

SUPREME COURT OF INDIA

Nikhil Kanchanlal Vakharia

Vs.

Securities & Exchange Board of India

C.A.No.4210 of 2006

(Tarun Chatterjee and Dalveer Bhandari JJ.)

15.05.2008

JUDGMENT

Dalveer Bhandari, J.

1. This batch of appeals involve the similar issue, therefore, all these appeals are disposed-of by this common judgment. For the sake of convenience, the facts of Civil Appeal No. 4210 of 2006 are recapitulated.

2. This statutory appeal under section 15Z of the *Securities and Exchange Board of India Act, 1992* (hereinafter referred to as "the Act") is directed against the order dated 12th May, 2006 passed by the Securities Appellate Tribunal, Mumbai in Appeal No.221 of 2004.

3. The impugned order is a one line order which makes a reference to the detailed order passed on 12th May, 2006 in a companion matter being Appeal No.211 of 2004 titled as *Kamlesh Ramanlal Shah v. SEBI and Another*.

4. The question which calls for adjudication in this case is regarding "fee continuity benefit". Under the *SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992* (for short "the Regulations") a fee is required to be paid by the stock brokers. Broadly, the fee was structured in two distinct phases. In the first five years of operation of a broker, the quantum of the fee was linked to the turnover of the stock broker. Greater the turnover, higher the fee.

5. The second phase comprised blocks of five years from the sixth financial year after the grant of initial registration. During each block period of five years, the stock broker was required to pay a flat rate of Rs.5000/- in order to keep the registration in force. The flat fee had no link to the turnover.

6. The appellant claims that whenever the event of transmission occurs within five years, they should be given the fee continuity benefit and should not be made to pay the turnover basis fee for the remainder of initial period of five years. The appellant is claiming that on account of transmission, since the business and trade continues in the same name or entity

and the Stock Exchange permits continuation of the same membership under the same number and clearing code, they should also be given the benefit under the same registration of the earlier Stock-Broker and thus grant the benefit of fee continuity.

7. According to the appellant, the present case involves a situation where at all material times the stock broking firm was a partnership firm carrying on business in the name and style of M/s. Kanchanlal & Sons. The appellant along with his son, wife and daughter-in-law constituted a partnership firm. Late Shri Kanchanlal K. Vakharia because of his ill health decided to nominate the appellant in his place as a member of Stock Exchange, Mumbai (respondent no.2). The appellant claimed that he is a partner of M/s. Kanchanlal & Sons and, therefore, now the Security Exchange Board of India (for short SEBI) should give the benefit of fee continuity as for the first five years they have already been charged from the partnership on a turnover basis, therefore, they must now charge on a flat rate of Rs.5000/- per annum for the registration. The appellant claims on account of transmission since the business and trade continued in the same name or entity and the stock exchange permits continuation of the same membership under the same number and clearing code. They should also be given the benefit under the same registration of the earlier stock broker and the benefit of fee continuity.

8. Mr. Altaf Ahmed, learned senior counsel appearing for the SEBI submitted that there is no provision in the SEBI Act, Rules and/or Regulations of the SEBI in this behalf which recognizes the registration of stock-brokers by inheritance and/or transmission for the purpose of granting fee continuity benefit. The appellant who is son of Late Shri Kanchanlal K. Vakharia on transmission can be registered only as a new stock broker with SEBI in accordance with the Act, Regulations and the SEBI (Stock-Brokers and Sub-Brokers) Rules, 1992 (for short "the Rules") and subject to payment of registration fee for a new stock-broker as per the schedule fixed in the Regulations. He further submitted that there is no provision for grant of fee continuity benefit in cases of such transmission. The only situation under which fee continuity benefit is granted is under para 4 of Schedule III under Regulation 10 of the Regulations, which reads thus:

"4. Where a corporate entity has been formed by converting the individual or partnership membership card of the exchange, such corporate entity shall be exempted from payment of fee for the period for which the erstwhile individual or partnership member, as the case may be, has already paid the fees subject to the condition that the erstwhile individual or partner shall be the wholetime Director of the corporate member so converted and such Director will continue to hold minimum 40% shares of the paid-up equity capital of the corporate entity for a period of at least three years from the date of such conversion.

Explanation.--It is clarified that the conversion of individual or partnership membership card of the exchange into corporate entity shall be deemed to be in continuation of the old entity and no fee shall be collected again from the converted corporate entity for the period for which the erstwhile entity has paid the fee as per the regulations."

9. Mr. Ahmed further contended that it was an incentive for corporatisation since a corporate entity is required to maintain all records under law and as such it facilitates regulating of the stock brokers. Under no other circumstances fee continuity benefit is available under the statutory regulations and hence the appellant cannot be granted benefit of fee continuity on account of transmission.

10. Mr. Ahmed also submitted that every stock-broker who wants to deal in securities in the securities market is required to be a member of a stock exchange and then get himself registered with SEBI under section 12 of the Act in accordance with the procedure as provided in the Regulations subject to the payment of registration fee for a new stock-broker under rule 4 of the Rules and Regulation 10 of the Regulations on the rates mentioned in Schedule-III. Rule 4 of the Rules reads thus:

"4. Conditions for grant of certificate to stock-broker.-- The Board may grant a certificate to a stock-broker subject to the following conditions namely:--

- (a) He holds the membership of any stock exchange;
- (b) He shall abide by the rules, regulations and bye- laws of the stock exchange or stock exchanges of which he is a member;
- (c) In case of any change in the status and constitution, the stock-broker shall obtain prior permission of the Board to continue to buy, sell or deal in securities in any stock exchange;
- (d) He shall pay the amount of fees for registration in the manner provided in the regulations; and
- (e) He shall take adequate steps for redressal of grievances of the investors within one month of the date of the receipt of the complaint and keep the Board informed about the number, nature and other particulars of the complaints received from such investors."

Regulation 10 of the Regulations reads thus:

"10. Payment of fees and the consequences of failure to pay fees.-- (1) Every applicant eligible for grant of a certificate shall pay such fees and in such manner as specified in Schedule III;

Provided that the Board may on sufficient cause being shown permit the stock-broker to pay such fees at any time before the expiry of six months from the date on which such fees become due.

(2) Where a stock-broker fails to pay the fees as provided in regulation 10, the Board may suspend the registration certificate, whereupon the stock-broker shall cease to buy, sell or deal in securities as a stock- broker.

11. Mr. Ahmed contended that in order to become a member of the stock exchange, the person is required to be qualified as per rule 8 of the Securities Contracts (Regulations) Rules, 1957. This right is also not inheritable, since every person on transmission may not even be qualified to become a member of a particular stock exchange. It is pertinent to mention here that membership of a stock exchange is a privilege and not a matter of right and thus this cannot be claimed as inheritable.

12. Mr. Ahmed also contended that SEBI has no discretion in implementation of the Act, Rules or Regulations and has to strictly adhere to the provisions as laid down and, therefore, has no power to waive the said requirement. It may also be relevant to mention that out of the 19 stock brokers who prayed for waiver of the fresh registration or new entities upon transmission, only 9 or 10 have come to challenge the same before this court and balance have accepted the judgment of the learned Tribunal.

13. Mr. Ahmed further submitted that the SEBI has applied the turnover regime for the period 1992-93 to 1996-97 and, therefore, charged on the flat rate basis. Clause I(1)(c) of Schedule III of the Regulations reads thus:

"After the expiry of five financial years from the date of initial registration as a stock-broker, he shall pay a sum of rupees five thousand for every block of five financial years commencing from the sixth financial year after the date of grant of initial registration to keep his registration in force."

14. Learned senior counsel also submitted that, under section 12 of the Act, no person can deal in securities in the securities market without being registered with the SEBI. In the present case, admittedly, Late Shri Kanchanlal K. Vakharia, father of the appellant, was a member of the stock exchange and not the firm M/s. Kanchanlal & Sons. Ordinarily, if M/s. Kanchanlal & Sons is not a member of the stock exchange, the firm would not be entitled to deal with securities in securities market in the Bombay Stock Exchange. The Bombay Stock Exchange does not enroll partnership firm as members. As such, Late Shri Kanchanlal K. Vakharia alone was the member of the stock exchange and he alone was thus entitled to deal in securities in the Bombay Stock Exchange. However, under rule 179 of the Bombay Stock Exchange Rules, an individual member can do business in partnership with certain categorized relations and, therefore, the Bombay Stock Exchange permits trading by the individual in the name of the partnership firm. Rule 179 of the Bombay Stock Exchange reads thus:

"179. No partnership shall be formed except-

(i) Between two or more members of the Exchange; or

(ii) Between a member of the Exchange and his father or mother or wife or his son or sons or daughter or daughter-in-law or daughters-in-law or father's brother or brothers or unmarried sister or sisters or brother's or brother's son or sons; or

(iii) Between two or more members of the Exchange and their father, mothers or wives or son or sons or daughter or daughters or daughter-in-law or daughters-in-law or brother or brothers or father's brother or brothers or unmarried sister or sisters or brother's or brothers' son or sons;

Provided that a son or daughter or son's son or brother or father's brother or unmarried sister of brother's shall not be taken into partnership unless he or she be in all respects eligible for membership of the Exchange."

15. It was contended by Mr. Ahmed that Late Shri Kanchanlal K. Vakharia alone was a member and through his partnership, the entire partnership firm was allowed to trade on the Bombay Stock Exchange, the entire turnover of trade on the Bombay Stock Exchange is relatable to the individual member Late Shri Kanchanlal K. Vakharia as otherwise the partnership firm and non-member partners would not have been able to deal in securities on the Bombay Stock Exchange. Consequently, this partnership firm could also not deal with securities unless the member of the stock exchange namely the individual member Late Shri Kanchanlal K. Vakharia gets registered with SEBI. It is through that individual member Late Shri K. Vakharia that the partnership firm and registered partners are able to deal in securities on the Bombay Stock Exchange. Even otherwise, the entire turnover of the partnership firm on the stock exchange is on securities and, therefore, relatable to the registered member i.e. Late Shri Kanchanlal K. Vakharia under whose membership of Bombay Stock Exchange and registration of SEBI, such trading is permitted.

16. It was also submitted on behalf of the SEBI that the appellant wants only his turnover to be considered as a member of the Exchange and the other partners being non-member partners want to be outside the purview of the registration of the SEBI since they cannot be registered but at the same time want to deal in securities on the exchange under the membership and registration of Late Shri Kanchanlal K. Vakharia.

17. According to the learned counsel for the SEBI, the entire dealing in securities by the non-member partners would be illegal and contrary to section 12 of the Act and liable to all such consequences in law. In fact, if the stand taken is correct then the partnership firm is also the non-member partnership and cannot deal in securities but are dealing in securities in breach of law.

18. We have heard the learned counsel for the parties at length and carefully analysed the provisions of the Act, Rules and Regulations. By clear interpretation of the Regulations, it is abundantly clear that no provision of succession to registration is permissible. Nikhil K. Vakharia son of Late Shri Kanchanlal K. Vakharia in order to operate in the stock exchange has to obtain a fresh registration from the SEBI and for the first five years, he would be

required to pay the quantum of fee linked to the turnover and thereafter at the flat rate of Rs.5000/- in order to keep the registration in force.

19. In view of the provisions of the Act, Rules and Regulations, we have no difficulty in arriving at the conclusion that the appeal is devoid of any merit and is accordingly dismissed.

CIVIL APPEAL Nos.2951, 3004, 3008, 3009, 3010, 3015, 3016, 3017, 3058, 3082 of 2006.

20. In view of our decision in Civil Appeal No.4210 of 2006, these appeals also stand disposed of accordingly.

21. In the facts and circumstances of the case, we direct the parties in all the appeals to bear their own costs.