HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 12TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

WRIT PETITION NO. 3525 OF 2022 (GM-RES)

C/W

WRIT PETITION NO. 3519 OF 2022 (GM-RES)

WRIT PETITION NO. 25261 OF 2022 (GM-RES)

IN WP NO.3525/2022

BETWEEN:

RAGURAJ GUJJAR
S/O LATE THIPANNA
AGED ABOUT 66 YEARS
R/O 406, 3A CROSS
M.M. LAYOUT
KAVALBYRASANDRA
BENGALURU - 560 032.

....PETITIONER

(BY SRI. ASHOK HARANALLI, SENIOR ADVOCATE FOR
SRI. ANIRUDH ANAND, ADVOCATE)

AND:

1. THE SECURITY AND EXCHANGE BOARD
OF INDIA (SEBI)
REPRESENTED BY ITS
CHAIRMAN
CONSTITUTED UNDER THE SECUTIRY &
EXCHANGE BOARD OF INDIA ACT 1992
HAVING ITS OFFICE AT 2ND FLOOR
JEEVAN MANDAL BUILDING
NO.4, RESIDENCY ROAD

BENGALURU - 560 015.

2. DEPUTY GENERAL MANAGER
INVESTIGATION DEPARTMENT -ID-6
SEBI BHAVAN
PLAT NO.C4 -AG BLOCK
BANDRA KURLA COMPLEX
BANDRA EAST
MUMBAI- 400 051.

…RESPONDENTS

(BY SRI. R.V. SUBRAMANYA NAIK, SENIOR ADVOCATE FOR
SRI. NITIN PRASAD, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED NOTICE BEARING NO.SEBI/IVD /1D-6-LVB-CR/BKS/SCN/25274/1/2021 DATED 22.09.2021 ISSUED BY RESPONDENT.

IN WP NO.3519/2022

BETWEEN:

BODDAVARAM K. MANJUNATH
AGED ABOUT 62 YEARS
1/20, 8TH CROSS,
KUMARA PARK WEST
BENGALURU - 560 020.

....PETITIONER

(BY SRI. D.L.N. RAO, SENIOR ADVOCATE FOR
SMT. SWATHI ASHOK, ADVOCATE)

AND:

1. THE SECURITY AND EXCHANGE BOARD
OF INDIA (SEBI)
REPRESENTED BY ITS
CHAIRMAN
CONSTITUTED UNDER THE SECUTIRY &
EXCHANGE BOARD OF INDIA ACT 1992
HAVING ITS OFFICE AT 2ND FLOOR
JEEVAN MANDAL BUILDING
NO.4, RESIDENCY ROAD
BENGALURU - 560 015.

2. DEPUTY GENERAL MANAGER
INVESTIGATION DEPARTMENT -ID-6
SEBI BHAVAN
PLAT NO.C4 -AG BLOCK
BANDRA KURLA COMPLEX
BANDRA EAST
MUMBAI- 400 051.

…RESPONDENTS

(BY SRI. R.V. SUBRAMANYA NAIK, SENIOR ADVOCATE FOR
SRI. NITIN PRASAD, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED NOTICE BEARING NO.SEBI/IVD /ID-6-LVB-CR/BKS/SLN/25265/1/2021 DATED 22.09.2021 ISSUED BY 2ND RESPONDENT (ANNEXURE-A).

IN WP NO.25261/2022

BETWEEN:

1. VISION-EI-TECH & SERVICES
PRIVATE LIMITED
NO.20, EDEN PARK
202, 2ND FLOOR
VITTAL MALLYA ROAD
BENGALURU - 560 001.

REPRESENTED BY DIRECTOR
SHRI. D.L.N. MURTHY
AGED ABOUT 64 YEARS.

2. CELESTIAL TECHSOFT & SERVICES
PRIVATE LIMITED
NO.20, EDEN PARK
202, 2ND FLOOR
VITTAL MALLYA ROAD
BENGALURU - 560 001.
REPRESENTED BY DIRECTOR
SHRI. D.L.N. MURTHY
AGED ABOUT 64 YEARS.

3. BHRAHMAPUTRA POWER
PRIVATE LIMITED
NO.20, EDEN PARK
202, 2ND FLOOR
VITTAL MALLYA ROAD
BENGALURU - 560 001.
REPRESENTED BY DIRECTOR
SHRI. D.L.N. MURTHY
AGED ABOUT 64 YEARS.

4. MR. D.L.N. MURTHY
AGED ABOUT 64 YEARS
"UDITA" APARTMENT
NO.08-607, 1050/1
SURVEY PARK
KOLKATA - 700 075.

....PETITIONERS

(BY SMT. LAKSHMY IYENGAR, SENIOR ADVOCATE FOR
SMT. SABAHATH SULTANA, ADVOCATE)

AND:

1. THE SECURITY AND EXCHANGE BOARD
OF INDIA (SEBI)
REPRESENTED BY ITS
CHAIRMAN

CONSTITUTED UNDER THE SECUTIRY &
EXCHANGE BOARD OF INDIA ACT 1992
HAVING ITS OFFICE AT 2ND FLOOR
JEEVAN MANDAL BUILDING
NO.4, RESIDENCY ROAD
BENGALURU - 560 015.

2. DEPUTY GENERAL MANAGER
INVESTIGATION DEPARTMENT -ID-6
SEBI BHAVAN
PLAT NO.C4 -AG BLOCK
BANDRA KURLA COMPLEX
BANDRA EAST
MUMBAI- 400 051.

…RESPONDENTS

(BY SRI. R.V. SUBRAMANYA NAIK, SENIOR ADVOCATE FOR
SRI. NITIN PRASAD, ADVOCATE FOR R1 & R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED NOTICE DATED 22.09.2021 ANNEXURE-A; RESPONDENTS TO AWAIT THE DECISION OF THIS HON'BLE COURT IN SIMILAR MATTERS BEFORE PROCEEDING WITH THE COMMON IMPUGNED NOTICE.

THESE WRIT PETITIONS HAVING BEEN RESERVED FOR ORDERS, COMING FOR PRONOUNCEMENT THIS DAY, **E.S. INDIRESH J.,** MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH

CAV ORDER

1. In these writ petitions, the petitioners are assailing the notice dated 22.09.2021 (Annexure-A) issued by the respondent No.2-Deputy General Manager (for short, 'DGM'), as incompetent authority has issued impugned notice and accordingly, sought for quashing the same.

2. Since, the question of law involved in these writ petitions are common, and facts are similar in nature and further the grounds as urged by the learned counsel appearing for the parties are more or less identical in nature and therefore, the writ petitions were clubbed, heard together and disposed of by this common order.

FACTS IN W.P.NO.3525 OF 2022:

3. In W.P.No.3525 of 2022, the petitioner is Noticee No.8, challenging the impugned notice dated 22.09.2021 (Annexure-A).

4. It is the case of the petitioner that the petitioner was an Independent Director and Non-Executive Chairman of the Board of LVB, from April, 2013 to April, 2015. It is also stated that, the respondent No.2 has issued impugned notice, calling upon the petitioner to furnish the details to the questionnaire which related to trading, and details of petitioners' association with various entities as well as with LVB. The petitioner has answered to the questionnaire, however, the respondent No.2 has sought for personal appearance of the petitioner for Inquiry as to take evidence. The petitioner requested his personal appearance in the local office of the

respondent-authority as per Annexure-B, however, the respondent No.2, did not accept the request made by the petitioner and on the other hand, the respondent No.2 issued impugned notice, alleging that, the petitioner is in possession of UPSI, as traded in the scripts of LVB, during the month of February, March and June of 2018. It is also alleged against the petitioner that, the mode of sharing of UPSI, is presumed on the basis that, the petitioner shares the minutes of meeting of the Board with one connected person.

5. It is further stated that, the UPSI relates to capital rising for LVB and the three connected persons have disputed their possession of UPSI and the adjudication is still pending against them. It is also stated that, the respondent No.2, erroneously come to the conclusion that, the connected persons had access

to UPSI, and therefore, it is contended by the petitioner that, allegation has been made against the petitioner is devoid of merit and unsustainable in law. The petitioner has sought for certain documents as per Annexure-C, however, the respondent No.2, replied vide e-mail dated 22.10.2021 (Annexure-D). It is further stated that, since the petitioner was a covid survivor and as such, requested the respondent No.2 to allow his advocate to inspect the documents and same was denied to the petitioner. It is also stated that the petitioner sought for cross-examination of officials of LVB and JP Morgan India Pvt Ltd., as well as seeks investigation report referred to in the impugned notice, as per Annexure- F and G. It is the case of the petitioner that, during January 2018, LVB, intend to rise the capital and same is reflected in the Press Release dated 08.07.2019 (Annexure-H). It is also stated that, impugned notice is without jurisdiction and

accordingly, sought for setting aside the impugned notice.

FACTS IN W.P.NO.3519 OF 2022:

6. In W.P.No.3519 of 2022, the petitioner is Noticee No.3, assailing the impugned notice dated 22.09.2021 (Annexure-A) issued under Section 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'Act').

7. Facts of the case are that, the petitioner claims to be a Non-Executive and Independent Director of Lakshmi Vilas Bank (hereinafter referred to as 'LVB') from August, 2008 to January, 2015. The petitioner was Non-Executive Chairman between 06.06.2017 to 05.06.2020 and was Non-Executive, Independent Director from 10.06.2020 to 25.09.2020. The petitioner held shares of LVB and also the Director in M/s.Brahmaputra Power Pvt. Ltd. with a paid-up capital

of Rs.5,00,000/- holding 500 shares i.e. 1% of the paid-up capital. It is averred in the writ petition that, the respondent No.2 issued summons and questionnaire to the petitioner seeking information as to affairs with LVB and pursuant to the same, the petitioner provided all information accordingly. It is further stated that a specific question through questionnaire, was relating to the petitioner, having participated in two Board Meetings of LVB, wherein the discussion was made to engage with JP Morgan India Pvt. Ltd. by LVB and the petitioner had passed information to M/s. Brahmaputra Power Pvt. Ltd. who in turn, traded in the scripts of LVB. It is further averred in the writ petition that, the petitioner had brought to the knowledge of respondent No.2 that, the petitioner was Member of Capital Raising Committee and had attended the Meeting on 22.02.2018 and in this regard, the reply dated 22.03.2021 was submitted

by the petitioner as per Annexure-B. It is also averred that, pursuant to the issuance of summons, the petitioner appeared and adduced evidence before the respondent No.2.

8. It is the case of the petitioner that, the petitioner has not violated any norms of trading of shares as alleged in the impugned notice, as no Circular or Communication has been issued by LVB regarding link with JP Morgan India Pvt. Ltd. It is further stated that, though the petitioner had attended the Board Meeting of Directors on 20.04.2018 and 25.05.2018, however, denied the trading with JP Morgan India Pvt. Ltd., as alleged, in the impugned notice. It is stated that, the matters relating to capital raising by LVB were discussed and the petitioner being a connected person and 'Insider' in terms of Regulation 2(1)(d)(1) and 2(1)(g)(1) of Insider Trading

Regulations and therefore, it is contended that, allegations made in the impugned notice are without ascertaining the true facts. The extracts of Minutes of Meeting dated 20.04.2018 and 25.05.2018 are produced at Annexures - D and D1 respectively. It is stated in the writ petition that, the Minutes of Meeting do not have agenda of the entire meeting and so also to discharge the onus imposed under the Regulations and as such, the petitioner addressed communication dated 17.10.2021 as to inspection of documents, which include agenda of the Board Meeting. In response to the same, the respondent No.2, indicated for inspection of documents on 23.11.2021 by letter dated 19.11.2021 (Annexure-F). In this regard, the petitioner appointed his counsel to inspect the documents on 24.11.2021 on account of his health issues, however, it was reported that, documents pertaining to two Board Meetings were not given for inspection. The counsel

for the petitioner informed as to not providing the relevant Minutes of the Board Meeting, however, the respondent No.2 sent e-mail to the petitioner that, same was not relied upon, as per their e-mail reply dated 24.11.2021 (Annexure-G).

9. It is further stated that, despite on account of his ill-health, as the petitioner was not provided with the entire Board Meeting Minutes and as such, the petitioner as per Regulation 4(4) of the Regulations, 2015, seeks Investigation Report relating to alleged trading between LVB and JP Morgan India Pvt. Ltd. It is also stated that, on 04.02.2022, the respondent No.2 sent an e-mail to the petitioner's advocate as to rejecting the request made by the petitioner seeking investigation report as per Annexure-K. The allegation made against the petitioner in the impugned notice as to communicating Unpublished Price Sensitive

Information (for short, 'UPSI') which is in violation of Section 12(e), (d) and (e) of the Act, read with 3(1) and 4(1) of Insider Trading Regulations, 2015. It is the grievance of the petitioner that the respondent No.2 has no jurisdiction and has no power or authority as the authorised officer to proceed with the Inquiry. It is further stated that, the allegation made by the respondent No.2 that the petitioner has traded in scripts of LVB but as per the impugned notice, it is M/s.Brahmaputra Power Ltd., which has traded and not the petitioner. It is further stated in the writ petition that, the action of the respondent No.2 is contrary to the RBI Circular dated 26.10.2021 (Annexure-M), and therefore, it is contended that, the impugned notice suffers from infirmity as the respondent No.2 has no jurisdiction to issue the impugned notice and that apart, there is no material referred to in the impugned notice to substantiate the allegation against the

petitioner and therefore, it is pleaded in the writ petition that, the reputation of the petitioner is being tarnished, which amounts to violation of fundamental right of the petitioner. Hence, the petitioner has filed W.P.No.3519 of 2022.

FACTS IN W.P.NO.25261 OF 2022:

10. In W.P.No.25261 of 2022, the petitioners are Noticee Nos.4 to 7, challenging the impugned notice dated 22.09.2021 (Annexure-A).

11. It is the case of the petitioners that, petitioner Nos.1 to 3 are the private companies. The respondent No.2 issued summons to the petitioners and sought information in respect of affairs of the petitioners with transaction to the script of LVB. The petitioners provided all the information and pursuant to the same, the respondent No.2 has issued impugned notice, stating that, the petitioner No.4 has traded in the script

of LVB based on UPSI and as such, it is alleged against the petitioner No.4 in the impugned notice that, the petitioner No.4 has violated the provisions of the Act. It is also stated that, the petitioners have filed detailed objections to the impugned notice, as per Annexure-B. It is further stated in the writ petition that the respondent No.2 had fixed the hearing on 05.07.2022, and in the meanwhile, the petitioners have sought for adjournment as to appear in person as per their reply dated 01.07.2022. It is also stated that the petitioners have received another notice dated 25.11.2022, (Annexure-G) to appear before the respondent No.2 on 16.12.2022, for which the petitioners have filed reply dated 13.12.2022 (Annexure-H). It is the grievance of the petitioners that the petitioners were denied with the opportunity of hearing by the respondent No.2 and that apart, the respondent No.2 has no jurisdiction to issue the impugned notice dated 22.09.2021,

(Annexure-A), and therefore, sought for setting aside the impugned notice at Annexure-A by filing this writ petition.

12. I have heard Sri. D.L.N. Rao, learned Senior Counsel appearing for Smt. Swathi Ashok for the petitioner in W.P.No.3519 of 2022; Sri. Ashok Haranalli, learned Senior Counsel for Sri. Anirudh Anand for petitioner in W.P.No.3525 of 2022; Smt. Lakshmy Iyengar, learned Senior Counsel appearing for Smt. Sabahath Sultana in W.P.No.25261 of 2022, and Sri. R.V.S. Naik, learned Senior Counsel for Sri. Nitin Prasad, for the respondents in all the writ petitions

ARGUMENTS OF THE PETITIONERS:

13. Sri. D.L.N. Rao, learned Senior Counsel appearing for the petitioner (Noticee No.3) in W.P.No.3519 of 2022, argued that, the impugned

notice at Annexure-A issued by the DGM of respondent-SEBI is without jurisdiction. Referring to Section 15-I of the Act, it is contended by the learned Senior Counsel that, DGM has no jurisdiction to issue the impugned notice, as the competent authority under Section 15-I of the Act is Division Chief and above or the Board as per Section 11B (2) of the Act. It is also argued by the learned Senior Counsel by inviting the attention of the Court to Section 11B (2), 15-I and 19 of the Act that, no delegation be made to any Officer lower than a office of Division Chief and as the statute provided for a thing to be done by a competent person, such power has to be exercised by the same person or authority under the statute and such power cannot be delegated to any other person, who is lower the competent authority. Therefore, learned Senior Counsel sought for setting aside the impugned notice on the ground of jurisdiction.

14. It is further argued by the learned Senior Counsel that, the scheme of the Act provides for Board to appoint an Adjudicating Officer under Section 15-I of the Act before initiation of penalty proceedings and the said requirement is mandatory in nature which cannot be conferred to the individual authorities under the Act. In this regard, referring to Section 15-I of the Act, Sri. D.L.N.Rao, learned Senior Counsel submitted that the amendment made to word 'shall' to 'may' in Section 15-I of the Act does not dispense with need for the Adjudicating Officer and it is mandatory requirement of appointment by the Board to initiate proceedings by issuing notice to the aggrieved person and therefore, penalty under Section 15G of the Act can be imposed by an Adjudicating Officer alone, and therefore, sought for interference of this court.

15. Referring to statement of objections filed by the respondent-authorities, it is contended by the learned Senior Counsel that the delegation of power and functions of the authorities provided under the Act, particularly, referring to Annexure-R1 (statement of objections) at Sl.No.22, 25 and 28, that the Chief General Manager is the competent officer to cause show-cause notice under Section 15-I of the Act and therefore, the impugned notice is *void ab initio* as being issued by the DGM. Referring to Section 19 of the Act which provides for delegation of power by the Board, it is contended by the learned Senior Counsel, Sri. D.L.N. Rao, that the delegation under Section 19 of the Act, cannot override the express statutory requirement provided under the Act, for adjudication and therefore, the impugned notice is liable to be quashed. It is contended that, the absence of a lawfully appointed Adjudicating Officer is a jurisdictional error,

which goes to the root of the proceedings and vitiates impugned show-cause notice in entirety. In this regard, Sri. D.L.N. Rao, learned Senior Counsel appearing for the petitioner, places reliance on the judgment of the Hon'ble Supreme Court in the case of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others*** reported in ***(1998) 8 SCC 1*** and contended that, the impugned notice suffers from incompetency and accordingly, sought for setting aside the impugned notice at Annexure-A.

16. Learned Senior Counsel further contended that the impugned notice is liable to be quashed as it proceeds on conclusive and predetermined allegations against the noticees, which is contrary to the requirement that the show-cause notice must put-forth the noticee of alleged allegation and therefore, sought for interference of this Court. It is contended that a

notice which declares conclusion deprives the noticee of a real and fair opportunity to respond, which violates the basic requirement of fair hearing, and as such, it is argued that the impugned notice is required to be set aside by this Court. In this regard learned Senior Counsel refers to the judgement of the Hon'ble Supreme Court in the case of ***Barium Chemicals Ltd and another vs. Company Law Board and others*** reported in ***(1967) 1 SCR 898***. Further, learned senior counsel refers to the judgment of the Hon'ble Supreme Court in the case of ***Siemens Ltd vs. State of Maharashtra and others*** reported in ***(2006) 12 SCC 33*** and contended that the writ petition is maintainable as the impugned notice is being issued with pre-meditation by the respondent-authority and therefore, sought for interference of this Court.

17. Nextly, learned Senior Counsel for the petitioner by referring to office note produced by the respondent-authority with substantial modification that the same is in violation of Regulation 3(1) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (for short, Regulations, 2015) and further, it is contended that the clerical corrections made thereunder is jurisdictional error to issue notice under Section 11B of the Act.

18. It is argued by the learned Senior Counsel that, where jurisdiction is depended upon the existence of foundational or jurisdictional error, the competent authority itself must be satisfied of those facts before assuming jurisdiction and as such, submitted that the internal notings clearly demonstrates that the allegations made in the impugned show-cause notice were not borne out by the investigation report and

were instructed to be inserted without evidentiary foundation and in this regard, learned Senior Counsel refers to the judgment of the Hon'ble Supreme Court in the case of ***Oryx Fisheries Private Limited vs. Union of India and others*** reported in ***(2010) 13 SCC 427***.

19. Finally, Sri. D.L.N. Rao, learned Senior Counsel argued that though the petitioner has sought for documents from the respondent-authorities to respond to impugned show-cause notice including the Investigation Report and such other materials, however, the respondent-authorities with a casual manner responded by letter dated 21.11.2021 (Annexure-G) that some of the documents were not relied upon and as such, declined to furnish the Investigation Report, which is contrary to the judgment of the Hon'ble Supreme Court in the case of ***T. Takano***

vs. Securities and Exchange Board of India and another reported in ***(2002) 8 SCC 162*** and further argued that non-disclosure of documents that form the basis for the allegations made against the petitioner vitiates the entire proceedings. Accordingly, learned Senior Counsel sought for setting aside the impugned show-cause notice issued by the respondents.

20. Sri. Ashok Haranalli, learned Senior Counsel appearing for the petitioner in W.P.No.3525 of 2022, argued on the similar lines with Sri. D.L.N. Rao, learned Senior Counsel, and in addition to the same, it is argued that, the impugned notice is in the nature of imposing penalty against the petitioners as the respondent-authorities have already determined to take action against the petitioners without offering explanation from the petitioners as to allegation made in the notice. Referring to paragraph 25 of the

impugned notice, it is argued by the learned Senior Counsel that the respondent-authorities have not provided the documents relied upon while issuing the show-cause notices and therefore, sought for interference of this Court.

21. It is also argued by Sri. Ashok Haranalli, learned Senior Counsel by referring to Section 19 and 29 of the Act, and emphasised that the essential power conferred by the Act cannot be delegated to anyone and such power conferred under the Act shall be exercised by the very same authority and therefore, as the impugned notice is issued by the incompetent authority- DGM and therefore, sought for interference of this Court. In this regard, learned Senior Counsel appearing for the petitioner, places reliance on the judgment of the Hon'ble Supreme Court in the case of

A. K. Roy and another vs. State of Punjab and others reported in ***(1986) 4 SCC 326***.

22. It is further submitted by the learned Senior Counsel for the petitioner that, though the impugned notice referred to in the investigation report, however, same was not supplied to the petitioner for effective response and therefore, sought for setting aside the impugned notices.

23. It is also contended by the learned Senior Counsel that the allegation made in the notice that the Directors of the LVB had trading with the JP Morgan India Pvt. Ltd., is incorrect as the LVB has no relationship with the JP Morgan India Pvt Ltd., and as such, the entire averments made in the impugned notice is based on the assumptions without fundamental facts by the respondent-authorities, which requires to be set aside in this writ petition.

24. It is also argued by the learned Senior Counsel that the impugned notice is liable to be quashed on the ground of delay and laches as the same was served to the petitioner, after three years from the date of cause of action and as such, action of the respondents would establish the malafide action of the respondents to target the petitioner to suffer mental trauma and as such, sought for setting aside the impugned notice.

25. Nextly, Sri. Ashok Haranalli, learned Senior Counsel argued that, petitioner has no role in trading with the LVB or JP Morgan India Pvt. Ltd., as the allegation made against the petitioner is as to his relationship with the Directors of LVB and further, the petitioner had access to UPSI as connected persons of LVB share does not arise to the petitioner and in this regard, no documents are furnished to the petitioner to substantiate the said fact and accordingly, sought for

setting aside the impugned notice issued by the respondent-authorities.

26. In order to buttress his arguments, learned Senior Counsel refers to the judgment of the Hon'ble Supreme Court in the case of ***S.L. Kapoor vs. Jagmohan and Others*****,** reported in ***(1980) 4 SCC 379***; in the case of ***Managing Director, ECIL vs. B. Karunakar and others,*** reported in ***(1993) 4 SCC 727***; in the case of ***Siemens Ltd vs. State of Maharashtra and others*** reported in ***(2006) 12 SCC 33***.

27. Smt. Lakshmy Iyengar, learned Senior Counsel appearing for the petitioners in W.P.No.25261 of 2022 (noticee Nos. 4 to 7) submitted that, the petitioners have filed detailed objections to the impugned notice on 08.02.2022 (Annexure-B) questioning the jurisdiction of the competent authority to issue the

impugned notice and also sought for an opportunity to inspect certain documents relied upon by the respondent-authorities for framing the charges against the petitioners, as stated in the show-cause notice, however, the respondent-authorities have not provided the copy of the Investigation Report and agenda for Board Meeting held on 20.04.2018 and 25.05.2018. Therefore, it is contended that the petitioners were prejudiced in making effective reply to the impugned notice. It is further contended that nothing is forthcoming from the impugned notice as to delay of more than three years in issuing impugned notice to the petitioners. It is the categorical arguments of the learned Senior Counsel that the petitioners are not connected to LVB in any manner whatsoever, and particularly, it is argued by the learned Senior Counsel that Noticee Nos. 1 and 3 were stated as "Insider" and such presumption by the respondents is based on no

evidence and as such, same is erroneous as just because the Noticee No.4 shares Directorship with Noticee Nos.1 and 3 does not automatically to conclude that the Noticee No.4 access to UPSI and therefore, sought for setting aside the impugned notice.

28. Nextly, it is contended by Smt. Lakshmy Iyengar, learned Senior Counsel, by referring to Section 15-I of the Act that the impugned notices have been issued by the incompetent person and therefore, same is required to be set aside.

29. In order to buttress her arguments, learned Senior Counsel referred to the judgment of the Hon'ble Supreme Court in the case of ***Babu Verghese and others vs. Bar Council of Kerala and others*** reported in ***(1999) 3 SCC 422*** and argued that, if the manner of doing a particular act is prescribed under a statute and such act must be done in that fashion

alone and therefore, sought for interference of the Court.

30. In reply to the arguments of the learned Senior Counsel for the respondents, referring to the judgment of the High Court of Judicature at Madras in W.P.Nos.17521 of 2020 and connected writ petitions disposed of on 26.04.2024, it is contended by the learned Senior Counsel that LVB was respondent No.3 in the aforementioned petitions and objected for amalgamation of the Bank with Reserve Bank of India and in this connection, the learned Senior Counsel refers to paragraph No.2(vii) and paragraph No.12.7 and argued that the allegation made in the impugned notice is nonest and without jurisdiction and as such, sought for setting aside the same.

31. Emphasizing on the judgment of the Hon'ble Supreme Court in the case of ***Reliance Industries***

Limited vs. Securities and Exchange Board of India & others., in ***Crl.A.No.1167/2022***, disposed of on 05.08.2022, Smt. Lakshmy Iyenger, learned Senior Counsel argued that the above decision is of strength of the three judges of the Hon'ble Supreme Court, and relied upon the judgment of ***T. Takano vs. Securities and Exchange Board of India*** reported in ***(2022) 8 SCC 162*** and therefore, judgment of the Hon'ble Supreme Court in the case of ***Kavi Arora vs. Securities and Exchange Board of India*** reported in ***2022 SCC Online SC 1217*** as referred to by the learned Senior Counsel for the respondents is *per incuriam* and ***Reliance Industries Limited*** (supra) has laid down the law as to the exercising judicial review over respondent-authorities which is of regulatory domain and accordingly, submitted that the entire action of the respondent-authority is contrary to

law and therefore, sought for setting aside the impugned notice issued by the respondents.

ARGUMENTS OF THE RESPONDENTS*:*

32. Per contra, Sri. R.V.S. Naik learned Senior Counsel appearing for the respondents sought to justify the impugned notices and argued that this Court must restrain from interfering with the impugned notice issued by the respondent-authorities and further the petitioners have to be relegated to file objections/reply to the impugned notice, if any, under the facts and circumstances of the case and therefore, submitted that the interference by this Court under Article 226 of Constitution of India is only under exceptional circumstances and the present writ petitions should not be considered as an exceptional matter to interfered with the impugned notice, and accordingly, places reliance on the judgment of the

Division Bench of this Court in the case of ***S.Durendra Babu vs. BWSSB and Another*** in ***W.P. 8816 of 2020*** disposed of on 20.07.2020; in the case of ***SEBI vs. Mukkaram Jan*** in ***W.A. No.270 of 2021*** disposed of on 09.04.2021, and in the case of ***Union of India and another vs. Kunisetty Satyanarayana*** reported in ***(2006) 12 SCC 28***.

33. It is further contended by the learned Senior Counsel for the respondents, that, the impugned show-cause notice is pertaining to the alleged violations committed by the petitioners, under Section 15G of the Act, which provides for allegations as to Insider Trading. Referring to Section 11(4A), 11B(1) and 11B(2) of the Act, it is argued that, the Board is empowered to issue directions/levy penalties, in respect of violations, specified in Chapter VIA, of the Act, which includes Section 15 of the Act. It is further

argued that, though Section 15-I, of the Act, confers power on Adjudicating Officer, to levy a penalty, however, same power be extended on the Board, to levy penalties, under Section 11(4A) and 11B(2) of the Act as per the amendment made during the year 2018, which came into effect from 08.03.2019 as per the rules framed by the Central Government and therefore, it is the principal submission of the learned Senior Counsel for the respondents that, either the Board, or the Adjudicating Officer, can levy penalty for violations committed thereunder and therefore, sought for dismissal of the writ petitions.

34. Referring to the Securities and Exchange Board of India, (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (for short, Rules, 1995), it is argued that, Rule 2(c) provides for "Inquiry" as provided under Section 11(4A) and 11B(2), of the Act,

and therefore, it is contended that, in the event, the Board is not exercising such powers, under the Act, eventually the deligatee under Section 19 of the Act, is empowered to pass appropriate orders and therefore, learned Senior Counsel sought for dismissal of the writ petitions. Emphasising on these aspects, it is argued that, the requirement of Section 19 of the Act, to pass orders in writing, as per the provisions under Exchange Board of India, (Delegation of Statutory and Financial Powers) Order, 2019 and such 'Delegation of Powers' referred to in SL.No.22 and 25 of Part A, Chapter I (Annexure-R1 in statement of objections in W.P.No.3525 of 2022), issuing and signing authority of the impugned show-cause notice is the respondent No.2-DGM, and therefore, it is argued by the learned Senior Counsel for the respondents that, the impugned notices are issued by the competent authority, and therefore, sought for dismissal of the writ petitions.

35. It is further argued that since the impugned notices are mere show-cause notices, do not amount to an adverse order affecting the rights of the parties, and therefore, it is contended that, the writ petitions do not survive for consideration. In this regard, learned Senior Counsel for the respondents referred to the judgment of the Hon'ble Supreme Court in the case of ***Special Director and another vs. Mohd. Ghulam Ghouse and another*** reported in ***(2004) 3 SCC 440*** and argued that, it is open for the petitioners to appear before the competent authority, and to raise issue with regard to jurisdiction insofar as issuing the show-cause notice and same could be decided by the respondent-authorities, conducting the inquiry and therefore, sought for dismissal of the writ petitions.

36. Sri. R. V. S. Naik, learned Senior Counsel for the respondents, while referring to Noticee Nos. 1, 3, 4

to 7 and 8, argued that, these noticees have allegedly traded while in possession of UPSI and that apart, the Noticee Nos. 4 to 7, have filed their reply to the show-cause notice, (Annexure-B in W.P.No.25261 of 2022) and therefore, it is contended by the learned Senior Counsel that, as those petitioners have filed reply to the impugned show-cause notice, without raising question of jurisdiction, and as such, these petitioners in W.P.No.25261 of 2022, cannot urge jurisdictional error and to maintain petition before this Court. In this regard, learned Senior Counsel for the respondents submitted that, it is open for such petitioners to raise jurisdictional aspect before the Inquiring Authority, if so advised.

37. Nextly, in response to the contentions raised by the learned Senior Counsel for the petitioners as to non-supply of relied upon documents, while issuing the

impugned show-cause notice issued to the petitioners, it is argued by the learned Senior Counsel for the respondents that the petitioners themselves have produced e-mails whereunder Annexures to the impugned show-cause notices have been attached and further the respondents have extended opportunity to the petitioners for inspection of such documents in their office, and therefore, countered the submission made by the learned Senior Counsel for the petitioners. In this regard, learned counsel for the respondents places reliance on the judgment of the Hon'ble Supreme Court in the case of ***Kavi Arora vs. Securities and Exchange Board of India*** reported in ***2022 SCC Online SC 1217*** and argued that, it would be open for the petitioners to approach the appropriate forum seeking such documents from the respondents.

38. Nextly, insofar as the contentions urged by the learned Senior Counsel for the petitioners that impugned show-case notice is pre-meditated, Sri. R.V. S. Naik, learned Senior Counsel for the respondents countered by referring to the word "alleged" in paragraph 20 of the impugned show-cause notice at Annexure-A and submitted that, the apprehension expressed by the learned Senior Counsel for the petitioners is misnomer and cannot be accepted and accordingly, sought for dismissal of the writ petitions. Emphasising on the object of the Act, Sri. R.V.S. Naik, learned Senior Counsel for the respondents submitted that, the Securities Market Regulator is an Expert Body, with a mandate to protect, the interest of the investors and therefore, contended that, the judicial review over the Regulatory Body under the Act, is limited and in this regard, places reliance on the judgment of the Hon'ble Supreme Court in the case of

Vishal Tiwari vs. Union of India and others reported in ***(2024) 4 SCC 115***.

39. Lastly, it is argued by the learned Senior Counsel for the respondents with regard to reply made by the learned Senior Counsel for the petitioners that, Section 11(4A) and 11B(2), of the Act, was inserted by way of amendment, which came into force on 08.03.2019, wherein, the alleged violation against the petitioners is during the year 2018 and as no cause of action to initiate Inquiry accordingly, it is argued by the learned Senior Counsel for the respondents that, the Board under the Act has empowered to impose penalties, and the provision under Section 11(1), 11(4) and 11B(1) of the Act, existed even before insertion through the amendment during, 2018 and therefore, sought for dismissal of the writ petitions.

ANALYSIS:

40. In the light of the submissions made by the learned counsel appearing for the parties, the following questions have to be answered in these writ petitions.

(i) Whether the impugned notices are liable to be quashed as there is pre-meditated action by the respondent-authorities ?

(ii) Whether the petitioners have made out a case for interference, as the action by the respondents in issuing impugned notice, calling for explanation, for alleged offence of trading under the Act, under Article 226 of Constitution of India ?

41. Since the principal question in these writ petitions as to attack the impugned notice, at Annexure-A, it is relevant to ascertain as to the nature, scope and the relevancy of averments in the notice in larger perspective. In this regard, it is relevant cite the judgment of the Hon'ble Supreme Court in the case of

Gorkha Security Services vs. Government of NCT of Delhi and others reported in ***AIR 2014 SC 3371*** as to mandatory requirement of the notice. Paragraphs 18 to 20 reads as under:

> *"18. Thus, there is no dispute about the requirement of serving show-cause notice. We may also hasten to add that once the show-cause notice is given and opportunity to reply to the show-cause notice is afforded, it is not even necessary to give an oral hearing. The High Court has rightly repudiated the appellant's attempt in finding foul with the impugned order on this ground. Such a contention was specifically repelled in Patel Engg. [Patel Engg. Ltd. v. Union of India, (2012) 11 SCC 257 : (2013) 1 SCC (Civ) 445]*
>
> *19. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes*

to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

20. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:

(i) The material/grounds to be stated which according to the department necessitates an action;

(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."

42. It is the case of the petitioners, that, Section 15-I of the Act, empowers on officers of rank, Division Chief and above, are the competent officers to issue the

impugned notice under Act. It is argued by the learned Senior Counsel for the petitioners that, the delegation under Section 19 of the Act, empowers the deligatee, to adjudicate the dispute and Section 15-I of the Act, does not provide any officer below the rank of Chief General Manager to be an Adjudicating Officer. Chapter 6A, comprising Section 15A, to 15JB, of the Act, provides for penalties and adjudication. For easy reference to resolve the contentions of the parties, it is relevant to extract certain provisions of the Act. Section 15-I of the Act, provides as under:

> ***Section 15-I. Power to Adjudicate****.- (1) For the purpose of adjudicating under sections 15A, 15B, 15C, 15D, 15E, [15EA, 15EB,] 15F, 15G, [15H, 15HA and 15HB], the Board [may] 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 sub-section(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.

(underlined by me)

43. Section 19 of the Act, provides for delegation, which reads as under:

> ***Section 19. Delegation***.- *The Board may, be general or special order 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.*

44. Chapter IV of the Act, provides for powers and functions of the Board. Section 11B of the Act, is extracted below:

> ***Section 11B. Power to issue directions and levy penalty***.- *[(1)] Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary-*
>
> *(i) in the interest of investors, or orderly development of securities market; or*
>
> *(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of investors or securities market; or*

(iii) to secure the proper management of any such intermediary or person,

it may issue such directions,-

(a) to any person or class of persons referred to in section 12m or associated with the securities market; or

(b) to any company in respect of matters specified in section11A, as may be appropriate in the interests of investors in securities and the securities market.

[(2) Without prejudice to the provisions contained in sub-section(1), sub-section (4A) of the section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.

Explanation.- For the removal of doubts, it is hereby declared that the power to issued directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contraventions.

45. The definition of 'Board', under Section 2(a) of the Act, which provides that, the Board constituted under

Section 3 of the Act. It is also relevant to extract, Rule 2(b) and Rule 2(c) of Rules, 1995, which provides as under:

> *Rule 2(b): "adjudicating officer" means the officer appointed by the Board as adjudicating officer under section 15I of the Act;*
>
> *Rule 2 (c): "inquiry" means the inquiry referred in sub-section (4A) of section 11 or sub-section (2) of section 11B or section 15-I of the Act.*
>
> (Underlined by me)

46. Rule 4 of Rules, 1995 provides as under:

> ***4. Holding of inquiry**. (1) In holding an inquiry for the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, [15EA, 15EB,] 15F, 15G [, 15HA and 15HB] whether any person has committed contraventions as specified in any of sections 15A, 15B, 15C, 15D, 15E, [15EA, 15EB,] 15F, 15G [, 15HA and 15HB] the [the Board or 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 [the Board or 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 [the Board or 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 [the Board or 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 [the Board or 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 16[the Board or 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 [the Board or 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 [the Board or the adjudicating officer], the 19[the Board or the adjudicating officer] may proceed with the inquiry in the absence of such person after recording the reasons for doing so.*
>
> (Underlined by me)

47. It is not in dispute that, impugned notices are issued by the Deputy General Manager of the respondent-authority under Section 11B of the Act. The alleged, transaction /trading as mentioned in the notice is during the period from 01.12.2017 to 21.06.2018. The respondent-SEBI suspects, the involvement of LVB Board Meeting, on 25.05.2018 to raise plans as to involvement in the financial aspect of JP Morgan India Pvt. Ltd., at paragraph 20 of the

impugned notice in W.P.No.3525 of 2022, reads as under: (page 48).

> *20. In light of the aforesaid, it is alleged that:*
>
> *(a) Noticees No.1,2,3 and 7 have communicated UPSI in violation of 12 A(e) read with Section 15G of SEBI Act and Regulation 3(1) of Insider Trading Regulations, 2015.*
>
> *(b)Noticee No.1 and Noticess No.3 to 8 have traded in the script of LVB on the basis of UPSI in violation of Section 12A(d) and (e) read with Section 15G of SEBI Act and Regulation 4 (1) read with Regulation 4(2) of Insider Trading Regulations, 2015.*
>
> (Emphasised by me)

48. It is pertinent to mention here that, the aforesaid paragraph 20 indicates that "noticee Nos. 1, 2 3 and 7 have communicated" and further "traded in script of LVB" and these unambiguous words, undoubtedly, express that, such noticees have committed an office under the Act and is nothing but concluding the Inquiry itself by issuing impugned notice by the respondents.

49. Paragraph 21 impugned notice is began with the word, "In view of the aforesaid violations". Paragraph 25 of the impugned notice, provides for enclosing the relied upon the documents as per the list of enclosures.

50. In Paragraphs 25 and 26 of the impugned notice at Annexure-A in W.P.No.3525 of 2022, which provides as under:

> *25. The documents relied upon in the notice have been annexed as per the list of enclosures.*
>
> *26. The Noticees may also note that a settlement mechanism is provided under the SEBI (Settlement Proceedings) Regulations, 2018. If the Noticees wish to opt for the settlement process, they may apply for the same in the manner given in the aforementioned regulations under intimation to the undersigned. Further, they may not that filing of settlement application does not confer any right to seek the settlement of the proceedings.*
>
> (Emphasis supplied)

51. Having noticed the aforementioned Clause in the impugned notice, if the enclosures have not reached the petitioners, and thereby, the petitioners have

requested for those documents in their letters and e-mails and as such, there was no impediment for the respondents to furnish the same. Be that as it may be, atleast, to maintain fairness in action, respondents ought to have supplied the relied upon documents to the petitioners and without doing so, the respondents have called upon the petitioners to inspect those documents at their office and that apart, rejecting their plea for seeking documents could not satisfy the test of principle of wednesbury of natural justice.

52. It is pertinent to mention here that, it is contention of the learned Senior Counsel for the respondents that, not only adjudicating authorities under Section 15-I of the Act, which provides for adjudication of the disputes under Section 15A, 15B, 15C, 15D, 15E, (15EA, 15EB,) 15F, 12G, 15H, 15HA, and 15HB of the Act, wherein, the word "may" is used

empowering the Board, to appoint any officer, not below the rank of Chief General Manager as Adjudicating Officer. In this regard, taking into consideration the power of delegation under Section 19 of the Act has to be read conjointly with Section 15-I of the Act, which provides for power to adjudicate including an offence under Section 15G, of the Act, which connotes for allegation as to Insider Trading.

53. It is pertinent to ascertain the relevant Clause of definition as per Regulations 2015, wherein, Section 2(d) to the word 'connected person'. Section 2(g) of the Regulation provides for definition to word 'Insider': Section 2(g) of the said Regulation reads as under:

1. " (g) "insider" means any person who is:

i) a connected person; or

ii) in possession of or having access to unpublished price sensitive information;

54. In the backdrop of the aforementioned provisions of the Act, Rules, and Regulations referred to above, the word 'may' is required to be interpreted by looking into the text and the context in which such expression is mentioned, under the specific provision, in which, such, "delegation" is provided. In this regard, it is relevant to follow the declaration of the Hon'ble Supreme Court in the case of ***Vijay Karia and others vs. Prysmian Cavi E Sistemi SRL and others*** reported in ***(2020) 11 SCC 1***, and paragraph 59 reads as under:

> *"59. On the other hand, where the grounds taken to resist enforcement can be said to be linked to party interest alone, for example, that a party has been unable to present its case before the arbitrator, and which ground is capable of waiver or abandonment, or, the ground being made out, no prejudice has been caused to the party on such ground being made out, a court may well enforce a foreign award, even if such ground is made out. When it comes to the "public policy of India" ground, again, there would be no discretion in enforcing an award which is induced by fraud or corruption, or which violates the fundamental policy of*

Indian law, or is in conflict with the most basic notions of morality or justice. It can thus be seen that the expression "may" in Section 48 can, depending upon the context, mean "shall" or as connoting that a residual discretion remains in the court to enforce a foreign award, despite grounds for its resistance having been made out. What is clear is that the width of this discretion is limited to the circumstances pointed out hereinabove, in which case a balancing act may be performed by the court enforcing a foreign award."

(Underlined by me)

55. Following the declaration of law made by the Hon'ble Supreme Court with reference to legislative intent therein, the competent authority under the Act to issue the notice is the Officer of the rank of CGM, and above only, and not any officer below the rank of CGM. In that view of the matter, "delegation" cannot be understood distancing from other provisions in the same Act, made under Section 19 of the Act nor any such officer below the rank of Chief General Manager and therefore, I find force in the submission made by the learned Senior counsel for the petitioners that, the impugned notices being issued by the respondent

No.2-DGM, who is undoubtedly incompetent authority and below the rank of Chief General Manager, and therefore, the impugned notices are liable to be quashed.

56. Though the learned Senior Counsel for the respondents vehemently argued that, normally this court does not interfere with challenging the show-cause notice, however, if such notice is issued by an incompetent authority and same has to be interfered with under Article 226 of Constitution of India, as such action is without jurisdiction. In this regard, it is relevant to cite the judgment of the Hon'ble Supreme Court in the case of ***Whirlpool*** (supra), wherein paragraph 15 and 19 reads as under:

> *"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is*

available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

* * *

19. Another Constitution Bench decision in Calcutta Discount Co. Ltd. v. ITO, Companies Distt. I [AIR 1961 SC 372 : (1961) 41 ITR 191] laid down:

"Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against the Income Tax Officer acting without jurisdiction under Section 34, Income Tax Act."

(Underlined by me)

57. The aforementioned judgment was reiterated by the Hon'ble Supreme Court in the case of ***U.P. Power Transmission Corp., Ltd and another vs. GG Power & Industrial Solutions Ltd and another*** reported in ***(2021) 6 SCC 15*** *(See paragraph 16)*.

58. Following the aforementioned judgments of the Hon'ble Supreme Court, I am of the opinion that, the delegation as provided under Section 19 of the Act, shall be read in the light of the provisions contained under Section 15-I, 15G and Section 11B(2) of the Act. These provisions has to be read harmoniously by looking into the other provisions in the same Act, which is plain, unambiguous and clear in conveying the intention of the legislation. In this regard, as the language employed in the aforesaid provisions are clear, plain and unambiguous, then the legislative intent has to be given effect to and this Court has no

jurisdiction to interfere with the intention of the makers by filling up gaps in between the words of the enactment, while exercising writ jurisdiction and as such, it is relevant to cite the judgment of the Hon'ble Supreme Court in the case of ***B. Premanand and Others Vs. Mohan Koikal and Others*** reported in ***(2011) 4 SCC 266***, and in the case of ***State of Jharkhand and Another Vs. Govind Singh*** reported in ***(2005) 10 SCC 437***.

59. It is to be noted that, in the light of the judgment of the Hon'ble Supreme Court in the case of ***Collector (District Magistrate) Alahabad and another vs. Raja Ram Jaiswal*** reported in ***AIR 1985 SC 1622,*** it is held that when the power is conferred to achieve a certain purpose, that power can be exercised only for achieving that purpose and not for extraneous consideration, nor for irrelevant consideration nor for

colourable exercise of power. In the case of ***Mackinnon Mackenzie and Company Ltd vs. Mackinno Employees Union*** reported in ***(2015) 4 SCC 544***, it is held that, if a statute prescribe a particular procedure, it should be done in the particular manner alone and any deviation from such provision in an enactment amounts to without jurisdiction. The aforementioned dictum was recently considered by the Hon'ble Supreme Court in the case of ***OPTO Circuits India Ltd vs. Axis Bank and others*** reported in ***AIR 2021 SC 753***. paragraph 15 reads as under:

> *"15. This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an election petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an election petition in Chandra Kishore Jha v. Mahavir Prasad [Chandra Kishore Jha v. Mahavir Prasad, (1999) 8 SCC 266] and in the course*

of consideration observed as hereunder : (SCC p. 273, para 17)

> *"17. … It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner."*

Therefore, if the salutary principle is kept in perspective, in the instant case, though the authorised officer is vested with sufficient power; such power is circumscribed by a procedure laid down under the statute. As such the power is to be exercised in that manner alone, failing which it would fall foul of the requirement of complying with due process under law. We have found fault with the authorised officer and declared the action bad only insofar as not following the legal requirement before and after freezing the account. This shall not be construed as an opinion expressed on the merit of the allegation or any other aspect relating to the matter and the action initiated against the appellant and its Directors which is a matter to be taken note of in appropriate proceedings if at all any issue is raised by the aggrieved party."

60. In the case of ***T. Takano*** *(supra)*, wherein, the question has to furnish the material to the aggrieved parties, and non-disclosure of the report therein, by the authorities under SEBI, and as such, the Hon'ble

Supreme Court, held that, it is a clear violation of Regulations and principles of natural justice. Paragraphs 30 and 45 of the said judgment reads as under:

> *"30. It would be fundamentally contrary to the principles of natural justice if the relevant part of the investigation report which pertains to the appellant is not disclosed. The appellant has to be given a reasonable opportunity of hearing. The requirement of a reasonable opportunity would postulate that such material which has been and has to be taken into account under Regulation 10 must be disclosed to the noticee. If the report of the investigating authority under Regulation 9 has to be considered by the Board before satisfaction is arrived at on a possible violation of the regulations, the principles of natural justice require due disclosure of the report.*
>
> * * *
>
> *45. The principle that the material that may influence the decision of a quasi-judicial authority to award a penalty must be disclosed to a delinquent was affirmed by this Court in Union of India v. Mohd. Ramzan Khan [Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588 : 1991 SCC (L&S) 612] . In that case, this Court laid down that a delinquent officer is entitled to receive the report of the enquiry officer which has been furnished to the disciplinary authority. This principle was affirmed by a Constitution*

Bench of this Court in ECIL v. B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] . The rationale behind the right to receive the report of the enquiry officer was explained by this Court in the following terms : (ECIL case [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] , SCC p. 754, para 26)

"26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that

the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."

(emphasis supplied)

61. Following the declaration of law made by the Hon'ble Supreme Court, the requirement as provided

under Section 19 of the Act is mandatory, as the same provision has not changed/altered/modified in exercise of power by the competent authority, and also even the amendment has been made to Section 11-4A of the Act, did not alter mandatory provision contained under Section 19 of the Act. Hence, it may be concluded that, this court normally will not interfere with a show-cause notice, in a writ proceedings under Article 226 of Constitution of India, unless the such notice is issued by an incompetent authority as required under a particular enactment and therefore, if such notice is issued by the incompetent authority, then such writ petitions are required to be interfered with as same are without jurisdiction.

62. In the light of the submission made by the learned Senior Counsel appearing for the petitioners, on careful reading of the averments made in the impugned

notice, I am of the opinion that, the impugned notices suffer from infirmity, as it vitiates on the ground as, it contains conclusive and pre-determination by the respondents herein, and as such, paragraphs 20 and 21 of the impugned notices as extracted above, though used the word "alleged", however, the respondent-authorities have clearly stated as to the violation of Section 12A(e), 12A(d) and read with Section 15G of the Act, and Section 3(1)(4) of the Regulations. It is well established principle in law that, if a notice is issued by the quasi-judicial authority under a statutory Regulations/Rule, it is the duty of the authority issuing such notice shall offer explanation for the alleged violation from the aggrieved party/noticee, based on the undecided allegations made thereunder.

63. Having taken note of the averments made in the impugned notice, wherein, the respondents proceeded

to assert that, the petitioners "Communicated UPSI" and "Traded while in possession of UPSI" which makes it clear that, the respondents had issued notices to the petitioners as an empty formality to offer explanation, despite decided to take action, under the Act. At this stage it is relevant to cite the judgment of Hon'ble Supreme Court in the case of ***Aigargh Muslim University and others vs. Mansoor Ali Khan*** reported in ***(2000) 7 SCC 529***, paragraph 25 reads as under:

> *"25. The "useless formality" theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta [(1999) 6 SCC 237] referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Straughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark etc. Some of them have said*

that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case."

64. In the case of ***Siemens Ltd*** *(supra)*, paragraph 9 reads as under:

"9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826] and Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2006) 12 Scale 262] , but the question herein has to be considered from a different angle viz. when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See K.I. Shephard v. Union of India [(1987) 4 SCC 431 : 1987 SCC (L&S) 438 : AIR 1988 SC 686] .) It is evident in the instant case that the respondent has clearly made up its mind. It

explicitly said so both in the counter-affidavit as also in its purported show-cause notice."

65. It is also relevant to cite the judgment of the Hon'ble Supreme Court in the case of ***Oryx Fisheries Pvt Ltd*** *(supra),* paragraph 31 reads as under:

"31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence."

66. Following the dictum of Hon'ble Supreme Court in the aforementioned decisions, I am of the opinion that, the impugned notice suffers from infirmity and errors

in the law and facts. Therefore, I find force in the submission made by the learned Senior Counsel for the petitioners.

67. Lastly, insofar as the submission made by the learned Senior Counsel appearing for the petitioners with regard to breach of principles of natural justice as the respondents have not provided relied upon documents to the petitioners, particularly investigation report, the learned Senior Counsel for the respondents countered by relying upon the judgment of the Hon'ble Supreme Court, in the case of ***Kavi Arora*** *(supra)* to over-come, the ruling in ***T.Takano***, *(supra)*. In this regard, learned Senior Counsel Smt. Lakshmy Iyengar, rightly places reliance on the judgment of three judges Bench, in the case of ***Reliance Industries Ltd***., *(supra)*, wherein, the Hon'ble Supreme Court had an occasion, to consider ***T.Takano*** case, and confirmed,

the fact as to disclosure of documents by the respondent-authorities, being a statutory authorities and in the said case, particularly, the direction was issued for disclosure of the document against SEBI only and as such, affirmed the judgment in the ***T.Takano*** case, and therefore, I am of the opinion that, the submission made by the learned Senior Counsel for the respondents cannot be accepted. It is also to be noted that, the Hon'ble Supreme Court in the case of ***S.L. Kapoor*** (supra), at paragraphs 16 and 17 held as follows:

> *"16. Thus on a consideration of the entire material placed before us we do not have any doubt that the New Delhi Municipal Committee was never put on notice of any action proposed to be taken under Section 238 of the Punjab Municipal Act and no opportunity was given to the Municipal Committee to explain any fact or circumstance on the basis that action was proposed. If there was any correspondence between the New Delhi Municipal Committee and any other authority about the subject-matter of any of the allegations, if information*

was given and gathered it was for entirely different purposes. In our view, the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. We do not suggest that the opportunity need be a "double opportunity" that is, one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met. We disagree with the finding of the High Court that the Committee had the opportunity to meet the allegations contained in the order of suppression.

17. Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of

natural justice, not because it approves the non-observance of natural justice but because courts do not issue futile writs. But it will be a pernicious principle to apply in other situations where conclusions are controversial, however, slightly, and penalties are discretionary."

68. Following the declaration of law made by the Hon'ble Supreme Court in the aforementioned cases, I have carefully examined the memo dated 16.12.2024, filed by the respondents along with the office note wherein, the approval of the competent authority, was obtained for issuance of show-cause notice, which is a note sheet, is nothing but a draft notice, which requires some more material is to be added to it. However, same has been approved by DGM, with following words:

"3.IVD-ID6 may issue the SCN <u>after suitably incorporating the aforesaid observations/modifications</u>."

69. On careful looking into the draft with corrections approved therein annexed in the memo filed by the respondents, no final draft was placed by the DGM after making necessary corrections, before the CGM or higher authorities, seeking their approval as mentioned in the note sheet, and therefore, the impugned notices lacks jurisdiction, incompleteness and suffers from merit, claiming explanation from the petitioners. Having perused the impugned notice, I am of the opinion that, the impugned notice is liable to be quashed as it has not passed through the test of reasonableness, justness, and fairness to meet the demands of Rule of law principles.

70. Foregoing reasons and the binding precedent of the Hon'ble Supreme Court in the aforementioned decisions, I am of the opinion that, the impugned notices have been issued by an incompetent authority

and the averments made in the impugned notice, in whole, would indicate the conclusive and pre-determined action by the respondents against the petitioners, and that apart, having not furnished Investigation Report, and such other documents sought for by the petitioners which are relied upon by the respondents, amounts to violation of principles of natural justice and therefore, questions framed above favour the petitioners. In the result, I pass the following:

ORDER

i) Writ petitions are ***allowed***;

ii) In W.P.No.3525 of 2022, the notice dated 22.09.2021 (Annexure-A) issued by the respondent No.2, in favour of the petitioner/noticee No.8, is hereby quashed;

iii) In W.P.No.3519 of 2022, the notice dated 22.09.2021 (Annexure-A) issued by the respondent No.2, in favour of the petitioner/noticee No.3, is hereby quashed;

iv) In W.P.No.25261 of 2022, the notice dated 22.09.2021 (Annexure-A) issued by the respondent No.2, in favour of the petitioners/noticee Nos.4 to 7, is hereby quashed.

SD/-
(E.S.INDIRESH)
JUDGE

SB
List No.: 1 Sl No.: 1