
(2004) 04 CAL CK 0020
In the Calcutta High Court
Case No : Writ Petition No. 548 of 2002

Lalit Kumar Marodia

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 123 CompCas 716 : (2005) 4 CompLJ 369 : (2005) 59 SCL 474

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Advocate : S.K. Kapur and Ranjan Deb, for the Appellant; Joyanta Mitra and Hirak Mitra and Soumen Sen for respondent No. 2-SEBI, for the Respondent

Final Decision : Dismissed

Judgement

Kalyan Jyoti Sengupta, J.—The brief facts in this matter are as follows : The petitioner is a stockbroker and as such is registered with the Securities and Exchange Board of India (hereinafter referred to as SEBI) and is also a member of the Calcutta Stock Exchange Association Ltd. (hereinafter in short as "the CSE"). He has been asked to pay registration fees sought to be levied by respondent No. 2 on the basis of the provisions of Regulation 10 read with Schedule III of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as "the said Regulations"). In this application, the petitioner has challenged this demand for payment of registration fees total of each trade, whether of purchase or sale carried by a stockbroker during the year.

2. The sum and substance of the grievance of the petitioner is that, the SEBI as well as the CSE upon giving wrong interpretation and/or meaning of the words "annual turnover" have been realising astronomic and absurd amount of registration fees.

3. Mr. S. K. Kapoor, now the Additional Solicitor General, appearing with Mr.

Ranjan Deb learned senior advocate appearing for the petitioner submits that the basis for the realisation of registration fee is "annual turnover", as defined in Schedule III to the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992. The petitioner is not challenging the validity of the "annual turnover", being a measure of the registration fees, but the construction and/or interpretation of the words "annual turnover" sought to be given by respondents Nos. 2 and 3. According to the petitioner, the true and plain interpretation of "annual turnover", occurring in Schedule III to the said regulations is the net position of the sale and purchase transaction as on a given date. In other words, annual turnover will be the figure calculated on the basis of the difference between the amount received and receivable by the stockbroker from the stock exchange and the amount paid and payable by the stockbroker as on a given date. The SEBI authorities contrary to the aforesaid clear expression and meaning of turnover are taking aggregate of the sale and purchase value of all transactions during a financial year, adding up the two and calculating registration fees on the basis of that aggregate. The petitioner's interpretation would be clear from the words used in the definition of "received" and "receivable", the words "paid" or "payable" do not occur in the said definition. Hence, there is no scope for including the words "paid" or "payable" by the stockbroker to the exchange in calculating "annual turnover". That would amount to adding words to the Regulations and doing violence to its language, which is not permissible in law. The definition of "annual turnover" is an exhaustive definition and this has to be found within the four corners of the language used therein.

4. Mr. Kapoor submits further that the amount paid or payable by the stockbroker to the exchange cannot come within the definition of "annual turnover" as defined in Schedule III, is evident from the fact that the definition of "annual turnover" in Schedule IV to the said Regulations, regarding fees to be paid by trading or clearing member of the derivatives exchange or derivatives segment, uses the words "aggregate value of all trades". This has to be read in juxtaposition with the definition of "annual turnover" in Schedule III, the construction whereof forms the subject matter of the present writ petition. The definition in Schedule III uses the words "aggregate of the sale and purchase price of the securities, received and receivable by the stockbroker". The expression "all trades" takes within its fold all transactions of sale and purchase and, hence, all amounts, whether "received" and "receivable" or whether "paid" or "payable" by the stockbroker from and to the exchange. The distinction between the definitions in Schedule of "annual turn over" in Schedule III and Schedule IV is a conscious one, made by rule making authority. Therefore, the construction of the definition in Schedule III has necessarily to be put as urged by him.

5. While answering to the preliminary objection taken by the respondents, Mr. Kapoor urges that there is no scope for application of the principles of res judicata, nor there is any scope of the judgment of the hon'ble Supreme Court of

India, See B.S.E. Brokers Forum, Bombay and Others etc. Vs. Securities and Exchange Board of India and Others etc., operating as a precedent and declaring a law under Article 141 of the Constitution of India, vis-a-vis the subject matter of the present writ petition. He argues that it is settled law that judgment of the hon"ble apex court of India is an authority for a point, which is raised before it and is decided by it. It is also equally well settled that the judgment is authority for what it is decided and not what logically follows from it, and the judgment of the Supreme Court of India are not to be read as statute on Euclid's theorems.

6. Mr. Joyanta Mitra learned senior counsel appearing for the added respondent and supporting the writ petitioner has adopted argument of Mr. Kapoor and has also relied on the same decision cited by Mr. Kapoor, submits that while interpreting the statute the court should give true and clear grammatical expression employed in the section itself, in support of his contention he has relied on the following decisions of the Supreme Court :

7. Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, , P. Kasilingam and others Vs. P.S.G. College of Technology and others, , MOHAMMAD ALI KHAN AND OTHERS Vs. COMMISSIONER OF WEALTH-TAX., , The Federation of Andhra Pradesh Chambers of Commerce and Industry and Others Vs. State of Andhra Pradesh and Others Etc. Etc., , Mathuram Agrawal Vs. State of Madhya Pradesh, and State of Orissa v. Titaghur Paper Mills Co. Ltd. [1985] Suppl. SCC 280.

8. Mr. Hirak Mitra, learned senior counsel appearing with Mr. Soumen Sen, learned advocate appearing on behalf of the SEBI, respondent No. 2, submits basically that if the interpretation of the definition "turnover" which is sought to be given by the writ petitioner is accepted, then there will be absolute absurdity and the meaning will not fulfil the object of the levy of registration fees. In the definition it is clear, that the "turnover" means the aggregate value of sale prices and purchase prices. Hence, turnover should mean total of these two figures, accordingly, the aggregate amount of the figures mentioned at page 137 of the writ petition should indicate and/or represent the turnover of a particular broker. The amount of Rs. 8,375 receivable from the CSE is really the final amount which a broker has to receive on a given date as a result of various sale and purchase, that is to say, as on March 17, 1997, as indicated at page 137 of the petition. In this connection, reference may be made to the procedure for settlement referred to at page 140 of the writ petition. For proper understanding and/ or appreciation of the said amount of Rs. 8,357 which the broker has to receive, he refers to rule 41(iii), (vi), (xi), (xix), (xxi)(a) of the stock exchange. He submits that it was for the purpose of the aforesaid rules for which different forms are prescribed for the CSE and the same was arrived at. This process has nothing to do with the "annual turnover" as mentioned in the Explanation of the aforesaid regulation. If the difference between the two purchase prices is a turnover as has been urged, then on a given date the two figures might cancel each other out or in some other dues although both the figures might be very large but the difference

between the two would be insignificant. According to him the question of turnover has been clearly referred to in the Bhatt Committee report as would appear from the judgment reported in B.S.E. Brokers Forum, Bombay and Others etc. Vs. Securities and Exchange Board of India and Others etc., , in particular. It would appear therefrom that the issue sought to be raised and/or argued in the present writ petition were also urged before the hon'ble Supreme Court. This will appear from paragraph 4/pages 23, 25, 26, 28, 32-34, 41, 45, 46 and 48 of the transfer petition. Even in the written notes of argument filed on behalf of Mr. Ajit Dey and others claiming themselves to be the members of the CSE in the said transfer petition, it will appear that same contention was raised with the interpretation of turnover given by the Bhatt Committee is shocking. He has drawn my attention to the relevant portions of the transfer petition as well as the notes of argument, which have been filed with the leave of this court.

9 He further contends that in the notes of argument it was conceded that the said Act is a beneficial piece of legislation and they did not attempt to argue with the SEBI does not have competence to levy such fees. It was argued that the definition of "turnover" which was sought to be given by SEBI would lead to very anomalous situation without having any rational and legal basis. In terms of the recommendation of the Supreme Court as referred to in the paragraph 47 of the said judgment the SEBI has also issued clarification relating to fees payable by stockbrokers as appeared at page 81 of the affidavit affirmed by one Rajesh Pratap Singh in 2003 in G.A. No. 1004 of 2003.

10. He contends further that it would appear in the said circular that the SEBI has accepted the Bhatt Committee recommendation in terms of the Supreme Court's order and has clarified various issues arising out of the various representations on fees to be paid by brokers to SEBI. The writ petitioner has not challenged the said circular dated March 20, 2002, nor made any submission on the scope of the said circular.

11. Modi Committee does not dispute about the interpretation of turnover but it prefers the fees on the basis of one-time registration because of difficulties in ascertaining the turnover. It has been duly recorded that no adequate or reliable details has been placed before the said Committee, to enable the said committee to recommend figures supported by precise reasons. He has clarified distinction between the definition of "turnover" used in the Explanation of Schedule III and that of in the Explanation to the Schedule IV. He says that the definition in Schedule III refers to aggregate sale and purchase of the securities received and receivable, whereas the Explanation to Schedule IV refers to the aggregate value of all trades executed by the trading members on derivative exchange.

12. He contends further that traders trade on two segments, namely, cash segments and derivative segments. Trading in derivative segments has been introduced recently and in all the stock exchanges such trading has not well commenced. Derivative is a product whose value is derived from the value of one or more basic variables called bases in a contractual manner. The underlying

assets can be equity, forex, commodity or any other asset.

13. His next contention is that section 2(a) of the Securities Contracts (Regulations) Act, 1956, gives inclusive definition of derivative by reason of the fact that it operates on different field and it is completely different from the cash segment. It has to be determined on the basis as indicated in the said Explanation to regulation 16 and accordingly the same is required to be on the basis of the value of all trades and the question of any sale or purchase price could not arise at all in such derivative segment. In any event, the CSE does not have any derivative segment and as such annual turnover on such derivative segments in the CSE could not and does not arise. Issues raised in this hearing were directly and substantially at issue before the hon"ble Supreme Court, as would appear from the pleading of the note of arguments disposed of by the proceedings. In view thereof he contends with emphasis, that the principles of res judicata and/or constructive res judicata is applicable and the writ application is liable to be dismissed being barred by this principle. In this connection he has relied on the following decisions of the Supreme Court as well as this court :

14. Smt. Somavanti and Others Vs. The State of Punjab and Others, , T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others, , Makhanlal Waza and Others Vs. State of Jammu and Kashmir and Others, , Shenoy and Co., Represented by its Partner, Bele Srinivasa Rao Street, Bangalore and Others Vs. Commercial Tax Officer, Circle II, Bangalore and Others, , G.K. Dudani and Others Vs. S.D. Sharma and Others, , Union of India (UOI) Vs. Nanak Singh, and Molina Ghosh v. State of West Bengal [1988] 2 CLJ 20.

15. Moreover, the writ petitioner is guilty of the suppression of material fact as in the earlier writ proceeding he participated and advanced argument. He further submits that following the Supreme Court judgment the Bhatt Committee recommendations has been implemented by all the stock exchanges all over the country. A large number of brokers including those of the CSE are paying such registration fees based on the said definition of annual turnover. In this connection, he has referred to paragraphs 4 to 8 and pages 55 and 56 of the affidavit affirmed by one Rajesh Pratap Singh in March, 2003, in G. A. No. 1009 of 2003.

16. Lastly, he contends that the SEBI is an expert body and implemented all the recommendations of the Bhatt Committee, which is again an expert body, and their decisions would not be easily interfered with and this court ordinarily sitting in writ jurisdiction would not substitute its own decisions. He has placed reliance in the connection on the following two Supreme Court decisions :

17. India Thermal Power Ltd. Vs. State of M.P. and Others, and Netai Bag and Others Vs. The State of West Bengal and Others, .

18. He submits that the definition of "annual turnover" as given in the Explanation is clear and explicit. In this regard the judgments referred to on behalf of the writ petitioner help the SEBI. Therefore, he submits while

concluding his arguments, the writ petition should be dismissed and interim order shall be vacated forthwith.

19. I have read the pleadings and examined the rival contentions of learned counsel in this matter. It seems to me the controversy raised here centers round the interpretation of the words "annual turnover" given in the Explanation of clause 3 of Schedule III of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. This Explanation is therefore quoted hereunder:

"Explanation.-For the purposes of paragraphs 1, 2 and 3, "annual turnover" means the aggregate of the sale and purchase prices of securities received and receivable by the stockbroker on his own account as well as on account of his clients in respect of sale and purchase or dealing in securities during any financial year."

20 It is the admitted position that stockbrokers in various High Courts once challenged the vires of the Securities and Exchange Board of India's (SEBI) (Stock Brokers and Sub-Brokers) Regulations, 1992, particularly Regulation 10 read with Schedule III thereto. The constitutional validity was challenged on the principal ground that the fees sought to be levied under regulation 2 read with section 11 is ultra vires the provision of article 265. The grounds for challenge in all the courts were common, so, a transfer petition was made by respondent No. 2 before the hon"ble Supreme Court for withdrawal of all the cases and consolidated hearing. Thereafter, the writ petition filed in the Bombay High Court was withdrawn. However, hearing of other writ petitions were stayed, but liberty was granted to all the parties therein to intervene in the transferred petition, and all questions raised in all the petitions were decided by the hon"ble apex court once for all on February 1, 2001. The said transferred petition was disposed of along with the application under article 139A of the Constitution of India, filed before the hon"ble Supreme Court of India being W. P. (C) No. 502 of 2000. This decision was reported amongst others in B.S.E. Brokers Forum, Bombay and Others etc. Vs. Securities and Exchange Board of India and Others etc., . This writ petition is a post Supreme Court judgment event.

21. Mr. Hirak Mitra, learned senior counsel appearing for respondent No. 2, has contended before me that all the points which are much agitated in this writ petition were dealt with by the hon"ble Supreme Court of India upholding the validity and legality of the said Act as well as Regulation 10 and Schedule III thereto and rejecting these contentions. According to him nothing is left for adjudication any more. In legal parlance, he says, this writ petition is hit by the principle of res judicata, constructive as well as the expressed. Learned counsel for the petitioner, Mr. Kapoor (now Additional Solicitor General of India), and Mr. Joyanka Mitra, appearing for the supporting respondent, contend otherwise, they say the Supreme Court has not dealt with the question of interpretation or meaning and expression of "annual turnover". The precise point in this case is that the interpretation or meaning sought to be given for realisation of registration fee by respondent No. 2 is arbitrary, irrational and absurd. According

to them, the Bhatt Committee did not deal with this aspect as such, though the Supreme Court has accepted the Bhatt Committee report. Therefore, this point is at large for decision of this court.

22. I feel that before adverting to other points raised on the merits, I should examine and decide the question of res judicata and/or principle analogous thereto. On this subject, Mr. Hirak Mitra has cited quite a good number of Supreme Court decisions as well as of this court. I think the decisions are on the same line, therefore, instead of considering and dealing with all the decisions cited by him a few relevant decisions are suffice for this purpose.

23. In the case of Smt. Somavanti and Others Vs. The State of Punjab and Others, , while dealing with a problem arose out of the Land Acquisition Act, 1894, in paragraph 22 of the said judgment the apex court observed amongst others that (page 758) :

"... The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided . . ."

24. This judgment has been referred to by Mr. Mitra in the context of his argument that the identical argument was advanced as it will appear from the notes of argument (copy of which was submitted to this court) filed before the hon"ble apex court, in the said matter by the petitioners therein including the petitioner herein. Such argument though not specifically dealt with, but the Supreme Court decided the point. Therefore, it will be hit by the principle of res judicata.

25. In the case of T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others, , the Supreme Court following the observation made in this connection in case of Smt. Somavanti and Others Vs. The State of Punjab and Others, , the apex court applied the principle of res judicata in a writ petition while dealing with a case under the Motor Vehicles Act, 1939. In paragraph 10 of the said judgment, it has been observed amongst other that (page 978) :

"It is common ground in the present cases that the validity of Chapter IV-A of the Act has been upheld on all previous occasions and merely because the aspect now presented based on the guarantee contained in article 19(1)(f) was not expressly considered or a decision given thereon will not take away the binding effect of those decisions on us."

26. In the case of Shenoy and Co., Represented by its Partner, Bele Srinivasa Rao Street, Bangalore and Others Vs. Commercial Tax Officer, Circle II, Bangalore and Others, , the Supreme Court in paragraph 16, considering other decisions of the Supreme Court, has been observed that (page 187) :

"... that the law laid down by the Supreme Court is binding on all, notwithstanding the fact that is against the State or a private party and that it is binding on even those who were not parties before the court. Since it is

necessary to make the position of law clear and free from ambiguity, we would set out our reasons for our conclusion clearly."

27. Again, in the case of Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others, , the Supreme Court has applied the principle of res judicata in the writ proceedings, while dealing with the case in connection with municipal matter in paragraph 20 of the apex court observed as follows (page 397) :

"So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to section 11 of the CPC provides that any matter, which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force."

28. In paragraph 21 in the same judgment it has been observed as follows (page 398) :

"21. The second reason given by the High Court, however, holds good. Explanation VI to section 11 provides :

"Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section be deemed to claim under the persons so litigating.

But it is only when the conditions of Explanation VI are satisfied that a decision in the litigation will bind all persons interested in the right litigated. The onus of proving the want of bona fides in respect of the previous litigation is on the party seeking to avoid the decision. The words "public right" have been added in Explanation VI in view of the new section 91 of the CPC and to prevent multiplicity of litigation in respect of public right. In view of Explanation VI it cannot be disputed that section 11 applies to public interest litigation as well but it must be proved that the previous litigation was the public interest litigation, not by way of a private grievance. It has to be a bona fide litigation in respect of

a right which is common and is agitated in common with others."

29. In the Calcutta decision rendered in the case of Molina Ghosh v. State of West Bengal [1988] 2 CLJ 20 the Division Bench of this court has applied the principle of constructive res judicata in writ proceedings. In paragraph 25 of the said judgment (page 44), it has been observed amongst others by the Division Bench that :

"... If constructive res judicata were not applied to such proceedings, a party could file as many writ petitions as he liked and take one or two points every time. That clearly was opposed to considerations of public policy on which res judicata was based and would mean harassment and hardship to the opponent."

30. The Division Bench, while following a good number of Supreme Court decisions and that of this court, went on observing that :

"... the general principles of res judicata apply to writ petitions filed under articles 32 and 226 of the Constitution. If the same question has been decided by the High Court in a petition under article 226 and the court comes to the conclusion that no relief can be granted to the petitioner, such a decision operates as res judicata in a subsequent petition for the same. The mere addition of a new party or a new ground (which might and ought to have raised in the earlier petition but was not raised) will not exclude the operation of the principles of res judicata ..."

31. In view of the aforesaid pronouncements of the Supreme Court and High Court now it has to be examined how far the contention of Mr. Mitra is acceptable in the light of the said judgment rendered by the Supreme Court in B.S.E. Brokers Forum, Bombay and Others etc. Vs. Securities and Exchange Board of India and Others etc., . It is pertinent to record that before the Supreme Court had decided the matter, respondent No. 2 on receipt of various representations from the stockbrokers and members decided to examine the reasonableness of the levy of fee under the provision of Regulation 10 read with Schedule III, as such a committee headed by Mr. Bhatt the then chairman of 1711, was constituted. The said committee was acknowledged to be an expert one in dealing with stocks, equities and other securities. The said report was duly submitted at the time of hearing before the Supreme Court.

32. From the Supreme Court decision, I find that the argument was advanced on behalf of the petitioners therein who are also similarly placed with that of the present petitioner who also joined to advance argument, as it appears from paragraph 12 of the said judgment that (page 514 of 104 Comp Cas) :

"The levy is further impugned on the ground that the same is based on vague and imprecise concept of annual turnover which has no nexus whatsoever with the purpose for which the fee is sought to be collected and registration fee in its very nature can only be onetime fee, hence, a demand for collection based on annual turnover extending over five years is arbitrary and unreasonable."

33. The contention has been raised here that the meaning of expression of the words "annual turnover" being given by respondent No. 2 is arbitrary and excessive and further the same was not dealt with by the Supreme Court. I am unable to accept this contention of the petitioner as urged by Mr. Kapoor, that this question needs to be decided by this court. Firstly, because the argument was advanced before the Supreme Court in my view covering all aspects of the matter though not specifically agitated as to the interpretation and meaning of the said definition of annual turnover, but could be or ought to have been agitated. Accordingly this point is hit by the principle of constructive res judicata as by this time this principle has been applied in the writ proceedings and indeed the Supreme Court has applied so and in particular this hon'ble court has in clear terms held that the points that could have been raised and was not raised cannot be allowed to be raised once again even by the person who was not a party to the first proceedings. In the Division Bench judgment rendered in the case of Molina Ghosh [1988] 2 CLJ 20 the Division Bench very appropriately observed and I respectively accept the same that mere addition of a new party or a new ground which might and ought to have been raised in the earlier petition was not raised will not exclude the operation of the principle of res judicata. That apart I find the Supreme Court in paragraph 43 of the judgment reported in B.S.E. Brokers Forum, Bombay and Others etc. Vs. Securities and Exchange Board of India and Others etc., while deciding the point raised on the question of "annual turnover" noted the argument that the petitioner has strongly relied upon the report submitted by the Bhatt Committee appointed by the SEBI. In paragraph 47 of the said judgment, the Supreme Court has decided as follows (page 530 of Comp Cas) :

"Therefore, it would be futile to contend that the impugned fee merely because it is levied on the basis of the turnover of the brokers would either amount to a turnover tax or a tax on income. While we accept the levy based on annual turnover of the brokers as valid, we have to notice that the Expert Committee appointed by the Board has in its report held that there should be certain changes brought about in the definition of "annual turnover" as also in the quantum of the levy pertaining to certain specific transactions which are treated as part of the turnover. It has recommended that for "jobbing transactions" the scale of fees may be reduced to one-two hundredth of 1 per cent., and in regard to carry forward, renewal of badla transactions, the offsetting entries made by the exchange, may not be counted as part of the turnover, and, further, on Government securities, PSU bonds and units, the turnover will have to be calculated separately and a fee of one thousandth of one per cent, may be charged on such turnover than the present scale of one hundredth of one per cent. It has also been recommended that the activities such as underwriting and collection of deposits should not be taken into account for the purpose of calculating the turnover of the brokers. These recommendations of the Committee were, as a matter of fact, accepted by the Government of India also but, as on date, the necessary changes have not been brought about by the

Board in its regulations. Consequently, to the extent of the recommendations made by the Expert Committee, we are of the opinion that the Board is bound to bring about corresponding changes so as to remove the anomalies pointed out by the Committee. This was pointed out by learned counsel for the respondents when it was submitted that the Board has accepted these recommendations and the proposed changes were not brought about because of the pendency of this petition and the necessary changes to incorporate the recommendations of the Bhatt Committee would be done after disposal of these petitions. We record this submission on behalf of the Board and direct that the said changes recommended by the Bhatt Committee will be incorporated in the regulations. Subject to the above, we are of the view that the challenge made to the levy based on the measure of turnover has to be rejected."

34. It appears in the said case the Bombay High Court by an interim order before the transfer of that case was effected, appointed a Committee headed by Justice A. N. Modi (retd.) to deal with the same subject, Justice Modi Committee report was also furnished and the same has been annexed to this petition. In my view the Modi Committee report has not been accepted by the hon''ble Supreme Court for implementation as it will be clear from paragraph 48 of the said judgment. I shall reproduce the said paragraph (page 531) :

"48. At this stage, in fairness to the petitioners, we must notice the fact that the High Court at an interim stage had appointed a Committee headed by Justice A. N. Modi to submit a report as to the reasonableness of the levy. The petitioners rely heavily on the said report to support their case while they have their reservations as to the Bhatt Committee Report. We are aware that the superior courts have often appointed committees and commissions to assist the courts in technical matters with which the courts are generally not very familiar. Though in the instant case, the facts involved are matter pertaining to the securities market with its own intricacies. We find that the question involved mainly pertains to the legislative competence, nature and reasonableness of the levy. We are not called upon to decide or to recommend as to what is the best way to levy the impugned fee. So long as the Legislature has the legislative competence to levy and the Board has not exceeded its statutory authority in imposing the levy, we need not go into other niceties of the levy, which are not in the realm of our jurisdiction. We have examined the reasonableness of the levy qua the statutory power of the Board and its quantum with reference to the need of the Board and not with reference to whether it is the best available method of levy. It is possible that Justice Modi Committee's recommendations are better than the method adopted by the Board but then that is not what we have to decide in this case. Hence, we have not made any specific reference to that report. Of course, we have referred to some of the recommendations of the Bhatt Committee because that part of the report is favourable to the case of the petitioners and the Government of India has accepted the same and the Board has, in principle agreed to implement that report and not because the Bhatt Committee report is more acceptable to us than Justice Modi Committee report."

In my view on a fair reading of the two paragraphs above, it appears to me that the Supreme Court has expressly given directions to implement the report of the Bhatt Committee for bringing about the changes as per the recommendations thereof.

It is submitted by Mr. Kapoor in this case that the Bhatt Committee has 36 not decided the question as to the interpretation and meaning of "annual turnover" which has been mentioned in vague terms in Schedule III of Regulation 10. In my view this submission has to be considered in the context of the petitioner's contention before the Supreme Court that the Bhatt Committee report has been accepted, and indeed the Bhatt Committee report has not been challenged here, and there is no scope either to do so at the present moment. In view of the aforesaid Supreme Court decision the petitioner cannot get out of the scope and purview of the Bhatt Committee report in relation to the question raised in this writ petition. Therefore, it has to be examined whether any expression "turnover" has been explained in this report to bring about the solution of the problem raised by the petitioner. The report of the Committee has been annexed being annexure P3 at page 63. The Bhatt Committee has dealt with very elaborately the meaning of turnover, the relevant and pertinent portion thereof is quoted hereunder :

"2.1 The terms of reference of the committee require it to go into the various competents to turnover. However, questions regarding reasonableness of turnover based registration fee were raised and therefore the committee would like to deal with these questions first.

2.2 The Webster's New Twentieth Century (page 1973) dictionary meaning of the "turnover" relevant to the matter referred to the Committee is "the amount of business done during the given period of time in terms of money used in buying and selling". The term "turnover" has been defined to mean "the aggregate of the sale and purchase prices of securities received and receivable by the stockbroker either on his own account as well as on account of his clients in respect of sale and purchase or dealing in securities during any financial year in the Securities and Exchange Board of India (Stock-Brokers and Sub-Brokers) Regulations, 1992. The committee found that the definition given in the regulations is consistent with the meaning of the word as normally understood.

2.3 It has been represented to SEBI that since brokers carry on business on behalf of their clients most of the time, the brokerage earned by them should be regarded as their turnover and not the purchase and sale price of the securities bought and sold. The committee considered this matter in depth and found it unacceptable for two reasons. First, the definition in the Securities and Exchange Board of India (Stock-Brokers and Sub-Brokers) Rules and Regulations, 1992, is quite clear and does not admit of the interpretation that the brokerage alone would constitute turnover. Even in common parlance the total volume that is the price paid or received for securities purchased or sold would constitute turnover and the brokerage together with the differential in the prices, if any, would

constitute income or revenues from which profits would be derived ultimately. Secondly, it has also been represented that for Income Tax purposes brokerage is deemed to be the turnover and hence even for purposes of fees payable to SEBI the same interpretation should apply. Each authority is required to interpret terms as per the enactment(s) being administered by that authority. Therefore, the Committee did not go into the question what exact interpretation is given by the Income Tax authorities.

The Committee noted that fact that fees have been levied and collected by the Securities and Exchange Commission in the United States of America since 1935 on the basis of the total price of securities and not brokerage alone. The turnover based fees are charged every year and are being collected from 1935 on a perennial basis whereas, under SEBI Regulations fees would be payable by any broker for a period of initial five years only and thereafter a nominal sum of Rs. 1,000 per annum is payable by each broker."

37. After explaining as above the Bhatt Committee ultimately in this context recommended that the turnover is lawful and reasonable basis for payment of registration fee. This practice of levying fees based on annual turnover, is well established in countries like USA. Ultimately it has been concluded that the basis of annual turnover is not unreasonable.

38. It is said in the affidavit in opposition in terms of the Supreme Court direction respondent No. 2 has brought about certain changes and Regulation has been amended accordingly by issuing a clarification regarding fees payable by the stockbrokers on March 28, 2002, this notification has not been challenged. Under this circumstance, I think this court has nothing to touch on the subject. In view of acceptance of the report of the Bhatt Committee the interpretation of the term "annual turnover" in reference to Schedule II of Regulation 10 has now become final, yet the petitioner tries to contend the reasonable interpretation of the said Schedule III and the word "turnover" should be considered to be the differential figure between the total purchase price and sale price as it will be clear from the words the stock and securities received and receivable used in the definition and not having employed the words paid or payable. In my view this interpretation is not only contrary to the interpretation given by the Bhatt Committee since accepted by the Supreme Court, the same is absurd also in view of the fact that in certain dealings and transaction the figures in sale and purchase may be same and naturally there shall not be any difference. Consequently, no fee could be calculated nor levied on the basis of this interpretation of the words "annual turnover".

39. Mr. Mitra is right in saying that the words "securities received and receivable" should be understood and meant in the context of the value received and receivable not the securities themselves. This would be clear in this phrase if read carefully. In my view, the words "received" and "receivable" are really qualifying words "sale and purchase prices" of securities and not the securities themselves. I cannot accept the argument of Mr. Kapoor that to understand the

clear meaning of the Explanation occurring in Schedule III, the Explanation contained in Schedule IV has to be read in juxtaposition. I see sound logic in the argument of Mr. Mitra that transaction undertaken by brokers in derivative segment is different in nature and character from that of cash segment. Schedule IV of that Regulation 10 deals with derivative segment. So phrase and words used therein cannot be brought in aid of Schedule III.

40. It is settled position of the law while giving interpretation to any phrases and words of any statute the clear and apparent reading and meaning if not lead to absurdity, should be taken, and in the context of the object and reasons for framing of the statute. In this connection a large number of Supreme Court decisions are referred to at the Bar. Two of such decisions namely Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, and Mathuram Agrawal Vs. State of Madhya Pradesh, may be good enough to rely on. The object of framing of this Regulation under the SEBI Act is for generating fund from the stockbrokers by means of levying registration fees for the purpose of regulating, promoting and developing securities markets and in the interest of the investors both foreign and indigenous. As such it is not a taxing legislation.

41. The meaning of the aforesaid words should be given in order to see that the reasonable amount is raised by way of collection of fees. If the interpretation sought to be given by Mr. Kapoor and Mr. J. K. Mitra is accepted then the registration fee in some case would be almost nil that is not the object and intention of the framing of Regulation to fulfil the object of the Act.

42. Therefore, the contention of the writ petitioner on this ground also fails.

43. This writ petition is thus dismissed without any order as to costs.

44. Interim order if any stands vacated.

45. Prayer is made for stay of operation of this judgment and order. Such prayer however, is opposed.

46. Since this matter was being heard with an interim order long time, I do not therefore see any reason that there would be any prejudice caused, if the interim order continues for a further period of fortnight from date. Therefore, the interim order already passed will continue till fortnight from date. On expiry of fortnight this interim order will stand automatically vacated.

47. Let a signed copy of the operative portion of the judgment and order be made available to the parties urgently.