HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 19352 OF 2021

Kavi Arora … Petitioner

Versus

Security and Exchange Board of India … Respondent

.....

Mr. Aurup Dasgupta with Mr. Ankit Bhatia, Ms Jinal Vani i/b M/s. Jhangiani Narula & Associates for the Petitioner.
Mr. Pradeep Sacheti, Senior Counsel with Ms Deepti Mohan, Ms Nidhi Singh and Binjal Samani i/b Vidhi & Partners for the Respondent.

.....

CORAM : K.K. TATED &
PRITHVIRAJ K. CHAVAN, JJ.
DATE :SEPTEMBER 15, 2021.

P.C. :-

. Heard.

2. By this petition, under Article 226 of the Constitution of India, the Petitioner is seeking directions against the Respondent to forthwith furnish documents relied upon by the Respondent and a copy of an Opinion formed under Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 constituting and adjudicating authority for the purpose of issuing Show Cause Notice dated 17/11/2020.

3. The learned counsel for the Petitioner submits that, in the present proceedings the Respondent Authority issued Show Cause Notice dated 17/11/2020 under Section 11(1), 11(4), 11B(1), 11B(2), and 11(4A) of the Securities and Exchange Board of India Act, 1992 and Section 12

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A(1) and 12A (2) of the Securities Contracts (Regulation) Act, 1956 read with SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Securities Contracts (Regulation) Act, 1956 (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 in the matter of Religare Enterprises Limited.

4. The learned counsel for the Petitioner submits that at the time of issuing Show Cause Notice dated 17/11/2020, the Respondent relied on several documents. He submits that event they obtained an internal Opinion before issuing the show cause notice. He submits that as per Rules 3 and 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, they have to follow the procedure before holding an inquiry on the basis of the show cause notice. Rules 3 and 4 of the Security and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 reads thus:

> *"Appointment of adjudicating officer for holding inquiry.*
> *3. Whenever the Board is of the opinion that there are grounds for adjudging under any of the provisions in Chapter VI-A of the Act, it may appoint any of its officers not below the rank of Division Chief to be an adjudicating officer for holding an inquiry for the said purpose.*
>
> *Holding of inquiry.*
> *4.(1) In holding an inquiry for the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G [15HA and 15HB] whether any person has committed contraventions as specified in any of sections 15A, 15B, 15C, 15D, 15E, 15F, 15G [15HA and 15HB] the adjudicating officer shall, in the first instance, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than fourteen days from the date of service thereof)*

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why an inquiry should not be held against him.

(2) Every notice under sub-rule (1) to any such person shall indicate the nature of offence alleged to have been committed by him.

(3) If, after considering the cause, if any, shown by such person, the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representative.

(4) On the date fixed, the adjudicating officer shall explain to the person proceeded against or his lawyer or authorised representative, the offence, alleged to have been committed by such person indicating the provisions of the Act, rules or regulations in respect of which contravention is alleged to have taken place.

(5) The adjudicating officer shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date and in taking such evidence the adjudicating officer shall not be bound to observe the provisions of the Evidence Act, 1872 (11 of 1872) :
Provided *that the notice referred to in sub-rule (3), and the personal hearing referred to in sub-rules (3),(4) and (5) may, at the request of the person concerned, be waived.*

[(5A) The Board may appoint a presenting officer in an inquiry under this rule.]

(6) While holding an inquiry under this rule the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the adjudicating officer, may be useful for or relevant to, the subject-matter of the inquiry.

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> *(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the adjudicating officer, the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.*
>
> *1. Substituted for "and 15H" by the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Amendment Rules, 2006, w.e.f. 14-11-2006.*
> *2. Substituted for "and 15H" by the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Amendment Rules, 2006, w.e.f. 14-11-2006.*
> *3. Inserted for "and 15H" by the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Amendment Rules, 2006, w.e.f. 14-11-2006.*

5. The learned counsel for the Petitioner submits that from time to time the they called upon the Respondent to provide the documents relied by them in the show cause notice. He submits that, the Petitioner by their e-mail dated 23/03/2021 called upon the Respondents to supply the following documents:

> *"1. The Complete AZB report (consisting of two volumes) along with letter dated 21.01.2020 from Religare Finvest Limited to SEBI vide which said report was forwarded by Religare Finvest Limited to SEBI;*
>
> *2. FileNo.SEBI/HO/BKC/IVD/04/30/FC/P/2020/ 0000291469,consisting of RFI's reply to the ex-parte interim order issued by SEBI dated March 14, 2019;*
>
> *3. Last five pages (unnumbered) to the MSA Probe Report dated September 12, 2018 provided under Annexure 1 to the Show Cause Notice ("MSA Probe Report");*
>
> *4. Enclosure (i) to the MSA Probe Report containing index of bank statements; and*
>
> *5. Enclosure (iii) to the MSA Probe Report containing calendar of oral evidence consisting of gist of interviews conducted."*

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He submits that in reply to the said e-mail dated 23/03/2021, the Respondents by their letter dated 24/03/2021 supplied the documents as mentioned at serial No. 1 and 2 of the said e-mail but in respect of the documents mentioned at paragraph No. 3, 4 and 5 stated that, those are confidential documents for their reference purpose. Paragraph 2 of the letter dated 24/03/2021 is as under:

> *"2. Further reference is drawn to your e-mail dated March 23, 2021 wherein you have requested for additional documents in the matter. In this regard, following are submitted:-*
>
> *a) With respect to the documents mentioned at para 1 and 2 in the said email, a CD containing the scan copies of the documents is attached herewith.*
>
> *b) Documents mentioned at para 3, 4 and 5 in the said email are been kept confidential for being internal/confidential/third party in nature."*

6. The learned counsel for the Petitioner submits that as the Respondent have failed and neglected to supply the documents as claimed by the Petitioner, the Petitioner has filed application dated 13/07/2021 before the Deputy General Manager for supply of an Opinion formed under Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, while issuing show cause notice dated 17/11/2020. The Petitioner also filed another application on the same day for certain documents. He submits that the Authority failed to decide both these applications and insisted to go on with the matter along with the main show cause notice. Hence, the Petitioner has filed the present writ petition.

7. The learned counsel for the Petitioner submits that as per the said Rule 1995, it is mandatory on the part of the Respondent to provide a

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copy of an Opinion formed by them to the other side before hearing the show cause notice. He further submits that at the time of issuing show cause notice whichever documents were relied by the Respondents, they have to provide the copies of the same to the Petitioner. He submits that without getting those documents it is impossible for the Petitioner to reply the show cause notice. In support of this contention, the learned counsel for the Petitioner relied on the Judgment of the Apex Court in the matter of ***Natwar Singh Vs. Director of Enforcement and Ors. reported in (2010) 13 SCC 255***. Paragraph 31, 33 and 34 reads thus:

> *"31.The concept of fairness may require the Adjudicating Authority to furnish copies of those documents upon which reliance has been placed by him to issue show cause notice requiring the noticee to explain as to why an inquiry under* Section 16 *of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read into rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in built into the Rules. A noticee is always entitled to satisfy the Adjudicating Authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the Authority are required to be furnished to the noticee enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute.*
>
> *33. In this regard, learned senior counsel for the appellant pressed into service the doctrine of duty of adequate disclosure which according to him is an essential part of the principles of natural justice and doctrine of fairness. A bare reading of the provisions of the Act and the Rules do not*

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support the plea taken by the appellants in this regard. Even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the Authority to set the law into motion. Supply of relied on documents based on which the law has been set into motion would meet the requirements of principles of natural justice. No Court can compel the Authority to deviate from the statute and exercise the power in altogether a different manner than the prescribed one.

34. As noticed, a reasonable opportunity of being heard is to be provided by the Adjudicating Authority in the manner prescribed for the purpose of imposing any penalty as provided for in the Act and not at the stage where the Adjudicating Authority is required merely to decide as to whether an inquiry at all be held into the matter. Imposing of penalty after the adjudication is fraught with grave and serious consequences and therefore, the requirement of providing a reasonable opportunity of being heard before imposition of any such penalty is to be met. In contradistinction, the opinion formed by the Adjudicating Authority whether an inquiry should be held into the allegations made in the complaint are not fraught with such grave consequences and therefore the minimum requirement of a show cause notice and consideration of cause shown would meet the ends of justice. A proper hearing always include, no doubt, a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view."

He relied relied on the Judgment of the High Court in the matter of ***Shashank Vyankatesh Manohar Vs. Union of India and another. reported in (2014) Page 838***. Paragraph 37 and 38 of the said Judgment read thus:

"37. There is nothing on record to indicate that the adjudicating authority has considered the aforesaid aspects before forming the opinion to proceed further with the inquiry under sub-rule (4) of Rule 4 of the Adjudication Rules.

38. In view of the above discussion, though we do not

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> *disturb, at this stage, the impugned show cause notices dated 25 November 2011 issued by the Special Director, Directorate of Enforcement, to the Petitioner, we set aside the communication dated 6 June 2013 issued by respondent No.2, calling the petitioner for a personal hearing. We direct the Special Director, Directorate of Enforcement first to form his opinion, after recording reasons, whether to proceed against the petitioner with regard to the impugned 11 show cause notices, in light of the observations made in this judgment. If the opinion so formed is adverse to the petitioner, such opinion along with the reasons so recorded shall be furnished so as to reach the petitioner at least 15 days prior to the date of personal hearing. This would meet the requirements of Rule 4(3) of the Adjudication Rules."*

He relied on the Judgment of the Delhi High Court in the matter of ***Amit Jain Vs. Securities and Exchange Board of India & Anr. reported in 2018 SCC OnLine Del 9784: (2018) 146 CLA 12.*** Paragraph 33 of the said Judgment reads thus:

> *"33. It is apparent from the above that the formation of an opinion by the Board that there are grounds for adjudging under any of the provisions of Chapter VIA of the Act is a pre condition for appointment of an Adjudicating Officer. It follows that in absence of such an opinion, an Adjudicating Officer cannot be appointed and any such appointment would be without jurisdiction. The respondent also does not dispute the above proposition. It claims that the Board has formed an opinion that there are grounds for adjudging under the provisions of Chapter VIA of the Act and, therefore, the appointment of the Adjudicating Officer cannot be faulted. In its counter affidavit, the respondent has averred as under:-*
>
> > *"It is submitted that SEBI had examined into the alleged irregularities in the trading in shares of Himalayan Granites Ltd. and into possible violation of the provisions of the SEBI Act and PIT Regulations. Further, the adjudication proceedings were initiated in*

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> *the matter after the Whole Time Member was prima-facie satisfied that there are sufficient grounds to enquire into the affairs and adjudicate upon the alleged violations under the SEBI Act and PIT Regulations. It is submitted that the same can be seen from Page no.66 (Annexure 10) of the writ petition containing the file noting."*

On the basis of these submissions, the learned counsel for the Petitioner submits that, the Respondents may be directed to supply all these documents or direct the Authority to decide their applications dated 13/07/2021 before deciding the main show cause notice. He submits that if these reliefs are not granted to the Petitioner, irreparable loss and injury will cause to them.

8. The learned senior counsel for the Respondent submits that the petition as it is filed by the Petitioner is not maintainable. He submits that for the same relief the Petitioner already filed applications before the Deputy General Manager on 13/07/2021 (Exhibit-P and Exhibit-Q of the petition). He submits that in respect of that the petitioner time and again filed an application for adjournment. He submits that they have no objection if the Authority decides both applications filed by the Petitioner along with the main show cause notice.

9. The learned senior counsel for the Respondent submits that as per Rule 3 of the Security and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, clearly shows that the Board has to form an Opinion to decide whether the show cause notice is required to be issued or not. Therefore, there is no question of providing the copies of the same. He further submit that necessary documents has already provided whichever are

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claimed by the Petitioner. He submits that they specifically informed the Petitioner by their letter dated 24/03/2021 (Exhibit-H, Page-171) that the documents mentioned at paragraph 3, 4 and 5 of e-mail dated 23/03/2021 are confidential documents. Therefore, there is no question of providing the copies of the same to the Petitioner.

10. During the course of an argument, the learned senior counsel for the Respondent further made a statement that whatever documents the Petitioner wanted already provided. Apart from that, they are not going to rely on any other documents at the time of hearing of the show cause notice as well as applications filed by the Petitioner on 13/07/2021. The learned senior counsel for the Respondent submits that actually the Authority in the matter of ***Natwar Singh Vs. Director of Enforcement and Ors. (supra),*** specifically shows that, there is no question of granting those documents which are not relied by the Respondents. In support of this contention he relies on paragraph 44, 47 and 48 pf the said Judgment which reads thus:

> *"44. In our opinion, these decisions do not assist the appellants' case in any manner whatsoever because the documents which the appellants wanted in the present case are the documents upon which no reliance was placed by the Authority for setting the law into motion. Observations of the Courts are not to be read as Euclid's theorems nor as provisions of the statute. The observations must be read in the context in which they appear. A line or a word in a judgment cannot be read in isolation or as if interpreting a statutory provision to impute a different meaning to the observations [see Haryana Financial Corporation Vs. Jagdamba Oil Mills12].*
>
> *47. It appears that those Acts recognize rights of accused persons in a criminal case to a fair trial. It is clear that disclosure of unused material in criminal proceedings in*

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United Kingdom is regulated by the provisions of those Acts and applicable to criminal trials where the accused are charged with criminal offences. Duty of disclosure of unused material is not a definite concept to be applied in any and every case in this country. There is no such Act or law as in United Kingdom, nor any procedure prescribed for disclosure of unused material in criminal proceedings. In the present case, the appellants are not defendants in any criminal trial. The judgment has no application as to the fact situation and the law applicable in United Kingdom is not applicable to either the adjudicatory proceedings or even criminal trials in this country.

48. On a fair reading of the statute and the Rules suggests that there is no duty of disclosure of all the documents in possession of the Adjudicating Authority before forming an opinion that an inquiry is required to be held into the alleged contraventions by a noticee. Even the principles of natural justice and concept of fairness do not require the statute and the Rules to be so read. Any other interpretation may result in defeat of the very object of the Act. Concept of fairness is not a one way street. The principles of natural justice are not intended to operate as roadblocks to obstruct statutory inquiries. Duty of adequate disclosure is only an additional procedural safeguard in order to ensure the attainment of the fairness and it has its own limitations. The extent of its applicability depends upon the statutory framework."

On the basis of these submissions, the learned senior counsel for the Respondent submits that there is no substance in the present writ petition and the same is required to be dismissed with costs.

11. We heard both sides at length. It is to be noted that, in the present proceedings, the Respondent issued Show Cause Notice dated 17/11/2020 to the Petitioner. Whatever documents can be provided to the Petitioner, the same were provided by the Respondent. The

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Respondent, specifically informed to the Petitioner by their letter dated 24/03/2021 (Exhibit-H) that other documents cannot be provided because those were kept are confidential. Apart from that, the Petitioner already filed applications dated 13/07/2021 (Exhibit-P) and another interim application on the same day (Exhibit-Q) for directing the Respondent to provide the documents. These both applications are pending before the Authority.

12. It is to be noted that the Judgment relied by the Petitioner as stated hereinabove are not applicable in the facts of the present case because in the present case, the Respondent Board specifically informed the Petitioner by letter dated 23/03/2021 that certain documents are confidential and that cannot provided to the Petitioner. The hearing of the show cause notice as well as applications filed by the Petitioner for certain documents dated 13/07/2021 (Exhibit-P and Exhibit-Q) are pending before the Whole Time Member of the SEBI.

13. Considering these facts, the letter of the Respondent dated 24/03/2021 and the statement made by the learned senior counsel for the Respondent stating that the they are not relying any other documents except those which are provided to the Petitioner, we do not find any substance in the present writ petition. Hence, the following order:

a. The writ petition stands dismissed.

b. No order as to costs.

(PRITHVIRAJ K. CHAVAN, J.) **(K.K. TATED, J.)**

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