
(1990) 04 DEL CK 0017
In the Delhi High Court
Case No : Civil Writ No. 1838 of 1987

Rajesh Kumar Maheshwari	Vs	APPELLANT
Union of India and others		RESPONDENT

Date of Decision : 18-04-1990

Acts Referred:

Citation : (1992) 73 CompCas 155 : (1990) 41 DLT 201 : (1990) 1 ILR Delhi 209

Hon'ble Judges : V.B. Bansal, J;Leila Seth, J

Bench : Division Bench

Advocate : P.B. Menon, Ashok Mathur, R. Menon and N.S. Vashist, V.P. Singh, for the Appellant;

Judgement

Leila Seth, J.—The petitioner is a citizen of India and a graduate in commerce and law and has the requisite educational and professional qualifications to become a member of the Delhi Stock Exchange. He is praying for a writ of certiorari to quash the letter dated February 5, 1987, written by the Government of India to the President of the Delhi Stock Exchange regarding increasing the membership and dilution of the shareholding of the said exchange.

2. In order to appreciate the matter, it is necessary to set out the background of the case. The Delhi Stock Exchange Association Ltd. was incorporated on June 25, 1947. The existing building was constructed in 1950, out of funds contributed by members. Initially, it was necessary only to hold one share to become a member but, some time in 1963, the eligibility criteria was changed to two shares. On February 20, 1957, the Securities Contracts (Regulation) Act, 1956 (Act 42 of 1956), came into force. The object of the Act was to prevent undesirable transactions in securities by regulation the business of dealing therein, by prohibiting operations and by providing for certain other matters connected therewith. The Central Government granted recognition to the Delhi Stock Exchange u/s 4 of the said Act.

3. As the volume of work increased, the Delhi Stock Exchange sought the

Government of India's permission to dilute every member's shareholding from two to one and admit as members authorized assistants, etc., who had worked for a long period in the stock exchange. The Union of India, however, was anxious that the membership of the Delhi stock Exchange be increased by induction of members of the public generally.

4. On January 8, 1986, a large number of members of the Delhi Stock Exchange wrote to the board of directors indicating the enormous difficulties being faced by them because of the small size of the trading hall and expressing their fear that these difficulties would become more acute if the membership was increased. Consequently, they suggested that the increase in membership be done in a phased manner and a new building be constructed and further that members should be required to sell one of the two shares held by them.

5. Thereafter, on January 31, 1989, the Delhi Stock Exchange Association Ltd. wrote to the Director (Investment), Stock Exchange Division, Ministry of Finance, Government of India, stating that a detailed discussion had taken place regarding the difficulties experienced by members due to inadequacy of space in the existing building and the need to provide services to the increasing number of investors. With a view to providing better services to investors and also keeping the interests of the existing members in mind, it was felt that the articles "be amended to provide the eligibility of the membership of the stock exchange by holding one share". This would naturally increase the membership of the stock exchange from 125 to 250. It was further suggested that this increase should take place in a phased manner spread over three years in view of the space shortage. During this period, a member would be required to sell one share to another person "willing and otherwise eligible to become a member". It was also suggested that both the new member would make a deposit of Rs. 1,00,000 each, resulting in a collection of Rs. 2.50 crores to be utilized in the construction of a new building. The Delhi Stock Exchange sought the approval of the Government of India to its proposal.

6. On July 24, 1986, the Delhi Stock Exchange once again wrote to the Joint Secretary (Investment), Government of India, regarding the intimation received for increase of membership of the stock exchange. It was indicated in the said letter that the board was agreeable to the Government's suggestion regarding the increase in membership and felt that a hundred per cent. Increase would provide enough opportunity; further its proposal was already pending with the Government, which, if accepted, would increase the membership by hundred per cent. It referred to the limited space which is not sufficient for more than hundred members, as being a constraint on the quick increase of membership.

7. A writ petition was filed by Mr. N. N. Saigal in the Supreme Court of India seeking a direction from the Government of India to permit and recognise a second stock exchange in Delhi. On August 18, 1986, the Supreme Court of India passed the following order :

"Shri Anil Deo Singh, learned counsel for the Union of India, submits that steps will be taken to increase the membership of the Delhi Stock Exchange Association by 100 per cent. within six months. Learned counsel has made the above statement on the basis of a letter received from the Delhi Stock Exchange Association Ltd. on July 24, 1986. He prays that, in view of the above submission, the petition may be disposed of. We direct the Union of India to take necessary steps for increasing the membership by 100 per cent. within six months. We hope that the membership by 100 per cent. within six months. We hope that the submission made on behalf of the union of India would be fully implemented with the period.

List the case after six months"

8. On September 23, 1986, the Delhi Stock exchange once again wrote to the Joint Director, Stock Exchange Division. It stated that, keeping in view the discussion held with the Joint Secretary (Investment), the board reconsidered the matter and was now indicating the modified proposal. The proposal was that, as mentioned earlier in the letter on January 31, 1986, the qualification share for membership should be made one instead of two. Consequently, 125 shares would be available for increasing the membership. The existing members would then be free to dispose of their surplus share, in a phased manner, within three years. The members disposing of their shares would be required to deposit a sum of Rs. 1,00,000 as security. Fifty shares be offered directly to the public at a price to be determined by the Government and the amount to "go directly to the fund of the stock exchange" so that its resources are augmented "for construction of the new building". All this would naturally require amendment of the articles of association as also approval from the shareholders and the Government. As such, a request was made that the proposals be approved in principle, so that steps could be taken at the general meeting for approval and implementation.

9. On November 12, 1986, the Government of India wrote a letter to the Delhi Stock Exchange. They referred therein to the letters of January 31, 1986, July 24, 1986, and September 23, 1986, on the subject of increase in membership. They indicated that the decision of the Government was that the membership must be increased to the extent of 150 shares by public issue of 300 shares. Each shares to be priced at Rs. 2,000; further the admission fee for each member should be Rs. 1 lakh instead of Rs. 1,000 as prescribed in the articles of association and each new member be required to make "a non-interest bearing deposit of Rs. 3 lakhs for the new building fund and for the office space in the new building". The new members to be admitted on the basis of selection by objective criteria such as educational/professional qualifications, professional experience, etc. It was also indicated in the said letter that, in the light of Civil Miscellaneous Petition No. 11043 of 1986 file in Writ Petition No. 12233 of 1985 by Mr. N. N. Saigal, there was a requirement to increase membership by hundred per cent by January 18, 1987. This letter was written by the Director

(Investment) who adverted to the fact that the Government had the power to withdraw the recognition granted to a stock exchange under the Securities Contracts (Regulation) Act, 1956, and directed the Delhi Stock Exchange to take immediate steps for increasing the membership.

10. On December 22, 1986, the Delhi Stock Exchange wrote to the Director (Investment), Government of India, and indicated that the matter had been discussed in the meeting of the board of directors held on November 14, 1986, and informal meetings thereafter and reconsidered in the meeting held on December 11, 1986. "Based on the assessment" at these meetings, it was proposed to pass a resolution "to increase the membership from 125 shares to 250 shares by amending the articles of association with regard to qualification share for becoming a member". Further, an extraordinary general meeting of the members of the Association was convened for January 6, 1987.

11. On January 5, 1987, the Assistant Director, Stock Exchange Division wrote to the Delhi Stock Exchange Association Ltd. stating that the decision of the board to reject the Government's direction of November 12, 1986, to increase its membership by public issue and instead to get the approval the general body for splitting the existing shares so that the existing members could dispose of their surplus shares to persons of their choice was contrary to the advice of the Government representatives and ran counter to the Government's intention to broad base the membership of the stock exchange. Consequently, it asked the governing body to show cause within ten days why it "should not be superseded in accordance with the provisions of section 11 of the Securities Contracts (Regulation) Act, 1956, for non-compliance with the Government's direction and having acted in a manner prejudicial to public interest".

12. On January 15, 1987, the Delhi Stock Exchange wrote to the Secretary, Government of India, Ministry of Finance, in response to the show-cause notice. In the said letter, it referred to the subsequent discussions held by some governing body members and other members of the stock exchange with Mr. P. G. Mankad, Joint Secretary. After giving the background of the correspondence, the difficulties envisaged with regard to space, valuation of property, etc., and the direction of Government, the necessity of increasing membership, it submitted a proposal for consideration.

13. The proposal in brief was : that the membership be increased from 125 to 375. 125 members be added to the stock exchange by dilution of the shareholding of each existing member from two shares to one share and the share be offered preferably to authorised assistants in the stock exchange at a price of Rs. 2 lakhs (Rs. 1 lakh as admission fee transferable and Rs. 1 lakh as interest-free non-refundable transferable contribution towards building fund) to be deposited with the stock exchange; another 125 members be added by public issue to be selected by a Committee. The new members would be required to pay Rs. 1 lakh as admission fee and Rs. 3 lakhs as interest-free non-refundable deposit for building and other infrastructure, etc., both transferable.

14. It was suggested that the proposal regarding "rights shares to be given to the authorised assistants working in the exchange for more than two years" merited consideration in view of the fact that sufficient experience had been gained by them and they had a preferential right to become members and render service to the public/investors. The reason for keeping their admission fee and deposit at half the value of the public issue was because of their experience and paying capacity. The valuation of the public issue shares and the higher non-refundable transferable deposit was suggested keeping in view the fact that the members of the Delhi Stock Exchange had built its own building from capital contributed by members before the Securities Contracts (Regulation) Act, 1956, came into force and before any listing fee income had accrued to the stock exchange.

15. The alternative proposal suggested was that the memorandum and the articles of association be amended "to increase the total of 125 shares by public issue without any rights, etc., for the new members and ask to pay Rs. 10 lakhs as non-refundable transferable deposit with the stock exchange for building and other infrastructure facilities, having regard to the fact that the new member would have equal rights in the existing assets of the association after becoming members".

16. The permission, approval, consent, etc., was sought from the Government expeditiously so that the Delhi Stock Exchange could implement and carry out the amendments, and the further increase of share capital before February 18, 1987.

17. On February 5, 1987, the Government of India replied to the letter of the Delhi Stock Exchange dated January 15, 1987. It stated that the proposals had been carefully considered and conveyed its approval regarding increase in membership subject to certain conditions :

- (i) The membership of the stock exchange be increased by 250, that is,
 - (a) 125 members through public issue of shares; and
 - (b) 125 members through dilution of the shareholding of each member from two shares to one share.

Necessary amendments in the articles of association of the exchange be made in this regard.

- (ii) All new members to pay an admission fee of Rs. 1 lakh each.
- (iii) New members admitted through public issue of shares and through dilution of the existing shareholding to pay to the stock exchange an additional non-refundable deposit of Rs. 3 lakhs and Rs. 1 lakh respectively. These deposit amounts to be utilised by the stock exchange towards provision of better infrastructure and services.
- (iv) Selection of 250 members to be by objective criteria taking into

consideration experience, professional qualifications and other relevant factors.

(v) Selection of new members to be by an expert committee.

(vi) The public issue of shares and the issue through dilution to be done simultaneously and completed within 3/4 months of receipt of letter.

(vii) The issue of shares through dilution of the existing members be permitted only to authorised assistants of members of the Delhi Stock Exchange daughters/ sons or direct dependents.

(viii) If the extra share arising out of dilution of shareholding is not disposed of within the stipulated period, then, no sale condition will prevail except for purposes already permitted.

18. The Delhi Stock Exchange was directed to take immediate action to increase the membership.

19. It appears that on February 11, 1987, the Delhi Stock Exchange wrote to the Government of India regarding some modifications in conditions (iii) and (vii). On February 12, 1987, the Government replied to the said letter and approved the modification on condition (iii) that the deposit of Rs. 3 lakhs and Rs. 1 lakh be transferable but rejected the proposal for including successors or heirs of members in condition (vii) pertaining to issue of shares through dilution of the shareholding of the existing members.

20. On February 18, 1987, the Supreme Court of India passed the following order in Civil Writ Petition No. 12233 of 1985 filed by Mr. Saigal as also in Civil Miscellaneous Petition No. 11043 of 1986 :

"We are informed by learned counsel for the Union of India that the Union of India has directed the Delhi Stock Exchange to increase its membership by 250 shares through a public issue of shares and dilution of shareholding of the existing members from two shares to one share on a 50 : 50 basis and that the necessary special resolution for increasing the membership would be passed by the Delhi Stock Exchange u/s 81 of the Companies Act within two months. Learned counsel also submits that, within three months, the shares of the Delhi Stock Exchange would be offered for public subscription in accordance with the resolution to be passed. In view of the above statement, we find there is no need to proceed with the hearing of the writ petition.

The civil miscellaneous petition and the writ petition are disposed of accordingly."

21. On June 10, 1987, the present writ petition was filed. The Union of India, the Director of Investments and the Joint Secretary, Stock Exchange Division, were arrayed as respondents Nos. 1, 2 and 3. On June 12, 1987, a show-cause notice was issued for July 20, 1987, as to why the petition be not admitted and *ex parte* interim order was passed staying the operation of the letter dated February 5, 1987.

22. On July 15, 1987, the respondents filed a reply and on July 20, 1987, the interim order was extended and time was granted to file an affidavit in rejoinder. The matter was directed to be listed for further preliminary hearing on August 17, 1987.

23. On August 14, 1987, the Delhi Stock Exchange Association Ltd. moved an application, being C.M. No. 3315 of 1987, to be imp led as a party. On August 17, 1987, this application was listed and was allowed as the court was of the view that the applicant was a necessary party. The reply filed by the applicant to the writ petition was taken on record and the petitioner was permitted to file a rejoinder, if he so wished.

24. On September 2, 1987, rule D. B. was issued. It was further directed that the hearing of the petition be expedited and, in the meanwhile, respondent No. 4, i.e., the Delhi Stock Exchange, could appoint an expert committee for the purpose of selection of new members and finalisation of applications, but actual allotment be not made till the disposal of the petition. With respect to dilution of shareholding of each member from two shares to one share, it was directed that the applications received from the existing members be processed but no transfer be effected till the disposal of the writ petition.

25. On an application, being C.M. No. 1304 of 1988, moved by respondent No. 4, the order dated September 2, 1987, was modified on May 23, 1988, as applications from new members of the public had been received along with sums of Rs. 17,000 as non-interest bearing application money and more than Rs. 2 crores applicants' money was lying unproductive. Since the expert committee had made its recommendations but the report had not been submitted to respondent No. 4, in view of the order of the court, the court permitted respondent No. 4 to proceed with the selection of new members but not to allot any shares to the newly elected members. Respondent No. 4 was also permitted to return the money of the applicants whose applications had been finally rejected.

26. Subsequently, an application was moved, being C.M. No. 1801 of 1989, by the selected persons for being imp led as parties. On August 25, 1989, counsel for the petitioner suggested that the applicants in C.M. 1801 of 1989, be heard on the writ petition on merits. We ordered accordingly.

27. It is in this background that we have to examine the contentions of learned counsel for the petitioner and the respondents.

28. Learned counsel for the petitioner contends that the directions contained in the impugned order dated February 5, 1987, issued by the Central Government are arbitrary, illegal and void. He submits that the said directions/approvals are discriminatory, prejudicial to public interest and contrary to the policy of the Government to broad base the membership of the Delhi Stock Exchange.

29. The argument appears to be than permission to members of the Delhi Stock

Exchange to transfer their surplus share to their authorised assistants, etc., is illegal and that it should have been mandatory that the dilution be only by way of transfer to members of the general public. Further, the difference in the amount to be paid by way of deposit by the members of the public as compared to transferees of shares by dilution is discriminatory. Apart from this, it is urged that this is contrary to the commitment made to the Supreme Court in N. N. Saigal's case referred to above. It is also contended that the inclusion of directors/members of the Delhi Stock Exchange in the expert selection committee is violative of article 14.

30. It appears to us that the argument regarding discrimination is not tenable. It is well-settled that, to sustain a plea of discrimination, it is essential to establish that all persons dissimilarly treated constitute a homogeneous class. In the present case, members of the public and authorised assistants of members of the Delhi Stock Exchange do not constitute a homogeneous class. The classification is based on the fact that persons who have been working over the years in the stock exchange have acquired a certain expertise as compared to the general public and, Therefore, they constitute two different groups. We are fortified in our view by the decision of the Supreme Court.

31. In *Madhubhai Amathalal Gandhi Vs. The Union of India (UOI)*, , a notification imposing, inter alia, a condition that members of the Indian Stock Exchange, Ltd. would be entitled to apply for membership of the Stock Exchange, Bombay, provided they were active members for twelve months immediately preceding August 6, 1957, was challenged as discriminatory. It was urged that classification of members into two groups, one active and the other inactive was arbitrary and had no reasonable relation to the object sought to be achieved.

32. Mr. Justice K. Subba Rao, speaking for the court, observed that a classification must have a reasonable relation to the object sought to be achieved, the standard of reasonableness being inextricably conditioned by the extent and nature of the evil and the urgency for eradicating the same. The object of the notification dated August 31, 1957, issued u/s 4 of the Securities Contracts (Regulation) Act, 1956, is two-fold. The main object being to carry out the purpose of the Act, namely, "to prevent undesirable transactions in securities by regulating the business in them" and the subsidiary object being to "assuage the hardship that recognition of only one stock exchange would cause to the members of the other association". It is to achieve this twin object that the classification has been made between active and inactive members. On the one hand, the Government found it necessary to exclude nominal members who would add their deadweight to the recognised association and bring down its efficiency and effect its disciplined conduct of business and on the other hand, it gave an opportunity to persons who were actively interested in the business to become regular members of the Stock Exchange, Bombay. On a consideration of the necessary data and presumably having regard to the record of activities of various members, the Government fixed the activities in the crucial year 1956-57

as the standard of activity for membership and fixed the 12 months immediately preceding August 6, 1957, as a standard for active membership. There is a presumption in favor of the State that there is a reasonable basis for the classification. Consequently, the Supreme Court held that the notification was not discriminatory and the period fixed by the Government as the standard for ascertaining the active membership is not arbitrary or unreasonable.

33. Taking a cue from the abovementioned observations, it is apparent that the object of the Central Government in granting the approval by its letter dated February 5, 1987, was clearly to provide adequate facilities to the investors as a result of the increases volume of work and to broad base the stock exchange membership without totally depriving the existing members of their rights.

34. Admittedly, authorised assistants are persons who have worked and gained experience over the years in the stock exchange. This experience will certainly benefit the investors and making such persons members is in public interest. Even under the articles of association of the Delhi Stock Exchange, it is those persons who have worked for not less than two years who are eligible to be admitted as members (see articles 25(2) (a). Though this condition can be waived by the board of directors on certain conditions, actual waiver is necessary. We are not aware of any law which compels the existing members to transfer their shareholding to the public generally. The existing members are full owners and are perfectly entitled to transfer their shares to persons of their choice. In any case, as noticed above, the public is being benefited by the fact that the authorised assistants are well-versed in their work and that the existing members are not pressing their preferential rights u/s 81 of the Companies Act. Consequently, the induction of authorised assistants, etc., as members on transfer of the surplus shares by the existing members appears to be a reasonable classification.

35. The object of dilution is different from the object of the public issue as, in the first case, it is to make provision for admission of the existing authorised agents whereas, in the latter case, it is to admit members of the public generally. As such, a claim that members of the general public be treated on par for the purpose of deposit with those persons inducted at the request or behest of the existing members is not sustainable. The public issue is without any premium being charged though, admittedly, the real value of the share far exceeds its face value as the company owns very valuable property.

36. The Supreme Court, in *Narendra Kumar Maheshwari Vs. Union of India (UOI) and Others*, , held that there is no reason why a company should not structure its issue in a manner that it confers greater advantage and benefits on the existing shareholders and promoters.

37. In this view of the matter, the difference in the amount of deposit is totally consistent with the respective objects sought to be achieved.

38. From the background of the case, as above indicated, it is apparent that the

members of the Delhi Stock Exchange were seeking permission to dilute their holding and admit their authorised assistants, etc., as members whereas the Government was anxious to increase membership by induction of the general public. The filing of the writ petition in the Supreme Court and the correspondence between the Government and the stock exchange putting forward their respective points of view has been set out above. It appears that, eventually, a package deal was agreed to under which the Delhi Stock Exchange's proposal to permit dilution was accepted along with the Government's request to have a hundred per cent. expansion. That is why the Government gave its assent to the two independent transactions, i.e., the admission of 125 authorised assistants, etc., by transfer of the surplus share held by the existing members and the induction of 125 members of the public so that there is a hundred per cent. expansion of the existing membership strength, as envisaged in the order of the Supreme Court dated August 18, 1986, thus making a total of 375 members and broad basing the organisation. The two transactions are separate, one is the issue of 125 shares to the members of the public on certain terms and conditions and the other is the permission to the existing members to dilute their holding by transfer of one share to their authorised assistants, etc. It is not correct to challenge the two independent transactions on the ground that the terms of the two components do not coincide. As indicated above, members of the public seeking membership and authorised assistants, etc., becoming members on transfer of surplus shares of the existing members do not belong to the same homogeneous class.

39. It, Therefore, appears to us that dilution by way of transfer of the existing shares in favor of authorised assistants, etc., is valid and in accordance with the assurance given to the Supreme Court. The said assurance was that there would be a hundred per cent. expansion in favor of the members of the public. There were 125 members and 125 members are to be taken from the public. The induction of another 125 members by dilution cannot be considered arbitrary in view of the facts indicated above, especially as this is limited to the authorised assistants, etc., who are coming in on transfer of surplus shares of the existing members. It is pertinent to note that the impugned letter of the Central Government is dated February 5, 1987, i.e., prior to the passing of the order in the Supreme Court in N. N. Saigal's case on February 18, 1987. The order of the Supreme Court reflects the Central Government's directions to the Delhi Stock Exchange both with regard to public issue as also dilution of the existing membership. Consequently, the contention that the said letter is contrary to the commitment made to the Supreme Court is not sustainable.

40. The next submission relates to the personnel of the expert selection committee. The said committee constituted for induction of new members, consists of some members of the board of directors and nominees of the Government and public representatives. Under the memorandum and articles of association, the selection of members is purely by members of the board of directors of the Delhi Stock Exchange. The validity of this condition in the

memorandum and articles of association is not under challenge. Consequently, it is difficult to appreciate how the constitution of the expert selection committee becomes arbitrary when some of its members are directors of the board of the Delhi Stock Exchange. It is also pertinent to note that the selection of members by this committee is to be done on the basis of objective criteria, taking experience, professional qualification and other relevant factors into consideration. We, Therefore, find that the constitution of the selection committee comprising partly members of the board of directors of the stock exchange is not vocative of article 14.

41. Learned counsel for the petitioner made certain oral submissions pertaining to the action of the Delhi Stock Exchange and violation of the provisions of the Securities Contracts (Regulation) Act, 1956.

42. As noticed above, the petitioner filed a writ petition challenging only the action of the Government as contained in its letter dated February 5, 1987, and made only the Union of India and its two officers parties. The Delhi Stock Exchange was not made a party. However, the Delhi Stock Exchange moved an application to be imp leaded and it was only on August 17, 1987, that it was imp leaded as respondent No. 4. There are no pleadings in the writ petition challenging any action of the Delhi Stock Exchange nor is any relief sought. Consequently, we do not think it necessary to deal with these submissions.

43. For the reasons outlined above, we discharge the rule. However, in the facts and circumstances of the case, we make no order as to costs.