BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

APPEAL NO. 1/2001

In the matter of:

R.K. Agarwal **Appellant**

Vs.

Securities and Exchange Board of India **Respondent**

APPEARANCE

None for the Appellant

Mr. K.R.C.V. Seshachalam
Asst. Legal Adviser, SEBI **for the Respondent**

(Appeal arising out of the order dated 3.11.2000 made by the Chairman, Securities and Exchange Board of India)

ORDER

In the present appeal, the Appellant has challenged the order dated 3.11.2000 made by the Chairman, Securities and Exchange Board of India, whereby the Appellant was directed to relinquish the office of President of Uttar Pradesh Stock Exchange (the exchange). By the same order the Appellant was also disqualified to be a member of the Governing Board or office bearer of the exchange as well as any capital market related public institution for a period of 2 years from the date of the order.

The Appellant was Vice President of the exchange during the period 1998-99. He took over as President of the exchange with effect from 18.12.1999. During his tenure as Vice president and also as President of the exchange, the Appellant was allegedly involved in certain activities, which were not in tune with the official position he was holding in the exchange. Northern Regional office of the Respondent conducted an inspection of the exchange during September 1999 and reported certain irregularities. Based on the findings of the said inspection, etc., the Appellant was issued Show Cause Notice seeking explanation. He was also given reasonable opportunity of being heard. Based on the written reply to the Show Cause Notices and the oral submissions made during the course of the personal hearing the Chairman of the Respondent concluded that:

The Appellant had exceeding his authority as Vice President of the exchange by interfering with margin and surveillance system of the exchange;

The Appellant had failed to initiate any action against the two members of the exchange who had allegedly become members by submitting fake educational certificates.

The Appellant, walked out of a Board meeting which was chaired by him intentionally with a view to disrupt the proceedings of the meeting to delay decision making in a matter of considerable importance to the exchange.

The Appellant got the trading terminal of another broker deactivated / reactivated by unwarrantedly interfering in the surveillance related activities of the exchange.

The Chairman has viewed that "the conduct of the President of UPSE, Mr.

R.K. Agarwal has got serious questions on the transparency and integrity of the system. This has also created an adverse public perception, which is harmful to the confidence of the investors and the market. He has further viewed that "all these actions of Mr. R.K. Agarwal raise serious issues of propriety and credibility and his conduct has been found to be unbecoming of a head of the organisation and the President of the Exchange". Based on the said view, the Chairman ordered "in the interest of fostering investor confidence and for promoting transparency and the integrity in the functioning of the capital market, in exercise of powers under section 11 and 11B of the SEBI Act, 1992, read with Securities Contracts (Regulation) Act, 1956", the Appellant to relinquish the office of President of the exchange. He was also made ineligible to hold any public position in future as member of the Governing Board or office bearer of the exchange as well as any capital market related public institution for a period of 2 years from the date of the impugned order i.e. from 3.11.2000.

On receipt of the Respondent's reply to the appeal in the Tribunal, the appeal was posted for hearing 14.3.2000. The Appellant filed a rejoinder vide letter dated 12.3.2000 (received on 14.3.2000) and also informed the Tribunal by the said letter that he had expressed his views in the appeal and also in the rejoinder and there was nothing further to state. The Representative of the Respondent sought permission to submit its submission in writing. The request was allowed. The Respondent filed thereafter its written submission.

The Appellant has denied all the charges leveled against him by the Respondent. According to the Appellant, the office order regarding reallocation of work of trade operation and margin was issued by him, when he was Vice President on 4.6.1999 in the absence of the President and Executive Director, in exercise of the powers conferred on him under clause 120(C) of the Articles of Association of the exchange and that office order was issued to streamline the functioning of the exchange in its best interest. The order was withdrawn on 16.8.1999. According to him if the order was issued without the authority as alleged, it was the duty of the Executive Director to bring it to the notice of the Appellant as required under article 100 of the Articles of Association of the exchange, that the Executive Director on return from leave did not advise the Appellant to revoke the order. According to the Appellant he never interfered in the maters concerning Margins and Trade Operation of the exchange, as alleged by the Respondent.

With reference to the allegation that the Appellant had failed to take action against Shri D.K. Gupta and Shri R.K. Garg, who allegedly got membership of the exchange by producing fake certificates, the Appellant has stated that action could not be taken against the members for want of the concerned original files. He has denied the charge that he disrupted the meeting in which the matter was to come up for discussion, by staging a walk out of the meeting. It has also been stated that the Allahabad High Court vide its order dated 25.5.2000 had restrained the exchange from taking action against the said members and as such it was not possible for him to take any action against them. It has been alleged that the Allahabad High Court's order was concealed from him. According to the Appellant, he and other elected members of the Governing Board walked out of the meeting held on 17.5.2000 as they fled humiliated by the remarks made by the SEBI nominee in the meeting, and that even after he walked out of the meeting, there was sufficient quorum and the Board with rest of the members could have decided the matter, which they did not do. He has denied the charge that he has amended the minutes of the board meeting from which he had walked out.

The Appellant has also denied his involvement in the deactivation and reactivation of the trading terminal of M/s. RBS Srivastava. He has stated that it was the General Manager of the exchange who deactivated / reactivated the trading terminal. The Appellant had only informed the General Manager about the misbehaviour of a member and when the member apologised the matter was not pursued further, that the misconduct of the member was subsequently discussed in the Disciplinary Committee and then in the Board meeting and the Broker's trading terminal was further suspended for one day. According to the Appellant he was in no way involved in the matter.

According to the Appellant power given to the Respondent under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 (the Act) to issue directions is for the purpose of regulating the

securities market and to protect the interests of the investors and not to pass mandatory orders in the nature of punitive action against the office bearers of the stock exchanges, that the impugned order was an exercise of power beyond jurisdiction. The Appellant has alleged that before passing the impugned order no reasonable opportunity was given to him to explain his views. He has also alleged that show cause notice dated 25.8.1999 was issued to him while he was acting as Vice President. Again another show cause notice was issued to him on 16.8.2000 when he was President. But a common enquiry was conducted and the impugned order was passed with undue haste with malafide intention. According to him the prejudice on the part of the Respondent is evident from the fact that the impugned order was issued on 3.11.2000, in such a hurry so as to precede the Annual General Meeting fixed on 25.11.2000, with a view to inflict 'penalty' on the Appellant, before he demitted office on 25.11.2000. The appellant has claimed that during his regime he had done praiseworthy work to benefit the exchange and its users.

According to the Appellant, the impugned order will override the provisions of the Companies Act in as much as the right of removal of a Director is a recognised right of the share holders under section 284 read with section 190 of the Companies Act which can be exercised only by the share holders, against an errant director or against a director who is considered by them as dishonest and not protecting their interest fairly and faithfully, that such right cannot be curtailed by the Respondent. According to the Appellant the impugned order adversely affects the lawful rights of the shareholders without giving them a right of hearing and will run contrary to the spirit of the provisions of Companies Act, and in striking contrast to the legislative intent embodies therein giving the shareholders the prime right to remove any such director of the company. Further, that the office of director of the exchange can be vacated only as per the provisions of Article 116 of the Articles of Association of the exchange and not by issuing any punitive order by the Respondent.

The Appellant has stated that the proceedings by the Respondent and hearing dated 13.10.2000 are null and void in view of the order dated 25.5.2000 of the Allahabad High Court in writ petition No. 26040 of 2000. According to him even the show cause notice dated 16.8.2000 itself is bad in the eyes of law as it did not refer to any provisions of the Act or any other law pursuant to which the said show cause notice was issued. It has been stated that contesting in the election for the directorship of the exchange was a fundamental right of the Appellant. The impugned order had deprived the Appellant of his said constitutional right. According to him it is well settled position of law that the SEBI / Courts have no power whatsoever to interfere in the internal affairs of the exchange, that the Respondent could have used its powers within the purview of the Act by amending the bye-laws of the exchange or issuing guidelines, etc. The substantive prayer of the Appellant in the appeal is to (i) cancel / set aside the impugned order dated 3.11.2000 and (ii) order status quo of Appellant in relation to the Presidentship and Directorship at the time of passing of the impugned order on 3.11.2000.

The Respondent in its written reply / submission has by and large reiterated the version appearing in the impugned order. According to the Respondent, the appeal is not maintainable for the reason that it has been filed beyond the prescribed time and that it has become infructuous as the tenure of the Appellant as President has already elapsed.

The Respondent has submitted, that the Appellant, when he was holding the office of Vice President of the exchange had issued an office order on 4.6.1999 regarding reallocation of work of trading operations and margins, that he had no authority to issue such an office order being Vice President at the relevant time, that too when the President met the Executive Director of the exchange were away from office only for a day i.e. on the date of issue of the said office order. The Respondent has stated that it had issued several circulars to all stock exchanges requiring them to set up separate surveillance department to carry our exclusively the functions of the surveillance and to ensure that the Governing Board of stock exchanges do not interfere with the affairs, functions and working of the surveillance department. According to the Respondent it had made clear in these circulars that the Executive Director would be wholly and directly responsible for the proper and independent functioning of the surveillance department, that despite such clear instructions the Appellant in total disregard to the same issued the office order on 4.6.1999 meddling with the functions of the surveillance mechanism in the exchange. The fact that such an order was issued in a hurry during the "one day absence" of the President and Executive Director suggests the motive of the Appellant. According to he Respondent article 120 of the Articles of Association of the exchange does not empower the Vice President to do whatever he wants, when the President is away from office temporarily for a day or so, as it happened in the instant case. In fact in terms of the Respondent's circular in the matter, even if the President is away from office temporarily for a day or so, as it happened in the instant case. In fact in terms of the Respondent's circular in the matter, even the President of the exchange could not have issued such an office order, that when it is

beyond the authority of the President o issue such an office order, a person acting for one day as a President cannot issue such an order. The Respondent further stated that through the Appellant had claimed that his action was to streamline the functioning of the exchange, he has not explained how the said office order helped to improve the functioning of the exchange. Respondent stated that the Appellant's submission that the Executive Director did not advise him to withdraw or cancel the said order and as such the order was in order is not correct, as a bad order cannot be made good by withdrawing it. According to the Respondent the question is on the Appellant's conduct with reference to exercise of excessive authority.

With reference to the Appellant's conduct relating to taking action against 2 members (Mr. D..K. Gupta and Mr. R.K. Garg) acquiring membership of the exchange by submitting forged educational certificates, the Respondent has stated that though the Appellant had promised to the Chairman, SEBI that he would take immediate steps in the matter, he not only back tracked but also created a situation by walking out of the meeting held on 17.5.2000, with a view to stop the Governing Board taking up the matter for consideration and that he also amended the minutes of the said meeting in the subsequent meeting held on 26.5.2000. According to the Respondent the Appellant's submission that to consider the case of these two members original files were not available, etc. is only an excuse. It has been stated that in the meeting held on 26.5.2000, which was chaired by the Appellant, in the absence of public / SEBI representative, he got the decision of the Board dated 6.10.1997 reconfirmed, waiving the requirement of minimum educational qualification of the said two members, that this itself indicates the attitude of the Appellant in protecting those two brokers against whom serious charges were pending consideration. According to the Respondent the conduct of the Appellant to favour the said two members who had allegedly procured membership of the exchange by producing fake certificates is a serious matter and the failure to take any action against the said two members raised serious question of impropriety on the part of the Appellant.

As per the submissions made by the Respondent, the Appellant had directed the General Manager of the exchange to take action against M/s. RBS Srivastava, a member of the exchange, and acting on the Appellant's instructions the General Manager immediately deactivated the trading terminal of the member. Subsequently, the terminal was reactivated on the instructions of the Appellant. The Appellant has admitted that the reactivation of trading terminal of the said member was on his direction. This is a clear case of unwarranted interference of the Appellant in the surveillance related activities of the exchange which was one of the tasks executed only by the surveillance department in terms of the circular issued by the Respondent.

The Respondent has stated that Securities Contracts (Regulation) Act (SCR Act) gives ample powers to SEBI to direct stock exchanges to make bye laws, etc. The stock exchange governing boards are required to follow the provisions of SCR Act, Rules and Bye-laws made thereunder, provisions of SEBI Act, and the directives of SEBI which are given in the interests of securities market. The provisions of the Companies Act, relied and cited by the Appellant, according to the Respondent, are not relevant to the present case. With reference to the Appellant's averment about the order dated 25.5.2000 of Allahabad High Court in Writ Petition No. 26040 of 2000, the Respondent has stated that the said order in no way restrained the Respondent from passing the impugned order against the Appellant.

With reference to the Appellant's contention about the scope of sections 11 and 11B of the Act, the Respondent has stated that in SEBI Vs. Alka Synthetics Ltd. (1999(9) SCL-460) a division bench of the Gujarat High Court has clearly explained the reach and scope of the sections and that the impugned directions are well within the purview of the said sections. The Respondent has also cited the observation made by the Bombay High Court in Ramrakh R. Bohra v. SEBI (1999(33) CLA 243) that the sections "empower the Board to issue directions for the purpose of securing the proper management of intermediary or person, as may be appropriate in the interests of the investors in securities and securities market …" Respondent had cited yet another decision wherein the Delhi High Court (MZ Khan v. SEBI (AIR 1999 Del. 164) had stated that "under section 11 of the SEBI Act, the SEBI has the power to protect the interest of the investors in securities and to promote the development of and to regulate the securities market, by such measures as it thinks fit. The power is of very wide nature and is not hedged in by any restrictions ….. In case the provisions of section 11 are construed in a restrictive manner, the interests of the investor in securities and development and regulations of securities market will suffer." The Respondent has stated that in view of the interpretation of the scope of section 11 and 11B made by various High Courts the impugned order, is well within the powers and jurisdiction of the Respondent and that a member of the exchange who is guilty of undue interference, maladministration and misconduct can be restrained from holding any substantive official position having a bearing on the securities market,

by issuing directions.

The respondent has also denied the Appellant's version that the impugned order was made without following the principles of natural justice in undue haste with malafide intention by concealing material facts.

Referring to the Appellant's version that the provisions of the Companies Act have been ignored while issuing the directions, the Respondent has stated that SCR Act is a special law relating to stock markets and the Companies Act is a general law in the matter of regulation of stock exchange, and as such in the event of any conflict between a general law and a specific law the provisions of the specific law will prevail over the general law. (J.K. Cotton Spinning & Weaving Mills Co. Vs. State of Uttar Pradesh - AIR 1961 SC 1170).

I have carefully considered the submissions made by the parties in their pleadings.

The Respondent's argument that the appeal is time barred and that it has become infructuous is without any basis. In terms of section 15T of the Act any person aggrieved by an order made by SEBI or the Adjudicating Officer is entitled to prefer an appeal to the Tribunal within a period of forty five days from the date of receipt of the copy of the order by the party. In the instant case, it is seen that order dated 3.11.2000 was issued to the Appellant vide Respondent's letter dated 6.11.2000 which according to the Appellant was received at Kanpur on 8.11.2000. It is seen that the appeal was first presented in the Registry of the Tribunal on 22.12.2000, i.e. within the prescribed time limit of 45 days. The Respondent's view that since the tenure of the Appellant as President of the exchange has come to end in December, 2000 the appeal has become infructuous is also baseless. Perhaps the Respondent has not fully understood the scope of the impugned order. It is to be noted that by the impugned order the Appellant was not only directed to relinquish the office of President forthwith but was also made ineligible to hold any public position in any capital market related public institutions for a period of 2 years from the date of the order. Since the said disqualification still continues. I do not see any reason to consider that the order has become infructuous to be appealed against. The preliminary objections raised by the Respondent have no merit and therefore I override the same.

On a perusal of the impugned order and the submissions made by the parties, it is clear that the impugned order is relatable to the conduct of the Appellant during his tenure as Vice President and subsequently as President of the exchange. The Respondent has cited three instances to support its version that the Appellant had acted without authority and in a manner unbecoming of the position he was holding in the exchange.

It has been admitted by the Appellant also that he had issued an office order on 4.6.1999, reallocating the work of trading, operations and margin review in the exchange, in the absence of the President and the Executive Director, when they were away for a day, from the office. The Appellant has stated that in terms of article 120 (c) of the Articles of Association, in the absence of the President, the exercise the presidential power and the Executive Director did not advise him to recall or cancel the said order, though in terms of article 100, the Executive Director was required to advise him so, if the order was issued without authority, and the fact that he did not do so shows that the Appellant's action was not beyond the authority vested in him. He has also defended his action of issuing the order saying that "the order was issued to streamline the functioning of the exchange, without prejudice and in its best interest". There is no dispute about the fact that the office order dated 4.6.1999 had a bearing on the surveillance function vested in the department of surveillance coming under the exclusive control of the Executive Director. Respondent has cited several circulars issued by it to stock exchanges requiring them to set up separate surveillance department to carry out exclusively the functions of surveillance and also stating in clear terms that the Governing Board should not interfere with the affairs, functions and working of the surveillance department. It is to be noted that market surveillance is of considerable importance and allowing the elected members of the broking community to have access to the same would not be in the interest of fair market operations. Similarly the "margin" decision is also very important from the safety angle of the investors. Stock exchanges have certain protection mechanism to meet the volatility of the market and the speculators. One of the safeguards is the requirement of margins. If this system is tampered with and the margins are altered without sufficient cause, in a hasty manner that would result in serous consequences. I find it extremely difficult to agree with the submission made by the Appellant that he had issued the office order on 4.6.1999 in such hurry when he was holding only one-day charge

of the President's office, "to streamline the functioning of the exchange, in its best interest". The Appellant has not started anywhere in his submission a to what was the deficiency in the then exiting system and what was the mighty hurry to issue such an order when he was holding the office of the President just for a day and that too knowing very well that "surveillance" department is out of bounds of the President's powers. An action which even the president of the exchange is not authorised to take, cannot be taken by a person temporarily discharging the functions of the president. Taking into consideration the facts before me, I have no hesitation to endorse the Respondent's view on the conduct of the Appellant in this regard.

Now coming to the Appellant's role in the context of action against two members who had allegedly procured membership of the exchange by producing fake certificates, it is very difficult to exonerate the Appellant from the charges levelled against him as the sequence of events establish that he had failed to act properly and reasonably in the matter. The Appellant's version that since that the original files were not handed over to him he could not attend to the matter is worth discarding as demonstrated by his conduct. The conduct of the Appellant leading a walkout from the meeting of the Governing Board held on 17.5.2000 and amending the minutes of the said meeting by him cannot be viewed lightly in the context of the over all conduct of the Appellant in the matter. Despite the fact that the Appellant had assured Chairman of the SEBI in a meeting held on 14.2.2000 that the files would be traced out and necessary action would be taken against the members when the matter came up for discussion in the meeting of the Board held on 17.5.2000 chaired by him, he staged a walk out, obviously with a view to debilitate the Governing Board taking any action in the matter. He did not stop there. He was fully aware of the fact that the case of the said two members procuring membership allegedly by producing fake certificates, was very much alive and the Respondent had asked the Appellant to take action, in a Board meeting chaired by him held on 26.5.2000, in which the representatives of the Respondent and other public representatives were absent, a resolution was passed, rectifying and reconfirming the decision of the Board taken in the meeting held on 6.10.1997 wherein the elected members of the Governing Board had waived the requirement of minimum educational qualification of the said two members, with a view to allow them to continue with their membership, obviating the need for prescribed qualification. It is seen from the conduct of the Appellant, as explained by the Respondent, remaining unrebutted, the Appellant had informed the Governing Board that it was not desirable to raise the issues concerning the said two members' eligibility qualifications in any Board meeting as it was fully concluded in the meeting of the Board held on 6.10.1997 and in the meeting held on 26.5.2000 chaired by him in the absence of the SEBI nominee Directors and Public Representative Directors, it was decided that no further discussion on the issue of the validity of membership of the said Shri R.K. Garg and Shri D.K. Gupta should take place in the Board meeting as the same stood concluded and closed. There is no explanation from the Appellant justifying the need to take such a decision, especially when non-elected nominee directors representing public interest and SEBI were not present in the meeting. In this context it is to be remembered that at that point of time there was no restraint order from the High Court, before the Appellant. It is evident that the Appellant was thwarting action against the said two members, who were facing the grave charge of producing fake certificates to procure membership. The Appellant's role, as it emerges from his conduct cannot be viewed leniently. As President of the exchange he was expected to probe into the matter to reach at the truth and take suitable action, instead of attempting to hush up the matter on technical grounds.

Coming to the deactivation / reactivation of the trading terminals of M/s. RBS Srivastava on 14.6.2000 it is clear from the Appellant's own version that it was done in the context of the misbehaviour of a broker with him. The Appellant's argument that it was not done by the General Manager may be technically correct. But it was done by the General Manager at the behest of the Appellant is amply clear from the facts before me. The fact that the action against the member was endorsed by the Disciplinary Committee subsequently does not justify the Appellant's involvement in the matter.

As the totality of the facts and circumstances of the specific cases discussed in the impugned order, it cannot be said that the Appellant had not acted beyond his authority and his conduct was not unbecoming of the office he was holding in the exchange at the relevant time.

Having come to the conclusion as stated above, the next question is as to whether the Respondent's order is legally in order.

The impugned order is issued under sections 11 and 11B of the Act. Section 11 of the Act enumerates the powers and functions of the Board. Section 11B enables the Respondent to issue directions to

achieve the objectives for which the Securities and Exchange board of India is established. Section 11B in a sense is more specific and action oriented. Section11B which is considered more relevant in the context is extracted below for ready reference.

"Power to issue directions:

11B. Save as otherwise provided in section11 if after making or causing to be made an enquiry, the Board is satisfied that it is necessary -

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person, it may issue such directions -

(a) to any person or class of persons referred to in section 12, or associated with the securities market;

(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market."

Section 11 and section 11B are interconnected and co-extensive.

Gujarat High Court had examined the scope of section 11 and section 11B vis-à-vis the Respondent's position, while deciding an appeal against the Single Judge's order in Alka Synthetics Case (supra). The basic issue for consideration before the Division Bench in the said appeal was as to whether the Respondent had the authority to issue an order under section 11B of the Act for impounding or forfeiting the money received by stock exchange as per the concluded transactions under its procedure, until final decision is made. While negating the views of the Single Judge, and upholding the Respondent's power to issue such a direction under section 11B The Court observed.

"The SEBI Act is an Act of remedial nature and, therefore, the present cases could not be compared with the cases relating to the fiscal or taxing statutes or other penal Statutes for the purposes of collection of levy, taxes, etc. As and when new problems arise, the call for new solutions and the whole context in which the SEBI had to take a decision, on the basis of which impugned orders were passed, cannot be said in the to be without authority of law in the fact of the provisions contained in section11 and section 11B. As the language of section11(1) itself shows and as the matters for which the measures can be taken are provided in sub-section(2) of section 11. It is clearly made out by the plain reading of the language of the section itself that the SEBI has to protect the interests of the investor in Securities and has to regulate the securities market by such measures as it things fir and such measures may be for any or all of the matters provided in sub-section (2) of section 11 and in the discharge of his duty cast upon the SEBI as a part of its statutory function, it as been invested with the powers to issue directions under section11B. ……. Thus, so far as the authority of law in the SEBI to issue such directions is concerned, such authority to take measures as it thinks fit is clearly discernible on the basis of the provisions contained in section 11 read with section 11B of the SEBI Act. …….. We have to therefore consider and interpret the power of SEBI under the provisions so as to see that the objects sought to be achieved by Act is fully served, rather than being defeated on the basis of any technicality …….The duty and function had been entrusted o take such measures as it thinks fit and in order to discharge this duty, the power is vested under section 11B. ….. The authority has been give under the law to take appropriate measures as it thinks fit and that by itself is sufficient to cloth the SEBI with the authority of law".

One has to view the powers of the Respondent under the provisions of the Act in the context of the

objects sought to be achieved by the Act and the duty cast on them in achieving the same. Section 11 and section 11B give enormous authority to the Respondent in this regard.

Having invested with such a duty the legislature has give ample power to effectively enforce the same. One of such powers is the power to issue directions as provided under section 11B of the Act. As the Delhi High Court in M.Z. Khan's case (supra) said "under section 11 of the SEBI Act the SEBI has the power to protect the interests of the investors in securities and to promote the development of and to regulate the securities market by such measures as it thinks fit. The power is of a very wide nature and not hedged by any restriction". True scope of section 11B was also subjected to examination by the Bombay High Court in Ramrakh R. Bohra Vs. SEBI (1999) 33 CLA 243 (Bom). In the said case the High Court observed that:

> "Section 11B is an enabling provision enacted to empower the SEBI to protect the interest of investors and to promote the development of and to regulate the securities market and to prevent malpractices and manipulations, inter alia, by brokers. Such an enabling provision must be construed so as to subserve the purpose for which it is enacted. It would be the duty of the court to further the legislative object of providing a remedy for the mischief. A construction which advances this object should be preferred rather than one which attempts to find a way to circumvent it. In the case of RBI v. Peerless General Finance & Investment Co. Ltd. [1996] 20 CLA 195/AIR 1996 SC 646 the Supreme Court has observed as under:
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> > "It would, thus, appear that section 45K(3) is an enabling provision enacted to empower the bank to regulate the conditions on which deposits may be accepted by non-baking companies or institutions and (the) to prevent malpractices in the matter of acceptance of such deposits. Such an enabling provision must be so construed as to subserve the purpose for which it has been enacted. It is a well accepted canon of statutory construction that "it is the duty of the court to further Parliament's aim of providing a remedy for the mischief against which the enactment is directed and the court should prefer a construction which advances this object rather than one which attempts to find some way of circumventing it."…..

Section 45K is in the nature of an enabling provision in the matter of construction of enabling statutes, the principle applicable is that if the Legislature enables something to be done, it given power at the same time by necessary implication, to do everything which is indispensable for the purpose of carrying out the purpose in view (see Craies on Statutes, 7th edn. P. 258). It has been held that the power to make a law with respect of any subject carries with it all the ancillary and incidental powers to make the law effective and workable and to prevent evasion (see Sodhi Transport Co. v. State of UP) [1996] I SCFR 939 at pp. 947-48/AIR 1986 SC 1099)……..

In the case of ITO v. Mohammed Kunhi AIR 1969 SC 430 it as been observed as under:

> "…. It is a firmly established rule that an express grant of statutory power carried with it by necessary implication the authority to use all reasonable means to make such grant effective……"
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> Therefore in our view, the express grant of statutory power confirmed by section 11B carries the authority to use of reasonable means to make such power effective."
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> "If one has regard to the aforesaid principles, it would follow that the power which has been conferred by section 11B to issue direction are of a widest possible amplitude and are exercisable in the interest of investors and in order to prevent, inter alia, a broker from conducting his business in a manner detrimental to the interests of the investors or the securities market. The said power to issue directions under section 11B must carry with it, by necessary implication, all powers and duties incidental and necessary to make the exercise of these powers fully effective including the power to pass interim orders in aid of the final orders."

In the light of the decision of the various High Courts cited above the authority of the Respondent to issue directions of the type impugned, is well established.

The Appellant's contention that by the impugned order he has been deprived of his fundamental right to contest election to the governing board of the exchange is baseless. The Respondent is empowered to disqualify a person from occupying any office in the exchange, if it is satisfied that the involvement of such a person in the management of the exchange would not be in the interest of the exchange. It cannot be said that the impugned order is an unjustified interference in the management of the exchange and on the freedom of the Appellant. The order is directed against the Appellant in the context explained in the order and issued in public interest.

The Appellant's contention that the principles of natural justice were not followed in his case is contrary to the facts. As could be seen from the impugned order the Appellant was issued show cause notices. He had replied to the same. He also made oral submissions. It is seen that the Appellant was given sufficient opportunity to explain his view-point before passing the impugned order. Further, the appellant's contention that he was served with two show cause notices and the show cause notices were deficient, etc. does not in any way affect the proceedings before he Respondent and the resultant order. Even though the Appellant has alleged malafide on the part of the respondent he has not in any way substantiated the said allegation. A wild allegation or malafide conduct of the Respondent without any material to substantiate the same need be discarded. The Appellant's submission that in view of the Allahabad High Court's order dated 16.8.2000, the Respondent should not have issued the impugned order is of no force as the said order was in a writ petition filed by S/Shri R.K. Garg and D.K. Gupta in a matter concerning them and not with reference in the inquiry proceedings initiated against the Appellant by the Respondent or the impugned order.

The Appellant's contention that the Respondent has passe the order ignoring the rights of the shareholders of the exchange, in terms of the provisions of the Companies Act is also of no force. As already stated, the impugned order is issued under sections 11 and 11B of the Act and it is not in any way overriding the provisions of the Companies Act. Companies Act does not prohibit, authorities under other statutes, taking action against the management / officers of the companies for violation of the provisions of other statutes.

Taking into consideration the facts and circumstances of the case, I do not think that this Tribunal would be justified in interfering with the impugned order. The impugned order is therefore upheld and the appeal is dismissed.

(C. ACHUTHAN)
PRESIDING OFFICER

Place: Mumbai
Date: April 30, 2001