

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 5498 OF 2008

SAURASHTRA KUTCH STOCK EXCHANGE LTD.

Appellant (s)

VERSUS

SECURITIES & EXCHANGE BD.OF INDIA & ANR.

Respondent(s)

O R D E R

Saurashtra Kutch Stock Exchange Limited is in appeal under Section 22F of the Securities Contracts (Regulation) Act, 1956 (for short, 'the 1956 Act') against the judgment and order dated July 13, 2007 passed by the Securities Appellate Tribunal (for short, 'the Appellate Tribunal') whereby its appeal was dismissed.

2. The appellant was granted recognition in 1989 as Stock Exchange under the 1956 Act. The recognition was renewed from time to time; the last of such renewal being in 2006. On February 27, 2007, the appellant was issued show cause notice by the Securities and Exchange Board of India (SEBI) to show cause as to why its recognition be not withdrawn under Section 5(1) of the 1956 Act. The show cause notice indicated diverse failures and non-compliances on the part of the appellant. The appellant responded to the show cause notice. The full time member of SEBI, vide his order dated July 5, 2007, ordered withdrawal of recognition of the

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appellant and further directed that the trading members of the appellant shall cease to be its trading members and therefore liable to be de-registered as stock brokers and, therefore, their certificate of registration granted by SEBI shall stand automatically cancelled. The appellant was restrained from transferring or alienating any moveable or immovable property of the Exchange including Bank Account in

any manner till further directions by SEBI in this regard.

The appellant was also restrained from using the expression 'stock exchange' or any variant in its name or in its subsidiary's name.

3. The appellant challenged the above order before the Appellate Tribunal. The Appellate Tribunal dismissed the appeal on July 13, 2007.

4. The appellant challenged the order dated July 13, 2007 passed by the Appellate Tribunal as well as the order dated July 5, 2007 passed by the full time member of SEBI by filing a Special Civil Application under Article 226 of the Constitution of India before the Gujarat High Court.

Diverse grounds were raised in challenging these orders. The appellant took up the position before the High Court that the remedy of appeal against the order dated July 5, 2007 cannot be said to be appropriate redressal of the grievances of the appellant and the matter should be considered by the High Court. Inter alia, a specific plea

was raised by the appellant before the High Court that the

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full time single member of SEBI had no jurisdiction to cancel or withdraw recognition granted to it and withdrawal of recognition under Section 5 of the 1956 Act by the whole time single member of SEBI was unjust, arbitrary and de hors the provisions of the statute.

5. The High Court dismissed the Special Civil Application vide order dated November 11, 2007 and considered the submission of the appellant in the following manner:-

"Section 29A is reproduced hereunder :-

29A. Power to delegate.

The Central Government may, by order published in the Official Gazette, direct that the powers (except the power under section 30) exercisable by it under any provision of this Act shall, in relation to such matters and subject to such conditions, if any, as may be specified in the order, be exercisable also by the Securities and Exchange Board of India or the Reserve Bank of

India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934).

Notification dated 13th September, 1994 issued by the Central Government reads as under :-

In exercise of powers conferred by Section 29A of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Central Government hereby directs that the powers exercisable by it under section 3, sub-section (1),(2),(3) and (4) of section 4, section 5, sub-section (2) of section 7A, section 13, sub-section (2) of section 18, section 22 and sub-section (2) of section 28 of the Act shall also be exercisable by the Securities and Exchange Board of India.

Section 19 of the SEBI Act, 1992 reads as under :-

The Board may, by general or special order  
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in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 29) as it may deem necessary.

Thus, the above notification dated 13th September, 1994 issued in exercise of power under Section 29A of the SCR Act of 1956, read with Section 19 of the SEBI Act, would mean that the Board may in writing delegate its power to any member of the Board and, therefore, the power exercised by the full-time member of the Board under Section 11 of the SEBI Act, 1992, or even withdrawal or recognition under Section 5 of the SCR Act of 1956, cannot be said to be unjust or arbitrary or de hors the provisions of the statute and, therefore, the contention of Mr. Shelat that no remedy of appeal is available to the petitioner cannot be accepted."

6. As regards appellant's contention of non-consideration for renewal of recognition, the High Court observed in para 11 of its order that there was efficacious alternative remedy available to the appellant.

7. Not satisfied with the order of the High Court, the appellant preferred Special Leave Petition which came to be dismissed by this Court on March 10, 2008. After the dismissal of the Special Leave Petition, the appellant preferred the present Civil Appeal under Section 22F of the 1956 Act against the order dated July 13, 2007 passed by the Appellate Tribunal.

8. In para 2 of the Civil Appeal, the following

question of law has been framed:-

"Whether the whole time single member of SEBI has no jurisdiction to cancel or withdraw recognition

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granted to a Stock Exchange on the principle that Delegate cannot further delegate its power, and whether the order under challenge is without jurisdiction?"

9. In our view, it is not necessary to go into the above question as we find that this very question was raised by the appellant before the High Court in extra-ordinary jurisdiction under Article 226 of the Constitution of India. The High Court, as noted above, in its order dated November 19, 2007 held that the withdrawal of recognition under Section 5 of the 1956 Act by the full time member of SEBI under Section 11 of the Securities and Exchange Board of India Act, 1992 cannot be said to be de hors the provisions of the Act. Special Leave Petition from the above order of the High Court came to be dismissed by this Court on March 10, 2008. The same question cannot be allowed to be reopened in the present Appeal.

10. Mr. Manoj Swarup, learned counsel for the appellant, vehemently contended that the finding of the High Court on the above issue was not final as the High Court found that efficacious alternative remedy was available to the appellant under Section 22F of the 1956 Act. We are unable to accept the submission of the learned counsel for the appellant. We have carefully considered the order of the High Court and we find that the finding by the High Court on the above issue is express and unambiguous and the Special Leave Petition therefrom has already been dismissed by this

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Court.

11. At this stage, Mr. Manoj Swarup, learned counsel for the appellant, submits that as regards the subsidiary company floated by the appellant in the name and style of SKSE Securities Limited (for short, 'subsidiary') is

concerned, in the counter affidavit filed on behalf of the respondent No. 1-SEBI the functioning of the subsidiary and the sub-brokers of subsidiary has not been challenged and, therefore, this Court may clarify the position in this regard.

12. In the counter affidavit filed by the respondent No. 1 (SEBI), it is stated that the appellant and its subsidiary are two different legal entities. While maintaining this, it has been stated in the counter affidavit that the impugned order does not prohibit functioning of subsidiary in any manner and the sub-brokers of the subsidiary can continue to trade on BSE and NSE. It has also been stated in the counter affidavit that the withdrawal of recognition of the appellant in no way affects the functioning of the subsidiary which has registered volumes to the tune of Rs. 950 crores in BSE since withdrawal of recognition. In view of the categorical statement made by SEBI in the counter affidavit, the apprehension of the appellant that there is threat to the functioning of the subsidiary or sub-brokers on withdrawal of appellant's recognition is wholly unfounded and mis-conceived.

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13. Civil Appeal is dismissed with no order as to costs.

.....J.  
(R.M. LODHA)

NEW DELHI; .....J.  
MARCH 14, 2012 (H.L. GOKHALE)

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ITEM NO.107

COURT NO.8

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5498 OF 2008

SAURASHTRA KUTCH STOCK EXCHANGE LTD.

Appellant (s)

VERSUS

SECURITIES & EXCHANGE BD.OF INDIA & ANR.

Respondent(s)

(With appln(s) for permission to file additional affidavit  
and permission to file additional documents and with office report)

Date: 14/03/2012 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA  
HON'BLE MR. JUSTICE H.L. GOKHALE

For Appellant(s) Mr. Manoj Swarup, Adv.  
Mr. Ankit Swarup, Adv.  
Ms. Neha Kedia, Adv.  
Mr. Rohit Kumar Singh, Adv.

For Respondent(s) Mr. Pratap Venugopal, Adv. for  
M/S. K.J. John & Co.

UPON hearing counsel the Court made the following  
O R D E R

Civil Appeal is dismissed in terms of the signed  
order.

(Rajesh Dham)  
Court Master

(Renu Diwan)  
Court Master

(signed order is placed on the file)