

(1992) 03 MAD CK 0016

In the Madras High Court

Case No : Review Applications No"s. 1 and 2 of 1992 in Writ Petition No"s.
14600 and 14601 of 1991

Coimbatore Texcity Share Brokers Association and another

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 13-03-1992

Acts Referred:

Companies Act, 1956 — Section 41(1)
Securities Contracts (Regulation) Act, 1956 — Section 13, 2, 3, 4
Securities Contracts (Regulation) Rules, 1957 — Rule 8(1)

Citation : (1993) 77 CompCas 29 : (1992) 2 MLJ 401

Hon'ble Judges : Venkataswami, J; Abdul Hadi, J

Bench : Division Bench

Advocate : G. Vasantha Pai, for the Appellant; Illias Ali, S.C. and Habibullah Badsha and Shakir Ali, for the Respondent

Judgement

Abdul Hadi J.

1. W.A. No. 1275 of 1991 is by the writ petitioner, the Coimbatore Texcity Share Brokers Association (hereinafter referred to as "the Tex

Association"), against the dismissal order dated September 24, 1991, of Bakthavatsalam J. of its Writ Petition No. 11575 of 1991. Writ Appeal

No. 1415 of 1991 is by the writ petitioner. The Cotton City Share Brokers Association (hereinafter referred to as "the Cotton Association")

against the consequent dismissal order dated November 18, 1991, of its W.P. No. 16027 of 1991. Both the said writ petitions sought for issue of

certiorarified mandamus to quash the impugned orders, respectively, dated August 7, 1991, and September 18, 1991, both of the Deputy Director

(Stock Exchange), Ministry of Finance (Department of Economic Affairs), Government of India, the fourth respondent in both the writ petitions.

By the said impugned orders, the respective applications of the respective petitioners/appellants, u/s 3 of the Securities Contracts (Regulation)

Act, 1956 (hereinafter referred to as "the Act"), for recognition of Stock Exchange at Coimbatore, to be promoted by the respective appellants,

were rejected. The abovesaid application by the Tex Association was made on July 3, 1991, and the other corresponding application by the

Cotton Association was dated April 23, 1991.

2. Even before W.P. No. 11575 of 1991 was dismissed, the abovesaid Department of the Central Government granted recognition to such a

stock exchange at Coimbatore pursuant to the application for recognition made by the Coimbatore Stock Exchange Ltd. (hereinafter referred to as

the Coimbatore Ltd."), with effect from September 18, 1991, by issuing Notification in S.O. 606(E) (See [1992] 73 Comp Cas 61 St), on the

said date. The said Coimbatore Ltd. in the eighth respondent in W.P. No. 16027 of 1991 but is not a party in W.P. No. 11575 of 1991.

However, in W.A. No. 1275 of 1991, C.M.P. No. 15164 of 1991 was filed by the appellant therein to implead it as the eighth respondent therein

and three others, viz., the Indian Chamber of Commerce and Industry, Coimbatore (hereinafter referred to as "the Indian Chamber"), Coimbatore

Share Trading House and the abovesaid Cotton Association, as respondents Nos. 5 to 7 in the said writ appeal. By order dated November 18,

1991, the abovesaid Indian Chamber and Coimbatore Limited have been impleaded in the writ appeal. With reference to the other respondents

also, there seems to be no objection to the impleading. Therefore, the C.M.P. is ordered even with reference to them.

3. It may also be stated that earlier to the above referred to W.P. No. 16027 of 1991, the writ petitioner therein, viz., the Cotton Association, also

filed W.P. No. 8292 of 1991 for appellant mandamus to the abovesaid department of the Central Government to consider its above application

for the abovesaid recognition and by order dated August 6, 1991, Bakthavatsalam J. directed the said authorities to dispose of the application of

the said petitioner on merits and according to law within two weeks.

4. Aggrieved by the said recognition by the abovesaid notification dated September 18, 1991, the abovesaid respective appellants also

respectively filed subsequently writ petitions, viz., W.P. No. 14600 of 1991, and

W.P. No. 14601 of 1991, for a writ of certiorari to quash the abovesaid notification granting recognition to the stock exchange of the abovesaid Coimbatore Ltd. The said Coimbatore Ltd. is the fifth respondent in W.P. No. 14600 of 1991 and the third respondent in W.P. No. 14601 of 1991. The relevant Central Government authorities are the other respondents in the writ petitions.

5. Now, in the abovesaid two writ appeals, it has to be seen whether the abovesaid order dated September 24, 1991, of Bakthavatsalam J. and his consequential order dated November 18, 1991, are correct. Likewise in the other two subsequent writ petitions it has to be seen whether the impugned notification dated September 18, 1991, granting recognition to Coimbatore Ltd. is correct.

6. The first submission of MR. Thiyagarajan, learned senior counsel for the abovesaid appellants and the writ petitioners in the subsequent W.P.

No. 14600 and 14601 of 1991, is that the respondent-Government should have taken up all the applications before it together and on a

comparative analysis of the merits and demerits of each of the said appellants, in the light of section 4 and other relevant provisions of the

abovesaid Act, should have to a conclusion in recognising one or other of the stock exchange of the applicants and that while doing so, the

respondent-Government erred in accepting the application of one of the applicants, viz., Coimbatore Limited. Learned counsel also, in this

connection, relied on Madhubhai Amathalal Gandhi Vs. The Union of India (UOI), . Learned counsel reiterates that Bakthavatsalam J. has erred in

stating that the abovesaid enactment does not say that all the applicants under the abovesaid section 3 have to be brought together and recognition

has to be given only after considering all the applicants together and that this court cannot sit in appeal over the decision taken by the Central

Government after considering the different applications individually.

7. In this connection, there is a necessity to say a few more facts. The said Coimbatore Limited filed its abovesaid application on July 3, 1991. The

said Coimbatore Limited was actually promoted by the above referred to Indian Chamber. In fact, the said Indian Chamber, by its letter dated

September 18, 1989, to the Joint Secretary of the abovesaid Government Department made an appeal on behalf of the signatories to the enclosed

memorandum of association, to grant permission to the said signatories to organise a stock exchange at Coimbatore, explaining the necessity of doing so. It is also stated therein that as soon as the said permission is granted, the said signatories would take steps to form the stock exchange and register it as a company. Pursuant to its further efforts the Joint Director of the abovesaid department of the Government also by his letter dated November 5, 1991, conveyed the approval of the Government in principle for establishment of a stock exchange at Coimbatore by the Indian Chamber, subject to the condition that the promoters of the exchange shall settle the memorandum and articles of association, the bye-laws and regulations and the infrastructure facilities of the proposed stock exchange to the satisfaction of the Ministry of Finance and to the Securities and Exchange Board of India. Therefore, the said letter also states that the said promoters may submit the prescribed application u/s 3 of the abovesaid Act to the Government for considering grant of recognition to the stock exchange.

8. According to the averments of Coimbatore Limited, the abovesaid Indian Chamber in response to the abovesaid letter dated November 5, 1990, received by it, submitted the draft memorandum and articles of association of the proposed stock exchange and proceeded to incorporate the abovesaid Coimbatore Limited as a limited company. The said Coimbatore Limited subsequently also filed the above-referred to application for recognition of the said stock exchange on July 3, 1991.

9. The second submission of Mr. Thiyagarajan is that if at all, the recognition could be granted only to Indian Chamber and not to a different entity, viz., the abovesaid Coimbatore Limited. He also argues that the term ""promoted"" used in several communications between the parties would only mean ""started"".

10. The third submission of the said counsel is that u/s 3 of the abovesaid Act, only a stock exchange can make an application for recognition under the said section, but that the abovesaid Coimbatore Limited was not carrying on the business of a stock exchange earlier and hence, this abovesaid application should not have been entertained. In this connection, he drew our attention to the definition of the term ""stock exchange"" u/s 2(j) of the said Act.

11. Lastly, learned counsel submits that in exercising the abovesaid statutory function u/s 4 of the abovesaid Act in granting the recognition, the

Government should show ""fairness in action"". But, according to him, the Government has not shown such fairness in action in the present case in

passing the impugned order and notification. In this connection, he relied on Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of

Bihar and Others, and K.J. John, Assistant Public Prosecutor, Grade-I, Palai Vs. The State of Kerala and others, .

12. On the other hand, Mr. Habibullah Basha, learned senior counsel for Coimbatore Limited and also Mr. Iliyas Ali, learned counsel for the

Government authorities, submit that there is no necessity to make a comparative study of the different applications u/s 3 of the Act and that it is

enough if those applications are considered individually, as it has been done in the present case. Admittedly, the writ petitioners were given

personal hearing, pursuant to the respective applications and then only their applications were rejected on the merits of the said respective

applications. The abovesaid personal hearing, admittedly, was given to the Tex Association on July 19, 1991, and for the Cotton Association on

September 4, and September 13, 1991. Therefore, according to the said counsel, there can be no grievance to those writ petitioners. The said

counsel also distinguished the abovesaid decision Madhubhai Amathalal Gandhi Vs. The Union of India (UOI), .

13. Learned counsel for Coimbatore Limited also particularly points out that in the subsequent two writ petitions, viz., W.P. No. 14600 of 1991

and W.P. No. 14601 of 1991, there is absolutely no plea that in passing the abovesaid impugned notification the abovesaid comparative analysis

was not made between the different applications u/s 3 of the abovesaid Act. The only grievance therein is that, if at all, the Government could have

granted recognition to Indian Chamber to whom even earlier the abovesaid approval was granted in principle, and not to Coimbatore Ltd.

14. Thus, this only grievance relates to the abovesaid second submission of Mr. Thiagarajan.

15. Regarding the said second submission, Mr. Habibullah Basha submits the Coimbatore Limited cannot be considered as a different entity since

the said company was floated by the abovesaid signatories to the memorandum of association annexed in the abovesaid letter dated September

18, 1989, of the Indian Chamber. Learned counsel also particularly draws out attention to the several efforts taken by the Indian Chamber ever

since September 18, 1989, and the huge expenditure of Rs. 50,00,000 incurred by it in promoting the abovesaid Coimbatore Limited and getting it

revognised as stated above. In this connection, he particularly draws our attention to paragraphs 8, 9, 10 and 13 of the counter-affidavit filed by

the Coimbatore Limited in W.P. No. 14600 of 1991 and submits that the writ petitioners have deliberately decided to take under-advantage of the

strenuous efforts put in by the Indian Chamber and Coimbatore Limited in the past five years. According to the said counsel, if the abovesaid

second submission has no leg to stand on, automatically, the abovesaid subsequent writ petitions, viz., W.P. No. 14600 of 1991 and 14601 of

1991, have to be dismissed since the grievance therein only relates to this aspect.

16. Mr. Habibullah Basha further contends that the abovesaid third submission of learned counsel for the writ petitioners is totally misconceived. It

is not necessary that for making the application u/s 3, the stock exchange must be actually doing stock exchange business at the time of the

application. According to the definition of the term ""stock exchange"" u/s 2(j), it means only any body constituted for the purpose of assisting,

regulating or controlling the business of buying, selling or dealing in securities. Thus, if it is so constituted for the said purpose, it comes under the

said definition. So, the application by the Coimbatore Limited is in order. According to learned counsel, in fact, the writ petitioners also are not a

stock exchange who carried on stock exchange business earlier to their applications. Their members were only ""stock brokers"" which term is

different from a stock exchange.

17. Regarding the last submission of Mr. Thiyagarajan, Mr. Habibullah Basha submits that the Government was absolutely showing fairness in

action and the contention of learned counsel for the writ petitioners is totally unfounded and the decisions cited by him have no application to the

present case.

18. We have given our considered attention to the abovesaid rival submissions. One of the submissions is that, if at all, recognition could be

granted only to Indian Chamber and not to a different entity, viz., the abovesaid Coimbatore Limited. But, the said Coimbatore Limited was, in

effect, only promoted by the above-referred to Indian Chamber. As already pointed out, in the abovesaid letter dated September 18, 1989, the

Indian Chamber, inter alia, states that as soon as the permission is granted, the above-referred to signatories would take immediate steps to form a

stock exchange and register it as a company. Further, by letter dated September 3, 1990, to the abovesaid department of the Government, it

requested the Government to grant consent to the opening stock exchange at Coimbatore and in this regard sought permission to form a company.

In response to the said letters, the respondent by its abovesaid letter dated November 5, 1990, conveyed the approval of the Government in

principle for the establishment of the stock exchange at Coimbatore by the Indian Chamber, subject to the condition that the promoters of the

exchange shall settle the memorandum and articles of association, bye-laws and regulations and the infrastructure facilities of the proposed stock

exchange to the satisfaction of the Ministry of Finance and to the Securities and Exchange Board of India. The said letter also states that the said

promoters may submit the prescribed application u/s 3 of the abovesaid Act. So, the Indian Chamber submitted a draft memorandum and articles

of association, etc., and proceeded to incorporate a company and named it ""Coimbatore Stock Exchange Limited."" The Coimbatore Stock

Exchange Limited (under formation) also, in turn, filed the application dated July 3, 1991. In fact, the said application was forwarded to the

respondent only by the Indian Chamber with its covering letter of the same date, stating therein thus :

..... we are forwarding herewith the application for the recognition of the proposed stock exchange we request you to kindly grant the

recognition early.

19. Then, in the subsequent letter dated July 8, 1991, the Indian Chamber also states as follows :

We are taking steps to incorporate Coimbatore Stock Exchange Limited as a guarantee company.

20. It is also to be noted that the president of the Indian Chamber is also the president of Coimbatore Limited and that in the said application it has

also been stated that the Indian Chamber has agreed to provide Coimbatore Limited sufficient spare for the trading hall and office for carrying on

the stock exchange business. In the light of these facts and certain other facts referred to in paragraphs 9 to 13 of the counter-affidavit of

Coimbatore Limited in W.P. No. 14600 of 1991, it can safely be concluded that Coimbatore Limited was only promoted, in effect by Indian

Chamber, and that the abovesaid "in principle approval" given by the Government would enure to Coimbatore Limited. After going through the

relevant communications, we also observe that the word "promoted" would only have the normal literal meaning and not as contended for by Mr.

Thiyagarajan. In the circumstances, we do not think that there is any merit in the second submission of Mr. Thiyagarajan.

21. We also find that in W.P. No. 14600 and 14601 of 1991, there is no plea even that since the abovesaid comparative consideration of all the

applications together was not done, the rejection of the writ petitioners' application under the abovesaid section 3 was bad. No doubt, Mr.

Thiyagarajan drew out attention to paragraph 15 of the affidavit in W.P. No. 14600 of 1991 to point out that there is such a plea. But, we do not

think so. The said paragraph 15 only says that the impugned notification is also bad for the reason that at the time when the said notification was

passed, the authority giving the sanction was aware of the fact that the petitioners' association has in its roll about 100 members who are doing

business as share brokers for several years. So the said paragraph says that the sanction given by the said notification should have been made

conditional upon the said members' entitlement to become the members of Coimbatore Limited, as otherwise, their functioning would be

prohibited u/s 13 of the Act. This plea cannot be considered as the plea above referred to. This averment only says that in view of the fact that the

petitioners' association has 100 members, who are share brokers, doing business for several years, the abovesaid notification should itself entitle

them to become members of Coimbatore Limited, as otherwise, section 13 of the Act would prohibit their business. This is certainly a different

plea.

22. At any rate, the Act does not provide that such comparative consideration must be done before coming to a decision for recognition. That

apart, since, as already stated, the abovesaid "approval in principle" expressed by letter dated November 5, 1990, would enure to Coimbatore

Limited, it cannot be said that there is any violation of the principles of natural justice or "fairness in action" as contended by Mr. Thiagarajan in so

far as the abovesaid rejection of the abovesaid applications of the writ petitioners. Therefore, there is no scope for the application of the principles

enunciated in the above-referred to decision of Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others, or K.J.

John, Assistant Public Prosecutor, Grade-I, Palai Vs. The State of Kerala and others, , to the present case.

23. Further, the point actually decided in the above-referred to Madhubhai Amathalal Gandhi Vs. The Union of India (UOI), , is different. There,

before the introduction of the abovesaid Act, there were two stock exchanges, carrying on the business of stock exchange, by name, (1) Native

Share and Stock Brokers" Association, and (2) Indian Stock Exchange Limited. The former was recognised under the erstwhile Bombay

Securities Contract Control Act, 1925, but the latter was not so recognised under the abovesaid 1925 Act. Then, after the abovesaid Act (of

1956) was introduced, both the abovesaid stock exchanges at Bombay, applied for recognition u/s 3 thereof and the Government no doubt,

considering the relevant merits of the two, recognised the former under the name of "Stock Exchange, Bombay" subject to the conditions, which

included that the members of the abovesaid Indian Stock Exchange Limited would be entitled to apply for membership of the abovesaid "Stock

Exchange, Bombay", provided they were active members of the said Indian Stock Exchange Limited, etc. Then, the Central Government issued a

subsequent notification u/s 13 of the Act, with the result that thereafter every contract in shares between the members of any unrecognised stock

exchange in Bombay would be illegal. The said notification and the earlier notification were challenged by a member of the Indian Stock Exchange

Limited on the ground that they offended his right to do business under 19(1)(g) of the Constitution of India and also on the ground that the former

notification was void as not being sanctioned by section 4 of the abovesaid Act.

24. At any rate, in the above referred to Madhubhai Amathalal Gandhi Vs. The Union of India (UOI), , there was no discussion or finding as such

that the "relative merits" of the applicants under the abovesaid section 3 have to be considered before coming to a decision regarding the

recognition under the abovesaid section 4. No doubt, in the said decision it is stated as a narration of the facts therein, thus :

The Government, after considering the relevant merits and the relevant circumstances, issued the abovesaid former notification, granting recognition as aforesaid.

25. But, the Supreme Court did not hold in the said decision that such recognition could be given only after considering the relevant merits of all the applications.

26. Mr. Thiagarajan also argues that the hardship that might be caused to the abovesaid unrecognised stock exchange in the abovesaid Supreme Court case was taken into consideration in that decision of the Supreme Court. But, Mr. Habibullah Basha points out that in the abovesaid

Supreme Court case, there were two stock exchanges actually doing business as stock exchanges at the time of the introduction of the abovesaid

Act and at the time when they both were applying under the abovesaid Act, but that in the present case, there were no stock exchanges actually

doing business earlier. So, we also think, as he points out that the question of hardship as in the Supreme Court case, does not arise here. In fact,

in the present case also, notification u/s 13 of the Act also has been issued on September 18, 1991, and there is no challenge to the said

notification by the writ petitioners. That apart, if any member of the writ petitioners desires to become a member of Coimbatore Limited, the

recognised stock exchange, such member is at liberty to do so. There will be a screening committee of Coimbatore Limited which will go into the

question of admitting the members of Coimbatore Limited and in the said committee of the Government representatives will also be there. So, there

can be no apprehension to the writ petitioners in this regard also.

27. We may also refer to one other decision of a Division Bench of this Court in Shanmugham v. Arumugham [1960] I MLJ 66, which dealt with

applications u/s 5 of the Madras Cinemas (Regulation) Act (IX of 1955) for the grant of a no objection certificate to locate a touring cinema. There

also, this court has held that there is nothing in the said Regulation, Act or in the Rules thereunder which casts a duty on the Collector or the Board

of Revenue to make a comparative estimate of the qualifications of the different applicants or to make a selection among several applicants.

Several difficulties in invoking the principle of selection in respect of the above-referred to applications were also pointed out in the said decision.

No doubt, Rajamannar C.J., who delivered the said Bench judgment, also pointed out that the scheme and procedure laid down in the abovesaid

Regulation Act did not correspond to the scheme and procedure found in the Motor Vehicles Act and the Rules framed thereunder, in respect of

applications u/s 57(2) of the then existing Motor Vehicles Act for stage carriage permits. In relation to the said applications u/s 57(2), in view of

the several specific features of the Motor Vehicles Act, the learned judge no doubt observed that there would be justification for invoking the

principle of selection. No such similar features are found in the abovesaid Securities Contracts (Regulation) Act, 1956, with which we are now

dealing, and we think the ratio of the said decision would also apply the facts of the present case.

28. In the light of the above discussion, we do not think that there is any merit in the above writ appeals or in the abovesaid subsequent writ

petitions and hence they are dismissed with costs in favour of the abovesaid Coimbatore Stock Exchange Limited. Counsel fee, one set Rs.

2,500.

JUDGMENT

Abdul Hadi J.

29. These two review applications are for reviewing our common order dated January 20, 1992, dismissing two writ petitions, W.P. Nos. 14600

and 14601 of 1991. They are filed by the respective writ petitioners therein.

30. Both the said writ petitions sought to quash the notification of the Central Government dated September 18, 1991 (See [1992] 73 Comp Cas

61 (St.)), granting recognition u/s 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (hereinafter, for convenience sake, referred to

as ""the Securities Act"" to the Stock Exchange at Coimbatore started by the Coimbatore Stock Exchange Limited, the fifth respondent in Review

Application No. 1 of 1992 and the third respondent in R.S. No. 2 of 1992. The said writ petitioners are the rival applicants, for recognition of their

respective exchanges at Coimbatore.

31. Learned senior counsel, Mr. Vasantha Pai, appearing for the applicants submits as follows : Our abovesaid order did not consider the

argument that four of the seven signatories to the memorandum of association of the company, the Coimbatore Stock Exchange Limited, were

disqualified to be members of any stock exchange under rule 8(1)(f) of the Securities Contracts (Regulation) Rules, 1957 (hereinafter, for

convenience sake, referred to as "the Securities Rules"), framed under the abovesaid Act, they being engaged in business other than securities and

accredited industrialists. His further contentions are that they are "deemed members" of the Coimbatore Stock Exchange Limited u/s 41(1) of the

Companies Act, 1956, but that because of their abovesaid disqualification, the abovesaid recognition granted under the Securities Act is bad and

that even the registration of the said company itself is bad under the said Companies Act. According to learned counsel, the abovesaid defect goes

to the root of the jurisdiction to grant the said recognition and the failure to consider the same is an error apparent on the face of the record.

Learned counsel also cited decisions in support of his contention that the review applications are maintainable on the facts of the present case.

32. On the other hand, learned counsel for the Coimbatore Stock Exchange Limited submits as follows : The above argument that the registration

of the Coimbatore Stock Exchange Limited under the Companies Act itself was bad, was not made at all while the writ petitions were argued, nor

was the said plea raised in any of the supporting affidavits of the respective writ petitions. Hence, there is no error apparent which could be

corrected in these review petitions. No doubt, the subscribers to the abovesaid memorandum of association have become automatically members

of the Coimbatore Stock Exchange Limited, which has since been recognised. But, such automatic admission to the membership of the said

recognised Stock Exchange does not make the said recognition bad, even assuming there was any disqualification as alleged by the applicants,

since under the above rule 8(1)(f), the disqualification contemplated therein is a curable one in view of the proviso to the said rule 8(1)(f) which

says that the Central Government may permit a recognised stock exchange to suspend the enforcement of the said clause (f) of rule 8(1). Learned

counsel also cited decisions to contend that the review applications are not maintainable on the facts of the present case.

33. Learned counsel appearing for the other respondents (Governmental authorities) generally supports the arguments of learned counsel for the

Coimbatore Stock Exchange Limited. However, it may also be noted that in the counter-affidavit filed by the said respondents in the writ petitions

it is stated that the abovesaid stock exchange has not yet admitted the members and during the appropriate stages, the company would consider

the issue regarding the qualification of the members of the stock exchange.

34. We have considered the abovesaid rival submissions. On the question whether the subscribers to the memorandum of association of the

Coimbatore Stock Exchange Limited have become automatically members of the recognised stock exchange of the Coimbatore Stock Exchange

Limited, learned counsel for the Coimbatore Stock Exchange Limited also represents that they have so become automatically members of the

abovesaid recognised stock exchange in view of the relevant clause in the articles of association of the Coimbatore Stock Exchange Limited. (He

no doubt contends that the definition of a member under the Companies Act cannot be imported into the Securities Act.) In view of the abovesaid

representation by the said counsel that the said subscribers are automatically members of the abovesaid stock exchange, we are not giving any

considered opinion on this question and we proceed on the basis of the abovesaid representation of the said counsel of the Coimbatore Stock

Exchange Limited, and counsel for the petitioners.

35. Then, the further question is whether such automatic admission of the abovesaid seven subscribers to the members of the said recognised stock

exchange makes the said recognition bad, on the footing that four of them were admittedly industrialists and consequently come under the

abovesaid rule 8(1)(f) as disqualified persons. Rule 8(1) runs as follows :

8. Qualifications for membership of a recognised stock exchange. - The rules relating to admission of members of a stock exchange seeking

recognition shall, inter alia, provide that :

(1) No person shall be eligible to be elected as a member if

(a) he is less than twenty-one years of age;

(b) he is not a citizen of India; provided that the governing body may in suitable cases relax this condition with the prior approval of the Central

Government;

(c) he has been adjudged bankrupt or a receiving order in bankruptcy has been

made against him or he has been proved to be insolvent even

though he has obtained his final discharge;

(d) he has compounded with his creditors unless he has paid sixteen annas in the rupee;

(e) he has been convicted of an offence involving fraud or dishonesty;

(f) he is engaged as principal or employee in any business other than that of securities except as a broker or agent not involving any personal

financial liability unless he undertakes on admission to sever his connection with such business :

Provided that the Central Government may, for reasons sufficient in the opinion of the said Government, permit a recognised stock exchange to

suspend the enforcement of this clause for a specified period on condition that the applicant is not associated with or is a member of or subscriber

to or shareholder or debenture-holder in or connected through a partner or employee with any other organisation, institution, association, company

or corporation in India where forward business of any kind whether in goods or commodities or otherwise is carried on or is not engaged as a

principal or employee in any such business; ...

(h) he has been at any time expelled or declared a defaulter by any other stock exchange;

(i) he has been previously refused admission to membership unless a period of one year has elapsed since the date of such rejection.

36. Thus, as per the abovesaid rule 8(1)(f), even though a person is disqualified from being admitted as a member of a stock exchange, seeking

recognition, if he is engaged in any business other than that of securities, the proviso therein says that ""the Central Government may, for reasons

sufficient in the opinion of the said Government, permit a recognised stock exchange to suspend the enforcement of this clause for a specified

period on condition ..."" The use of the words ""recognised stock exchange"" in the abovesaid proviso shows that the abovesaid disqualification in

rule 8(1)(f) is not an absolute bar for the granting of the abovesaid recognition itself. Otherwise, permitting a ""recognised stock exchange"" to

suspend the enforcement of the said clause (f) will not arise at all. If the recognition itself is bad ab initio, suspension of a disqualification rule in

considering the recognition application will not arise at all. So, we have to accept

the argument of learned counsel for the Coimbatore Stock

Exchange Limited that the said disqualification is a curable one in view of what is contained in the proviso to rule 8(1)(f).

37. Next, it must be stated that, as contended by learned counsel for the Coimbatore Stock Exchange Limited, there were no contentions raised,

either in the affidavits of the writ petitioners or by way of argument by counsel who appeared for the writ petitioners, stating that the registration of

the Coimbatore Stock Exchange Limited under the Companies Act itself was bad in view of the abovesaid disqualification. So, on that footing, it

cannot be held that there is any error apparent on the face of the record for us to review our earlier order. Further, there is neither a prayer to

quash the registration of the Coimbatore Stock Exchange Limited as a company, nor has the Registrar or Companies who registered the company

been impleaded. That apart, in the view we have taken on the earlier question discussed by us, the Registrar of Companies cannot be said to have

wrongly registered the said company under the Companies Act.

38. In the above view we have taken, there is no necessity to go into the question whether on the facts of the present case a review would lie at all

and there is also no necessity to consider the different decisions cited by both the rival counsel on that question.

39. In the result, we find that there is no merit in these review applications and hence they are dismissed. However, in the circumstances of the

case, there will be no order as to costs.