

(1995) 03 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition No. 2614 of 1995

R. Jagadeesh Kumar

APPELLANT

Vs

P. Srinivasan and others

RESPONDENT

Date of Decision : 06-03-1995

Acts Referred:

Securities Contracts (Regulation) Act, 1956 — Section 9 (4)

Citation : AIR 1995 Kar 420 : (1995) 83 CompCas 677 : (1995) ILR (Kar) 954 : (1995) 2 KarLJ 218

Hon'ble Judges : S. Rajendra Babu, J

Bench : Single Bench

Advocate : R.N. Narasimha Murthy, for the Appellant; R.S. Ravi Kumar and Udaya Holla, for the Respondent

Judgement

S. Rajendra Babu, J.—The petitioner is a member of the Bangalore Stock Exchange Limited (hereinafter, for short, referred to as the "stock exchange"). One T. S. Gopalakrishnan (sixth respondent) lodged a complaint to the effect that the petitioner fraudulently prepared a contract in collusion with one Ramachandra, the then assistant general manager, collected an amount of Rs. 2,25,000 directly from C. R. Thimmaiah and the balance of Rs. 2,75,000 from the defaults committee. The petitioner denied all these allegations. The council of management of the stock exchange requested Sri P. Srinivasan, first respondent herein, and Sri S. S. Naganand to go into the allegations and make a report thereto, in its meeting held on December 22, 1993. The first respondent and Sri Naganand are stated to have made a report that there is substance in the allegations contained in the complaint and asked the council of management to proceed further in the matter. However, later on this proceeding was sought to be recorded in a different manner. Originally, it had been recorded at subject No. 2.2.4 that based on the records verified by them, they felt that there is a prima facie case to be investigated and the charges have to be framed and placed before the disciplinary committee. Since they are also members of the disciplinary committee, they cannot investigate and do the job of presenting a

report. Sri Naganand felt that they as council members will not be able to act and some independent person with necessary machinery should investigate the matter. The report of the meeting was recast later on to read as follows:

"Mr. P. Srinivasan stated that he and Mr. S. S. Naganand had gone through the complaint and replies thereto received by the president. They felt that preliminary investigation should be made to ascertain whether there was a prima facie case against any member of the exchange; if such a prima facie case was made out charges were to be framed and served on the person concerned. If the persons concerned deny all or any of the charges, the memorandum of charges and the reply should be forwarded to the disciplinary committee for a detailed enquiry into the charges. The council or the president should nominate a presenting officer to present the case against the person charged before the disciplinary committee. Since, he would have to hear the matter as chairman of the disciplinary committee, if the matter reaches there, Mr. P. Srinivasan expressed his inability to undertake the preliminary investigation. The council will have to nominate somebody else to conduct the preliminary investigation and if considered necessary, frame charges. If such charges are framed, the council will have to appoint a presenting officer to present the case before the disciplinary committee."

2. Thereafter, one B. S. Venkatanarasiah and P. K. Rungta were asked to investigate into the complaint of Gopalakrishnan against the petitioner regarding the claim made by him in the defaults account of S. D. Shah. The said two persons made a report that there is substance in the allegation made by Sri Gopalakrishnan on December 17, 1993, and there existed a prima facie case and that the matter has to be examined in the light of the facts gathered by them and indicated what other information will have to be gathered and in what manner the disciplinary committee may proceed.

3. The meeting of the council of the stock exchange was scheduled to be held on May 25, 1994. The petitioner wrote a letter to them on May 23, 1994, stating that certain persons are biased against him and those persons should not be present at the time of consideration of the report submitted. The council of management of the stock exchange referred the matter to the disciplinary committee. The stock exchange proposed to institute an enquiry against the petitioner and C. R. Thimmaiah under bye-laws 356A, read with 356B and 356C of the stock exchange. The petitioner raised certain preliminary objections regarding the constitution of the disciplinary committee; regarding the bye-laws, under which the present enquiry was to be initiated, which itself has not been validly brought into force; that the disciplinary committee has no jurisdiction to go not the matter as no valid bye-law has been formulated; that Sri P. Srinivasan, chairman of the disciplinary committee, was present when the council of management considered certain incidental matters on the subject and, therefore, he is biased by reason of his participation in the council, apart from the points raised in regard to the merits of the matter.

4. The disciplinary committee made an order on November 12, 1995. It upheld the objection that the requirement of section 9(4) of the Securities Contracts (Regulation) Act (hereinafter referred to as "the Act") had not been fulfilled as to prior publication in the Gazette of India and after approval of the bye-laws by the Securities and Exchange Board of India (SEBI), publication for the second time in the Gazette of India. It held that the SEBI had not passed any order in writing as envisaged in the proviso to section 9(4) of the Act dispensing with the condition of previous publication and even if the SEBI had passed such an order, it is not empowered by the proviso to dispense with the publication of the bye-law after approval by it and without such publication, the bye-laws can have no effect. However, they took the view that the initiation of action in this case is valid even though the bye-laws under which such initiation is purported to be done are not valid. In doing so, they took note of the fact that citing of a wrong provision would not invalidate the exercise of power so long as the power to do so is conferred on the authority exercising the power by another provision. Having traced their power to article 64 of the articles of association, they took the view that even in the absence of any bye-laws they can enquire into the matter. On the question whether the council was properly constituted or not, it took the view that the disciplinary committee cannot examine such a question. The president who was the ex officio president of the committee, had excused himself from participation in the enquiry on the ground that he had participated in the proceedings of the council which resulted in the initiation of present enquiry. Similarly, the executive director also excused himself from participation. Article 62(c) empowers the members of the committee to select one from time to time from among themselves to preside over the meeting. Since, the president had excused himself from the committee, the first respondent was elected by the members to preside over the committee. Therefore, that objection was also overruled. On the contention that the president and the executive director excused themselves, only five members of the committee were left of whom two were member brokers and three non-members and, therefore, the requirement of 40 : 60 ratio between member brokers and non-members to be maintained in terms of article 62(a) was maintained and rejected the objection in regard to the constitution of the committee. Having overruled all the objections raised by the petitioner, the committee proceeded to consider the matter. At that stage, the petitioner has preferred this petition.

5. In this petition, it is urged that the constitution of the disciplinary committee is opposed to the articles of association of the stock exchange and in terms of article 62(a), the disciplinary committee should be so constituted so as to maintain the ratio of 40 : 60 between the member brokers and non-members with the prior approval of the SEBI. According to the petitioner, the disciplinary committee consisted of six members:

1. The President
2. Sri P. Srinivasan

3. Sri N. Srinivasan
4. Sri Anant R. Hegde
5. Sri Kishore B. Kanneganti
6. Smt. Naina Poghul

6. It is thus contended that the constitution of the disciplinary committee is itself not in accordance with article 62(a) of the stock exchange. The executive director became a member of the committee subsequently on his appointment as executive director. Since, the proceedings had already commenced and the matter had been referred to the disciplinary committee prior to the executive director becoming a member of the committee, the proportion of 40 : 60 between the members and non-members had not been maintained and, therefore, the constitution of the disciplinary committee itself is illegal. The amendment to the articles of association to include the executive director as the member of the committee was made on November 19, 1994, long after the initiation of the proceedings against the petitioner by the disciplinary committee. The second contention urged on behalf of the petitioner is that the disciplinary committee itself has no jurisdiction in the absence of validly framed bye-laws because under article 64 of the articles of association each committee should exercise its powers as are set out in the rules, bye-laws and regulations of the exchange and subject to the directions, bye-laws or regulations that may be framed by the management in that behalf. In the absence of any bye-laws which have come into force, it is not possible for the disciplinary committee to function at all and, therefore, the order of the disciplinary committee overruling the preliminary objection of the petitioner is illegal and is not sustainable in law.

7. The petitioner contends that the first respondent is biased against the petitioner. Firstly, it is pleaded that the first respondent along with Sri Naganand examined the question as to whether the complaint of the said Gopalakrishnan should be referred to the disciplinary committee or not and whether it constituted a prima facie case. And, secondly, the first respondent was present at the meetings of the council when the report was considered. Therefore, he having participated in the proceedings, petitioner apprehends that he would not get a fair trial and will not get full justice in the enquiry.

8. On behalf of the respondents, it is contended that a writ against the action of a stock exchange in the matter of admission of a member or expulsion thereof would not lie because such an act of a company is an act which is engaged in a commercial activity and there is no public duty owed by such a company and, therefore, the writ petition is not maintainable. Learned counsel, dealing with the question of bias, firstly, disputed that the chairman of the disciplinary committee had expressed any opinion as to the necessity of investigating the matter into the conduct of the petitioner as in his opinion prima facie a case existed for such investigation. He also submitted that even otherwise, the role played by the first respondent is only of a limited character and merely because a preliminary

enquiry is held by him that would not debar a member from sitting on the disciplinary committee which ultimately decided the matter. On the question relating to the violation of the constitution of the committee or bye-laws thereto, it is submitted, neither the bye-laws nor the rules framed by a company are enforceable through a writ proceeding and, therefore, submitted that those contentions are also liable to be rejected.

9. The first question that arises for consideration in this case is whether a writ would lie in the nature of mandamus to the stock exchange which is a company registered under the Companies Act in respect of an action to expel a member from the company. In order to appreciate the case put forward before the court, it is necessary to bear in mind the activities that are carried on in a stock exchange before I advert to the statutory provisions governing such a company. I may first briefly notice how a stock exchange works and the nature of control and regulation exercised by the statute. Under the Act, "stock exchange" means any body of individuals, whether incorporated or not, constituted for the purpose of assisting or controlling the business of buying, selling or dealing in securities. A stock exchange provides facilities to liquefy capital by enabling a person who has invested money in any company by way of shares which is converted into cash by disposing of his shares in the enterprise to someone else. A stock exchange gives mobility to the capital in the absence of which the capital invested in the form of shares in any enterprise would become locked up. The proper working of a stock exchange essentially depends not only on the calibre of the members constituting it, but also perhaps more importantly on their moral stature. In carrying out the activities in a stock exchange the members therefore should be men of valour, prudence, levelheaded and act with wisdom even in the most adverse circumstances, They must also be men of good financial stability, considerable experience, capable of assessing the market psychology, etc. The stocks and shares are dealt with in three manners: (i) spot delivery contract, where the contract provides for actual delivery of securities on payment of a price either on the day of the contract or the next day excluding perhaps the time taken for despatch of the securities or the remittance of money from one place to another; (ii) ready delivery contract which means a contract for the purchase or sale of securities for the purpose of which no time is specified and it is to be performed immediately or within a reasonable time; and (iii) forward contract, this is, contracts under which the parties agree for their performance at a future date. If the stock exchange is under the influence of unscrupulous members, the second and third categories of contracts to buy or sell shares would lapse to highly degenerating and speculative transactions amounting to pure gambling. If the parties do not intend while entering into contracts for sale or purchase of securities that only the difference in prices should be paid, even those transactions which are speculative, may be valid and not void for there is no law against speculation as there is against gambling. If the parties do not intend that there should be no delivery of the shares but only that the difference in price should be paid or accounted for, the contract becomes void for it is a

wager. Quite often it becomes difficult for a court to distinguish one from the other as a wagering transaction can be ingeniously camouflaged as to pass off as a speculative transaction. Such obnoxious potentialities are inherent in the transaction and if left uncontrolled would tend to subvert the main object of the stock exchange and convert it into a den of gambling which would ultimately upset the economy of the country.

10. In this background, the Act was brought into force recognising stock exchanges to carry on the business. The object of the Act is to prevent undesirable transactions in securities by regulating the business by prohibiting actions and by providing certain other matters connected thereto. As stated earlier, the stock exchange is defined as a body of individuals whether incorporated or not. A stock exchange desirous of being recognised for the purpose of the Act will have to make an application as provided u/s 3 of the Act and such application should be accompanied by the particulars prescribed under the Act and a copy of the bye-laws of the stock exchange for the regulation and control of contracts and also a copy of the rules relating in general to the constitution of the stock exchange and in particular to the governing body of such stock exchange, its constitution, powers of management and the manner in which its business is transacted, the powers and duties of the office bearers of the stock exchange, admission into the stock exchange of various classes of members and qualification for membership, the procedure for registration of partnership firm as member of stock exchange, whether rules provide for such membership and the nomination and appointment of authorised representatives and clerks. The Central Government on being satisfied that it should grant recognition, may do so as provided u/s 4 of the Act. Section 5 thereof provides for withdrawal of recognition under certain circumstances. The annual reports of stock exchanges is to be furnished to the Central Government by the respective stock exchanges. The stock exchanges could be called upon to frame certain rules or implement such rules as may be framed by the Government. The recognised stock exchanges also will have to make bye-laws subject to the previous approval of the SEBI at the time of incorporation of the stock exchange in question (Act provided for approval of the Central Government) and to make publication in the Gazette of India and various provisions are made as to in what manner bye-laws are to be framed in addition to other provisions that may be made thereunder within the powers of the stock exchange. Section 10 of the Act empowers the SEBI to make or amend bye-laws of recognised stock exchanges. Section 11 empowers the Central Government to supersede the governing body of a recognised stock exchange and section 12 of the Act empowers the Central Government to suspend the business of recognised stock exchanges for any period it deems fit.

11. The nature of control that is exercised by the Government from a perusal of these provisions referred to from section 3 to 12 would only extend as to making provisions for carrying on effective functioning of the stock exchange and does not take away the powers of a stock exchange in the matter of internal

regulation, namely, to take a decision as to whether a person who is a member of the stock exchange should continue to be so or whether a person is entitled to be a member of the stock exchange, as long as the power that is exercised by the stock exchange is within the framework of the statute. Therefore, by no stretch of imagination can it be said that the stock exchange in the matter of regulating as to who should be its members and who should be expelled exercises any public duty or discharges any duty to the public at large. What it does in a particular case is to find out whether a particular member has violated the terms of any rules, regulations or bye-laws or the articles of association of the stock exchange so as to become disentitled to continue to be its member. In such a matter, it is very difficult to consider that the stock exchange discharges any public duty. It is only in cases where a company exercises or performs a public duty that a writ would lie. Learned counsel for the petitioner relied on *Mrs. Sejal Rikeen Dalal and others Vs. The Stock Exchange, Bombay* and another, and *Raiesh Kumar Maheshwari Vs. Union of India and Others*, But neither of these two decisions bears on the point raised in this case. The Bombay High Court took the view that the stock exchange is a public authority and that is not the argument put forth in this case. Sri R.N. Narasimha Murthy fairly conceded that he cannot put forth case that it is a public authority but only confined to the argument that it discharges a public duty. In the decision of the Delhi High Court this point was neither raised nor decided. Hence, these decisions cannot be of any assistance to the petitioner.

12. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, the Supreme Court explained that article 226 empowers the court to issue writs for enforcement of the fundamental rights or other rights in respect of a company, person or authority not confined to statutory authorities and instrumentalities of the State. They would cover other persons or bodies who perform public duties. In explaining the scope of such public duty or the meaning to be attributed to that public duty, the court noticed that what is relevant is the nature of the duty imposed on the body and that duty must be judged in the light of positive obligation owed by a person or authority to the affected party. In this case, the affected party is a member who apprehends that he may be expelled from the stock exchange and that right to continue to be a member of the stock exchange arises only out of an obligation to fulfil the terms of the articles of association or rules or other bye-laws that may have been framed thereunder. Indeed, this position has been elaborated even earlier in *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, wherein the court refused to grant any mandamus as against the corporation. While enunciating the law it was stated that a mandamus can issue to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. No such provision either in the Securities Contracts (Regulation) Act, 1956, or the SEBI Act is forthcoming. In that view of

the matter, I am clearly of the opinion that the stock exchange in exercising its powers under the articles of association in the matter of admission or expulsion of members owes only a duty to that particular member and not to the public at large and does not discharge any public duty which is amenable to the writ jurisdiction.

13. In De Smith's Judicial Review of Administrative Action, fourth edition, the grounds for the award of mandamus are discussed to explain in what circumstances a writ of mandamus would lie. It is stated that mandamus lies to secure the performance of a public duty, in the performance of which the applicant has a sufficient legal interest. The duty to be performed must be of a public nature and mandamus will not lie to order admission or restoration to an office that is essentially of a private character, as in the present case restoration of membership of a stock exchange that is essentially of a private character, nor, in general, will it lie to secure the due performance of the obligations owed by a company towards its members, unless it be that it is a case to secure performance of statutory duty, which is not the position in the present case. Hence, this ground is sufficient to dismiss the petition and, therefore, I do not propose to consider the other contentions raised in this petition. The petition is, therefore, dismissed. Rule discharged.