

First Commodities Exchange of India Vs. Union of India

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Court : Kerala

Decided On : Jan-29-2015

Judge : Honourable the Ag.Chief Justice Mr.Ashok Bhushan

Appellant : First Commodities Exchange of India

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN & THE HONOURABLE MR.JUSTICE A.M.SHAFI THURSDAY, THE 29TH DAY OF JANUARY 2015 9TH MAGHA, 1936 WP(C).NO. 19880 OF 2011(H)
----- PETITIONER(S): ----- 1. FIRST COMMODITIES EXCHANGE OF INDIA LIMITED, A COMPANY REGD. UNDER THE INDIAN COMPANIES ACT AND HAVING ITS REGD. OFFICE AT 2D FLOOR, VEE YEM TOWER, PALARIVATTOM KOCHI, KERALA-682025 REP. BY ITS DIRECTOR A.A.HANEEFA.

2. A.A.HANEEFA, DIRECTOR, FIRST COMMODITIES EXCHANGE OF INDIA LIMITED SURYA TRADERS, BLDG. NO. VIII/333B, KAITHAKAD PATTIMATTOM, ERNAKULAM-683562.

3. K.K.NIZAM, DIRECTOR, FIRST COMMODITIES EXCHANGE OF INDIA LIMITED KAIRALI TRADERS, KALAPURACKAL, MANATHUPADAM

CHANGAMPUZHA NAGAR, KALAMASSERY, COCHIN-682033. BY ADVS.SRI.BECHU KURIAN THOMAS SRI.PAUL JACOB (P) SRI.ROSHEN.D.ALEXANDER SMT.INDU SUSAN JACOB SMT.NISHA JOHN SRI.ENOCH DAVID SIMON JOEL RESPONDENT(S): ----- 1. UNION OF INDIA, REP. BY ITS SECRETARY, MINISTRY OF CORPORATE AFFAIRS 'A' WING, SHASTRI BHAWAN, RAJENDRA PRASAD ROAD NEW DELHI-110001. WP(C).NO. 19880 OF2011(H) 2. FORWARD MARKETS COMMISSION, 'EVEREST' 3RD FLOOR, 100, MARINE DRIVE MUMBAI-400002, REP. BY ITS, DEPUTY DIRECTOR.

3. K.V.KRISHNAKUMAR, AGED37YEARS, S/O.VISWANATHAN, SREE KRISHNA OILS, TC201358 KARAMANA P.O., THIRUVANANTHAPURAM-2.

4. NAVAS P.A., AGED36YEARS, S/O.P.S.ABDUL GAFOOR, PALLIVEETI HOUSE, YENDEYAR P.O. KOTTAYAM-686514.

5. K.K.KUNJIKOMU, AGED73YEARS, S/O.KUNGU SEETHI HAJI, SEETHI OIL MILLS, ENYAD P.O. KODUNGALLUR-680666.

6. M.P.KRISHNAN, DEPUTY DIRECTOR, FORWARD MARKETS COMMISSION, 'EVEREST' 3RD FLOOR, 100, MARINE DRIVE MUMBAI-400002. (R6 DELETED AS PER

ORDER

DATED1403/2013 IN IA41132013) ADDL.7. FIRST COMMODITIES EXCHANGE OF INDIA LTD. 2ND FLOOR, VEE YEM TOWER, PALARIVATTOM KOCHI, KERALA - 682 025. REP. BY ITS CHAIRMAN - T.VIDYASAGAR. ADDL.R7 IS IMPEADED AS PER

ORDER

DATED2501.2012 IN IA.18277/2011. R1-42 BY ADVOCATE SHRI PHILIP MATHEW R3-5 BY ADV. SRI.P.K.IBRAHIM RADDL7BY ADV. SRI.BABU KARUKAPADATH RADDL7BY ADV. SMT.M.A.VAHEEDA BABU RADDL7BY ADV. SRI.JAGAN GEORGE RADDL7BY ADV. SRI.K.A.NOUSHAD RADDL7BY ADV. SRI.P.U.VINOD KUMAR RADDL7BY ADV. SRI.P.G.PRAMOD RADDL7BY

ADV. SRI.KANDAMPULLY RAHUL RADDL7BY ADV. SRI.J.RAMKUMAR THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON0801.2015 ALONG WITH W.A. NO.1289 OF 2011 AND CONNECTED CASES, THE COURT ON2901.21015 DELIVERED THE FOLLOWING: WP(C).NO. 19880 OF2011(H) APPENDIX PETITIONER(S)' EXHIBITS: EXHIBIT P1 TRUE COPY OF THE NOTICE OF THE AGM DATED2611.2010 ISSUED BY THE CEO. EXHIBIT P2 TRUE COPY OF THE NOTICE APPOINTING THE RETURNING OFFICER DATED2511.2010. EXHIBIT P3 TRUE COPY OF THE NOMINATION DATED0212.2010 SUBMITTED BY MR.KETTY CHERIAN EXHIBIT P3(A) TRUE COPY OF THE NOMINATION DATED0312.2010 SUBMITTED BY THE4H RESPONDENT. EXHIBIT P3(B) TRUE COPY OF THE NOMINATION DATED312.2010 SUBMITTED BY THE5H RESPONDENT. EXHIBIT P3(C) TRUE COPY OF THE NOMINATION DATED312.2010 SUBMITTED BY THE3D RESPONDENT. EXHIBIT P4 TRUE COPY OF THE ELECTION NOTIFICATION ISSUED BY THE RETURNING OFFICER DATED312.2010. EXHIBIT P5 TRUE COPY OF THE NOTICE ISSUED BY MR.KETTY CHERIAN OPPOSING THE PROCESS OF ELECTION. EXHIBIT P6 TRUE COPY OF THE LEGAL OPINION DATED912.2010 TAKEN FROM MATHAI & MATHAI EXHIBIT P6(A) TRUE COPY OF THE LEGAL OPINION TAKEN FROM BVR ASSOCIATES COMPANY SECRETARIES DATED1012.2010. EXHIBIT P7 TRUE COPY OF THE MINUTES OF THE AGM HELD ON1112.2010. EXHIBIT P8 TRUE COPY OF THE NOTICE OF BOARD MEETING DATED1612.2010 ALONG WITH THE AGENDA. EXHIBIT P9 TRUE COPY OF THE MINUTES OF THE BOARD MEETING HELD ON3010.2010. EXHIBIT P10 TRUE COPY OF THE MEMORANDUM OF COMPANY PETITION IN C.P. NO.14 OF 2011 OF THE COMPANY LAW BOARD CHENNAI. WP(C).NO. 19880 OF2011(H) EXHIBIT P10(A) TRUE COPY OF THE LETTER DATED183.2011 ISSUED BY PETITIONERS16TO19AND45H PETITIONER IN C.P. NO.14 OF2011 EXHIBIT P10(B) TRUE COPY OF THE AFFIDAVIT DATED295.2011 FILED BY THE2D RESPONDENT THROUGH THE6H RESPONDENT HEREIN AS13H THE COUNTER PETITIONER IN C.P. NO.14 OF 2011 BEFORE THE CLB. EXHIBIT P11 TRUE COPY OF THE WITHDRAWAL MEMO FILED BY THE PETITIONERS THEREIN BEFORE THE COMPANY LAW BOARD. EXHIBIT P12 TRUE COPY OF THE

ORDER

DATED 22.06.2011 IN C.P. NO.14/397 & 398/CB/2011 ISSUED BY THE COMPANY LAW BOARD. EXHIBIT P12(A) TRUE COPY OF THE

ORDER

SHEET DATED 23.06.2011 IN C.P.NO.14 OF 2011 EXHIBIT 13 TRUE COPY OF THE NOTICE NUMBERED AS NO.1/1/2011/LAD-1/CLB/2544 DATED 21.06.2011. EXHIBIT P14 TRUE COPY OF THE NOTICE NUMBERED AS NO.1/1/2011/LAD-1/CLB/2571 DATED 27.06.2011. EXHIBIT P15 TRUE COPY OF THE MINUTES OF HEARING AND

ORDER

DATED 11.07.2011 ISSUED BY THE 6^H RESPONDENT PURPORTING TO BE ISSUED ON BEHALF OF THE 2^D RESPONDENT. RESPONDENT(S)' EXHIBITS: EXHIBIT R2(A) TRUE COPY OF THE LETTER DATED 29.07.2011 ISSUED BY THE 2^D RESPONDENT TO THE 1^T PETITIONER. EXHIBIT R2(B) TRUE COPY OF THE REPLY DATED 29.07.2011 RECEIVED FROM THE CHAIRMAN OF FIRST COMMODITIES EXCHANGE OF INDIA LIMITED. EXHIBIT R2(C) TRUE COPY OF THE NOTIFICATION DATED 23.11.2009 ISSUED BY THE GOVERNMENT OF INDIA, GRANTING RECOGNITION TO THE EXCHANGE. EXHIBIT R2(D) TRUE COPY OF THE CERTIFICATE OF REGISTRATION DATED 21^T JULY, 2009 GRANTED TO THE FIRST COMMODITIES EXCHANGE OF INDIA LIMITED. WP(C).NO. 19880 OF 2011(H) EXHIBIT R2(E) TRUE COPY OF THE NOTIFICATION DATED 12.07.11 EXHIBIT R2(F) TRUE COPY OF THE SAID COMPLAINT RECEIVED 27 SHAREHOLDERS OF THE FIRST COMMODITIES EXCHANGE OF INDIA LIMITED. EXHIBIT R2(G) TRUE COPY OF THE NOTIFICATION DATED 12.07.11 DELEGATING POWERS OF THE FORWARD CONTRACTS (REGULATION) ACT. EXHIBIT R2(H) TRUE COPY OF THE INQUIRY REPORT DATED 17.03.11. EXHIBIT R2(I) TRUE COPY OF THE LETTER DATED 25.11.2010 APPOINTING THE RETURNING OFFICER BY THE FIRST COMMODITIES EXCHANGE OF INDIA LIMITED. EXHIBIT R2(J) TRUE COPY OF THE NOTICE DATED 26.11.2010. EXHIBIT R2(K) TRUE COPY OF THE REPORT DATED 03.12.2010 OF THE ELECTION OFFICER DECLARING THE

RESULT OF ELECTION OF BOARD OF DIRECTORS OF THE FIRST COMMODITIES EXCHANGE OF INDIA LIMITED. EXHIBIT R2(L) TRUE COPY OF CHARGE TAKEN REPORTS OF THE NEW DIRECTORS OF THE FIRST COMMODITIES EXCHANGE OF INDIA LIMITED. EXHIBIT R2(M) TRUE COPY OF THE

ORDER

DATED1107.2011 OF THE FORWARD MARKETS COMMISSION EXHIBIT R2(N) TRUE COPIES OF THE

ORDER

S OF THE2D RESPONDENT APPOINTING DIRECTORS ON THE BOARD OF THE FIRST COMMODITIES EXCHANGE OF INDIA LIMITED. EXHIBIT R2(O) TRUE COPY OF THE INTERIM

ORDER

DATED2206.2011 OF THE COMPANY LAW BOARD, CHENNAI. ANNEXURE A1 TRUE COPY OF THE MINUTES OF BOARD MEETING OF THE PETITIONER COMPANY HELD ON55.2011. EXHIBIT R3(A) TRUE COPY OF THE RESOLUTION OF THE BOARD OF DIRECTORS DATED98.2008. WP(C).NO. 19880 OF2011(H) EXHIBIT R3(B) TRUE COPY OF THE NOTIFICATION PUBLISHED IN THE OFFICIAL GAZETTE OF INDIA GRANTING RECOGNITION TO THE COMPANY. EXHIBIT R3(C) TRUE COPY OF THE CERTIFICATE OF REGISTRATION ISSUED BY THE2D RESPONDENT. EXHIBIT R3(D) TRUE COPY OF THE COMPLAINT DATED71.2010. EXHIBIT R3(E) TRUE COPY OF THE DRAFT COPY OF THE MINUTES OF THE8H AGM EXHIBIT R3(F) TRUE COPY OF THE PRINTOUT OF THE REPORT OF THE ANNUAL GENERAL BODY MEETING HELD ON1112.2010 PUBLISHED IN THE WEBSITE OF THE COMPANY ON11.2011. EXHIBIT R3(G) TRUE COPY OF THE COMMUNICATION DATED3012.2010. EXHIBIT R3(H) TRUE COPY OF THE LETTER DATED2212.2010 ADDRESSED TO CEO OF THE COMPANY BY SHRI V. GOPAKUMARAN NAIR. EXHIBIT R3(I) TRUE COPY OF THE LETTER OF SHOMY GEORGE DATED2812.2010. EXHIBIT R3(J) TRUE COPY OF THE PRINTOUT OF THE MINUTES OF THE ALLEGED BOARD OF DIRECTORS

MEETING HELD ON3012.2010 AS PUBLISHED IN WEBSITE OF THE COMPANY. EXHIBIT R3(K) TRUE COPY OF THE PRINT OUT OF THE INFORMATION MADE AVAILABLE IN THE WEBSITE OF CREDIT INFORMATION BUREAU INDIA LIMITED. EXHIBIT R3(L) TRUE COPY OF THE PRINTOUT OF THE INFORMATION. EXHIBIT R3(M) TRUE COPY OF THE NEWS ITEM APPEARED IN MALAYALA MANORAMA UNDER THE HEAD "LOAN CHEATING: CBI FILED FIR" EXHIBIT R7(A) TRUE COPY OF THE EXTRACT OF THE ARTICLES OF ASSOCIATION OF THE COMPANY. WP(C).NO. 19880 OF2011(H) EXHIBIT R7(B) TRUE COPY OF THE LETTER ISSUED BY THE STATE BANK OF TRAVANCORE, PALARIVATTOM BRANCH. EXHIBIT R7(C) TRUE COPY OF THE NOTICE FOR CONVENING9H ANNUAL GENRAL MEETING OF THE COMPANY ON1112.2010. ANTONY DOMINIC, J.

===== W.P.(C) NO. 19880 OF2011=====

Dated this the 25th day of August, 2011

ORDER

This writ petition is filed by a Company and its two Directors, challenging Ext.P15 order passed by the 2nd respondent directing that respondents 3, 4 and 5 be taken on the Board of Directors of the Company with immediate effect. When the interlocutory application to stay Ext.P15 order was heard, the main contention urged by the counsel for the petitioners was that the 2nd respondent did not have any power under the Forward Contracts (Regulation) Act, 1952 to issue such an order.

2. On the other hand, it was contended by the respondents in their counter affidavits that the order is perfectly within the statutory powers and that in pursuance to Ext.P15, respondents 3, 4 and 5 have already assumed charge as Directors as per Ext.R2(l) dated 16.7.2011.

3. The first petitioner Company made an application for recognition under Section 5 of Forward Contracts (Regulation) Act [Act 74 of 1952] and accordingly, the Central Government granted recognition to the first petitioner under Section 6 of the WPC No. 19880/11 :2 : Act. Ext.R3(b) is the notification dated 23rd of January

2009 issued by the 1st respondent renewing the recognition granted to the first petitioner for the period up to 31st January, 2012. Similarly in terms of the provisions contained in Section 14A(2) of the Act, the Company also made an application for certificate of registration to carry on business relating to forward contracts and accordingly certificate of registration under Section 14B was granted by the Central Government, a copy of which is Ext.R3(c).

4. Section 6(1) of the Act which provides for grant of recognition to an Association reads thus: "6. Grant of recognition to association - (1) If the Central Government, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require, is satisfied that it would be in the interest of the trade and also in the public interest to grant recognition to the association which has made an application under section 5, it may grant recognition to the association in such form and subject to such conditions as may be prescribed or specified, and shall specify in such recognition the goods or classes of goods with respect to which forward contracts may be entered into between members of such association or through or with any such member".

5. A reading of this provision shows that the grant of recognition to an association shall be subject to such conditions as may be prescribed or specified. In Ext.R3(b) notification dated WPC No. 19880/11 :3 :

23. 1/09 also, recognition granted to the petitioner Company has been made subject to the condition that "said exchange shall comply with such directions as may, from time to time be given by the Forward Markets Commission". Therefore, on the strength of the enabling provision contained in Section 6(1), while issuing Ext.R3(b) notification, the Central Government specified that the first petitioner shall comply with such directions as may be issued from time to time by the Commission.

6. Similarly, Section 14A(1) provides as follows: "14-A. Certificate of registration to be obtained by all associations- (1) No association concerned with the regulation and control of business relating to forward contracts shall, after the commencement of the Forward Contracts (Regulation) Amendment Act, 1960 (hereinafter referred to as such commencement) carry on such business except

under, and in accordance with, the conditions of a certificate of registration granted under this Act by the Commission".

7. This section therefore obliges the association to carry on business relating to forward contracts only under a certificate of registration and in accordance with the conditions specified therein. In Ext.R3(c) certificate of registration, various conditions have been specified and the first condition is that "the said association shall comply with such directions as may from time to time, be given by the Forward Markets Commission".

8. Therefore, both in Ext.R3(b) and in Ext.R3(c) and in Sections 6 and 14A of the Act, enabling provisions have been incorporated entitling the Forward Markets Commission to issue directions from time to time and the first petitioner Company is obliged to comply with such directions.

9. The provisions of the Act shows that various powers have been reserved in favour of the Central Government and also the Forward Markets Commission to grant recognition, to withdraw recognition, to call for periodical returns or direct enquiries to be made, to furnish annual reports, to direct rules to be made or to make rules, to make or amend bye laws, to prohibit forward contracts in certain cases, to levy penalties, to supersede the governing body of association, to suspend members etc. These statutory provisions and the scheme of the Act thus show that pervasive control has been conferred on the Central Government and the Forward Markets Commission and there is nothing in the Act which suggests that the Central Government or the Commission cannot direct induction of members to the Director Board of the 1st petitioner Company in WPC No. 19880/11 :5 : the circumstances as pointed out in Ext.P15.

10. In fact, counsel for the petitioner relied on the Apex Court judgment in *Indramani v. W.R.Natu* (AIR 1963 SC274 and referred me to the dissenting opinion of Justice K.Subba Rao and contended that the Commission has no administrative functions or powers of interference in the internal management of the registered association. However, in the judgment, the manner in which the powers of the Commission should be understood from the provisions of the Act has been indicated by the Apex Court in the following words:- "What we are here

concerned with is whether it is legally competent to vest a particular power in a statutory body, and in regard to this the proper rule of interpretation would be that unless the nature of the power is such as to be incompatible with the purpose for which the body is created, or unless the particular power is contra-indicated by any specific provision of the enactment bringing the body into existence, any power which would further the provisions of the Act could be legally conferred on it. Judged by this test, it would be obvious that the power conferred by the bye-law is one which could be validly vested in the Commission".

11. The aforesaid principle has been followed by the Apex Court in its judgment in Union of India v. Rajdhani Grains and Jaggery Exchange (1975(1) SCC676. Applying the aforesaid WPC No. 19880/11 :6 : principles laid down by the Apex Court, prima facie, I am of the view that it was perfectly within the jurisdiction of the 1st respondent to have issued Ext.P15. Taking note of this prima facie finding, as also the fact that the respondents have already assumed charge as Directors w.e.f 16.07.2011, I decline the interim prayer sought for by the petitioners. ANTONY DOMINIC, JUDGE Rp

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