(2013) 05 SC CK 0025

In the Supreme Court Of India

Case No : Civil Appeal No. 4242 of 2004

SEBI APPELLANT

Vs

Roopram Sharma RESPONDENT

Date of Decision : 03-05-2013

Acts Referred:

Securities and Exchange Board of India Act, 1992 — Section 11B

Citation : (2013) 120 SCL 156

Hon'ble Judges : V. Gopala gowda, J;C.K. Prasad, J

Bench : Division Bench

Advocate : Altaf Ahmed, Bhargava V. Desai and Shreyas Mehrotra, for the Appellant;

Final Decision : Allowed

Judgement

1. The Appellant, aggrieved by the Order dated 19.09.2002 passed by the Securities Appellate Tribunal, Mumbai, in Appeal No. 20 of 2002 setting aside the direction given by the Appellant prohibiting the Respondent from accessing capital market and dealing in securities market, has preferred this appeal. Facts lie in a narrow compass.

2. The Chairman of the Appellant, the Securities and Exchange Board of India, passed Order dated 19.02.2002 prohibiting Roopram Sharma, Respondent herein, from accessing the capital market and dealing in securities for a period of three years. He challenged the same by way of an appeal before the Securities Appellate Tribunal, Mumbai. The Tribunal on facts found that the company's public issue was designed to defraud the investing public and the issue was manipulated and the said Roopram Sharma was involved in that. Relevant portion of the finding of the Tribunal in this regard reads as follows:

The Respondent has established beyond doubt that the company's public issue was designed to defraud the investing public and the issue was manipulated and the Appellant was involved. However, it is noticed that in such proven misconduct on the part of the Appellant, the Respondent has opted to issue a direction u/s 11B 'prohibiting the Appellant from accessing capital market and directing him not to deal in securities market in any capacity for a period of three years.'

3. However, the Tribunal found the order to be bad on its conclusion that the same tantamounts to imposition of penalty u/s 11B of the Securities and Exchange Board of India Act, 1992. The Tribunal in this connection has observed as follows:

In my view the direction tantamounts to imposition of penalty which Section 11B does not provide for, as explained in Sterlite Industries (India) Ltd. v. SEBI [2001] 34 SCL 485 (SAT). In this view of the matter I am of the view that the direction has no legal backing and therefore cannot sustain.

4. Despite service of notice, nobody has chosen to appear on behalf of the Respondent.

5. Mr. Altaf Ahmed, learned Senior Counsel appearing on behalf of the Appellant, submits that the view taken by the Tribunal that the action tantamounts to imposition of penalty is in teeth of the judgment of this Court in the case of Securities and Exchange Board of India Vs. Ajay Agarwal, . He has drawn our attention to Paragraphs 23 to 31 of the said judgment.

6. We are of the opinion that the matter stands concluded by the aforesaid judgment and for the reason stated therein the order impugned cannot be allowed to stand. In the result, we allow this appeal, set aside the judgment and order of the Securities Appellate Tribunal but without any order as to costs.

