

Kamlesh Kumar Vs. Jaipur Stock Exchange Ltd. and ors. and

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Court : Rajasthan

Decided On : Jun-29-1989

Reported in : [1990]68CompCas666(Raj); 1989(2)WLN216; 1989(2)WLN591

Judge : M.B. Sharma and; I.S. Israni, JJ.

Acts : Securities Contracts (Regulation) Act, 1956 - Sections 3, 4, 5, and 6;
Securities Contracts (Regulation) Rules, 1957

Appeal No. : D.B. Civil Writ Petitions Nos. 407, 605 and 1469 of 1989

Appellant : Kamlesh Kumar;padam Kumar Khaitan

Respondent : Jaipur Stock Exchange Ltd. and ors. and ;union of India (Uoi);union of India (Uoi) and ors.

Advocate for Def. : U.N. Bhandari,; L.L. Jain,; M.R. Singhvi and;

Advocate for Pet/Ap. : Kamlesh Kumar,; Vimal Choudhary and; G.P. Kaushik, A

Disposition : Petitions dismissed

Judgement :

I.S. Israni, J.

1. In these writ petitions filed by the petitioners in the above mentioned writ petitions, it has been, inter alia, claimed that certain conditions in the application

form for enrolment as member of Jaipur Stock Exchange Ltd., non-petitioner No. 1, are arbitrary and illegal. Further grievances of the petitioners relate to the constitution of a screening committee and that enrolment of 200 members before the recognition of non-petitioner No. 1 is also illegal and should be quashed.

2. Jaipur Stock Exchange Ltd. is a company registered under the Indian Companies Act. A press advertisement was issued in the year 1983-84 by which the non-petitioner No. 1 invited applications initially for enrolment of 200 members but in response to the same, 1,300 applications were received. In view of the large number of applications, it is stated by non-petitioner No. 1 that the Central Government nominated a screening committee which scrutinised all applications and approved 316 applications. The managing committee of non-petitioner No. 1 approved the names of 182 persons in November, 1985, and 18 persons were directors and in this way the membership of 200 was approved.

3. The contention of Shri Kamlesh Kumar, petitioner, and Shri Vimal Choudhary, learned counsel for Shri Padam Kumar, is five-fold. It is contended that the formation of a screening committee is arbitrary and its members cannot be said to be independent and, therefore, their decision will not be impartial. Secondly, it is contended that in the application form for enrolment of membership of non-petitioner No. 1, the conditions that it should be recommended either by two members or two directors is arbitrary and vests undue power in the hands of members/directors. Thirdly, it is contended that the discretion with the council of management to reject any application even though approved by the screening committee is illegal and arbitrary and unjustified. It is contended that the selection of 200 members/directors before recognition was given by the Central Government to non-petitioner No. 1 is illegal and such members cannot be permitted to remain as members. Lastly, it is contended that the applications invited in 1987-88 have not yet been considered and new applications have been invited.

4. Notice of the petition was given to non-petitioner No. 1 and Shri U. N, Bhandari, learned counsel for non-petitioner No. 1, has appeared on their behalf. It is also given out by him that the Union of India, non-petitioner No. 2, has authorised non-

petitioner No. 1 to look after their interests also and appear in this court on their behalf. It is contended by Shri Bhandari that D. B. Civil Writ Petition No. 259 of 1988 was earlier filed by Manju Lata Jain and the petitioner, Kamlesh Kumar, which was disposed of by this court, vide its order dated March 16, 1988. It is contended that similar contentions were raised in that petition also and, therefore, the present petitions do not lie. It is also contended that non-petitioner No. 1 does not fall within the ambit of 'State' as defined in Article 12 of the Constitution and, therefore, also the petitioners are not entitled to file any writ petition against non-petitioner No. 1. It is further contended that in the earlier writ petition mentioned above, this court has already upheld the validity of initial membership of 200 persons of non-petitioner No. 1 and that the matter of screening committee was also approved, and, therefore, these contentions cannot be raised again by the petitioner in the present petition. It is further contended that even in the earlier application form for membership, the condition of recommendation of the applicant by two directors/members was there and since no objection was raised against the same in the earlier writ petition, the petitioner, Kamlesh Kumar, now cannot challenge the same in this petition. Apart from this, it is contended by learned counsel that there is nothing arbitrary or illegal in keeping such condition as the members of non-petitioner No. 1 have to be carefully selected as they will be dealing with securities of the public and, therefore, it is only just and reasonable that every person whoever makes an application should not be allowed to be approved and some enquiry regarding his background, etc., should be made. It is also contended that the screening committee includes representatives of State as well as the Central Government and, therefore, cannot be said to consist of such members who are not independent. It is also pointed out that those persons who had applied for enrolment as members in the year 1987-88 have been supplied with fresh forms free of cost and if they choose to apply for membership as per the conditions laid down in the new form for application which has been approved by the Central Government, they shall also be considered. Thus, there can be no grievance to such applicants who had filed an application in the year 1987-88 and that the drafts given by them regarding membership fee, etc., were not encashed and have been returned to them.

5. We have heard both the parties and have also gone through the pleadings and the documents on record.
6. At the outset, it may be stated that this court, in D. B. Civil Writ Petition No. 259 of 1988 decided on March 16, 1988, held that 'Since the aforesaid selection of 182 persons for membership was made by non-petitioner No. 1 on the basis of the selection made by the screening committee constituted by the Central Government, it cannot be said that non-petitioner No. 1 acted arbitrarily in the matter of selecting applicants for its membership.' Therefore, we find no reason to again go into the question of validity of 182 members and 18 directors the selection of which has been also upheld by this court and this contention has, therefore, no merit.
7. It may be pointed out that stock exchanges are recognised by the Central Government in exercise of its powers conferred upon it under Section 4 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'the Act'). The non-petitioner company submitted an application under Section 3 of the Act for recognition which was granted to it under Section 4 of the Act from January 9, 1989, for a period of one year. A form has been prescribed under the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as 'the Rules'), wherein it is prescribed in column 6, that it has to be mentioned in the said application the number of members at the time of making the application. Therefore, the contention of the petitioners that no member could be enrolled before the recognition was granted to non-petitioner No. 1 has no force. In column 8 of the form, there is mention regarding minimum qualifications and experience before enrolling new members. In column 7, there is mention regarding the limit of the number of members proposed to be enrolled. Under Section 5 of the Act, it is provided that if the Central Government is of the opinion that the recognition granted to the stock exchange, in the interest of trade/public interest, be withdrawn, it can do so after serving notice and giving opportunity of hearing in this respect. Section 6 of the Act empowers the Central Government to make any enquiry in the prescribed manner relating to the affairs of the governing body of the stock exchanges or any member thereof. Thus, in short, it can be said that under the Act and the Rules framed thereunder, the Central Government has

power to keep complete control over the work of the stock exchanges which have been recognized in the country.

8. So far as the contention of the petitioners that the condition of the recommendation by 2 members/directors of non-petitioner No. 1 is illegal and arbitrary, we consider that this has no force as even in many voluntary organisations/clubs, it is necessary that the application of a person for enrolment as member has to be recommended by an existing member so that the management can be reasonably satisfied regarding the antecedents and desirability of having such person as a member. The membership of non-petitioner No. 1 will confer certain rights on the member and he will be dealing with securities of the public. It is, therefore, only necessary that the antecedents and credentials of the applicants should be seen and checked before they are given membership of non-petitioner No. 1. A reference has also been made by learned counsel for non-petitioner No. 1 to *Madhubhai Amathalal Gandhi v. Union of India* [1960] 30 Comp Cas 667 (SC), in which a similar matter came up for consideration. While considering this question regarding obtaining recommendation/nomination of the existing members, it was held by the apex court that such restrictions were not unreasonable having regard to the importance of stock exchanges in the country's national economy and having regard to the magnitude of the mischief sought to be remedied in the interests of the general public.

9. We are, therefore, of the considered opinion that there is nothing arbitrary or illegal in having such a condition in the application form.

10. The next contention of the petitioners is that the members of the screening committee are not independent and, therefore, no reliance can be placed on their decision. It seems that the matter regarding proper formation of the screening committee also came up while the earlier Writ Petition No. 259 of 1988 was decided and it was held that the screening committee was constituted by the Central Government. It is also contended by the petitioners that the discretion with the council of management to reject any application approved by the screening committee gives controlling power to it even on the recommendation made by the screening committee. It is given out by Shri Bhandari, learned counsel for non-

petitioner No. 1, that as per the direction of the Stock Exchange Division of the Central Government, Ministry of Finance, the number of members has been increased from 200 to 500. It is likely that a large number of persons may apply for obtaining membership of non-petitioner No. 1. Therefore, it is only desirable that before any final decision is taken by the council of management regarding membership, these applications should be screened by the screening committee and such persons who are not found to be qualified for consideration may be weeded out and the rest of the applications can be considered by the council of management. Similar practice is adopted by several organizations. Even in the Rajasthan Public Service Commission, when too many applications are received, a screening-test is held. It is given out by learned counsel for the non-petitioner that the screening committee has been constituted by the Central Government and it includes nominees of the Government of India who may be senior officers of the State Government. It is further stated that an application of any person can be rejected by the screening committee only when not less than 2/3rds of its members agree to do so. This shows that the rejection of any application by the screening-committee is not by simple majority and, therefore, cannot be termed to be unreasonable. The council of management has been constituted as provided in the Articles of association of non-petitioner No. 1 which has been approved by the Ministry of Finance, Central Government. In this council of management, the Central Government nominates three nominees on its own behalf. Two such nominees have been already appointed, vide letter dated February 1, 1989, of the Ministry of Finance which has been marked as annexure-R-1/12. Letter marked annexure-R-1/13 dated March 28, 1989, issued by the Department of Economic Affairs, Ministry of Finance, Government of India, addressed to the president of non-petitioner No. 1 shows that the Central Government has also nominated Shri H. M. Mathur, Secretary, Industries Department, Government of Rajasthan, as another nominee of the Central Government on the council of the management of non-petitioner No. 1. A reference may also be made to annexure-1/11 dated March 27, 1986, issued by the same department as confirming the recommendations regarding membership of stock exchange made by the high power committee on the stock exchange as contained in their final report and it is mentioned at No. (1) that passing of 12th standard or equivalent examination shall

be the minimum educational qualification for admission of new members to stock exchanges. This clearly shows that the Central Government, Ministry of Finance, through the Department of Economic Affairs is giving directions to non-petitioner No. 1 from time to time as is evident from the documents mentioned above and other documents on file and non-petitioner No. 1 is liable to act in accordance with the same. We do not find any merit in the contentions raised by the petitioners regarding formation of the screening committee and unlimited powers alleged to be in the hands of the council of management of non-petitioner No. 1. So far as the consideration of applications invited in the year 1987-88 are concerned, it has been already mentioned that non-petitioner No. 1 has sent fresh application forms to such persons free of cost and has also returned their amounts/drafts for filing fresh applications in accordance with the conditions laid down in the amended form which has been duly approved by the Central Government and is in accordance with the Articles of association of non-petitioner No. 1.

11. Since we do not find any merit in the writ petitions, we do not consider it necessary to go into the question as to whether non-petitioner No. 1 comes within the ambit of 'State' as defined in Article 12 of the Constitution.

12. In the result, we find no merit in these writ petitions and these are, accordingly, dismissed.