(2005) 03 MP CK 0078

In the Madhya Pradesh High Court

Case No : Writ Petition No. 150 of 2004

Bonanza Biotech Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 04-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Securities and Exchange Board of India Act, 1992 — Section 11(1), 11C(1), 15A, 24

Citation : (2005) 126 CompCas 80 : (2005) 62 SCL 84

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : G.M. Chafekar and Asudani, for the Appellant; Vinay Zelawat, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Sapre J.

1. The decision rendered in this writ shall also govern disposal of W. P. No. 673 of 2004 as both these writs involve identical points.

2. By filing this writ under Article 226/227 of the Constitution of India, the petitioner seeks to challenge the issuance of show cause notice dated November 18, 2003 (annexure P3), issued by the Investigating Officer u/s 11C(1)(6), read with Section 15A and Section 24 of the Securities and Exchange Board of India Act, 1992.

3. The impugned show cause notice (annexure P3) is challenged by the petitioner only on the ground that firstly, there is no order in writing passed by the Board appointing any person as contemplated u/s 11(1) of the Act to investigate the affairs of the petitioner-company and secondly, even if there exists any order as contemplated u/s 11C(1) ibid then it is the legal obligation on the part of the issuing authority (respondent) to give its copy to the petitioner before giving effect to the impugned show cause notice for carrying out the investigation into

the affairs of the company. This, in substance, is the grievance of the petitioner which is reiterated in the submission by learned counsel for the petitioner. In reply, the stand of the respondent is that firstly, no show cause notice can be questioned at this stage and hence, the petition is premature. Secondly, there is a compliance with the requirement of Section 11C(1) and thirdly, it is not necessary to supply copy of the order as prayed for by the petitioner and lastly, the petitioner is not co-operating in the inquiry and is avoiding to participate.

4. Heard Shri G. M. Chafekar, learned senior counsel with Shri Asudani, learned counsel for the petitioner and Shri Vinay Zelawat, learned counsel for the respondents.

5. Having heard learned counsel for the parties and having perused record of the case, I do not find any merit in this writ and hence, it deserves to be dismissed.

6. Section 11C(1) of the Act which alone is relevant reads as under :

"11C. (1) Where the Board has reasonable ground to believe that--

(a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market ; or

(b) any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board thereunder, it may, at any time by order in writing, direct any person (hereafter in this section referred to as the investigating authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board."

7. Mere perusal of the aforequoted section would indicate that what is required for initiating investigation into the affairs of any intermediary or persons associated with the securities market is an order in writing by the Board specifying any person known as investigating authority to carry out/ undertake the investigation. The section nowhere says and/or contemplates an obligation on the part of the respondent/issuing authority to give/ supply a copy of the said order to the person concerned. Had it been so, the legislative intention would have been expressed in explicit language. In other words, if the intention of the legislation had been to provide a copy to the person concerned, then it would have said so in clear terms.

8. At the stage of investigation, what is necessary is to provide for an opportunity to the person concerned. It is being done.

9. So far as compliance with the requirement of Section 11C(1) in the present case is concerned, the impugned show cause notice (annexure P3) itself proceeds on the assertion/mention that compliance is made. In other words, it is mentioned in the show cause notice itself that proceedings are initiated by an order passed by the Board on May 14, 2003. This is what is recited in the

impugned show cause notice :

"Whereas your co-operation is required in connection with the investigations instituted by the Securities and Exchange Board of India (hereinafter referred to as "SEBI") into the affairs relating to dealing in the shares of M/s. Design Auto Systems Ltd. vide its order dated May 14, 2003."

10. In my opinion, in order to issue impugned show cause notice, the aforesaid compliance is sufficient being in conformity with the requirement of Section 11C(1) ibid.

11. In view of the aforesaid discussion, the petition is found to be devoid of any merit. It fails and is dismissed. However, the respondents are directed to ensure expeditious completion of the investigation undertaken by the investigating authority pursuant to the impugned show cause notice. The petitioner is to co-operate in the investigation to enable the investgating authority to complete the same expeditiously.

12. No costs.

13. C. C. within a week.