
(2003) 10 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition No. 2336 of 2003

Ashok Surendra Upadhyay

APPELLANT

Vs

The Stock Exchange and Others

RESPONDENT

Date of Decision : 14-10-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2003) 6 BomCR 481 : (2004) 49 SCL 656

Hon'ble Judges : R.J. Kochar, J; Nishita Mhatre, J

Bench : Division Bench

Advocate : Janak Dwarkadas and Z. Andhyarujina, instructed by Bilawala and Co, for the Appellant; P.C. Mody, instructed by Wadia Gandhi and Co. for respondent No. 1, R.A. Dada and V.K. Rambhadran for respondent No. 2, Kumar Desai and Shyam Diwan and Ashok Purohit, for the Respondent

Final Decision : Dismissed

Judgement

Kochar, J.—The petitioner claims to be a director of M/s. Pacific Corporate Services Ltd. and claims to be an investor in the capital market holding approximately 45 lakhs shares of respondent No. 4, He is aggrieved by the impugned circular issued by respondent No. 2 bearing No. NSE/CMO/0055/2003 dated September 23, 2003 issued as a part of surveillance review pursuant to its meeting with the respondent Nos. 1 to 3 with a view to take preventive surveillance measure to ensure market safety and to safeguard interest of investors whereby, it has moved eight securities to trade for trade segment. The members were requested to note that these securities shall not be available in rolling segment. The respondent No. 4 is one of the securities moved to trade for trade segment. According to the petitioner he being the shareholder of the respondent No. 4 holding 45 lakhs shares has been seriously prejudiced by the aforesaid decision of the respondent No. 2.

2. The learned Senior Counsel Mr. Janak Dwarkadas has made a number of submissions very emphatically assailing the circular of the respondent No. 2,

inter alia, on the ground that the petitioner was not heard in the matter and even the companies, stock of which were moved to trade for trade segment, were not heard and therefore, there was serious infraction of principles of natural justice. He has further submitted that the respondent No. 4 in the list of trade to trade segment ought to have been heard in the matter, as this decision has caused a serious prejudice to them also. He further submitted that such decisions are usually taken when there is sudden increase in the volume of turnover of the stocks in the market. The learned Counsel submits that in the scrip of the respondent No. 4, there was no such sudden increase in the volume of turnover and, therefore, it was not at all necessary to take such a decision, causing serious financial injury to the shareholders of the respondent No. 4 like the petitioner. According to Mr. Dwarkadas such an abrupt decision is arbitrary and unreasonable and is hit by Article 14 of the Constitution of India being discriminatory as the scrips of other companies, the turn over of which was much larger were not put to trade to trade segment. Picking up of the respondent No. 4, submits the learned Counsel, has in fact stigmatised the respondent No. 4. Mr. Dwarkadas has tried to elaborate from material containing statistics that there has been a serious discriminatory treatment meted out to the respondent No. 4 in particular and the stocks of the companies under the said circular, Mr. Dwarkadas has further submitted that the decision of the respondent No. 2 is illegal, biased, unilateral and in contravention of the rules and by-laws and regulations and the Act under which the respondent Nos. 1 to 3 are governed.

3. On the other hand Mr. Rafique Dada the learned Senior Counsel appearing for respondent No. 2 has stoutly defended its decision challenged in the present petition. He submitted that the circular is not the final decision as it would be reviewed from time to time and there was nothing permanent or static about the said circular. The learned Sr.Counsel submitted that the decision was taken by the Committee for surveillance in order to prevent speculation based on manipulation and to tune up the transactions on the basis of actual delivery of the scrips to protect small investors. He further submitted that the said decision was perfectly within the four corners of the law and based on material considered by the Committee, which is keeping surveillance on the market in the interest of small investors. It is a bonafide and lawful preventive step to protect the small shareholders. He further submitted that the petitioner holding 45 lakhs shares is not prevented from selling any number of shares with him and no harm or prejudice is caused to him. By the said circular the attempt is to stabilise the market in the interest of small investor who tries to put his life long savings, in the scrips with a hope to get some dividend/profit. Mr. Dada further pointed out that the position of "A" scrip is not changed and the scrips of the respondent No. 4 are not down graded to 8 group but the movement is only for trade to trade schemes; meaning thereby that a seller has to actually handover the scrips at the time of the transaction itself. By the said decision, which was taken by the committee of the respondents Nos. 1 to 3 after taking into account several factors, the Committee has ensured that the share market reflects genuine trade

after actual trade and not a false transactions. Mr. Modi the learned Counsel for the respondent No. 1 in support of the submissions of Mr. Dada, further pointed out that by the said decision of the respondent No. 2, status position of the petitioner has not adversely changed and that value of the shares has not gone down. He further submitted that it was only an administrative decision taken by the expert bodies constituted by the respondent Nos. 1 to 3 under the law to regulate its affairs in the interest of the shareholders and also in the interest of the economy.

4. Mr. Kumar Desai, the learned Counsel for the respondent No. 3 has also supported the submissions of Mr. Dada and Mr. Modi.

5. After hearing the learned Counsel of both the sides, we are of the considered opinion that there is absolutely no substance in the writ petition, which purports to challenge the legality and validity of the administrative circular issued by the respondent No. 2. We do not find any illegality or impropriety in the said decision of the respondent. No. 2 to issue the said circular which obviously is in the interest of the shareholders and particularly in the interest of small investors. There is no dispute that the expert committee of the respondents is empowered to have surveillance to observe that the share market reflects genuine trade after actual trade and false trade or transactions are prevented. Such decisions are transitory decisions which are taken by the respondents Nos. 1 to 3 considering the current market position and such decisions are always subjected to review. These respondents are bound to protect the small investors and to prevent manipulation in the stock market. It is exclusively for such expert bodies to take appropriate decisions to achieve their objective of stabilising the market. There is no dispute that the Committee of the respondents has taken into account all the factors prevailing in the market as a measure of surveillance and have selected eight companies to move their scrips to trade to trade segment. It is not the respondent No. 4 alone which is isolated.

6. There is hardly any substance in the submissions of Mr. Dwarkadas that the respondent No. 4 is specifically picked LIP arbitrarily and that the circular suffers from the vice of hostile discrimination. It is further pertinent to note that the companies have not challenged the said circular. It is only the petitioner who claims to hold 45 lakhs shares of respondent No. 4 has filed the present petition claiming his fundamental right to trade freely without any restriction put by the respondent Nos. 1 to 3. We are not able to accept such far-fetched submissions. As far as the legality aspect, is concerned we are satisfied that the circular issued by the respondent No. 2 is within the four corners of the law and is based on the expert opinion based on material on record. We are not inclined to expand the vistas of Article 226 of the judicial review to take control and have surveillance over the decision of the respondent Nos. 1 to 3. We have no expertise to study this share market. The circular is purely an administrative decision taken by the respondent No. 2 in consultation with the expert committee of the respondent Nos. 1 to 3. The bonafide objective of the circular is crystal clear to stabilise the

market and to protect the interest of the shareholders and to tune up genuine trade and to prevent false trade, which is not delivery based trade.

7. There is no malafides or arbitrariness or unreasonableness in the said circular which is only a temporary measure to control the movement of certain scrips in the stock market. We find no substance and merits in the petition and hence it is rejected in limini.