B.S.E. Brokers Forum, Bombay & Ors. vs Securities & Exchange Board Of India & ... on 1 February, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1010, 2001 AIR SCW 628, 2001 CLC 258 (SC), 2001 (3) SRJ 145, 2001 (1) SCALE 575, 2001 (3) SCC 482, (2001) 2 JT 242 (SC), (2001) 1 BANKCAS 779, (2001) 1 SUPREME 479, (2001) 1 SCALE 575, (2001) BANKJ 404, (2001) 2 BOM CR 326

Bench: B.N.Kirpal, N.S.Hegde

CASE NO.:
Transfer Case (civil) 20 of 2000
Writ Petition (civil) 502 of 2000

PETITIONER:
B.S.E. BROKERS FORUM, BOMBAY & ORS. .

Vs.

RESPONDENT:
SECURITIES & EXCHANGE BOARD OF INDIA & ORS. .

DATE OF JUDGMENT: 01/02/2001

BENCH:
B.N.Kirpal, N.S.Hegde

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J SANTOSH HEGDE, J.

Writ petitions questioning the validity of Regulation 10 of the Securities & Exchange Board of India (Stock Brokers and Sub- brokers) Regulations, 1992 read with Schedule III thereof as also letters dated 7th of November, 1992 and 7th of January, 1993 issued by the Securities & Exchange Board of India (SEBI) were filed in various High Courts in the country. On a transfer petition for consolidating these cases being filed before this Court by respondent No.1, this Court by its order dated 10th of December, 1999 directed that one such Writ Petition © No.126/1993 pending before the Bombay High Court be transferred to this Court. By the said order, this Court also stayed other proceedings pending in the other High Courts but gave liberties to the concerned parties to file intervention application in the above transferred case. On 31st of January, 1992, the President of India in exercise of the powers conferred upon him by Article 123(1) of the Constitution of India was

pleased to promulgate the Securities & Exchange Board of India Ordinance, 1992. This Ordinance was subsequently replaced by the Securities & Exchange Board of India Act, 1992 (the Act). The Act was given retrospective operation w.e.f. 30th of January, 1992. Section 3 of the Act provided for the establishment of Securities & Exchange Board of India (SEBI) while Section 4 provided for SEBIs Management Board (the Board).

On 10th of April, 1992 on behalf of the Board, a letter was addressed to the Presidents and Executive Directors of all the recognised Stock Exchanges whereby the members, stock brokers of all the recognised Stock Exchanges in India were called upon to submit their applications to the Board for the purpose of registration in accordance with Section 12(1) of the Act. The said letter which enclosed a pro forma of the application for registration of stock brokers required fees to be paid by applicants for registration on the following basis: Registration Annual Fees Fees (Rs.) (Rs.) Category A 5 Lakhs 10.000 Category B 3 Lakhs 5.000 Category C 1 Lakh 4.000 Category A:

> Stock Brokers who are or will be members of Bombay, Delhi and Calcutta Stock Exchanges. Category B: Stock Brokers who are or will be members of Bangalore, Cochin, Madras and Ahmedabad Stock Exchanges. Category C: Stock Brokers who are or will be members of other stock Exchanges.
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> This demand of the Board led to a nation-wide agitation of stock brokers which resulted in the closing down of Stock Exchanges throughout India for several days. The issue which gave rise to this agitation was the high registration fee sought to be levied by the Board for the purpose of registration. Succumbing to the pressure of this agitation the Board on 19th of April, 1992 issued a revised fee structure for registration of brokers giving two options as below : OPTION A: One time registration fee may be payable by the members in 5 annual instalments under this Option as follows: For Group A exchanges viz. Bombay, Delhi and Calcutta at Rs.50,000 per year for 5 years. Rs.2.5 lakhs For Group B exchanges viz. Madras, Ahmedabad, Bangalore and Cochin at Rs.30,000/- per year for 5 years. Rs. 1.5 lakhs For other exchanges at Rs.10,000/- Per year for 5 years. Rs. 50,000/-
>
> OPTION B:
>
> One time registration fee may be payable by the members under this Option as follows:
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> Fee @ of 1% of the annual turnover of each broker for 5 years from 1990-91. This fee will be uniform for all exchanges.

The registration fee will include fee for registration as underwriters also. During the 5 years period there will be no annual fee.

Each exchange may choose either Option A or Option B and collect fees accordingly from all its members and sent their applications forms to SEBI within the date stipulated already.

The one time registration fee for sub-brokers will be uniform at Rs.5,000/-. In addition, the sub-brokers will require to pay an annual fee of Rs.1,000/- for renewal of registration.

As could be seen from the above, there was substantial change in the new proposal made by the Board. It proposed to reduce the initial fee for registration by 50% with more instalment facility. In effect the earlier demands of registration fee of Rs.2.5 lakhs, Rs.1.5 lakhs and Rs.50,000/- respectively on different categories of members were brought down to Rs.1.45 lakhs, Rs.87,000/- and Rs.29,000/- respectively. Even to this reduced offer of the Board, the members of the Stock Exchanges and the stock brokers had their opposition which is evident from the letter dated 25th of April, 1992 addressed to the Finance Minister of India by the Presidents of all the 22 Stock Exchanges which are recognised and regulated by the Union of India under the Securities Contracts (Regulation) Act, 1956 (the SCR Act). By the said letter the Stock Exchanges sought exemption from the requirement of registration by their members. Their further demand was that there should be, if at all necessary, a simplified form for registration and only nominal fee for registration of Rs.1,000/- payable at one time only should be collected from each of their members. The Union of India by a notification dated 20th of August, 1992 issued in exercise of powers conferred by Section 29 of the Act notified the Securities & Exchange Board of India (Stock brokers and Sub-brokers) Rules, 1992 (the Rules). Rule 3 of the said Rules provides that no stock broker shall buy sell and deal in securities unless he holds a certificate granted by the Board. The Rule also provided that for the grant of such certificate, the applicant concerned will have to pay an amount of fees for registration in the manner provided in the Regulation to be framed by the Board. By a notification dated 23rd of October, 1992 issued in exercise of the powers conferred under Section 30 of the Act, the Board with previous approval of the Central Government notified the Securities & Exchange Board of India (Stock brokers and Sub- brokers) Regulations, 1992 (the Regulations). Regulation 3(1) of the same provided that applications by stock brokers for grant of certificate shall be made in the prescribed Form A through the Stock Exchange of which the said broker is admitted as a member. Regulation 6 provided that the Board on being satisfied that the stock broker is eligible for a certificate of registration shall grant a certificate in Form D to the stock broker and send an intimation to that effect to the Stock Exchange concerned. The controversy in this petition emerges from Regulation 10 read with Schedule III of the said Regulations which reads thus: 10(1) Every applicant eligible for grant of a certificate shall pay such fees and in such manner as specified in Schedule III:

> Provided that the Board may on sufficient cause being shown permit the stock-broker to pay such fees at any time before the expiry of six months from the date on which such fees become due.
>
> (2) Where a stock-broker fails to pay the fees as provided in regulation 10, the Board may suspend the registration certificate, whereupon the stock broker shall cease to buy, sell or deal in securities as a stock-broker.

Schedule III states as under:

> I. Fees to be paid by the Stock-broker. 1. Every stock-broker shall subject to paragraphs 2 and 3 of this Schedule pay registration fees in the manner set out

below:

(a) Where the annual turnover does not exceed rupees one crore during any financial year, a sum of rupees five thousand for each financial year; or (b) Where the annual turnover of the stock- broker exceeds rupees one crore during any financial year, a sum of rupees five thousand plus one hundredth of one per cent of the turnover in excess of rupees one crore for each financial year; (c) After the expiry of five financial years from the date of initial registration as a stock-broker, he shall pay sum of rupees five thousand for a block of five financial years commencing from the sixth financial year after the date of grant of initial registration to keep his registration in force.

2. Fees referred to in clause (a) and (b) of paragraph 1 above shall be paid-

(a) in respect of the financial year 1992- 1993 within one month of the commencement of these regulations; (b) in respect of the financial year beginning on the 1st day of April, 1993 and the following financial years, on or before the first day of October of the financial year to which such payment relates, and such fees shall be computed with reference to the annual turnover relating to the preceding financial year.

3. Every remittance of fees referred to in clauses

(a) and (b) of paragraph 1, shall be accompanied by a certificate as to the authenticity of turnover on the basis of which fees have been computed duly signed by the stock exchange of which the stock-broker is a member or by a qualified auditor as defined in Section 226 of the Companies Act, 1956.

Explanation - For the purposes of paragraphs 1, 2 and 3, annual turnover means the aggregate of the sale and purchase prices of securities received and receivable by the stock -broker on his own account as well as on account of his clients in respect of sale and purchase or dealing in securities during any financial year.

II. Fees to be paid by Sub-broker:

(a) A Sub-broker shall pay a fee of rupees one thousand for each financial year for an initial period of five years. (b) After the expiry of the five years mentioned above, the sub-broker shall pay a fee of rupees five hundred for each financial year as long as the certificate remains in force.

III. Manner of fees to be paid:

The fees indicated above shall be paid on or before the 1st day of October each year payable by a cheque, draft or other instrument in favour of The Securities and

Exchange Board of India at Bombay.

It seems that after coming into force of the said Regulation, the Board by its letter dated 7th November, 1992 called upon the President/Executive Director of all the Stock Exchanges in the country to collect registration fees from each of the member broker for the year 1992 in accordance with the said Regulations. The members of the Stock Exchanges being agitated by this demand, through their Stock Exchanges initiated correspondence with the Board as to the justification of the levy as well as the method of levy. They contended that the demand was excessive and the collection of the same based on turnover of a broker was unreasonable and arbitrary. On such complaint of the broker, the Board on 18th of December 1992 appointed an Expert Committee to look into their grievances. The said Committee after considering the case of the parties came to the conclusion that the fees levied by the Board was reasonable. Having found no beneficial response to their grievances from the Government of India and the Board, aggrieved parties filed various writ petitions in different High Courts, as stated above. One such writ petition was Writ Petition No.126/93 filed by the BSE Brokers Forum, Bombay before the High Court of Bombay. This petition by the above said order of transfer of this Court is now before us as Transferred Case © No.20/2000. In this said petition the petitioners contend that there are at present 491 stock brokers operating from its exchange out of which more than 460 stock brokers are members of the first petitioner Society. They contend that the registration fee sought to be levied by the Board on stock brokers for the purpose of registration is ex facie illegal and void ab initio being ultra vires of the Act and the Rules and the demand is without authority of law being a tax in the guise of a fee which is ultra vires Article 265 of the Constitution of India. They also contend that the said levy is discriminatory, arbitrary, excessive and ultra vires Articles 14 and 19(1)(g) of the Constitution of India.

Their further contention is that the said fee which is levied merely for the purpose of registration is so excessive that the same is nothing short of a colourable attempt on the part of the Board to tax the petitioners for carrying on their professions/business. It is also stated that both the Union of India and the Board lack the legislative competence to levy a tax which is in the nature of a professional tax which power being exclusively with the States under Entry 60, List II, Schedule VII of the Constitution of India. They also contend that the artificial and unreasonable classification of the stock brokers for the purpose of exacting the lions share of the levy is arbitrary and violative of Article 14. In view of the fact, the consequences of non-payment of such fee would entail penal consequences affecting materially the business/profession of such defaulters, the same would also be violative of Article 19(1)(g) of the Constitution. The levy is further impugned on the ground that the same is based on vague and imprecise concept of annual turnover which has no nexus whatsoever with the purpose for which the fee is sought to be collected and registration fee on its very nature can only be one- time fee, hence, demand for collection based on annual turnover extending over 5 years is arbitrary and unreasonable. On behalf of the members of the National Stock Exchange (NSE) a further argument is addressed contending that as per the provisions of the Act the stock brokers and other intermediaries dealing in its exchange are not liable to be charged

with the impugned registration fees since these are not members of their Exchange.

In reply to the above contentions in the petition, first respondent-Board has filed its objections denying that there was lack of legislative competence to levy registration fee as contended in the petition. It is also denied that the levy in fact is a tax in the guise of a fee. On the contrary, it is asserted that the said levy is a fee towards the service rendered by it to the petitioners and others involved in the business of stocks and shares and in furtherance of the object enumerated in Section 11 of the Act. It also denied that the levy would amount to an unreasonable restriction on trade/business so as to attract Article 19(1)(g) of the Constitution. It denied that any unreasonable hardship would be caused to the brokers by virtue of the levy being linked with the annual turnover of theirs and their classification vis-a-vis other intermediaries is an unreasonable classification. It contends that it is a reasonable classification taking into account the object of the Act. They, further, contended that when earlier a proposal was made to levy a flat fee the brokers opposed the same strongly, hence, the said decision to levy flat fee had to be withdrawn. They denied that Regulation 10 of Schedule III to the Regulations is either ultra vires of the Act or unconstitutional. Justifying the fee levied by them the Board contended that it had to render multifaceted and multitude of services contemplated under Section 11(2) of the Act which included the following mandatory duties under the Act:- (a) regulating the business in stock exchanges and any other securities markets; (b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner; (c) registering an regulating the working of collective investment schemes, including mutual funds; (d) promoting and regulating self-regulatory organisation; (e) prohibiting fraudulent and unfair trade practices relating to securities markets; (f) promoting investors education and training of intermediaries of securities markets (g) prohibiting insider trading in securities; (h) regulating substantial acquisition of shares and take-over of companies; (i) calling for information, undertaking inspection, conducting inquiries and audits of the stock exchanges and intermediaries and self-regulatory organisations in the securities market; (j) performing such functions and exercising such powers under the Securities Contracts (Regulation) Act, 1956 as may be delegated to it by the Central Government; (k) levying fees or other charges for carrying out the purposes of this section; (l) conducting research for the above purposes; (m) performing such other functions as may be prescribed.

Taking into consideration the above multifarious duties, it contended that it required the finances for fulfilling the following statutory obligations. These are:

> (a) Establishment of a computer network, i.e. to create environment and facilities to enable dealers in securities to monitor trade at various places with interlinkages through telecommunication and other facilities for on line transmission of information.
>
> (b)Developing self regulatory organisation, i.e. to encourage formation and recognition of associations to be formed by respective intermediaries with the objectives of evolving a code of self-regulation on matters concerned with trade

practices, code of business ethics, prevention of unhealthy and unfair competition among the members with powers to discipline the erring members.

(c)Providing resources support to investors associations.

(d)Undertaking studies and preparing reports relating to, interalia, the functioning of the stock brokers with a view to finding out ways and means of strengthening the basis of their operations.

(e)Organising investment education programs including bringing out publications, books, magazines etc., including newspaper advertisements, relating to the capital market.

(f)To improve the procedure and practice for transaction on stock exchange for the benefit of the brokers and investors, for settlement of disputes between the investors and brokers as well as brokers inter se.

(g)To inspect the records of the brokers and stock exchange from time to time to prevent malpractices.

It is also contended that from the facilities that will be provided by the Board, the brokers would stand to benefit a great deal and that the Board intends to provide improved system of the trading which would fetch larger income to the brokers, by regulating the system the Board contends the inflow of foreign investment in the country also would increase substantially. According to the Board, the money that will be received by the levy would be reasonably sufficient to meet its expenses arising out of its statutory obligations. It specifically denied that the levy is a registration fee simpliciter but the same includes a fee required for establishing the necessary infrastructure for fulfilling and maintaining the objectives of the Act. It also disputed the figures relied upon by the petitioners to controvert the argument that the collection from the levy far exceeded the requirement of funds by the Board. It also denied that imposition of fee on the basis of turnover was either vague, unreasonable, arbitrary or discriminatory. It contends that a levy of .01% of the annual turnover when compared to the brokerage fee charged by a broker was hardly unreasonable. It further contended that on the representations made by the petitioners it had appointed an Expert Committee and this Committee after hearing various members of the Bombay stock Exchange by its report dated 18th of December, 1992 in effect approved the levy. On the above basis, the Board prayed for the dismissal of the writ petition. The Union of India has adopted the said objections of the Board.

We have heard Shri P.Chidambaram, Shri Ashok H.Desai, Shri S.K.Dholakia, Shri Mahendra Anand, and Shri Shanti Bhushan, Senior Advocates and Mr.Navroj Seervai and Mr.P.L.Narayanan, Advocates for the petitioners and intervenors and Shri Kirit N.Raval, A.S.G. for respondent No.1.

From the arguments addressed before us, we will have to first consider the question whether the respondents have the necessary statutory authority for levying a fee of the nature which is impugned

in this petition. If so, whether this fee is, as a matter of fact, a tax in the guise of fee and is so excessive as to lose the character of a fee as contended by the petitioners. The Act in question is an Act to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. The Board is established under Section 3 of the Act. Section 11 of the Act defines the powers and functions of the Board which mandates that it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. Sub-section (2) of the said Section enumerates the various areas in which the Board is mandated to take measures to fulfil the objects of the Act. They include such measures as (i) regulating the business in stock exchanges and any other securities markets; (ii) registering and regulating the working of stock brokers and other intermediaries; (iii) registering and regulating the working of the depositories etc. (iv) registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds; (v) promoting and regulating self-regulatory organisations; (vi) prohibiting fraudulent and unfair trade practices relating to securities markets; (vii) promoting investors' education and training of intermediaries; (viii) prohibiting insider trading in securities; (ix) regulating substantial acquisition of shares and take-over of companies; (x) collection of information, inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market and other intermediaries and self-regulatory organisations in the securities market; (xi) performing such other functions as are delegated to it by the Central Government; (xii) conducting research for the above purposes; (xiii) providing necessary information for the efficient discharge of the functions of the organisations with securities markets etc. The said Board is also vested with certain powers of the civil courts under the Code of Civil Procedure, 1908 in regard to discovery, production, summoning and enforcing the attendance of persons and inspection of books, registers etc. Section 11(2)(k) of the Act empowers the Board to levy fees or other charges for carrying out the purposes enumerated in Section 11 of the Act. Section 12 requires the stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustee of trust deed, Registrar to an issue, merchant banker, underwriter, portfolio managers, investment advisors and such other intermediaries who may be associated with securities market to get themselves registered and obtain a certificate of registration from the Board in accordance with the Regulations made under this Act. Section 12(2) empowers the Board to collect such fees as may be determined by the Regulations from the applicants who seek registration.

Section 29 of the Act empowers the Central Government to make, by notification, rules for carrying out the purposes of the Act. It is an undisputed fact that such Rules have been notified. Pursuant to the power vested in the Board under Section 30 of the Act, the Board has framed the Securities and Exchange Board of India (Stock-brokers and Sub-brokers) Regulations, 1992 (the Regulations) with previous approval of the Central Government which came into force w.e.f. 23.10.1992. Regulation 10 of the said Regulations provides for payment of fees as specified in Schedule III of the said Regulations. Schedule III of the said Regulations provides that every stock broker will have to pay a registration fee where his annual turnover does not exceed Rs.1 crore a sum of Rs.5,000/- for each financial year. In case of stock brokers whose annual turnover exceeds Rs.1 crore during any financial year, the fee payable is a sum of Rs.5,000 plus 100th of 1 per cent of the turnover in excess of Rs.1 crore for each financial year. It also provides that after the expiry of 5 financial years from

the date of initial registration as a stock broker, he will have to pay a sum of Rs.5,000/- for a block of 5 financial years commencing from the 6th financial year after the date of grant of initial registration to keep his registration in force. It also provides for instalments for payment of the said fee from the stock brokers. In regard to sub-brokers and other intermediaries, the Schedule provides for a flat rate of fee.

From the enumeration of the above provisions of the Act, Rules and Regulations, it is clear that the Board is empowered to collect two types of fees, namely, the fee under Section 11(2)(k) for carrying out the purposes of Section 11 and a fee for the purpose of registering the applicants under Section 12(2) of the Act. The quantum of fee to be paid is fixed under Schedule III of the Regulations as provided under the Act. Therefore, there is no room to attack the levy on the ground that the same is not authorised by law.

The petitioners contend that it is clear from the demand that what is demanded by the Board from them is a fee under Section 12(2) of the Act which is a registration fee simpliciter. They support this contention by pointing out that the application for registration has to be made in Form A and the registration certificate is issued in Form D, which are statutory forms and which shows that these Forms are issued under Regulations 3 and 6 which are referable only to Section 12 of the Act. Therefore, they contend that the Board cannot now contend that the impugned fee is collected for any purpose other than for registration.

In reply on behalf of the Board, it is contended that though the demand is termed as registration fees, as a matter of fact, the fee that is collected is a combination of a regulatory fee as well as a registration fee as contemplated under Sections 11(2)(k) and 12 of the Act respectively. They also point out that, as a matter of fact, the collection from this levy is credited to a fund created under Section 14 of the Act and the amount from the said fund is utilised only towards the expenses incurred by the Board in performing its duties mandated under the Act. It is further contended that the mere fact that Forms A and D are referable to Section 12(2) only, ipso facto does not make the demand a registration fee simpliciter.

It is no doubt true that a perusal of Forms A and D shows that these forms are issued pursuant to the requirement of Regulations 3 and 6 and Section 12(2) of the Act which, however, does not by itself determine the nature of the fee in question. It is a well established principle in law that so long as the impugned power is traceable to the concerned Statute, mere omission or error in reciting the correct provision of law does not denude the power of the authority of taking a statutory action so long as its action is legitimately traceable to a statutory power governing such action. In such cases, this Court will always rely upon Section 114(e) of the Evidence Act to draw a statutory presumption that the official acts are regularly performed and if satisfied that the action in question is traceable to a statutory power, the courts will uphold such State action. See Peerless General Finance and Investment Co. Ltd. & Anr. v. Reserve Bank of India (1992 (2) SCC

343) and Union of India & Anr. v. Tulsiram Patel (1985 (3) SCC 398). Applying the said principles to the facts of this case, we notice that the Board has the necessary competence to collect the fees for the purpose of carrying out the mandates under Section 11(2)(k) of the Act and also the power to

collect the registration fee under Section 12(2) of the Act. Therefore, in our opinion, the Board has the necessary authority to collect a cumulative fee both for the purpose of regulating the activities contemplated under Section 11 of the Act as also for the purpose of registration under Section 12(2) of the Act, and the fee levied is both regulatory and registration fee leviable under Sections 11(2)(k) and 12(2) of the Act.

It is next contended on behalf of the petitioners that assuming that the fee in question is a cumulative fee under Sections 11(2)(k) and 12(2) of the Act, even then such fee, as demanded by the respondents, cannot be levied on them because a fee can be levied only if the collector of the fee is rendering any service to the contributories of the fee. They contend that no such service is being rendered by the Board to them which can even remotely be equated to the quantum of the levy. They also contend that the amount collected as fee is used as a general fund by the Board for its various activities which has no nexus with the services to be rendered to the contributories. Hence, the impugned levy cannot be treated even as a regulatory fee. On behalf of the Board, it is contended that a levy being a regulatory-cum-registration fee, the quid pro quo required is very minimal and that it is entitled to levy and collect the same for meeting out the various activities of the Board required to be performed under the Act and the fact that the benefit from such acts of the Board also goes to non-contributories of the fee, would not deviate from the fact that the levy is a fee and not a tax. The Board also contends, the fact that the amount so collected is credited to a general fund and is utilised for the capital and revenue expenditures of the Board also will not change the nature of the levy so long as such collection, as a matter of fact, is utilised solely for the purpose of the activities of the Board authorised under the Act.

The argument of the petitioners in regard to the requirement of equivalent service from the collector of the fees is based on the dictum of this Court in the case of The Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1954 SCR 1005) where while enumerating the different characteristics of tax and fee, this Court held that the distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of common burden while fee is a payment for a special benefit or privilege. Bringing out a clear distinction between a tax and a fee, this Court held that a tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not a payment for services rendered. The Court in the said case held that it is also not possible to formulate a definition of fee that can apply to all cases as there are various kinds of fees. But a fee may generally be defined as a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenditure incurred by the Government in rendering the services.

The petitioners also relied on another judgment of this Court in The Chief Commissioner, Delhi & Anr. v. The Delhi Cloth & General Mills Co. Ltd. & Ors. (1978 (2) SCC

367) wherein this Court has held that there are two essential elements required to be established for justifying a levy of fee. Firstly, such levy should be in consideration of certain services which the individuals accept either willingly or unwillingly and secondly the collection from such levy should not be set apart or merged in the general revenue of the State to be spent for general public purposes but should be appropriated for the specific purpose for which the levy is being made.

The petitioners further relied on another judgment of this Court in Om Parkash Agarwal & Ors. v. Giri Raj Kishori & Ors. (1986 (1) SCC 722) wherein this Court held that when the money collected by the levy of fee is to be deposited in a fund which was to vest in the State Government and not in the Municipality or a Marketing Committee or any other local authority having limited functions specified in the enactment under which the fund was constituted and was empowered to be expended by the State Government virtually on any object which the State Government considered to be the development of rural areas, that levy could not be treated as a fee because it was more in the nature of a tax primarily in view of the fact that the collection so made was being utilised not for fulfilling the objects of the Act under which the collection was authorised but for the general requirement of the States functions.

Based on these judgments, the petitioners contend that the Board after collecting huge sums of money by way of impugned fee, was not rendering them services co-relatable to the levy but was utilising the same for the benefit of the persons who were not contributories to the levy and the levy in question being a compulsory exaction having penal consequences, the same is not a fee but a tax in the garb of fee.

A lot of ice has melted in the Himalayas after rendering the judgments in the above-cited cases so also there has been see changes in the judicial thinking as to the difference between a tax and a fee since then.

This Court in the case of Sreenivasa General Traders & Ors. v. State of Andhra Pradesh & Ors. (1983 (4) SCC 353) has taken the view that the distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. This Court said that in determining whether a levy is a fee or not emphasis must be on whether its primary and essential purpose is to render specific services to a specified area or class. In that process if it is found that the State ultimately stood to benefit indirectly from such levy, the same is of no consequence. It also held that there is no generic difference between a tax and a fee and both are compulsory exactions of money by public authorities. This was on the basis of the fact that the compulsion lies in the fact that the payment is enforceable by law against a person in spite of his unwillingness or want of consent. It also held that a levy does not cease to be a fee merely because there is an element of compulsion or coerciveness present in it nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It also held that the element of quid pro quo in the strict sense is not always a sine qua non for a fee, and all that is necessary is that there should be a reasonable relationship between the levy of fee and the services rendered. That judgment also held that the earlier judgment of this Court in Kewal Krishan Puri & Anr. v. State of Punjab & Ors. (1979 (3) SCR 1217) is only an obiter.

In the case of City Corporation of Calicut v. Thachambalath Sadasivan & Ors. (1985 (2) SCC 112), this Court reflected the change that is taking place in the judicial thinking as to the difference between a tax and a fee. It held that the traditional concept of quid pro quo in a fee is undergoing transformation, though the fee must have relation to the services rendered, or the advantages

conferred, it is not necessary to establish that those who pay the fee must receive direct or special benefit or advantage of the services rendered for which the fee is being paid. It held that if one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied.

In the case of The Sirsilk Ltd. & Ors. v. The Textiles Committee & Ors. (AIR 1989 SC 317), this Court held that when the entire proceeds of the fee are utilised in financing the various projects undertaken by the Textiles Committee, it cannot be said that there is no reasonable and sufficient correlation between the levy of fee and the services rendered by the Textiles Committee. It further held that when the levy of the fee is for the benefit of the entire textile industry, there is sufficient quid pro quo between the levy recovered and the services rendered to the industry as a whole.

In a more recent case of Commissioner & Secretary to Govt., Commercial Taxes & Religious Endowments Department & Ors. v. Sree Murugan Financing Corporation Coimbatore & Ors. (1992 (3) SCC 488), this Court after taking into consideration the financial involvement of general public in the chit funds, observed that the object of the Act obviously was to protect the interest of the subscribers and more the number of subscribers meant more the burden on the authorities under the Act and as a consequence more fee is required to meet the expenditure. Taking note of the human expectation of winning a draw or a bid at the auction and becoming rich overnight mostly by the lower-middle class and the poor who invest their hard-earned money in such chit funds, this Court held that a situation like that makes the levy a regulatory measure since the collection of such funds from such category of people will have to be monitored strictly, and it also held that the Act and the Rules which operate with such objectives, if charge enhanced fee, such enhancement is justified in law as amounting to sufficient quid pro quo.

In Krishi Upaj Mandi Samiti & Ors. v. Orient Paper & Industries Ltd. (1995 (1) SCC 655), rejecting the contention of the respondent therein, this Court held that the machinery created under the said Act is meant to facilitate and benefit all the buyers and sellers of all the agricultural produce within the market area and it cannot be said that the respondent-Mills is neither directly nor indirectly a beneficiary of the said machinery. In the case of Secretary to Government of Madras & Anr. v. P.R. Sriramulu & Anr. (1996 (1) SCC 345) testing the validity of the Court Fee Act involved therein, this Court negatived the contention that the expenses incurred by the administration of justice in criminal courts should not be treated as sufficient quid pro quo for the levy of court fee in civil cases. It held that such levy should not be examined so minutely or be weighed in golden scale to discern any difference between the two. It also held that there could not be any scientific method by which levy of fee may be made exactly corresponding to the expenditure in a particular year relating to the administration of civil justice. It held that it is not the requirement of law that the collection raised by the levy should exactly tally or correspond to the expenditure in the administration of civil justice. It further held that the test of correlation of the collection with the services rendered is to be reckoned at the aggregate level and not at the individual level.

In Vam Organic Chemicals Ltd. & Anr. v. State of U.P. & Ors. (1997 (2) SCC 715), this Court held that there is a distinction between a fee charged for licence, that is regulatory fees and fees for services rendered as compensatory fees. In the case of regulatory fees, the Court held that like the licence

fees, existence of quid pro quo is not necessary although the fee imposed must not be, in the circumstances of the case, excessive, keeping in view the quantum and nature of the work involved in the required supervision.

In Secunderabad Hyderabad Hotel Owners Association & Ors. v. Hyderabad Municipal Corporation, Hyderabad & Anr. (1999 (2) SCC 274), this Court after considering the earlier judgments, to some of which we have already made reference, held that a licence fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, a certain element of quid pro quo must be there between the service rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the service although the exact arithmetical equivalence is not expected. It held, however, that is not the only kind of fee which can be charged. Licence fees can also be regulatory when the activities for which a licence is given require to be regulated or controlled. The fee which is charged for regulation of such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for levy of such fee is not required although such fees cannot be excessive.

As noticed in the City Corporation of Calicut (supra), the traditional concept of quid pro quo in a fee has undergone considerable transformation. From a conspectus of the ratio of the above judgments, we find that so far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of fee provided the fee so charged is not excessive. It is also not necessary that the services to be rendered by the collecting authority should be confined to the contributories alone. As held in Sirsilk Ltd. (supra), if the levy is for the benefit of the entire industry, there is sufficient quid pro quo between the levy recovered and services rendered to the industry as a whole. If we apply the test as laid down by this Court in the abovesaid judgments to the facts of the case in hand, it can be seen that the Statute under Section 11 of the Act requires the Board to undertake various activities to regulate the business of the securities market which requires constant and continuing supervision including investigation and instituting legal proceedings against the offending traders, wherever necessary. Such activities are clearly regulatory activities and the Board is empowered under Section 11(2)(k) to charge the required fee for the said purpose, and once it is held that the fee levied is also regulatory in nature then the requirement of quid pro quo recedes to the background and the same need not be confined to the contributories alone.

Alternatively, the petitioners have contended that assuming that the fee levied does not require the equivalent quid pro quo even then the amount collected by way of this levy amounts to hundreds of crores of rupees which is not reasonably required by the Board for the purpose of implementing the objectives of the Act. They contend that the amount to be collected by the Board as per the present levy in the first five years will be in the region of over 400 crores and by no stretch of imagination it could be said that such a large amount of levy is required for the purpose of maintaining the regulatory measures under the Act. According to the petitioners, even as per the Boards own assessment, the requirement of the Board over a period of 5 years since its inception will not exceed more than Rs.65 crores. Therefore, the collection of Rs.400 crores by way of this levy is unjustified and unreasonable. The Board, however, contends that even though at a point of time the Board had estimated its immediate requirement for the first year of the inception of the Board in the range of

Rs.65 crores. Subsequently, on an analysis of its expenditure it was found that its requirement was far more than what was originally projected. It further contends that, as a matter of fact, the entire amount collected by the Board is required only for the purpose of fulfilling its statutory obligations. According to the Board, as per the levy permissible under Schedule III of the Regulations, the Board is likely to collect from the brokers of all Stock Exchanges including that of National Stock Exchange for the period between 1992-93 to 1999-2000 a total sum of Rs.418.57 crores and from intermediaries other than brokers for the said period a sum of Rs.126.96 crores; and from 2001 onwards its income by way of fee from approximately 9000 brokers would be of the order of approx. Rs.90 lakhs per annum, and from the intermediaries it would be to the tune of Rs.25-30 crores per annum, and in regard to its expenditure, the Board has given the following particulars :

EXPENDITURE S.No. Particulars Amount in crores

1. AMOUNT ALREADY SPENT DURING 1991-92 TO 1999-2000 (REVENUE & CAPITAL) 193.00

3. BUDGET ESTIMATES FOR 2000-2001

(i) Office Premises Rs.99.20 Crores (ii) Residential Premises Rs.90.00 Crores (iii) Office Equipments Rs.20.00 Crores Rs.209.20 Crores 209.20

4. FURTHER REQUIREMENT OF FUNDS

(i) Corpus creation Rs.150.00 Crores (ii) Refund of Govt. Loans Rs.105.00 Crores Rs.255.00 Crores 255.00

5. FUTURE PROJECTIONS ON REQUIREMENT OF FUNDS (Planned expenditure subject to availability of Funds) a. Computerisation Rs. 60.00 Crores b. Offices in other cities Rs.120.00 Crores c. Increase in staff Rs.

15.00 Crores d. EDGAR Project * Rs. 75.00 Crores e. Setting up Institute for Capital market and Investor Education Campaign Rs. 50.00 Crores Rs.320.00 Crores 320.00

---------- TOTAL 977.20 *

EDGAR = Electronic Data gathering, Analysis and Retrieval Systems. The project envisages automated collections, validation of vital information by/from listed companies.

Therefore, it contends that it will be erroneous on the part of the petitioners to contend that the Board is levying any amount in excess of its requirement. While examining the reasonableness of the quantum of levy, the same will not be done with a view to find out whether there is a co-relatable quid pro quo to the quantum of levy, because as noticed hereinabove, the quid pro quo is not a condition precedent for the levy of a regulatory fee. Such examination will have to be made in the context of the levy being either excessive or unreasonable for the requirement of the authority for fulfilling its statutory obligations. With this principle in mind, we have noticed earlier that apart

from the requirement of registration of brokers and other intermediaries, the Statute also mandates that the Board should regulate the business of stock exchanges and other securities market. It also mandates that the Board shall promote and regulate self-regulatory organisations prohibiting fraudulent trade practices and insider trading, promote investors education and training of intermediaries, regulate the acquisition of shares and take-over of companies, undertake inspection, inquiries and audits of the stock exchanges, mutual funds and other persons associated with the securities market, conduct research in furtherance of the obligations cast on the Board and over and above all, it has the obligation to perform such functions as are delegated to it by the Central Government under the SCR Act, 1956. It is seen that in furtherance of these requirements of the Statute, the Board requires substantial sums of money towards capital expenditure in the form of acquiring office premises, residential premises, office equipments and to provide the necessary facilities for inducting the information technology in its day-to-day functions. It is to be noticed that the Board has to control and regulate 23 stock exchanges all over India which have more than 10,000 listed companies, 9500 brokers, 5500 sub-brokers, 250 merchant brokers with similar number of Registrars to the Issue, share transfer agents, more than 300 depository participants and other categories of intermediaries. From the material supplied by the Board, it is to be noticed that the total market capitalisation is over 800,000 crores. Apart from this, it is the case of the Board that it has to regulate 39 mutual funds involving 300 schemes with a Net Asset Value (NAV) of Rs.1 lakh crores. The Board has also to deal with the entities which raise money through collective investment schemes at present involving 642 companies which have raised Rs.2,680 crores from the public. From the pleadings of the Board, it is to be seen that a large number of cases to the tune of nearly 800 are pending in various courts in India which in due course are likely to increase, thereby burdening the Board with heavy expenditure. That apart, it has the responsibility of protecting the interests of investors as well as undertake investors education among other duties specified in Section 11 of the Act. The Board has placed material before us to show that the Government of India has already delegated to the Board the functions under the SCR Act, the Depositories Act as also some of the functions under the Companies Act. To discharge all these duties, the Board has contended before us, which cannot be controverted, that it requires substantial staff members and it has to induct professional persons at various levels apart from modernising the working with the induction of latest modern technology. The Board has also contended that it has to invest huge sums of money in providing proper and necessary office space as also adequate housing facilities to the staff without which it would be extremely difficult for the Board to employ and retain its technically trained staff in its employment. To meet all these expenses, according to the Board, it has no other source of income apart from the levy contemplated under Sections 11(2)(k) and 12 of the Act, except certain sum loaned by the Government of India which is repayable, hence, the Board certainly requires substantial sums of money. What the petitioners contend in this regard is that most of these expenses are in the nature of capital expenditure for which provisions ought to be made by the Government and they cannot be saddled with the burden of providing these infrastructures of the Board. This argument of course is based on the ground that the capital expenditure cannot be met out of the fee to be levied on them and also on the ground that a substantial amount of levy is being utilised not for their benefit but for the benefit of other persons involved in the stock market. Once we come to the conclusion that the fee in question is primarily a regulatory fee then the argument that the service rendered by the Board should be confined to the contributories alone, cannot be accepted. What the Court has to investigate while examining a challenge of this nature is to see what

is the primary object of the Regulations for which the fee is being collected and find out whether the Regulation in question is in public interest or not. Once the levy is in public interest and connected with the larger trade in which the contributories are involved then confining the services only to the contributories does not arise. As has been held by this Court in City Corporation of Calicut (supra). Applying the said principle, we are of the opinion that since the amount collected under the impugned levy is being spent by the Board on various activities of the stock and securities market with which the petitioners are directly connected, the fact that the entire benefit of the levy does not accrue to contributories i.e. the petitioners would not make the levy invalid.

The next contention of the petitioners that the Board cannot be permitted to levy the fee for its capital expenditure should also meet with the same fate. This Court in Salvation Armys case (supra) has specifically held The expenditure in constructing buildings for locating the head office and regional offices and the increase in the allowances or other amenities to the staff have also to be included in the costs of the services. That being the position in law, this argument should also fail. Even the argument that the amount required for the capital expenditure of the Board should be met by the Government of India and not out of the regulatory fee charged by the Board, has no force. The Board is an autonomous body created by an Act of Parliament to control the activities of the securities market in which thousands of members of gullible public will be investing huge sums of money. Therefore, there is every need for a vigilant supervision of the activities of the market and for that purpose if the Statute intends that the necessary funds should be met by collection of fees from the securities market itself then the said levy cannot be questioned on the ground that the monies required for the capital expenditure of the Board should be met by the Government of India. That apart, this Court in the case of Sreenivasa General Traders (supra) has rejected a similar contention.

It is contended on behalf of the petitioners that the brokers have been subjected to a hostile discrimination vis-à-vis other intermediaries in the stock market inasmuch as they as a class alone are made to pay the fee on the basis of the annual turnover while others have to pay only on a flat rate. Thus, they have been compelled to bear the maximum burden of the levy while the other intermediaries are liable to pay only a nominal part of the levy. This argument, in our opinion, proceeds on the footing that the law requires every contributory to pay equally. We are unable to accept this argument either. It is true that every classification must have a reasonable nexus with the object to be achieved. In the instant case the question that arises in answering this argument of the petitioners is whether all persons involved in the business of stock exchange should be equally burdened or is it open to the Board to distribute the burden based on certain classification. At this stage, it should be borne in mind that the collection made from a class of persons even if it is a fee can also enure to the benefit of the non-contributories so long as they are within the object governing the levy. From the material on record, it is seen that approx. 50 per cent of the total expenditure to be incurred by the Board would be on brokers related services and from amongst all the players in the share market brokers form a distinct and separate class as compared to others including other intermediaries. Therefore, in our opinion, there is nothing wrong in either classifying the brokers as a separate class for the subject of levy based on their annual turnover because the volume of transaction of the brokers has a direct bearing on the regulatory expenses of the Board. Hence, this classification has a direct nexus with the object to be achieved.

Another major issue in controversy in this case pertains to the imposition of impugned fee on the basis of the annual turnover of the brokers. The petitioners contend that assuming that the respondents had the authority in law to levy the fee under challenge, the same could not have been levied on the basis of the annual turnover of the brokers because such levy would amount to a tax on turnover. They also contend that the definition of annual turnover found in Explanation III of the Regulations is vague, imprecise, irrelevant and is over- inclusive. They contend that by virtue of such definition, every transaction of the brokers; be it a carry forward or a badla transaction will be subjected to the levy of fee in question. They also contend that this definition could multiply a single transaction into multiple transactions, for example, in the case of squaring up of transactions during the same settlement cycle, the turnover will get multiplied four times as per the said definition due to which there is a likelihood of balooning of value of transaction ultimately leading to confiscation of the gross income earned by the broker because in reality, he earns only one brokerage in all the above transactions while for the purpose of payment of registration fee, the turnover would get multiplied anywhere between 4 to 14 times in the annual turnover. In support of their contention, the petitioners have strongly relied upon the report submitted by the Bhatt Committee appointed by the SEBI itself as also Justice Mody Committee appointed by the High Court of Bombay. In reply, it is contended on behalf of the Board that the annual turnover of a broker reflects the number of transactions entered into by the broker which all form the subject-matter of scrutiny by the Board. However, when the Board received a letter from the petitioners opposing the levy based on annual turnover, the Board constituted an Expert Committee comprising of the persons actively associated with the functioning of the Stock Exchange and the Securities Market. It also included the Chairman of the Unit Trust of India (UTI), Joint Managing Director of the Industrial Credit & Investment Corporation of India Ltd. (ICICI) a leading merchant banker in India so also the Executive Director and a member of the governing body of the Bombay Stock Exchange. This Committee, according to the respondents, had taken into consideration the views expressed by various members of the Stock Exchange and thereafter it submitted a report which was made public through a Press Release by the SEBI. This report, according to the respondents, upheld the decision of the Board to levy fee on the basis of the turnover of the brokers and has also concluded that the levy in question was a reasonable levy. It was pointed out that the said Expert Committee had made certain recommendations which have been accepted by the Government of India and the Board is in the process of implementing those recommendations. De hors the report, the Board contends that the levy of fee based on annual turnover of a stock broker is not a new phenomenon and the same is prevalent even in countries like United States of America, Hong Kong etc. They refuted the allegation that the definition of annual turnover as found in Schedule III to the Regulations is vague, imprecise, irrelevant or over-inclusive. It cannot be disputed that the annual turnover of a broker is not the subject matter of the levy but is only a measure of the levy. In other words, the fee is not being levied on the turnover as such but the fee is being levied on the brokers making their annual turnover as a measure of the levy which is a fee for regulating the activities of the securities market and for registration of the brokers and other intermediaries in the said market. Therefore, it is futile to contend that such levy would be either a tax or a fee on turnover. It is a settled principle in law that if the State has the authority to impose a levy then it has a wide discretion in choosing the measure of levy provided, of course, it withstands the test of reasonableness. Many levies may have a similar measure but by such similarity in the measure, the levies do not become the same. Therefore, if the impugned levy adopts a measure which is either similar to the one adopted while

levying turnover tax or income-tax, the impugned levy ipso facto by adoption of such measure, would not become either an income-tax or a turnover tax or even a fee on income or a fee on turnover. This Court in the case of Goodricke Group Ltd. & Ors. v. State of West Bengal & Ors. (1995 Supp (1) SCC 707) while upholding a cess on tea estate which is a tax on land by the measure of yield by quantum of tea leaves produced in the tea estate held :

> A tax imposed on land measured with reference to or on the basis of its yield, is certainly a tax directly on the land. Apart from income, yield or produce, there can perhaps be no other basis for levy. A tax on land is assessed on the actual or potential productivity of the land sought to be taxed. Merely because a tax on land or building is imposed with reference to its income or yield, it does not cease to be a tax on land or building. The income or yield of the land/building is taken merely as a measure of the tax; it does not alter the nature or character of the levy. It still remains a tax on land or building. There is no set pattern of levy of tax on lands and buildings indeed there can be no such standardisation. There cannot be uniform levy unrelated to the quality, character or income/yield of the land. Any such levy has been held to be arbitrary and discriminatory. No one can say that a tax under a particular entry must be levied only in a particular manner, which may have been adopted hitherto. The legislature is free to adopt such method of levy as it chooses and so long as the character of levy remains the same, i.e., within the four corners of the particular entry, no objection can be taken to the method adopted.
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> Similar is the view taken by this Court in the case of The Tyford Tea Co. Ltd. & Anr. v. The State of Kerala & Anr. (1970 (1) SCC 189).
>
> Therefore,it would be futile to contend that the impugned fee merely because it is levied on the basis of the turnover of the brokers would either amount to a turnover tax or a tax on income. While we accept the levy based on annual turnover of the brokers as valid, we have to notice that the Expert Committee appointed by the Board has in its report held that there should be certain changes brought about in the definition of annual turnover as also in the quantum of the levy pertaining to certain specific transactions which are treated as part of the turnover. It has recommended that for jobbing transactions the scale of fees may be reduced to One Two hundredth of 1 per cent, and in regard to carry forward, renewal or badla transactions, the off-setting entries made by the Exchange, may not be counted as part of the turnover, and further on Government securities, PSU Bonds and Units, the turnover will have to be calculated separately and a fee of one thousandth of one per cent may be charged on such turnover than the present scale of one hundredth of one per cent. It has also recommended that the activities such as underwriting and collection of deposits should not be taken into account for the purpose of calculating the turnover of the brokers. These recommendations of the Committee were, as a matter of fact, accepted by the Government of India also but as on date, the necessary changes have not been brought about by the Board in its Regulations. Consequently, to the extent of the recommendations made by the Expert Committee, we are of the opinion that

the Board is bound to bring about corresponding changes so as to remove the anomalies pointed out by the Committee. This was pointed out to learned counsel for the respondents when it was submitted that the Board has accepted these recommendations and the proposed changes were not brought about because of the pendency of this petition and the necessary changes to incorporate the recommendations of the Bhatt Committee would be done after disposal of these petitions. We record this submission on behalf of the Board and direct that the said changes recommended by the Bhatt Committee will be incorporated in the Regulations. Subject to the above, we are of the view that the challenge made to the levy based on the measure of turnover has to be rejected.

At this stage, in fairness to the petitioners, we must notice the fact that the High Court at an interim stage had appointed a Committee headed by Justice A.N. Mody to submit a report as to the reasonableness of the levy. The petitioners rely heavily on the said report to support their case while they have their reservations as to the Bhatt Committee report. We are aware that the superior courts have often appointed Committees and Commissions to assist the court in technical matters with which the courts are generally not very familiar. Though in the instant case, the facts involved are matters pertaining to the securities market with its own intricacies, we find that the question involved mainly pertains to the legislative competence, nature and reasonableness of the levy. We are not called upon to decide or to recommend as to what is the best way to levy the impugned fee. So long as the Legislature has the legislative competence to levy and the Board has not exceeded its statutory authority in imposing the levy, we need not go into other niceties of the levy which are not in the realm of our jurisdiction. We have examined the reasonableness of the levy qua the statutory power of the Board and its quantum with reference to the need of the Board and not with reference to whether it is the best available method of levy. It is possible that Justice Mody Committees recommendations are better than the method adopted by the Board but then that is not what we have to decide in this case. Hence, we have not made any specific reference to that report. Of course, we have referred to some of the recommendations of the Bhatt Committee because that part of the report is favourable to the case of the petitioners and the Government of India has accepted the same and the Board has, in principle, agreed to implement that report and not because Bhatt Committee report is more acceptable to us than Justice Mody Committee Report.

Lastly, on behalf of the trading members of the National Stock Exchange it is contended that they are not the members of the said Stock Exchange so as to bring them within the ambit of the levy. This argument is based on the premise that it is only a full-fledged member of a Stock Exchange who can be called upon to be registered under Section 12(2) of the Act and not any other member of the Stock Exchange. They contend that the National Stock Exchange has only institutional members who are treated as full-fledged members and all others are only trading members who do not have any right and obligations expected of a member of the

stock exchange. It is also contended that under the Rules and Regulations, a stock broker to be registered as such under the Act has to be a regular member of the Stock Exchange and since the said Rules and Regulations of the Board do not recognise a trading member as a member of the Stock Exchange, they cannot be brought within the net of the levy. They rely on the definition of stock exchange under Rule 2(d) of the Rules which states that stock exchange means a stock exchange which is for the time being recognised by the Central Government under Section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and a stock broker is defined as a member of a stock exchange. Since the stock brokers of NSE are not the members as defined under Section 2(e) of the Act and the NSE being a company of which shareholders are only institutions and trading members not being shareholders, they do not fall within the definition of a member of a stock exchange. It is difficult to accept this argument. Section 3(2)(c) of the SCR Act requires a stock exchange which applies for recognition to specify various classes of members who will be admitted as members of the stock exchange. This does not make any distinction between a full-fledged member and a trading member of the NSE. Further, Clause 9 of Part II of Annexure to Form A requires a stock exchange, inter alia, to state the different classes of members, if any, and such number of members thereof, and the privileges enjoined by such class of persons. Definition of a trading member under the NSE bye-laws itself shows that a trading member to be a stock broker and a member of the NSE registered in accordance with Chapter V of its bye-laws. Article 1(m) of the Articles of NSE defines a trading member to mean a member of the stock exchange. Explanation to it further clarifies that there may be more than one class of trading members of the Exchange as may be determined by its Board from time to time. A trading member of the NSE need not necessarily be a member of the company that is NSE. Therefore, it is clear from the Articles of NSE that the said Exchange itself recognises a trading member to be a member of the Stock Exchange though with limited rights. Therefore, it is clear that there can be more than one class of members who can be admitted as members of the stock exchange and any of those members belonging to any of those classes so long as they are registered as such by a stock exchange, will fall within the definition of member as defined in Section 2© of the SCR Act and Rule 2(e) of the SEBI Rules. It is also undisputed that the trading members of the NSE are carrying on the business of stock brokering, hence, keeping in mind the objects of the Act, it would be futile to contend that the trading members of the NSE cannot be considered to be the stock brokers for the limited purpose of the liability to pay the impugned fee under the Act, Rules and Regulations. Therefore, this contention also should fail.

For the reasons stated above and subject to the directions issued by us in regard to the implementation of the Bhatt Committee Report, T.C. © No.20/2000 fails and the same is hereby dismissed.

WP © No.502/2000 :

In view of the order passed in T.C. © No.20/2000 hereinabove, this petition is also dismissed.