

Kinetic Engineering Ltd. Vs. Unit Trust of India and ors.

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Court : Company Law Board CLB

Decided On : Jun-16-1994

Reported in : (1995)84CompCas811

Judge : S Balasubramanian, C Mehta

Appellant : Kinetic Engineering Ltd.

Respondent : Unit Trust of India and ors.

Judgement :

1. Kinetic Engineering Ltd. (hereinafter referred to as "the company") has filed, in all, 170 references under Section 22A(4)(c) seeking confirmation of this Bench for the decisions of the board of directors of the company to refuse registration of transfer of shares in favour of the Unit Trust of India (UTI). The decisions to refuse the registration of transfers were taken in various meetings and as the facts and circumstances in respect of these references are the same, all these references are disposed of by this single order.

2. The facts of the case are that the Unit Trust of India (UTI), as part of its market operations, bought from the market, 29,075 shares of the company over a period of time and lodged the instruments of transfer with the company for registration, the details of which are set out in annexure "A" to this order. These transfers were considered by the board , of directors in various meetings and the board decided to refuse registration of transfers on the ground that the registration of these transfers in favour of the Unit Trust of India, which already holds about 4.9 per

cent, shares in this company would take the total holding of the Unit Trust of India in the company beyond 5 per cent, of the paid-up capital of the company carrying voting rights, which, according to the board; is against the guidelines of the Government of India/Regulations of the Securities and Exchange Board of India in respect of mutual funds and, therefore, the company refused registration of transfer of these shares in accordance with the provisions of Section 22A(3)(b) of the Securities Contracts (Regulation) Act, 1956. According to the company, the Unit Trust of India is a mutual fund and, therefore, as per regulation 41 read with Schedule VI of the Securities and Exchange Board of India Regulations of 1993," the guidelines issued by the Government of India in 1992, mutual funds are not supposed to hold more than 5 per cent, of the shares carrying voting power in any company. Even though the board of directors, depending upon the time at which it took the decisions on these transfers, relied in some cases on the Government Guidelines of 1992 and later on the Regulations of 1993, the opinion formed by the board of directors was on the premises that the Unit Trust of India is a mutual fund and is prohibited from holding more than 5 per cent of the shares of the company. In one of the resolutions, the board also referred to a letter having been written by them to the Securities and Exchange Board of India authorities seeking clarification from the Securities and Exchange Board of India whether the Unit Trust of India is a mutual fund and whether the provisions of the Regulations are applicable to the Unit Trust of India. In another resolution, taking into consideration the reply received from the Securities and Exchange Board of India indicating therein that the company may follow the procedure as per the Securities Contracts (Regulation) Act/ Companies Act, in taking a decision with regard to the registration of transfer, the board decided to refuse registration.

3. Shri Gupte, advocate, instructed by Kanga and Company, advocates and solicitors, appearing on behalf of the company, reiterated the submissions made in the petition. According to him, there is absolutely no doubt that the Unit Trust of India is a mutual fund. In furtherance of the argument, he referred to the Securities and Exchange Board of India (Mutual Funds) Regulations, 1993, relating to mutual funds and also compared the functions of the Unit Trust of India to that of a mutual fund. He also drew our attention to the Statement of Objects at the time when the Unit Trust of India was constituted by statute wherein it has

been stated that "the Unit Trust of India will encourage saving by providing for various classes of investors the facility of investing their money in the units of the Trust. The Trust will invest the initial capital obtained by the sale of units in shares and other securities and will distribute every year, not less than 90 per cent, of the net income accruing to the unitholders. It is expected that the risk of losses or of depreciation on account of the investments will be reduced or eliminated as a result of the proposed arrangement. The Trust will also be in a position to contribute, through its operations, to the growth and diversification of country's economy." According to him, from this it is clear that the functions of the Unit Trust of India are nothing but that of a mutual fund and, therefore, the Unit Trust of India should be governed by the Securities and Exchange Board of India Regulations.

4. He further drew our attention to the application made by the company seeking directions of this Bench to the Unit Trust of India/Securities and Exchange Board of India to produce a copy of the letter purported to have been written by the Joint Secretary, Ministry of Finance, on March 16, 1994, to the effect that the Unit Trust of India would be regulated by the Securities and Exchange Board of India. For this request he relied on the press news, dated March 24, 1994, in the Times of India. Therefore, according to him, the Unit Trust of India falls within the framework of the Securities and Exchange Board of India Regulations. He, therefore, sought the confirmation of the Bench for the various resolutions passed by the company in refusing the transfer of shares in the name of the Unit Trust of India as the acquisition of the Unit Trust of India beyond 5 per cent, would be against the provisions of the Securities and Exchange Board of India Regulations and, therefore, falls within the ambit of Section 22A(3)(b) of the Securities Contracts (Regulation) Act, 1956.

5. Shri Rohit Kapadia, senior counsel, instructed by G. M. Dave and Co., advocates and solicitors, appearing on behalf of the Unit Trust of India, refuted the contentions of Shri Gupte. He stated that the Unit Trust of India is not a mutual fund. It is wrong to rely on the statement of objects and one should go by the statute itself. On this point he relied on the decision of the Supreme Court in *State of West Bengal v. Union of India*, AIR 1963 SC 1241. He also stated that the Unit Trust of India has been constituted by an Act of Parliament, namely, the Unit Trust

of India Act, 1963, and as per the rules framed thereunder the Unit Trust of India can invest up to 15 per cent of the securities issued by a company subject to an overall limit of 5 per cent of the total amount of funds of the Unit Trust of India.

Therefore, according to him, the Unit Trust of India Act, being a special Act, is out of the purview of the provisions of a general Act or general Regulations like the Securities and Exchange Board of India Regulations. For this proposition, he relied on the decision in *Paradip Port Trust v. Their Workmen*, *AIRLife Insurance Corporation of India v. D.J. Bahadur*, AIR 1980 SC 2181. He further stated that even the Securities and Exchange Board of India, to which the company addressed a letter, has not confirmed that the Unit Trust of India is a mutual fund, nor has it indicated that these Regulations are applicable to the Unit Trust of India.

6. He pointed out the various differences between a mutual fund registered with the Securities and Exchange Board of India and the functions of the Unit Trust of India. According to him, the main difference is, that, while a mutual fund is managed by trustees, and is sponsored and controlled by an asset management company, the Unit Trust of India is the creation of a statute. As per the statute, the Unit Trust of India has got powers to function directly. It has not registered any of its schemes with the Securities and Exchange Board of India. It has got its own regulations and as per Section 19 of the Unit Trust of India Act, the Trust can transact the business of buying and selling of units, investing in, and acquiring, holding or disposing of securities and exercising and enforcing all the powers and rights incidental thereto, providing merchant banking and investment advisory services, etc., apart from the business of the so-called mutual funds.

He further stated that the Unit Trust has been created by an Act of Parliament, whereas the other mutual funds are required to be established in the form of Trusts and are required to be registered under the Companies Act, 1956, and approved by the Securities and Exchange Board of India. He stressed the point that unless/otherwise the Unit Trust of India Regulations are repealed/modified by a special enactment to make the Securities and Exchange Board of India Guidelines applicable, the provisions of the Unit Trust of India Regulations would stand. He also stated that as per the provisions of Section 32 of the Securities and

Exchange Board of India Act, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and as such the Unit Trust of India Regulations would continue their application. Besides this, he also stated that Sections 33 and 35 of the said Act which relate to "Amendment of certain enactments" and "Repeal and saving" do not indicate any provisions to the effect that the Unit Trust of India Regulations have been either amended or repealed. He further stated that as the Unit Trust of India, as per its Regulations, can hold up to 15 per cent of the securities in a company, if the intention of the Legislature is to restrict the same to 5 per cent., then there should have been provisions to take care of the possibility of the Unit Trust of India holding more than 5 per cent. Since there is no such provision, he concluded that the Unit Trust of India is not a mutual fund and, therefore, the Unit Trust of India will be governed by its own regulations and not by the Securities and Exchange Board of India Regulations/Guidelines.

7. Shri Gupte, replying to the arguments of Shri Kapadia, stated that one has to look into the spirit of an enactment. The Securities and Exchange Board of India Guidelines/Regulations have been formulated with a view to regulate the functions of mutual funds. The functions of the Unit Trust of India are not entirely different from those of mutual funds. The terms Unit Trust and mutual funds have been used interchangeably. In 1963, when the capital market was just at the infant stage, the Government thought it fit to bring about an institution for the purpose of safeguarding the savings of the general public and the Unit Trust of India was constituted. Now that with the expansion of the capital market, in addition to statutory corporations, private parties are also allowed to formulate mutual funds, general guidelines/regulations have also been issued to govern their functions.

Even though, as cited by Shri Kapadia the Government Guidelines, 1990, excluded statutory corporations yet such exceptions were only relating to registration and not for being constituted as trust under the Indian Trusts Act. But with the issue of comprehensive regulations by the Securities and Exchange Board of India in 1993, which has superseded the earlier guidelines, there is no exception made in regard to statutory corporations. As a matter of fact, according to him, all mutual funds, if they are already carrying on the business of mutual

funds, should have come under the second guidelines, within a period of six months. He further stated that on the principle of interpretation of statutes, if there are two statutes, the later one will prevail over the earlier one and, therefore, the Securities and Exchange Board of India (Mutual Funds) Regulations issued in the year 1993, would override the provisions of the Unit Trust of India Regulations. As such he stressed that we should confirm the decision of the board.

8. From the pleadings and submissions of counsel, the following issues emerge for our decision : (2) If so, whether the Unit Trust of India is governed by the .

guidelines issued by the Ministry of Finance, Government of India, O. M. No. 19(27)SC/90, dated February 14, 1992, and/or by the provisions of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1993, dated January 20, 1993.

(3) If so, whether the decisions of the board of directors deserve to be confirmed.

(a) "Mutual Fund--also called unit trust or open ended trust--a company that invests the fund of its subscribers in diversified securities and in turn issues units representing shares in those holdings. They make continuous offering of new shares at net asset value and redeem the shares on demand at net asset value determined daily by the market value of the securities they hold." (b) Thomson Dictionary of Banking defines a unit trust "as a method of investment by which money subscribed by many people is pooled in a fund, the investment and management of which is subject to the strict legal provision of a trust deed. The fund is invested in securities on behalf of subscribers by a management company. The management company and the trustee who must be independent of each other are parties to the trust deed which defines their respective responsibilities towards the subscribers to the trust fund and details the rules for the operation of the trust." (c) The Prevention of Fraud (Investment) Act, 1958, of England defines a unit trust scheme "as any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever." 10. A collective reading of the above definitions shows that when a trust collects money by sale of units from

the public and invests the same in securities with a view to share the profits arising therefrom, then it is engaged in the business of mutual funds.

"An Act to provide for the establishment of a Corporation with a view to encouraging saving and investment and participation in the income, profits and gains accruing to the Corporation from the acquisition, holding, management and disposal of securities." 12. Section 21 of the Unit Trust of India Act amplifies the preamble as "for the purpose of providing facilities for participation in the income, profits and gains arising out of the acquisition, holding, management or disposal of securities by the Trust, the Board may make one or more unit schemes." 14. A comparison of the activities of a mutual fund and the activities of the Unit Trust of India as elaborated in the preamble and Section 21 reveals, in abundance, a commonality of purpose, i.e., mobilisation of funds from the public and distribution of profits arising from such usage of funds to the unitholders.

15. As per Encyclopaedia Britannica, a mutual fund is also a unit trust. The Statement of Objects and Reasons in respect of the Unit Trust of India Act has also used the unit trust and mutual fund in analogous terms. Thus, there is little doubt that the Unit Trust of India is engaged in the business of mutual fund. Therefore, the contention of the Unit Trust of India that it is not a mutual fund, per se, cannot be accepted. May be that its functions are wider than a mutual fund but it cannot claim that it does not conduct mutual fund business.

16. Regarding the second issue, it is necessary to look into the guidelines/regulations. The first guidelines for mutual funds were issued by the Stock Exchange Division of the Finance Ministry (F. No.1/45/AC/86-Part IV), dated June 28, 1990. According to the preamble to the guidelines "institutions that manage the funds obtained from different investors have commonly come to be known as mutual funds." Other than this, there is no detailed definition of "mutual fund" in the guidelines. It is also stated in these guidelines that all mutual funds except those established through a statute would require the approval of the Controller of Capital Issues and after this they will have to be registered with the Securities and Exchange Board of India and the other mutual funds should get themselves registered with the Securities and Exchange Board of India within 90

days of the issue of these guidelines. It is further provided in these guidelines that mutual funds except the statutory funds shall be constituted as trusts under the Indian Trusts Act. In regard to investment limitation, it is prescribed in these guidelines that a mutual fund shall not invest more than 5 per cent of its assets in the shares of any company. A mutual fund shall also not invest in more than 5 per cent of the shares of any company under any one scheme.

17. Another set of guidelines (second guidelines) were issued by the Ministry of Finance (Department of Economic Affairs--Investment Division), vide F. No. 93(27)SE/90, dated February 14, 1992, The preamble to these guidelines states "mutual funds have become a major vehicle for mobilising the saving particularly from the small and household sector for investment in the market. In view of the growing importance in the capital market, their expanding investor base and the decision to allow mutual funds to be set up in the joint and private sectors, it has become necessary to evolve a comprehensive set of prudential guidelines for the all-round development and regulation of mutual funds and for ensuring investors' protection." In these guidelines also, "mutual fund" has not been defined but it only states that the existing mutual funds should conform to these guidelines within a period of six months from the date of issue of these guidelines. Unlike the earlier guidelines of 1990, there is no express provision to exempt statutory corporations in these guidelines. In respect of investment limitation, these guidelines provide that no individual scheme of mutual fund should invest more than 5 per cent, of its corpus in any one company; no mutual fund under all schemes taken together should invest more than 10 per cent, of its fund in the shares or debentures or other securities of a single company. Besides these investment limitations, these guidelines provide for guidelines relating to establishment, asset management company, trustees and trust companies, custodian, schemes, winding-up, income distribution, etc.

18. The third set of guidelines known as the Securities and Exchange Board of India (Mutual Funds) Regulations, 1993, were issued by the Securities and Exchange Board of India on January 20, 1993, in exercise of the powers conferred by Clause (c), Sub-section (2) of Section 11 read with Section 30 of the Securities and Exchange Board of India Act, 1992. It is for the first time in these regulations

for mutual funds that there is a definition of a mutual fund.

19. From the above, it can be seen that while the guidelines of 1990 exempted statutory mutual funds from getting the approval of Controller of Capital Issues and registration with the Securities and Exchange Board of India, there is no clear indication as to the applicability of the guidelines to statutory mutual funds except those specially exempted in clause (viii). In the guidelines of 1992, there is no specific mention relating to statutory mutual funds but it is provided that existing mutual funds should get themselves registered within a period of six months from the date of issue of these guidelines. The Securities and Exchange Board of India Regulations, in regulation 3, state that these regulations shall apply to all mutual funds except those provided thereunder. In other words, there is nothing to indicate that statutory mutual funds are exempt from the application of these regulations, but at the same time it is also relevant to note that there is nothing in these regulations to specifically stipulate that these regulations are applicable to existing mutual funds except by implication from the provisions of regulation 3. Therefore, could it be implied that the mutual fund business of the Unit Trust of India has come under the provisions of the Securities and Exchange Board of India (Mutual Funds) Regulations? 20. According to regulation 2(m) of the said Regulations, a mutual fund is "a fund established in the form of a trust by a sponsor to raise money by a trustee through the sale of units to the public under one or more schemes for investing in securities in accordance with these regulations".

21. From the above, certain propositions emerge. A mutual fund under these regulations has to satisfy the following conditions : 22. As per regulation 3, every mutual fund shall be registered with the Securities and Exchange Board of India through an application and as per regulation 8, there are certain pre-conditions for registration which, inter alia, include that a trust deed has to be approved by the Securities and Exchange Board of India, an asset management company (AMC) has to be appointed to manage the mutual fund and the sponsor has to contribute at least 40 per cent, of the net worth of the asset management-company.

23. Chapter III of the Regulations deals with the constitution and management of mutual funds (MF). As per the provisions in this Chapter, a company is to be approved as a trustee of the mutual fund (regulation 15), an asset management company to be approved by the Board (regulations 18, 19, 20), the asset management company is subject to certain restrictions on its activities (regulation 23) and the mutual fund to have a custodian as approved by the Securities and Exchange Board of India (regulations 25, 26).

24. In Chapter IV, dealing with schemes of mutual funds, it is stipulated that each scheme is to be approved by the Securities and Exchange Board of India. Chapter V deals with investment objectives and valuation policies. Chapter VI deals with general obligations of the mutual fund. And Chapter VII deals with inspection and disciplinary proceedings. According to regulation 60, the Securities and Exchange Board of India has powers to inspect the books of account, records and documents of the mutual fund, the trustees, the asset management company and the custodian and it can also appoint an auditor to investigate into the books of account or the affairs of the mutual fund, trustee, an asset management company and the custodian.

Regulation 66 subjects the mutual fund, the trustee, the asset management company and the custodian to certain penalties in case of default, and under regulation 68, the Securities and Exchange Board of India can cancel the registration of a mutual fund. In other words, the Securities and Exchange Board of India is vested with an all-pervasive control over a mutual fund registered with it. In Schedule VI of the regulations, restrictions on investments have been elaborated. The issue in contention in these references before us has arisen out of the stipulation in Clause 5 of this Schedule, i.e., "no mutual fund under all its schemes should own more than 5 per cent, of any company's paid-up capital carrying voting rights".

25. Now let us have a look at the provisions of the Unit Trust of India Act and the Regulations framed thereunder.

26. The Unit Trust of India Act was enacted in December, 1963, to set up the Unit Trust of India. There are various provisions in this Act relating to the establishment

of the Unit Trust of India, its initial capital, management of the Trust, powers and functions of the Trust, allocation and distribution of income and reserves, funds, accounts, audit, etc. It has the power to make regulations necessary or expedient for the purpose of giving effect to the provisions of the Act. In exercise of this power, the Unit Trust of India has framed the Unit Trust of India General Regulations, 1964, which regulate the election of trustees, restrictions on investment in the shares of companies, etc. It is in these regulations that in regulation. 36 it has been provided that "investment by the trust from the funds mobilised under any of its schemes in securities in any corporation shall not, unless otherwise provided for in the relevant scheme, exceed 5 per cent, of the total amount of the said funds or 15 per cent, of the securities issued by such corporation and outstanding whichever is lower." 27. A comparison of the provisions in the Unit Trust of India Act/its Regulations and the Securities and Exchange Board of India (Mutual Funds) Regulations reveals wide variations between the provisions of these two pieces of legislation. The important variations can be summed up as follows : (i) The functions of the Unit Trust of India are governed by the Unit Trust of India Act read with its regulations while mutual funds registered with the Securities and Exchange Board of India are governed by the Securities and Exchange Board of India (Mutual Funds) Regulations.

(ii) The Unit Trust of India is a statutory corporation established under Section 3 of the Unit Trust of India Act while a mutual fund shall be constituted in the form of a trust under the Indian Trusts Act.

(iii) The schemes framed by the Unit Trust of India are unilateral as they are designed by themselves while the schemes framed by mutual funds are bilateral.

(iv) The structure of the Unit Trust of India is in accordance with the Unit Trust of India Act while the structure of a mutual fund consists of settlor, trustee, asset management company and custodian.

(v) The Unit Trust of India is not only dealing with the mutual fund business but also acts as a finance company while the mutual funds under the Securities and Exchange Board of India Regulations are prohibited from carrying on any business other than mutual fund.

(vi) The trustees are appointed or elected as per the provisions of the Unit Trust of India Act while for a mutual fund governed by the Securities and Exchange Board of India, it has to approve the appointment of directors of the mutual fund, trustee company and asset management company.

(vii) The Central Government can authorise the Unit Trust of India to carry on any business, while as per the Securities and Exchange Board of India (Mutual Funds) Regulations, a mutual fund cannot carry on any business other than mutual fund.

(viii) The Unit Trust of India can grant loans and advances and has also borrowing powers, while the mutual funds under the Securities and Exchange Board of India (Mutual Funds) Regulations can neither grant loans nor borrow money.

28. In addition to the above major differences between the mutual fund under the regulations and the Unit Trust of India under the Unit Trust Act/Regulations, the following differences in the operation of these institutions are also worth consideration : (i) As per the Securities and Exchange Board of India (Mutual Funds) Regulations not less than 90 per cent, of the net profits have to be distributed to unitholders (regulation 51), while in the case of the Unit Trust of India, except in the case of the Unit 64 Scheme wherein a minimum of 90 per cent, distribution is mandatory as per the Act, the distribution in respect of other schemes is at the discretion of the Board (section 25A(2) and (3)(i)).

(ii) There are four ways limitations in regard to investment by mutual funds under the Securities and Exchange Board of India (Mutual Funds) Regulations, Schedule VI as indicated below : (a) No individual scheme to invest, more than 5 per cent, of its corpus in any one company's shares.

(b) No mutual fund to hold more than 5 per cent, of paid-up capital carrying voting rights in any company.

(c) All schemes put together not more than 10 per cent, of the funds in shares, debentures and other securities of a single company.

(d) No mutual fund to invest in shares and debentures beyond 15 per cent, of its funds in any one industry.

In the case of the Unit Trust of India as per general regulation 3G(1)(a) "investment by the trust from the funds mobilised under any of its schemes in securities of any corporation shall not, unless otherwise provided for in the relative scheme, exceed 5 per cent, of the total amount of the said funds or 15 per cent, of the securities issued by such corporation and outstanding whichever is lower." In other words, this percentage can vary from scheme to scheme if so provided in such schemes, and, therefore, is not a mandatory limit while in the case of mutual funds under the Securities and Exchange Board of India (Mutual Funds) Regulations, the limits indicated are mandatory limits.

(iii) The Securities and Exchange Board of India (Mutual Funds) Regulations are silent on acquisition of rights shares while, in the Unit Trust of India Regulations there is specific stipulation that the Unit Trust of India can acquire rights shares regardless of the limits specified in regulation 36(1)(a).

29. From the above, it is clear that the provisions relating to the Unit Trust of India as per the Unit Trust of India Act/Regulations and the provisions for mutual funds as defined in the Securities and Exchange Board of India Regulations for mutual funds are very much at variance with each other almost in every respect in regard to constitution, establishment, management, powers of the trust, allocation and distribution of income, investment restrictions, etc. In other words, there is little commonality between the provisions of these Act/Regulations. Therefore, either the Securities and Exchange Board of India (Mutual Funds) Regulations should override the provisions of the Unit Trust of India Act/Regulations, or they should be read as complements to each other and a harmonious construction between the two should be attempted.

30. While Shri Gupte, advocate for the petitioner-company, did not dispute the various differences between the Unit Trust of India and a mutual fund as stipulated by the Securities and Exchange Board of India Regulations, his contention was that the Securities and Exchange Board of India guidelines, being later in time, will have an overriding effect on the provisions of the Unit Trust of India Act/Regulations. It is more so, it was argued, looking into the objective of the Regulations, all mutual funds should come under the purview of these

Regulations. This plea was refuted by Shri Robit Kapadia, senior advocate, for the Unit Trust of India, on the ground that the Unit Trust of India Act is a special Act having its own applicability to the Unit Trust of India notwithstanding the general Act/ Regulations like mutual funds regulations of the Securities and Exchange Board of India.

31. The arguments of both counsel have merit but the contention of the company fails on one important consideration. As we have indicated, if there is a difference or inconsistency in a particular provision of the two enactments, then it may, perhaps, be possible to either apply the later enactment or try to arrive at a harmonious construction between the two legislations. But as we have indicated, the variations between the provisions of these two, the Securities and Exchange Board of India Regulations and the Unit Trust of India Act/Regulations are all-pervasive. It is difficult to accept the contention that only in respect of investment limitation, the Securities and Exchange Board of India guidelines would have an overriding effect on the provisions of the Unit Trust of India Act/Regulations, even though there are various other differences. As correctly pointed out by Shri Rohit Kapadia, in the main Act, namely, the Securities and Exchange Board of India Act under which the Regulations have been formulated, the provisions of the Unit Trust of India Act have not been either repealed or superseded nor there is any amendment to the Unit Trust of India Act subjecting the Unit Trust of India to the provisions of the Securities and Exchange Board of India Regulations. Under these circumstances we are unable to accept the contention of Shri Gupte, advocate for the company, that the Securities and Exchange Board of India guidelines will have an overriding effect on the Unit Trust of India Act/Regulations, in relation to its mutual fund business.

32. Looking at the angle pointed out by Shri Kapadia, that the Unit Trust of India Act is a special Act which is not subject to the applicability of general regulations, there is considerable merit in this argument and he has rightly relied on the decision of the Supreme Court in Life Insurance Corporation of India v. D.33. It is also worth mentioning the observation of the Supreme Court in V. P. State Electricity Board v. Hari Shankar Jain "The rule 'generalalia specialibus non derogant' which means that the general provision should yield to a specific

provision is based upon the reason that in passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former special Act unless it appears that the special Act again received consideration from Parliament." 34. The Unit Trust of India was constituted under an Act of Parliament and the entire set-up, management, powers, etc., of the Unit Trust of India have been specifically provided in the statute itself. Regarding the limitation on investment, the Board of the Unit Trust of India has formulated its own rules. The Securities and Exchange Board of India Regulations which have been framed on the basis of delegated legislation under the Securities and Exchange Board of India Act provides not only for the constitution, management powers, etc., of mutual funds, it also provides for restriction on investments. If we apply the abovequoted observations of the Supreme Court, even if Parliament were to legislate a general Act, unless otherwise it has considered the provisions of the special Act, at the time of considering the general Act, the provisions of the special Act would prevail. Even if the Unit Trust of India has to come under the provisions of the Securities and Exchange Board of India Guidelines relating to investment restrictions as contended by the company, subjecting the Unit Trust of India to the investment limitation would arise only if the Unit Trust of India fulfils all the other provisions of the Securities and Exchange Board of India Regulations like having an asset management company, custodian, trustee-company, etc., and is also registered with the Securities and Exchange Board of India. No such requirement is provided for under the Unit Trust of India Act.

Therefore, a moot question that arises is whether the provisions of a statute as enacted by Parliament would be subject to a set of regulations framed under delegated powers. The answer is no. Delegated legislation cannot alter or be contradictory to the statute authorising it ; and in the event of an irreconcilable conflict, the statute prevails. This principle is applicable in the case of a conflict between a statute and delegated legislation thereunder. In the present case, the company contends that the Securities and Exchange Board of India Regulations framed under the delegated powers as per the Securities and Exchange Board of India Act will have an overriding effect on an entirely different statute, viz, the Unit

Trust of India Act. This proposition has absolutely no merit.

35. Besides the above, one has to look at the issue from a practical angle too. Both the Securities and Exchange Board of India Act and the Unit Trust of India Act are administered by the Ministry of Finance. It is common knowledge that the Unit Trust of India being the first and also the foremost institution engaged in various activities including mutual fund as authorised under the Unit Trust of India Act, holds, in a number of companies, securities in excess of what is prescribed by the Securities and Exchange Board of India Regulations but within the limits as provided in the Unit Trust of India Act/Regulations. The Securities and Exchange Board of India Guidelines had been issued with the approval of the Central Government and if the Government had desired that the mutual funds of the Unit Trust of India should also come under the purview of the Securities and Exchange Board of India Regulations, it could have been specifically provided for in the Securities and Exchange Board of India Regulations with suitable amendment to the Unit Trust of India Act, but it has chosen not to do so. As a matter of fact, even the Securities and Exchange Board of India to which the company addressed a letter for clarification, instead of giving a categorical reply whether the Securities and Exchange Board of India Regulations are applicable to the Unit Trust of India or not, evaded the entire issue in its reply.

36. As the company, at the time of the last hearing, relied on certain press reports on a letter issued by the Finance Ministry, on March 16, 1994, to the Securities and Exchange Board of India, to argue that the Government have decided to bring the Unit Trust of India under the purview of the Securities and Exchange Board of India Regulations, we thought it fit to obtain a copy of the letter which reads as follows : "I write to indicate that the Government would like the Unit Trust of India to come under the regulatory jurisdiction of the Securities and Exchange Board of India.

As the Unit Trust of India is not a regular mutual fund and has evolved into a distinctive and 'hybrid' financial institution, the mutual fund regulations of the Securities and Exchange Board of India appear inappropriate in respect of the Unit Trust of India.

It, therefore, appears desirable that the Unit Trust of India be given certain special dispensations in recognition of its special character. We would request the Securities and Exchange Board of India to work out an appropriate set of dispensations in association with the Unit Trust of India." 37. As is apparent from the above letter, even the Government is conscious of the fact that the Securities and Exchange Board of India Regulations are not applicable to the Unit Trust of India now, but the Government desires to bring the Unit Trust of India under the regulatory jurisdiction of the Securities and Exchange Board of India.

38. The case before us is a case wherein the Unit Trust of India has sought registration of transfer of shares beyond 5 per cent, of the share capital carrying voting rights in the company and the company has refused. If the Securities and Exchange Board of India Guidelines relating to restriction on investment were made applicable to the Unit Trust of India in the absence of any saving Clause for existing mutual funds having more than the prescribed limit, it might mean that the Unit Trust of India will have to disinvest its holding beyond 5 per cent, in every case. In such a contingency, the effect that would have on the stock market would be unimaginable. Perhaps, this is one of the reasons that the Government have felt, as seen from the letter above, that certain special dispensations, in recognition of the special character of the Unit Trust of India, should be provided. Even such an application of the Regulations to the Unit Trust of India would be only prospective and would not be applicable to the past transactions.

Therefore, on an overall assessment of the provisions of the Unit Trust of India Act/Regulations and first and second guidelines as well as the Securities and Exchange Board of India Regulations and in view of the special characteristics assigned to the Unit Trust of India under the Unit Trust of India Act, we are of the view that none of the provisions of the Guidelines/Securities and Exchange Board of India Regulations are applicable to the Unit Trust of India in the conduct of its mutual fund business and the Unit Trust of India is only governed by the provisions of the Unit Trust of India Act and its general regulations in conducting the mutual fund business.

39. The next issue relates to the resolutions of the board of directors passed on the various dates refusing registration of transfers. It was argued that the decisions of the board were mala fide. We are unable to uphold this allegation. As we have indicated earlier, some resolutions to reject the shares were based on the Government Guidelines of 1992 wherein it had been specifically stated that they were applicable to all mutual funds and in the absence of any exemption for the Unit Trust of India in these guidelines, the board took the decision to refuse registration. Later on, after the coming into force of the Securities and Exchange Board of India Regulations, the company did make a reference to the Securities and Exchange Board of India seeking clarification whether these regulations were applicable to the Unit Trust of India and since it had to take a decision within two months of the lodgment, they took a decision to refuse, in a few cases in the absence of any reply from the Securities and Exchange Board of India.

Even after receiving the reply which was not in any way throwing any light on the doubt of the company, it was pointed out during the hearing, that, in view of the two months' limitation, the company had to take a view and the board bona fide formed an opinion that the Unit Trust of India was a mutual fund and was subject to the provisions of the guidelines. In these circumstances and in view of the genuine doubt which has necessitated our giving this lengthy order, we do not hold the decisions as mala fide but only erroneous.

40. Accordingly, even though we have concluded that the Unit Trust of India is engaged in the business of mutual fund, for reasons elaborated above, we hold that the Securities and Exchange Board of India Regulations/Government Guidelines, relating to mutual funds are not applicable to the Unit Trust of India and, therefore, the impugned transfers do not fall within the provisions of Section 22A(3)(b) of the Securities Contracts (Regulation) Act, 1956, and as such we do not confirm the decision of the board of directors to refuse registration of transfers in respect of the shares covered in these references.

Accordingly, we direct that the company shall register the transfers in favour of the Unit Trust of India in respect of all these shares within ten days from the date of receipt of this order.

