



W.P.No.32965 of 2004 & W.P.No.27519 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2022

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.32965 of 2004
& W.P.No.27519 of 2005
and WMP No.29932 of 2005

CSX Members Welfare Association
Represented by its President
S.A.Thooyamani,
9A, SRP Nagar Main
Saibaba Colony,
Coimbatore 641 011

... Petitioner
in W.P.No.32965 of 2004

Kankani Securities Pvt. Ltd.,
Rep. by its Director
123, Ponnurangam Road West,
R.S.Puram,
Coimbatore 641 002

... Petitioner
in W.P.No.27519 of 2005

Vs.

Securities and Exchange Board of India,
Mumbai

... Respondents
in both W.Ps

Common Prayer : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to apply the continuity benefit of the free payable under Clause 4 of Schedule III to the SEBI (Stock Brokers and Sub-Brokers) Regulation, 1992 for the



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corporate entities set out in the list appended to the petition formed by conversion of individual membership into corporate membership.

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For Petitioner : Mr.Sundar Narayan
in both W.Ps

For Respondents : Mr.Shiva Kumar Suresh
in both W.Ps

ORDER

The issues involved in both the writ petitions are common and hence, they are taken up together, heard and disposed of through this common order.

2.The petitioners in both the writ petitions seek for the issue of writ of mandamus directing the respondent to apply the fee continuity benefit under Clause 4 of Schedule III of the Stock Brokers Regulations for the corporate entities. W.P.No.32965 of 2004 has been filed by an Association consisting of thirteen corporate entities and W.P.No.27519 of 2005 has been filed by a single corporate entity.

3.The case of the petitioners is that individual or partnership firms were the members of the Coimbatore Stock Exchange and they converted into corporate entities. As individuals or as firms, they have paid the fees to



the Stock Exchange in which they were members which is based on the turn over for every financial year and according to the petitioners, those individuals and partnership firms who subsequently converted into corporate entities are entitled for exemption from payment of fees for the period for which the erstwhile individual or the partnership firm as member have already paid the fees. This is subject to the various conditions stipulated under Clause 4 of Schedule III of SEBI Regulations, 1992.

4. There is no dispute with regard to the fact that the individuals or the partnership firms who were the members of the Coimbatore Stock Exchange had already remitted the fees in that capacity and it has been received by the SEBI. The dispute is only with regard to the entitlement once they have converted into a Corporate entity under the relevant Regulations. The spark for claiming such an entitlement arises out of the Judgment of the Hon'ble Supreme Court in **SEBI vs. Magnum Equity Services Limited and others**, wherein, the Apex Court held that the issue regarding the benefit of the fees can be granted to even those entities which corporatized prior to 01.04.1997. The Apex Court also dealt with the requirements for claiming such a benefit whereby, there is a twin requirement to be fulfilled viz., the corporate entity must earlier have been either a sole proprietorship or a partnership firm and the second



requirement is that the erstwhile partner should own atleast 40% of the paid equity share capital and should also be a whole time Director of the Company for a minimum period of three years. The same benefit was also held to be entitled to erstwhile partners who after the corporatorisation jointly retained atleast 40% of the paid of equity capital of the corporate entity and were its whole time Directors.

5. There would have been no difficulty if the Coimbatore Stock Exchange had continued in the business of Stock Exchange, since all the details that are required to claim such a benefit would have been available with the concerned exchange. However, Coimbatore Stock Exchange exited in the year 2013 and while, the SEBI allowed for such an exit, the outstanding registration fees amounting to a sum of Rs.2,28,36,251/- of the brokers/trading members were collected up to the date of the de-recognition. Therefore, insofar as the SEBI is concerned, the entire amount outstanding towards registration fees has been collected and there is no amount that is due and payable.

6. The entire difficulty arises when it comes to determining the benefits that are now sought for by the corporate entities as per the 1992 Regulations. The particulars are normally collected by the SEBI only from

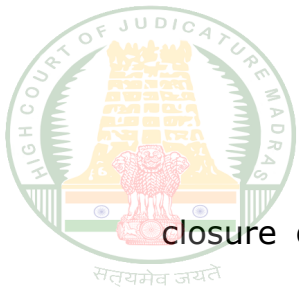


the exchange. The SEBI does not have any particulars about the entities which have now filed the writ petitions and the members of this entities are also not in a position to provide the details, since according to them they have already provided the details to the exchange and the exchange in-turn had provided the details to SEBI. These are details pertaining to the period from 1992-1998.

7.The learned counsel for the petitioners submitted that the entities who have approached this Court have fulfilled the requirements under Clause 4 of Schedule III of the Regulation and hence they are entitled for the fee continuity benefit. The learned counsel therefore submitted that the matter can be remanded to the file of the SEBI to enable them to take a decision after satisfying themselves on the fulfillment of the requirements under the relevant regulations.

8.Per contra, the learned counsel for the SEBI submitted that the SEBI does not have any particulars about these entities and the exchange has also been closed in the year 2013 and hence, no useful purpose will be served in remanding the matter to the file of SEBI.

9.In the considered view of this Court, the efflux of time and the



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closure of the Coimbatore Stock Exchange has virtually made these writ petitions infructuous. This Court exercising its jurisdiction under Article 226 of the Constitution of India cannot get into the issue as to the entitlement that is claimed by the corporate entities under the relevant Regulations. However, even to remand the matter back to the file of SEBI, there must be some purpose and SEBI must have the details to consider the entitlement claimed by the corporate entities. In the absence of the same, if any directions are issued by this Court, it will become completely unworkable.

10.In view of the above, without deciding on into the entitlement that is sought for by the petitioners, both the writ petitions are closed, since sheer efflux of time and non-availability of details have rendered these writ petitions infructuous.

11.In the result, both the writ petitions are closed. No Costs. Consequently, connected miscellaneous petition is closed.

25.07.2022

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
ssr



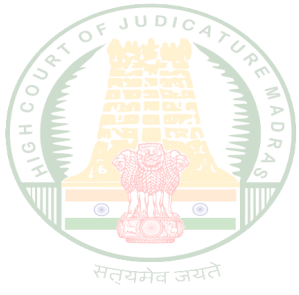
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To

Securities and Exchange Board of India,
Mumbai



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N. ANAND VENKATESH, J.

ssr

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