secure voluntary retirement under the Voluntary Retirement Scheme can be withdrawn by such an employee before the same is accepted by the competent authority.

10. Now I would like to discuss the law with regard to the word "offer" and "acceptance" in the light of the Contract Act.

11. When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. When a person to whom proposal is made signifying his assent, thereto, the proposal is said to be accepted. The proposal when accepted becomes a promise. The word "proposal" is used in the Act in the same sense as the word "offer" is used in English Law. Writers of English law have defined an "offer" as :

... an intimation, by words or conduct, of a willingness to enter into a legally binding contract, and which in its terms expressly or impliedly indicates that it is to become binding on the offer or as soon as it has been accepted by an act,

forbearance, or return promise on the part of the person to whom it is addressed.

12. In Chitty on Contracts, the word "proposal" has been defined as :

an expression of willingness to contract made with an intention (actual or apparent) that it is to become binding on the person making it as soon as it is accepted by the person to whom it is addressed.

13. A proposal may be revoked at any time before acceptance, even though the proposer has promised to keep the offer open for a specified time and once accepted, the proposal becomes irrevocable. At the same time the proposer has the right to revoke the offer at any time before acceptance, even if he has undertaken to keep the offer open for a certain time, unless such promise is supported with consideration.

14. Section 6 of the Contract Act makes a provision as to how revocation of proposal can be made. Section 6 of the Act reads as under :

Revocation how made.--A proposal is revoked :

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of the reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfill a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

15. It is, therefore, clear that a proposal or offer is revoked by the lapse of time prescribed in the offer for its acceptance or if no time is so prescribed, by the lapse of reasonable time without communication of the acceptance.

16. In Anson's Law of Contract, (26th Edn. at page 52) it is stated :

an offer may be considered to have lapsed owing to the passing of time. Sometimes the parties expressly fix a time within which an offer is to remain open. Instances of such a prescribed time are readily supplied. This offer to be left open until Friday, 9 a.m. 12th June, allows the offeree to accept the offer, if unrevoked, at any time up to the hour named, after which the offer would lapse. Similarly, an offer to supply goods of a certain sort at a certain price for a year from the present date, or an offer to guarantee the payment or any bills of exchange discounted for a third party for a year from the present date, are offers which may be turned into contracts by the giving of an order in the one case, the discount of bills in the other. Such offers may be revoked at any time, except as regards orders already given or bills already discounted, and they will, in any event, lapse at the end of a year from the date of offer.

The lapse of an offer after a reasonable time may be explained on the ground that the offeree, by his delay in accepting the offer, has impliedly rejected it by his conduct. On this view, the knowledge of the offerer of the offeree's intention to keep the offer alive might preclude an offer from lapsing even after the passage of what might otherwise be a reasonable time, although clearly the offer could not be kept open indefinitely. On the other hand, an alternative explanation is that a term should be implied into the offer that its continued existence is conditional upon acceptance being made within a reasonable time, in which case the manifestation of a desire not to reject the offer would probably be irrelevant. It is clear, however, that where the offeror prescribes a specific time limit for acceptance, the offer is conditional upon acceptance within that time.

17. In the book Cheshire Fifoot & Furmston's, Law of Contract, it is stated that :

Lapse of time :

if an offer states that it is open for acceptance until a certain day, a later acceptance will clearly, be ineffective. Even if there is no express time limit an offer is normally open only for a reasonable time. So in *Ramsgate Victoria Hotel Co. v. Montefiore* :

The defendant had applied in June for shares in the plaintiff company and had paid a deposit into the company's bank. He heard nothing more until the end of November, when he was informed that the shares had been allotted to him and that he should pay the balance due upon them.

The Court of Exchequer held that his refusal to take them up was justified. His offer should have been accepted, if at all, within a reasonable time, and the interval between June and November was excessive.

Failure of a condition subject to which the offer was made :

An offer, no less than an acceptance, may be conditional and not absolute: and if the condition fails to be satisfied, the offer will not be capable of acceptance. The condition may be implied as well as expressed. A striking illustration is afforded by the case of *Financings Ltd. v. Stimson*.

As the implied condition had been broken before the plaintiffs purported to accept, the offer had ceased to be capable of acceptance and no contract had been concluded.

18. Chitty on contract states the law thus :

Specified time.--An offer which expressly states that it will last for a specified time only cannot be accepted after that time. The most common application of this rule is to offers taking the form of options, which obviously cannot be accepted after the expiry of the period during which the option is expressed to be exercisable. On a similar principle, an offer, which stipulates for acceptance "by return of post" must be accepted either in the specified way or by some other no less expeditious method.

Reasonable time.--Where the duration of an offer is not limited by its express terms, the offer comes to an end after the lapse of a reasonable time. What is a reasonable time depends on all the circumstances; for example on the nature of the subject matter and on the means used to communicate the offer. An offer to sell a perishable thing, or a thing subject to violent price fluctuations, would terminate after a relatively short time; and this would often also be true of an offer made by telex or by telegram or by other equally speedy means of communication such as telex or fax.

Conduct of offeree known to offeror.--The period which would normally constitute a reasonable time for acceptance may be extended if the conduct of the offeree within that period indicates an intention to accept and this is known to the offeror. Often on such facts there would be an acceptance by conduct, but this possibility may be ruled out by the terms of the offer, which may require the acceptance to be by written notice sent to a specified address. In such a case the offeree's conduct, though it could not amount to an acceptance, could nevertheless prolong the time for giving a proper notice of acceptance. For the offeree's conduct to have this effect, it must be known to the offeror; for if this were not the case the offeror might reasonably suppose that the offer had not been accepted within the normal period of lapse, and act in reliance on that belief; e.g. by disposing elsewhere of the subject-matter.

19. In the Hulsbury's Laws of England, Vol. 11, the revocation of offer has been stated as :

Revocation of offer.--A proposal can be revoked at any time before the acceptance is communicated to the proposer and not afterwards. For Example, if under the conditions of the auction a successful bid can only be accepted with the approval or concurrence of a specified officer, the bid can be revoked even after the auction until such formal approval or concurrence is obtained and the acceptance is communicated. Similarly, if under the terms of the bid, the acceptance is only final after a specified period, the proposal can be revoked until such period expires.

A proposal may be revoked in the following ways.

(1) Communication.--A proposal is revoked by the communication of a notice of revocation of an offer by the proposer to the other party. For example, if the tender conditions require the revocation to be communicated to him. There is no specific mode of communicating a revocation and it can be done in any manner, and a written offer may be revoked orally. However, a revocation by facsimile sent to a wrong telephone number, which does not reach the offeree, is not a valid revocation.

(2) Lapse of time.--A proposal stands revoked by the lapse of time specified in the proposal or, if no time is specified, after the lapse of a reasonable time without communication of the acceptance. Therefore, an offer to purchase shares in a company lapses if no allotment is made for many months. Once an offer is

rejected it cannot be accepted. An offer is rejected if a counter - offer is made, and if cannot be accepted that.

(3) Failure of fulfill condition precedent.--If the acceptor fails to fulfill a condition precedent to acceptance the proposal is revoked.

20. Heaving regard to the law discussed herein above, it can be safely held that the applications submitted by the employees for voluntary retirement, being an offer, a decision on that application has to be taken within a reasonable time by issuing letter of acceptance or letter of refusal. An offer may be conditional and if the condition fails to be satisfied the offer will not be capable of acceptance. An offer for voluntary retirement may be considered to have been lapsed owing to passing of time.

21. Coming back to the instant case, as noticed above, it has been categorically admitted by the respondent in paragraph 8 and elsewhere of the counter affidavit, quoted herein above that the petitioner submitted his application for voluntary retirement on 18.1.2003 and he made special request that he may be released by the end of March 2003. In other words, petitioner exercised his option to take voluntary retirement, if it is accepted and he is released by the end of March 2003. The respondent Company after receipt of the application on 18.1.2003 remained silent for more than 2-1/2 years without intimating the petitioner that even after the expiry of March 2003 his application shall be considered. In paragraph 17 of the counter affidavit, the respondent has admitted that in 2002 when earlier scheme for voluntary retirement was introduced the petitioner sought voluntary retirement but the same was not accepted and the request for voluntary retirement was treated as rejected within two months. It is, therefore, clear that under the earlier voluntary retirement scheme, the Corporation took decision on all such application within two months. But in the late scheme, the Corporation alleged to have kept such application pending of more than 2-1/2 years. In my considered opinion, therefore, the offer made by the petitioner for voluntary retirement with a specific condition to release him by March 2003, having not been accepted within that time or within a reasonable time, the offer ceased to be capable of acceptance and no contract has been concluded by issuing impugned letter of acceptance dated 25.8.2005. The acceptance of offer by the Company, therefore, is not a valid acceptance and therefore, petitioner cannot be relieved pursuant to the impugned letter of acceptance dated 25.8,2005 issued by the respondent-Company. The impugned letter of acceptance is, therefore, illegal, unreasonable and unjustified.

22. Now I shall discuss the next question whether the offer has been rightly withdrawn by the petitioner. It is the specific case of the petitioner that he withdrew his offer for voluntary retirement by letter-dated 23.2.2003. The case of the respondent is that petitioner submitted his application dated 29.7.2005 informing the, respondent-Company that the application for voluntary retirement submitted by him couple of years back is withdrawn and the same may be treated as cancelled. It is contended that the said withdrawal letter dated

19.7.2005 was received by the Chief Manager (Material) on 22.8.2005 who kept the said letter with him and forwarded it to the G.M./Dy.G.M. on 25.8.2005. The Dy. G.M. (Acting G.M.) forwarded the said application to the Head Office on 26.8.2005. However, in paragraph 21 of the counter affidavit, it is stated that request of the petitioner for voluntary retirement was accepted by the competent authority on 19.8.2005 and Fax from Head quarter was dispatched on 20.8.2005 and thereafter, final letter of acceptance was issued by the Company on 25.8.2005. Even assuming that request letter of withdrawal-dated 29.7.2005 was allegedly received by the respondents only on 22.8.2005, admittedly letter of acceptance was finally communicated to the petitioner on 25.8.2005.

23. Be that as it may, the manner in which the respondent- Company kept the offer letter dated 18.1.2003 for number of years and then processed the said request letter for taking a decision is wholly unjustified and suffers from serious illegality. At this score also, acceptance of offer by letter-dated 25.8.2005, beyond a reasonable time, cannot be held to be a valid acceptance.

24. Taking into consideration the entire facts of the case and the law discussed hereinabove, I have no hesitation in holding that the acceptance of offer for voluntary retirement by the Corporation is illegal, unreasonable and unjustified and the impugned order of acceptance cannot be given effect to.

25. For the reasons aforesaid, this writ application is allowed and the impugned order of acceptance is quashed. Consequently, the petitioner shall be deemed to be in service with all benefits.