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W.P.No.6113

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.07.2022

PRONOUNCED ON : 15.07.2022

CORAM

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.6113 of 2010
and W.M.P.No.1 of 2010

...Petitioner

M.Ashok Mootha

Vs.

1.Securities and Exchange Board of India
Karumttu Centre
495, Anna Salai
Chennai – 600 035.

2.National Stock Exchange of India Limited
Trade World
Senapati Bapat Marg
Lower Parel
Mumbai.

...Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 1st respondent herein, pertaining to the 1st respondent's order dated 08.03.2010 issued by the 1st respondent herein and the consequential communication bearing No.NSE/COMP/SEBI-Order/994/01389/132269-W dated 08.03.2010 issued by the 2nd respondent herein and quash the same.



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For Petitioner : Mr.Srinath Sridevan
For Respondents : M/s.Shivakumar & Suresh for R1.
M/s.S.Thiruvengkataswamy for R2.

ORDER

The petitioner has challenged the order dated 08.03.2010 passed by the first respondent and the consequential communication dated 08.03.2010 issued by the second respondent.

2.The case of the petitioner is that he is a registered stock broker and he is licensed to trade stocks in the second respondent exchange. The further case of the petitioner is that as per the revised guidelines issued by the first respondent to all the stock exchanges on 28.03.2002, all the brokers must submit their turnover details together with Auditor's certificate in the revised format. The exchange must verify the turnover details provided by the brokers and in case of any discrepancy, the same has to be reconciled.

3.It is stated that the petitioner submitted the turnover details to the second respondent and it did not tally with the turnover details available with the second respondent. The petitioner therefore made a representation to the second respondent



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to furnish the details in order to understand the reason for such a discrepancy. The petitioner has specifically pleaded that the second respondent never provided the information to the petitioner and as a result of the same, he was not able to file the turnover details within the prescribed time.

4.The second respondent issued a communication dated 10.02.2003 and informed the petitioner that the information has already been furnished and the petitioner disputed the same.

5.Ultimately, the second respondent through communication dated 24.03.2003 informed the petitioner that since no turnover details are available, the second respondent is going to follow the notional turnover details and accordingly fixed the registration fee payable by the petitioner. Aggrieved by the same, the petitioner filed W.P.No.11188 of 2003 and this Writ Petition was pending at the relevant point of time.

6.The grievance of the petitioner is that the first respondent issued a show cause notice dated 23.11.2005 calling upon the petitioner to show cause as to why the certificate of registration of the petitioner should not be suspended or cancelled. The petitioner gave a reply on 05.12.2005 and brought to the notice of the first

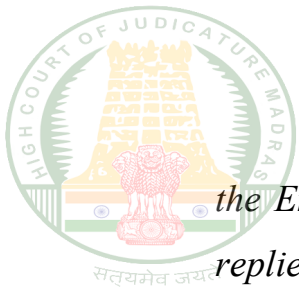


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respondent that there is a dispute over the turnover and the same is pending by way of a Writ Petition in W.P.No.11188 of 2003 and requested the first respondent to await the verdict in the said Writ Petition. According to the petitioner, the first respondent without taking into consideration the reply given by the petitioner, proceeded to pass the impugned order dated 08.03.2010 and suspended the certificate of registration of the petitioner till the payment of the outstanding registration fee. This was followed by a consequential communication from the second respondent. Aggrieved by the same, this Writ Petition was filed before this Court.

7.The first respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder :-

“8.I state that the petitioner has challenged the impugned order on the ground of non compliance of principles of natural justice stating that his reply dated 05.12.2005 has not been taken into account. I respectfully state that the enquiry proceedings were initiated in August 2005 and accordingly an Enquiry Office (EO) was appointed to conduct summary proceedings. However, the case was re-assigned in January, 2009 to another Enquiry Officer and according the new Enquiry Officer had issued a show cause notice dated September 29, 2009. The said show cause notice was served on the petitioner through the 2nd respondent which has been duly acknowledged by the petitioner. I further state that



the Enquiry Officer has stated in his report that the petitioner has not replied to the said show cause notice.

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9.I state that the petitioner has disputed the turnover figures furnished by the exchange. On verification with the 2nd respondent vide letter dated 22.09.2010 has stated that the petitioner has submitted the turnover details vide his letter dated November 15, 2002 which were not matching with the Exchange records. The same was intimated to the petitioner vide Exchange letter ref.no.NSE/MEM/994/40153 dated March 24, 2003. Subsequently, the 2nd respondent vide letter ref.no.NSE.MEM/TD/42047 dated May 05, 2003 forwarded the turnover details of the said broker as per exchange records in the prescribed format.

10.I state that the SEBI computes fee on the basis of the turnover details provided by the concerned exchanges as they are the custodians of turnover details. Accordingly, in respect of the petitioner's case, SEBI took on record the turnover details provided by the 2nd respondent for calculation of fee liability. I further state that as on 31.10.2011, the petitioner has an outstanding fee liability of Rs.10,95,694/- i.e. Rs.3,82,615/- towards principal and Rs.7,13,079/- towards interest.

11.I state that petitioner has disputed the turnover figures only for the year 1997-1998. It is observed from the fee statement that the petitioner has not paid the registration fees from the year 1996 onwards.”

8.Heard Mr.Srinath Sridevan, the learned counsel for the petitioner,



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Mr.Shivakumar, learned counsel for R1 and Mr.S.Thiruvenkataswamy, learned counsel for R2.

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9.The learned counsel for the petitioner submitted that Writ Petition filed by the petitioner in W.P.No.11188 of 2003 challenging the communication dated 24.03.2003, issued by the second respondent, was disposed of by an order dated 04.10.2010 and the petitioner was given liberty to raise all the contentions in this Writ Petition.

10.The learned counsel further submitted that the first respondent proceeded to pass the impugned order on the premise that the petitioner did not give any reply for the show cause notice issued by the first respondent and the said reason is unsustainable due to availability of the reply that was shown to the Court. The learned counsel further contended that the petitioner had determined the turnover and the same did not match the turnover details provided by the second respondent and hence the first respondent ought to have reconciled and determined the turnover for fixing the registration fees and instead, the first respondent straightaway went ahead and suspended the certificate of registration of the petitioner. The learned counsel therefore sought for a remand back to the file of the first respondent in order to determine the registration fee payable after reconciling the turnover.



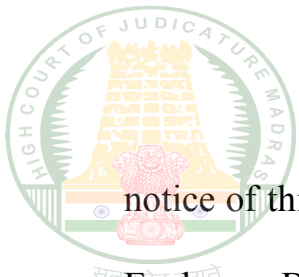
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11.The learned counsel appearing on behalf of the first respondent submitted that the petitioner was served with the show cause notice and the petitioner did not chose to give a reply by providing all the details and merely mentioning the pendency of Writ Petition, cannot be construed as an effective reply. Therefore, the learned counsel contended that the first respondent rightly passed the impugned order and suspended the certificate of registration on the ground of non-payment of the registration fees. The learned counsel further submitted that the second respondent had already forwarded the turnover details of the petitioner on 05.05.2003 in the prescribed format and based on the same, the registration fee was calculated and it was determined as Rs.10,95,694/-. This amount was not paid by the petitioner and the petitioner cannot take advantage of W.P.No.11188 of 2003 which was already dismissed by this Court. The learned counsel therefore submitted that there are absolutely no merits in this Writ Petition and the same is liable to be dismissed by this Court.

12.This Court carefully considered the submissions made on either side and the materials available on records.

13.The instructions issued by the Securities and Exchange Board of India (SEBI) towards fees payable by stock brokers, on 28.03.2002 was brought to the



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notice of this Court. The relevant portion in the instructions issued by Securities and

Exchange Board of India (SEBI) are extracted hereunder :-

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All Stock Exchanges are advised that they shall:

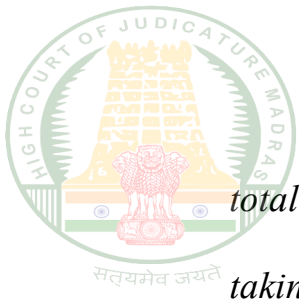
A) Verify the turnover figures submitted by the member with their own records.

B) In case of any discrepancy, the concerned Exchange shall settle the same with the members concerned.

C) In case of any shortfall in fees after reconciliation, the Exchanges shall advise the members concerned to remit the balance fees to SEBI immediately in case the fees paid by the member concerned is less than 50% of the principal fees payable.

D) The Exchanges shall confirm to SEBI the correct turnover figures of all its members (including inactive and past members who were registered with SEBI) after due verification. The said turnover figures in both hard copy (duly certified by the Exchange) as well as soft copy version (Excel format) financial year-wise, member-wise from 1991-92 to 2001-02 may be forwarded strictly as per format specified in Annexure – C (strictly in the order prescribed).

E) In respect of members who do not furnish the break-up of total turnover duly certified by the Auditor, the Exchange may furnish the



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total turnover of such members as per their records, once again, taking into consideration the steps underlined below, even though the said details may have been furnished earlier and there is no change in the turnover reported earlier.

14.It is clear from the above that wherever there is a discrepancy in the turnover figures furnished by the broker and the stock exchange, the same has to be reconciled by the stock exchange with the broker concerned. Thereafter, the concerned stock exchange will confirm to Securities and Exchange Board of India (SEBI), the correct turnover figures and the registration fees will be calculated based on the same.

15.In the present case, there was a difference/discrepancy in the turnover figures furnished by the petitioner and the second respondent exchange. The second respondent took a decision to determine a notional turnover figure by taking into account the higher of the two turnover figures as of furnished by the petitioner and as per the exchange records. This was challenged by the petitioner in W.P.No.11188 of 2003. At the time when this Writ Petition was filed, the above Writ Petition was pending and therefore the focus of the petitioner was to restrain the first respondent from suspending the certificate of registration of the petitioner till a final verdict is given in the above Writ Petition. This Writ Petition ultimately came to be dismissed by an order dated 04.10.2010. The Writ Petition was dismissed mainly on the ground



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that the order of suspension was already passed against the petitioner and the petitioner was granted liberty to raise all the issues in this Writ Petition.

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16.The first respondent proceeded to take into consideration the turnover figures furnished by the second respondent and the registration fee was fixed and due to the non payment of the same, the certificate of registration of the petitioner was suspended.

17.The issue regarding reconciliation of the turnover figures was not finalized by the second respondent. The notice issued by the second respondent on 24.03.2003, only directed the petitioner to provide the revised/reconciled figures and it was further informed to the petitioner that if there is still a mis-match, the higher of the turnover figure will be submitted to the first respondent. This process did not reach its logical conclusion, since the Writ Petition was filed against the said communication. In the meantime, the first respondent proceeded to determine the registration fees based on the turnover figures available with the second respondent. The impugned order passed by the first respondent was stayed by this Court when this Writ Petition was entertained and hence, the status-quo as on the date of filing of the Writ Petition continues till date.



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18. In view of the above discussion, this Court is inclined to dispose of this

Writ Petition with the following directions :-

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a) The petitioner is directed to furnish the turnover figures as directed by the second respondent through communication dated 24.03.2003, within a period of four weeks from the date of receipt of copy of this order.

b) The second respondent on receipt of the same shall determine the turnover figures for the relevant period as per the instructions issued by the Securities and Exchange Board of India (SEBI).

c) The second respondent shall thereafter furnish the turnover details to the first respondent within a period of six weeks from the date of receipt of the details furnished by the petitioner.

d) The first respondent on receipt of the details from the second respondent shall fix the registration fees for the relevant period and inform the same to the petitioner. This process shall be completed by the first respondent within a period of six weeks from the date of receipt of the details from the second respondent.

e) Till the above process is completed, the order passed by the first respondent dated 08.03.2010 shall be kept in abeyance.

f) If the petitioner fails to pay the registration fees fixed by the first respondent, consequential orders shall be passed by the first respondent cancelling the certificate of registration of the petitioner. If the petitioner pays the registration fees fixed by



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the first respondent, consequential orders shall be passed cancelling the earlier order dated 08.03.2010.

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19. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

N.ANAND VENKATESH.J.,

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To

1. Securities and Exchange Board of India
Karumttu Centre
495, Anna Salai
Chennai – 600 035.



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2.National Stock Exchange of India Limited

Trade World

Senapati Bapat Marg

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