

Securities Appellate Tribunal  
Shruti Vora vs Sebi on 12 February, 2020  
BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

Order Reserved on: 29.01.2020  
Date of Decision : 12.02.2020

Appeal (L) No. 28 of 2020

Shruti Vora  
701-A, Surya Apartments,  
53, Bhulabhai Desai Road,  
Cumbala Hill,  
Mumbai - 400 026. .... Appellant  
Versus  
Securities and Exchange Board of India  
SEBI Bhavan, Plot No. C-4A, G-Block,  
Bandra-Kurla Complex, Bandra (East),  
Mumbai - 400 051. ... Respondent

Mr. Kunal Katariya, Advocate i/b Aagam Doshi, Advocate  
for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody  
and Mr. Shehaab Roshan, Advocates i/b K. Ashar & Co. for  
the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer

Dr. C.K.G. Nair, Member Justice M.T. Joshi, Judicial Member Per : Justice Tarun Agarwala,  
Presiding Officer

1. The core issue which arises for consideration in the present appeal is, whether the appellant is entitled for inspection and for supply of all the documents in possession of the adjudicating authority including those documents upon which no reliance has been placed by the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) in the show cause notice.

2. The facts leading to the filing of the present appeal is, that investigation started in the year 2018 in the matter of unpublished price sensitive information being shared on a messaging platform 'Whatsapp'. Based on the investigation, three show cause notices were issued on November 20, 2019 and the fourth show cause notice was issued on November 27, 2019. The appellant after receiving the show cause notice, instead of submitting her reply filed an application dated December 9, 2019 and again on December 13, 2019 requesting for supply of certain documents, namely, investigation report, annexures to the investigation report and statement of witnesses that were examined by the Investigating Officer. The appellant also made a request for inspection of the aforesaid documents.

3. The AO granted inspection of the documents which were inspected on January 9, 2020 and, according to the appellant, the inspection of the documents was only confined to the show cause notice and documents relied upon in the show cause notice. According to the appellant the investigation report and the documents collected during the investigation was not supplied nor inspection was granted to those documents. Accordingly, a letter dated January 13, 2020 was issued by the advocate of the appellant to respondent praying that full inspection of other documents obtained during the investigation should be allowed to the appellant and copies be supplied thereof and only thereafter appropriate reply to the show cause notice would be filed.

4. The request for inspection of other documents and for supply of such documents was rejected through a communication made by the respondent through an e-mail dated January 14, 2020 and January 15, 2020. Through this communication the appellant was informed that in law only the documents relied upon by the AO in the show cause notice could be inspected and only those documents could be supplied which have been provided to the appellant.

5. The appellant, being aggrieved by the said communications issued by the AO has filed the present appeal.

6. We have heard Shri Kunal Katariya, the learned counsel for the appellant and Shri Shyam Mehta, the learned senior counsel for the respondent.

7. The learned counsel for the appellant contended that a duty is cast upon the AO to disclose and supply copies of all the documents that may be available with the AO to enable the appellant to effectively defend and rebut the allegations mentioned in the show cause notice. It was urged that the appellant is not only entitled to the documents referred in the show cause notice but to all such other documents which are in the possession of the AO. It was urged that one who is facing an enquiry can only effectively meet the charges only when copies of the relevant statements and documents used against the delinquent are made available to him. In the absence of such copies, the delinquent cannot prepare his defence and therefore the appellant is entitled to all the documents that was collected during the investigation whether the same is relied upon or otherwise. In support of his submissions the learned counsel for the appellant has placed a compilation of 13 judgments but only placed reliance and referred to the decision in Shri M.L. Sethi vs. Shri R.P. Kapur (1972) 2 SCC 427, Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 and another decision of this Tribunal in Ms. Smitaben N. Shah vs Securities and Exchange Board of India in Appeal No. 37 of 2010 decided on July 30, 2010 and in Union of India and Others vs E. Bashyan (1988) 2 SCC 196.

8. On the other hand, the learned senior counsel for the respondent vehemently contended that there is no rule of law permitting a party to have access to such documents which are not relied upon. Only the relevant documents which are relied upon in the show cause notice which is only required to be supplied in the accordance with fair play and principles of natural justice. It was further contended that a frivolous plea is being taken by the appellant in order to delay the proceedings. It was contended that the appellant should file her reply to the show cause notice without prejudice to her rights and contentions that she was not provided full, free and unhindered

inspection of the relevant records and documents. It was contended that the present appeal is an abuse of process of law and the applications are being filed only to delay the proceedings and therefore the appeal should be dismissed with costs. In support of his submissions the learned senior counsel for the respondent has placed reliance upon a recent decision of the Bombay High Court in Writ Petition No. 3581 of 2019 decided on January 6, 2020 in the matter of Dr. Prannoy Roy & another vs Securities and Exchange Board of India & another.

9. Having heard the learned counsel for the parties, we find that Securities and Exchange Board of India Act, 1992 ('SEBI Act') and the Securities Contracts (Regulation) Act, 1956 ('SCRA') govern the operation of the capital market. The object of the Acts is to protect the interests of the investors in the securities market in order to check the manipulative or fraudulent transactions which are not bonafide and / or genuine transactions of sale and purchase. SEBI has been given the power to take action which are not only remedial in nature but could impose monetary penalties in addition to other penalties of suspension or cancellation of certificate of registration, etc.

10. Chapter VI-A of the SEBI Act provides for penalties for violation of various provisions of the Act, Rules and Regulations. Section 15G of the SEBI Act provides for penalty for insider trading. For facility, the said provision is extracted here under:-

"Penalty for insider trading.

15G.If any insider who,--

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

(ii) communicates any unpublished price-sensitive information any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher."

11. Section 15-I gives power to an AO to hold an inquiry and impose a penalty. For facility, 15-I of the SEBI Act is extracted here under:-

"Power to adjudicate.

15-I. (1) For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15HA and 15HB, the Board shall appoint any officer not below the rank of a

Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in subsection (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

(3) The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter:

Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 15T, whichever is earlier."

12. From the aforesaid provisions, it is apparently clear that if a person contravenes any provision of the Act or contravenes any Rules, Regulations, etc. the said person would be liable for imposition of penalty as specified under various sections under Chapter VI-A of the SEBI Act.

13. In exercise of the powers conferred by clause (da) of sub-section (2) of section 29 of the SEBI Act, the Central Government made the following Rules for holding inquiry for the purpose of imposing penalty under Chapter VI-A of the Act, namely, "Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 ('Rules of 1995' for short)".

14. Rule 4 of the said Rules prescribes the procedure for holding an inquiry for the purpose of adjudication under Chapter VI-A of the Act whether any person has committed any violation of any provision of the Act. For facility, Rule 4 which is material for the present purpose is extracted here under:-

"Holding of inquiry.

4.(1) In holding an inquiry for the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15HA and 15HB whether any person has committed contraventions as specified in any of sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15HA and 15HB the adjudicating officer shall, in the first instance, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than fourteen days from the date of service thereof) why an inquiry should not be held against him.

(2) Every notice under sub-rule (1) to any such person shall indicate the nature of offence alleged to have been committed by him.

(3) If, after considering the cause, if any, shown by such person, the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representative.

(4) On the date fixed, the adjudicating officer shall explain to the person proceeded against or his lawyer or authorised representative, the offence, alleged to have been committed by such person indicating the provisions of the Act, rules or regulations in respect of which contravention is alleged to have taken place.

(5) The adjudicating officer shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date and in taking such evidence the adjudicating officer shall not be bound to observe the provisions of the Evidence Act, 1872 (11 of 1872):

Provided that the notice referred to in sub-rule (3), and the personal hearing referred to in sub-rules (3), (4) and (5) may, at the request of the person concerned, be waived.

(5A) The Board may appoint a presenting officer in an inquiry under this rule.

(6) While holding an inquiry under this rule the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the adjudicating officer, may be useful for or relevant to, the subject-matter of the inquiry.

(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the adjudicating officer, the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so."

15. A perusal of the provisions of the Act and the Rules as extracted hereinbefore makes it apparently clear that the manner, method and procedure of adjudication are completely structured by the Act and the Rules. The AO is bound to follow the prescribed procedure under the Act and the Rules and it is not open for him to devise its own procedure for making an inquiry while adjudicating under Chapter VI-A of the SEBI Act. The AO can only hold inquiry in the prescribed manner after giving the person concerned a reasonable opportunity of being heard for the purpose of imposition of any penalty. The Rules provide that where any person has committed any contravention, the AO shall issue a notice to such person requiring him to show cause as to why an inquiry should not be held against him. Such issuance of notice at this stage is not for the purpose of making any adjudication into the alleged violation but is only for the purpose of deciding whether an inquiry should be held against him or not. If a response is made by person concerned against a notice the AO is required to consider the response and form an opinion as to whether an inquiry is required to be held into the allegations of the contravention of the provisions of the Act, Rules or Regulations. It is only then that substantial inquiry into allegations of contravention begins. Under Section 15-I (2) of the Act read with Rule 4(6) of the rules the AO while holding an inquiry has the powers of a civil court under the Code of Civil Procedure in respect of summoning and enforcing the attendance of any person and examining him on oath, requiring discovery and production of documents, receiving evidence on affidavits, issuing commissions for examination of witnesses or documents, etc.

16. However, we find that Rule 4 of the Rules does not provide any specific provision requiring the AO to supply copies of any documents along with the show cause notice nor requires the AO to furnish any list of documents upon which reliance has been placed by it. However, the principles of natural justice and doctrine of fair play requires the AO to supply the documents upon which reliance has been placed at the stage of show cause notice. In *Natwar Singh vs Director of Enforcement and Another* (2010) 13 SCC 255 the Supreme Court held that the fundamental principle remains that nothing should be used against the person which has not been brought to his notice. If relevant material is not disclosed to a party, there is prima-facie unfairness irrespective of whether the material in question arose before, during or after the hearing. The Supreme Court further held that the law is fairly well settled, namely that if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he could prepare his defence.

17. The Supreme Court in *Natwar Singh* case (supra) was considering Rule 4(1) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 ('FEMA Rules' for short) which is more or less pari materia of the present Rules of 1995. While considering Rule 4, the Supreme Court held:-

"31. The concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the noticee to explain as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read into Rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in-built into the Rules. A notice is always

entitled to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the authority are required to be furnished to the notice enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute."

18. In the light of the aforesaid, we are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of 1995 and that the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence.

19. The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to be held cannot be accepted. A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon.

20. The learned counsel for the appellant has relied upon a decision of the Supreme Court in *Shri M.L. Sethi vs. Shri R.P. Kapur* (1972) 2 SCC 427 wherein an observation was made that generally a party is entitled to inspection of all documents which is in the possession of the other party. This proposition of law is not applicable in the instant case, in as much as, the said observation was made by the Supreme Court in the matter of limited discovery of specific documents under Order 11 Rule 10 of the Code of Civil Procedure. Such discovery of documents is not required at the preliminary stage in reply to the show cause notice as to why an inquiry should not be initiated.

21. The learned counsel has also placed reliance upon a decision of this Tribunal in *Ms. Smitaben N. Shah vs Securities and Exchange Board of India* in Appeal No. 37 of 2010 decided on July 30, 2010 wherein the Tribunal observed that the documents asked for which are relevant would help the delinquent to prepare his/her defence and thus such documents are required to be furnished. Such observation was made in the context that the details in the charts relied upon in the show cause notice was culled out in the trade and order logs and therefore the Tribunal observed that it was necessary that the trade and order logs should be provided to the appellant. The said decision is totally distinguishable in its own facts and is not applicable in the instant case.

22. Reliance was also made of a decision of the Supreme Court in *Union of India and Others vs E. Bashyan* (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context,

in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied.

23. The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra).

24. We may also observe that the practice of filing a compilation of judgments without citing during the course of arguments is not an accepted practice and consequently we are not required to consider such decisions which were not cited at the Bar.

25. In view of the aforesaid, the request of the appellant for supply of the documents in possession of the authority is misconceived and cannot be accepted. Prima facie, the only object in making such demand is to obstruct the proceedings. We accordingly do not find any merit in the appeal and is dismissed with no order as to costs. As a last measure, we grant one more opportunity to the appellant to file a reply to the show cause notice on or before February 28, 2020, if not already filed, failing which it would be open to the AO to proceed in accordance with law.

Sd/-

Justice Tarun Agarwala Presiding Officer Sd/-

Dr. C.K.G. Nair Member Sd/-

Justice M.T. Joshi Judicial Member 12.02.2020 Prepared and compared by:msb