

(1995) 02 PAT CK 0028

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 1126, 1308, 1758, 1761, 2440 and 3959 of 1991

Manoj Kumar Saraf, Thakur Sachchidanand Singh, Birla Investment Services, Vijay Kumar Singh and Keshar Deo Dalmia

APPELLANT

Vs

Magadh Stock Exchange Association and Others and Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-02-1995

Acts Referred:

Citation : (1995) 02 PAT CK 0028

Final Decision : Allowed

Judgement

Sachchidanand Jha, J.—The petitioners, members of the Magadh Stock Exchange Association, a company incorporated under the Companies Act, 1956 (hereinafter referred to as "the stock exchange"), are aggrieved by the decision declaring them as defaulters and seek its quashing. In C.W.J.C. No. 1126 of 1991 the petitioner, in addition, also seeks certain declaration and quashing of some circulars of the stock exchange.

2. Despite a marathon hearing many aspects of the case touching upon the functioning of the stock exchange, in general, remained unclear to us. However, it is not necessary to go into the facts which are indeed complex and diverse, since, in my opinion, the writ petitions are fit to succeed on the ground of violation of the rules of natural justice alone.

3. The articles of association of the stock exchange, which are deemed to be rules u/s 2(g) of the Securities Contracts (Regulations) Act, 1956, under which the stock exchange has been established, read with its bye-laws, provide for penalties, such as, defaulter, expulsion, suspension, fine, etc. Article 29 in this connection may be noticed in extenso :

"29(a) The council may, subject to the provisions of the Securities Contracts (Regulation) Act, 1956, and the Rules framed thereunder from time to time,

make bye-laws and regulations for defining what acts or omissions constitute a member committing the same a defaulter, or what acts or omission render him liable to expulsion, suspension, fine or withdrawal or suspension of rights and privileges of membership and other consequences.

(b) If any person becomes a defaulter within the meaning so defined by the bye-laws and regulations made in that behalf as aforesaid, the council shall declare him a defaulter and thereupon all the consequences and penalties arising therefrom as provided by the said bye-laws and regulations shall follow and be incurred.

(c) If any member is guilty of such conduct or act or omission that under the aforesaid bye-laws or regulations made in that behalf render him liable for suspension, expulsion or other consequences, the council shall suspend, expel or impose other consequences as the council may deem fit.

(d) In exercising the said powers, the council shall observe and follow the procedure respectively, set out in that behalf in the aforesaid bye-laws and the regulations."

4. Chapter XVIII of the bye-laws of the stock exchange contains provisions in regard to default. Bye-laws 308 and 309 contemplate situations/ conditions in which a member may be declared defaulter. Bye-law 310 provides that a member adjudicated as an insolvent shall be ipso facto declared defaulter, although he may not be otherwise a defaulter. The provisions occurring thereafter deal with the different aspects of the default after declaration to that effect is made. The bye-laws do not provide for any enquiry or an opportunity of hearing before declaring a member defaulter.

5. It is noteworthy that there are specific provisions regarding opportunity of hearing and a fulifledged enquiry in the matter of proposed expulsion or suspension. Article 31 provides that no resolution of the council expelling or suspending a member shall be passed or voted upon until and unless the member has been given an opportunity to explain the charges against him, The member may himself appear at the meeting or be represented by another member. He may also state his case in writing before the chairman which is required to be placed for consideration during the meeting. Article 34 provides for production of documents and adducing evidence in the course of enquiry or investigation as may be deemed necessary "in the interest of just and equitable principles of trade or in public interest and welfare of the exchange and its members". Article 31(b) provides another safeguard to a defaulting member, in the matter of proposed expulsion or suspension, by providing that the resolution of the council has to be passed by a majority of not less than two-thirds of the members of the council present subject to a minimum of four votes.

6. It is really strange that while a defaulting member has been provided with adequate opportunity to defend himself in the matter of proposed expulsion or suspension of membership which are by far less stringent penalties, no such

protection whatsoever is available to him in the matter of declaration as defaulter. The consequences of declaration of defaulter are the severest as it disables the person from trading in shares and securities in any stock exchange of the country. It would not be out of place to mention here that in the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992, a detailed procedure has been laid down in regard to giving show-cause notice, manner of holding enquiry against any action in the matter of suspension or cancellation of registration, with a right of appeal to the Central Government. The stock exchange would be well advised to consider suitably amending its bye-laws making the same more in conformity with the rules of natural justice and fair play.

7. However, the absence of the provisions in regard to giving opportunity of hearing or enquiry cannot affect the rights of the persons in the least. It is well-settled that where there are specific provisions made in the statute in regard to opportunity of hearing, enquiry, etc., the same have to be followed, but where the statute is silent on the point the rules of natural justice and fairness of action come into play.

8. I need not dwell at length upon the well established legal position that the rules of natural justice and fair play pervade all sections of a democratic polity irrespective of whether the power conferred upon a body or tribunal or individual is judicial, quasi-judicial or administrative. The duty to act fairly is implicit in all walks of public life. In the well-known case of *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , the apex court observed at page 154 :

"The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised ... In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as. an administrative power some years back is now being considered as a quasi-judicial power."

9. Having regard to the scheme and consequences envisaged in the articles of association, bye-laws, etc., there can be no doubt that the power of declaring a member as defaulter is quasi-judicial in nature.

10. The position would be no different even if the power were said to be administrative. In *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, , dealing with the case of blacklisting of Government contractors without notice and opportunity of hearing, the Supreme Court took the view that black listing not only involves civil consequences but also casts a slur on the person and, therefore, opportunity of hearing is a must. It was said (at page 269) :

"Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority, is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

11. The same view was reiterated later in the case of Raghunath Thakur Vs. State of Bihar and Others, , wherein it was observed :

"It has to be realised that blacklisting any person in respect of business ventures has civil consequences for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have the right of being heard and making representations against the order."

12. The observations made hereinabove apply on all fours to the declaration of defaulters. It not only casts a stigma but may also affect the livelihood of the person. There can be no doubt that observance of the rules of natural justice and fair play are obligatory.

13. It is an admitted position that no opportunity of hearing was given to the petitioners before the impugned decision was taken, nothing to say of any enquiry. The respondents have taken the stand that the petitioners had been given ample opportunity to clear their liabilities which they did not do and in the circumstances they cannot complain of deprivation of due opportunity. They have heavily relied on a Bench decision of this court in Akhileshwar Upadhyaya Vs. Magadh Stock Exchange Association and Others . It was pointed out that the impugned declaration of defaulters in some of the cases in hand were a sequel to similar declaration in the case of Akhileshwar Upadhyaya. It has been argued that the declaration of Akhileshwar Upadhyaya as a defaulter having not been interfered with, the cases of the present petitioners should not be treated otherwise.

14. I have carefully considered the submission. It appears from the judgment cited above that Akhileshwar Upadhyaya, upon receipt of notice issued to him to make payment of a sum of Rs. 17,96,800, had issued a cheque for the said amount on December 20, 1990, which bounced. He was informed by letter dated December 29, 1990, that the cheque had been dishonoured and asked to make the necessary deposit by December 31, 1990. He did not make the deposit. The fact that Upadhyaya had issued the cheque which had bounced and he did not make a fresh attempt to pay the money was not in dispute. On these facts the court held that sufficient opportunity had been given before the decision regarding defaulter was taken. In the instant cases, no doubt, the petitioners had been asked to make the deposit but at no point of time earlier was any attempt made to determine the liability. Akhileshwar Upadhyaya by reason of issuance of the cheque for the amount which he had been asked to pay must be deemed to

have admitted his liability ; if in that circumstance he did not make the payment, he could not have complained of deprivation of opportunity of hearing. In the instant cases, the petitioners do not admit liability. Nothing has been pointed out to us which could show that the petitioners had admitted their liability to make the payment but even then they failed to do the same despite opportunity in that regard. These cases, therefore, stand on different footing.

15. During the course of hearing detailed submissions were made on behalf of the petitioners. Counsel appearing for each of them made an endeavour to establish that there was no default on their part. At one stage, after the arguments were over, I felt inclined to go into the facts and consider the merits of the submissions, but having regard to the intricacies of the matter, I have decided not to go into individual cases. It may well be that the petitioners or some of them are not creditworthy or unblemished. Their cases may not also be the same but as would appear from the impugned notification and the communications in that regard, they all have been treated alike. The facts constituting default or the reasons for coming to the conclusion have not at all been stated in the impugned notification/communication.

16. In *S.N. Mukherjee Vs. Union of India*, , a Constitution Bench of the apex court emphasized the need of recording reasons in exercising quasi-judicial functions in the following words (at page 1995) :

"An important consideration which has weighed with the court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this court under article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under article 227 of the Constitution and that the reasons, if recorded, would enable this court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority ; (ii) introduce clarity in the decisions ; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary courts of law and Tribunals and authorities exercising judicial functions on the ground that a judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the stand point of policy and expediency.

Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this court in holding that an administrative authority must record reasons for its decision are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes

chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy."

17. The legal position was summed up in these words (pages 1996-97) :

"Keeping in view the expanding horizon of principles of natural justice, we are of the opinion, that the requirement to record reasons can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory frame-work whereunder jurisdiction has been conferred on the administrative authority . . . except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi judicial functions is required to record the reasons for its decision."

18. If reasons had been indicated in respect of the petitioners it would have been more convenient and appropriate to consider their cases. Even counsel for the respondents was not in a position to take the stand that all the petitioners stand on the same footing. The only way out in the circumstances was to consider the matter as if we were giving a post- decisional hearing. In a case beset with complex and intricate facts, many of them being of a technical nature, we decided not to embark upon such an exercise and to remit the matter back for fresh consideration.

19. One of the aspects in controversy was. that the decision had been taken by the then executive director out of malice and caprice. I do not want to go into the question of bias. Under bye-law 308 the decision in regard to defaulter is to be taken by the council of management (which is the same thing as the board of directors) or the President or in the absence of the President two members of the council of management. As noticed above, the decision in regard to expulsion or suspension is to be taken by a majority of not less than two-thirds of the members of the council subject to a minimum of four votes. It is doubtful as to whether the power of declaration of default should be conferred on a single individual. It would not be inappropriate, to notice the observations in Supreme Court Advocates-on-Record Association and another Vs. Union of India, , in this connection. While dealing with the question of appointment to superior judiciary the Supreme Court observed at pages 683, 699 of the report :

"The Constitutional scheme excludes the scope of absolute power in any one individual. .. The rule of law envisages the area of discretion to be the minimum, requiring only the application of known-principles or guidelines ,to ensure non-arbitrariness, but to that limited extent, discretion is a pragmatic need. Conferring discretion upon high functionaries and, whenever feasible, introducing the element of plurality by requiring a collective decision, are further checks against arbitrariness. This is how idealism and pragmatism are reconciled and integrated, to make the system workable in a satisfactory manner."

20. In an earlier case, Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , it was observed :

"It is inadvisable to depend on the good sense of the individuals, however high placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness do not go with the posts, however high they may be."

21. Since the matters are being remitted to the respondents represented by the council of management of the stock exchange, the authorities concerned shall do well to keep in view the above observations in considering the matter and taking appropriate decision.

22. For the reasons stated above, I am satisfied that there has been a gross violation of the principles of natural justice causing prejudice to the petitioners. The writ petitions are fit to be allowed on this ground alone.

23. In the result, the writ petitions are allowed. The impugned decisions as contained in the notifications and the communications thereof, copies whereof have, been marked annexures 13 and 14 in C.W.J.C. No. 1761 of 1991, annexures 11 and 11-A in C.W.J.C. No. 1308 of 1991, annexures 12 and 13 in C.W.J.C. No. 2404 of 1991, annexures 11 and 12 in C.W.J.C. No. 1758 of 1991 and annexures 2 and 2-A in C.W.J.C. No. 1126 of 1991 are quashed. The council of management of the Magadh Stock Exchange is directed to reconsider the matter in the light of the observations made hereinabove and take appropriate decision in accordance with law within two months. The petitioners, however, will not be allowed to enter the ring and participate in transactions of sale and purchase of shares and securities in the meantime. The consequential benefits, if any, of the quashing of the impugned decisions shall abide by the fresh decision as aforesaid. There will be no order as to cost.

Narayan Roy, J.

24. I agree.