

SUPREME COURT OF INDIA

Mahesh Ratilal Shah

Vs.

Union of India

S.L.P. (C) No.21686 of 2006

(Altamas Kabir and Cyriac Joseph JJ.)

19.01.2010

JUDGEMENT

Altamas Kabir, J.

1. Claiming to be a Sub-broker with one Yogesh B. Mehta, a Member of the Bombay Stock Exchange (hereinafter referred to "BSE"), the petitioner herein filed a writ petition before the Bombay High Court under Article 226 of the Constitution against the Union of India, the Securities and Exchange Board of India (hereinafter referred to as the 2 "SEBI") and the BSE, inter alia, for a direction upon the Union of India and SEBI to withdraw the recognition granted to BSE for alleged non- compliance with the provisions of Sections 7 and 9 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "the 1956 Act"). A further direction was also sought for for cancellation of SEBI registration of all relevant 90 members of the Stock Exchange for fraudulently inducing investors to trade in forged scrips of M/s Presto Finance Ltd. and to declare the Rules, Bye- laws and Regulations of the BSE as illegal, void and ultra vires the 1956 Act as also the Constitution of India. Various ancillary and interim reliefs were also prayed for connected with the main reliefs.

2. The case of the Petitioner is that he had been induced by the BSE and its Members to buy 4,50,800 shares of "Presto Finance Ltd." and under the 3 assurance of the Exchange, he had deposited the entire purchase amount, amounting to Rs.71,19,817.30 with the Exchange. It is the Petitioner's further case that the Exchange and its Members had intentionally and deliberately cheated him by giving him delivery of 1,56,100 forged share certificates and refused to cancel the said dealing when the same was discovered and instead asked the Petitioner to go to the Liquidator of Presto Finance Ltd. for claiming damages.

3. Appearing in support of the Special Leave Petition, Mr. Manohar Lal Sharma, learned Advocate, submitted that the SEBI as a statutory body established under Section 3 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "SEBI Act"), was empowered under Section 11 of the Act to protect the interests of the investors in securities and to promote the development of and to regulate the securities 4 market by such

measures as it thought fit for prohibiting fraudulent and unfair trade practice relating to the securities market.

4. Mr. Sharma further submitted that the BSE is a body of individuals which has been granted recognition as a "Stock Exchange" under Section 4 of the 1956 Act, subject to the provisions of Section 9 thereof, to function as a Stock Exchange in Bombay. Under Section 12 of the SEBI Act, SEBI has granted registration to the Members of the BSE to deal in the securities market in the country within the ambit of the said Act and the Regulations made thereunder. Mr. Sharma submitted that the main object of the BSE is to protect the interests both of the brokers and dealers and of the public interested in securities. Rules, Bye-laws and Regulations had, therefore, been framed by the BSE for trading and settlement of shares through the BSE terminal. Mr. Sharma submitted 5 that the said Rules, Bye-laws and Regulations were contrary to the provisions of the 1956 Act, and were, therefore, void and ultra-vires the Act and the Constitution. The Writ Petitioner had, therefore, been compelled to move the High Court in its writ jurisdiction, inter alia, for the reliefs indicated hereinabove.

5. Referring to the Prospectus of M/s Presto Finance Ltd., Mr. Sharma pointed out that since it had been indicated therein that the shares of Presto Finance Ltd. were to be listed both on the Regional Exchange at Ahmedabad and in the BSE, the Petitioner and other investors were induced into investing in the shares of the company which were ultimately de-listed from trading in both the Stock Exchanges on account of fraudulent dealings, which left the Petitioner holding a large number of forged shares traded by the Company from the BSE.

“Mr. Sharma urged that the BSE had completely failed 6 to protect the interests of the investors as it was bound to do under Section 4 of the 1956 Act.”

6. Mr. Sharma contended that the very existence of the BSE and its activities must be held to have been vitiated from its very inception since it had failed to comply with the provisions of Section 4 of the Act of 1956 relating to grant of recognition to Stock Exchanges by the Central Government and, in particular, Sub-section (3) thereof, which reads as follows :- "4(3). Every grant of recognition to a Stock Exchange under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the Stock Exchange is situate, and such recognition shall have effect as from the date of its publication in the Gazette of India."

7. Mr. Sharma submitted that since the recognition granted to BSE has neither been published in the Gazette of India or in the Official Gazette of the State, such recognition did not have any effect at 7 all and in addition to the above, ever since its recognition, the BSE has not also complied with the provision of Section 9 of the aforesaid Act and framed Byelaws for the regulation and control of contracts with the previous approval of SEBI. It was submitted that Sub-section (4) of Section 9 also provides for publication of the Byelaws and reads as follows :-

"9(4). Any Bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed and when approved by the Securities and Exchange Board of India in the Gazette of India and in which the principal office of the recognised Stock Exchange is situate, and shall have effect as from the date of its publication in the Gazette of India:

Provided that if the Securities and Exchange Board of India Government is satisfied in any case that in the interest of the trade or in the public interest any Bye-law should be made immediately, it may, by order in writing specifying the reasons therefor, dispense with the condition of previous publication."

8. Referring to the decision of this Court in *Ritesh Agarwal vs. SEBI*¹, wherein the question as to whether proceedings should also be taken against minors in view of Section 11 of the Contract Act, 1872, was under consideration, this Court held that since the father of the minors had committed fraud in their names, it is he who should have been proceeded against. Mr. Sharma urged that once it was shown that a promoter had committed fraud, as in this case, in listing its shares with the Exchange, thereby inducing investors to invest in such shares, it must be held that the Exchange had failed to comply with the provisions of clause (a) of Sub-section (1) of Section 4 of the 1956 Act, which makes it mandatory that the Rules and Byelaws of a Stock Exchange have to be in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors. [Emphasis supplied] 9

9. On behalf of BSE, Mr. Shyam Diwan, learned Senior Advocate, submitted that all Stock Exchanges, including the BSE, acted on the basis of information received from other Stock Exchanges in the country. In the instant case, since the Scrip of Presto Finance Ltd. had been listed for trading on the Ahmedabad Stock Exchange, the same were also listed for trading on the Bombay Stock Exchange, but as soon as information of fraud was received from the former Stock Exchange, BSE immediately stopped trading in the said Scrip. Mr. Diwan submitted that it was required to be noted that the Petitioner had approached the Court ten years after the incident, which in itself, was sufficient ground for dismissal of the Writ Petition.

10. Mr. Diwan submitted that the BSE had been established in 1875 as "The Native Shares and Stock Brokers Association" and was the first Stock Exchange in the country which obtained permanent recognition in 1956 from the Government of India under the 1956 Act and had played a pivotal role in the development of the Indian Capital Market. The recognition granted to the BSE was duly published by the Ministry of Finance, Government of India, in its Stock Exchange Division in the Gazette of India dated 31st August, 1957. Thereafter, the Stock Exchange Rules, Bye-laws and Regulations were framed in 1957 and advance print of the same, together with all amendments up to date, was sent to the Government of India. Receipt and approval of the same by the Government of India under the 1956 Act was also conveyed to the Secretary of the Stock Exchange by the Deputy Secretary in the Ministry of Finance, Department of Economic Affairs, by his letter dated 1st May, 1959. Mr. Diwan submitted that the Rules, Regulations and Bye-laws of the Bombay

Stock Exchange had been acted upon since they were framed and the Petitioner also claims to have traded on the Stock Exchange as a Sub-broker through Yogesh Mehta, said to be a member of the Stock Exchange. Mr. Diwan submitted that when the Rules, Bye-laws and Regulations had been continuously acted upon for more than 50 years, it would be inequitable to hold that the same were not valid on account of non- publication in the Official Gazette or the Gazette of India in terms of Sub-section (4) of Section 9 of the 1956 Act.

11. Mr. Diwan then urged that the scheme of Section 4 of the 1956 Act relating to grant of recognition to Stock Exchanges, makes it clear that before such grant of recognition, the Central Government has to be satisfied that the Rules and Bye-laws of the Stock Exchange applying for registration were in conformity with such conditions as might be prescribed with a view to ensuring fair dealing and to protect investors. Mr. Diwan submitted that under Section 9 of the 1956 Act the recognized Stock Exchange is required to make Bye-laws for the regulation and control of contracts and any Bye- laws made under the said section would be subject to such conditions in regard to previous publication as may be prescribed, and, when approved by SEBI, is to be published in the Gazette of India and also in the official Gazette of the State in which the principal office of the recognized Stock Exchange is situate, and shall have effect as from the date of its publication in the Gazette of India.

12. Mr. Diwan reiterated that it would be amply clear from the above that the Rules and Bye-laws framed by the Stock Exchange before grant of recognition under Section 4 were not required to be published in the manner indicated in Sub-Section (3) of Section 4 of the 1956 Act. Mr. Diwan submitted that only amendments effected to the Rules and Bye-laws after grant of recognition would require publication as provided for in Sub-Section (4) of Section 9 of the above Act. Mr. Diwan also urged that since the BSE had been functioning as perhaps the most important Stock Exchange in India, since it was granted permanent recognition in 1956, its performance over the past 33 years cannot be diluted and has to be taken into consideration while considering the case sought to be made out by the Petitioner. Learned counsel submitted that, although, the question now sought to be raised had not at any point of time been raised in this Court, the same question did arise before the Bombay High Court in Appeal No.1101/98 arising out of Arbitration Petition No.130/98, Stock Exchange, Mumbai vs. Vijay Bubna & Ors., reported in 1999 (2) LJ 289. In the said decision, where the primary issue was whether an Arbitral Tribunal constituted under the Bye-laws framed by the BSE under the 1956 Act was in contravention of the provisions of Section 10 of the Arbitration and Conciliation Act, 1996, the question arose as to whether the said Bye-laws of the BSE required publication in the Official Gazette. Upon construction of the provisions of the Bye-laws of the BSE and the decision of this Court in *Dr. Indramani Pyarelal* [274], the High Court held that the Bye-laws of the BSE were subordinate legislation and that the same were statutory in nature having the force of enactment within the meaning of Sub-Section (4) of Section 2 of the Arbitration and Conciliation Act, 1996. Mr. Diwan drew our attention to paragraph 42 of the judgment in which reference was made to another decision of the Bombay High Court in the case of *V.V. Ruia vs. S. Dalmia*² where the question arose as to whether the Bye-laws of the BSE, which were made prior to its

recognition under Section 4, needed publication under Sub-Section (4) of Section 9 of the 1956 Act.

It was held that the Bye-laws made by the Bombay 15 Stock Exchange prior to its recognition did not require publication in the Official Gazette, on account of the fact that for the purpose of obtaining recognition from the Central Government, the Stock Exchange was required to submit a copy of the Bye-laws and Rules and it is only after scrutiny thereof that recognition was granted under Section 4. It was also mentioned that if, after recognition, any subsequent Bye-law was made under Section 9 of the Act, then, by virtue of Sub- Section (4) of Section 9 such a post-recognition Bye-law required publication.

13. Mr. Diwan then referred to the decision in V.V. Ruia's case (supra,) referred to by the Division Bench of the High Court in the aforesaid judgment, wherein it had been held that the Bye-laws made by the Stock Exchange prior to its recognition in 1956 did not require publication under Section 9(4) of the 1956 Act.

14. Mr. Diwan's next contention was that a procedure, which had been consistently followed over a long period, should not be interfered with except for very compelling reasons as that could otherwise lead to chaos and unsettle the position which had been settled over such period.

15. Referring to the Three-Judge Bench decision of *Prasad Tewari & Ors*³. Mr. Diwan submitted that while interpreting the doctrine of stare decisis, this Court had held that a decision of long-standing on the basis of which many persons would, in the course of time, have arranged their affairs, should not lightly be disturbed by a superior court not strictly bound itself by the decision. It was further observed that in the matter of the interpretation of a local statute, the view taken by the High Court over a number of years should normally be adhered to and not 17 disturbed. A different view would not only introduce an element of uncertainty and confusion, it would also have the effect of unsettling transactions which might have been entered into on the faith of those decisions. It was held that the doctrine of stare decisis can be aptly invoked in such a situation.

16. Apart from being guilty of delay and laches, Mr. Diwan submitted that the petitioner was himself in default, not being a registered sub-broker of the BSE, although, he claimed to be a sub-broker of Yogesh B. Mehta, a member of the Stock Exchange.

Mr. Diwan submitted that the Special Leave Petition bristled with malice in law and was, therefore, liable to be dismissed with costs.

17. Mr. Jaideep Gupta, learned Advocate who appeared for SEBI, took us through the letter dated 1st August, 1996, addressed on behalf of the Ahmedabad Stock Exchange to Shri L.K. Singhvi, 18 Executive Director, SEBI, informing him of the Report of the Committee in the matter of Presto Finance Ltd. In the said letter it was indicated that based on a number of

complaints received from the investors in the scrip of Presto Finance Ltd., a Special Committee consisting of three members, including SEBI, and a nominated public representative, had been constituted and after inquiry it had recommended that the trading in the scrip of Presto Finance Ltd. should not be recommended and might be de-listed permanently.

“Mr. Jaideep Gupta referred to the inquiry report of the Assistant Police Inspector, General Branch, Crime Branch, C.I.D., Mumbai, submitted to the learned Metropolitan Magistrate, 33rd Court, Ballard Estate, Mumbai, stating that the BSE had acted promptly and diligently to protect the interest of the market and as such no offence had been committed by BSE and those who were involved in the transactions of the shares of Presto Finance Ltd. in 1996. It was stated that on the contrary, the complainant was not a registered sub-broker of the Bombay Stock Exchange and had himself violated the provisions of Section 23(h) of the 1956 Act, as he had also dealt with the above transactions as sub- broker, without being registered with the BSE.”

18. Mr. Gupta submitted that based on the complaints received from various investors relating to the issuance of fake and forged share certificates of M/s. Presto Finance Ltd., the Stock Exchange, Ahmedabad, had constituted a Special Committee, as indicated hereinabove, and had found the Managing Director and other Directors of the company to be guilty of irregularities.

Accordingly, in a proceeding under Section 11B of the SEBI Act, 1992, SEBI had taken stringent measures against the Managing Director and other Directors of the company for having received payments for issuance of fake and forged shares of 20 the company. Mr. Gupta pointed out that on such finding, in the interest of investors in securities and the securities market, SEBI had debarred Shri Hitendra Vasa and the companies promoted by him and the group companies of M/s. Presto Finance Ltd., from accessing the capital market for a period of five years with effect from 22nd April, 1998.

19. Mr. Gupta submitted that as far as SEBI was concerned, on receipt of information about the fraudulent share scrips issued by M/s. Presto Finance Ltd., immediate steps had been by SEBI to have the share scrips of the said company de-listed from the Ahmedabad Stock Exchange as well as from the Bombay Stock Exchange.

20. Mr. Gupta submitted that no fault could be found with BSE in listing the shares of Presto Finance Ltd., since the same had been listed on the Ahmedabad Stock Exchange earlier, but as soon as information was received from the Ahmedabad Stock 21 Exchange that there was an element of fraud involved, and the scrips had been delisted in the Ahmedabad Stock Exchange, BSE took immediate steps to delist the scrips and to close trading of the said shares in order to protect the securities market and the investors who traded in such securities. Mr. Gupta submitted that the entire allegations made by the petitioner against the

Bombay Stock Exchange was devoid of any merit and did not warrant any interference in these proceedings.

21. As would be evident from the pleadings and submissions made on behalf of the respective parties, the main question which we are called upon to consider is whether in the absence of publication of the Rules and Bye-laws of the Bombay Stock Exchange, which had been framed prior to its recognition in 1956 under the 1956 Act, its activities could be said to be without authority.

22 The further question which falls for consideration is whether it can be said, as has been urged on behalf of the petitioner, that in listing the shares of M/s. Presto Finance Ltd. on the Stock Exchange, the Bombay Stock Exchange had acted in a manner which failed to ensure fair dealing and to protect the investors.

22. As we have noticed hereinbefore, the scrip of M/s. Presto Finance Ltd. was listed on the Bombay Stock Exchange after it had been listed in the Stock Exchange at Ahmedabad and on receipt of information thereof. However, as soon as information was received that the said company was involved in fraudulent dealing of its scrip, again on intimation from the Ahmedabad Stock Exchange, the said scrip was delisted and debarred from trading by the BSE. In our view, the Bombay Stock Exchange had not acted in a manner which tended to 23 promote the share scrip of M/s. Presto Finance Ltd. with any malafide motive. Apart from the above, the delay of 10 years in approaching the High Court over the transactions in the said scrip cannot be ignored since, as observed by this Court in Raj Narain Pandey's case (supra) a long standing decision should not be easily interfered with, having regard to the fact that over the years, people have already settled their business in accordance therewith. Except for the bald allegations that the Bombay Stock Exchange had acted in a manner which was contrary to the interest of the securities market and investors in listing the share scrips of M/s. Presto Finance Ltd. for trading, there is nothing else to establish any ulterior motive on the part of the aforesaid Stock Exchange in listing the said scrip and, in fact, in terms of remedial measures the Stock Exchange also invited all those who had been 24 given forged scrips, to submit the same to the Stock Exchange for further action.

23. On the question of non-publication of the Bye- laws, we agree with the views of the Bombay High Court in V.V. Ruia's case (supra) that since the said Rules and Bye-laws had been in existence from long before the enactment of 1956 Act and the grant of recognition to the Stock Exchange, the same did not require publication in terms of Section 4 of the 1956 Act. In any event, as has been submitted by Mr. Diwan on behalf of the BSE, all amendments to the Rules and Bye-laws made after grant of recognition had been duly published in the Gazette.

24. Upon considering the case made out by the petitioner in the writ petition, the Bombay High Court held that the writ petition, which was lacking in particulars relating to the constitutional challenge, was not the appropriate remedy for the petitioner, who, along with a member 25 of the Stock Exchange, had traded in the shares of the above-mentioned

company. The High Court also observed that upon the complaints made to SEBI, action had been initiated against the Company as far back as in 1998-99 under Section 11B of the SEBI Act and SEBI had come to a finding that all the Directors of the Company, including one Hitendra Vasa, were guilty of dealing in fake and bogus shares and cheating the investing public at large. The High Court also observed that the market regulator had taken due steps in the matter of individual transactions and the remedy of the petitioner, who was aggrieved by the acts of the promoters of the company in question, as well as its Directors, would be in approaching the appropriate Court to initiate criminal prosecution against the offenders. Observing that it would not be appropriate to issue any blanket writ, as claimed by the Petitioner, when admittedly his case was restricted to dealing in shares of one of the 26 companies listed at the Stock Exchange, the High Court summarily dismissed the writ petition. While doing so, the High Court also noted that no material had been produced by the petitioner for issuing directions for de-recognition of the BSE or to declare its Rules, Bye-laws and Regulations to be illegal, void and ultra vires.

25. Agreeing with the views expressed by the High Court, we are of the view that the Petitioner has not been able to make out any case of malafides or irregularity on the part of the Bombay Stock Exchange with regard to the listing and subsequent de-listing of the scrip of M/s Presto Finance Ltd. and we are also of the view that the publication of the Rules and Bye-laws of the Stock Exchange was not intended in the Securities Contract (Regulation) Act, 1956, as otherwise some provision would have been made in the Act with regard to pre-recognition Rules and Bye-laws. While the Act 27 provides for publication of amendments to the Rules and Bye-laws after grant of recognition, the Act is silent with regard to the publication of the pre-recognition Rules or Bye-laws which were already in existence and had been acted upon all along.

26. In that view of the matter, we see no reason to interfere with the order of the Bombay High Court impugned in the present Special Leave Petition and the same is, therefore, dismissed, but without any order as to costs.

27. Before parting, we would, however, indicate that even if the 1956 Act did not contemplate publication of the pre-recognition Rules and Bye-laws, the position is and would continue to be rather ambivalent if the amended Rules and Bye-laws were published in the Official Gazette while the main Rules and Bye-laws remain unpublished. It may, therefore, be in the fitness of things to have the said Rules and Bye-laws also published in the 28 Official Gazette and the State Gazette to prevent questions similar to those raised in this Special Leave Petition from being raised in future.

¹(2008) 8 SCC 205

²AIR 1968 Bombay 347

³(1973) 2 SCC 35],