
(2002) 04 BOM CK 0106
In the Bombay High Court
Case No : Writ Petition No. 824 of 2002

Shankar Sharma

APPELLANT

Vs

Securities and Exchange Board of India

RESPONDENT

Date of Decision : 11-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995 — Regulation 10, 11, 11B, 13, 7
Securities and Exchange Board of India Act, 1992 — Section 15T, 15Z

Citation : (2002) 04 BOM CK 0106

Hon'ble Judges : S.J. Vazifdar, J; R.M. Lodha, J

Bench : Division Bench

Advocate : P. Chidambaram, Aspi Chinoy, C.U. Singh and S.K. Sen, for the Appellant; Soli Sorabjee, Kumar Desai and Maneksha Sethna, for the Respondent

Judgement

Lodha, J.—The petitioners, by means of this writ petition filed under Article 226 of the Constitution of India, have prayed for writ of prohibition prohibiting the respondents from proceeding with or taking any further steps in pursuance of or otherwise acting upon the order dated 31-5-2001 passed by Chairman, Securities and Exchange Board of India (Respondent No. 2), the show-cause notices dated 17-7-2001 and 6-10-2001 issued by the enquiry officer (Respondent No. 3) appointed by respondent No. 2, the enquiry report dated 9-1-2002 submitted by the respondent No. 3 and the show-cause notice dated 10-1-2002 issued by the respondent Nos. 1 and 2.

2. There are five petitioners in all. The petitioner Nos. 1 and 2 are directors and controlling shareholders of petitioner No. 3 viz. First Global Stock broking (P.) Ltd. ("FGSP Ltd,") and petitioner No. 4 viz. Vruddhi Confinvest India (P.) Ltd. ("Vruddhi Confinvest"). The petitioner No. 5 First Global Finance (P.) Ltd. is wholly owned subsidiary of FGSP Ltd. The respondent No. 1 is Securities and Exchange Board of India ("SEBI") which is a regulatory body incorporated under

the Securities and Exchange Board of India Act, 1992 ("the Act"). The respondent No. 2 was the Chairman of the SEBI at the relevant time and a member of the Board thereof. The respondent No. 3 is the enquiry officer who was appointed by the SEBI and its Chairman to enquire into the allegations against the petitioners relating to market fall on 2-3-2001 and market movements between mid February and mid March 2001 and alleged manipulative activities of the petitioners in respect thereof. On 28-2-2001 the budget was presented by the Finance Minister of the Union Government in the Parliament. There was steep fall in the market on 2-3-2001. On that day itself the SEBI initiated enquiries into the crash. On 18-4-2001 the Chairman, SEBI passed a ban order u/s 11 of the Act, whereby the petitioners were restrained from carrying on any further stock broking business. The petitioners challenged this order by filing writ petition lodging No. 1129 of 2001. The said writ petition was disposed of by the Division Bench of this Court on 4-5-2001 by observing that the order dated 18-4-2001 and the affidavits filed by the SEBI shall be treated as show-cause notice to the petitioners and the Chairman, the SEBI was directed to pass reasoned order after granting personal hearing to the petitioners. In the said order, this Court also recorded the statement made on behalf of the petitioners that they will not undertake any fresh business as stock brokers or merchant bankers or portfolio managers till further orders are passed by the SEBI. Pursuant thereto the Chairman, SEBI gave fresh hearing to the petitioners and by order dated 25-5-2001 affirmed the earlier order dated 18-4-2001 and debarred the petitioners from undertaking any fresh businesses as a stock broker, merchant banker or portfolio managers pending enquiry. It further directed that an order appointing enquiry officer to enquire into the violations by FGSP Ltd. under the Act, rules and regulations shall be passed within a week and the enquiry officer after considering the material available on the basis of investigations conducted so far and the material which may be further supplemented, shall expeditiously complete the proceedings after following the procedure laid down under the regulations. It was further observed in the order u/s 11B that after receipt of the enquiry officer's findings, it would be decided whether the entities viz. the petitioners should be permitted or debarred from carrying on activities. The said order dated 25-5-2001 has been challenged by the petitioners in appeal before Securities Appellate Tribunal (SAT). However, that being not very relevant for the present purpose, we do not deal with this aspect further except observing that order dated 25-5-2001 debarring the petitioners from undertaking any fresh business as stock broker, merchant bankers or portfolio managers holds the field as on date. Thereafter by the order dated 31-5-2001 the Chairman, SEBI appointed enquiry officer in exercise of the powers conferred on him by Sub-section (3) of Section 4 of the Act, read with Sub-regulation (1) of Regulation 28 of the SEBI (Stockbrokers and Sub-brokers) Regulations, 1992 (SS Regulations 1992) and Regulation 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets), Regulations, 1995 ("FUTP Regulations, 1995"), and Regulation 34 of SEBI (Portfolio Managers) Regulations, 1993 ("PM Regulations, 1993") to enquire into

the contraventions referred to in the order. Shri. Krishna Mohan (Respondent No. 3) was appointed as the enquiry officer under the order dated 31-5-2001. The enquiry officer, after his appointment under the order dated 31-5-2001, issued notice to the petitioners on 17-7-2001. The said show cause notice refers to provisions viz., Regulation 28(2) of SS Regulations, 1992. Regulation 13 of FUTP Regulations, 1995 and Regulation 34(2) of PM Regulations, 1993. It is alleged in the notice that the petitioners had indulged in large trading transactions in the scrips of (1) Global Telesystems, (2) HFCL, (3) DSQ Software, (4) Zee Telefilms, (5) Wipro, (6) Satyam Computers, (7) MTNL, (8) SBI, (9) Infosys Technologies and (10) Sterlite Opticals with a view to artificially depress the prices of the said securities between mid February and mid March 2001 in a concerted manner. It also recorded that the conduct of Mr. Shankar Sharma (Petitioner No. 1) and Mrs. Devina Mehra (Petitioner No. 2) directors of FGSP Ltd. is unbecoming of a stock broker and they did not exhibit high standards of integrity, fairness and professionalism of a registered intermediary. The imputation of charges in support of the said allegations were also specified in the notice. The enquiry officer, thus, called upon the petitioners to explain within a period of 30 days from the date of receipt of notice failing which it was observed that it would be presumed that they had no Explanation to offer and the matter would be proceeded further. The petitioners, upon receipt of the show-cause notice, vide their letter dated 6-8-2001 informed the enquiry officer that despite request and reminders they had not been provided with relevant material and in the absence of the relevant material, it would not be possible for them to effectually reply to the allegations contained in the show-cause notice. The petitioners thereafter vide their letters dated 13-8-2001, 17-8-2001, 28-8-2001, 30-8-2001, 6-9-2001, 11-9-2001, 17-9-2001 and 26-9-2001 are again said to have called upon the SEBI and the enquiry officer to furnish material relied upon by the respondent No. 1 as well as data required to cross check the correctness of SEBI's compiled data/tables. The petitioners thereafter through their advocates sent a letter to the SEBI and the enquiry officer on 1-8-2001 calling upon the enquiry officer to furnish requisite information. In the mean time, the petitioners had also filed reply to the show-cause notice without prejudice to their right to file detailed reply upon receipt of full information, Thereafter on 6-10-2001 the enquiry officer issued a further show-cause notice to the petitioners calling upon them to submit their Explanation within 30 days from the date of the receipt of the notice. The details of imputation of charges were stated in the said show-cause notice. The said show-cause notice recorded the acts of omissions and commissions by the petitioners involving short sales after those were prohibited, evasion of margins, non-furnishing of the information sought by the SEBI and non-compliance of the summons. It stated that the acts of the petitioners were in violation of Regulation 7 of SS Regulations, 1992 and punishable under Regulation 26 of the said Regulation. The said show cause was issued under Regulation 28(2) of SS Regulations, 1992. It would not be out of place to mention here that the petitioners filed writ petition lodging No. 2639 of 2001 on 9-10-2001 before this Court for production of certain information which was

subsequently withdrawn. On 10-10-2001 further hearing in the matter was held by the enquiry officer. The petitioners were represented by their counsel and they prayed for production of documents. It appears that proceedings continued before the enquiry officer and hearing took place before him on various dates. Ultimately on 9-1-2002 the enquiry officer submitted his report to the SEBI. The enquiry officer in his report recommended cancellation of certificate of registration granted to FGSP Ltd. as stockbroker and portfolio manager and also cancellation of certificate of registration granted to Vruddhi Confinvest as sub-broker. These recommendations were made by the enquiry officer under Regulation 13 of FUTP Regulations, 1995 for consideration by the SEBI in terms of Regulation 28(7) of SS Regulations, 1992 and Regulation 34(7) of PM Regulations, 1993, Upon receipt of the enquiry officer's report, by notice dated 10-1-2002 the SEBI called upon the FGSP Ltd. and Vruddhi Confinvest to show cause in terms of Regulation 29(1) of SS Regulations, 1992 and Regulation 35 of PM Regulations, 1993 and Regulation 11 read with Regulation 12 of FUTP Regulations, 1995, as to why the penalty as considered appropriate by the Board should not be imposed on them. The reply was required to be filed by FGSP Ltd. and Vruddhi Confinvest within two weeks of the receipt of the notice. In response thereto FGSP Ltd. and Vruddhi Confinvest filed their reply before the SEBI on 24-1-2002. It may be noted here that after the reply was filed by the FGSP Ltd. and Vruddhi Confinvest on 24-1-2002 in response to the show-cause notice dated 10-1-2002, the petitioners got their writ petition lodging No. 2958 of 2001 (numbered as writ petition No. 71 of 2002) circulated before this Court on 25-1-2002 and the same was withdrawn on that date with liberty to them petitioner to file fresh writ petition. On 28-1-2002 the petitioners filed fresh writ petition. On 29-1-2002 the said petitioners appeared before the SEBI Board through their counsel and matter was fully heard (Chairman, SEBI refused himself) on that day and the order was reserved. On 31-1-2002 the petitioners submitted their written submissions before the Board. On 31-1-2002 also the matter came before the Division Bench of this Court and as the respondents sought time to file reply, it was adjourned to 12-2-2002. On that day, the learned Advocate General who appeared for the SEBI made statement that the SEBI Board shall not pass final order till 14-2-2002 which was accepted. The Court also directed that the order dated 25-5-2001 shall continue. Thereafter the matter was adjourned from time to time and the statement made by the learned advocate General continued.

3. We heard Mr. P. Chidambaram, the learned senior counsel appearing for the petitioners and Mr. Soli Sorabjee, the learned Attorney General of India at quite some length.

4. At the outset Mr. P. Chidambaram, the learned senior counsel appearing for the petitioners submitted that Shankar Sharma, Devina Mehra and First Global Finance (P.) Ltd. (Petitioner Nos. 1, 2 and 5 respectively) may be permitted to withdraw the writ petition as no action for cancellation of their registration has been proposed by the enquiry officer. The learned Attorney General responded by

saying that withdrawal of the writ petition by the petitioner Nos. 1, 2 and 5 shall be at their risk.

5. We, accordingly, dismiss the writ petition as withdrawn in so far as the petitioner Nos. 1, 2 and 5 are concerned.

6. Mr. P. Chidambaram, the learned senior counsel then submitted that proceedings against the petitioner Nos. 3 and 4 by issuance of order dated 31-5-2001, notices dated 17-7-2001 and 6-10-2001 issued by the respondent No. 3, the enquiry report dated 9-1-2002 and the show-cause notice dated 10-1-2002 are in breach of law, regulations and ultra vires, illegal and without jurisdiction. The learned senior counsel submitted that the order appointing enquiry officer is dated 31-5-2001 and it was made under Regulation 28(1) of SS Regulations, 1992. The reference to Regulation 13 of the FUTP Regulations therein is meaningless because : (i) Regulation 13 does not relate to appointment of an Enquiry Officer; and (ii) Regulation 13 can be invoked only after following the procedure contained in Regulations 7 to 11 thereof. He submitted that in the show-cause notice dated 17-7-2001, the Enquiry Officer alleged that the acts of commission and omission violate the 1992 and 1995 Regulations - no allegations were made of any violation under Regulation 26(1) or 26(2) of SS Regulations, 1992. The learned senior counsel urged that in the show-cause notice dated 6-10-2001, the enquiry officer alleged that the acts of commission and omission violate Regulation 7 of SS Regulations, 1992 and are punishable under Regulation 26 thereof. In the enquiry report dated 9-1-2002, the enquiry officer recommended cancellation of certificate of registration as stockbroker under Regulation 13 of FUTP Regulations, 1995 and Regulation 28(7) of SS Regulations, 1992. In show-cause notice dated 10-1-2002 no reference is made to Regulation 13 of FUTP Regulations but yet the learned Attorney General submitted that notice dated 10-1-2002 is a notice under Regulation 13 of FUTP Regulations which is without jurisdiction because: (a) in so far as it relates to SS Regulations, 1992, it does not propose specific penalty; (b) in so far as it relates to Regulation 13 of FUTP Regulations, 1995, the procedure contained in Regulations 7 to 11 thereof has not been followed; (c) reference to Regulations 11 and 12 of FUTP Regulations is meaningless; and (d) SEBI can only take action under a valid enquiry report but the so called report of the enquiry officer is non est, null and void because there is no legal evidence in support of the findings recorded by enquiry officer. According to the learned senior counsel, no witness was examined, no document was proved, no underlying material was furnished, and no-one (including the investigating officer) was produced for cross-examination. Mr. Chidambaram, the learned senior counsel submitted that such enquiry report is no report in the eye of law and, therefore, cannot furnish basis for taking action by the SEBI. The learned senior counsel also submitted that the issue raised in the writ petition is a pure jurisdictional issue of law to be decided on undisputed facts and it is this Court alone which can and must decide the jurisdictional issue. In support of his contentions Mr. Chidambaram, the learned senior counsel relied upon the case of State of Tamil Nadu v. State of Karnataka

1991 (Sup.) 1 SCC 240 and the Division Bench judgment of this Court in Shirish Finance (P.) Ltd v. Shreenivasulu Reddy [2002] 1 BCR 419 . The learned senior counsel in support of his contention that pre-requisite conditions of Regulations 7 to 11 for exercise of jurisdiction under Regulation 13 having not been complied with, the notice under Regulation 13 suffers from patent lack of jurisdiction relied upon the judgment of the Apex Court in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, . Chief of Army Staff and Others Vs. Major Dharam Pal Kukrety, , Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, and the Division Bench judgment of this Court in S.L. Kirloskar v. Union of India [1993] 1 BCR 555.

7. The learned Attorney General, per contra, submitted that the contentions regarding non-compliance of Regulations 7, 10 and 11 of FUTP Regulations, 1995, the infirmity in the appointment of the Enquiry officer and the show-cause notices dated 17-7-2001 and 6-10-2001 issued by enquiry officer were raised by the petitioners in the hearing before the enquiry officer on 10-10-2001 and 22-11-2001 onwards. The petitioners also filed writ petition lodging No. 2958 of 2001 (numbered as writ petition No. 71 of 2002) wherein the petitioners challenged the show-cause notices dated 17-7-2001 and 6-10-2001 as well as the appointment of the enquiry officer. The said writ petition was only served upon the SEBI on 23-1-2002 and circulated for admission and interim reliefs only on 25-1-2002 and it was withdrawn on that day with liberty to the petitioners to file fresh writ petition. The learned Attorney General submitted that the hearing of the show-cause notice dated 6-10-2001 commenced before the enquiry officer on 6-12-2001 and it was adjourned to 7-12-2001 and thereafter hearing went on from 10-12-2001 till 26-12-2001 and on 27-12-2001 the petitioners filed their written submissions before the Enquiry Officer. In response to the show-cause notice dated 10-1-2002 issued by the SEBI the petitioners filed their reply on 24-1-2002 wherein they have set up all grounds raised before us and then on 25-1-2002 earlier writ petition lodging No, 2958 of 2001 (numbered as writ petition No. 71 of 2002) was withdrawn and the present writ petition was filed thereafter on 28-1-2002. The petitioners, through their counsel appeared before the Board on 29-1-2002 and on that day, hearing was concluded. On 31-1-2002 written submissions were filed by the petitioners and the order was reserved. In the backdrop of these facts the learned Attorney General urged that the petitioners have fully availed of the opportunity given by the SEBI Board and filed their replies and participated in the proceedings before the enquiry officer and the SEBI Board and the hearing before the SEBI Board is concluded, and orders are reserved, but the said orders could not be passed in view of order of this Court dated 31-1-2002 which has been continued till date and, therefore, the circumstances do not justify invocation of extraordinary jurisdiction under article 226 of the Constitution of India. The learned Attorney General submitted that there is no warrant or justification to assume that the order which may be

passed by the SEBI Board will be adverse to the petitioners. He further submitted that if the petitioners feel aggrieved by the order that may be passed by the Board, there is statutory remedy of appeal to the Tribunal u/s 15T of the Act, available to them. Moreover, further appeal on law and facts to the High Court of Judicature is provided by Section 15Z of the Act and, therefore, no case for interference in writ jurisdiction is made out. The learned Attorney General strenuously contended that the present writ petition is a circuitous method to bypass and circumvent the provisions of Sections 15T and 15Z. As regards the contention raised by the learned senior counsel for the petitioners that prerequisite procedure for issuance of notice under Regulation 13 of FUTP Regulations, 1995 has not been complied with as contemplated under Regulations 7 to 11 of the Regulations, 1995, the learned Attorney General submitted that the scope and meaning of Regulations 10, 11 and 13 of FUTP Regulations, 1995 are capable of two interpretations; and one of the interpretation can be that there is no requirement for any prior hearing to be given before the appointment of enquiry officer when dealing with the question of cancellation or suspension of registration of the intermediary under Regulation 13 of FUTP Regulations, 1995. He also clarified that the SEBI has not invoked Regulation 12 at this stage and, therefore, the question of hearing under Regulation 11 does not arise. The learned Attorney General, thus, submitted that all these questions can be very well considered by the Board and if necessary, by SAT u/s 15T and thereafter by this Court u/s 15Z. The learned Attorney General lastly submitted that the notice dated 10-1-2002 cannot be said to suffer ex facie from patent lack of jurisdiction and, therefore, no interference is called for.

8. We have reflected over the rival contentions. It does appear from the available material that the SEBI in view of the market crash on 2-3-2001 initiated enquiries into the crash and obtained information through the preliminary enquiries. In the light of the information collected, on 18-4-2001 the Chairman, SEBI passed an order u/s 11B debarring the petitioners from undertaking business activities. The said order dated 18-4-2001 came to be challenged before this Court and by order dated 4-5-2001 this Court directed Chairman, SEBI to provide post decisional hearing to the petitioners. Ultimately by order dated 25-5-2001 the Chairman, SEBI after hearing the petitioners confirmed the earlier order passed by him on 18-4-2001 and debarred the petitioners from undertaking any fresh business as stock broker, merchant banker or portfolio manager, pending the enquiry. The conclusions recorded in the order dated 25-5-2001 reads thus:--

"In view of the above, it is held that Mr. Shankar Sharma; Mrs. Devina Mehra, First Global Stock Broking Pvt. Ltd., Vruddhi Conferment India Pvt. Ltd. and First Global Finance Pvt. Ltd. be debarred from undertaking any fresh business as Stock Broker, Merchant Banker or Portfolio Manager pending enquiry. It is further directed that an order appointing an Enquiry Officer to enquire into the violations by First Global Group of the provisions of the SEBI Act, Rules and Regulations be passed within a week. The Enquiry Officer after considering the material available

on the basis of investigations conducted so far and the material, which may be further supplemented, will expeditiously complete the proceedings, after following the procedure as laid down in the regulations. On receipt of the enquiry officer's findings a view will be taken as to whether the entities above named should be permitted or debarred from carrying on activities as stated above."

9. Thereafter by order dated 31-5-2001 the enquiry officer was appointed by the Chairman, SEBI in exercise of the powers conferred on him by Sub-section (3) of Section 4 read with Regulation 1 of Regulation 28 of SS Regulations, 1992 Regulation 13 of FUTP Regulations, 1995 and Regulations 34 of PM Regulations. The said order dated 31-5-2001 reads thus :

"In the wake of excessive volatility in the index movements in stock exchanges during mid February to mid March 2001 and apprehension of possible attempts by certain entities to distort the true price discovery and manipulate the securities markets, investigations were undertaken by SEBI. Preliminary investigations in the role of various entities including entities controlled/connected with Mr. Shankar Sharma and Mrs. Devina Mehra, both directors of First Global Stock Broking Pvt. Ltd., a SEBI registered stock broker were carried out to find out, inter alia, whether there are any violations of provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the securities market) Regulations, 1995, SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and SEBI (Portfolio Managers) Regulations, 1992.

Preliminary investigations reveal that First Global Stock Broking Pvt. Ltd. and Vruddhi Confinvest India Pvt. Ltd. have indulged in large trading transactions in the scrips of Global Telesystems, HFCL, DSQ Software, Zee Telefilms, Wipro, Satyam Computers, MTNL, SBI, Infosys Technologies, Sterlite Optical. These transactions prima facie appear to have been carried out inter alia to artificially depress the prices of the above named securities and First Global entities have also indulged in unfair practices. The investigation is under progress. The Board is satisfied, after examining the preliminary findings, that it is in the interest of the securities market and in the public interest of enquire into the affairs of aforesaid entities related to First Global for violation of the provisions inter alia of the following:

1. Securities and Exchange Board of India Act, 1992.
2. SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.
3. Provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 1995.
4. SEBI (Insider Trading) Regulations, 1992.
5. SEBI (Portfolio Managers) Regulations, 1992.
6. SEBI (Merchant Bankers) Regulations, 1992.
7. Various circulars issued by SEBI from time to time particularly with reference

to client broker relationship vide Cir.SMD/SED/CIR/93/ 23321 dated 18-11-1993.

8. Rules, regulations and Bye-laws of the Stock Exchange, Mumbai, and

9. Rules, regulations and bye-laws of the National Stock Exchange, Mumbai.

Therefore, in exercise of the powers conferred on me by Sub-section (3) of Section 4 of the Securities and Exchange Board of India Act, 1992 read with Regulation (1) of Regulation (28) of the SEBI (Stock Brokers and Sub-Brokers) Regulations and Regulation 13 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 1995. Regulation 34 of the SEBI (Portfolio Managers) Regulations, thereby appoint Shri Krishna Mohan as Enquiry Officer to enquire into the contraventions, if any, as aforesaid.

The Enquiry Officer after considering the material available on the basis of preliminary investigations conducted so far, reply/submissions of First Global entities and the material which may be further supplemented, will expeditiously complete the proceedings and submit its report to the Board after following the procedure as laid down in the Regulations."

10. The enquiry officer upon his appointment issued notice to the petitioners on 17-7-2001. The subject referred to in the notice reads thus :

"Notice under Regulation 28(2) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992, Regulation 13 of SEBI (Prohibition of Fraudulent & Unfair Trade Practices Relating to the Securities Market) Regulations, 1994 and Regulation 34(2) of SEBI (Portfolio Managers) Regulations, 1993."

11. The details of the transactions in various scrips by the petitioners were referred which, according to the Enquiry Officer, led to artificial depressing of the prices in the said securities between mid February and mid March 2001. In the said notice after setting up the details of transactions it was noted thus:--

"The aforesaid acts of omissions and commissions in the securities transactions involving circular trading, heavy short selling with a view to depress the market, structured arrangements or carrying on of portfolio trades with assured returns disguised as arbitrated trading and the attempts to depress the market by manipulative transactions are prejudicial to the safety and integrity of the securities market and are in violation of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. SEBI (Prohibition of Fraudulent & Unfair Trade Practices Relating to the Securities Market) Regulations, 1994 and SEBI (Portfolio Managers) Regulations, 1993."

12. Accordingly the petitioners were called upon to submit their Explanation in response to the aforesaid show-cause notices. It is not necessary for us to go into the communications sent by the petitioners to Enquiry Officer for furnishing them complete material and various documents as, in our view, the petitioners fully participated in the proceedings before the enquiry officer and raised all objections available with them. Thereafter the enquiry officer submitted his

report on 9-1-2002. This is definitely not proper stage to examine the legality and correctness of the proceedings which led to the passing of the order dated 31-5-2001 by appointing the enquiry officer, issuance of notices dated 17-7-2001 and 6-10-2001 and the enquiry report dated 9-1-2002 as the petitioners shall have full opportunity to make their grievance and raise their contentions before SEBI Board in response to the show-cause notice dated 10-1-2002 and which in fact the petitioners have availed of and raised all contentions which have been raised before us regarding legality and validity of the order dated 31-5-2001, notices dated 17-7-2001 and 6-10-2001 and the enquiry report dated 9-1-2002. Needless to say that the SEBI Board shall consider the objections raised by the petitioners concerning the order dated 31-5-2001, the notices dated 17-7-2001 and 6-10-2001 and the enquiry report dated 9-1-2002 objectively in accordance with law and uninfluenced by the previous writ petitions filed by the petitioners as well as the present writ petition and pass order. If the SEBI Board passes an order in favour of 3rd and 4th petitioners, then grievance will not survive at all. On the other hand, if the SEBI Board does not accept the contentions raised by the petitioners in respect of the order dated 31-5-2001, notices dated 17-7-2001 and 6-10-2001 and the enquiry report dated 9-1-2002, the petitioners shall have efficient remedy of statutory appeal u/s 15T before SAT. Not only that against the order of SAT further appeal lies to this Court u/s 15Z wherein this Court can go into all facts and law involved in the matter. In view of the adequate and efficacious remedy available to the 3rd and 4th petitioners as noted above, in our view, this is not the proper stage to go into the legality and correctness of the order dated 31-5-2001, notices dated 17-7-2001 and 6-10-2001 issued by the respondent No. 3 and the enquiry report dated 9-1-2002.

13. Coming now to the principal contention raised by Mr. Chidambaram, the learned senior counsel for the petitioners that issuance of notice dated 10-1-2002 SEBI which as per the submission of the learned Attorney General has been issued under Regulation 13 of FUTP Regulations, 1995, that the pre-requisite procedure contemplated under Regulations 7 to 11 has not been followed and, therefore, the notice is without jurisdiction *ex facie*, we observe that since there is no dispute that the SEBI has power and competence to issue notice under Regulation 13 of FUTP Regulations, 1995 for cancellation and suspension of registration, it cannot be said that issuance of notice dated 10-1-2002 is totally and wholly without jurisdiction, The objection raised by Mr. Chidambaram about non-compliance of procedure contemplated in Regulations 7 to 11 of FUTP Regulations, 1995 before issuance of notice dated 10-1-2002 purported to be issued under Regulation 13 of FUTP Regulations, 1995 is at best a matter of irregularity and erroneous exercise which in our view can be considered by the SEBI Board. In the facts and circumstances of the present case, we do not deem it expedient to go into the said contention on merits as in our considered view the SEBI Board is capable of considering the said contention on merits. If the order of the SEBI Board is adverse to 3rd and 4th petitioners, they may challenge that order before SAT u/s 15T and, if necessary, further

before this Court u/s 15Z. In an appeal u/s 15Z this Court can go into questions of facts as well as law. We have already noted that in response to the show-cause notice dated 10-1-2002, petitioner Nos. 3 and 4 have already filed their reply before the SEBI Board on 24-1-2002 that is prior to the filing of the present writ petition before this Court and in the said reply all contentions raised before us have been raised. The SEBI Board obviously has to consider all these contentions objectively in accordance with law. Though in the reply affidavit filed on behalf of the respondent Nos. 1 to 3 the statement has been made that the procedure contemplated under Regulations 7 to 11 has been substantially complied with, during the course of arguments Mr. Soli Sorabjee, the learned Attorney General made categorical statement that the said statement made in paragraph 43 of the reply affidavit should not be construed that the respondent No. 1 the SEBI Board has made up its mind about the procedural requirement before issuance of notice under Regulation 13 and while deciding the said question, the respondent No. 1 shall not be influenced at all by the statement made in paragraph 43 of the reply affidavit. We have no reason to disbelieve the statement made by the learned Attorney General. It is true, as has been held by the Apex Court in State of Tamil Nadu's case (supra) that this Court has jurisdiction to decide the parameters, scope, authority and jurisdiction of the Tribunal constituted under an Act made by the Parliament, however, for the reasons which we have already indicated above, this is not a fit case at this stage to determine the question as to whether for issuance of notice under Regulation 13 of FUTP Regulations, 1995 the procedure contemplated under Regulations 10 and 11 is pre-requisite, This question, necessarily has to be considered by the SEBI Board in the light of the submissions made by the petitioner Nos. 3 and 4 and if the said petitioners are ultimately aggrieved by the order of the SEBI Board, they may agitate the question in appeal u/s 15T before the SAT and, if necessary, u/s 15Z before this Court. The interpretation of Regulation 13 of FUTP Regulations, 1995 put forth by Mr. P. Chidambaram, the learned senior counsel for the petitioners, cannot be said to be the only interpretation and, therefore, it cannot be said at this stage that the issuance of notice dated 10-1-2002 is totally and wholly without jurisdiction and suffers from patent lack of jurisdiction. The argument raised by the petitioner Nos. 3 and 4 about non-compliance of the procedure contemplated under Regulations 7, 10 and 11 of FUTP Regulations, 1995 and its effect on the issuance of notice dated 10-1-2002 can, therefore, be conveniently examined, considered and decided by the SEBI Board whose order will be subject to scrutiny further by the SAT if necessary and by this Court u/s 15Z, if occasion arises. It is in this view of the matter that we do not deem it necessary to consider various provisions of SS Regulations, 1992 and FUTP Regulations, 1995 relied upon by the learned senior counsel for the petitioners as any observation by us may directly or indirectly influence the decision that may be taken by the SEBI Board on the objections raised by the petitioners.

14. Our conclusion not to invoke extraordinary jurisdiction under article 226 in the present case in challenge to the notice dated 10-1-2002 may not be

understood as laying down proposition that in no case this Court shall exercise jurisdiction under Article 226 in challenging the notice under Regulation 13 of FUTP Regulations at the stage of issuance of notice. Each case wherein writ of prohibition or writ in that nature is sought has to be considered on its own facts. The impugned notice cannot be said to be wholly and totally without jurisdiction *ex facie*. In this view of the matter we do not intend to burden this judgment by making extensive reference to the judgments cited by Mr. Chidambaram as legal position about invocation of writ jurisdiction for issuance of writ of prohibition is well known and settled.

15. Before we conclude, we may refer to the application made by the petitioners seeking amendments in the writ petition as per draft amendments. By means of draft amendments, the petitioners have proposed to plead that the hearing which took place before the SEBI Board on 29-1-2002 was farce. According to the petitioner Nos. 3 and 4, though the Chairman, SEBI refused himself, the other members of the Board were pre-determined to decide the matter and the hearing was concluded on that day itself though the said members were tired of hearing, completely ceased concentrating and lacked attention. The proposed amendments have been refuted by the respondents. Upon deeper reflection, without going into merits and demerits of the allegations made in the draft amendments, in view of changed circumstances inasmuch as the SEBI has now new Chairman, we are of the view that ends of justice shall be subserved if *de novo* hearing pursuant to the notice dated 10-1-2002 takes place before the SEBI Board. As a matter of fact, the learned attorney General was not averse if fresh hearing was given to the petitioners by the SEBI Board. At the time of dictation of the order Mr. Sen, the learned counsel appearing for the petitioners, also submitted that without prejudice to the petitioners right against the present order, the petitioner Nos. 3 and 4 shall be desirous of being afforded fresh hearing by the SEBI Board. Rather Mr. Sen submitted that if the petitioner Nos. 3 and 4 are afforded fresh hearing by the SEBI Board, they may also be given liberty to file comprehensive reply before the Board in addition to the reply already filed on 24-1-2002.

16. In the light of the discussion aforesaid, we are satisfied that no case for invocation of writ jurisdiction under article 226 is made out.

17. We, accordingly, dismiss the writ petition in limine, however, with following directions:--

(i) In response to the notice dated 10-1-2002, the petitioner Nos. 3 and 4 shall be at liberty to file comprehensive additional reply within two weeks from today.

(ii) Upon receipt of the additional reply from petitioner Nos. 3 and 4, the respondent No. 1 SEBI Board shall fix date/s of hearing expeditiously and preferably within two weeks from the date of receipt of additional reply.

(iii) All contentions raised by the petitioner Nos. 3 and 4 in the writ petition and which have been raised in the reply already submitted or in the additional reply

that may be submitted by them, are kept open to be considered on their own merits by respondent No. 1 - the SEBI Board uninfluenced by any statement made in the reply affidavit or withdrawal of earlier writ petitions or dismissal of this writ petition in limine.

(iv) In case any adverse order is passed by respondent No. 1 the SEBI Board against the petitioner Nos. 3 and 4, such order shall remain stayed for a period of four weeks from the receipt of the copy of the order by them.

(v) The order passed u/s 11B, on 25-5-2001 shall remain operative as regards petitioner Nos. 3 and 4, till the order is passed by respondent No. 1 - SEBI Board and in case adverse to the said petitioners for four weeks thereafter.