

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 195 OF 2009

1. M/s. National Commodity & Derivatives)
Exchange Limited, a company)
incorporated under the provisions of)
the Companies Act, 1956, having its)
registered office at 1st Floor, Akruti)
Corporate Park, Near G.E. Garden,))
LBS Road, Kanjurmarg West,)
Mumbai – 400 078.)
2. Mr. R. Ramaseshan, Managing Director,)
M/s.National Commodity & Derivatives)
Exchange Limited, having its registered)
office at 1st Floor, Akruti Corporate Park,)
Near G.E. Garden, LBS Road,)
Kanjurmarg West, Mumbai – 400 078.).. Petitioners

Versus

1. Union of India, represented by the)
Secretary, Department of Consumer)
Affairs, Ministry of Consumer Affairs,)
Food and Public Distribution,)
Krishi Bhawan, New Delhi.)
2. Forward Markets Commission,)
represented by its Chairman,)
“Everest”, 3rd Floor, 100, Marine Drive,)
Mumbai – 400 002.).. Respondents

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Shri I.M. Chagala, Senior Counsel and Shri Virag Tulzapurkar, Senior Counsel with Ms Sowmya Srikrishna, Shri Indranil Deshmukh and Shri Aditya Mehta i/by Amarchand Mangaldas & S.A. Shroff & Co. for the Petitioners.

Shri A.J. Rana i/by Shri H.K. Vardhan for Respondent No.1.

S/Shri R.A. Dada, Senior Counsel with Rajeev Mane, Haihanrang Newme and Ms Harshada Nagare for Respondent No.2.

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CORAM: SWATANTER KUMAR, C.J. &
DR. D.Y. CHANDRACHUD, J

JUDGMENT RESERVED ON : 2ND FEBRUARY, 2009.

JUDGMENT PRONOUNCED ON : 5TH FEBRUARY, 2009.

JUDGMENT : (PER SWATANTER KUMAR, C.J.)

1. Petitioner No.1 is a Limited Company, registered under the provisions of the Companies Act, 1956 and a recognised association under the provisions of the Forward Contracts (Regulation) Act, 1952 and claims to carry on business as a Commodities' exchange by providing a trading platform for dealing in

forward contracts in commodities by its members. Besides Petitioner No.1, there are two more entities which are functioning in Commodities' exchanges at the national level. Respondent No.2 is a statutory body constituted under Section 3 of the Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as the "Act") and exercises limited powers within the provisions of the Act. The Union of India in exercise of its power under Section 26 has delegated powers conferred upon it to Respondent No.2 under the provisions of the Act including Sections 6(2)(a), 6(3), 8(2)(a), 8(2)(b), 10, 11, 12 and 14.

2. Respondent No.2 has the power to recognise an association and Petitioner No.1 is one of the recognised associations which, in turn, has framed Rules and Bye-laws, inter alia, for regulation of its relationship with its members and for the regulation and control of forward contracts. These Rules and the Bye-laws have received the approval of Respondent No.1 under Sections 9A and 11 of the Act. In exercise of powers under Bye-law (2)(5)(l) of the Rules and Bye-laws, the Board of Directors of Directors of Petitioner No.1

has made regulations with respect to charges payable by trading members/clearing members for business transacted through the Exchange as may be laid down from time to time. According to Petitioner No.1, this power exclusively vests in the Board of Directors of Petitioner No.1 and in exercise of this power for this limited purpose, Petitioner No.1, since inception from 2003, by way of circular without seeking prior or subsequent approval from the Respondents has been prescribing and regulating Transaction Charge payable by its trading members, including by a Circular issued on 3rd December, 2003; and by a Circular dated 11th April, 2007 which prescribed transaction fee effective from that date. All members of Petitioner No.1 and for that matter even the Respondents were aware of the transaction charges prescribed by Petitioner No.1. It is the case of the Petitioners that in the interest of agrarian economy of the country it laid emphasis on providing for trading in agricultural commodities. Keeping in view the various meetings held and the demand of its members for uniform transaction charges, the Petitioner proposed to lower the Transaction Charge to a uniform level of Rs.3 per lakh of Average Daily Turnover Value (ADTV) for trades till 3.00 p.m. and

Rs. 0.05 thereafter. Apart from enhancing trading interest in agricultural commodities this would serve the larger cause of improved price discovery in such commodities lending a boost to the agrarian sector. The Petitioners believe that this measure would enhance the trading in non-agricultural commodities, more particularly gold and silver, thus reducing the dependence of trading in agricultural commodities. With an intention to implement its decision, Petitioner No.1 issued a Circular dated 29th December, 2008 prescribing the revised transaction charges for trading members. Copy of the said Circular annexed as Exhibit-D to the Petition reads as under :-

**“NATIONAL COMMODITY & DERIVATIVES
EXCHANGE LIMITED**

Circular to all trading and clearing members of
the Exchange

Circular No: NCDEX/TRADING-132/2008/296

Date : December 29, 2008

Subject : Rationalisation of transaction
charges

The trading and clearing members are hereby
informed that, in modification of our earlier

circular no. NCDEX/TRADING-032/2007/085 dated April 11, 2007 and in terms of the Rules and Bye-Laws of the Exchange, the transaction charges stand revised as under:

Uniform charges of Rs. 3.00 per lac of value of all trades in all commodities from 10.00 a.m. to 3.30 p.m. till end of trading

The above revised schedule of transaction charges shall be effective from December 30, 2008.

The existing requirements relating to Annual Advance Minimum Transaction charges shall continue.

For and on behalf of
National Commodity & Derivatives Exchange
Limited

Uma Mohan
Head – Products”

3. For the reasons best known to Respondent No.2, the Director of Respondent No.2 vide an E-mail dated 30th December, 2008 directed the Petitioner to keep the said Circular dated 29th December, 2008 in abeyance till further orders. During a meeting with Petitioners' officials the following concerns were raised: -

- “(i) that the Circular is predatory;
- (ii) that the Circular may lead to excessive speculation in agricultural commodities;
- (iii) that the Circular is prejudicial to the financial interests of the Petitioners.”

4. In its meeting dated 1st January, 2009, Petitioner No.2 considered the above referred objections of Respondent No.2 and on 3rd January, 2009 the Board of Directors of Petitioner No.1 decided to apply their Circular dated 29th December, 2008, lowering the transaction charges.

5. On 27th January, 2009, Petitioner No.2 claims to have met the Chairman of Respondent No.2 in order to inform the decision of the Board of Directors of Petitioner No.1 and submitted a detailed basis for rationalisation of transaction charges. In furtherance thereto, the Petitioners also issued a Circular dated 28th January, 2009 to all members implementing lower rates of transaction charges. On 28th January, 2009 itself Respondent No.2 issued a letter directing the

Petitioners to keep in abeyance the circular dated 28th January, 2009 with immediate effect as the Petitioners have reintroduced the Circulars dated 29th December, 2008 and 27th January, 2009 with minor change after substituting only one change i.e. The applicability of time from “after 3.30 p.m.” to “after 5.00 p.m.”. None of the objections of the Respondents were validly taken care of by the Petitioners. Operative part of the said letter dated 28th January, 2009 of Director of Respondent No.2 reads as under: -

“3. The Commission, has, therefore, directed that implementation of the aforesaid Circular dated 28th January, 2009 be kept in abeyance with immediate effect till the matter is examined by the Commission in depth and suitable communication is sent to the Exchange. The Exchange will, however, be given full opportunity to defend its decision/action. Receipt of this letter and compliance of the direction of the Commission may please be communicated to the Commission immediately.”

6. This direction of Respondent No.2 has been questioned by the Petitioners in the present Petition, primarily on the ground that Respondent No.2 has no authority to issue such a directive inasmuch

as the matter relating to transaction charges squarely falls in the exclusive jurisdiction of the Petitioner. No rule or authority is vested in the Respondents to interfere in the management of internal matters of the Petitioner as it primarily controls the charges payable to it by its members for transacting the said trading business. It is further stated that the directives contained in the letter dated 28th January, 2009 are violative of Articles 14, 19(1)(g) and 21 of the Constitution of India and therefore, are liable to be quashed and set aside.

7. On advance notice, the Respondents have appeared, but no reply was filed. However, it was argued that under the provisions of the Act and the Rules framed thereunder, the Respondents have full authority to issue such a directive. They have requested the Petitioners to keep the Circular in abeyance and have called upon the Petitioners to explain the matter to the Competent Authority for issuance of further directives. It is further argued that it is a statutory obligation of Respondent No.2 to ensure that economic and public interest as well as concept of fair competition are not prejudicially affected by any Association. No doubt, under its Rules and Bye-

laws, the Petitioners under Clause (2)(5)(I), the Board of Directors of Petitioner No.1 has the power to make regulations in relation to charges for business to be transacted through them on their platform. This power is vested in the Board and the Board can take its decision on business principles and regulate and control actions prescribing rates relating to transaction charges. It had considered the matter and then taken a decision as has been communicated to Respondent No.2 by the letter dated 28th January, 2009.

8. The question that arises for consideration is whether the power of the Petitioner vested under its Bye-laws is absolute and free from any restrictions or whether it is controlled by other statutory provisions or regulatory authorities provided thereunder. In terms of Rule and Bye-laws (9) of the Petitioner itself, it has been stated that the regulation would mean and include rules framed under the directions of the Forward Markets Commission or any other similar related Authority and such other directives, as may be specified from time to time by the relevant authority. Not only this, in terms of Rule 7 of the Forward Contracts (Regulation) Rules, 1954 framed by the

Central Government in exercise of its power under Section 28 of the Act, grant of recognition is vested in the Central Government and is based upon the advise of the Forward Markets Commission. Rule 7 (2) of the said Rules reads as under:-

“7.

(2) The recognition hereby granted is subject to the condition that the said association shall comply with such direction as may from time to time, be given by the Forward Markets Commission.”

9. A bare reading of the above provision shows that recognition of an Association in terms of Section 6 is vested in the Respondents and they have the jurisdiction to withdraw the recognition. Recognition is subject to the conditions which have been stated in the certificate of registration. Form-B and Form-F respectively, in which the certificates are to be issued, further clearly postulate that the registration granted is subject to conditions stated therein and particularly that the said association shall comply with such directions as may, from time to time, be given by the Forward Markets Commission. In face of these statutory provisions, the

contention raised on behalf of the Petitioners that the Respondents have no jurisdiction, and it is not obligatory upon the Petitioners to carry out directives relating to transaction charges upon examination of the effect of transaction charges proposed and circulars issued by the Petitioners cannot be gone into by the said Authority, is not correct.

10. It cannot also be disputed that under the Act and the Rules framed thereunder, Respondent No.2 is a specialized body which is entitled to consider all these aspects. Firstly, vide its E-mail dated 30th December, 2008, it had asked the Petitioner to keep in abeyance their Circular, whereafter the Petitioner claims to have met the Chairman of Respondent No.2 as well as submitted a detailed representation on 27th January, 2009. This obviously means that the parties had acted on the basis of the earlier letter issued by Respondent No.2 and were examining the matter. However, despite that, when the Petitioner issued Circular dated 28th January, 2009 for enforcing revised transaction charges, Respondent No.2 issued the impugned letter dated 28th January, 2009. Even in the impugned

letter, the matter has not been finally decided and the last paragraph of that letter clearly shows that the Respondents have called upon the Petitioners to discuss the matter and they would take final decision after examining the matter in depth and after granting full opportunity to the Petitioners to defend its decision. To this extent, the present Writ Petition is even premature. It is not the case of inherent lack of jurisdiction with Respondent No.2 to raise such a query. The Petitioners have responded since December, 2008 to the letters issued by Respondent No.2 and resultantly no irreparable harm or injury is likely to be caused to the Petitioners if the matter is examined and adjudicated upon by Respondent No.2 in furtherance to its letter dated 28th January, 2009 expeditiously.

11. It is a settled principle of law that wherever an authority including the State takes a prima facie view and requires the Authorities concerned to submit their objections before it takes a final decision normally invocation of writ petition under Article 226 of the Constitution would be premature. In the case of *Ulgappa & Ors. v.*

Divisional Commissioner, Mysore & Ors., (2001)10 SCC 639, the Supreme Court took such a view.

12. In the case of *Divisional Forests Officer & Ors. v. M. Ramalinga Reddy*, AIR 2007 SC 2226, the Supreme Court took the view while relying upon the judgment of that Court in the case of *Special Director & Anr. v. Mohd. Ghulam Ghouse & Anr*, (2004)3 SCC 440, that the writ petitions questioning legality of the show cause notice stalling inquiries should not normally be interfered by the High Court unless the Court is satisfied that the show cause notice is totally not est in the eyes of law for absolute want of jurisdiction of the Authority even to look into such facts.

13. In the present case, we have already dealt with the contention that Respondent No.2 is vested with the power of grant of recognition and withdrawal thereof. It has power to impose conditions and one of the mandatory conditions is that the Petitioner should obey and carry out the directives issued by Respondent No.2 from time to time. Thus, the query raised by the said Respondents cannot be

termed in law as non-est without jurisdiction. It was also argued on behalf of the said Respondent No.2 that they are examining the effect of resolution passed by the Petitioner as it may lead to unhealthy or unfair competition as other registered Associations may get affected and this may also have effect on the entire business transacted through different Associations. The decision of the Petitioner is not a mere commercial decision in regard to internal management but is likely to have large ramifications on the economy and the circular will lead to excessive speculation of agricultural commodities. These are matters which are not to be examined by this Court in exercise of its jurisdiction vested under Article 226 of the Constitution of India. These are matters to be examined by experts and specialised bodies. It is always better to leave such matters to be determined by the expert bodies at least at the first instance and the facts and circumstances of the present case do not justify interference by this Court and in any case at this stage of the proceedings. Nothing prevents the Petitioners from satisfying the Respondents that the circular issued by it is valid and that the apprehensions expressed by Respondent No.2 are ill founded. We also have no doubt that the Authorities concerned

i.e. Respondent No.2 shall consider all such objections objectively, in the larger public interest and with due regard to commercial principles put forth by the Petitioners in the explanation dated 28th January, 2009.

14. Matters of policy and matters which squarely fall within the domain of expert bodies are normally beyond judicial review unless they are arbitrary or discriminatory or the power has been exercised contrary to the law or in a colourable manner.

15. Decisions of an expert body would not be interfered by the Court unless such decisions are in error in compliance with the rules, regulations and manifest injustice is perpetrated on the parties. Reference can be made in this regard to the judgments of the Supreme Court in the case of (i) *Chairman, J&K State Board of Education v. Feyaz Ahmed Malik & Ors.*, (2000)3 SCC 59, (ii) *Federation of Railway Officers Association & Ors. v. Union of India*, (2000)3 SCC 289 and (iii) *Greater Kailash Part II Welfare Association & Ors. v. DLF Universal Ltd. & Ors.*, (2007)6 SCC 448.

16. Analysis of these judgments clearly shows that the decisions of the expert bodies should be left to be determined by the authorities which are empowered to take such decisions. The questions raised in the present writ petition have a direct bearing on the agrarian economy and also on the business of agricultural as well as non-agricultural commodities. The impact of these commercial decisions taken by the Petitioner vide its Circular dated 28th January, 2009 and the objection of Respondent No.2 as contained in the impugned letter is bound to have impact on the business which is transacted through the exchanges and recognised Associations. These are important and larger issues relatable to the economy and commercial principles which should be examined properly by an Expert Body and judicial interference preventing such a process would neither be just nor fair.

17. For the reasons aforesaid, we do not find any merit in this writ petition and dispose of the same at the admission stage itself, however, with a direction to Respondent No.2 to deal with the matter

expeditiously and in any case not later than two weeks from the date of pronouncement of this judgment. No order as to costs.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J