(1998) 11 BOM CK 0063

In the Bombay High Court

Case No : Writ Petition No. 1043 of 1998

Kirit Somaiya and Others APPELLANT

Vs

Security and Exchange Board of India and Others RESPONDENT

Date of Decision : 18-11-1998

Acts Referred:
Constitution of India, 1950 — Article 226
Securities Contracts (Regulation) Act, 1956 — Section 9

Citation : (1999) 1 ALLMR 20 : (1999) 1 BomCR 420

Hon'ble Judges : M.B. Shah, C.J;S. Radhakrishnan, J

Bench : Division Bench

Advocate : K. Shivramkrishnan and Janak Dwarkadas, instructed by Dhruve Liladhar and Co, for the Appellant; Kumar Desai, D.Y. Chandrachud, A.S.G., C.J. Sawant, A.G., Abhay Patki, A.G.P., R.A. Dada, instructed by y Maneksha Sethna and Co. and Praveen Singh Arora, instructed by y Desai and Diwanji, for the Respondent

Judgement

M.B. Shah, C.J.—Heard the learned Counsel for the parties.

2. The present petition has been filed, in public interest, seeking protection of the interest of several thousands of depositors and investors who have invested their funds in Collective Investment Schemes and other Schemes floated by Plantation Companies promising unreasonably high returns on their investments. One of the prayers which is sought in the petition is that the State Government be directed to forthwith promulgate an Investor Protection Act as was done by the State Governments of Tamil Nadu and Goa.

3. It is the contention of the petitioners that there are approximately 3,599 plantation companies which have succeeded in attracting deposits and/or funds to the extent of approximately 25,000 crores. The petitioners have furnished instances of at least 5 plantation companies which, after promising unconscionably high returns, and after collecting large amount of funds from the depositors, are either not holding plots of land or have issued post-dated

cheques which have bounced or have diverted a large portion of the revenue generated into non-agricultural use and unproductive activities.

4. Respondent No.1, viz., Securities and Exchange Board of India (S.E.B.I.), has set up an Advisory Committee chaired by Dr. S.K. Dave, Ex-Chairman of Unit Trust of India, in order to draft regulations with regard to plantation companies and submit its report. Report is already submitted.

5. It is also one of the grievances of the petitioners that individual investors, whose deposits had either not been returned or cheques issued by the plantation companies in favour of their companies had bounced, were unable to have their grievances redressed on account of the fact that neither S.E.B.I. nor any other regulatory authority nor the Police were willing to entertain their complaints. It was in the above background that the present petition came to be filed as a public interest litigation. Since it was found that plantation companies as well as companies involved in Collective Investment Schemes were continuing to issue advertisements, inviting deposits from the members of the public by promising unreasonably high returns and/or agricultural income and promising that the amount invested would either triple or become four times within four or five years and since it was found that there were no regulatory Law or Rules enacted by State Legislature or Parliament for protecting the investment of such depositors/ investors, we passed an interim order on 11th June, 1998 by which it was clarified that it would be open for S.E.B.I. to issue an advertisement in the newspapers cautioning investors against depositing/investing any amount in such plantation companies. It was further clarified that such advertisement shall state that hereafter any such investment schemes, including Plantation Schemes, shall not issue any advertisement inviting investment/ deposits in the scheme or the Company until and unless the advertisement carries, in a prominent manner, a credit rating from an Accredited Rating Agency along with the meaning of the Rating assigned to the schemes of the company. It was also directed that the advertisement shall conform to the Rules/Guidelines issued by S.E.B.I. in that behalf.

6. It is to be noted that number of other petitions against such plantation companies are pending before this Court. Various interim orders are passed for protecting the interest of the investors. Interim orders to the following effect are passed:-

(a) Direction is given to the Commissioner of Police, Mumbai, or the Deputy Commissioner of Police, Economic Offences Wing, or to the C.I.D. (Crime), Pune, to enquire into the assets and functioning of such companies.

(b) The officers are also directed to hold the necessary enquiries to find out the whereabouts of the absconding Directors and the property, moveable and immovable, of the said companies.

(c) The Directors of such companies, who were available, were asked to file affidavits containing details of moveable and Immovable properties and all assets and the location of the said properties.

(d) They were also directed to disclose the Bank accounts and particulars thereof.

(e) Moveable and Immovable properties of the companies are attached and seized.

(f) The Reserve Bank of India is also directed to give instructions to all Scheduled and Commercial Banks to intimate such companies not to operate their respective Bank accounts.

(g) In some cases, the Inquiry Officer or the Police officers are directed to find out the properties siphoned off by the Directors of such companies.

7. At the time of hearing of the matter, respondent No. 11, which is an association of 27 plantation companies, made a statement before us that respondent No. 11 would issue an advertisement in leading newspapers cautioning the investors to make proper inquiries before investing in agro-plantation companies so that they can differentiate between genuine and non-genuine plantation companies. This statement was recorded by us in our Order dated 17th August, 1998 and came to be implemented soon thereafter by publishing a notice in THE ECONOMIC TIMES, Delhi. On a representation made by the learned Counsel for the respondents as well as S.E.B.I., at the hearing held before us on 17th August, 1998, that the publication of the advertisement in THE ECONOMIC TIMES was not likely to serve any purpose because the readers of THE ECONOMIC TIMES are already well-versed about the weak financial position of such companies and since the learned Counsel for respondent No. 11 submitted that the Association did not have sufficient funds to publish notices in other daily newspapers, the petitioners as well as S.E.B.I. were permitted by our order dated 17th August, 1998 to publish in the newspaper an advertisement warning investors that this type of plantation schemes is not viable in this country because of --

(i) vagaries of weather,

(ii) various tenancy laws in different States which prohibit holding of more than the ceiling area of agricultural land and

(iii) transfer of agricultural land in favour of companies or non-agriculturists is prohibited.

8. In the light of the fact that, although 3,700 companies had registered themselves for plantation schemes out of which 500 companies were in operation and had collected millions of rupees of small and poor investors, we, by our Order dated 17th August, 1988, expressed our hope that, in view of the absence of any control on such companies and on the illegalities and frauds perpetrated by the promoters of large number of companies, the Central or the State Government would consider this aspect and take necessary action so that small and poor investors are not fleeced by such unscrupulous promoters of such

companies.

9. By our aforesaid Order dated 17th August, 1998, we directed the State of Maharashtra to issue a circular to all Revenue Officers that, in case of purchase of land by such companies, appropriate action be taken in accordance with the Maharashtra Land Revenue Code, Bombay Tenancy and Agricultural Land Act and other allied Acts before mutation entries are made on the basis of so-called transfer of agricultural lands.

10. In two or three matters, at the request of the learned Counsel for S.E.B.I. and Reserve Bank of India, orders were passed, stating that there was immediate need of a legislation to protect such investors. When the matter came up before us on 3rd November, 1998, the learned Advocate-General appearing for the State of Maharashtra made a statement that within a few days from that date, the State of Maharashtra would pass an appropriate legislation to protect the interest of depositors/investors/shareholders who had invested in plantation companies and collective investment schemes. He also stated that care would be taken so that Directors/Promoters of such companies are personally held answerable for the investment made by the depositors/investors/ shareholders. He further stated that, in the State of Maharashtra, the Bombay Tenancy and Agricultural Land Act, 1948 and the Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961 are in operation. On that date, the learned Counsel appearing on behalf of the petitioners drew our attention to the fact that companies which had been rated with a credit rating of "Care-5", which would mean that these were companies which were unlikely to achieve their objective and make repayment to the investors, had been issuing advertisements inviting deposits from the public at large to invest in such companies by describing the "Care-5" rating as "Khush Khabar." Learned Counsel for the petitioners rightly stated that the rating such as "Care-4" or "Care-5" given by Credit Rating Agencies can never be considered safe for the investors. He further submitted that S.E.B.I. may be directed to publish in the newspaper an advertisement to the effect that whenever a "Care-4" or "Care-5" rating or such other rating is given, investors should be warned that they would be investing their moneys in companies with such rating at their own risk. We accordingly directed S.E.B.I. to publish a notice in the newspapers to the aforesaid effect warning investors that the investment made by them would be at their own risk because such companies are unlikely to achieve their objective and meet their liabilities.

11. At the time of hearing, the learned Counsel appearing on behalf of the Association of Plantation Companies submitted that at present, in this country, there is no appropriate law regulating such Plantation Companies. He further relied upon section 34 of the S.E.B.I. Act, which empowers the Central Government to make necessary provisions to remove difficulties. He submitted that neither the Union Government, nor the Ministry of Finance, nor S.E.B.I. has taken appropriate action on the basis of the said Act or provisions of the Reserve Bank of India Act or the Companies Act. It is true that, because prompt action is

not taken by the appropriate authorities, large amounts of small investors in the country are siphoned off by the Directors of such plantation or saving companies. However, that would hardly be a ground for keeping this matter pending for finding out whether S.E.B.I. or R.B.I. has defaulted in discharge of their functions.

12. We further note the submission of the learned Counsel for S.E.B.I. that, on 17th November, 1997, by a press release, the Government of India conferred jurisdiction on S.E.B.I. to regulate collective investment schemes and plantation companies, in particular, and S.E.B.I. called upon the plantation companies to provide certain information. On 18th December, 1997, S.E.B.I. issued a public notice to that effect. S.E.B.I. thereafter took inspection of several plantation companies. On discovering the irregularities committed by some of them, S.E.B.I. was required to approach this Court by filing Writ Petition No. 344 of 1998 in January, 1998.

13. Since the State Government has decided to promulgate an Ordinance to protect the interest of investors/depositors/shareholders who have invested in plantation companies and collective investment schemes taking care to see that Directors/Promoters of such companies are personally held answerable for the investment made by Depositors/investors/shareholders therein, we feel that no purpose would be served in keeping the present Public Interest Petition pending.

14. In the light of the aforestated facts and the statements made by the learned Advocate-General before us, we dispose of the present petition by rejecting the same, without passing any further order or directions, save and except that, until the Ordinance is promulgated, the interim Orders dated 2nd June, 1998 and 17th August, 1998 regarding publication of advertisement as well as issuance of notice to all concerned, including Land Revenue Authorities, in respect of transfer of agricultural land in favour of plantation companies shall continue.

15. We were informed that S.E.B.I. had constituted a Committee under the Chairmanship of Dr. S.K. Dave for drafting Regulations in respect of such collective investment schemes. The said Committee has submitted its report. In the event of it being found that the Ordinance promulgated by the State of Maharashtra does not regulate all collective investment schemes, particularly those floated by companies incorporated under the Companies Act, respondent No. 1 shall, in that event, take steps to see that small, illiterate and needy depositors are not fleeced by such types of companies. For that purpose, it would take steps for having some regulation or enactment

16. The State of Maharashtra is directed to implement the Order dated 17th August, 1998 on or before 30th November, 1998 and to issue a circular to all Revenue officers that, in case of purchase of lands by plantation companies or other companies, appropriate action be taken in accordance with the Bombay Tenancy and Agricultural Land Act, 1948, the Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961 and other allied Acts before mutation entries are made on the basis of so-called transfer of agricultural lands.

17. It is hoped that the Central Government would take appropriate action, including enactment of the law, to protect small investors by considering the report submitted by S.E.B.I. as early as possible.

18. The Petition stands disposed of accordingly.

19. Petition rejected.