(2010) 04 DEL CK 0379

In the Delhi High Court

Case No : Writ Petition (C) No. 11887 of 2009

Sunit Kumar Singh APPELLANT

Vs

Hotel Corporation of India Ltd. RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 04 DEL CK 0379

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : N. Safaya, for the Appellant; Padma Priya, for the Respondent

Final Decision : Allowed

Judgement

Kailash Gambhir, J.—By this petition filed under Article 226 of the Constitution of India, the petitioner seeks quashing of the order dated 04.09.2009 passed by the respondent No. 1 Hotel Corporation of India Ltd. thereby relieving the petitioner from his services under the VRS Scheme and order dated 14.09.2009 whereby the representation of the petitioner was rejected. The petitioner also seeks a declaration to declare the VRS Scheme of the respondent Corporation having become defunct or lapsed in absence of further disinvestment of the respondent''s assets of the remaining units.

2. A conspectus of facts of the case relevant for deciding the present petition are that the petitioner is employed as a Senior Sous Chef in the respondent Corporation and is presently posted at a Unit of the respondent No. 1 known as Chefair Flight Catering Delhi at IGI Airport, New Delhi. Vide office order dated 08.07.2002, the respondent No. 1 Corporation invited options from its employees to opt for voluntary retirement scheme and in response to the said scheme many employees of the respondent No. 1 opted for their voluntary retirement, including the petitioner, who gave his option vide application dated 06.08.2002. Along with the said office order, the respondent No. 1 also circulated the guidelines governing the said scheme. It will be relevant to reproduce the said

office order and also some of the relevant terms and conditions of the scheme as under:

OFFICE ORDER

Options for accepting Voluntary Retirement Scheme are hereby invited from all employees of Centaur Hotel Delhi Airport including Chefair, Delhi, Chefair, Mumbai including Dining Facilities Centre and also the employees of Head Office who had opted for Centaur Hotel Delhi and Chefair, Mumbai, as the case may be. On acceptance of the Voluntary Retirement by the Company, the Scheme would be operative only in the eventuality of disinvestment on completion of the transaction of the respective business to which the employees belong. A copy of the Scheme is enclosed for perusal, information and sake of clarity. The employees are advised, if they are interested, that they may submit their applications in the prescribed format enclosed with the Scheme referred herein above latest by 7th August, 2002, which on receipt will be processed and details thereto would be provided to the prospective bidders with the list of employees whose Voluntary Retirement options have been accepted by the HCI and they would be accordingly asked to make upfront payment of the requisite amount. The upfront amount so received would be disbursed to the employees of the respective units on the date of transfer of business and simultaneously their claim for terminal benefits would also be processed and settled by the HCI itself.

All HODs are advised to kingly bring out the contents of the above Office Order to the knowledge of each employee and may arrange to have their application collected so as to reach the undersigned on or before 7th August, 2002.

VOLUNTARY RETIREMENT SCHEME FOR INVITING OPTIONS

1. APPLICABILITY:

The Scheme shall apply to all regular executives and non-executives of Centaur Hotel, IGI Airport, Delhi including Chefair Flight Catering Delhi and Chefair Flight Catering Mumbai including Dining Facilities Centre, the employees of Head Office who had opted for Centaur Hotel Delhi/Chefair Flight Catering Mumbai as the case may be. It shall not apply to temporary casual, daily wagers/contractual employees and employees who are not on the permanent rolls.

1.1. This Scheme shall be made applicable only in the eventuality of disinvestment of Centaur Hotel Delhi and/or Chefair Flight Catering Mumbai on successful completion of transaction in respect of the business to which the employees belong.

6. TENURE:

6.1 The Scheme would be kept operative for a period of 30 days effective 9th July, 2002. The Management will convey their acceptance to the Voluntary Retirement Scheme application of the employee within 90 days of the closure date indicated for the Voluntary Retirement Scheme.

6.2 The Company reserves the right to extend or reduce the period of the operation of the Scheme or to withdraw the Scheme, suspend operation of the Scheme without any notice or without assigning any reasons therefore and/or to modify, alter, amend or vary the Scheme in any manner without any notice and without assigning any reasons therefore.

11. The employees whose request for voluntary retirement is accepted by the Competent Authority would be released on the transfer date i.e. the date on which business will be transferred to the party buying the business of the respective Unit. The final settlement of their accounts with the Company will also be processed simultaneously.

NOTE:

(a) The options being invited by the Company would be processed and a list of the employees whose Voluntary Retirement has been accepted by the Company would be drawn and the bidders would be accordingly asked to make upfront payment of the requisite amount. In this regard it is clarified that Voluntary Retirement would only be given on successful completion of transaction in respect of the business to which the employees belong. The upfront payment towards VRS would be obtained from the prospective purchasers, which will be kept with the Company with the stipulation that the said amount would be used only towards disbursing VRS payment to the employees of the respective units.

3. Consequently, vide letter dated 09.11.2002 the respondent No. 1 Corporation intimated the petitioner that his name stood included amongst the employees who had opted for Voluntary Retirement Scheme and that the same has also been intimated to the Global Advisors for the purpose of disinvestment of the property of Chef Air Flight Catering, Delhi. It was also intimated to the petitioner that the VRS compensation would be released to the petitioner on the transfer date i.e. the date on which the business would be transferred to the succeeding party and that before the actual disbursement, due notice shall be given to the petitioner. In this communication, the respondent No. 1 corporation reiterated that the entire scheme of VRS is subject to the Unit being disinvested. Relevant para of the said letter is reproduced as under:

The entire scheme is subject to the Unit being disinvested, to which you belong i.e. Chef Air Flight Catering, Delhi, as and when decided by the Government and your claim would be settled appropriately subject to the fulfillment of the conditions mentioned in para 3 of Staff Notice No. CFCD/PER/02.18(3)/1008 dated 16.08.2002.

4. Thereafter, the said voluntary scheme was amended by the respondent No. 1 as there was some delay in the disinvestment process and through the amended scheme, an option was given to the employees who had earlier applied and whose applications were already accepted that they can withdraw their application from VRS, if they so desire, within 30 days from the issue of the said notice of amendment. The staff notice Amendment dated 28/29.03.2003

introducing the said amendment is reproduced as under:

STAFF NOTICE

Voluntary Retirement Scheme - Amendment

Vide our Office Order No. MD/HCI/DEL/OR-VRS/04 dated July 08, 2002, displayed on the notice Board of the Company in each of the Units, we had also displayed the Voluntary Retirement Scheme (VRS) as formulated by the Company. In response to this Notice/Voluntary Retirement Scheme number of applications were received from the employees. Subsequently, Management had displayed names of the employees whose applications for VRS was accepted and also individual letters of accepting the application for VRS were issued to the eligible employees. This Voluntary Retirement Scheme was subject to the concerned unit being disinvested.

2. Since there has been some delay, in order to facilitate the employees who had applied for the Voluntary Retirement Scheme, Management has decided to proceed with the Voluntary Retirement Scheme. Consequent to this decision of the Management, following amendments are notified in the VRS Scheme announced earlier.

a) In view of the modified VRS Scheme now offered under this Staff Notice, it will not be obligatory on the part of the purchasers(s) to offer any further VRS at the time of disinvestment.

(b) The employees whose applications for VRS is accepted, will be relieved on the date(s) decided by the Managing Director, taking into account the exigencies of work.

(c) The employees who had not applied for VRS earlier, can now apply for VRS within 30 days from the date of issue of this notice.

(d) The employees who had applied earlier and whose applications were already accepted, can withdraw their application from VRS, if they so desire, within 30 days from the issue of this notice.

(e) The applications already accepted and not withdrawn after the issue of this Notice and fresh applications approved by Managing Director, stand accepted.

3. The amended copy of the Voluntary Retirement Scheme is also displayed alongwith this Notice for information, perusal and further action of the employees of these Units.

5. However, the petitioner did not exercise his option to withdraw from the said scheme after the introduction of the said amendment in the said scheme. Vide letter dated 26.04.2006/2.05.2006 the petitioner was informed that his request for VRS is accepted and since the Board of the respondent No. 1 Corporation, as per the directions of the Ministry of Civil Aviation, has taken a decision to outsource the Management of the remaining Units of respondent No. 1, therefore

the decision to relieve the petitioner under the VRS will be taken after the finalization of the Management Contract. In the meanwhile some of the Units of the respondent No. 1 corporation were sold under the investment plan of the Government of India i.e. the Centaur Hotel Bombay and another hotel in Rajgir in Bihar, but the Centaur Hotel IGI Airport and its unit Chefair Flight Catering Delhi, where the petitioner was employed, neither disinvested nor outsourced and the same continued to function under the management and control of the respondent No. 1 Corporation. The petitioner who had given his option in the year 2002 also continued in service as he was not relieved from his services due to the said Unit of the petitioner not being disinvested or outsourced. However, vide letter dated 04.09.2009 the petitioner was intimated that he will be relieved from the service of the Corporation on 03.10.2009. Feeling agitated with the said communication, the petitioner made a representation with a request to allow him to continue in service but the said representation of the petitioner was rejected by the respondent No. 1 Corporation vide their communication dated 14.09.2009. Aggrieved with the said rejection order, the petitioner has approached this Court challenging the said decision of the respondent No. 1 Corporation being arbitrary, illegal and unwarranted.

6. Mr. N. Safaya, counsel for the petitioner strenuously contended that the option exercised by the petitioner for the VRS Scheme was subject to the disinvestment of the Centaur Hotel IGI Airport, Delhi including the Chefair Flight Catering, Delhi and once the disinvestment of the said unit has not taken place, the option given by the petitioner could not have been accepted by the respondent No. 1 Corporation. The contention of the counsel for the petitioner was that the petitioner had agreed to opt for the VRS Scheme only because of the fact that the respondent had announced disinvestment of the said Unit where the petitioner was working and once no such disinvestment has taken place, the respondent Corporation had no right to accept the said option of the petitioner. He further submitted that the entire VRS as announced by the respondent was linked with the disinvestment of various Units of the Corporation and even the VRS compensation was to be paid by the respondent Corporation on the date when the business of the Unit was to be transferred to the succeeding party. Counsel further submitted that even in the amended scheme, notified through Staff Notice dated 28/29.03.2003, it was clearly stipulated that the Voluntary retirement scheme was subject to the concerned Unit being disinvested. Counsel on behalf of the petitioner thus urged that once the said representation of disinvestment was made by the respondent No. 1 and under the garb of the same if the offer has been accepted by the employees and in case no disinvestment takes place, then it can be clearly inferred that there was a misrepresentation made by the respondent No. 1 to its employees and any offer made by the petitioner on such misrepresentation will get nullified under the provisions of the Contract Act.

7. Refuting the said submissions of the counsel for the petitioner, Ms. Padma Priya, counsel for the respondent vehemently contended the stand of the

respondent that he accepted the said VRS, for which the offer through his application was made knowing fully well the terms and conditions of the said Scheme. Counsel also submitted that because of the delay in the disinvestment process, the said VRS Scheme was amended and a fresh opportunity was given by the Corporation to its employees to withdraw from the said scheme if they so desire within a period of 30 days from the date of issue of notice but since no such request was made by the petitioner therefore he cannot now turn around and challenge the said VRS Scheme of respondent No. 1. Counsel for the respondent further placed reliance on the judgment of this Court in the case of Suresh Kumar Rana and Others Vs. The Managing Director, Centaur Hotel Corporation of India Ltd., which decision as per counsel for the respondent deals with all the issues that have been raised by the petitioner in the present petition.

8. I have heard counsel for the parties at considerable length.

9. Through the office order dated 08.07.2002, the respondent Corporation had announced Voluntary Retirement Scheme and in the said office order itself the respondent made it quite clear that the Scheme would be operative only in the eventuality of disinvestment on completion of the transaction of the respective business to which the employees belong. Even in the guidelines formulated by the Corporation for inviting options for VRS, it was made clear that the scheme of the VRS shall be made applicable in the said eventuality of disinvestment of Centaur Hotel, Delhi Airport, (including Chef Air Flight Catering, Delhi) and/or Chef Air Flight Catering, Mumbai on successful completion of transaction in respect of the business to which the particular employees belong. In Clause 11 of the guidelines, it was also notified that the employees whose request for voluntary retirement was accepted by the competent authority, would be relieved on the transfer date i.e. the date on which the business will be transferred to the party buying business of the respective units. Even in the Note appended to the said guidelines, it was clarified that voluntary retirement scheme would only be given on successful completion of transaction in respect of the business to which the employees belong. Even in the amended scheme it was again reiterated by the Corporation that the Voluntary Retirement Scheme was subject to the concerned Unit being disinvested. Although the option was given to the employees to withdraw their applications from the VRS within a period of 30 days from the date of the notice of the amended scheme, yet it is quite clear that nowhere did the Corporation indicate that the said VRS Scheme had no link with the disinvestment of the concerned unit. It is not in dispute between the parties that so far the Unit i.e. Chefair Flight Catering attached to Centaur Hotel, Delhi is concerned, it has not been disinvested and the same has been outsourced and therefore the entire premise on which the said VRS Scheme was announced, so far the said unit is concerned, vanishes. Undeniably, the petitioner continues to work in the said Unit even after the acceptance of his application as long back in the year 2000 itself but he was never relieved from his duties and rather vide communication dated 26.04.2006/02.05.2006, the petitioner was intimated that the decision to relieve the petitioner under the VRS Scheme will be taken after

finalization of the said Management Contract to outsource the management of the said Unit. No where in the relieving letter dated 4.9.2009, the respondent Corporation has referred to the disinvestment of the Unit where the petitioner was employed or the finalization of the Management contract for outsourcing the management of the Unit of the petitioner. Here, it would be worthwhile to refer to the recent judgment of the Supreme Court in the case of Bank of India and Another Vs. K. Mohandas and Others, wherein it dealing with the contract of VRS observed as follows:

28. The true construction of a contract must depend upon the import of the words used and not upon what the parties choose to say afterwards. Nor does subsequent conduct of the parties in the performance of the contract affect the true effect of the clear and unambiguous words used in the contract. The intention of the parties must be ascertained from the language they have used, considered in the light of the surrounding circumstances and the object of the contract. The nature and purpose of the contract is an important guide in ascertaining the intention of the parties.

29. In AIR 1938 26 (Privy Council) , Lord Wright made these weighty observations:

---that if the contract is clear and unambiguous, its true effect cannot be changed merely by the course of conduct adopted by the parties in acting under it.

30. In Ganga Saran Vs. Ram Charan Ram Gopal, , a four Judge bench of this Court stated:

Since the true construction of an agreement must depend upon the import of the words used and not upon what the parties choose to say afterwards, it is unnecessary to refer to what the parties have said about it.

31. It is also a well-recognized principle of construction of a contract that it must be read as a whole in order to ascertain the true meaning of its several clauses and the words of each clause should be interpreted so as to bring them into harmony with the other provisions if that interpretation does no violence to the meaning of which they are naturally susceptible. [(The North Eastern Railway Co. v. L. Hastings) 1900 AC 260].

32. The fundamental position is that it is the banks who were responsible for formulation of the terms in the contractual Scheme that the optees of voluntary retirement under that Scheme will be eligible to pension under Pension Regulations, 1995, and, therefore, they bear the risk of lack of clarity, if any. It is a well-known principle of construction of contract that if the terms applied by one party are unclear, an interpretation against that party is preferred. [Verba Chartarum Fortius Accipiuntur Contra Proferentum].

10. Hence, in the light of the aforesaid, it is thus quite evident that so far the petitioner is concerned, the respondent Corporation has gone back from its

declared stand announced in the office order of VRS and the Amendment Notice wherein it clearly declared that the VRS of the employees, including the petitioner, was linked with the disinvestment of the Units of the Corporation and was not independent of it.

11. The judgment in the case of Suresh Kumar Rana (Supra) on which strong reliance was placed by the counsel for the respondent although relates to some of the employees of the Corporation itself but the ratio of the said judgment would not be applicable to the instant case as in that case the petitioners after being relieved from their services, had accepted the entire money package as received by them under the VRS Scheme and had approached the court after almost two-and-a-half years to challenge the said scheme and in the background of the aforesaid facts the case of those petitioners was found to be devoid of any merit. However, in the present case, it is an admitted position between the parties that the petitioner not only continued to remain in the service throughout, even after the acceptance of his offer of VRS, but he never received the benefits as were offered to him under the said VRS and has therefore preferred to challenge the said decision of the respondent Corporation before this Court on the aforesaid grounds.

12. When a scheme is floated for voluntary retirement, it constitutes an offer to treat. It is not an offer stricto sensu. Only when pursuant to the said invitation to treat, an employee opts for such a scheme, it constitutes an offer. When such an offer is made, it is required to be accepted. The matter relating to implementation of the said offer would indisputably be governed by the terms and conditions of the scheme as were offered to the petitioner. The VRS scheme was launched with the disinvestment of various units of the respondent Corporation and clearly the VRS Scheme was linked with the disinvestment of the Units of the Corporation and perhaps many of the employees of the Corporation would not have given their offer for VRS, had there been no such announcement of disinvestment of the concerned units of the Corporation. The respondent Corporation being a public sector undertaking should have placed the correct facts before its employees and if no disinvestment was taking place then the Corporation should have further amended its scheme to inform all its employees that even without outsourcing the unit or without disinvestment the employees could maintain their offer of VRS or to withdraw from the same. But no such step was taken by the respondent Corporation, whereas at the same time, it illegally relieved the petitioner from his assigned post without implementing the disinvestment plan of the Unit where the petitioner was working. In such a scenario, the respondent has flouted the terms of the contract and therefore the offer made by the petitioner cannot be held to be binding on him with the change of the said essential terms of the contract.

13. In the light of the above discussion, I find merit in the present petition and consequently set aside the relieving order dated 04.09.2009.

14. The petition is accordingly allowed.

