HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 11796/2020

Naresh Kumar Gurjar S/o Raghuveer Gurjar, Aged About 33 Years, Resident Of 31, Gurjaro Ki Bagichi, Indira Bazar, Gpo, Jaipur, Rajasthan -302001

----Petitioner

Versus

Security And Exchange Board Of India, Having Office At Ground Floor, Jeevan Nidhi 2, Lic Building, Ambedkar Circle, Bhawani Singh Road, Jaipur, Rajasthan 302005 Through Its Dy. General Manager

----Respondent

For Petitioner(s) through VC	:	Mr. Karan Bharihok Mr. Sameer Sharma
For Respondent(s) through VC	:	Mr. R.D. Rastogi, Additional Solicitor General, Mr. Punit Singhvi

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HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PRAKASH GUPTA

ORDER

04/12/2020

1. The petitioner who is a resident of Jaipur, claims to have filed this petition in public interest. The petitioner is seeking various directions and declarations as per following prayers:-

> *"(a) Issue a writ, order or direction directing SEBI to forthwith identify all cases where penal proceedings for adjudication or prosecution have not yet been commenced, despite noticing violation of the provisions of SEBI Act, 1992, rules or regulations made thereunder coupled with the violation of the provisions under Part III and IV of Companies Act, 1956 relating to issuance, sale, purchase, transfer or subscription of securities, and to direct suitable action against erring officials, whether serving or retired, for their inaction;*
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> *(b) Issue an appropriate writ, order or direction, holding that notwithstanding Section 26D of the*

SEBI Act, 1992, from the date of commencement of the said Act i.e. w.e.f. 30.01.1992, the provisions of Section 468 of CrPC have no applicability in any prosecution for offences under Section 24 of the said SEBI Act, to enable the Respondent to initiate criminal prosecution even in respect of acts or omissions done prior to SEBI (Amendment) Act, 2002;

(c) Issue an appropriate writ, order or direction, directing that notwithstanding the provisions of Section 465 of the Companies Act, 2013, SEBI shall immediately initiate / institute appropriate adjudicatory and prosecution proceedings for taking appropriate penal action for violation of the provisions of Part III and IV of the Companies Act, 1956 relating to issuance, sale, purchase, transfer or subscription of securities, which in turn may also be in violation of provisions of SEBI or regulations made thereunder;

(d)Issue an appropriate writ, order or direction, declaring in public interest that even if the commission of any contravention was prior to SEBI (Amendment) Act, 2002 which came w.e.f. 29.10.2002, the stricter monetary penalty under amended / new provisions of Sections 15-A, 15-B, 15-G, 15-H and 15-HA and higher punishment under amended Section 24, of SEBI Act, 1992 shall necessarily apply in such proceedings;

(e) In public interest and for protection of Investors this Hon'ble Court may please direct the Respondent to forthwith provide details of all such cases where despite noticing violation of the provisions of SEBI Act, 1992, rules or regulations made thereunder coupled with the violation of the provisions of Part III and IV of the Companies Act, 1956 relating to issuance, sale, purchase, transfer or subscription of securities, penal proceedings for adjudication or prosecution have not yet been commenced;

(f) To pass such other and further Orders, as may deem just and expedient to this Hon'ble Court in public interest may also please be passed."

2. The petitioner submits that SEBI was established under the Securities and Exchange Board of India Act, 1992, which is an Act to provide for the establishment of a Board to protect the

interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. SEBI is vested with statutory powers to effectively deal with all matters relating to the capital market. However, SEBI has miserably failed in its obligation to protect the interests of the investors in securities. After establishment of SEBI vide the 1992 Act, huge frauds have taken place time and again causing huge losses to investors in securities. The faith and trust of the investor public at large in the security markets has been completely shaken. There are large number of cases from 1992 onwards i.e. when SEBI Act was enacted, where despite violations the respondent has failed to either commence the penal adjudication proceedings under Section 15-I or to file criminal prosecution under Section 24 of the Act, despite noticing contravention of the provisions of the Act, rules or regulations made thereunder read with the violation of the provisions of Part III and IV of the Companies Act, 1956 relating to issuance, sale, purchase, transfer or subscription of securities. The petitioner submits that there is dire necessity in wider public interest to identify all such contraventions and to initiate penal adjudication and prosecution proceedings. On this basis, various directions and declarations are being sought by the PIL Petitioner by claiming public interest. The petitioner submits that it would also be in public interest, if this Court would direct appropriate action against the erring officials of respondent, whether serving or retired, for their inaction.

3. Mr. R.D. Rastogi, learned Additional Solicitor General appearing for the Union of India has opposed the admission of the

petition. It is vehemently submitted that no cause of action arises for the PIL Petitioner. The PIL Petition is misconceived. The directions sought are without any legal basis. Such directions are not warranted in law and the contentions are without merit.

4. We have carefully perused the petition and have heard the parties. We do not find any merit in the PIL for the following reasons:-

4.1 The amendments introduced vide ***SEBI (Amendment) Act, 2002*** came in force ***w.e.f. 29-10-2002.*** These amendments also included -

(i) enhancement of "penalties" under Section 15A to 15H,

(ii) incorporating a new provision for imposition of "penalty" under Section 15-HA, and

(iii) enhancement of punishment for "offences" under Section 24(1) and 24(2) of the Act.

In so far as the aforesaid amendments are concerned, they are not procedural or regarding mere change in forum. These amendments create new penal provision under Section 15-HA or they enhanced the penalty under certain Sections from 15A to 15H or provided for enhanced punishment for "offences" under Section 24(1) and 24(2) of the Act.

4.2 As held by the Hon'ble Supreme Court in ***T. Barai v. Henry Ah Hoe, (1983) 1 SCC 177,*** in view of Article 20(1) of the Constitution of India and well settled principles of statutory interpretation, only when a later statute imposes a reduced punishment, or merely modifies the procedure, it applies

retrospectively. But in view of the prohibition contained in Article 20(1) against ex post facto law providing for a greater punishment, the aforesaid amendments creating new penalty or providing for greater punishment / penalty would operate only prospectively. As a result, such amendments introduced vide ***SEBI (Amendment) Act, 2002*** in penalty and offences would apply prospectively from 29.10.2002 and would have no application for any act or omissions committed prior to 29.10.2002. The declaration and directions sought by the petitioner are for initiating such actions, which are prohibited under Article 20(1) of the Constitution of India and settled principles of statutory interpretation.

4.3 Section 26D of the SEBI Act, 1992 specifically incorporates by implication all provisions of Cr.P.C. to the proceedings before a Special Court. Even otherwise, Section 4(2) of Cr.P.C. makes all provisions of Cr.P.C. applicable to investigation, inquiry, trial or otherwise dealing with all offences under any law other than IPC, subject to provisions of special laws to the contrary. Therefore, provisions of Section 468 of Cr.P.C. which provide for bar on taking cognizance after lapse of the period of limitation as specified in sub-section (2) of Section 468 of Cr.P.C would necessarily apply for the prosecution for offences under Section 24 of the SEBI Act, 1992. If the act or omission is committed prior to 29.10.2002 i.e. prior to SEBI (Amendment) Act, 2002, the punishment for offences under the existing Section 24(1) and 24(2) being imprisonment for one year and three years, the bar of limitation period of one year or three year respectively imposed by Section 468(2) of Cr.P.C., shall necessarily be

applicable to prosecution for such offence under SEBI Act, 1992, being a valuable right of an accused. The petitioner in the guise of public interest, interest of security market and of the investors, seeks declaration and directions which would be contrary to the statutory provisions and would militate against Article 21. No such declaration or directions can thus be issued by this Court.

4.4 The PIL petitioner further wants the Court to ignore the effect of provisions of Section 465 of the Companies Act, 2013 providing for "repeal and savings", although brought in effect from 30.01.2019. Section 465 saves only those proceedings before authorities or prosecution before Court, which are already filed under the repealed Act and are pending before 30.01.2019. What the petitioner seeks is that *dehors* the now applicable provisions of Section 465 of the Companies Act, 2013, this Court shall issue directions to the Respondent SEBI thereby permitting initiation of proceedings for adjudication and prosecution for contraventions of the provisions of Part III and IV of the repealed Companies Act, 1956 relating to securities. The same is not permissible in law.

5. We see no merits in any of the contentions and prayers made in the petition. There is no reason for directing any action against the serving or retired officials of SEBI.

6. For the above reasons, the PIL petition is dismissed. No costs.

(PRAKASH GUPTA),J (INDRAJIT MAHANTY),CJ

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