

(1999) 04 DEL CK 0065

In the Delhi High Court

Case No : I.A. 4055 of 1999 in Suit No. 857 of 1999

Prasad and Co. Pvt. Ltd.

APPELLANT

Vs

Delhi Stock Exchange Association Ltd.

RESPONDENT

Date of Decision : 26-04-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (1999) 98 CompCas 192 : (1999) 79 DLT 426 : (1999) 1 ILR Delhi 321

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : Ravinder Sethi and S.N. Gupta, for the Appellant; J.R. Midha, for the Respondent

Final Decision : Dismissed

Judgement

M.S.A. Siddiqui, J.—The plaintiff has filed the present suit for declaration and injunction. Along with the plaint, the plaintiff filed an application under Order 39, Rules 1 and 2, C.P.C. seeking suspension of the impugned order dated 20th April, 1999.

2. It is beyond the pale of controversy that the Delhi Stock Exchange Association Ltd. (defendant) is an approved stock exchange (for short the Exchange) under the Securities Contracts (Regulation) Act, 1956. plaintiff company, as a member of the Exchange, are governed by the bye-laws of the Exchange (hereinafter to be referred as Bye-Laws). plaintiff Company transact their business of buying and selling of shares from the cabin provided by the Exchange in their administrative office located at Indra Gandhi Institute, I.P. Estate, New Delhi. The Exchange has also provided a computer terminal to plaintiff to facilitate the buying and selling of the shares. It is also undisputed that a surveillance machine is installed at the office of the Exchange, which handles price sensitive information regarding members' position and the trading that takes place. In the last week of December, 1998 some data base errors were detected in some of the computers installed at the office of the Exchange. It is further undisputed

that WIPRO was asked to track down the terminal which was unauthorisedly trying to access the surveillance machine. After detailed investigation and checking, WIPRO submitted a report to the Exchange in consequence of which the show cause notice dated January 6, 1999 was issued to plaintiff. In their reply dated 12.1.1999, plaintiff admitted involvement of one of their employee, namely, Dinesh Srivastav, who was later on suspended by the plaintiff. On 2nd February, 1999, plaintiff sent another representation to the Exchange requesting to take into consideration their impeccable credentials in the trade before taking any action against them. It is further undisputed that in their meeting held on 15.1.1999, the Board of Directors of the Exchange suspended plaintiff's membership for a period of one month with effect from 8th March, 1999. The said letter was communicated to plaintiff vide letter dated 4.3.1999. plaintiff made a representation to the Exchange against the said order vide letter dated 5.3.1999. It is also undisputed that on plaintiff's representation, the order dated 4.3.1999 was kept in abeyance. On 19th March, 1999, the plaintiff sent another representation to the defendant against the said order. On 20th April, 1999 plaintiff received a fax message from the defendant about suspension of their membership for a period of one month with effect from 20th April, 1999.

3. It is alleged by plaintiff that the impugned penalty of suspension was inflicted in breach of the principles of audi alteram partem inasmuch as no pre-decisional hearing was given to plaintiff before inflicting the impugned penalty.

4. Defendant resisted the suit contending that on investigation by the WIPRO, it was found that plaintiff had made unauthorised access to price sensitive information from the Surveillance Terminal of the Exchange. Thereupon a show cause notice dated 6.1.1999 was issued to the plaintiff. On the plaintiff's representation, the order dated 4.3.1999 was kept in abeyance. plaintiff sent another representation dated 19.3.1999 to the defendant against the order dated 4.3.1999. It is alleged that in their meeting dated 19.4.1999, Board of Directors of the Exchange considered the plaintiffs representation and decided to suspend plaintiff's membership for a period of one month w.e.f. 19.4.1999. According to the defendant, plaintiff's alleged misconduct was of the kind that merited a severe penalty and further the penalty inflicted on the plaintiff was perfectly proper.

5. The first and foremost question to be considered is whether the plaintiff has made out a prima facie case for grant of ad interim injunction.

6. plaintiff's main grievance is that while inflicting the impugned penalty the defendant had not acted in conformity with the fundamental principles of natural justice. It is portent to mention that the principle of audi alteram partem is a basic concept of the principles of natural justice. The omni-potency inherent in the doctrine is that no one should be condemned without being heard or given an opportunity to the person affected to present his case before taking a decision or action. The said doctrine has come in for increasing consideration in recent years, and the Courts generally, have advanced its frontiers considerably. Right

to a fair hearing in the case of administrative acts or decisions affecting rights has achieved something like the statute of a fundamental right. In *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, it was observed that the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. In *Dr Rash Lal Yadav Vs. State of Bihar and Others*, it was held that where the statute is silent and a contrary intention cannot be implied the requirement of the applicability of the rule of natural justice is read into it to ensure fairness and to protect the action from the charge of arbitrariness. Natural justice has thus secured a foothold to supplement enacted law by operating as an implied mandatory requirement thereby protecting it from the vice of arbitrariness. Although there is no express provision in the bye-laws laying down the procedure to be adopted for inflicting penalty on a member of the Exchange, but the principle of *audi alteram partem* is implied by the very nature and impact of the impugned penalty inflicted on plaintiff. In *Shiv Sagar Tiwari Vs. Union of India and others*, it was observed that requirements of natural justice can be moulded in such a way as to take care of two basic facets of this principle: (i) to make known the nature of accusation; and (ii) to give opportunity to state the case. In the instant case it is an admitted position that one of plaintiff's employee namely, Dinesh Srivastav, an Operator of plaintiff's terminal, had made unauthorised access to price sensitive information from the surveillance terminal of the Exchange. The said fact is also borne out by plaintiff's representation dated 12th January, 1999, which is as under:

"January 12, 1999

SHRI AVINASH GUPTA

Dy. General Manager,

Delhi Stock Exchange Association Ltd.

Delhi

Dear Sir,

With reference to your letter No. D-210 dated January 6, 1999 we wish to inform you that we have looked into the matter and it appears that one of our personnel Mr. Dinesh Srivastava, Operator on DSE terminal ma)" have accessed certain servers and, PC's of the exchange for accessing internet, E-mail etc. While accessing internet he apparently had access to sensitive information which he may have had accessed. This act of his was neither authorised by us nor was in our knowledge.

To best of our knowledge and information neither our firm or my clients have accessed the information for their benefit or otherwise. You may note that we are not involved in any speculative or delivery based transaction of significant value on the DSE.

The undersigned had met and discussed the matter with Mr. S.S. Sodhi, Executive Director on January 12, 1999 and as discussed Mr. Dinesh Srivastava has been suspended and debarred from going to the DSE office. Further action against Mr. Dinesh Srivastava shall be taken as mutually decided.

Kindly note that with effect from today following are the authorised personnel on the DSE.

1. Mr. Sandeep Dhall.

2. Mr. Rajeev Arora.

We deeply regret the incident and look forward in assisting the Stock Exchange in creating systems so that such incidents do not occur in future.

Yours sincerely,

for PRASAD & CO (P) LTD.

Sd/-

ROHIT PRASAD

Director

7. It is stated in para No .9 of the plaint that plaintiff did not contest the alleged accusation. It is undisputed that Surveillance terminal of the Exchange handles price sensitive information regarding members" position and the trading that takes place. It cannot be doubted that any unauthorised access to the surveillance terminal affects the integrity and fairness of trading at the Exchange as it gives an unfair advantage over other members of the Exchange. It is apparent from the plaintiffs representation dated 12.1.1999 that plaintiffs employee Dinesh Srivastava had made an unauthorised access to the surveillance terminal of the Exchange. As an employer, plaintiff was responsible for acts and omissions of the said employee. Realizing the gravity of the said misdemeanour, plaintiff company suspended Dinesh Srivastava and assured the Exchange to take strict action against him. Prima facie, the act complained of falls within the definition of "misconduct" as defined in Clause 348 of the bye-laws. plaintiff cannot be permitted to take shelter under the plea that no guidelines have been laid down for the use of computer terminals provided to members of the Exchange.

8. It is also undisputed that on plaintiff"s representation, the order of suspension dated 4.3.1999 was kept in abeyance by the defendant and that on 19.3.1999 plaintiff submitted another representation against the proposed penalty of suspension. In the said representation, plaintiff again did not contest the accusation. It appears that from the very beginning, plaintiff adopted an attitude of reconciliation and they even offered to pay a reasonable penalty for the alleged misdemeanour. In this view of the matter, the Board was not under obligation to give a personal hearing to plaintiff as they (plaintiff) could not say

beyond what was stated in their two representations. In such a situation, grant of a personal hearing to plaintiff would have been a useless formality because there was nothing that plaintiff could have said against the action taken. The personal hearing could not have affected the decision. However, defendant has placed on record a copy of the Board's resolution dated 19.4.1999, which prima facie shows that the Board had taken into consideration the plaintiff's representation and decided to suspend plaintiff's membership for a period of one month w.e.f. 20.4.1999. The question whether or not the penalty inflicted on the plaintiff was disproportionate to the alleged misconduct, cannot be gone into the present suit. Suffice it to say, such a contention cannot form a basis for invalidating the impugned action. Thus, there is no violation in the present case of any one of the facts of the principles of natural justice inasmuch as pre-decisional hearing was given to plaintiff.

9. For the foregoing reasons, I am of the opinion that plaintiff has failed to make out a prima facie case for grant of ad interim injunction.

10. In view of the aforesaid conclusion, it is not necessary for me to go into the question of balance of convenience and inconvenience but even then I am, prima facie, of the view that the balance of convenience in the case is overwhelmingly in favor of refusing to grant injunction as prayed for. Consequently, plaintiff's application under Order 39, Rules 1 and 2, CPC is dismissed. Before I part with this order, I would like to make it clear that nothing stated herein shall affect the rights of the parties that are being agitated in the suit.