
(2004) 06 BOM CK 0039
In the Bombay High Court
Case No : Writ Petition No. 1414 of 2004

Veneet Agarwal

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 29-06-2004

Acts Referred:

Securities and Exchange Board of India Act, 1992 — Section 31

Citation : (2005) 1 ALLMR 439 : (2004) 5 BomCR 542 : (2005) 126 CompCas 132 : (2004) 55 SCL 286

Hon'ble Judges : S.R. Sathe, J;F.I. Rebello, J

Bench : Division Bench

Advocate : M.L. Sharma, for the Appellant; D.A. Dubey, Y.R. Mishra, Kumar Desai and V.K. Ramabhadran, for the Respondent

Judgement

F.I. Rebello, J.

The principal relief sought for by the petitioner reads as under :--

"That This Hon''ble Court be pleased to quash and set aside the impugned SEBI (Stock-Brokers and Sub-Brokers) Rules, 1992 and Regulations, 1992 declaring it as unconstitutional."

The other reliefs sought for by the petitioner are consequential to the aforesaid principal relief.

2. The challenge to the Regulation is principally based on the contention that the Regulation was not laid before each House of Parliament as mandated by Section 31 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the Securities and Exchange Act). It will therefore be essential to reproduce Section 31 of the said Act as the entire argument is placed on the requirement of the said section. Section 31 reads as under :--

"Rules and regulations to be laid before Parliament.--Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made,

before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation."

3. The case of the petitioner is that according to the parliamentary proceedings, the copy of the Notification containing Rules and Regulations was tabled in the Lok Sabha on 27th November, 1992. It was thereafter removed from the Lok Sabha and placed in the Library on the very same day. In so far as the Rajya Sabha is concerned, it was laid on the table of the House on 16th December, 1992 and thereafter it was removed from Rajya Sabha and was placed in the Library also on the very same day. It is then set out that both the Houses of Parliament viz. Lok Sabha and Rajya Sabha were adjourned sine die and prorogued as on 23rd December, 1992. It is submitted that all the proceedings pending in the Houses would also lapse alongwith the closure of the session of the House. Reliance is placed on the parliamentary proceedings dated 16-12-1992. The new session of Both the Houses of Parliament started on 22-2-1993. The Rules and Regulations were never re-laid either in the Lok Sabha or the Rajya Sabha. It is therefore submitted that the respondents did not follow the mandatory requirements of Section 31 of the Securities and Exchange Act, 1992 and consequently, the regulations are illegal and ultra vires the SEBI Act, 1992 as also the provisions of the Constitution of India, and consequently all the actions, orders and directions issued by the respondents against the petitioner under the said Rules and Regulations were illegal and liable to be quashed. It is next submitted that Article 19(1)(g) of the Constitution of India guarantees the freedom of business and it can only be restricted by a valid and reasonable restriction, it is therefore submitted that all actions taken by the respondents against the petitioner have to be quashed and set aside being illegal, null and void.

4. The respondents have not filed reply, but have relied on the judgment of the Division Bench of the Uttaranchal High Court passed in the case of Manwar Singh Rawat v. Union of India [Civil Misc. Writ Petition No. 606 (M/B) of 2002, dated 17-10-2003]. Reliance is also placed on the reply filed on behalf of the Union of India before the said High Court. In the said reply, which was considered by the learned High Court, reference is made to the procedure and conduct of business of Lok Sabha and Rajya Sabha. It is set out that when the statute provides that the orders framed thereunder should be laid on the table of the House for a certain period which may be comprised in one or two or more sessions, the orders after having been laid initially in a session are deemed to lie in the succeeding sessions till the specified period is completed. Reference was made to

the letter dated 9-10-1992 issued by the Rajya Sabha Secretariat. In the said letter under signature of K.K. Thakur, Deputy Secretary to the Government of India, it is set out that the Rules, Regulations and Bye-laws which are required to be laid in the Houses were sent by the Ministries/ Department concerned directly to the Parliament Secretariats which take necessary action to list them for laying/relaying, wherever necessary, in the Agenda Paper of the respective Houses. It was therefore pointed out that the said information could be received from the Secretariats of the two Houses. It was however pointed out that no motion for modification/rejection of the impugned regulations was moved in either of the Houses after the regulations were placed in the Lok Sabha and the Rajya Sabha on 27th November, 1992 and 16th December, 1992 respectively. The fifth session of Parliament started on 24-11-1992 and was closed sine die on 23-12-1992. There were only 18 actual sitting days. The Parliamentary Secretariat had issued a notice known as list of business dated 26-11-1992 and circulated that list of business amongst the then members of Parliament in 1992 declaring that contents of the impugned regulations were published in the Notification No. GSR 780(E) in Extraordinary Gazette in 1992 and would be laid in the House for approval as on 27-11-1992. The Hon'ble State Finance Minister accordingly laid the regulations in the Lok Sabha as on 27-11-1992 and in the Rajya Sabha as on 16-12-1992. The regulations, it was pointed out had been tabled in both the Houses in terms of the rules of the Houses and that there was no legal infirmity.

In answer to grievance made by the petitioner, though no relief on that count is sought, that the respondents had retained with them large amount of money, the letter dated 22nd June, 2004 addressed by the Legal Officer of Securities and Exchange Board of India has been placed on record. The letter sets out that the petitioner's fee liability is totalling to Rs. 18,36,993 and further that the SEBI has not received any payment of Rs. 32,81,474 either from NSE or the petitioner.

5. With the above, we may now proceed to consider the issues involved in the present petition. Rule 234 of the Rules of Procedure and Conduct of Business in Lok Sabha given in Parliamentary Procedure Vol. II page 1700 as reproduced in the judgment of Manwar Singh Rawat (supra), sets out the procedure regarding laying of regulations, rules etc. on the table of the House. Rule 234 reads as under :--

"Laying of regulation, rule etc. on table.--(1) Where a regulation, rule, sub-rule, bye-law etc. framed in pursuance of the Constitution or of the legislative functions delegated by Parliament to a subordinate authority is laid before the House, the period specified in the Constitution or the relevant Act for which it is required to be laid shall be completed before the House is adjourned sine die and later prorogued, unless otherwise provided in the Constitution or the relevant Act.

(2) Where the specified period is not so completed, the regulation, rule, sub-rule, bye-law etc. shall be re-laid in the succeeding session or sessions until the said period is completed in one session."

6. We may now consider some of the judgments cited. Learned counsel for the petitioner has relied upon the judgment of the Apex Court in the case of *Purushothaman Nambudiri Vs. The State of Kerala*, . The issue before the Apex Court was whether the Bill passed by the Legislative Assembly pending assent of the President, lapses on dissolution of the Assembly. The Apex Court was called upon to consider the procedure followed in England and whether it would be the same procedure in India considering the constitutional provisions. The Apex Court negated the contention that unless the Legislature by law has made a contrary provision, the English convention with regard to the effect of dissolution shall prevail in the Country. The Apex Court noted that in India when Parliament is dissolved, it is only the Legislative Assembly which would stand dissolved and not the Rajya Sabha and that the position in England is different. The Apex Court further noted the provision of Article 196 of the Constitution which sets out that the Bill pending in the Legislature of a State will not lapse by reason of the prorogation of House or Houses thereof. It may be noted that we are really not called upon to consider the case of prorogation of House or dissolution and the effect on the pending Bill as Article 196 of the Constitution covers such cases. The issue in the present case is of tabling of subordinate legislation in both the Houses of Parliament considering Section 31 of the Securities and Exchange Act, 1992. The ease of *Purushothaman Nambudiri*(supra) is therefore of no assistance to decide the issue involved in the present petition. The other judgment relied upon was in the case of *Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others*, . In that case the issue was whether the provisions of *Madhya Pradesh Tendu Patta (Vyapar Vinियaman Adhiniyam)* Adhiniyam infringed Article 19 and other articles of the Constitution. Again the issue therein was in the matter of reasonable restriction and the judgment is of no assistance in so far as the issue of tabling of regulation in the House.

7. The real issue is the need for tabling and the failure to table in the manner prescribed. In modern parliamentary practice, the Legislature enacts the laws and leaves the rule, regulation and bye-law making power to the Government or other bodies as may be specified. Many a time a question arose whether conferring such power on the delegate would amount to abdication of essential legislative functions by the Legislature. It is in that context when a challenge were thrown to the legislation on the ground of abdication of essential legislative functions, that Courts have held that once there was provision made to table the rules, regulations or bye-laws in the House, the challenge on ground of abandonment of essential legislative functions would have to be rejected, as by such a procedure Parliament always retains the power to amend, modify or recall the rule altogether. It is in this context that the procedure and the mandate of law for tabling rule, regulation or bye-law has to be considered. H.W.R. Wade & C.F. Forsyth in *Administrative Law*, 8th Edition, have noted that laying before Parliament is done in a number of different ways. The regulations may merely have to be laid; or they may be subject to negative resolution; or they may expire unless confirmed by affirmative resolution; or they may have to be laid in

draft. Occasionally they do not have to be laid at all because Parliament has omitted to make any provision. It is then noted that there are two clear categories into which majority of cases fall. Either the regulations will be of no effect unless confirmed by a resolution of each House; or else they will take effect without further formalities in Parliament, but subject to annulment in pursuance of a resolution of either House. These are described as the "affirmative" and "negative" procedures respectively. The issue of tabling of subordinate legislation has come up before the Apex Court from time to time. In *Jan Mohammad Noor Mohammad Begban Vs. State of Gujarat and Another*, the State Government was authorised to make rules for carrying out the provisions of the Act. Sub-section (5) of Section 26 of the relevant Act provided that the rules shall be laid before each House of Provincial Legislature at Session next following. Rules were framed by Provincial Government in 1941, when no Legislature was in Session it being suspended during emergency arising out of World War II. Session convened for first time was prorogued. Second Session of Assembly was convened. Rules were placed on table of Assembly in Second Session. The contention was that the rules would not be valid unless the rules were tabled. On a reading of the section, the Apex Court held that the section does not prescribe that rules acquire validity only from date on which they were placed before Houses of Legislature. It further held that Sub-section (5) of Section 26 could not be regarded as mandatory. In *Hukam Chand etc. Vs. Union of India (UOI) and Others*, again what was in issue was tabling of the subordinate legislation in the House. The Apex Court noted from Craies on Statute Law, the three kinds of laying - (i) laying without further procedure; (ii) laying subject to negative resolution; (iii) laying subject to affirmative resolution. The issue once again came up before the Apex Court in *Atlas Cycle Industries Limited and Milton Cycle Industries Limited Vs. State of Haryana and Others*, as to the policy and object underlying the provisions relating to laying of delegated legislation made by the subordinate law making authorities or orders passed by subordinate executive instrumentalities before both Houses of Parliament. It was held that this was to keep supervision and control over the aforesaid authorities and instrumentalities, and that "laying clauses" assume different forms depending on the degree of control which the Legislature may like to exercise. The Apex Court observed that the question whether direction to lay rules before Parliament is mandatory or merely directory and whether the laying is a condition precedent to their operation, will depend upon circumstances of each case or wordings of the statute under which the orders or rules are made. The Court then noted that there was no prohibition in Section 3(6) of the Essential Commodities Act to the making of the orders without the approval of both the Houses of Parliament. Neither it provides that it shall be subject to the negative or affirmative resolution by either House of Parliament, nor that it shall be open to the Parliament to approve or disapprove the order, made u/s 3 of the Act, nor that it shall be subject to any modification which either House of Parliament may in its wisdom think it necessary to provide. It does not even specify the period for which the order is to be laid before both Houses of Parliament, nor did it

provide any penalty for non-observance of or non-compliance with the direction as to the laying of the order before both Houses of Parliament, and further the requirement as to the laying of the order before both Houses of Parliament was not a condition precedent but subsequent to the making of the order. Considering that, the Court held that it can be said to be a "simple laying" and is directory and not mandatory, and that the Legislature never intended that non-compliance with the requirement of laying should render the order void.

On the point of laying, we may now consider the judgment of the Apex Court in the case of the *The Quarry Owners Association Vs. The State of Bihar and Others*, . In view of earlier noted object of laying, the Apex Court in this case explained the law as follows :--

"... Where any document, rule or notification requires placement before any House or when placed, the said House inherently gets the jurisdiction over the same. Each member of the House, subject to its procedure gets right to discuss the same, they may put questions to the concerned Ministry. Irrespective of the fact that such rules or notifications may not be under purview of its modification, such members may seek explanation from such Ministry of their inaction, arbitrariness, transgressing limits of their statutory orbit on any such other matter. Short of modification power, it has a right even to condemn the Ministry. No doubt in the case where House is entrusted with power to annul, modify or approve any rule, it plays positive role and have full control over it, but even where the matter is merely placed before any House, its positive control over the executive, makes even mere laying to play a very vital forceful role which keeps a check over the concerned State Government. Even if submission for the appellants is accepted that mere placement before a House is only for the information, even then such information, inherently in it makes Legislature to play an important role as aforesaid for keeping a check on the activity of the State Government. Such placement cannot be construed to be non est. No Act of Parliament should be construed to be of having no purpose. As we have said mere discussion and questioning the concerned ministry or authority in the House in respect of such laying would keep such authority on guard to act with circumspection which is a check on such authority, specially when such authority is even otherwise answerable to such Legislature...." (p. 2892)

The Apex Court also noted various methods of laying before the Parliament and observed that laying before House of Parliament is made in three different ways. Laying of any rule may be subject to any negative resolution within specified period or may be subject to its confirmation. This is spoken as negative and positive resolution respectively. Third may be mere laying before the House. The Apex Court also noted the commentary on the subject by HWR Wade and Forsyth, which we have referred to earlier and also the commentary on Constitutional and Administrative Law, Stanley De Smith and Rodney Brazier, 7th Edition.

8. There is no dispute that the power to make regulations is conferred by Section

30 of the Act. That is also not contested by the petitioner. We may now examine the nature of laying as required by Section 31 of the Act. The requirements are that: (i) every rule and every regulation, as soon as it is made, has to be placed before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions; (ii) if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect as the case may be; (iii) however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

It is therefore clear that in the instant case laying is in the form of negative laying.

Rule 234(1) of the Parliamentary Procedure provides that when the rule, regulation, sub-rule and bye-law etc. is framed in pursuance of the Constitution or of the legislative functions delegated by Parliament to a subordinate authority is laid before the House, the period specified in the Constitution or the relevant Act for which it is required to be laid shall be completed before the House is adjourned sine die and later prorogued. What Section 31 of the Act contemplates is that after it is laid, the period of 30 days may be comprised in one session or in two or more successive sessions. Therefore compliance must be in terms of Rule 234(1). Rule 234(2) of Parliamentary Procedure would not apply as that speaks about those situations where the period has to be completed in one session. Section 31 of the Securities and Exchange Act, 1992 on the contrary permits the period to be completed either in one session or in two or more successive sessions. That requirement has been met.

9. One other aspect of the matter. Does the regulation come into force only after the period is completed as set out u/s 31 of the Act. Section 31 itself gives the answer. The regulation comes into force when it is made. It is not dependent on the expiry or non-expiry of the period of laying. It only provides that during the period when it is laid before the House of Parliament, the regulation can be modified or that the regulation can be annulled, whereupon the regulation would stand modified or be of no effect. That the Regulations come into force immediately, is clearly demonstrated by the later part of the section, which sets out that even if the regulation is modified or annulled, what was previously done is saved, in other words, the regulation had already come into force.

10. From the above discussion, it becomes clear that the regulation was laid in the House as required by Section 31 of the Act. There was no modification or annulment. Once that be the case, the regulation continues to have force of law. The same point was canvassed before the Uttaranchal High Court in the case of Manwar Singh Rawat(supra). The Uttaranchal High Court in the judgment dated 17-10-2003 has also recorded the finding that factually the notification was laid

as required. We are therefore of the opinion that the only challenge made is devoid of merit. In the light of that, rule stands discharged. There shall be no order as to costs.

11. Parties to act on an ordinary copy of this order duly authenticated by the Personal Secretary or the Associate.