

DESH BANDHU GUPTA & CO. & ORS.

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v.

DELHI STOCK EXCHANGE ASSN. LTD.

February 23, 1979

[R. S. SARKARIA, V. D. TULZAPURKAR AND A. P. SEN, JJ.]

Securities Contracts (Regulation) Act, 1956—Ss. 4 & 16—Notification issued thereunder—Scope of.

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Interpretation of statutes—Press Note issued by Government and letter of Ministry of Finance—If could be used for interpreting the notification.

By a notification issued on the 27th June, 1969, under s. 16(1) of the Securities Contracts (Regulation) Act 1956 the Central Government banned with immediate effect all forward trading in shares on recognised stock exchanges in the country. The proviso to the notification, which dealt with how all existing contracts remaining outstanding as on the date of the notification should be closed or liquidated, contained a direction to the effect that "a contract other than a spot delivery contract or contract for cash or hand delivery or special delivery may be entered into between its members or through or with any such member for the purpose of closing out or liquidating all existing contracts remaining to be performed after that date." It further provided that "such contracts shall be subject to the rules, bye-laws and regulations of the recognised stock exchange" that come into force when further new dealings are prohibited and subject also to such terms and conditions as the Central Government may impose.

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In terms of the notification the respondent called upon all its members to submit a list of outstanding transactions in all securities on the cleared list and to deposit along with it, interim margins in cash or approved shares calculated on the basis of differences between the rates of the last clearing and certain average specified rates fixed by it. Appellant no. 2 who was a partner of appellant no. 1, contended that the demand for interim margins was by way of "carry over" of the forward transactions which, in view of the ban contained in the notification, was illegal. Instead of submitting a list of his outstanding transactions on the basis of the rates fixed by the respondent, he enclosed a statement of his outstanding transactions adjusted at the last official closing rates which were higher than the rates fixed by the respondent, suggesting thereby that he was not liable to pay anything. The respondent rejected the appellant's contention and again called upon him to comply with its earlier notice. Eventually since the appellant did not comply with the notice the respondent by a resolution declared him a defaulter which exposed him under the bye laws to a rigorous enquiry into his financial condition and entailed other disabilities including termination of membership. By another resolution the appellant was called upon to deposit additional security of Rs. 20,000/-.

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In his writ petition before the High Court, challenging the resolutions, the appellant contended that all his transactions which remained outstanding on June 27, 1969 were forward contracts pertaining to cleared securities and as such were affected by the notification which banned all forward contracts, that these had to be adjusted at the last official closing rates, and therefore, the respondent's action in calling upon him to deposit interim margins calculated

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A on the basis of certain average specified rates fixed by it was not warranted by the proviso of the notification and was illegal. The High Court dismissed the petition.

Dismissing the appeal,

HELD : The directions issued by the respondent were proper and legal. [383 H]

B The proviso clearly permitted the closing out or liquidation of all outstanding transactions in the normal manner by entering into a forward contract (which would include "carry over") in accordance with the rules, bye-laws and regulations of the respondent. There was no warrant for the stand taken by appellant no. 2 that all outstanding transactions had to be or could be adjusted on the basis of "previous official closing." [381F]

C 1. For the purpose of closing or liquidating existing outstanding transactions a forward contract was permitted to be entered into. The expression "such contracts" occurring in the last part of the notification meant those as were referred to in the first part of the notification, the making of which was banned after June 27, 1969. The expression "such contracts" was not referable to the existing outstanding "contracts nor to 'a contract' that could be entered into for closing or liquidating the existing outstanding contracts. The last part of

D the notification has nothing to do with the existing outstanding contracts, the closing or liquidating of which was independently provided for by the proviso. [381C-D]

2. Moreover the letter of the Joint Director Ministry of Finance addressed to the President of the respondent and the Press Note issued by the Ministry of Finance clearly brought out that as per the notification itself all outstanding contracts were permitted to be liquidated in accordance with the relevant rules,

E bye-laws and regulations of a recognised stock exchange and secondly no specific period was mentioned in the notification for liquidation of outstanding business but that the members operating on a recognised stock exchange were expected to clear the outstandings in a smooth and orderly manner within a reasonable period. [382G-H]

F 3. The two documents which came into existence almost simultaneously with the issue of the notification, could be looked at for finding out the true intention of the Government in issuing the notification. The principle of *contemporanea expositio* can be invoked, though the same will not always be decisive on the question of construction. In construing a statute courts will give much weight to the interpretation put upon it at the time of its enactment and by those whose duty it has been to construe, execute and apply it. Contemporaneous construction placed by administrative or executive officers charged with executing a statute, although not controlling, is nevertheless entitled to considerable weight; it is highly persuasive. [383A-B]

Baleshwar Bagarti v. Bhagirathi Dass, ILR 35 Cal. 701 at 713; *Mathura Mohan Saha v. Ram Kumar Saha*, ILR 43 Cal. 790; approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2458 of 1969.

From the Judgment and Order dated 14-10-1969 of the Delhi High Court in Civil Writ No. 520/69.

Desh Bandhu Gupta (for Appellant No. 2 for self and on behalf of appellants 1 and 3.)

F. S. Nariman, Bishamber Lal, Manoj Swarup, Miss Lalita Kohli and *Miss Manish Gupta* for the Respondents.

The Judgment of the Court was delivered by

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TULZAPURKAR, J.—This appeal by certificate is directed against the judgment and order dated October 14, 1969 of the Delhi High Court dismissing the appellants' Civil Writ Petition (520 of 1969) whereby the appellants sought to quash certain directions issued on June 28, 1969 and two resolutions passed on July 2 and 3, 1969, by the Delhi Stock Exchange, which adversely affected them.

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The Delhi Stock Exchange Association Ltd., New Delhi (the Respondent herein) is a company incorporated under the Indian Companies Act, 1913. It has received recognition from the Central Government under s. 4 of the Securities Contracts (Regulation) Act (XLII) of 1956 for the purpose of the said Act. One Desh Bandhu Gupta (Appellant No. 2) carried on business as a share-broker in the firm name and style of Desh Bandhu Gupta & Co. (Appellant No. 1) and as such was a member of the Respondent. By a notification No. S.O. 2561 dated June 27, 1969 issued under s. 16(1) of the Securities Contracts (Regulation) Act, 1956 the Central Government banned with immediate effect all forward trading in shares at all the Stock Exchanges in the country by declaring that "no person, in the territory to which the said Act extends, shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery in any securities as is permissible under the said Act and the rules, bye-laws and regulations of recognised Stock Exchange", but as regards the forward contracts which remained outstanding as on that date it was directed under the proviso that these could be closed or liquidated in the normal manner. On June 28, 1969 at an emergent meeting held at 10.30 a.m. the Board of Directors of the Respondent considered the abnormal situation arising from the ban imposed under the notification and decided to issue notice to all its members directing them to submit their lists of outstanding transactions in all the securities on the cleared list and to deposit alongwith it interim margins in cash or approved shares calculated on the basis of differences between the rates of the last clearing and certain average specified rates fixed by it. Upon receipt of such notice dated June 28, 1969 from the Respondent the appellant No. 2 addressed a letter of

A even date to the Board of Directors contending that the demand for interim margins was by way of "carry over" of the forward transactions which in view of the ban contained in the notification was illegal and instead of submitting a list of his outstanding transactions on the basis of the rates which had been fixed by the Respondent he enclosed a statement of his outstanding transactions adjusted at the last official closing rates which were higher than the rates fixed by the Respondent, thus suggesting that he was not liable to pay any thing but was entitled to receive some amount at the foot of closing out or liquidating his outstanding transactions. By a rejoinder of the same date the Board of Directors of the Respondent reiterated that its action in fixing the interim clearing rates in the concerned securities and demanding interim margins was in order and that the adjustment of outstanding business claimed by appellant No. 2 was utterly wrong and as such appellant No. 2 was called upon to comply with its notice by submitting an amended list in accordance with the directions together with the differences, if any, immediately. By a telegram dated June

B 30, 1969, which was confirmed by a letter of even date the appellant No. 2 was again called upon to submit his list alongwith the amount of differences, if any, by July 1, 1969 failing which he was informed that necessary action would be taken against him. As the appellant No. 2 stuck to his stand, the Respondent by its letter dated July 1, 1969 once again stressed that the action of the Board in calling for the list and margin money was in order and in accordance with the rules, bye-laws, regulations, practices usages and previous resolutions of the Board and gave further opportunity to him to comply with the directions by July 2, 1969 upto 11.00 a.m. failing which further action was threatened. At the meeting of the Board of Directors of the Respondent held on July 2, 1969 at 4.00 P.M. the Board noticed that all members, except appellant No. 2, had complied with its directions and on a consideration of the entire matter came to the conclusion that appellant No. 2 was intentionally evading to comply with its direction and to pay the required amount of margins and, therefore, resolved that appellant No. 2 trading in the name and style of Desh Bandhu Gupta & Co. be declared a defaulter for such failure and a notice in that behalf be pasted on the Notice Board and appellant No. 2 was informed about it by a telegram and a letter. The resolution passed on July 2, 1969 declaring appellant No. 2 as a defaulter exposed him under the bye-laws to a rigorous inquiry by the Respondent into his financial condition and entailed other disabilities including termination of his membership of the Respondent under Bye-law 308 read with Article 43(iv) of the Articles of Association. Appellant No. 2 thereupon filed a writ petition (Civil Writ No. 520 of 1969) in Delhi High

Court challenging the directions of the Respondent demanding payment of interim margins as also its resolution declaring him to be a defaulter. It appears that after the filing of the petition the Board of Directors of the Respondent at its meeting held on July 3, 1969 passed another resolution calling upon the appellant No. 2 under Article 29 of the Articles of Association to deposit additional security of Rs. 20,000/- failing which further action was threatened. The writ petition was amended and a prayer seeking to quash the second resolution was added. The main contention of the appellant No. 2 was that all his transactions which remained outstanding as on June 27, 1969 were forward contracts pertaining to cleared securities and as such were affected by the Notification which banned all forward contracts, that these had to be adjusted at the last official closing rates, that the action of the Respondent in calling upon him to deposit interim margins calculated on the basis of certain average specified rates fixed by it was not warranted by the proviso therein but in fact amounted to carry over of those transactions which had been prohibited and, therefore, illegal and that both the resolutions, one dated July 2, 1969 whereby he was declared to be a defaulter and the other dated July 3, 1969 whereby he was called upon to deposit Rs. 20,000/- as additional security were contrary to law and unjust and, therefore, the said action as well as the resolutions were liable to be quashed. The appellant No. 2 further contended that by passing the two resolutions, particularly the first one dated July 2, 1969 in contravention or breach of statutory Bye-laws and Regulations his fundamental right to carry on business under Article 19(1)(f) of the Constitution had been infringed and, therefore, issuance of appropriate writ quashing the directions issued on June 28, 1969 and the two resolutions dated July 2 and 3, 1969 was sought.

By its reply filed on July 15, 1969 the Respondent raised a preliminary objection to the maintainability of the petition. It was contended that the relationship between appellant No. 2 and the Respondent was contractual resulting from the Memorandum & Articles of Association and the Rules, Bye-laws and Regulations made under the powers given by the Articles of Association, and since the grievance made in the writ petition related to contractual rights and obligations between the parties and no question of enforcement of any statutory right or obligation arose the remedy under writ jurisdiction was not available. On merits it was contended that the construction sought to be placed by the appellants on the proviso contained in the Central Government Notification, which dealt with closing out or liqui-

A dating the transactions outstanding as on June 27, 1969 was not correct, that under the said proviso such transactions were permitted to be closed or liquidated in accordance with the rules, bye-laws and regulations of the Respondent and, therefore, the directions issued by its Board of Directors on June 28, 1969 to all its members including appellant No. 2 to submit their lists of outstanding transactions and to pay interim margins on the basis of the average specified rates fixed by it were proper and lawful and both the resolutions were legal and justified. The respondent, therefore, prayed for dismissal of the writ petition.

C On a consideration of the rival submissions made before it by counsel for the parties, the High Court upheld both the contentions of the Respondent and dismissed the petition with costs. The High Court's view on both the points is challenged by the appellant before us in this appeal.

D In the view which we are taking on the merits of the case after giving our anxious consideration to the rival submissions thereon, we feel that it would be unnecessary to go into and decide the preliminary objection raised by the respondent to the maintainability of the writ petition. We, therefore, propose to dispose of the appeal on merits.

E On merits the question that arises for our determination is what on proper construction is the scope and ambit of the proviso contained in the notification? Whether, after the imposition of the ban on all forward trading in shares with effect from the close of June 27, 1969, the outstanding contracts that had remained to be performed as on that date were permitted to be closed or liquidated under the proviso in accordance with the rules, bye-laws and regulations of the Respondent or not? On the one hand counsel for the appellants contended that by reason of the ban imposed on all forward trading in shares with effect from the close of June 27, 1969 the action of the respondent in making the demand for interim margins calculated on the basis of the difference between the rates of the last clearing and certain average rates fixed by it in respect of their forward outstanding transactions, which amounted to "carry over" of those transactions, was illegal; in other words the proviso did not permit the closing out or liquidation of the existing outstanding transactions by way of "carry over". On the other hand, counsel for the respondent contended that notwithstanding the ban imposed, which prohibited all future forward trading in shares, the existing forward transactions that remained outstanding on that date were permitted to be closed or liquidated in the

normal manner under its rules, bye-laws and regulations and, therefore, the directions issued by the respondent on June 28, 1969 were in accordance with the notification. It was pointed out that at the close of June 27, 1969, the appellant No. 2 had certain outstanding contracts in Cleared Securities for the then current clearing of July 8, 1969 which had to be completed and performed for the said clearing in the manner laid down in Regulation 8 and Bye-law 52(e) which meant that he could either make cross contracts to close his outstanding purchases or sales for that clearing or to make carry over contracts so as to close the contracts of the current clearing and to make contracts for the ensuing clearing and such contracts could be made upto the last business day prescribed for that clearing by the Respondent; and so much was permitted by the proviso contained in the notification. Moreover, in view of the crisis created by the Notification the Board of Directors of the Respondent issued the directions on June 28, 1969 having regard to Bye-law 73, which were in order and the further action taken by the respondent against the appellant No. 2 consequent upon his failure to comply with the directions was proper and justified under Bye-law 308 read with Article 43(iv) of the Articles of Association of the respondent. Since the question depends upon proper construction of the notification dated June 27, 1969, it will be desirable to set out the said notification *in extenso* which ran thus:—

“New Delhi, the 27th June 1969.

NOTIFICATION

S.O. 2561. In exercise of the powers conferred by sub-section (1) of section 16 of the Securities Contracts (Regulation) Act 1956 (42 of 1956) the Central Government, being of opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declares that no person, in the territory to which the said Act extends, shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of securities other than such spot delivery contract or contracts for cash or hand delivery or special delivery in any securities as is permissible under the said Act, and the rules, bye-laws and regulations of a recognised stock exchange :

Provided that a contract other than a spot delivery contract or contracts for cash or hand delivery or special delivery in any securities on the Cleared Securities List of a recognised stock exchange may be entered into between its members

A or through or with any such member for the purpose of closing out or liquidating all existing contracts entered into upto the date of this notification and remaining to be performed after the said date, but such contracts shall be subject to the rules, bye-laws and regulations of the recognised stock exchange that come into force when further new dealings are prohibited in any securities on the Cleared Securities List and subject also to such terms and conditions, if any, as the Central Government may from time to time impose."

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Counsel for the appellants did not dispute that the proviso in the aforesaid notification dealt with the topic of closing out or liquidating all existing forward contracts entered into up to the date of the notification and which remained to be performed or outstanding as on that date but contended that it did not permit the closing or liquidating all such outstanding transactions in the normal manner under the rules, bye-law or regulations of the respondent, but such outstanding transactions were declared to be "subject to the rules, bye-laws and regulations of the recognised Stock Exchange that come into force when further new dealings are prohibited in any securities on the Cleared Securities List and subject also to such terms and conditions, if any as the Central Government may from time to time impose." In other words, according to counsel, the words "but such contracts" occurring in the last part of the notification referred to the outstanding contracts that remained to be performed at the close of June 27, 1969 and it is this last portion of the notification which indicated the manner in which such outstanding transactions were required to be closed or liquidated. The Respondent's counsel disputed this and urged that the last portion had nothing to do with such outstanding transactions, the closing or liquidating of which was fully dealt with by the proviso. It cannot be disputed that the drafting of the notification in question has been far from happy but even so on a fair reading of the notification it is difficult to accept the construction sought to be placed thereon by counsel for the appellants. In our view, the notification was in three parts. By the first part the Central Government put a ban on all forward trading in shares through the Stock Exchanges in the country by declaring that "no person.....shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery in any securities as is permissible under the said Act, and the rules, bye-laws and regulations of a recognised stock exchange." The second part consisted of the proviso and it dealt fully with how all existing contracts remaining outstanding as on the date of the notification should be closed or liquidated, and the direction

contained therein in that behalf was to the effect that "a contract other than a spot delivery contract or contract for cash or hand delivery or special delivery (meaning thereby a forward contract).....may be entered into between its members or through or with any such member for the purpose of closing out or liquidating all existing contracts.... remaining to be performed after that date." In other words, for the purpose of closing or liquidating existing outstanding transactions a forward contract (which would include a carry over) was permitted to be entered into. Then follows the third or the last part of the notification which commences with the words "but such contracts shall be subject to....." The expression "such contracts" occurring in this last part of the notification meant those as were referred to in the first part of the notification the making of which was banned after June 27, 1969 and the last portion provided that such forward contracts that had been banned "shall be subject to the rules, bye-laws or regulations of the recognised Stock Exchange that come into force (i.e. become applicable) when further new dealings are prohibited.....and subject also to such terms and conditions as the Central Government may from time to time impose." In our view the expression "such contracts" occurring in the last part of the notification were not referable to the existing outstanding contracts nor to 'a contract' that could be entered into for closing or liquidating the existing outstanding contracts. In other words, the third part of the notification on which reliance has been placed by the counsel for the appellants, in our view, has nothing to do with the existing outstanding contracts, the closing or liquidating of which was independently provided for by the proviso. It will thus appear clear that on a proper construction of the notification in question the proviso clearly permitted the closing or liquidating of the existing outstanding transactions in the normal manner by entering into a forward contract (which would include a "carry over") in accordance with the rules, bye-laws and regulations of the Respondent. There was no warrant for the stand taken by the appellant No. 2 that all outstanding transactions had to be or could be adjusted on the basis of "previous official closing".

On the construction of the proviso counsel for the Respondent rightly invited our attention to two documents on record which had come into existence almost simultaneously with the issuance of the notification explaining the manner in which outstanding transactions were intended to be closed or liquidated. In a Press Statement or Press Note issued by the Finance Ministry immediately upon the issuance of the notification it was stated thus :

"The existing contracts entered into upto the date of the notification and remaining to be performed are, however, per-

A mitted by the same notification to be liquidated in accordance with the rules, bye-laws and regulations of the Stock Exchange concerned."

B Further it appears that in response to a query made by the President of the respondent, Shri Maitra, Joint Director (S.E.) Ministry of Finance, Department of Economic Affairs, addressed a communication dated June 28, 1969 to the President in which he stated thus :

C *"As stated in the notification itself, all outstanding contracts which were not liquidated till the date of notification, will have to be liquidated in accordance with the relevant rules, bye-laws and regulations of your exchange in that regard. No fresh forward transactions in any cleared security, however, is permissible.*

D *A statement of outstanding position in each of the cleared securities on your Exchange, as on the date of the notification may please be forwarded to us as early as possible and thereafter at each settlement so as to enable Government to know the reduction in the outstanding business effected from time to time. As will be seen, no specific period has been mentioned in the notification for liquidation of the outstandings. It is, however, hoped that you will issue suitable instruction to your members to ensure that the outstandings are cleared in a smooth and orderly manner within a reasonable period."*

(Emphasis supplied)

E It may be stated that in one of his earlier communications appellant No. 2 himself had requested the respondent to seek clarification from the Government on the points raised by him in regard to the outstanding transactions. The letter dated June 28, 1969 addressed by the Joint Director to the President of the Respondent clearly brings out two aspects : first, that as per the notification itself all outstanding contracts were permitted to be liquidated in accordance with the relevant rules, bye-laws and regulations of the respondent and secondly, no specific period was mentioned in the notification for liquidation of the outstanding business but the members operating on a recognised Stock Exchange were expected to clear the outstandings in a smooth and orderly manner within a reasonable period and, in fact, the Government desired the respondent to forward to it a statement at each settlement indicating the reduction in outstanding business effected from time to time. The exposition in these two documents, therefore, conforms to our interpretation of the proviso.

It may be stated that it was not disputed before us that these two documents which came into existence almost simultaneously with the issuance of the notification could be looked at for finding out the true intention of the Government in issuing the notification in question, particularly in regard to the manner in which outstanding transactions were to be closed or liquidated. • The principle of *contemporanea expositio* (interpreting a statute or any other document by reference to the exposition it has received from contemporary authority) can be invoked though the same will not always be decisive of the question of construction. (Maxwell 12th Edn. p. 268). In Crawford on Statutory Construction (1940 Edn.) in para 219 (at pp. 393—395) it has been stated that administrative construction (i.e. contemporaneous construction placed by administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction, commonly referred to as practical construction, although not controlling, is nevertheless entitled to considerable weight; it is highly persuasive. In *Baleshwar Bagarti v. Bhagirathi Dass*⁽¹⁾ the principle, which was reiterated in *Mathura Mohan Saha v. Ram Kumar Saha*⁽²⁾ has been stated by Mukerjee J. thus :

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“It is a well-settled principle of construction that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it. I do not suggest for a moment that such interpretation has by any means a controlling effect upon the Courts; such interpretation may, if occasion arises, have to be disregarded for cogent and persuasive reasons, and in a clear case of error, a Court would without hesitation refuse to follow such construction.” •

Of course, even without the aid of these two documents which contain a contemporaneous exposition of the Government's intention, we have come to the conclusion that on a plain construction of the Notification the proviso permitted the closing out or liquidation of all outstanding transactions by entering into a forward contract in accordance with the rules, bye-laws and regulations of the respondent.

Having regard to the above construction which appears to us to be the true and proper construction of the notification in question it will be clear that the directions issued by the respondent to all its members including appellant No. 2 on June 28, 1969 in regard to their outstanding transactions as at the close of June 27, 1969 were proper and

(1) I.L.R. 35 Cal. 701 at 713.

(2) I.L.R. 43 Cal. 790.

- A** legal and the appellants' stand was clearly erroneous. It cannot be disputed that ample opportunity was given to appellant No. 2 to comply with the directions but the appellant persisted in his erroneous contention, and failed to comply with those directions with the result that the respondent had no alternative but to declare him a defaulter. In our view, the directions dated June 28, 1969 as well as the two resolutions passed by the respondent on July 2 and July 3, 1969 were proper and justified and the appellants' case on merits was rightly rejected by the High Court. This conclusion of ours, as stated at the commencement of the judgment, renders unnecessary the determination of the preliminary objection.
- C** In the result the appeal fails and is dismissed with costs.

P.B.R.

Appeal dismissed.