

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1434 OF 2017

1. SAMCO Securities Ltd.]
A company incorporated under the]
Companies Act, 1956 having its]
Corporate office at 1004-A, 10th Floor,]
Naman Midtown-A Wing,]
Senapati Bapat Marg, Elphinstone Road,]
Mumbai – 400 013.]
]
2. Samruddhi Finstock Ltd]
A company incorporated under the]
Companies Act, 1956 having its registered]
office at 66, Samruddhi House,]
Bhaudaji Cross Road, Matunga Central]
Mumbai.]
]
3. Jimeet Modi,]
Chief Executive Officer of Samco]
Securities Ltd, having his]
office at 66, Samruddhi House,]
Bhaudaji Cross Road, Matunga Central]
Mumbai.] **..Petitioners.**

Versus

1. Securities and Exchange Board of India,]
C-4A, 'G' Block, Bandra Kurla Complex,]
Bandra (East), Mumbai – 400 051.]
]
2. BSE Ltd,]
Phiroze Jeejeebhoy Towers, Dalal Street,]
Mumbai – 400 001.]

-]
3. National Stock Exchange of India Limited,]
Exchange Plaza, C-1, Block G, Bandra]
Kurla Complex, Bandra (East),]
Mumbai – 400 051.]
]
4. Multi Commodity Exchange of India Ltd,]
CTS No. 255, Exchange Square, Suren]
Road, Chakala, Andheri (East)] **..Respondents.**

Mr. V. R. Dhond, Senior Advocate with Mr. Luckyraj Indorkar, Paras Parekh, Stuti Shah I/b M/s. J. Sagar Associates for the Petitioner.

Mr. Vikram Nankani, Senior Advocate with Pulkit Sukhramni, Nikhil Ratti Kapoor I/b M/s. The Law Point for Respondent No. 1.

Mr. Manish Chhanani and Pratisha I/b M/s. Khaitan & Co., for Respondent No. 2.

Mr. Sachin Chardrana, Mr. Rashi Agarwal I/b M/s. Manilal Kher Ambalal & Co., for Respondent No. 3.

Mr. Gouresh C. Mogre for Respondent No. 4.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date : **August 29, 2018.**

Judgment [Per Ranjit More, J.]:

1. By this petition, filed under Article 226 of the Constitution of India, the Petitioner seeks to quash and set aside two circulars issued by Respondent No. 1, being Circular dated 11th August 2016 and 3rd November 2016.

2. The Petitioner's case is as under :

Petitioner No.2 and Petitioner No.1 (stock broker) are the group companies. The Petitioners' group conceived the idea of

Indian Trading League [*for short "ITL"*], a ranking mechanism that ranks the performance of participants who trade in securities. The ITL entails ranking by Petitioner No.2 of trades of participants (clients of Petitioner No.1, who register for the ITL) in equities, derivatives etc., after such trades are effected. For this ranking, Petitioner No. 1 shares the data of trading by its clients with Petitioner No.2 with the written consent of clients. Participants are rewarded for the highest return on investments on a daily, weekly, monthly and quarterly basis. The trading by the participants is based on their own investment decisions. There is no fee by Petitioner No.2 for participating in the ITL. The trading by the participant is no different from any trading in ordinary course. No pooling, assurance of return or sharing of revenues is effected by Petitioner No.1 or Petitioner No.2. Petitioner No.2's source of income from the ITL is from advertisements and sponsorships from third parties.

. By the first circular, i.e., Circular dated 11th August 2016 Respondent No.1 advised Respondent Nos.2 and 3 not to grant approval to any advertisement by brokers which are related to leagues / schemes / competitions etc till such time the revised code of advertisement is communicated to them. By the Circular dated 3rd November 2016, Respondent Nos.2 and 3 are advised to ensure that

stock broker or its associates / group companies cannot directly or indirectly sponsor or be associated with any schemes / leagues / competition, etc. which may involve distribution of monies / prizes / gifts / medals, etc.,

3. Mr. Dhond, learned senior counsel for the Petitioner submitted that impugned circulars are violative of constitutional right of the Petitioner guaranteed under Article 19(1)(g) of the Constitution of India to carry on business, trade or profession. He also submitted that the impugned circulars are violative of Article 14 of the Constitution of India as the same are arbitrary and based on irrelevant and extraneous considerations. He also submitted that impugned circulars amount to a piece of colourable subordinate legislation inasmuch as they exceed the scope and bounds of the authority of Respondent No.1.

4. The case of Respondent No.1 is that on 14th May 2015, it received a complaint regarding the ITL launched by Petitioner No. 1 wherein Respondent No.1 was requested to take corrective action. Respondent No.1 in turn advised Respondent Nos.2 and 3 to examine the issue regarding ITL. On receipt of comment from Respondent Nos.

2 and 3, 1st Respondent on 11th December 2015 issued certain requirements which were to be strictly complied with by the stock brokers whose clients were availing services under any schemes / leagues / competitions etc. Subsequently, Respondent No.1 sought information from Petitioner No.1 with regard to ITL. After exchange of correspondence on the matter, Respondent No.1 conducted inspection of Petitioner No.1 and in this inspection it emerged that Petitioner No.2-the sponsor of league, nominated SAMCO Commodities Limited (100% subsidiary of Petitioner No.1) as its execution broker of the league. For the purpose of participation in the league, a client was required to open a trading and/or Demat account with the designated execution broker. The client was further required to give a written consent by way of a voluntary authorization to allow sharing details of its portfolio with Petitioner No.2 for the purposes of ITL. The performance of investors was evaluated based on the returns generated on the portfolio of stocks during a given time period. The best performing clients were given monetary incentives.

5. Respondent No.1 thereafter on 11th August 2016 issued the first impugned circular informing that it was in the process of framing a revised code of advertisement for the stock brokers and the

stock exchanges were advised not to grant any approval to any advertisement by stock brokers which were related to schemes / leagues / competitions till the time the revised code of advertisement is communicated. After receipt of inputs from various stock exchanges, Respondent No.1 on 3rd November 2016 issued second circular whereby the stock exchanges were notified of the code of advertisement for the stock brokers.

6. Mr. Nankani, learned senior counsel for the Respondent no. 1 submitted that the impugned circulars are issued as part of an evolving policy, in exercise of the powers granted to Respondent No.2 under the Securities and Exchange Board of India Act, 1992 [*for short "the SEBI Act"*] and in discharge of duties and functions of Respondent No.1 under the SEBI Act. He submitted that the guidelines under the impugned circulars were issued after consulting various stock exchanges and stock brokers and the same are issued keeping in mind the interest of investors. He denied that the impugned circulars violate the constitutional rights guaranteed to the Petitioner under Article 14 or for that matter under Article 19(1)(g) of the Constitution of India.

. Without prejudice to this contention, Mr.Nankani further

submitted that in terms of Article 19(6) of the Constitution of India, the reasonable restrictions in the interest of general public can be imposed on the right which is guaranteed under Article 19(1)(g). He submitted that by the impugned circulars, business of Petitioner No.1 cannot be said to be affected. He lastly submitted that the petition is devoid of merit and therefore deserves to be dismissed.

7. Having considered the rival submissions canvassed by the learned senior counsel appearing for the respective parties and having gone through petition and annexures thereto and affidavit-in-reply as well as the provisions of relevant statutes, we find no merit in the writ petition. Respondent No.1 is a statutory body established under section 3 of the SEBI Act. Respondent No.1 is established in order to protect the interest of investors in securities and promote the development and to regulate the securities market. Section 11 of the SEBI Act gives power and jurisdiction to Respondent No.1 to regulate the securities market and also to protect the interest of the investors in the securities market by such measures as it thinks fit. Under section 12, the registration of stock brokers, sub-brokers, share transfer agents, bankers to an issue is mandatory. Respondent No.1 in exercise of powers under section 30 of the SEBI Act has notified the

Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992. Regulation 7 of the said Regulations of 1992 specifies that the stock broker holding a certificate of registration shall at all times abide by the code of conduct as specified in Schedule II of the Stock Broker Regulations. Para C(4) and C(5) of the said Code of Conduct is relevant in the context of present matter, which is therefore reproduced here :

“Para C(4) : Advertisement and Publicity : A stock broker shall not advertise his business publicly unless permitted by the stock exchange.”

“Para C(5) : Inducement of Clients : A stock-broker shall not resort to unfair means of inducing clients from other stock-brokers”

8. The record reveals that during the course of inspection of Petitioner No.1, Respondent No.1 found that number of clients of Petitioner No.1 has increased from 7,441 (pre-ITL) to 28,696 (post-ITL) after the ITL was launched which was an increase of almost 300% the clientel base of Petitioner No.1. Respondent No.1 further found that total turnover of clients participating in ITL since start of ITL till 31st July 2016 was Rs.35,412 crore whereas the turnover of clients not participating in ITL since start of ITL till 31st July 2016 was only Rs.16,641 crore. Respondent No.1 found that ITL participating clients have been contributing almost twice the turnover than the non-ITL participating clients. On the basis of these figures, Respondent No.1

came to the conclusion that massive rise in client base and turnover of Petitioner No.1 was on account of the monetary incentives which were being offered to clients for trading through Petitioner No.1 as its stock broker. Respondent No.1 apprehended that the scheme such as the subject matter of the present writ petition, rather than educating and promoting a habit of informed decision making, would make the investors take rash, reckless and risky decisions to maximise their profits and to win the monetary reward which were up for the grabs.

9. In the light of conclusion arrived at by Respondent No. 1 and the apprehension of Respondent No.1 stated hereinabove, Respondent No.1 took a decision to prohibit the stock-brokers from being associated, directly or indirectly, with any schemes, leagues competitions which may involve distribution of monies / gifts / prizes etc.,. We find that impugned circulars do not have any bearing on the primary business of the Petitioner and the guidelines are issued to achieve the object that investors are not misguided and lured into trading on the pretext of receiving monetary incentives from the brokers. We therefore do not find merit in the Petitioner's contention that the impugned circulars are arbitrary or based on irrelevant or extraneous considerations and are therefore violative of mandate of

Article 14 of the Constitution of India. We are also unable to accept the Petitioner's contention that impugned circulars are in breach of the Petitioner's right under Article 19(1)(g) of the Constitution of India to carry on business or trade or profession. By the impugned circulars, the brokers like Petitioner No. 1 are prohibited from being associated with any sort of competition or league which involves distribution of prizes or monies or gifts. The primary business of Petitioner No.1 is to carry on the stock-broking activities and not the promoting or participating in leagues or competitions. By the impugned circulars, by no stretch of imagination it can be said that the primary business of Petitioner No.1 is affected. In our considered opinion, the impugned circulars therefore do not violate the constitutional right of Petitioner No.1 guaranteed under Article 19(1)(g) the Constitution of India. Even assuming for the sake of argument that restrictions put on by the impugned circulars are violative of the Petitioner's right enshrined in Article 19(1)(g) of the Constitution of India, in that case also we are of the opinion that the said restrictions are reasonable restrictions and those are imposed in the interest of general public. It is settled position of law that reasonableness is to be seen from the stand-point of public interest and not from the perspective of the person on whom the restriction is imposed. In the

light of this settled position, in our view the prohibition put on the stock-brokers from being associated with the leagues, schemes, competitions, which lure investors by providing monetary incentives and which would cause investors to make reckless decisions, cannot be termed as unreasonable as the same is being done in the larger public interest.

10. Before parting with this judgment, we must also deal with the submission of learned Senior Counsel Mr. Dhond that the impugned circulars exceed the scope and bound of authority of Respondent No.1. We are unable to agree with this submission. As stated in paragraph 7 above, Respondent No.1 gets power to regulate the securities market and is duty-bound to protect the interest of investors in the securities market as provided for under section 11 of the SEBI Act. In exercise of powers conferred under section 13, Regulations of 1992 have been framed. Schedule-II of the Regulations of 1992 contains code of conduct for the stock-brokers, which is required to be abided by all stock-brokers. As stipulated under this code of conduct, the stock-broker shall not advertise his business publicly without permission of the Exchange nor can he directly resort to unfair means for inducting the clients from other stock-brokers.

Undoubtedly, Petitioner No.1 being the stock-broker neither can advertise its business nor can resort to unfair means for inducing the clients from other stock-brokers inasmuch as the same is prohibited under the code of conduct. By the impugned circulars it is only clarified that what the stock-broker cannot do directly is also not permitted to do indirectly.

11. Taking totality of the facts and circumstances of the case into consideration, we find no merit in the petition and the same is accordingly dismissed.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]