

(2000) 01 KAR CK 0081
In the Karnataka High Court
Case No : Writ Appeal No. 4986 of 1999

C.M. Gopalaswamy

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 300A

Citation : (2002) 111 CompCas 565 : (2000) 3 KarLJ 1

Hon'ble Judges : Y. Bhaskar Rao, C.J; A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : Sri A.R. Holla, for the Appellant; Sri Udaya Holla, for the Respondent

Judgement

A.V. Srinivasa Reddy, J.—The appellant calls in question the validity and correctness of the order dated 17-6-1999 passed by the learned Single Judge dismissing the writ petition.

2. The brief facts of the case are:

Petitioner-appellant was a member of the respondent 3-stock exchange. He was doing the business of the share broker in the name and style of M/s. Vimal and Company at No. 4, II Floor, Sujatha Complex, Bangalore. He was, admittedly, a defaulter. His membership card was auctioned to recover the dues from him. After adjusting the dues and other expenses the balance was refunded to the appellant. The appellant was aggrieved that the respondent 3 levied default fee at 10% as per Bye-law 337 of Bangalore Stock Exchange. Therefore, he filed writ petition. The learned Single Judge dismissed the writ petition. Hence, the present appeal.

3. We have heard the learned Counsel for appellant and the respondents.

4. The learned Single Judge dismissed the writ petition relying on the decision of this Court in R. Jagadeesh Kumar Vs. P. Srinivasan and others, , wherein it has been held to the effect that Securities Contracts (Regulation) Act, 1956 provides

for effective functioning of stock-exchanges and that includes the power to regulate admission or expulsion of members which is not a public duty amenable to writ jurisdiction. The learned Counsel for the appellant relies on the decision in *Rashtreeya Ispat Nigam Ltd. Vs. State of Andhra Pradesh*, wherein the Andhra Pradesh High Court has laid down that the phrase "any person or authority" contained in Article 226 of the Constitution includes non-statutory authorities such as the stock exchange performing public duty and, therefore the writ petition is maintainable against stock exchange. The decision in *Rakesh Gupta*, supra, also relates to the admission of members to the stock exchange. While in the decision of this Court in *Jagadeesh Kumar*, supra, the power to regulate admission or expulsion exercised by the stock exchange is held not to be a public duty, in the decision in *Rakesh Gupta's* case, supra, a directly opposite view is taken.

5. Therefore, the point that arises for consideration in the present case is whether the imposition of 10% default fee as per Bye-law 337 by the Bangalore Stock Exchange can be said to be in discharge of its public duty by respondent 3?

6. The stock exchange performs myriad functions. In the case on hand we are presently concerned only with the imposition of default fee. The two decisions referred to supra, laying down, as they do, principles directly contrasting one another relate to the function performed by the stock exchange in relation to admission and expulsion of the members. Herein, what is in issue is not the expulsion as such but the limited question of imposition of the default fee. We, therefore, decline to pronounce one way or the other as to which of the decisions lays down the correct position in law as the same is not essential for the limited purpose of disposing of this appeal. It is in this background that we have formulated the question of law as aforestated.

7. Bye-law 337 of the Articles of Association lays down the scale of charge to be collected by the stock exchange. It reads:

"The charges to be paid to the exchange on the assets collected shall be 5 per cent on the first Rs. 5,000/- collected or part thereof and 2 per cent on any sum in excess of Rs. 5,000/- or such other as the Council of Management may from time to time prescribe".

(emphasis supplied)

It cannot be disputed that Articles of Association governs the internal affairs of the stock exchange and every member of the stock exchange who is a signatory to it is bound by the same. It is in the form of a concluded contract between the members and the stock exchange. Article 48(a) of the Articles of Association is to the following effect:

"48(a) The exchange shall have a first and paramount lien upon the share registered in the name of each member and upon the proceeds of sale thereof for his debts, liabilities and engagements, solely or jointly with any other person

to or with the exchange. . .".

The fact that there has been default by the appellant is not disputed. The appellant having committed default, the stock exchange has acted in pursuance of Article 48(a) and Bye-law 337 and has collected "default fee" at 10% as prescribed by the Council of Management. Both these amount to nothing more than regulating the internal business of the stock exchange and by no stretch of imagination it can be said that such internal management of the affairs of the stock exchange would amount to discharge of a public duty by the stock exchange. The action complained of by the appellant in the present petition being purely within the ambit of the management of the internal affairs of the stock exchange no writ petition can lie against such action.

8. It is contended by learned Counsel for appellant that Bye-law 337 suffers from excessive and unbridled delegation of powers to the Council of Management and, therefore, ultra vires of Article 300-A of the Constitution. As stated earlier, the appellant is a signatory to the Articles of Association and cannot be heard to complain against any of the articles contained therein.

9. In the result, we find no merit in the writ appeal and it is, accordingly, dismissed.