
(1998) 08 MAD CK 0138
In the Madras High Court
Case No : Writ Petition No. 466 of 1989

A. Vaidyanathan

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 06-08-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Securities and Exchange Board of India Act, 1992 — Section 12
Securities Contracts (Regulation) Act, 1956 — Section 30(2)
Securities Contracts (Regulation) Rules, 1957 — Rule 8(2)

Citation : AIR 1999 Mad 11 : (2000) 101 CompCas 224

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : V. Ramasubramaniam, for the Appellant; R. Muthukumaraswamy, Sr. Central Govt. Standing Counsel, (for No. 1) and A.K. Sreeraman, (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—The prayer in the writ petition is to issue a writ of declaration declaring Rule 8(2) of the Securities Contracts (Regulation) Rules, 1957 as unconstitutional and directing the 2nd respondent to grant membership to the petitioner without imposing any unreasonable and arbitrary terms.

2. The case of the petitioner is briefly stated hereunder:-- According to him, he is well qualified with a Bachelor in Engineering and Master's Diploma in Business Management. Because of his Master's degree in Business Management, particularly in finance and marketing, he is interested in the business of trading and securities. He is fully qualified to take up a career in the business of dealing in securities. However, by virtue of certain provisions of the Securities Contracts (Regulation) Act, 1956 and the Rules made thereunder and by virtue of the bye-laws/Articles of Association of the Stock Exchanges, the entry of proficient men into this field of business was effectively being prevented by vested interests. The second respondent did not take step to implement the directives of the High

Powered Committee headed by Mr. G. S. Patel. For two years after these directives, the 2nd respondent did not take steps to implement these directives, but only flooded the exchange with persons of their own choice. Later, the 2nd respondent herein, by advertisements in Newspaper made in September, 1987, invited applications from two categories of persons, viz., (i) Post Graduate Degree holders in Commerce, Economics and Business, Administration from recognised/approved Universities/Institutions and Members of Professional Bodies such as the Institute of Chartered Accountants of India. The Institute of Costs and Works Accountants of India and the Institute of Company Secretaries of India and (2) persons, who have a pass in Plus Two or XII Standard Examination with an experience of 3 years in the business of shares and securities. He sent his application in the prescribed format along with an Earnest Money Deposit of Rs. 5,000/-. He was called for an interview on 24-5-88 by the 2nd respondent herein. The applicants were not seeking any employment, but were only entering into a business, which cannot be curtailed by way of interview or other selection procedures. The petitioner and his father initially filed a writ petition, namely, W. P. No. 1573/87 under Article 32 of the Constitution of India against the respondents herein, which is pending in the Supreme Court of India. The writ petition which was filed challenging the constitutional validity of the various provisions of the Securities Contracts (Regulation) Act and the Rules made thereunder, was withdrawn by them on 1-8-88. After the withdrawal of the writ petition, he received a communication dated 29-7-88 from the 2nd respondent, informing him that his application was not considered favourably. No reasons were mentioned in the said letter, for not considering his application favourably. By this letter, the opportunity of carrying on business in shares and securities, has been denied to him and in such circumstance, he has approached this Court as stated above. The first set of relief is sought by him both as a person aggrieved and as by way of public interest litigation.

3. None of the respondents have chosen to file a counter affidavit.

4. In the light of the above position, I have heard the learned counsel for the petitioner as well as the respondents.

5. Mr. V. Ramasubramanian, learned counsel appearing for the petitioner, after taking me through the various provisions of the Act and the Rules has raised the following contentions :--

i) The restrictions imposed by the Government in respect of the business of Stocks and Securities hit at the very right of carrying on business, it offends Articles 14 and 19(1K) of the Constitution of India;

ii) The State exercises so deep and pervasive a control over the stock exchanges that they have become no less than extended arms of the Government. Being so, their membership should be thrown open to all and there can be no artificial embargo on the right of a person to become a member of a recognised stock exchange, since it would offend his fundamental right to carry on this business;

iii) Rule 8(2) of the said Rules which is also adopted in the bye-laws of the 2nd respondent herein, tend to create and perpetuate a separate and privileged class of persons, who monopolise this business opportunity to themselves;

iv) There is no rationale for the restrictions laid down under R. 8(2) and inasmuch as it reserves the right to carry on this particular business to a privileged few, it is ultra vires the Constitution and offends Articles 14 and 19(i) (g) of the Constitution of India;

v) While there can be reasonable restrictions on the method of carrying on any business, there cannot be any restrictions on the very right to carry on a business. Inasmuch as Rule 8(2) of the Securities Contracts (Regulation) Rules, 1957 purports to curtail the rights of a person to carry on this business, the same is liable to be struck down; and

vi) No reasons have been stated for rejection and the same is done with mala fide intention.

6. On the other hand, Mr. R. Muthukumaraswami, learned Senior Central Government Standing Counsel, after taking me through the relevant provisions of the Act and Rules, has raised the following contentions :--

i) By virtue of Rule making power u/s 30 of the Securities and Exchange Board of India Act, 1992, the first respondent has framed necessary Rules; accordingly the Government is also competent to frame Rule 8(2) of the Securities Contracts (Regulation) Rules, 1957;

ii) Doing business in securities is not a fundamental right. It is only a statutory right; hence there is no question of violation of Article 19(1)(g) of the Constitution of India. The petitioner has not challenged the rejection of his application for becoming a member of the 2nd respondent till date.

7. Mr. A.K. Sriraman, learned counsel appearing for the 2nd respondent has raised the following contentions :--

i) In terms of Section 30(2)(b) of the Securities and Exchange Board of India Act, 1992, the Government have framed Rule 8(2) of the said Rules. Based on the said Rule, the second respondent has also framed Articles of Association. In view of section 12 of the Securities and Exchange Board of India Act, 1992, the contentions of the petitioner regarding proviso to Rule 8(2) of the said Rules cannot be sustained;

ii) The petitioner has not challenged Section 30(2)(b) of the said Act, nor the rejection order passed by the 2nd respondent as well as Articles of Association; and

iii) With regard to the second part of the prayer, inasmuch as Stock Exchange is not an authority and not amenable to writ jurisdiction, no relief could be granted, as claimed by the petitioner.

8. I have carefully considered the rival submissions.

9. The Securities Contracts (Regulation) Act, 1956 (Act No. 42 of 1956) was enacted by the Parliament in order to prevent undesirable transaction in Securities by regulating the business of dealing therein by providing for certain other matters connected therewith. Section 2(h) speaks about securities. It is an inclusive definition. Securities include shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate; Government securities; such other instruments as may be declared by the Central Government to be securities; and as rights or interests in securities. Section 3 speaks about application for recognition of stock exchanges and Section 4 deals with grant of recognition to stock exchanges. Section 7 deals with the power of the Central Government to call for periodical reports or directives to be made. As per Section 9, it is open to the recognised stock exchanges to make bye-laws. Section 30 enables the Central Government to make Rules for the purpose of carrying into effect the object of the said Act. Among other things, we are concerned with Section 30(2)(b) of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as Act No. 42 of 1956) which runs as follows :--

"Section 30(1) : The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for,

(a) * * *

(b) the manner in which any inquiry for the purpose of recognizing any stock exchange may be made, the conditions which may be imposed for the grant of such recognition, including conditions as to the admission of members if the stock exchange concerned is to be the only recognised stock exchange in the area; and the form in which such recognition shall be granted."

In pursuance of the rule making power u/s 30 of Act No. 42 of 1956, the Central Government framed Rules called "The Securities Contracts (Regulation) Rules, 1957". Among other Rules, we are concerned with Rule 8(1) enumerates the eligibility of a person to be elected as a member of a recognised stock exchange. We are more concerned with Rule 8(2) of the said Rules which runs as follows :--

"Rule 8(2): No person eligible for admission as a member under Sub-rule (1) shall be admitted as a member unless :

(a) he has worked for not less than two years as a partner with, or as an authorised assistant or authorised clerk or remisier or apprentice to, a member, or

(b) he agrees to work for a minimum period of two years as a partner or representative member with another member and to enter into bargains on the

floor of the stock exchange and not in his own name but in the name of such other member; or

(c) he succeeds to the established business of a deceased or retiring member who is his father, uncle, brother or any other person who is, in the opinion of the governing body, a close relative :

Provided that the rules of the stock exchange may authorise the governing body to waive compliance with any of the foregoing conditions if the person seeking admission is in respect of means, position, integrity, knowledge and experience of business in securities, considered by the governing body to be otherwise qualified for membership."

10. Before considering the validity of the above said Rule, I shall once again refer certain factual position relating to the petitioner. In pursuance of advertisements in Newspaper made in September, 1987 by the second respondent, the petitioner sent his application in the prescribed format along with an Earnest Money Deposit of Rs. 5,000/-. He was called for an interview on 24-5-88 by the second respondent. By a communication dated 29-7-88 the second respondent herein has informed the petitioner that his application was not considered favourably. Though he has not directly challenged the order of rejection dated 29-7-88, while challenging the validity of Rule 8(2) of the Securities Contracts (Regulation) Rules, 1957, also prayed for a direction directing the second respondent to grant membership without imposing any unreasonable or arbitrary terms. Any person desirous of becoming a broker and carrying on business in securities, must necessarily become a member of a recognised stock exchange, if the State or area in which he wishes to carry on the business, is one notified u/s 13 of the Securities Contracts (Regulation) Act. Since almost all the major cities in India have been notified u/s 13 of the said Act, any person carrying on business in securities without becoming a member of a recognised stock exchange will be liable for prosecution u/s 23 of the said Act 42 of 1956, in addition to all his contracts becoming illegal, by virtue of Section 13. Stock exchanges other than recognised stock exchanges are prohibited u/s 19 of the said Act and therefore, any person intending to carry on" business in shares and securities, must necessarily apply to a recognised stock exchange existing in his area. The right of admission is restricted both by the Act and the Rules framed thereunder as well as the Articles of Association of the second respondent. While in respect of all other types of business, the restrictions imposed by the Government relate only to the mode in which they are to be carried on, the restrictions imposed by the Government in respect of the business of stocks and securities hit even at the very right to carry on this business, this according to the petitioner, offends Article 19(1)(g) of the Constitution of India. The Government exercised very deep and pervasive control over the stock exchanges, for which he cited so many instances in the affidavit. In such circumstance, it is stated that their membership should be thrown open to all and there can be no artificial embargo on the right of a person to become a

member of a recognised stock exchange, since it would offend his fundamental right to carry on this business. By showing many reports in the newspapers, it is contended that the stock exchanges are run as "closed door clubs". Taking note of the appalling conditions prevailing in the stock exchanges, it is pointed out by the learned counsel for the petitioner that the Government of India appointed a High Powered Committee headed by Mr. G.S. Patel, in the year 1984. The Committee recommended that professionals should especially be encouraged to enter into this field. The Rules framed in pursuance of Section 30 of Act 15 of 1992 make it impossible for a person who has no connection with the existing members, to become a member of the stock exchange. I have already extracted the Rule, namely, Rule 8, which deals with the qualifications for membership of a recognised stock exchange is divided into 3 parts. The first Sub-rule deals with eligibility; the second refers to conditions for admission and the third mentions about the continuity of membership. A person who is otherwise eligible by virtue of his satisfying the provisions of Sub-rule (i), can be denied admission under Sub-rule (2) of Rule 8. The very same conditions have been made by the second respondent in the Articles of Association. It is also stated that there is no rationale for the restrictions laid down under Rule 8(2) and inasmuch as it reserves the right to carry on this particular business to a privileged few, it ultra vires the Constitution and offends Articles 14 and 19(1)(g) of the Constitution of India. It is also stated that inasmuch as Rule 8(2) of the Securities Contracts (Regulation) Rules, 1957 purports to curtail the rights of a person to carry on this business, the same is liable to be struck down. It is also averred that since no reasons have been stated for rejection and the same is done with mala fide intention because of his earlier writ petition before the Supreme Court, according to the petitioner, the second respondent may be directed to grant membership to him. In addition to the contentions raised, the learned counsel for the petitioner has relied on the decisions of the Supreme Court in (1) Mohammed Faruk Vs. State of Madhya Pradesh and Others, ; and (2) Rashbihari Panda etc. Vs. State of Orissa, , Though he has referred to the said decisions, after going through the same, I am not in a position to conclude how the principles laid down in those cases are applicable to the present one. However, it is clear that his only grievance is that in view of the unreasonable conditions imposed under Rule 8(2) of the Securities Contracts (Regulation) Rules, 1957 and of the fact that some arbitrary power has been entrusted with the governing body of the Stock Exchange, the same violates Articles 14 and 19(1)(g) of the Constitution of India.

11. In an answer to the contentions Mr. R. Muthukumaraswami, learned Senior Central Government Standing counsel took me through the object of the Securities Contracts (Regulation) Act, 1956, relevant provisions therein as well as Rules, namely, Securities Contract (Regulation) Rules, 1957, framed in pursuance of Section 30 of the said Act. After pointing out the qualifications of a membership of the recognised stock exchange from Rule 8(1) and (2) of the said Rules, he has submitted that the Rules, more particularly, the impugned Rule 8(2) is within the Rule making power of the Government and it would not violate

Article 19(1)(g) of the Constitution of India as contended. In support of his contention, he very much relied on a decision of the Apex Court reported in *Madhubhai Amathalal Gandhi Vs. The Union of India (UOI)*, . Before the Supreme Court, a petition under Article 32 of the Constitution for the issue of a writ of mandamus directing the Union of India to withdraw or cancel the notification dated 31-8-1957 recognising the Stock Exchange, Bombay u/s 4 of the Securities Contracts (Regulation) Act, 1956 was filed. The Constitutional Bench have considered the salient features of the Act and the Rules made thereunder in detail. Since the said decision is directly on the issue before us, the learned Senior Central Government Standing counsel has taken me through the various conclusions arrived at by Their Lordships. He also contended that inasmuch as the very same conditions provided in Section 30(2)(b) of Act 42 of 1956 have been reproduced in Rule 8(2), in the absence of any challenge with regard to the said section, it is not open to the petitioner to challenge the Rule. No doubt, similar contention was raised by the learned Solicitor General before the Supreme Court in the above referred decision. After considering the same, Their Lordships have concluded thus (at p. 25 of AIR) :--

"..... It an Act is a self-contained one and the notification issued thereunder only relates the provisions of the Act, the validity of the notification cannot obviously be question as the validity of the contents were accepted..... But if the Act confers a power on the State in general terms and the notification issued thereunder infringes one or other of the fundamental rights, the validity of the Act cannot equally obviously prevent an attack on the notification. In the former case the notification only reflects the provisions of a valid Act and in the latter it is the notification and not the Act that infringes the fundamental rights."

Even though I agree with the contention of the learned senior Central Government Standing Counsel that what is stated in Section 30(2)(b) of the said Act has been re-constituted in Rule 8(2) and in the absence of any challenge with regard to the said section, it is not open to the petitioner to challenge the Rule, and I am of the view that the validity of the said Rule has been independently considered. As stated earlier, since the Constitutional Bench decision is directly on the point, it is worth-while to refer the following passages/ conclusions arrived at by Their Lordships :--

"21. Re. (1) : Article 19(1)(g) of the Constitution states that every citizen shall have the right to carry on any business; but the State is empowered under Clause (6) of the said Article to make any law imposing in the interest of the general public reasonable restrictions on the exercise of the said right. Briefly stated, the argument is that the, combined effect of the two notifications is that the petitioner is driven out of his business of stock exchange inasmuch as, it is said, they confer a monopoly on the Stock Exchange, Bombay, and the rules of the said Stock Exchange exclude any outsider from becoming its member without obtaining a nomination and that too only in the place of an existing member. To put it differently, the argument proceeds that under the rules of the Stock

Exchange, Bombay, membership is not thrown open to the public. This leads us to the consideration of the relevant provisions of the Stock Exchange Rules, Bye-laws and Regulations, 1957. Under Rule 3 the membership of the Exchange shall consist of such number of members as the Exchange in general meeting may from time to time determine. It is common case that the membership of the Exchange is not limited. Under the heading "Election of New Members", the Rules prescribe the conditions of eligibility for election as a member of the Exchange. These Rules adopt the provisions of Rule 8 of the Securities Contracts (Regulation) Rules, 1957. The Rules do not contain any limitation on the eligibility of a person to be elected as a member such as that the person should be nominated in the manner provided by the Rules or that he should come only in the vacancy caused by another member ceasing to be one in one of the ways mentioned thereunder. The words "no person" in Rule 17 are comprehensive enough to take in any outsider seeking for election as a member. Rule 22, provides for an application for admission in the form prescribed in Appendix A to the Rules. This Rule also does not impose any such limitation. The admission application form in Appendix A is also general in terms and enables any person of India to apply for membership provided he agrees to abide by the conditions imposed therein. In the form also there is no such limitation. But it is contended that a fair reading of the provisions of Rules 20 and 21 makes it clear that a candidate for admission is confined only to two categories, viz., (1) a candidate nominated by a member or a legal representative of a deceased member seeking admission to membership in the place of the deceased; and (2) a person recommended for admission to membership in the place of a member who has forfeited his right to membership. A careful scrutiny of the Rules does not bear out the contention; nor do they enable us to cut down the wide amplitude of Rules 17 to 22. Rule 10 says :

"When a right of membership is forfeited to or vests in the Exchange under any Rule, bye-law, or Regulation of the Exchange for the time being in force it shall belong absolutely to the Exchange free of all rights, claims or interest of such member or any person claiming through such member and the Governing Body shall be entitled to deal with or dispose of such right of membership as it may think fit."

Rule 54 is to the following effect ;

"A member's right of membership shall lapse to and vest in the Exchange immediately he is declared a delaulter."

Rule 11 is as follows :

"(a) A member of not less than seven years' standing who desires to resign may nominate a person eligible under these Rules for admission to membership of the Exchange as a candidate for admission in his place."

"(b) The legal representatives of a deceased member or his heirs or the person mentioned in Appendix C to these Rules may with the sanction of the Governing

Board nominate any person eligible under these Rules for admission to membership of the Exchange as a candidate for admission in the place of the deceased member. In considering such nomination the Governing Board shall be guided so far as practicable by the instructions set out in Appendix in Appendix C to these Rules."

Appendix B gives the nomination forms Nos. 1 and 2 to be filled by a member or a legal representative, as the case may be, under Rule 1 (a) and (b). Now it would be convenient to read Rules 20 and 21. They are as follows :

Rule 20 : "A candidate for admission except a candidate applying for a membership vesting in the Exchange must obtain a nomination in the manner provided in these Rules."

Rule 21 : "A candidate for admission must be recommended by two members none of whom should be a Member of the Governing Board. The recommenders must have such personal knowledge of the candidate and of his past and present circumstances as shall satisfy the Governing Board."

The argument is that under Rule 20 a candidate for admission falls under two categories, namely, (1) a candidate who must obtain a nomination in the manner provided in the Rules, i.e. Rule 11(a) and (b); and (2) a candidate applying for a membership vesting in the Exchange; and, therefore, these two categories exhaust the candidates for admission and that when under Rule 21 the same words, "a candidate for admission", are used they must carry the same meaning as in Rule 20, that is, they must be confined only to the two categories comprehended by Rule 20. This argument appears to be plausible and even incontrovertible, if Rules 20 and 21 are taken out of their setting and construed independently of other rules. But in the setting in which they appear they can bear only one meaning, namely, that Rule 20 provides for nomination only in the case of a candidate for admission who requires a nomination in the manner provided by the rule and Rule 21 provides, for all the candidates for admission, that they should be recommended by two members who have personal knowledge of the candidates. To put in in other words, under the Rules candidates for admission fall under three groups viz.. (1) candidates falling under Rule 11, (a) and (b); (2) candidates applying for membership vesting in the Exchange; and (3) other candidates. All the three categories of candidates must be recommended by two members. But the candidates belonging to the first category shall in addition be nominated in the manner provided by the Rules. We, therefore, hold that the Stock Exchange Rules do not operate as a bar against the petitioner becoming a member of the Stock Exchange subject to the rules governing such application. The petitioner has the right to do business in shares; in spite of the notifications he can still do business in spot delivery contracts. He can apply to become a member of the Stock Exchange subject to the conditions laid down by the Rules. The Act, the validity of which he has not chosen to question, enable, the State to give or refuse recognition to any Stock Exchange and it has chosen to give recognition to the Stock Exchange, Bombay,

subject to the conditions prescribed. The restrictions, in our view, are not unreasonable, having regard to the importance of the business of stock exchange in the country's national economy and having regard to the magnitude of the mischief sought to be remedied in the interest of the general public. At another place we have already dealt with the necessity for stringent rules governing this type of business. For the reasons mentioned we reject the first contention."

**** "15. Re (3) : Learned counsel for the petitioner advanced a forcible argument questioning the validity of condition 2(i)(a) of the notification on the ground that it infringed Article 14 of the Constitution. Elaborating his argument, the learned counsel stated that the said condition classified members of the Indian Stock Exchange Limited into two groups, one active members and the other who were not active members, and that classification was arbitrary and had no reasonable relation to the object sought to be achieved by the notification. He further pointed out that the defining of active members as those who had themselves transacted business regularly on the floor of the Indian Stock Exchange Limited either on their own account or on account of their clients for 12 months immediately preceding August 6, 1957, was not only arbitrary and vague but also, if analysed, would lead to anomalies destructive of any standard of reasonableness. It is alleged in the affidavit filed by the petitioner that from the inception of the Indian Stock Exchange Limited, 199 members of the said Stock Exchange were actually trading on the floor of the said Exchange from time to time but for some reason or the other were not trading during the period of 12 months immediately preceding August 6, 1957; that there were 34 members of the said Stock Exchange who were regularly transacting business on the floor of the said Stock Exchange prior to August 6, 1956, and for some time after August 6, 1956, but not during the entire period of 12 months from August 6, 1956 to August 6, 1957; and that there were 24 members of the said Stock Exchange who started transacting business regularly on the floor of the said Stock Exchange some time after August 6, 1956, and continued to transact business right upto and after August 6, 1957. It was asked what was the reasonable basis for confining the definition of active members to those who were carrying on business during the period of 12 months from August 6, 1956, to August 6, 1957, while excluding the aforesaid three categories who were equally active members and indeed more active than those included in the definition, li was further asked what was the justification for excluding a member who was an active member for years before the crucial year and irregularly conducted business on the floor of the Stock Exchange during the crucial year while including a member who might have been a newcomer or who might have been earlier a nominal member but began to do business regularly only during the said year. Emphasis was also laid upon the alleged elastic and indefinite content of the word "regular" and it was suggested that the said word could not possibly afford a precise standard. These are all weighty considerations and we must confess that there is force in them. But there is the other side of the picture. It will well settled that a classification must have reasonable relation to the object

sought to be achieved. The standard of reasonableness is inextricably conditioned by the extent and nature of the evil and the urgency for eradicating the same. The object of the notification is two-fold. The main object is to carry out the purpose of the Act, namely, to prevent undesirable transactions in securities by regulating the business in them. The subsidiary object is to assuage the hardship that recognition of only one stock exchange would cause to the members of the other association. To achieve this twin object the classification is made between active members and inactive members. While on the one hand the Government found it necessary to exclude the nominal members who would add their dead weight to the recognised association and bring down its efficiency and affect its disciplined conduct of business, on the other hand it gave opportunity to persons who were actively interested in the business to become regular members of the Stock Exchange, Bombay. There is every justification for excluding members who had not been taking active interest in the business, for, as we have already pointed out the efficient carrying out of the business of the Stock Exchange depends upon the moral stature, high calibre, and genuine and active interest evinced by the members. The active members justified themselves to the preferential treatment by their sustained interest in the business whereas the members who were not active showed their continued indifference to that line of business. But the crux of the question is, what is the justification for fixing twelve months immediately preceding August 6, 1957, as the standard for active membership? The Under-Secretary to the Government of India, Ministry of Finance, filed an affidavit describing the circumstances whereunder this classification was made. It discloses that the notification was issued after taking into the consideration the representations made on behalf of both the Stock Exchanges and also the facts pertaining to the course of business conducted by the Indian Stock Exchange Limited. It also gives the vicissitudes through which the said Stock Exchange passes from the date of its formation and the circumstances under which the membership of that exchange was divided into full members and associate members. It points out that the Indian Stock Exchange Limited became moribund in a few years and to revive its activities it allowed the members of the East India Chamber of Commerce, by relaxing its entrance fee and security deposit requirements in 1950-51 and created a new class of Associate Members, which facilitated the enrolment of hundreds of Associated Members on Payment of a nominal entrance fee of Rs. 100. The Government on a consideration of the necessary data and presumably having regard to the record of the activities of the various members fixed the activities in the crucial year 1956-57 as the standard of activity for membership.

16. There is a presumption in favour of the State that there is a reasonable basis for the classification. Except the mere allegations in the affidavit which are not admitted, the petitioner has not placed before us any materials to ascertain that any other members, who were regularly doing business on the floor of the Indian Stock Exchange Limited before August 6, 1956, temporarily suspended their business for one reason or other over which they had no control. No statement

from the accounts has been produced to enable us to evaluate the activities of the members before the crucial date so as to enable us to form a view that really active members were excluded by the fixing of this period. Nor are we in a position to verify whether any of the members excluded were regularly doing business during a part of the year in continuation of their business in the earlier period. We cannot also say that the words "carrying on business regularly" are so vague that the parties did not understand their connotation, for it is admitted that some of the regular members applied for membership of the Stock Exchange, Bombay and most of them were admitted. There is also the fact that though three years have elapsed since the date of the notification no other member of the Indian Stock Exchange Limited thought fit to question the notification on the ground that the period fixed was unreasonable and that really active members were excluded from membership of the Stock Exchange, Bombay. So far as the petitioner is concerned, he was admittedly not an active member, though he now pretends that he was doing business through other members. There is also no material placed before us to support the said assertion. If the classification, between active members and others who were not, is justifiable -- we hold it is the -- Government has to draw a line somewhere and to fix a period of activity reasonable in its opinion as a standard to satisfy the test of "active member". The burden which lies upon the petitioner who impeaches the validity of the classification to show that it violates the guarantee of equal protection has not been discharged. On the material placed before us we cannot say that the period fixed by the Government as the standard for ascertaining the active membership is arbitrary or unreasonable. We must make it clear that this finding must be confined only to the validity of the impugned notification dated August 31, 1956."

12. After going through the conclusion arrived at by their Lordships in the above referred decision, I am not in a position to accept the contra argument made by the learned counsel for the petitioner.

13. As rightly contended by the learned Senior Central Government Standing counsel, trade in securities is not a fundamental right; it is only a statutory right; hence the statute can regulate the business of dealing therein. In this regard, it is worthwhile to refer the decision of the Supreme Court reported in Ebrahim Suleiman Sait Vs. M.C. Mohammed and Another, . In that case, their lordships have stated that the right to stand as a candidate and contest an election is not a common law right and that it is a special right created by statute and can only be exercised on the conditions laid down by the statute. Their Lordships have also stated that the Fundamental Rights chapter has no bearing on a right like this created by statute, that the appellants have no fundamental right to be elected members of Parliament and that if they want that they must observe the rules. As stated earlier, right to do business in securities is not a fundamental right. It is a right created under the statute, namely, the Securities Contracts (Regulation) Act, 1956. Apart from the statutory provisions, the Central Government framed rules for the purpose of carrying into the object of the Act.

Accordingly, as observed by Their Lordships in the said decision, since this is a special right created by a statute, it can only be exercised on the persons concerned as laid down by the statute. Inasmuch as the petitioner has no fundamental right, in dealing with business in securities, the fundamental rights chapter has no bearing; accordingly if the petitioner wants, he must observe the rules. It is true that Article 19 guarantees all the seven freedoms to the citizen of the country including the right to hold, acquire and dispose of property. It must, however, be remembered that Article 19 confers an absolute and unconditional right which is subject only to reasonable restrictions to be placed by Parliament or the legislature in public interest. In this regard, the learned Senior Central Government Standing Counsel has also brought to my notice another Constitutional Bench decision of the Apex Court reported in *Pathumma and Others Vs. State of Kerala and Others*, wherein Their Lordships have formulated the following guidelines to determine the question of reasonableness of "restriction" :--

- (i) In judging the reasonableness of the restrictions imposed by clause (5) of Article 19, the Court has to bear in mind the Directive Principles of State Policy;
- (ii) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public;
- (iii) In order to judge the quality of the reasonableness no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case;
- (iv) A just balance has to be struck between the restriction imposed and the social control envisaged by Clause (6) of Article 19;
- (v) There must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object which is sought to be achieved. In other words, the Court has to see whether by virtue of the restriction imposed on the right of the citizen the object of the statute is really fulfilled or frustrated;
- (vi) The Court must see the prevailing social values whose needs are satisfied by restrictions meant to protect social welfare; and
- (vii) So far as the nature of reasonableness is concerned it has to be viewed not only from the point of view of the citizen but the problem before legislature and the object which is sought to be achieved by the statute. In other words, the Courts must see whether the social control envisaged in Clause (6) of Article 19 is being effectuated by the restrictions imposed on the fundamental right.

I have already referred to the object of bringing the Securities Contracts (Regulation) Act in the year 1956. As stated earlier, the preamble of the Act envisages that to prevent undesirable transactions in securities by regulating the business of dealing therein, by providing for certain other matters connected therewith, the Act has been enacted by the Parliament. Apart from the qualifications prescribed under Rule 8(1) of Securities Contracts (Regulation)

Rules, 1957, the person concerned has to satisfy certain conditions prescribed in Sub-rule (2) of Rule 8 in order to eligible for admission as a member of recognised Stock Exchange. However, it is open to the Governing Body to waive compliance with any of the conditions mentioned in (a), (b) and (c) in Sub-rule (2) of Rule 8 in respect of means, position, integrity, knowledge and experience of business in securities.

14. Mr. A.K. Sreeraman, learned counsel appearing for the second respondent has also very much relied on a decision of the Supreme Court reported in *Madhubhai Amathalal Gandhi Vs. The Union of India (UOI)*, . As I have already referred to the conclusion of their Lordships in the said decision in my earlier part of this Order, I am not referring the same once again. He also stated that the 2nd respondent has framed Articles similar to Rule 8(2) of the Rules. By relying on Section 12 of the Securities and Exchange Board of India Act, 1992 (Act No. 15 of 1992), he has submitted that in the light of the said provision, the entire case of the petitioner has to be rejected. As rightly contended by him, even if we accept that Rule 8(2) prohibits the person like petitioner there is no bar in doing business in the securities as per Section 12 of Act 15 of 1992. After going through the said provision, I sustain the argument of the learned counsel for the second respondent. He also raised the same contention as that of the learned Senior Central Government Standing counsel that the petitioner has not challenged the rejection order passed by the second respondent. Likewise, the petitioner has not challenged Section 30(2)(b) of Act 42 of 1956 which is in pari materia Rule 8(2) of the Rules. Further, the petitioner has also not challenged the Articles of Association of the second respondent relating to qualification for membership of the second respondent Stock Exchange. In the absence of any challenge as stated above, according to him, the challenge with regard to Rule 8(2) cannot be countenanced. As rightly contended, even without reference to Rule 8(2) of the Rules, as per the provisions of Act No. 15 of 1992, more particularly, after registering himself as per Section 12 of the said Act, he can very well do business in securities. Accordingly, the contention that by virtue of rejection of his claim by the respondent Board and in view of Rule 8(2) of the said rules, the petitioner's right to do business in securities is barred cannot be accepted.

15. Learned counsel appearing for the second respondent, by drawing my attention to the second part of the prayer in the writ petition, namely, direction to the second respondent to grant membership without imposing any unreasonable and arbitrary terms, has contended that the second respondent Stock Exchange is not amenable to writ jurisdiction and no direction as claimed by the petitioner can be issued. In order to substantiate his contention, he has relied on the following decision:-- *R. Jagadeesh Kumar Vs. P. Srinivasan and others*, . Against the expulsion of a member of the Bangalore Stock Exchange Limited, the aggrieved person has approached the High Court of Karnataka under Article 226 of the Constitution of India for issuance of a writ of mandamus. After referring to the various provisions of the Act and the Articles of Association of the

Bangalore Stock Exchange, the learned single Judge of Karnataka High Court has concluded thus (at pp. 425 & 426 of AIR) :--

"9. The nature of control that is exercised by the Government from a perusal of these provisions referred to from Section 3 to Section 12 would not indicate as to making provisions for carrying on effective functioning of the stock exchange and does not take away the powers of a stock exchange in the matter of internal regulation, namely, to take a decision as to whether a person who is a member of the stock exchange should continue to be so or whether a person is entitled to be a member of the stock exchange, as long as the power that is exercised by the stock exchange is within the frame-work of the statute. Therefore, by no stretch of imagination can it be said that the stock exchange in the matter of regulating as to who should be its members and who should be expelled exercises any public duty or discharges any duty to the public at large. What it does in a particular case is to find out whether a particular member has violated the term of any rules, regulations or bye-laws or the Articles of Association of the Stock Exchange so as to become disentitled to continue to be its member. In such matter, it is very difficult to consider that the stock exchange discharges any public duty. It is only in cases where a company exercises or performs a public duty, a writ would lie. Learned counsel for the petitioner relied on *Mrs. Sejal Rikeen Dalal and others Vs. The Stock Exchange, Bombay and another*, and *Raiesh Kumar Maheshwari Vs. Union of India and Others*, . But neither of these two decisions bear on the point raised in this case. The Bombay High Court took the view that the Stock Exchange is a public authority and that is not the argument put forth in this case. Sri R.N. Narasimha Murthy fairly conceded that he cannot put forth a case that it is a public authority but only confined to the argument that it discharges public duty. In the decision of the Delhi High Court neither this point was raised nor decided. Hence these decisions cannot be of any assistance to the petitioner.

10. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, the Supreme Court explained that Article 226 empowers the Court to issue writs for enforcement of the fundamental rights or other rights in respect of a company, person or authority not confined to statutory authorities and instrumentalities of the State. They would cover other persons or bodies who perform public duty. In explaining the scope of such public duty or the meaning to be attributed to that public duty, the Court noticed that what is relevant is the nature of the duty imposed on the body and that duty must be judged in the light of positive obligation owned by a person or authority to the affected party. In this case, the affected party is a member who apprehends that he may be expelled from the stock exchange and that right to continue to be a member of the stock exchange arises only out of an obligation to fulfil the terms of the Articles of Association or rules or other bye-laws that may have been framed thereunder. Indeed this position has been elaborated even earlier in *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, --wherein the Court refused to grant any mandamus as

against the Corporation. While enunciating the law it was stated that a mandamus can issue to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. No such provision either in the Securities Contracts (Regulations) Act, 1956 or the S.E.B.I. Act is forthcoming. In that view of the matter, I am clearly of the opinion that the Stock Exchange in exercising its powers under the Articles of Association in the matter of admission or expulsion of members owes only a duty to that particular member and not to the public at large and does not discharge any public duty which is amenable to writ jurisdiction.

11. In De Smith's Judicial Review of Administrative Act -- IV Edition -- the grounds for the award of mandamus is discussed to explain in what circumstances a writ of mandamus would lie. It is stated that mandamus lies to secure the performance of a public duty, in the performance of which the applicant has a sufficient legal interest. The duty to be performed must be of a public nature and mandamus will not lie to order admission or restoration to an office that is essentially of a private character, as in the present case restoration of a membership of a stock exchange that is essentially of a private character, nor, in general will it lie to secure the due performance of the obligations owed by a company towards its members, unless it be that is a case to secure performance of statutory duty, which is not the position in the present case. Hence, this ground is sufficient to dismiss the petition and therefore I do not propose to consider the other contentions raised in this petition. Petition is therefore dismissed. Rule discharged."

Similar view has been taken by a Division Bench of Kerala High Court in a decision reported in Satish Nayak Vs. Cochin Stock Exchange Ltd., Ernakulam and Others, . In that case before the Division Bench, the only question that arose for consideration was whether Cochin Stock Exchange Limited is an authority under Article 12 of the Constitution of India and whether it is amenable to writ jurisdiction? After considering the various Articles of Association of the Cochin Stock Exchange as well as the provisions of the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and after discussing various decisions of the Supreme Court including the decision rendered in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , the learned Judges in the Division Bench have concluded as follows Satish Nayak Vs. Cochin Stock Exchange Ltd., Ernakulam and Others, :--

"By applying this principle the Supreme Court in that decision held that the Society is an instrumentality or the agency of the State and the Central Governments and it is an "authority" within the meaning of Article 12. The Supreme Court found in that case that having regard to the Memorandum of Association and the Rules of the Society, the composition of the Society is dominated by the representatives, appointed by the Central Government and the

Governments of Jammu and Kashmir, Punjab, Rajasthan and Uttar Pradesh with the approval of the Central Government. The monies required for running the college are provided entirely by the Central Government and the Government of Jammu and Kashmir and even if any other monies are to be received by the Society, it can be done only with the approval of the State and the Central Governments. The Rules to be made by the society are also required to have the prior approval of the State and the Central Governments and the accounts of the Society have also to be submitted to both the Governments for their scrutiny and satisfaction. The Society is also to comply with all such directions as may be issued by the State Government with the approval of the Central Government in respect of any matters dealt with in the report of the Reviewing Committee. The control of the State and the Central Governments is indeed so deep and pervasive that no immovable property of the society can be disposed of in any manner without the approval of both the Governments. The management of the Society is under the control of the State and the Central Governments. If we apply the criteria laid down by this decision, we are not in a position to say that the stock exchange is an authority falling within the definition of "State" in Article 12 of the Constitution."

The learned Judges have further held thus (at pp. 379 & 380 of AIR) :--

"25. Applying these tests laid down by the Supreme Court and this Court in the various decisions and after going through the Memorandum of Association as pointed out by the learned counsel on both sides, we do not find any of the control envisaged by the decisions over the Stock Exchange so as to say that there is a pervasive and effective control over the management of the Stock Exchange. Cochin Stock Exchange is a Company registered under the Companies Act. Some of the important provisions which were pressed into service for the purpose of showing that there is a deep pervasive control by the State are -- Article 6 where a Government owned Corporation is also eligible to apply for membership of the Exchange, Article 106 which provides for the nomination of one or more persons not exceeding three in number as members of the Council of Management. Under Article 126 the Secretary shall be appointed with the prior approval of the Central Government. The terms and conditions of such appointment shall be subject to the approval of the Central Government. The bye-laws and the rules of the Company shall be subject to the provisions of the Securities Contracts (Regulation) Act, 1956. Similarly the Act provides for regulatory measures like recognition, withdrawal of recognition, direction to make rules, power to suspend business and power to supersede the governing body. As it could be seen in the preamble to the Act, the "Securities Contracts (Regulation) Act is an Act to prevent undesirable transactions in securities by regulating the business of dealing therein, by prohibiting options and by providing for certain other matters connected therewith. Thus the said Act is purely regulatory in character.

26. Applying the tests laid down by the series of Supreme Court decisions, we do

not find that these regulatory measures by itself are sufficient in the absence of any other factors like financial assistance, control of management and policies. State protected monopoly status and public functions, so as to come to the conclusion that the 1st respondent company is an authority amenable to writ jurisdiction under Article 226 of the Constitution.

27. The subject-matter in both the matters are purely contractual in character. Therefore, in any event, the issue relating to the violation of the bye-laws of the Company and appointment of arbitrator for realising the claim of another member and the issue relating to the termination of services of an employee are purely in the realm of contract. Therefore the extraordinary jurisdiction under Article 226 is not the proper forum for the reliefs prayed for."

The Articles of Association of Cochin Stock Exchange, particularly Article 8 regarding eligibility of membership of Stock Exchange is similar to Article 8 of Madras Stock Exchange. I have already observed that the said Article is also similar to Rule 8 of the Securities Contracts (Regulation) Rules, 1957. Even though a contrary view has been taken by the Bombay High Court in a decision reported in Mrs. Sejal Rikeen Dalal and others Vs. The Stock Exchange, Bombay and another, , the learned counsel appearing for the petitioner has not highlighted the said decision. Inasmuch as the Articles of Association of the 2nd respondent/Madras Stock Exchange Limited are similar to Bangalore Stock Exchange and Cochin Stock Exchange, with respect I am in agreement with the conclusion arrived at in both the decisions and I respectfully follow the same. Taking note of the above aspects and in view of similar view of mine even if the petitioner succeeds in the first part of his prayer, no direction could be issued by this Court as claimed by the petitioner.

16. Under these circumstances, I hold that Rule 8(2) of the Securities Contracts (Regulation) Rules, 1957 is constitutionally valid and I accordingly dismiss the writ petition as devoid of any merit. No costs.