

(1998) 11 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No's. 2125, 2127, 2131 and 2141 of 1998

Ramrakh R. Bohra, Harvest Deal Securities Ltd. and Another, APPELLANT
Mahico Pvt. Ltd. and Another and Star Share and Stock
Brokers Ltd.

Vs

Securities and Exchange Board of India and Others RESPONDENT

Date of Decision : 07-11-1998

Acts Referred:

Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995 — Regulation 13
Securities and Exchange Board of India Act, 1992 — Section 11B, 12, 19

Citation : (1999) 96 CompCas 623

Hon'ble Judges : S.S. Parkar, J; Ashok Aggarwal, J

Bench : Division Bench

Advocate : C.M. Kothari, in W.P. No. 2125 of 1998, K.K. Singhvi and S.J. Thakkar, instructed by Divya Shah, of Desai and Diwanji, in W.P. No. 2127 of 1998, Shailesh Shah and P.N. Ganwani, instructed by Thakordas and Madgaokar in W.P. Nos. 2131 and 2141 of 1998, for the Appellant; D.Y. Chandrachud, A.S.G. and P.S. Jetly, M.M. Vashi, instructed by Vashi and Associates in W.P. No. 2127 of 1998, Nihar Mody, instructed by Wadia Gandhi and Co., R.A. Dada, Kumar Desai and Mahesh Ayare, instructed by Manekshan Sethna, for the Respondent

Judgement

1. The present group of petitions seek to impugn an order passed by the Securities and Exchange Board of India, the first respondent herein, directing the petitioners, who are stock brokers, not to undertake any fresh business as brokers till the inquiry proceedings, which have been initiated against them, under regulation 28 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, and regulation 13 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995, are completed and further decisions are taken thereon by the first respondent. The order is passed on October 30, 1998, and was directed to come into effect from November 2, 1998.

2. In these petitions, a chamber summons has been taken out on behalf of Shri

Jasmin B. Shah, seeking intervention in the petitions and for permission to make submissions on the merits of the case. The said intervener had earlier filed, in this court, Writ Petition No. 1156 of 1998 seeking directions against the respondents herein for carrying out investigation for the purpose of taking action in respect of rigging of certain scrips. The petition was disposed of on September 4, 1998, by passing the following order:

"In view of the affidavit of respondent No. 1 and the statement of learned counsel for respondent No. 1 that the petitioner will be informed of the completion of the investigation and the proposed action, Mr. Vashi, learned counsel for the petitioner, seeks liberty to withdraw this writ petition. The writ petition is allowed to be withdrawn and is disposed of accordingly."

3. In our view, having regard to the filing of the aforesaid Writ Petition No. 1156 of 1998, by the intervener and having regard to the aforesaid order, which records a statement on behalf of respondent No. 1 that the petitioner will be informed of the completion of the investigation and the proposed action, we find that the intervener is entitled to be heard in the present petitions. Leave is accordingly granted to take out the chamber summons under Rule 121 of the High Court, Original Side Rules. The same is made returnable forthwith and is made absolute in terms of prayer Clause (a). No orders as to costs. Prayer Clause (a) :

That the intervener be permitted to intervene in the matter and be allowed to make submissions on the merits of the case."

4. The present petitions raise a challenge to the vires of Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992. Having regard to the nature of the challenge to the aforesaid provisions, we issue rule and direct notice to be issued to the Attorney-General of India.

5. As far as interim reliefs, which are claimed in the petitions are concerned, we have heard learned counsel appearing for the contending parties at considerable length. It is first contended on behalf of the petitioners that the present order, which is purported to have been passed u/s 11B of the Securities and Exchange Board of India Act, 1992, has been passed without notice to the petitioners and without their being offered a reasonable opportunity of being heard. The said order, which has been passed in violation of the principles of natural justice, is non-est and, therefore, cannot be permitted to operate against the petitioners. The said order deprives the petitioners of their fundamental right to carry on business. The petitioners cannot be deprived of the same without following the procedure provided under the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. The said Regulations provide for a detailed procedure before any penalty in respect of suspension or cancellation of a broker's licence can be issued. The present order, which is passed without following the said procedure is, therefore, null and void especially as it contravenes the fundamental rights guaranteed by Articles 19, 21 and 14 of the Constitution.

6. Reliance is placed on a decision of the Supreme Court in the case of *Swadeshi Cotton Mills Vs. Union of India (UOI)*, . The Supreme Court, while dealing with the doctrine of the principles of natural justice, has observed as under :

"The High Court of Australia in *Commissioner of Police v. Tanos* [1958] 98 CLR 383, held that some urgency, or necessity of prompt action does not necessarily exclude natural justice because a true emergency situation can be properly dealt with by short measures. In *Heatley v. Tasmanian Racing and Gaming Commission* (14 Aug LR 519), the same High Court held that without the use of unmistakable language in a statute, one would not attribute to Parliament an intention to authorise the Commission to order a person not to deal in shares or attend a stock exchange without observing natural justice. In circumstances of likely immediate detriment to the public, it may be appropriate for the Commission to issue a warning off notice without notice or stated grounds but limited to a particular meeting, coupled with a notice that the Commission proposed to make a long-term order on stated grounds and to give an earliest practicable opportunity to the person affected to appear before the Commission and show why the proposed long-term order be not made."

"In short, the general principle--as distinguished from an absolute rule of uniform application--seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the *audi alteram partem* rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature ; and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

7. Reliance is next placed on the case of *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, , wherein it has, inter alia, been observed, as under (pages 1284-86) :

"On the initiation of a proceeding under Clause 8 by the commencement of investigation, the authority has to address itself to the question whether any action of an interim nature to prevent further harm or mischief is warranted

pending investigation. Licences may have already been issued and allotment of imported goods may have already been made. The authority may consider it desirable to prevent the person from importing goods pursuant to the licences or to prevent him from obtaining the imported goods allotted to him through the specified agencies. If so, the authority may make an order under Clause 8A suspending the importation of goods, the grant of licences or the allotment of imported goods. But Clause 10 provides that no action under Clause 8A may be taken without giving a reasonable opportunity to the person concerned. It is obviously thought that the right such as it may be, to obtain a licence or allotment of goods having become crystallised into a licence or an allotment, an order under Clause 8A may have immediate and grave prejudicial repercussions on the person concerned making it desirable that he should be heard before an order of suspension is made. So it is that Clause 8A contemplates a pre-decisional hearing. On the other hand, licences may not yet have been issued and allotments may yet have to be made. The appropriate authority may be satisfied that it would not be in the public interest to issue licences or make allotment to the person concerned, without ascertaining further details with regard to the allegations against him. In such cases, the authority may make an order of "abeyance" under Clause 8B.

Though the language of Clause 8B is capable of being read as if it applies to both allotments already made and allotment yet to be made, a reference to the marginal head, in the background of what has been provided for in Clause 8A, makes it clear that Clause 3B applies only to allotments yet to be made and licences yet to be issued. That clearly is the contextual construction of Clause 8B. Read in any other manner, there will be a totally unnecessary overlapping of and a needless conflict between Clauses 8A and 8B, with freedom to the authority to pursue action either under Clause 8A or Clause 8B each providing a different procedure of its own. We do not think that it is permissible for us to read Clauses 8A and 8B in a manner as to create needless conflict and confusion when the two clauses are capable of existing separately, without encroaching upon each other. Contextual construction demands such a construction and we have no hesitation in adopting it. Clause 10 which provides for a reasonable opportunity before action is taken under Clause 8A, does not make similar provision in the case of action under Clause 8B though action under Clause 8A as well as action under Clause 8B are both in the nature of interim orders of temporary duration aimed at preventing further harm and mischief pending investigation into the allegations under Clause 8. Does it mean that the principle of natural justice of procedural fairness is to be altogether excluded when action is taken under Clause 8B ? We do not think so. We do not think that it is permissible to interpret any statutory instrument so as to exclude natural justice, unless the language of the instrument leaves no option to the court. Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties. It may be that the opportunity to be heard may not be pre-decisional it may necessarily have to be post-decisional where the danger to be averted or

the act to be prevented is imminent or where the action to be taken can brook no delay. If an area is devastated by floods, one cannot wait to issue show-cause notices for requisitioning vehicles to evacuate population. If there is an out-break of an epidemic, we presume one does not have to issue show-cause notices to requisition beds in hospitals, public or private. In such a situation, it may be enough to issue post-decisional notices providing for an opportunity. It may not even be necessary in some situations to issue such notices, but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case. Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of ad interim nature pending investigation or enquiry. Ad interim orders may always be made ex parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party has, nevertheless, always the right to make an appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at his request. There is no violation of the principles of natural justice if an ex parte ad interim order is made unless of course, the statute itself provides for a hearing before the order is made as in clause A. Natural justice will be violated if the authority refuses to consider the request of the aggrieved party for an opportunity to make his representation against the ex parte ad interim orders." "We have referred to these four cases only to illustrate how ex parte interim orders may be made pending a final adjudication. We, however, take care to say that we do not mean to suggest that natural justice is not attracted when orders of suspension or like orders of an interim nature are made. Some orders of that nature, intended to prevent further mischief of one kind, may themselves be productive of greater mischief of another kind. An interim order of stay or suspension which has the effect of preventing a person, however temporarily, say, from pursuing his profession or line of business, may have substantial, serious and even disastrous consequences to him and may expose him to grave risk and hazard. Therefore, we say that there must be observed some modicum of residual, core natural justice, sufficient to enable the affected person to make an adequate representation. These considerations may not, however, apply to cases of liquor licensing which involve the grant of a privilege and are not a matter of right ; see Chingleput Bottlers v. Majestic Bottling Co. (C. A. Nos. 11970-71 of 1983). That may be and in some cases, it can only be after an initial ex parte interim order is made." (emphasis" supplied)

8. It is next contended that the impugned order has been passed by the chairman of the SEBI and not by the Board itself. Section 11B entrusts powers of issuing directions to the Board and not to the chairman. The impugned order not

having been passed by the authority authorised is null and void on this ground also. In the circumstances, it is contended that this is a fit case where the impugned order should be stayed.

9. The present petitions are resisted on behalf of the respondents by filing an affidavit of Shri Anant Barua, Divisional Chief of respondent No. 1 wherein it is, inter alia, averred, as under :

"The investigation by the SEBI relating to the role of brokers was completed by the investigation officer on October 29, 1998. Shri Harshad Mehta, a notified person under the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as "the said Act") prima facie appears to be an accused in the securities scam of 1992, and prima facie appears to be the main person behind the manipulations of the aforesaid three scrips. The investigation established that a set of common clients with whom a group of brokers including the petitioner abovenamed were dealing in the said three scrips are entities closely connected to Mr, Harshad Mehta and acted as a front for him. The directors of the common clients companies namely Mr. Anil Doshi and Dinesh Doshi are close relations of Mr. Harshad Mehta. These persons have no financial track record of their own or experience or the professional expertise to undertake such securities transactions. The decision making was not done by them and prima facie evidence shows that their activities and decision making was in control with Mr. Harshad Mehta."

"The SEBI submits that investigations revealed that a group of brokers of the Bombay Stock Exchange and the National Stock Exchange had as aforesaid acted on behalf of a common set of clients all of whom cornered large chunks of the aforesaid three scrips. Further, they built up unusually large positions resulting in the distortion of the market equilibrium and the artificial creation of demand. The act of these brokers prima facie carried out in a calculated and concerted manner was detrimental to the interest of the investors and the safety of the securities market. The conduct of these brokers including the petitioner above-named was not only unprofessional, reckless and unbecoming but was grossly manipulative and violative of the code of conduct of stock brokers under regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as "the said Regulations").

"The investigation revealed that the petitioner dealt for a group of common clients to manipulate the prices in these scrips. As found from the investigation the petitioner acted in concert with a group of brokers of the BSE and the NSE who also dealt for this common client which was a front for Mr. Harshad Mehta. The petitioner has repeated involvement in the market manipulations and other irregular activities in the securities market. Mr. J. N. Doshi a director of the petitioner was found to be involved in the rigging of the scrip prices of Betala Global Securities Ltd. Pursuant to the investigation, enquiry proceedings have been initiated against the petitioner under regulation 28 of the said Regulations read with regulation 13 of the SEBI (Prohibition of Fraudulent and Unfair Trade

Practices Relating to Securities Markets) Regulations, 1995 (hereinafter referred to as "the said Regulations of 1995"). Pending the completion of enquiry under the Regulations of 1995 the petitioner has been directed not to undertake any fresh business as a broker till the enquiry proceedings are completed. It is submitted that the said direction has been issued u/s 11B to ensure that no further harm or detriment is caused to the market or that the investors are not adversely affected or that the safety and integrity of the market remains unimpaired."

"It is submitted that the said direction of the SEBI directing the petitioner not to undertake any fresh business is not an order to close down the business as wrongly contended by the petitioner. It is denied that the SEBI has no power to issue directions pending the enquiry or the said direction is beyond the power vested in the SEBI. It is submitted that a broker can continue to act as a member of the exchange, till his registration is suspended or cancelled after the enquiry. It is submitted that the petitioner can continue to act and exercise his power as broker of the stock exchange. It is submitted that the petitioner has only been directed by the chairman not to take fresh business as a broker till completion of the enquiry on the basis of prima facie evidence it is apprehended that if he is allowed to undertake new business, the same may be done in a way which may impair the safety and integrity of the market and may not be in the interests of the investors and may also further affect the equilibrium of the market. It is submitted that the petitioner can continue to do business like underwriting, depository participant or custodian if they are holding registration for the same. The petitioner if it is permitted to continue to carry on fresh business would cause further harm and be detrimental to the safety of the general investors and safety and security of the market."

10. It is, inter alia, contended on behalf of the respondents that the afore said order merely prohibits the petitioners from undertaking any fresh business as a broker. The same does not amount to suspension or cancellation of the broker's licence and is, therefore, not by way of penalty. The said order does not prohibit the petitioners from carrying on transactions which they have already entered into but merely prohibits them from entering into fresh business. The same is an interim arrangement so as to protect the interests of the investors and the securities market. The said directions have been issued after a preliminary inquiry has been conducted by recording statements of various witnesses, including those of the petitioners. One of the reports in respect of the inquiry has been furnished to the Board and investigation into the other is in progress. As far as the inquiry report is concerned, the same cannot be disclosed to the petitioners as it would prejudice the further progress of investigation. Since the inquiry is incomplete, the contents of the inquiry cannot be disclosed as it would expose the investigative content.

11. It is next contended that the petitioners have an alternate and efficacious remedy of an appeal both u/s 20 of the Act and under regulation 32 of the SEBI

Regulations. It would, therefore, not be open to the petitioners to invoke the writ jurisdiction of this court.

12. Taking the second point--in regard to the availability of the remedy of an appeal first, we find that the same cannot be a bar to the exercise of writ jurisdiction. When an alternate remedy is available it is merely a rule of convenience that a writ court may not exercise jurisdiction and may direct the party to avail of the alternate remedy. Availability of an alternate remedy, however, cannot oust the exercise of writ jurisdiction. In a proper case even though an alternate remedy is available, the writ court would still be fully justified in exercising its writ jurisdiction. In the case of *State of V. P. v. Mohammad Nooh*, AIR 1958 SC 86 it has been observed, as under :

"In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute (Halsbury's Laws of England, 3rd Edition, Vol. 11, page 130, and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies .. ." "If, therefore, the existence of other adequate legal remedies is not per se a bar to the issue of certiorari and if in a proper case it may be the duty of the superior court to issue a writ of certiorari to correct the errors of an inferior court or tribunal called upon to exercise judicial or quasi-judicial functions and not to relegate the petitioner to other legal remedies available to him and if the superior court can in a proper case exercise its jurisdiction in favour of a petitioner who has allowed the time to appeal to expire or has not perfected his appeal, e.g., by furnishing security required by the statute, should it then be laid down as an inflexible rule of law that the superior court must deny the writ when an inferior court or tribunal by discarding all principles of natural justice and all accepted rules of procedure arrived at a conclusion which shocks the sense of justice and fair play merely because such decision has been upheld by another inferior court or tribunal on appeal or revision ?"

13. As far as the present case is concerned, the present order was issued on October 30, 1998, and was served on the petitioners on October 31, 1998. 30th October, 1998, was a Friday and 31st October, 1998, was a Saturday. The order was to be brought into force on Monday, the 2nd of November, 1998. The

petitioners, therefore, could not be expected to avail of the remedy of appeal on Sunday, the 1st of November, 1998, and secure ad interim orders of stay. The petitioners were accordingly constrained to move this court on the 1st of November, 1998, and this court passed an ad interim order in their favour. In the circumstances, we find that the present petitions cannot be thrown out on the ground that petitioners have a right of appeal. The petitioners are, therefore, entitled to agitate their claim in the present petition.

14. As regards the first contention, we find prima facie, that the petitioners have failed to make out a prima facie case in their favour so as to claim the interim reliefs prayed for in the petition.

15. Section 4 of the Securities and Exchange Board of India Act, 1992 (for short "the SEBI Act") provides for the management of the Board. The same provides that the Board shall consist of a chairman and other officers mentioned therein. Sub-section (2) of Section 4 invests the general superintendence and management of the affairs of the Board in the board of members. Sub-section (3) of Section 4 which is material for the enquiry at hand, provides as under :

"4. Management of the Board.--(3) Save as otherwise determined by regulations, the chairman shall also have powers of general superintendence and direction of the affairs of the Board and may also exercise all powers and do all acts and things which may be exercised or done by the Board."

16. Whereas it is contended on behalf of the petitioners that the chairman, under the aforesaid provision, will not be entitled to exercise all powers and do all acts and things which may be exercised or done by the Board as the same is excepted by the regulations by use of the phrase "save as otherwise" determined by regulations". As far as the regulations are concerned, the same confer the power only on the Board and not on the chairman. It is, however, the contention of the respondents that even though regulations may not have conferred the aforesaid powers on the chairman, the aforesaid provision does confer the said powers on the chairman. The phrase "save as otherwise determined by the regulations" covers only the phrase immediately following, i.e., "the chairman shall also have powers of general superintendence and direction of the affairs of the Board". The same does not qualify what follows thereafter, i.e., "and may also exercise all powers and do all acts and things which may be exercised or done by the Board". In our view, it is not necessary to dilate over this controversy as u/s 19 there is an independent power of delegation and the Board in the instant case has delegated its powers on the chairman. Section 19 provides, as under :

"Delegation.--The Board may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act except the powers u/s 29 as it may deem necessary."

17. In the instant case, counsel for the respondents, has placed for our perusal,

a resolution passed by the Board, on August 12, 1997, which, inter alia, provides that the chairman is authorised and shall be competent to take action for any default under the provisions of the Securities and Exchange Board of India Act, Rules and Regulations. In view of the aforesaid delegation, we have no hesitation in holding that the chairman of the first respondent is fully justified in taking the impugned action.

18. Section 11 deals with the functions of the Board. Sub-section (1) of Section 11 imposes a duty on the Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market by such measures as it thinks fit. The measures mentioned include measures for regulating the business in stock exchanges and any other securities markets, registering and regulating the working of stock brokers, sub-brokers, share transfer agents, etc. The same includes provision for calling for information undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market.

19. Section 11B of the Act deals with the power of the Board to issue directions. The same provides as under :

"11B. Power to issue directions.--Save as otherwise provided in Section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary-

(i) in the interest of investors, or orderly development of the securities market ; or

(ii) to prevent the affairs of any intermediary or other persons referred to in Section 12 being conducted in a manner detrimental to the interests of investors or securities market ; or

(iii) to secure the proper management of any such intermediary or person, it may issue such directions,--

(a) to any person or class of persons referred to in Section 12, or associated with the securities market ; or

(b) to any company in respect of matters specified in Section 11A, as may be appropriate in the interests of investors in securities and the securities market."

20. The aforesaid provision, therefore, empowers the Board to issue directions for the purpose of securing the proper management of intermediaries or persons, as may be appropriate in the interests of the investors in securities and securities market. Section 12 deals with registration of stock-brokers, sub-brokers, share transfer agents, etc. Sub-section (3) of Section 12 empowers the Board by passing an order to suspend or cancel the certificate of registration in such manner as may be determined by regulations. The proviso to sub-section (3) of Section 12 reads as under :

"Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard."

21. The aforesaid provision, which is found in Section 12 is in regard to the penalty of suspension or cancellation of a certificate of registration. This under the proviso, no doubt can be done only after affording a reasonable opportunity of being heard. However, this is not what has been done in the instant case. A preliminary inquiry into the conduct of the petitioners has been conducted. A part of the preliminary inquiry is complete and it is found that the petitioners have been indulging in malpractices. Hence, in order to safeguard the interests of the investors and to maintain the integrity of the market the petitioners have been directed not to undertake any fresh business as brokers till the inquiry proceedings are completed and further proceedings in the matter are taken. This, in our view, is an interim measure which the chairman of the first respondent is fully justified in taking.

22. It may be useful at this stage to peruse some of the provisions of the SEBI (Stock-Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as "the Regulations, 1992"), and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995 (hereinafter referred to as "the Regulations, 1995"). Chapter V of the Regulations, 1992, deals with the procedure for inspection, Regulation 19 deals with the right of the Board to inspect. Regulation 20 provides for the procedure for inspection. Regulation 21 deals with the duties and obligations of stock brokers in respect of the inspection. Regulation 22 deals with submission of the report to the Board and regulation 23 deals with the communication of findings of the inspecting authority to the Board. Chapter VI, thereafter, deals with the procedure for taking action in case of default. The same provides for penalties either of suspension of registration for a specified period or of cancellation of registration. Regulation 27 provides for holding of an inquiry before a penalty of suspension or cancellation can be imposed. Regulation 28 deals with the manner of holding inquiry. Regulation 28(7) provides for the inquiry officer to submit a report to the Board by recommending penalty to be awarded along with the justification of the penalty proposed. Regulation 29, thereafter, postulates the issue of a further show-cause notice to show cause why the penalty proposed should not be imposed. The said regulation, thereafter, empowers the Board to impose the penalty after considering the reply to the show-cause notice.

23. Having regard to the aforesaid provisions, it is strenuously contended on behalf of the petitioners that the impugned order has virtually put a death-knell on the business of the petitioners. The same has undoubtedly stopped their entire business. It is, therefore, virtually an order passed u/s 12 and this can be done only after affording the petitioners a reasonable opportunity of being heard. In our prima facie view the impugned order cannot be said to have been passed u/s 12 as contended but the same has been passed u/s 11B. It is in the nature of a direction restraining the petitioners from carrying on their business of dealing

in shares. The same has been passed pending the inquiry into the manipulations. The same has been passed in the interests of investors and in the interests of the securities market.

24. Section 11B of the SEBI Act is an enabling provision enacted to empower the SEBI to protect the interest of investors and to promote the development of and to regulate the securities market and to prevent malpractices and manipulations, inter alia, by brokers, Such an enabling provision must be construed so as to subserve the purpose for which it is enacted. It would be the duty of the court to further the legislative object of providing a remedy for the mischief. A construction which advances this object should be preferred rather than one which attempts to find a way to circumvent it. In the case of Reserve Bank of India and others Vs. Peerless General Finance and Investment Company Ltd. and another, , the Supreme Court has observed, as under :

"It would thus appear that Section 45K(3) is an enabling provision enacted to empower the bank to regulate the conditions on which deposits may be accepted by non-banking companies or institutions and to prevent malpractices in the matter of acceptance of such deposits. Such an enabling provision must be so construed as to subserve the purpose for which it has been enacted. It is a well accepted canon of statutory construction that "it is the duty of the court to further Parliament's aim of providing a remedy for the mischief against which the enactment is directed and the court should prefer a construction which advances this object rather than one which attempts to find some way of circumventing it..."

"Section 45K is in the nature of an enabling provision. In the matter of construction of enabling statutes the principle applicable is that if the legislature enables something to be done, it gives power at the same time, by necessary implication, to do everything which is indispensable for the purpose of carrying out the purpose in view. (See Craies on Statutes Law, 7th edition, p. 258). It has been held that the power to make a law with respect to any subject carries with it all the ancillary and incidental powers to make the law effective and workable and to prevent evasion. (See Sodhi Transport Co. and others Vs. State of U.P. and others,)."

25. In the case of Ch. Rama Rao Vs. The Lokayukta and others, , it is observed by the Supreme Court, as under :

"The power to submit final report with recommendation to take punitive or penal action includes power to submit interim report with recommendation to suspend an officer or to transfer him pending further investigation or the preliminary verification itself. The object of the recommendation is only to enable smooth enquiry or the investigation conducted without being hampered by the persons concerned or to prevent an opportunity to tamper with the record or to destroy the record ..."

26. In the case of Income Tax Officer Vs. M.K. Mohammed Kunhi, , it has been

observed, as under (headnote of ITR) :

"It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective . . ."

27. Therefore, in our view, the express grant statutory power conferred by Section 11B carries the authority to use reasonable means to make such power effective.

28. If one has regard to the aforesaid principles, it would follow that the power which has been conferred by Section 11B to issue directions are of the widest possible amplitude and are exercisable in the interests of investors and in order to prevent, inter alia, a broker from conducting his business in a manner detrimental to the interests of the investors or the securities market. The said power to issue directions u/s 11B must carry with it, by necessary implication, all powers and duties incidental and necessary to make the exercise of these powers fully effective including the power to pass interim orders in aid of the final orders. The provision of Section 11B, it is to be noted, has been introduced by an amendment brought about in 1995 and the same seeks to confer additional power on the Board, by way of interim measures, pending inquiry. The same is intended for the protection of the interests of the investors and the securities markets.

29. The impugned orders, in our prima facie view, are fully justified. The petitioners, in the circumstances, are not entitled to interim reliefs claimed in the petition. Ad interim orders passed on November 1, 1998, and continued by an order passed on November 3, 1998, are vacated.

30. At this stage, counsel for the petitioners apply for stay of the present orders, as also for continuation of the aforesaid ad interim orders. Counsel for the respondents strongly opposes the same.

31. Having regard to the attendant facts and circumstances of the case, we permit the petitioners, for a period of four weeks from today, to trade in shares and securities other than BPL, Videocon, Sterlite and Nedungadi Bank Ltd. The petitioners" during the aforesaid period of four weeks will not trade in the aforementioned shares and securities.