

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2092 OF 2004

Hindustan Lever Limited

...Petitioners.

V/s

The Securities and Exchange
Board of India and anr.

...Respondents.

Mr. Amit Desai with Mr. Prakash Naik, advocate for
the petitioners.

Mr. H.H. Ponda with Mr. V.N. Shringarpure, advoacte
for respondent No.1.

Mr. S.R. Shinde, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 3rd March, 2005

P.C.

1. After having heard the learned Counsel for the petitioner and the learned counsel for the respondents, the short question which falls for consideration before this Court is : whether by virtue of the order dated 28/9/1998 passed by the Division Bench of this Court in Writ Petition No.1837 of 1998, stay has been granted by the Division Bench to the prosecution to be launched by the respondents - SEBI? The said order dated 28/9/1998 passed by the Division Bench of this Court in Writ Petition No.1837 of 1998, reads as under:-

"1. Heard the learned Counsel for the parties.

2. Rule expedited.

3. Operation and effect of the following findings given in the impugned order dated 14th July, 1998 passed by the Appellate Authority, is stayed.

a) An order or prosecution should be based on conclusion determination of all aspects of insider trading and on specific justification in terms of the gravity of the offence; and

with regard to jurisdiction of SEBI to levy compensation for breach of regulations or to take remedial measures, the Appellate Authority has given finding as under-

b) SEBI has chosen not to use this specific provision for imposing a penalty but has instead decided to use omnibus powers under sections 11 and 11B to adjuscate for awarding compensation. We are of the view that it is a settled principle of law that for

imposing a pecuniary burden, there must be specific provisions in law and there should be specific Regulations for giving an opportunity to the affected person to present its (his) case before any burden can be imposed on it by an Authority like SEBI. Use of omnibus powers for imposing pecuniary burden cannot be the intent of law."

2. It is submitted by the learned Counsel for the petitioner that by virtue of the said order, the Division Bench was pleased to stay the further prosecution. However, it is seriously opposed by the learned Counsel appearing on behalf of the respondent.

3. In my view, since both the learned Judges who have passed this order are not available. It would be appropriate if the parties file a praecipe before Hon'ble the Chief Justice for either seeking clarification of the order or seeking an order for expeditious disposal of the Writ Petition No.1837 of 1998 or both the parties may apply to Hon'ble the Chief Justice by filing appropriate praecipe so that both these petitions i.e. Writ Petition No.2092 of 2004 filed on the Appellate Side and Writ Petition No.1837 of 1998 filed on the Original Side are tagged

together.

4. The learned Counsel for the respondents seek
time.

5. S.O. four weeks. Interim order to continue.

V.M. KANADE, J.