

Securities Appellate Tribunal

Dr. Anjali Beke vs The Adjudication Officer, ... on 26 October, 2006

Bench: N Sodhi, R Bhardwaj

JUDGMENT R.N. Bhardwaj, Member

1. This appeal filed under Section 15T of the Securities and Exchange Board of India Act, 1992 is directed against the order dated August 8, 2005 passed by the adjudicating officer imposing a penalty of Rs. 5 lacs on the appellant and Anjudi Property and Investment P. Ltd. for trading in the shares of Tata Finance Ltd. (hereinafter referred to as "TFL") in March, 2001 in violation of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "the Regulations"). It is alleged that the appellant had sold 2.5 lac shares of TFL as per table given below on 28th March, 2001 on the receipt of unpublished price sensitive information from Shri Dilip Pendse, the managing director of TFL.

Name of the seller	No. of shares sold	Sale Price (Rs.)	Dmat transfer of shares to the buyer
Dr. Anajali Beke	20,000	90	28.03.01
Anjudi Property & Investment (P) Ltd.	1,50,000	90	28.03.01
	80,000	90	28.03.01
Total	2,50,000		

2. It was alleged that Dr. Anjali Beke was known to Shri Dilip Pendse, managing director of TFL

3. It is alleged that the price sensitive information related to the loss of Rs. 79.37 crores for the year ending March, 2001 by Nishkalp Investment and Trading Company Ltd. (NITC) which is wholly owned by TFL. This information of loss came to be known to the general public only on 30th April, 2001 when the results were published where as the appellant came to know of this crucial price sensitive information from Shri Dilip Pendse earlier and she alongwith API sold 2.5 lac shares of TFL on 28th March, 2001 at a price of Rs. 90/- whereas the price of the share had fallen to Rs. 30/- after the publication of the results. They, thus, made huge unjust profits by selling these shares.

4. Based on this information, the Securities and Exchange Board of India (for short "the Board") issued a show cause notice under Rule 4(1) of the Securities and Exchange Board of India (Procedure for Holding Enquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 to the

appellant and asked her to submit her reply. The appellant denied these allegations in her reply to the show cause notice and submitted that the appellant did not trade in these shares. According to her she did not benefit out of the trading of these shares, and that Shri Dilip Pendse was only trading on her behalf and API. Dr. Beke submitted that she had known Shri Pendse for a long time as he was her family friend and she only agreed to have the accounts opened in her name for his sake which were solely operated by Shri Dilip Pendse. The adjudicating officer on receipt of their reply considered the material available with him, alongwith the statements made by Dr. Anjali Beke on oath and the written submissions while adjudicating the issue. The operative part of the impugned order dated 8th August, 2005 against which this appeal has been filed reads as under:

Having regard to the nature and gravity of charges established, the factors contained in Section 15J of the SEBI Act, 1992 with particulars reference to the unjust enrichment derived out of the impugned transactions and following the order of Securities Appellate Tribunal in Appeal No. 151/2004 dated 7.2.2005 cited above, a penalty of Rs. 5 Lakhs is imposed on Dr. Anjali Beke and Anjudi Property & Investment Private Limited.

Both Dr. Anjali Beke and Anjudi property and Investment Private Limited are jointly and severally liable to pay the penalty amount immediately on receipt of this order through a crossed demand draft drawn in favour of "SEBI- Penalties remittable to the Government of India" and payable at Mumbai which may be sent to Shri R.K. Nair, Executive Director, Securities and Exchange Board of India, Mittal Court, B Wing, 224 Nariman Point, Mumbai - 400 021.

5. The learned senior counsel for the appellant argued that Shri Pendse was a family friend for the last 15 years and Shri Pendse wanted to form a private limited company himself but he requested Dr. Anjali Beke and her husband to become directors of API which was started with the initial subscribed capital of Rs. 20,000/- only some time in December, 1999. She agreed to be on the Board of API for the sake of her relationship with Shri Pendse. He contended that Shri Pendse himself was administering the said company from his own residence which is confirmed from various records. The records pertaining to API were brought to the house of Dr. Anjali Beke only in July/August 2001. Neither Dr. Anjali Beke nor her husband received any remuneration as directors from the company. He pointed out that the dividend cheques from companies were received at A 5, Seaface Park, 2nd Floor, 50 Bhulabhai Desai Road, Mumbai -26, which was the address of Shri Pendse. He further submitted that the receipts issued by the courier company Blue Dart in the name of API also contained the same address of Shri Pendse. He strenuously urged that all this was a clear proof that the appellant, Dr. Anjali Beke had nothing to do with the activities of the company of which she and her husband were the directors and that they did not attend to any job pertaining to this company. In support of this argument, the learned senior counsel mentioned that even the address of depository participants, IIT Corporate Services contained the address of Shri Dilip Pendse. It was only on 8th June, 2000 that the existing address of API got changed from A 5, Seaface Park, 2nd Floor, 50 Bhulabhai Desai Road, Mumbai -26, to Shivaji Park, Dadar which is the residential address of Dr. Anjali Beke.

6. The learned senior counsel contended that the subscribed capital of API was only Rs. 20,000/- and inter company deposits could not have been given to the company without the active

involvement of Shri Dilip Pendse. Dr. Anjali Beke was not in a position to have arranged huge amounts of loans and company deposits. She had clearly stated that she did not know Shri Manoj Tiroadkar who gave loan of Rs. 1 crore on 3rd April, 2000 to API. It was only Shri Dilip Pendse who arranged this amount for investment in the company. He also mentioned that Ms. Mona Lundwani was the employee of Nalini Properties which was a company owned by Shri Dilip Pendse and his wife Smt. Anuradha Pendse. Dr. Anjali Beke was not looking after the affairs of API. As a matter of fact, as far as affairs of API were concerned, Ms. Lundwani was getting instructions from Shri Dilip Pendse. He went on to argue that Dr. Anjali Beke was a qualified doctor who was practicing for more than twenty years and therefore she could not have got any time to manage the voluminous trading in the shares transacted in the name of API. The shares of TFL were dealt with by Shri Dilip Pendse who was in possession of the unpublished price sensitive information. Because of the long standing relationship and her implicit trust in Shri Dilip Pendse, Dr. Anjali Beke used to sign even blank cheque books and handed them over to Shri Pendse. He would also get blank delivery slips signed from her. She would on some occasions fill the particulars in the cheques in her own hand as per the advice of Shri Pendse. He strenuously argued that Dr. Anjali Beke was not at all involved in transacting and executing the transactions of shares. She had no knowledge of the market as she was a busy medical practitioner. Had she been involved in any of the transactions she could have gained some benefit out of these transactions, but she did not take any benefit from the trading of shares in her name or in the name of API which was registered in her name. It was Shri Dilip Pendse who was doing benami transactions in her name. He, therefore, submitted that his client was totally innocent and she has become the victim of breach of trust and therefore the order of the adjudicating officer was wrong which should be set aside. The learned senior counsel cited a number of cases contending that the appellant could not be penalized merely on the basis of suspicion and conjuncture. The charge of fraud has to be established beyond all reasonable doubts. In this case, the respondent has not been able to prove the charge of insider trading conclusively. There is no evidence to support that appellant at all traded in these shares. All records show that it was Shri Pendse who was transacting and executing trades on behalf of the appellant. We have carefully considered the various judgments and have kept in mind the principles as laid down in those judgments while dealing with this case.

7. The learned Counsel for the respondent argued that it was clearly a case of insider trading in terms of Regulation 2(e) of the Regulations. He referred to the statements made by the appellant before the Board on different dates to contend that she had been carrying on the business herself and that it could not be said that Shri Pendse was carrying on the business in her name. He further contended that she was in the know of unpublished price sensitive information and was, therefore, an insider and since she traded in the shares of TFL, the charge against her is fully established.

8. We have heard the learned Counsel for the parties and before we deal with their contentions, it is necessary to refer to the provisions of the Regulations 2(e) and 3.

2. In these regulations, unless the context otherwise requires:

(e) "insider" means any person who, is or was connected with the company or is deemed to have been connected with the company, and who is reasonably expected to have access by virtue of such

connection to unpublished price sensitive information in respect of securities of the company, or who has received or has had access to such unpublished price sensitive information;

3. No insider shall-

- (i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange [when in possession of] any unpublished price sensitive information; or
- (ii) communicate counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal on securities:

Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business [or profession or employment] or under any law.

9. In view of the above, when a person has received unpublished price sensitive information or who has had access to such information, he becomes an insider. He need not be a person connected with the company. It is an admitted fact that Dr. Anjali Beke was well known to Shri Dilip Pendse for more than ten years and it is her own case that he carried on business in her name. Their closeness cannot, therefore, be in doubt. It is because of this closeness that he passed on the unpublished price sensitive information to her on the basis of which she traded in the shares of TFL. She is, therefore, an insider. Shri Pendse was the managing director of TFL of which NITC was a wholly owned subsidiary and, therefore, by virtue of this connection he had access to the unpublished price sensitive information in respect of the securities of TFL. Unpublished price sensitive information was the loss suffered by NITC which had a direct bearing on the price of the shares of TFL. The charge of insider trading is complete when it is established that an insider traded in the scrips of the company. We have already held that the appellant was an insider and it is on record that she and API had sold the shares of TFL before the price sensitive information was made public on 30th April, 2001. The shares were sold on 28th March, 2001 @ of Rs. 90/- per share and the price of the share had fallen to Rs. 30/- after the publication of the information. It may be mentioned that the results of TFL and NITC were published only on April 30, 2001 though Shri Dilip Pendse had this price sensitive information with him much prior thereto by virtue of his connection with TFL. We are unable to agree with the learned senior counsel for the appellant that it was Shri Dilip Pendse who carried on the business in the name of the appellant and that she was only a name lender and had no knowledge about the operations. It would be relevant to refer to the statements made by her to the Board which would establish that she carried on the business herself and was in full control of the operations. Of course, Shri Dilip Pendse helped her in the business. The relevant portions of her statements read as under:

Statement dated 22nd January, 2002 Q. Have you placed any orders with the aforesaid brokers for transactions in the scrip of TFL in the name of Anjudi properties and Dr. Anjali Beke and others (AOP). If yes, how were the orders placed.

A. Yes. I have placed orders for purchase and sale of shares of TFL with the aforesaid brokers for transactions in the name of Anjudi properties and Dr. Anjali Beke and others (AOP). The orders were placed over telephone.

Q. Did any other person, ever, place orders on behalf of Anjudi Properties, if yes. Please give the name of the persons?

A. As far as I remember no other person except I gave any order for the transaction on behalf of Anjudi Properties.

Statement dated August 16, 2002 Q. Who is looking after the management, day-today operations of Anjudi.

A. Anjudi properties upto date has only dealt with share transactions. As far as placing of orders is concerned, I am the one who looks into it. There are no other operations apart from share transactions in this company.

Q. Who has been authorized to sign cheques, documents, consent letters for placement of orders with brokers, acknowledgements for contract notes, vouchers in banks, consent letters given to brokers for placement for orders.

A. The authorized signatories for the accounts of Anjudi Property in banks are myself and Dr. Dilip Beke, the other director. Majority of the cheques were signed by me. Contract notes might have been signed by myself or sometimes by my Accountant depending upon my availability. Mostly it might have been signed by me or my accountant when I was not available.

Q. Who was looking after the deliveries to be received or given for share transactions of Anjudi.

A. As far as I remember, I used to sign the delivery instruction form blank and keep it with the accountants Ms. Mona, who used to fill it forward it to the broker when asked for. Sometimes brokers also used to fill the signed demat delivery instructions forms forwarded to them.

Q. Whether the transactions for sale of 2,30,000 shares of Tata Finance was done on any stock exchange or it was an off-market deal.

A. As far as I remember, the transactions was not done on any stock exchange. It was an off-market transactions.

Q. How do you decide to purchase or sale certain share. What are the parameters used by you in selecting scrips. What analysis is done before making any purchase or sell decision for any scrip.

A. There plenty of reading material, plenty of material in the news items like CNBC, Moneymatters, plenty of magazines, plenty of research reports carried out by big finance firms like Morgan Stanley, CSFB etc of very good reputé supplemented by tips circulating in the market on a day to day basis

and information from friends. Analysing all this helps one to conclude a decision of sell or purchase in a particular share whether right or wrong.

10. From the answers to the various queries which she has voluntarily given on oath to the Board, it becomes abundantly clear to us that not only was she herself dealing in the shares and executing the transactions through select brokers but she was quite knowledgeable about the market and its functioning. She also seems to be in complete control of the operations of the company registered in her name and also the transactions done by her. It could not, therefore, be accepted that she was totally novice about the market and its functioning and share transactions. Her own recorded statements confirm that she was taking keen interest in the affairs of the company. She uses familiar market terminology and even abbreviations which go to show that she had acquired sufficient operational knowledge of the share market. Her later statements in which she has totally denied having any thing to do with the trading of shares or with the affairs of API could not be relied upon. It could be her second thoughts to wriggle out of this tangled situation which impelled her to change the earlier statements. Admittedly, she had close proximity with Shri Dilip Pendse and it is also a fact that Shri Pendse had access to unpublished price sensitive information and the appellant also sold 2.5 lac TFL shares in the month of March before the results were declared in April, 2001. The appellant therefore made huge profits from this transaction. There are a number of loan transactions between API and the companies of Shri Pendse. It is quite understandable that Shri Pendse would have helped her to get the loans arranged for API but this did not imply that the appellant had nothing to do with the affairs of the company of which she and her husband were the directors.

11. In the result, we find no merit in the appeal and dismiss the same. No order as to costs.