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VENEET AGRAWAL
v.
UNION OF INDIA AND ORS.

OCTOBER 31, 2007

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[ASHOK BHAN AND V.S. SIRPURKAR, JJ.]

Securities and Exchange Board of India Act, 1992:

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*S.31—Constitutionality and vires of 1992 Rules and Regulations challenged on the ground that procedure mandated under s.31 was not complied with—Held: It was not necessary for rules/regulations to be re-laid in the next sessions as requisite period of 30 days was to be completed in one or more sessions—Hence rules/regulations after having been initially laid are deemed to lie in succeeding sessions till completion of 30 days—Requirement of s.31 has been thus met—Rules/regulations cannot be declared **ultra vires** on this ground—Even otherwise, provisions of s.31 not being mandatory and merely directory, rules/regulations made thereunder cannot be held to be **ultra vires**—SEBI (Stock Brokers and Sub Brokers) Rules and Regulations, 1992—*

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Rules of Procedure and Conduct of Business in Lok Sabha—Rule 234.

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The challenge in these appeals is relating to the vires and constitutionality of SEBI (Stock Brokers and Sub Brokers) Rules and Regulations, 1992 on the ground that these Rules and regulations in question were laid on the table of the Lok Sabha on 27.11.1992 while on the table of the Rajya Sabha on 16.12.1992 and the proceedings lapsed after the adjournment of the House *sine die* and since the rules and regulations were not re-laid either in the Lok Sabha or in the Rajya Sabha after the calling of the new session, the procedure mandated under s.31 of the SEBI Act was not complied with.

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Before different High Courts, various writ petitions were filed challenging the levy of turnover fee as well as the vires of Regulation

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10. In a transfer petition filed by the SEBI before this Court for consolidating the said cases, this Court had transferred one such petition from the Bombay High Court to this Court while staying the other cases pending before the various High Courts. After hearing the said case, this Court had upheld the vires of Regulation 10 of SEBI Regulation as well as the levy of turnover fee. On the basis of the judgment rendered by this Court, all other similar writ petitions pending in the various High Courts were disposed off. Having failed in their challenge to the levy of turnover fee, the brokers and sub brokers have repeatedly been filing petitions on one or other grounds while their actual grievance is the turnover fee imposed by Regulation 10 which has been upheld by this Court. In the writ petition from which the present appeal arises, similar attempt has been made.

Dismissing the appeals, the Court

HELD: 1.1. Laying of the rules/regulations framed under a particular statute for a specific period which that particular statute may warrant is governed by the Rules of Procedure and Conduct of Business in Lok Sabha. As per Rule 234 of these Rules, the rules and regulations were required to be placed before both the Houses of Parliament for a specified period and if the House is adjourned *sine die* and later prorogued, the procedure has to be completed in one or more sessions, unless otherwise provided under the Constitution or the relevant Act. In the facts and circumstances of the case, Rule 234(1) is applicable.

[Paras 8, 9 and 11] [746-C, D; 747-E, F; 746-G]

1.2. S.31 specifically provides that the Bill has to be placed before both the Houses for a period of thirty days which may be comprised in one session or in two or more successive sessions. The regulation, rule, sub-rule, bye law etc. have to be re-laid in the succeeding session or sessions until the said period is completed in one session. The position has been further clarified by the Rajya Sabha Secretariat in its letter dated 9.10.2002 wherein the Secretariat has clarified that in the case of rules and regulations under S.31 of the SEBI Act, no relaying was necessary as the statute permitted the requisite period of 30 days to be completed in one or

- A more sessions and therefore, the rules/regulations in question after having been initially laid are deemed to lie in the succeeding sessions till the specified period is completed. Besides this the Ministry of Parliamentary Affairs by its letter dated 9.10.2002 further clarified that no modification/rejection of the regulations and rules in question
- B was done by either House. The requirement of S.31 of the SEBI Act has been met with, the rules and regulations in question cannot be declared *ultra vires* on this ground. [Paras 12] [747-G; 748-C-D]

- C *Jan Mohammad Noor Mohammad Bagban v. The State of Gujarat & Anr.*, [1966] 1 SCR 505; *M/s. Atlas Cycle Industries Limited & Ors. v. The State of Haryana*, [1979] 2 SCC 196; *Hukum Chand v. Union of India*, [1972] 2 SCC 601; *Bank of India etc. etc. v. O.P. Swarnakar & Ors. etc. etc.*, [2003] 2 SCC 721; *Prohibition & Excise Suptd., A.P. & Ors. v. Toddy Tappers Cooperative Society, Marredpally and Ors.*, [2003] 12 SCC 738; *Quarry Owners Association v. State of Bihar*, [2000] 8 SCC 655 and *Union of India v. National Hydroelectric Power Corporation Limited*, [2001] 6 SCC 307, relied on.
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BSE Brokers Forum, Bombay and Ors. v. SEBI, [2001] 3 SCC 482, referred to.

- E *Parliamentary Procedure Volume 2*, referred to.

3. Although in the present case the rules were laid before both the Houses as required under S.31, but even if it is assumed that the rules/regulations in question did not complete the requisite period of 30 days, the provisions of S.31 of the SEBI Act not being
- F mandatory and merely directory, as has been held by this Court, the rules/regulations cannot be held to be *ultra vires* on the ground of non-completion of 30 days period after laying of the rules before both the Houses of Parliament. [Para 16] [750-C-D]

- G [This court observed that once the regulations are declared to have been validly made then it is not open to the counsel for the appellant to argue that the same was not examined from a particular angle and the court should re-examine it again. It is especially so, when the counsel who is appearing
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before this Court had appeared in the earlier cases as well.] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2565 of 2005.

From the Judgment dated 29.6.2004 of the High Court of Judicature at Bombay in W.P. No. 1414/2004. B

WITH

Civil Appeal No. 7574 of 2005.

Manohar Lal Sharma and Kuldip Singh for the Appellant. C

G. Vahanvati, SG, A. Sharan, ASG, A.Y. Chitale, Sujeeta Srivastava, Suchitra Atul Chitale, Samir Ali Khan, Amit Anand Tiwary, B.V. Balaram Das, Maninder Acharya, Dev Dutt Kamath, Amit Madhan, Rakesh Singh and Nikilesh Ramachandran for the Respondents.

The Judgment of the Court was delivered by D

BHAN, J. 1. This judgment shall dispose off Civil Appeal No. 2565 of 2005 directed against the judgment of the High Court of Bombay in Writ Petition No. 1414 of 2004 dated 29.06.2006 and Civil Appeal No. 7574 of 2005 directed against the judgment of the High Court of E
Uttaranchal at Nainital in Civil Misc. Writ Petition No. 606(M/B) of 2002 dated 17.10.2003. The point involved being the same, the appeals are disposed off by a common order.

2. By the impugned judgments, the High Court of Bombay and F
Uttaranchal have upheld the vires and constitutionality of SEBI (Stock Brokers and Sub Brokers) Rules and Regulations, 1992 (for short "the Rules & Regulations of 1992). The facts are taken from Civil Appeal No. 2565 of 2005. Although in the writ petition several other points were also taken but at the time of argument before the High Court, the learned G
counsel appearing for the writ petitioners confined his submissions to the question of vires of the rules and regulations only.

3. Principal challenge to the Rules & Regulations of 1992 is based on the contention that the Rules & Regulations were not laid before each H

A Houses of the Parliament as mandated by Section 31 of the Securities and Exchange Board of India Act, 1992 (for short "the Securities and Exchange Act). It will therefore be essential to reproduce Section 31 of the said Act as the entire argument is placed on the requirement of the said Section. Section 31 reads as under:

B "Rules and regulations to be laid before Parliament.—Every rule
and every regulation made under this Act shall be laid, as soon as
may be after it is made, before each House of Parliament, while it
is in session, for a total period of thirty days which may be
C comprised in one session or in two or more successive sessions,
and if, before the expiry of the session immediately following the
session or the successive sessions aforesaid, both Houses agree
in making any modification in the rule of regulation or both Houses
agree that the rule or regulation should not be made, the rule or
D regulation shall thereafter have effect only in such modified form
or be of no effect, as the case may be; so, however, that any such
modification or annulment shall be without prejudice to the validity
of anything previously done under that rule or regulation."

4. SEBI is a regulatory body which has been established under the
E SEBI Act with the objective of protecting the interest of investors in the
securities and of promoting the development of and to regulate, the
securities market and for matters connected therewith or incidental thereto.
Under Section 29 of the SEBI Act, the Central Government is empowered
to frame rules for carrying out the purposes of the Act. Under Section
F 30 of the SEBI Act, the SEBI is empowered to frame regulations
consistent with the SEBI Act and the rules made thereunder to carry out
the purposes of the Act. Section 31 of the SEBI Act, however, provides
that every rule and regulation made under the Act would be required to
be laid before each House of the Parliament, while it is in session, for a
G total period of 30 days which may comprise in one session or two or
more successive sessions. It is further provided therein that if after such
laying, both the houses agree that the rules/regulations should not be made
then the same would be of no effect. In case, if both the Houses agree in
making any modification in the said rules or regulations, then the rules or
H regulations shall have effect only in such modified form. However, any

such modification or annulment shall be without prejudice to the validity of any act previously done under that rule or regulation. A

5. Before proceeding further, it may be mentioned that under Regulation 10 of the SEBI Act, 1992, the Registration fee is levied on the annual turnover of the stock brokers and sub brokers. Levy of turnover fee as well as the vires of Regulation 10 was challenged in different high courts by filing writ petitions soon after the said regulation came into force. In a transfer petition filed by the SEBI before this Court for consolidating the said cases, this Court had transferred one such petition from the Bombay High Court to this Court while staying the other cases pending before the various high courts. After hearing the said case, this Court upheld the vires of Regulation 10 of SEBI Regulation as well as the levy of turnover fee. This Court while deciding the said case, had also taken into consideration the "Bhatt Committee report" which had been submitted by an expert committee constituted by SEBI to examine the issue of turnover fee. This is reported as [2001] 3 SCC 482, *BSE Brokers Forum, Bombay and Ors. v. SEBI*. On the basis of the judgment rendered by this Court, all other similar writ petitions pending in the various high courts were disposed off. Having failed in their challenge to the levy of turnover fee, the brokers and sub brokers have been repeatedly filing petitions on one or other grounds while their actual grievance is the turnover fee imposed by the Regulation 10 which has been upheld by this Court. In the writ petition from which the present appeal arises, similar attempt has been made. B C D E

6. In the present case, rules and regulations in question were laid on the table of the Lok Sabha on 27.11.1992 while on the table of the Rajya Sabha on 16.12.1992. The copies of the proceedings in both the Houses showing the tabling of the said rules and regulations in both the Houses have been annexed. Both the Houses were adjourned *sine die* on 23.12.1992 and later on prolonged. New session of both the Houses of Parliament started on 22.2.1993. It is submitted on behalf of the appellant that the rules and regulations in question are *ultra vires* on the ground that they were not laid before both the Houses for a total period of 30 days, as required under Section 31. F G

A 7. It is submitted on behalf of the appellants that all the proceedings
pending in both the Houses lapsed after the adjournment of the House
sine die and since the rules and regulations were not re-laid either in the
Lok Sabha or in the Rajya Sabha after the calling of the new session, the
procedure mandated under Section 31 of the SEBI Act was not complied
B with. It is also submitted that, for these reasons the rules and regulations
were illegal and *ultra vires* of the SEBI Act as also the provision of the
Constitution of India and consequently all the actions, orders and
directions issued by the respondent against the petitioner under the said
rules and regulations were illegal and liable to be quashed.

C 8. It is important to mention here that the laying of the rules/regulations
framed under a particular statute for a specific period which that particular
statute may warrant is governed by the Rules of Procedure and Conduct
of Business in Lok Sabha given in Parliamentary Procedure Volume 2,
page 1107. The Rule 234 of the said Rules which is relevant in the present
D case is reproduced hereunder:-

“Rule 234. Laying of Regulations, Rule etc. on table:

(1) Where a regulation, rule, sub rule, bye laws etc. framed in
E pursuance of the Constitution or of Legislative functions
delegated by parliament to a subordinate Authority is laid
before the House, the period specified in the Constitution or
the relevant Act for which it is required to be laid shall be
completed before the House is adjourned sine-die and later
F prorogued unless otherwise provided in the constitution or the
relevant Act

(2) Where the specified period is not so completed, the regulation,
rule, sub rule, bye law etc. shall be re-laid in the succeeding
session or sessions until the said period is completed in one
G session.”

9. From the perusal of the above mentioned rule, it is clear that Rule
234(1) is applicable in the facts and circumstances of the present case.
Wherever the period required to be completed under the statute under
which a rule or regulation may have been framed has to be completed in
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one session only, sub clause 2 of Rule 234 would not apply. In the present case, the rules and regulations in question have been framed under Section 31 of the SEBI Act. The said Section of the SEBI Act clearly provides that the requisite period of 30 days for which a rule or regulation framed under the Act is required to be laid before the Houses may be completed in one session or in two or more successive sessions. It further provides that if both the Houses agree to make any modification or reject the said rule/regulation then the rule/regulation would be enforced in the said modified form or would be annulled in accordance with the decision of the Houses.

10. In addition to the above, Rule 234 of Rules of Procedure of Conduct of Business in Lok Sabha has been further clarified in para 2.4 of the Book of Parliamentary Procedure Volume 2, page 1701 where it has been clearly stated as under:-

“2.4 Where a statute provides that the Rule framed thereunder should be laid on the table for a certain period which may be comprised in one session or two or more sessions, it is not necessary for the Rules to be formally re-laid in the next session in order to complete the prescribed period.”

11. We do not find any substance in the submission made by the Counsel for the appellant. Section 31 permits the requisite period of 30 days to be completed in one or more sessions. As per Rule 234 of the Rules of Procedure and Conduct of Business in Lok Sabha, the rules were required to be placed before both the Houses of Parliament for a specified period and if the House is adjourned *sine die* and later prorogued, the procedure has to be completed in one or more sessions, *unless otherwise provided under the Constitution or the relevant Act*. In the present case, Section 31 specifically provides that the Bill has to be placed before both the Houses for a period of thirty days which may be comprised in one session or in two or more successive sessions. The regulation, rule, sub-rule, bye law etc. have to be re-laid in the succeeding session or sessions until the said period is completed in one session. Rule 234, as noted above, has been clarified by para 2.4 of the Book of Parliamentary Procedure. Where the statute provides that the rule framed thereunder

- A should be laid on the table for a certain period which may be comprised in *one session or two or more sessions*, it is not necessary for the rules to be formerly re-laid in the next session in order to complete the prescribed period. Section 31 permits the requisite period of 30 days in one or more sessions. There was no necessity to re-lay the rules before
- B the Parliament in the next session as per parliamentary procedure.

12. This position has been further clarified by the Rajya Sabha Secretariat in its letter dated 9.10.2002 wherein the Secretariat has clarified that in the case of rules and regulations in question under Section 31 of the SEBI Act, no relaying was necessary as the statute permitted the
- C requisite period of 30 days to be completed in one or more sessions and therefore, the rules/regulations in question after having been initially laid are deemed to lie in the succeeding sessions till the specified period is completed. Besides this the Ministry of parliamentary Affairs vide its letter
- D dated 9.10.2002 further clarified that no modification/rejection of the regulations and rules in question was done by either House. The requirement of Section 31 of the SEBI Act has been met with, the rules and regulations in question cannot be declared *ultra vires* on this ground.

13. This apart the issue relating to the laying down of rules/regulations
- E on the table of the Houses for the period provided under the statute under which they are so framed has been dealt with by this Court in various cases. Some of these cases are *Jan Mohammad Noor Mohammad Bagban v. The State of Gujarat & Anr.*, [1966] 1 SCR 505, *M/s. Atlas Cycle Industries Limited & Ors. v. The State of Haryana*, [1979] 2
- F SCC 196, *Hukum Chand v. Union of India*, [1972] 2 SCC 601 and *Bank of India etc. etc. v. O.P. Swarnakar & Ors. etc. etc.*, [2003] 2 SCC 721. In a recent judgment, this Court followed the view taken in *M/s. Atlas Cycle Industries Limited's case* (supra) and *Prohibition & Excise Suptd., A.P. & Ors. v. Toddy Tappers Cooperative Society,*
- G *Marredpally and Ors.*, [2003] 12 SCC 738.

14. In all these cases, the issue relating to laying down and interpretation of the said regulation was examined. It has been held in all these cases that the laying of the rule before both the Houses of Parliament is merely a directory rule and not mandatory. In the Case of *O.P.*
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Swarnakar & Ors (Supra), the provision providing for laying the rules before the Legislative was exactly similar to Section 31 of the SEBI Act. It was also held by this Court that the said provision was directory and not mandatory. The non-compliance with the laying of the rule before the Parliament was not a sufficient ground to declare the rules/regulations framed under the statute as to be *ultra vires*. In *Toddy Tappers Cooperative Society's* case (supra) Hon'ble Mr. Justice Sinha in his concurring judgment following the decision in *Atlas Cycle Industries Limited's* case (supra) and *Quarry Owners Association v. State of Bihar*, [2000] 8 SCC 655 and various other judgments, distinguishing the judgment in *Union of India v. National Hydroelectric Power Corporation Limited*, [2001] 6 SCC 307, (which has been relied upon by counsel for the appellant before us as well) has held as under:-

“The said observations, thus, must be held to be confined to the fact of the matter obtaining therein. In that case it was found as of fact that the rule had never been placed before the Legislature and, thus, there was even no substantial compliance with the law. The Bench, however, did not consider the effect of the directory nature of such a provision, in the light of the decision of this Court in *Atlas Cycle Industries* (supra) and *Quarry Owners' Association* (supra). The Court further did not notice the difference between the expressions ‘approval’ and ‘permission’. Section 16 of the Water Act, construction whereof was in question did not use the expression ‘prior approval’. The word ‘approval’ indicates an Act which has already been made and is required to be approved whereas in the case of ‘permission’, the situation would be different. This aspect of the matter has been considered by this Court in High Court of Judicature for *Rajasthan v. P.P. Singh and Anr.*, [2003] 4 SCC 239 stating : (SCC p. 255, para 40)

“40. When an approval is required, an action holds good. Only if it is disapproved it loses its force. Only when a permission is required, the decision does not become effective till permission is obtained. (See *U.P. Avas Evam Vikas Parishad and Anr. v. Friends Coop. Housing Society Ltd and Anr.*, [1995] Supp 3 SCC 456, In the instant case both the

A aforementioned requirements have been fulfilled.”

15. It was observed that provision was merely directory and not mandatory and even if the rules were not laid before the House at all even then the non-compliance with the laying down of the rules before the Parliament could not be a ground to declare the rules/regulations framed under the statute as *ultra vires*.

16. Although in the present case the rules were laid before both the Houses as required under Section 31, as discussed in the earlier paragraph of the judgment but even if it is assumed that the rules/regulations in question did not complete the requisite period of 30 days, the provisions of Section 31 of the SEBI Act not being mandatory and merely directory, as has been held by this Court in the aforementioned cases, the rules/regulations cannot be held to be *ultra vires* on the ground of non-completion of 30 days period after laying of the rules before both the Houses of Parliament.

17. Respondents with their reply have placed on record the three judgments of Delhi High Court in CWP No. 2942 of 2003 dated 18.9.2002, CWP No. 6920 of 2003 dated 3.11.2003 and CWP No. 2876 of 2001 dated 22.2.2002, wherein a challenge was raised to the rules and regulations under challenge was rejected. Counsel for the appellant appearing before us had also appeared before the Delhi High Court in the said writ petition. In CWP No. 6920 of 2003, counsel who is appearing for the appellant in the present case had appeared before the High Court of Delhi as well. This writ petition was dismissed by the High Court by imposing cost of Rs.15,000/- by observing thus:-

“Once the Regulations are declared to have been validly made, then, it is not open to argue that it was not examined from a particular angle and, therefore, the Court should examine it again. It is not appropriate to ask the Court to presume that the Court while examining the matter was not aware about the provisions contained in law and, more particularly, when the Division Bench of this Court had examined the matter from the same angle. It is in view of this, we dismiss this petition with costs which we quantify at Rs. 15,000/- which shall be deposited with the Delhi Legal Aid

Service Authority within two weeks from today.”

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18. Although the writ petitioner in the present case is different but the repeated attempts are being made to get the rules/regulations invalidated. This has been adversely commented upon by the High Court of Delhi. Once the regulations are declared to have been validly made then it is not open to the counsel for the appellant to argue that the same was not examined from a particular angle and the court should re-examine it again. It is especially so, when the counsel who is appearing before us had appeared in the earlier cases as well.

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19. For the reasons stated above, we do not find any merit in these appeals and the same are dismissed with costs which are assessed at Rs. 20,000/- in each of the appeals.

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D.G.

Appeals dismissed.