

(2002) 02 DEL CK 0110

In the Delhi High Court

Case No : Civil Writ Petition No. 2876 of 2001

Yogesh Jain

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 22-02-2002

Acts Referred:

Securities and Exchange Board of India Act, 1992 — Section 11, 12, 30, 31

Citation : (2004) 118 CompCas 758

Hon'ble Judges : Usha Mehra, J;C.K. Mahajan, J

Bench : Division Bench

Advocate : M.L. Sharma, for the Appellant; Neeraj Kaul and Maninder Acharya, Enakshi Kulkshreshta, for the Respondent

Final Decision : Dismissed

Judgement

1. Ms. Enakshi Kulkshreshta, the counsel for the applicant requests that she may be allowed to withdraw the application. Request allowed. The application is accordingly dismissed as withdrawn.

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2. Writ petitioner is seeking prohibitory order against the respondent prohibiting them to regulate the Securities and Exchange Board of India (Stock broker and sub-broker) Rules, 1992 SEBI Rules, 1992). He also wants Regulations 1992 to be declared illegal, unconstitutional and void ab initio. He has further challenged the validity of order of prohibition for "Sale and then purchase of shares". According to the Petitioner by virtue of regulation excessive powers have been delegated to the SEBI. Regulation 1992 is also against the principles of natural justice.

3. Main thrust of the petitioner's arguments is that the SEBI has framed various rules and regulations which have been framed without following the provisions of the Securities and Exchange Board of India Act, 1992 ("the Act"). This according to him, amounts to excessive delegations of power. Further the rules as framed

do not lay down any guidelines with regard to the minimum and maximum powers to be exercised by the SEBI for the purpose of levy of registration fees: secondly the SEBI cannot charge or levy the registration fees from the investors. Some of the brokers are also investors, Therefore, without laying down any guidelines, levy fees on such investors is against the Act and the rules framed therein. Since there is uncontrolled and unbridled power given to the SEBI without laying down minimum and maximum which is vocative of principle of natural justice. To support his contentions he placed reliance on the following decisions of the Supreme Court in the cases namely *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, , *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, , *Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others*, , *Satyanarain Bajoria and another Vs. Ramnarain Tibrewal and another*, , *Union of India v. Deoki Nandan Agrawal* AIR. 1992 SC 96 and of course the decision between *B.S.E. Brokers Forum Bombay v. SEBI* [2001] 30 SCL 1 (SC) and lastly Transferred Case (Civil) No. 20 of 2000 (With W.P. (C) No. 502 of 2000) dated 1-2-2001 by the Apex Court. There cannot be any quarrel with the proposition of law laid down by the Apex Court in the above quoted cases. Admittedly the legislative power in favor of another Agency either in whole or in part is beyond the permissible limits of delegation. However, it is for the Court to strike down without any hesitation any arbitrary power conferred on the Executive by the legislature. At the same time we cannot loose sight of the fact that it is for the Court to hold on a fair, generous and liberal construction of an impugned statute whether the Legislature exceeded such limits. The question of delegated legislation came up for interpretation before Supreme Court in the case of *Hamdard Dawakhana*(supra) wherein their Lordship held that delegated legislation involves delegation of rule making power which constitutionally may be exercised by the administrative agent. This means the Legislature lays down the broad principles of its policy and the details are to be supplied by the administrative authority. In the words of the Apex Court, "when the delegate is given the power of making rules and regulations in order to fill in the details to carry out and subserve the purpose of the legislation the manner in which the requirements of the statute are to be met and the rights therein to be enjoyed, it is an exercise of delegated legislation. And that is precisely what has happened in this case. Therefore, the decisions relied upon by the petitioner no way advance his case nor help him in any manner. From facts on record it cannot be said that there is unbridled delegations of power in favor of SEBI. In fact observations of the Apex Court negates the arguments of the counsel for the petitioner because by virtue of Section 31 powers have been delegated to the SEBI to frame rules and regulations and at the same time reasonable restrictions have been placed on the SEBI to place such rules and regulations before the Parliament's approval. Section 31 which is reproduced as under clearly indicates that no arbitrary powers vest with the SEBI nor it is a case of excessive delegation of powers.

"Section 31 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."

4. Section 31 lays down that any amendment proposed by the Board or any Regulations framed by the SEBI have to be laid before the Parliament where it remains for almost for 30 days. Such regulations or amendment after due deliberation are either accepted or rejected by the parliament. Therefore, it cannot be said that there is no check on the power of the SEBI nor it can be called a case of excessive delegation of powers. Contention of the petitioner that there is excessive delegation of legislative power stand negated by virtue of section 31.

5. Functions of the Board and the purpose which the SEBI has to implement and achieve are given in Sections 11 and 12 of the Act. Section 11 deals with the functions of the Board and section 12 deals with registration of stock brokers and sub-brokers, share transfer agents etc. Sections 11 and 12(1) reads as under :

"Section 11 - Functions of the 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;

(b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue; merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;

(ba) **

(c) registering and regulating the working of collective investment schemes, including mutual funds;

(d) promoting and regulating self-regulatory organisations;

(e) prohibiting fraudulent and unfair trade practices relating to securities markets;

- (f) promoting investors' education and training of intermediaries of securities markets;
- (g) prohibiting insider trading in securities;
- (h) regulating substantial acquisition of shares and takeover of companies;
- (i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges and intermediaries and self-regulatory organisations in the securities market;
- (j) performing such functions and exercising such powers under the provisions of the Capital Issues (Control) Act, 1947 and the Securities Contracts (Regulation) Act, 1956, as may be delegated to it by the Central Government;
- (k) levying fees or other charges for carrying out the purposes of this section;
- (l) conducting research for the above purposes;
- (Ia)** ** **
- (m) performing such other functions as may be prescribed.

"Section 12(1)-Registration of StockBrokers, Sub-brokers, Share transfer agents, etc.-No stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the rules made under this Act:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application."

6. Reading of the above provision makes it clear that the SEBI is empowered to frame rules and regulations in order to achieve the above objects. These provisions have to be read with Section 31. Therefore, the powers exercised by the SEBI by no stretch of imagination can be called excessive delegation of legislative powers nor can be arbitrary powers.

7. The counsel for the petitioner to strengthen his arguments relied on 4(d) of the rules and Explanation to Schedule III of SEBI Regulation 1992 which are reproduced as under :-

"Rule 4(d)

He shall pay the amount of fees for registration in the manner provided in the regulations;"

"Explanation - For the purpose of paragraphs 1, 2 and 3, "annual turnover" means the aggregate of the sale and purchase prices of securities received and receivable by the stock broker on his own account as well as on account of his clients in respect of sale and purchase or dealing in securities during any financial year."

8. Neither rule 4(d) nor Explanation to Schedule III are of any help to the petitioner. Argument of the appellant that SEBI has not cared for the interest of the investors, to our mind, this argument is without substance and deserve to be rejected for the reason that the Act and the rules only deal with brokers and sub-brokers etc. It does not in any way effect the interest of the investors. Similarly contentions of the petitioner that levy of registration fee on the investor is vocative of the Act is Without merits. No registration fee has in fact been levied on investor. Rule 4(d) of the Rules, 1992 provides that the stock-broker shall have to pay the amount of fee for registration in the manner provided in the regulations. In the regulations, it is nowhere provided that Registration fee will be charged from investors, for this reasons, the order of the SEBI cannot be faulted.

9. So far as the question of quantum of levy of Registration fee is concerned it came up before Supreme Court in the case of BSE Broker Forum (supra) the Apex Court while rejecting the challenge to the power of the SEBI to fix the quantum observed as under :

"So long as the "Legislature has the legislative competence to levy" and the Board has not exceeded its statutory authority in imposing the levy, we need not go into other niceties of the levy which are not in the realm of our jurisdiction. We have examined the reasonableness of the levy qua the statutory power of the Board and its quantum with reference to the need of the Board and not with reference to whether it is the best available method of levy."

10. In the case in hand, the counsel for the petitioner during the course of argument stated that he was not challenging the quantum of fee fixed by the SEBI. Nor he is challenging the right of the SEBI to charge fee. He is only challenging the excessive legislative delegation of the powers to the SEBI and that no guidelines for minimum and maximum have been fixed.

11. So far as the question of legislative delegations is concerned we have already discussed above. As regard guidelines the Apex Court in the case of Organon (India) Ltd. (Now known as INFAR (India) Ltd. and another Vs. The Collector of Exise and others, held that delegation to levy duty on State Government cannot be assailed on the ground that it is made without fixing maxima or minima. For this reason also power of the SEBI cannot be faulted.

12. For the reasons stated above, we find no merits in the petition. Dismissed.