(2007) 03 CAL CK 0068

In the Calcutta High Court

Case No : Writ Petition No. 3718 (W) of 2007

Gujarat NRE Coke Ltd. APPELLANT

Vs

Securities and Exchange Board of India RESPONDENT

Date of Decision : 23-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Securities and Exchange Board of India Act, 1992 — Section 11(4), 11C, 15A, 15I, 15T

Citation : (2007) 139 CompCas 772 : (2007) 2 CompLJ 538 : (2007) 76 SCL 436

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : D. Basak and M.S. Tiwari, for the Appellant; S.K. Kapoor, Arindam Mukherjee, Sandip Agarwal, Ashis K. Mukherjee and Rupak Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Dipankar Datta, J.—It is the case of the petitioners that sometime in the month of March 2006, they came to learn that the respondents 2 and 3 were proceeding to obtain finance from the securities market by issuing prospectus/letter of offer in the name of Gremach Infrastructure Equipments and Projects Limited (hereafter ''Gremach''). Since the petitioners were of the view that the respondents 2 and 3 have suppressed relevant facts in the said prospectus/letter of offer and statements contained therein are false which would mislead the investors, they lodged a complaint dated 13-3-2006 through their learned Advocate on record. The complaint was addressed to the Securities and Exchange Board of India (hereafter ''SEBI'') having office at Nariman Point, Mumbai, with a copy thereof to the Regional Office of SEBI at 16, Camac Street, Kolkata-700 017. In view of the contents of the complaint, the petitioners prayed before SEBI to restrain the respondents 2 and 3 and Sourashtra Projects Limited from having access in the security market in terms of the said prospectus/letter of offer and a further prayer was made for restraining them from acting and/or entering into the security market by way of purchase and/or sale of securities.

Since the complaint dated 13-3-2006 allegedly was not considered and disposed of by SEBI, the petitioners approached this Court by filing the present petition praying for, inter alia, the following relief:

(a) Writ in the nature of mandamus commanding the respondents to consider the complaint lodged by the petitioners through their Lawyer dated 13-3-2006 after expunging the Word Flat No. 19, Lovely Rose, Juhu, Mumbai within the stipulated period of time;

(b) Writ in the nature of prohibition preventing the respondent No. 1 from giving any permission and/or allowing the respondent Nos. 2 and 3 to access in capital market in the name of Gremech Infrastructure Equipments & Projects Limited or in any name;

(c) Writ in the nature of certiorari commanding the respondents to transmit all the records, files, with regard to the said complaint letter lodged by the petitioner through petitioners'' letter dated 13-3-2006 along with their other relevant papers if any filed by the respondent Nos. 2 and 3 with the respondent No. 1 seeking permission to access the capital market so that the same may be adjudged and conscionable justice may be rendered.

2. On the self same cause of action, the petitioners had earlier approached this Court by filing a writ petition bearing W.P. No. 2873(W) of 2007. This Court had the occasion to consider the same. Being confronted with the situation that there was no pleading in the writ petition in relation to territorial jurisdiction of this Court to entertain the same, learned Counsel for the petitioners sought leave to withdraw it and to file a fresh writ petition. Leave, as prayed for, was granted and consequently, the present petition was filed.

3. At the outset, Mr. Kapoor, learned Senior Counsel for the respondents 2 and 3 objected to the maintainability of the present petition on the grounds of (1) want of territorial jurisdiction of this Court to entertain the petition; and (2) lack of locus standiof the petitioners to maintain the same.

4. Mr. Kapoor submitted that Gremach having its registered office at Mumbai intended to offer Public Issue to enhance its share capital and/ or list its shares in the Stock Market. Accordingly SEBI was approached and on its approval, prospectus/letter of offer for Public Issue had been issued. Since Gremach apprehended that the petitioners might initiate litigations to halt the Public Issue being business rivals and/or competitors, it had lodged caveat in the High Court of Delhi at New Delhi, in the Gauhati High Court at Guwahati as also in the District Court of Alipore, South 24 Parganas at Kolkata. However, writ petitions were neither filed in the aforesaid High Courts nor was any proceeding initiated in the District Court at Alipore; on the contrary, this Court had been approached by the petitioners in the writ jurisdiction without impleading Gremach as respondent but impleading the respondents 2 and 3, who are its Directors. He also submitted that none of the respondents in the petition have their respective offices within the territory of West Bengal and for the purpose of maintaining the

present petition, the petitioners impleaded SEBI through its Regional Office within the jurisdiction of this Court and its Head Office, beyond the jurisdiction of this Court. It is his submission that the purported complaint lodged by the petitioners was addressed to the Head Office of SEBI at Mumbai and it is the Head Office of SEBI at Mumbai that was called upon to initiate enquiries in respect of alleged acts of suppression of the respondents 2 and 3. It is also his submission that only a copy thereof was forwarded to the Regional Office at Kolkata without any request to it for taking action. He submitted that the Regional Office of SEBI has no role to play in the matter and hence by reason of the Regional Office of SEBI being located in Kolkata, that would not confer jurisdiction on this court to entertain and hear the writ petition. He invited the attention of this Court to the statements made in paragraphs 15, 18 and 26 of the writ petition and in paragraph 3 of the supplementary affidavit filed by the petitioners in support of maintaining the writ petition within the territorial jurisdiction of this Court and submitted that all facts stated by the petitioners in the petition even if accepted at face value, do not give rise to any cause of action, even in part, entitling them to move the petition before this Court.

5. Assuming that this Court has territorial jurisdiction to hear and determine the issue involved in the present petition, learned Senior Counsel proceeded to argue that no legal rights of the petitioners have been abridged which could entitle them to approach this Court in its writ jurisdiction. By referring to the various provisions of the Securities and Exchange Board of India Act, 1992 (hereafter ''the said Act'') and the SEBI (Disclosure & Investors Protection) Guidelines, 2000 (hereafter ''the Guidelines''), he submitted that there is no statutory provision which imposes a legal duty on the SEBI to consider the complaint lodged by the petitioners and in the absence of such duty, no legal right vested in the petitioners could be said to have been infringed. He submitted that the dispute raised is essentially one between brothers-in-law and the petitioners not having applied pursuant to the prospectus/letter of offer issued by Gremach, they have not suffered any prejudice and therefore, are not "persons aggrieved". Referring to Section 15T of the said Act, he submitted that if the petitioners are really aggrieved by any action of SEBI, an appeal would lie and not a writ petition. Referring to the contents of paragraph 26 of the petition he submitted that no writ would lie against the respondents; at best a Public Interest Litigation may be filed by the petitioners.

6. He has accordingly, prayed for summary dismissal of the writ petition.

7. Mr. Ghosh, learned Advocate representing SEBI while adopting the arguments advanced by Mr. Kapoor, learned Senior Counsel on the point of lack of locus standiof the petitioners has submitted that in the present case the Regional Office of SEBI has no records of the prospectus/offer letter issued by the respondents 2 and 3 which has been approved by the Head Office of SEBI. He further submitted that after receipt of complaint from the petitioners, certain enquiries were made and omissions in respect of vital facts in the prospectus/

offer letter having been detected, Gremach was directed to cure the defects and the same have since been cured.

8. Mr. Basak, learned Counsel representing the petitioners, on the contrary, vehemently opposed the objections raised by the respondents and contended that the said objections were without merit and the writ petition was well-high maintainable before this Court. He has referred to Schedule XXII of the Guidelines read with Clauses 16.1-1.(6), 16.2.3-1 and 16.2.4-3 thereof. By referring to the same, he contended that the Eastern Regional Office of SEBI has its office in Kolkata and any inaction on the part of the said office to deal with and dispose of the petitioners'' complaint could be subject of judicial review by this Court. He also referred to the provisions of Section 11(4) of the said Act which lays down the functions of the Board. It is his categorical submission that the petitioners having brought to the notice of SEBI illegal dealings, it was obligatory for it to take action in terms of statutory power conferred on it. He also referred to the provisions of Sections 15Iand 15A of the said Act to emphasize that the power to adjudicate is that of SEBI and it is the SEBI which has power to penalize persons who are found to have defaulted in acting in accordance with the terms of the statute. Based thereon, he submitted that this Court has the territorial jurisdiction to hear and determine the issue involved.

9. On the question of locus standi, he has referred to Section 11C of the said Act and submitted that the SEBI can proceed to investigate if there are reasonable grounds to believe that the power conferred ought to be exercised. It is his submission that the complaint lodged by the petitioners afford grounds for the SEBI to come to a conclusion that there has been false representation and suppression of facts and the prospectus/letter of offer is misleading and in case of inaction to investigate, a writ petition would definitely be maintainable for activating the SEBI. By referring to the complaint dated 13-3-2006, he submitted that the allegations contained in it are true and correct which is corroborated by the admission made on behalf of SEBI that certain facts had indeed been suppressed, disclosure whereof was later on sought. In view thereof, it was submitted by him that the petitioners have the locus standi to present the writ petition before this Court and he urged this Court to pass interim order as prayed for upon admission of the writ.

10. This Court is of the considered view that the objection regarding want of territorial jurisdiction to entertain the present petition cannot be examined in isolation but has to be examined in the light of the powers and duties of the Regional Office of SEBI which has been made the sheet anchor of the petitioners'' claim. Accordingly, the objections relating to want of territorial jurisdiction and lack of locus standi have been considered together.

11. Territorial jurisdiction of this Court has been sought to be invoked basically on the following averments:

(1) The complaint was lodged by the petitioners with the Regional Office of SEBI

at Kolkata which was issued by their Advocates from their office at 1B, Old Post Office, Kolkata within the jurisdiction of this Court;

(2) The complaint was served on the Regional Office of SEBI at Kolkata by special messenger within the jurisdiction of this Court;

(3) The records of the case are located within the jurisdiction of this Court since SEBI has its Regional Office at Kolkata and it is guilty of inaction;

(4) The complaint has been lodged by the petitioners for their own protection and for protection of the investors and the public at large;

(5) The misdeed of the respondents forming subject-matter of the writ petition have caused infringement of the legal and fundamental rights of the petitioners at the registered office of the petitioner No. 1 and the place of business of the petitioner No. 2 which are within the jurisdiction of this Court;

(6) The petitioners have suffered legal injury at the registered office of the petitioner No. 1 at 22, Camac Street, Kolkata-700 016; and

(7) The issuer company''s registered office is at P-50, Princep Street, Kolkata-700 017.

12. Of the first three points and the last point mentioned above, the grievance that the Regional Office of SEBI at Kolkata has not taken any action pursuant to the complaint lodged by the petitioners is the only point worth consideration for deciding whether this Court has the territorial j urisdiction to entertain this petition or not. It would thus be the endeavour of this Court to find an answer to this. If the Regional Office by remaining inactive has failed to discharge a statutory duty and thereby has infringed any legally protected right of the petitioners, definitely this Court would have jurisdiction to entertain this petition overruling the preliminary objection.

13. Before delving deep to examine the contentious issues raised herein, this Court reminds itself of the law laid down by the Apex Court with regard to locus standi to present a writ petition conceived in private interest of the applicant.

14. In the decision in State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo, the Apex Court in clear terms held that

...before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Article 226 of the Constitution of India.

15. The Apex Court in its decision in Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, while dealing with a Civil Appeal arising out of a writ petition seeking certiorari, has held as follows:

This takes us to the further question: who is an ''aggrieved person'' and what are the qualifications requisite for such a status? The expression ''aggrieved person'' denotes an elastic, and to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner''s interest, and the nature and extent of the prejudice or injury suffered by him....

35. To have a ''standing to sue'', which means locus standi to ask for relief in a court independently of a statutory remedy, the plaintiff must show that he is injured, that is, subjected to or threatened with a legal wrong. Courts can intervene only where legal rights are invaded. ''Legal wrong'' requires a judicially enforceable right and the touchstone to judiciability is injury to a legally protected right. A nominal or a highly speculative adverse affect on the interest or right of a person has been held to be insufficient to give him the ''standing to sue'' for judicial review of administrative action. Again the ''adverse affect'' requisite for ''standing to sue'' must be an ''illegal effect''....

16. In the decision in Mani Subrat Jain and Others Vs. State of Haryana and Others, following its earlier decisions in The State of Haryana Vs. Subash Chander Marwaha and Others, and J.M. Desai''s case (supra), law has been laid down by the Apex Court in the following terms:

It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something.

17. Keeping in mind the principles of law relating to locus standi ref erred to above, this Court proceeds to consider the grievance of the petitioners of inaction of the Regional Office of SEBI.

18. Provisions of the said guidelines, relevant for deciding the present controversy, are as follows:

16. The eligible merchant bankers shall ensure compliance with the following:

16.1 Submission of draft and final offer document.

16.1-1 (a) The offer documents of size up to Rs. 20 crores shall be filed by lead merchant bankers with the concerned regional office of the Board under the jurisdiction of which the registered office of the issuer company falls.

(b) The jurisdiction of regional offices/head office shall be as per Schedule XXII.

19. For maintaining this petition, it was required for the petitioners to prove that the Regional Office of the SEBI at Kolkata owed a legal duty to them which it has failed to discharge despite being notified in this behalf. In the process the

petitioners were required to plead and prove that the offer documents had been filed with the concerned Regional Office of SEBI at Kolkata since it has jurisdiction over the registered office of the issuer company, i.e. Gremach, and therefore it had the jurisdiction to investigate the complaint lodged by them. From the pleadings on record, it appears that there is no averment to the effect that the offer documents were filed by the respondent No. 4, alleged lead merchant banker of Gremach, before the Regional Office of SEBI at Kolkata. That apart, the prospectus of Gremach shows that public issue of shares worth more than Rs. 20 crores have been offered, and as such the offer documents at any rate could not have been filed before the Regional Office of SEBI at Kolkata. The question of the Regional Office of SEBI having jurisdiction to deal with the offer documents of Gremach, therefore, does not and cannot arise. No specific request to the Regional Office to act on the complaint was made. The involvement of the Regional Office in the present case thus is not at all established.

20. That apart, no statutory provision has been brought to the notice of this Court on behalf of the petitioners which confers a right of lodging complaint of the present kind before the SEBI by a person who feels aggrieved as a consequence of prospectus/offer letter being issued. Also, attention to this Court has not been drawn to any provision of the said Act or the rules framed thereunder or the guidelines which casts a duty on the SEBI to consider any such complaint that is made by a person or company objecting to issuance of prospectus/offer letter which is not a statutory complaint. In the absence of a right conferred by statute on the petitioners to object and in the absence of any legal duty cast on the SEBI by the statute to consider a non-statutory complaint from a so-called aggrieved party, the basic foundation for issuance of a mandamus or a direction of like nature appears to be missing in the present case.

21. Apart from bald statements that petitioners'' legal and fundamental rights have been infringed and they have suffered legal injury as a result of the impugned inaction in Kolkata, there has been no endeavour on their part to demonstrate which of their rights have been infringed and how. It is not the case of the petitioners that they have applied pursuant to the prospectus/letter of offer and are likely to suffer a prejudice. It is merely their apprehension that consequent to and acting on the contents of the prospectus/letter of offer of Gremach, a future investor might be duped and cheated. Masquerading as protectors of the interests of the general public which might include future investors, the petitioners have brought to the surface their internal squabbles with the respondents 2 and 3. Allegation of suffering legal injury without a legal right is ill-conceived. This Court is constrained to observe that the petitioners have indulged in speculative litigations.

22. The SEBI, which is required to discharge duties and perform functions within the four corners of the said Act, and the said Rules framed thereunder and the guidelines, is not obliged to take into consideration any and every complaint which might be lodged with it, objecting to prospectus/offer letter of public issue.

If a representation or objection is made in pursuance of a statutory provision, the SEBI would be bound to consider it. But, upon receipt of a complaint containing a prayer to investigate, like the present one, which is not made in exercise of any right conferred by statute, it would entirely be the discretion of the SEBI whether to consider the same for embarking on an investigation or not. No mandamus can issue in such a case where the SEBI declines to investigate since the petitioners would not be denied of any legal right.

23. In view of the finding of this Court that no duty is cast either upon the Head Office of SEBI or its Regional Office to investigate into the complaint lodged by the petitioners which can be enforced by a writ, the petitioners have no cause of action to move the present petition which is liable to fail.

24. Accordingly, the writ petition is dismissed with costs assessed at Rs. 10,000, to be paid to the respondent No. 1, and the respondent Nos. 2 and 3 in equal shares.

