

(2012) 03 MAD CK 0021

In the Madras High Court

Case No : W. P. No's. 28703, 28704, 29375 to 29380 of 2004 and W. P. M. P. No's. 35660 to 35665 of 2004 and 208 of 2005

Ritu Devi

APPELLANT

Vs

Securities and Exchange Board of India

RESPONDENT

Date of Decision : 22-03-2012

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239
Constitution of India, 1950 — Article 20(1)
Criminal Procedure Code, 1973 (CrPC) — Section 468
Income Tax Act, 1961 — Section 147, 148, 153
Securities and Exchange Board of India Act, 1992 — Section 11, 11(1), 11(2)(i), 11(4) (b), 11A

Citation : (2012) 110 CLA 73 : (2012) 172 CompCas 240 : (2012) 6 CTC 166 : (2012) 115 SCL 150

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : R. Yashod Vardhan in W P Nos. 28703, 28704 and Vijaya Narayanan, S.R. Rajagopal in W P Nos. 29375 to 29380 of 2004, for the Appellant; R. Muthukumaraswamy, for Shivakumar in All Writ Petitions, for the Respondent

Final Decision : Dismissed

Judgement

S. Nagamuthu J.

1. In all these writ petitions, the orders passed by the respective investigating authority, u/s 11C of the Securities and Exchange Board of India Act,

1992, directing the petitioners herein to appear before the investigating authority for Investigation, are under challenge. The respondent is the

Securities and Exchange Board of India" constituted under the "Securities and Exchange Board of India Act, 1992" (hereinafter referred to as "the

SEBI Act"). According to the impugned orders in W. P. Nos. 28703 and 28704 of 2004, the petitioners were doing the business of buying, selling

or dealing in shares of NEPC group of companies during the period between June 3, 1996 and October 31, 1996. By means of the impugned

orders; the petitioners were required to furnish details/information relating to the transactions, which were done during the said period, for the

purpose of completing the investigation u/s 11C of the SEBI Act. In W.P. Nos. 29375, 29376, 29377, 29378, 29379 and 29380 of 2004,

according to the respondent, the petitioners were involved in the business of buying, selling or dealing in shares of M/s. Sai Televisions Ltd., during

the period between April, 2001 to June, 2002. The petitioners, by means of the impugned orders, were directed to furnish the details/information

for such, transactions, held by the petitioners to enable the investigating authority to investigate into the allegations. The petitioners, in all these writ

petitions, are aggrieved by the said orders. That is how, they are before this court. Since, common issues are involved, these writ petitions were

heard together and they are disposed of by this common order.

2. Before going into the grounds raised and the arguments advanced at length on either side, let us have a bird's eye view of the SEBI Act.

3. In the year 1988, by means of a resolution, the Central Government established the ""Securities and Exchange Board of India"" to promote

orderly and healthy growth of the securities market and for the protection of the investors. Subsequently, the capital market in India had witnessed

tremendous growth and the participation of the public had undergone remarkable increase. In order to enhance the confidence of the investors in

the capital market, the protection of the interest of the investors was to be ensured. Keeping this in mind, the Central Government decided to vest

the SEBI with statutory powers required to deal effectively with all matters relating to capital market. Since, Parliament was not in session and

since there was urgent need to instill confidence in the public, the President promulgated the ""Securities and Exchange Board of India Ordinance,

1992"", which came into being on January 30, 1992. Subsequently, it became an Act of Parliament known as ""the Securities and Exchange Board

of India Act, 1992"", which came into force with effect from April 4, 1992.

4. The salient features, of the Act are thus : Chapter II of the SEBI Act deals with the establishment of ""the Securities and Exchange Board of,

India"". Chapter III deals with transfer of assets and liabilities, etc., of the

erstwhile Securities and Exchange Board to the Board constituted under the SEBI Act. Chapter IV deals with the powers and functions of the Board. Section 11(1) of the SEBI Act which falls in Chapter IV reads as follows :

11. Functions of Board--(1) Subject to the provisions of this Act, it shall be the duty of 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.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may, provide, for--

(a) regulating the business in stock exchanges and any other securities markets;...

(i) calling for information from, 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;..

(m) performing such other functions as may be prescribed.

5. Chapter V of the SEBI Act deals with the registration certificate. Chapter VI deals with the finance, accounts and audit. Chapter VII deals with

the miscellaneous matters. Section 24 of the SEBI Act deals with offences. The said provision; prior to the Amendment Act 59 of 2002, stood as

follows :

24. Offences.--(1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to

contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with

imprisonment for a term which may extend to one year, or with fine, or with both.

(2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be

punishable with imprisonment for a term which shall not be less than one month, but which may extend to three years or with fine, which shall not

be less than two thousand rupees but which may extend to ten thousand rupees or with both.

(emphasis 1 supplied)

6. Subsequently, the SEBI Act had undergone drastic amendments by four Amending Acts, viz., Amendment Act 9 of 1995, Amendment Act, 31

of 1999, Amendment Act 32 of 1999 and Amendment Act 59 of 2002. By means of Amendment Act 9 of 1995, sections 11A and 11B were

introduced. Section 11A deals with matters to be disclosed by the companies. Section 11B deals with powers to issue directions. By means of

Amendment Act 31 of 1999, section 11AA was introduced which deals with collective investment scheme. By means of Amendment Act 59 of

2002, sections 11C and 11D were introduced with effect from October 29, 2002. Section 11C deals with investigation and section 11D deals

with cease and desist proceedings. For the purposes of our discussions in these writ petitions, it would suffice, if we extract section 11C(1), (2)

and (6) of the SEBI Act hereunder :

11C. Investigation.--(1) Where the Board has reasonable ground to believe that--

(a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or

(b) any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations

made or directions issued by the Board thereunder, it may, at any time by order in writing, direct any person (hereafter in this section referred to as

the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and

to report thereon to the Board.

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every 1. Here

printed in italics. manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every

person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf,

all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or

such person, which are in their custody or power...

(6) If any person fails without reasonable cause or refuses--

(a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is

his duty under sub-section (2) or sub-section (3) to produce; or

(b) to furnish any information which is his duty under subsection (3) to furnish; or

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to

him by the Investigating Authority in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in subsection (7),

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one, crore rupees, or with

both, and also with a further fine which may extend to five lakh rupees for everyday after, the first during which the failure or refusal continues.

7. By means of Amendment Act 59 of 2002, section 24 of the SEBI Act was also amended. Under sub-section (1) of section 24, the punishment

of one year or fine or with both prescribed earlier was substituted by punishment of ten years or with fine which may extend to twenty-five crore

rupees or with both. Similarly, section 24(2), of the SEBI Act was amended and instead of punishment of three years or with fine, which shall not

be less than two thousand rupees but which may extend to ten thousand rupees or with both, it was amended as ten years or with fine which may

extend to twenty-five crore rupees or with both.

8. As we have noticed, in order to ensure orderly and healthy growth of the securities market and the protection of the interest of the investors, and

to regulate the securities market, the SEBI was vested with statutory powers. For the said purpose, u/s 11(2)(i) of the SEBI Act, the SEBI has

power to call for any information from anybody and to hold inquiry in respect of the persons involved in the securities market, intermediaries and

self-regulatory organisations in the securities market. u/s 30 of the SEBI Act, the Board has been vested with the power to make regulations

consistent with the SEBI Act and the Rules made thereunder by means of a notification.

9. In exercise of the powers conferred u/s 30 of the SEBI Act, the Board issued two Regulations known as ""the Securities and Exchange Board of

India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995"" and ""the Securities and Exchange

Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to

Securities Market) Regulations, 2003". Under the Regulations, 1995, the power was vested with the Board to order investigation under regulation 7(1) falling in Chapter III. Thus, it is crystal clear that even prior to 1995, as per regulation 7(1), the Board had the power to investigate into the affairs of any person buying, selling or otherwise dealing with the securities. Such investigation can be entrusted by the Board to any officer nominated by the Board. Thus, in order to issue any direction u/s 11 of the SEBI Act and for other purposes, the Board used to either investigate directly or through any officer in respect of the affairs of any person or organisation involving in the business of buying, selling or dealing in securities. The said Regulations, 1995 was superseded by Regulations, 2003 as referred to above. As per Regulations, 2003 also, under Chapter III, the Board has been vested with power to order investigation and such investigation can be entrusted to an investigating authority. Based on the report of the investigating authority, the Board can pass any order as it deems fit as provided in section 11B of the Act.

10. As we have already seen, prior to October 29, 2002, the SEBI Act did not contain a specific provision providing for an agency to investigate.

Admittedly, u/s 11(2)(i), an inquiry could be conducted by the Board. However, by means of the Regulations 1995, the Board was vested with the

power to nominate any officer to investigate into the affairs. The said Regulations 1995 has not been challenged. The same is also not inconsistent

either with the Act or Rules framed thereunder. By means of Amendment Act 59 of 2002, a specific provision was made by way of section 11C in

the SEBI Act itself providing for an agency for investigating into the affairs and the procedure to be followed, etc. After the introduction of section

11C, the Regulations, 2003 was put in place which will have still force inasmuch as the same is not inconsistent with section 11C Section 11C of

the SEBI Act and the Regulations, 2003 go hand-in-hand. So, even after the introduction of section 11C, the Board can very well nominate an

officer to investigate and submit a report.

11. In the instant cases, one of the main grounds of attack is that the orders impugned in the writ petitions which have been issued u/s 11C of the

SEBI Act are not sustainable as according to the petitioners, the said provision is only prospective in nature and the same is not applicable to the

petitioners since the transactions, which are said to have been done by the petitioners, were prior to the Amendment Act 59 of 2002. In other

words, the contention is that section 11C is pure and simple prospective in nature and, therefore, in exercise of the said power u/s 11C, no

investigation could be ordered/conducted in respect of the transactions which had taken place prior to October 29, 2002.

12. In order to resolve this question, it needs to be analysed as to whether section 11C is purely procedural in nature or it is a substantive provision

creating rights and liabilities. It is needless to point out that if a provision is held to be, pure and simple, procedural, it is always retrospective unless,

a different intention is shown in the statute itself. On the contrary, if the provision is substantive in nature, creating either rights or liabilities, unless a

different intention is shown in the Act itself, the said provision shall, undoubtedly, be prospective in nature. In this regard, we may usefully refer to

the judgment of the hon"ble Supreme Court in K.S. Paripoornan Vs. State of Kerala and Others, , wherein the hon"ble Supreme Court has held

as follows (page 1034) :

A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while

a statute dealing with substantive right is prima facie prospective unless it is expressly or by necessary implication made to have retrospective

effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be constructed as retrospective

unless there is a clear indication that such was not the intention of the Legislature.

13. Learned senior counsel Mr. R. Yashod Vardhan would submit that section 11C is substantive in nature as, according to him, it creates civil,

criminal and penal consequences and, therefore, it is prospective: Learned senior counsel would further submit that in pursuance of the impugned

orders, if the petitioners fail to produce the documents or to participate in the inquiry, they could be punished with imprisonment or with fine or with

both. Thus, according to learned senior counsel, section 11C(6) creates criminal liability and, therefore, section 11C(1) is a substantive provision.

But, this argument does not persuade me at all for more than one reason. Undoubtedly, as guaranteed under article 20(1) of the Constitution of

India, no person shall be convicted for any offence except for violation of a law in force at the time of commission of the act, nor be subjected to penalty greater than which might have been inflicted under the law in force at the time of commission of the offence. In the cases on hand, if the petitioners fail to comply with the orders made u/s 11C(1) of the SEBI Act, for the said non-compliance or disobedience, they are liable to be punished as provided in section 11C(6) of the Act. Here, it needs to be understood that such punishment is not for any violation or disobedience of any provision, then in force, i.e., prior to the introduction of section 11C(6) of the SEBI Act. It is for non-compliance of the orders made u/s 11C(1) of the SEBI Act, that they are liable to be punished as the non-compliance which constitutes offence takes place after the introduction of section 11C(1) of the SEBI Act. Thus, section 11C(6) of the SEBI Act is not attempted to be applied retrospectively in the instant cases as it is projected by learned senior counsel for the petitioners. I hold that section 11C(6) of the SEBI Act, which creates criminal liability, is substantive in nature and thus, it is prospective.

14. Nextly, learned senior counsel Mr. R. Yashod Vardhan would submit that prior to Amendment Act 59 of 2002, u/s 24 of the Act, the punishment for contravention or attempt to contravene or abet to contravene the provisions, of the SEBI Act or of any Rules and Regulations was only one year or with fine or with both. After the amendment, the punishment provided for is ten years imprisonment or with fine which may extend to twenty-five crore rupees or with both. Learned senior counsel would submit that if for any reason, during investigation, which is under challenge in the present writ petitions, it is found that the petitioners had violated any other provision of the SEBI Act prior to October 29, 2002 and in the event they are prosecuted, they are likely to be sentenced, which may extend to ten years or with fine which may extend to twenty-five crore rupees or with both. This apprehension, in my view, is baseless, for, as per article 20(1) of the Constitution, in the event the petitioners are found to have committed an offence punishable u/s 24 of the SEBI Act prior to October 29, 2002, they shall be liable to be punished up to only one year or with fine or with both, which was the punishment prescribed prior to October 29, 2002.

15. Now, let us analyse the other possible consequences like civil and penal, consequent upon the investigation u/s 11C(1) of the SEBI Act.

Admittedly, the investigation itself does not directly result in either penalty or punishment or any other civil consequences. After the investigation,

the investigating authority has to submit a report to the Board u/s 11C(1) of the SEBI Act. On receipt of such report, the Board will consider the

same and after affording sufficient opportunity to the persons concerned, the Board will have three options before it to do. The first option is to go

in for prosecution u/s 24 of the SEBI Act; the second option is to impose a penalty u/s 15A of the SEBI Act; and the third option is to issue any

suitable direction u/s 11B of the SEBI Act. Penalty under Chapter VI-A or any conviction u/s 24 of the SEBI Act will be by means of appropriate

adjudication by the competent authority/court after affording sufficient opportunity to the persons concerned. Thus, investigation is only a means to

collect evidences by the investigating authority by following the prescribed procedure and such investigation by itself does not result in penal or civil

consequences. Therefore, I hold that the investigation, as provided in section 11C(1), by itself is not substantive in nature. Per contra, it is purely

procedural. Therefore, as per the settled law, section 11C(1) of the SEBI Act is retrospective in nature.

16. At this juncture, we may usefully refer to the judgment of the hon''ble Supreme Court in Securities and Exchange Board of India v. Ajay

Agarwal (2010) 155 Comp Cas 1; (2010) 3 SCC 764. In that case; before the hon''ble Supreme Court, an argument was advanced that section

11B of the SEBI Act is substantive in nature and, therefore; it is only prospective in operation. Factually, in the case before the hon''ble Supreme

Court, the impugned transactions were during the months of November 1993 and October, 1993, whereas section 11B was introduced to the

statute with effect from January 25, 1995. For the misconduct committed in the year 1993, when the Board applied section 11B of the SEBI Act

and issued direction, it was found fault with by the company by contending that section 11B of the SEBI Act, being prospective, cannot be

applied. While negating the said contention, the hon''ble Supreme Court in the said case, in paragraphs 23, 24 and 25, has held as follows (page

9) :

It was urged on behalf of the respondent that on the date when the violations were alleged against him, the Board did not have the power either

u/s 11B or u/s 11(4)(b) as those provisions came subsequently, by way of amendment. This contention weighed with the appellate forum and the

respondent was given the protection against ex post facto law even though it was not clearly mentioned in the order of the Appellate Forum.

The right of a person of not being convicted of any offence except for violation of a law in force at the time of the commission of the act charged as

an offence and not to be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the

commission of the offence, is a fundamental right guaranteed under our Constitution only in a case where a person is charged of having committed

an "offence" and is subjected to a "penalty".

In the instant case, the respondent has not been held guilty of committing any offence nor has he been subjected to any penalty. He has merely

been restrained by an order for a period of five years from associating with any corporate body in accessing the securities market and also has

been prohibited from buying, selling or dealing in securities for a period of five years.

17. Finally, in paragraph 40 of the aforesaid judgment, the hon'ble Supreme Court has held as follows (page 12 of 155 Comp Cas) :

Provisions of section 11B being procedural in nature can be applied, retrospectively.

The Appellate Tribunal made a manifest error by not appreciating that section 11B is procedural in nature. It is a time honoured principle if the law

affects the matters of procedure, then prima facie it applies to all actions, pending as well as future (see K. Kapen Chako Vs. The Provident

Investment Company (P) Ltd., , wherein Chief Justice A. N. Ray laid down those principles.

18. In view of the above law laid down by the hon'ble Supreme Court holding that section 11B of the SEBI Act under which a prohibitory order

is passed itself is only procedural and has got retrospective operation, there can be no difficulty at all in holding that section 11C(1), which deals

only with investigation, is procedural and, therefore, it is retrospective in operation.

19. As I have already pointed out, even prior to the introduction of section 11C(1) of the SEBI Act, the Board was not helpless to do any investigation. The Board was fully empowered as per Regulations, 1995 to nominate an investigating officer and to get a report from him on a thorough investigation. Such investigation, which was earlier governed solely by the Regulations, 1995, subsequently came to be governed by section 11C of the SEBI Act as well as the Regulations, 1995. Now, the Regulations, 1995 has been repealed by Regulations, 2003. Thus, as of now, any investigation by an authority is governed by section 11C of the SEBI Act as well as Regulations, 2003. Thus, the contention of the petitioners that the orders impugned in these writ petitions, which have been issued u/s 11C(1) of the Act, are wholly without jurisdiction deserves only to be rejected.

20. Learned senior counsel Mr. R. Yashod Vardhan would nextly contend that assuming that the SEBI has power to order for investigation, such investigation can be directed only in respect of the transactions in securities, which are being dealt with in a manner detrimental to the investors or the securities market. Referring to section HC(1)(a), learned counsel would submit that a plain understanding of the said provision would make things beyond any pale of doubt that an investigation can be ordered only in respect of a transaction, which is being dealt with as on the date of issuance of the order u/s 11C(1) of the SEBI Act. In the cases on hand, admittedly, the transactions were not in progress as on the date of the impugned orders. According to learned senior counsel, section 11C(1) does not cover the past transactions. If we refer to section HC(1)(a) alone, at the first blush, it gives an impression that the said provision, deals only with transactions, which are presently being dealt with and the said provision does not cover the past transactions. For better understanding, let us again read section 11C(1)(a) of the SEBI Act:

11C. Investigation.--(1) Where the Board has reasonable ground to believe that--
(a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market.; or"" (emphasis1 supplied)

21. At once, the immediate next provision contained in section HC(1)(b) needs to be looked into carefully which reads as follows :

11C. Investigation.--(1) Where the Board has reasonable ground to believe

that--...

(b) any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations

made or directions issued by the Board thereunder, it may, at any time by order in writing, direct any person (hereafter in this section referred to as

the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and

to report thereon to the Board.

22. Here, the language used in section 11C(1)(b) is not similar to the language used in section 11C(1)(a). In section 11C(1)(a), the language used

is ""transaction in securities are being dealt"", whereas the language in section 11C(1)(b) is ""has violated any of the provisions of the Act or Rules or

1. Here printed in italics. Regulations, etc.,"". This clearly shows that section 11C(1)(b) covers the past transactions. In other words, section

11C(1)(a) deals with the transactions, which are in progress, whereas, section 11C(1)(b) deals with the past transactions as well.

23. But, Mr. R. Yashod Vardhan would submit that the word ""or"" employed between section 11C(1)(a) and section 11C(1)(b) should not be

understood as ""a disjunction"" and it should be read as ""and"". In other words, according to learned senior counsel, both sections 11C(1)(a) and

11C(1)(b) deal with one and the same subject and so, the same should not be read disjunctively. Thus, learned senior counsel would make an

attempt to show that if both the provisions are read together, it could be understood that the said provisions cover only the transactions, which are

still in progress and not the past transactions. This argument of learned counsel is also liable to be rejected for the simple reason that sub-section

(1)(a) of section 11C and sub-section (1)(b) of section 11C deal with two different kinds of situations. In so far as section. 11C(1)(a) is

concerned, it deals with transactions in securities, which have got no sanction of law. If the Board has reasonable ground to believe that there are

some transactions, which are detrimental to the investors and security market, though the persons involved in the business/transactions are not

known, the Board can order u/s 11C(1)(a) investigation by the investigating authority. Section 11C(1)(b) is relatable to investigation against any

intermediary or any person. Here, the Board may not have grounds to believe

that there are some transactions in securities, which are detrimental to the investors and security market and instead the Board may have ground to believe that a person or intermediary has violated any of the provisions of the Act, Rules, Regulations or directions issued by the Board. Thus, section 11C(1)(a) and 11C(1)(b) are to be read disjunctively as they deal with different aspects. That is the reason why, Parliament has aptly used the word "or" in between these two provisions. Therefore, the word "or" as employed in between these two provisions should not be read as "and" as it is contended by learned senior counsel for the petitioners. In other words, these two provisions should be read disjunctively and not conjunctively.

24. Next, learned senior counsel Mr. Vijay Narayanan would submit that the impugned orders do not reflect the grounds which made the Board

to believe that the investigation is required in respect of the affairs of the petitioners as per section 11C(1) of the Act. Learned senior counsel

would take me through the impugned orders to point out that such grounds, which are foundations for the belief of the Board, have not been

mentioned. Learned senior counsel would submit that formation of belief founded on such grounds alone gives jurisdiction for issuance of orders

u/s 11C(1) for investigation. Since, in the instant cases, the impugned orders do not reflect the grounds, according to learned senior counsel, the

impugned orders are wholly without jurisdiction. In support of his contention, learned senior counsel relies on the judgment of the hon'ble Supreme

Court in Commissioner of Income Tax, Delhi Vs. Kelvinator of India Limited, Commissioner of Income Tax, Delhi Vs. Kelvinator of India

Limited, . That is a case under the income tax Act, 1961. u/s 147 of the income tax Act, if an Assessing Officer has reason to believe that any

income chargeable to tax has escaped assessment for any assessment year, he may subject to the provisions of sections 148 and 153 of the

income tax Act assess or reassess such income and also any other income chargeable to tax, which has escaped assessment, etc. While

considering the expression "reasons to believe" the hon'ble Supreme Court has held, that the reasons recorded by the Assessing Authority alone

gives him jurisdiction to assess or reassess. If reasons have not been stated, then the notice, issued by the authority is liable to be quashed as

without jurisdiction. Regarding this legal position, there can be no controversy. Of course, in the case, on hand, in the impugned orders, there is no mention about the grounds upon which the Board believed that there had been violation of the provisions, of the SEBI Act, Rules, Regulations or directions by the petitioners warranting investigation. But, it is the settled law, that if the records show consideration of such grounds by the authority, it would satisfy the legal requirements. For that purpose, the respondent has produced the copies of records to show the entries prior to the impugned orders. I find from the records that there are lot of materials collected, discussions held indicating application of mind and based on the same only, the impugned orders have been passed. Therefore, this argument is also liable to-be rejected.

25. Next, learned senior counsel Mr. Vijay Narayanan would contend that the petitioners are not persons involved in buying, selling or dealing in shares of any company. Learned senior counsel would submit that the petitioners are individual investors and not intermediaries dealing in shares.

But, according to the respondent, the petitioners are not individual investors. In my considered opinion; this question is essentially on facts, which cannot be gone into in these writ petitions. It is for the petitioners to explain to the Board, in response to the impugned orders, to prove that they are only individual investors and, they have not violated any of the provisions of the Act, Rules, Regulations or Directions of the Board.

26. Learned senior counsel Mr. R. Yashod Vardhan would finally contend that the petitioners have stopped their business long before and,

therefore, there is no purpose in conducting the investigation. Learned senior counsel would submit that even if the transactions involved in the

instant cases constitute offences, prosecution cannot be launched as such offence is barred by limitation as per section 468 of the Code of Criminal

Procedure, 1973. Learned senior counsel would further submit that since the petitioners have stopped their business, there is no question of issuing

any further directions. Learned senior counsel would further add that at this length of time, penalty u/s 15A of the SEBI Act, cannot be imposed. In

my considered opinion, these questions are highly immaterial at this stage. The investigation is at its threshold and only on completing the

investigation the Board will be in a position to decide about the future course of action. Therefore, it cannot be said that the investigation as

ordered under the impugned proceedings is a wasteful exercise.

27. In view of all the above, I do not find any merit in the writ petitions and the same are liable to be dismissed. In the result, the writ petitions are

dismissed, however, with liberty to the petitioners to comply with the impugned notices within a period of six weeks from the date of receipt of a

copy of this order. Thereafter, the investigating authority will be at liberty to proceed with the investigation and based on the same, the SEBI will be

at liberty to pass further orders strictly in accordance with law. No costs. Consequently, connected MPs are closed.