MADHUBHAI AMATHALAL GANDHI

v.

THE UNION OF INDIA.

1960

August 17.

(B. P. SINHA, C. J., J. L. KAPUR, P. B. GAJENDRAGADKAR, K. SUBBA RAO and K. N. WANCHOO, JJ.)

Stock Exchange—Rules for membership—Notification laying conditions restricting membership — Classification between active members and others—Whether unreasonable or infringed fundamental rights—Securities Contracts (Regulation) Act, 1956, (42 of 1956) s. 4 —Securities Contracts (Regulation) Rules, 1957, rr. 17-22.

The Securities Contracts (Regulation) Act, 1956, was enacted with the object of preventing undesirable transactions in securities by regulating the stock exchange business, and the Act conferred an effective controlling power on the Central Government over the stock exchange. In exercise of the power conferred on the Central Government to make rules the Central Government made rules described as the Securities Contracts (Regulation) Rules, 1957, providing, inter alia, for the qualification for membership of a stock exchange seeking recognition etc. After the Act came into force two Companies, namely, the Native Share and Stock Brokers' Association and the Indian Stock Exchange Limited doing stock exchange business in Greater Bombay applied for recognition under the Act. The Government after considering the merits of the companies and the relevant circumstances issued a notification dated August 31, 1957, recognising the Native Share and Stock Brokers' Association under the name "The Stock Exchange, Bombay" subject to certain conditions. One of the conditions was that the members of the other company, India Stock Exchange Limited, would be entitled to apply for membership of the Stock Exchange, Bombay, provided they were active members of the Indian Stock Exchange Limited for 12 months immediately preceding August 6, 1957, and they were also eligible under r. 8(1) of the Securities Contracts (Regulation) Rules, 1957, to be members of a recognised stock exchange. Within the time granted for applying for membership a number of active members of the Indian Stock Exchange Limited applied for membership and were admitted as members of the recognised Stock Exchange. Though three years had elapsed after this no member other than the petitioner questioned the validity of the notification which was accepted and the recognised Stock Exchange became established. The petitioner, however, filed a petition under Art. 32 of the Constitution praying that the Union be directed to withdraw or cancel the notification dated August 31, 1957, recognising the Stock Exchange, Bombay, under s. 4 of the Securities Contracts (Regulation) Act, 1956. Subsequently on November 30, 1957, the Central Government

1960

Madhubhai Amathalal Gandhi v. The Union of India

issued another notification applying s. 13 of the Act to Greater Bombay with the result that thereafter every contract in shares between the members of any unrecognised stock exchange in that city would be illegal. The contentions of the petitioner in the petition for the issue of a writ of mandamus were that under Art. 19(1)(g) of the Constitution he had a fundamental right to carry on business in shares and the two notifications in question imposed unreasonable restrictions on his right, that the notification dated August 31, 1957, was void as it was not sanctioned by the provisions of s. 4 of the Act, that the condition 2(i)(a) of the said notification classifying members of the Indian Stock Exchange Limited as active members and members who were not active infringed fundamental right granted under Art. 14 of the Constitution and as the said condition was not severable the entire notification was bad. The respondent besides controverting the said contentions further contended that as the petitioner had not questioned the validity of the Act itself the notification issued thereunder could not be questioned.

Held, that the validity of a notification could not be questioned if it was issued under a self contained Act and restated the provisions of the Act the validity of which was accepted. If, however, the Act conferred a power on the State in general terms and the notification issued thereunder infringed any of the fundamental rights it could be attacked even though the Act was valid.

The Stock Exchange Rules did not operate as a bar against the petitioner becoming a member of the Stock Exchange subject to the rules governing such application.

The restrictions and conditions imposed under the notification in question were not unreasonable. The condition restricting membership to active members only is germane to the recognition of the Stock Exchange and is therefore, a condition within the meaning of "any other conditions" in cl. (b) of sub s. (1) of s. 4 of the Act.

The classification between active members and others was justifiable and the period fixed by the Government as the standard for ascertaining the active membership was neither arbitrary nor unreasonable.

There was a presumption in favour of the State that there was a reasonable basis for the classification and the burden to prove that it violated the guarantee of equal protection lay on the petitioner who impeached it.

ORIGINAL JURISDICTION: Writ Petition No. 136 of 1957.

Writ Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

Purshottam Tricumdas, Mukund R. Mody, Anil B. Divan, Ramesh A. Shroff and *I. N. Shroff*, for the petitioner.

C. K. Daphtary, Solicitor-General of India, R. Ganapathy Iyer and *R. H. Dhebar*, for respondent.

1960. August 17. The Judgment of the Court was delivered by

SUBBA RAO J.—This is a petition under Art. 32 of the Constitution for the issue of a writ of mandamus or a writ in the nature of mandamus or any other appropriate direction, order or writ to direct the respondent, the Union of India, to withdraw or cancel the notification dated August 31, 1957, recognising "the Stock Exchange, Bombay" under s. 4 of the Securities Contracts (Regulation) Act, 1956 (XLII of 1956), (hereinafter referred to as "the Act").

Subba Rao J.

At the outset it is necessary to notice briefly how a Stock Exchange is worked and how it is controlled or regulated by the State. "Stock Exchange" means, "any body of individuals, whether incorporated or not, constituted for the purpose of assisting or controlling the business of buying, selling or dealing in securities". The history of stock exchanges in foreign countries as well as in India shows that the development of joint stock enterprise would never have reached its present stage but for the facilities which the stock exchanges provided for dealing in securities. They have a very important function to fulfil in the country's economy. Their main function, in the words of an eminent writer, is "to liquify capital by enabling a person who has invested money in, say, a factory or a railway, to convert it into cash by disposing of his share in the enterprise to someone else". Without the stock exchange, capital would become immobilized. The proper working of a stock exchange depends upon not only the moral stature of the members but also on their calibre. It is a trite saying that a jobber or dealer is born and not made. In the words of the same author, a jobber must be a man of good nerve, cool judgment, and ready to deal

1960

Madhubhai Amathalal Gandhi v. The Union of India

Subba Rao J.

under any ordinary conditions, and he must be a man of financial standing, considerable experience, with an understanding of market psychology. There are three modes of dealing in shares and stocks, namely, (1) spot delivery contract, i.e., a contract which provides for the actual delivery of securities on the payment of a price thereof either on the day of the contract or the next day, excluding perhaps the period taken for the despatch of the securities or the remittance of money from one place to another; (2) ready delivery contract, which means a contract for the purchase or sale of securities for the performance of which no time is specified and which is to be performed immediately or within a reasonable time; (3) forward contracts, i.e., contracts whereunder the parties agree for their performance at a future date. If the stock exchange is in the hands of unscrupulous members, the second and third categories of contracts to buy or sell shares may degenerate into highly speculative transactions or, what is worse, purely gambling ones. Where the parties do not intend while entering into a contract of sale or purchase of securities that only difference in prices should be paid, the transaction, even though speculative, is valid and not void, for "there is no law against speculation as there is against gambling". But, if the parties do not intend that there should be any delivery of the shares but only the difference in prices should be accounted for, the contract, being a wager, is void. More often than not it is difficult for a court to distinguish one from the other, as a wagering transaction may be so cleverly camouflaged as to pass off as a speculative transaction. These mischievous potentialities inherent in the transactions, if left uncontrolled, would tend to subvert the main object of the institution of stock exchange and convert it into a den of gambling which would ultimately upset the industrial economy of the country.

For that reason, in Bombay as early as 1925, the Bombay Securities Contracts Control Act was passed to regulate and control contracts for the purchase and sale of securities in the City of Bombay and elsewhere in the Bombay Presidency. Under s. 6 of that Act,

"Every contract for the purchase or sale of securities, other than a ready delivery contract, entered into after a date to be notified in this behalf by the Provincial Government shall be void, unless the same is made subject to and in accordance with the rules duly sanctioned under s. 5 and every such contract shall be void unless the same is made between members or through a member of a recognised stock exchange; and no claim shall be allowed in any Civil Court for the recovery of any commission, brokerage, fee or reward in respect of any such contract". But this Act defined "ready delivery contract" to mean "a contract for the purchase or sale of securities for performance of which no time is specified and which is to be performed immediately or within a reasonable time". It was also stated therein by way of explanation that what was reasonable time was in each particular case a question of fact. This Act did not achieve its purpose, for under s. 6 thereof contracts entered into in contravention of the provisions of that section were not made illegal but only void, with the result that even members of a stock exchange not recognised under that Act were able to do business in that line. What is more, the explanation to the definition of "ready delivery contract" which is excluded from the operation of the Act was so elastic that in the name of ready delivery contracts unrecognised stock exchanges and individuals were able to carry on business in forward contracts. Gambling in shares went on unchecked in Bombay as elsewhere. After the Second World War, the post-war boom gave an unhealthy impetus to the stock exchange transactions. Various expert committees appointed by the Government from time to time considered the question of regulation of stock exchanges and the latest of those committees was the Gorwalla Committee. The report of that Committee was circulated to the principal stock exchanges, Chambers of Commerce, and other interested associations and individuals. After considering the reports of the committees and the comments made thereon by the various bodies, the Government introduced a bill in the Parliament, which became law on

1960

Madhubhai Amathalal Gandhi
v.
The Union of India

Subba Rao J.

September 4, 1956. The Act was passed to prevent undesirable transactions in securities by regulating the business therein by prohibiting auction and by providing for certain other matters connected therewith. The Act mainly provides for the recognition of stock exchanges and for controlling the rule-making of the said exchanges. Section 4 of the Act empowers the Central Government to recognise stock exchanges subject to two conditions. Section 13 enables it to issue a notification that in a particular State or area every contract which is entered into after the date of the notification otherwise than between members of a recognised stock exchange in such State or area or through or with such member shall be illegal. Without resorting to such drastic procedure the Government is also given power to prohibit contracts in certain securities in certain areas from doing business without obtaining a licence. Spot delivery contracts are excluded from the operation of ss. 13, 14, 15 and 17 of the Act, unless the Central Government by notification thinks fit to extend the operation of s. 17 of the Act to such contracts. Section 19 prohibits formation of stock exchanges other than recognised ones except with the permission of the Central Government. It declares all auctions in securities entered into after the commencement of the Act illegal. It also provides penalties for the infringements of the provisions of the Act. In short, the Act confers an effective controlling power on the Central Government over the stock exchanges.

In exercise of the power conferred upon the Central Government to make rules, the Central Government made rules described as the Securities Contracts (Regulation) Rules, 1957, providing, *inter alia*, for the qualification for membership of a stock exchange seeking recognition, the procedure for recognition, the manner of keeping accounts, the submission of annual reports, the constitution of governing bodies and for taking disciplinary action against any member of such bodies and other similar matters.

In Greater Bombay there were two stock exchanges,

one called the Native Share & Stock Brokers' Association, and the other the Indian Stock Exchange Limited. The former was in existence for more than 80 years and it was registered under the Bombay Securities Contracts Control Act, 1925. Its rules and bye-laws were approved by the Government of Bombay and it was doing business in both forward as well as ready transactions. It has a clearing house and was doing extensive business in different kinds of securities.

The other, namely, the Indian Stock Exchange Limited, was a company incorporated under the Indian Companies Act, 1913, as a company limited by guarantee without any share capital. The said Company had been functioning since 1937, but was not registered under the Bombay Securities Contracts Control Act, 1925. It was mainly doing business in Tata Ordinary and Bombay Dyeing shares and had hardly any investment business. Not being registered under the Bombay Securities Contracts Control Act, 1925, it could only deal in ready delivery contracts; and as the definition of "ready delivery contract" under that Act was elastic and as forward contracts were not made illegal thereunder, this Exchange was also doing speculative business mainly in the said two shares.

After the Act came into force, both the Exchanges applied for recognition under the Act. The Government, after considering the relative merits and the relevant circumstances, issued a notification dated August 31, 1957, recognising the Native Share and Stock Brokers' Association under the name "The Stock Exchange, Bombay" subject to the conditions mentioned therein. One of the conditions imposed was that the members of the Indian Stock Exchange Limited would be entitled to apply for membership of the Stock Exchange, Bombay, provided they were active members of the Indian Stock Exchange Limited for 12 months immediately preceding August 6, 1957, and they were also eligible under r. 8(1) of the Securities Contracts (Regulation) Rules, 1957, to be members of a recognised stock exchange. The notification

1960

Madhubhai Amathalal Gandhi
v.
The Union of India

Subba Rao J.

further gave some concessions to such active members in the matter of payment of the membership fee. They had to apply for membership before October 15, 1957, or before such period as the Board of the recognised Stock Exchange might think fit to extend. It appears that within the extended time a number of active members of the Indian Stock Exchange Limited as defined by the notification applied for membership and were admitted as members of the recognised Stock Exchange. Though three years have passed by, no member other than the petitioner has so far thought fit to question the validity of the notification, that is, the validity of the notification has been accepted and the recognised Stock Exchange has become stabilised on that basis. Subsequent to the filing of the petition on November 30, 1957, the Central Government issued another notification applying s. 13 of the Act to Greater Bombay; with the result that thereafter every contract in shares between the members of any unrecognised stock exchange in that City would be illegal.

The petitioner had become a member of the Indian Stock Exchange Limited on February 27, 1956, but he had not been transacting any business on the floor of the said Stock Exchange either on his own account or on account of his clients. He avers in the affidavit filed in support of the petition that he has been doing considerable business on his own account or on account of his clients through other members of the Stock Exchange and that he intends to commence business directly in ready delivery contracts. As the impugned notifications affect his right to do business, he seeks for the issue of a writ of mandamus for the aforesaid reliefs.

Shri Purshottam Trikumdas, learned counsel for the petitioner, raised before us the following contentions: (1) under Art. 19(1)(g) of the Constitution the petitioner has a fundamental right to carry on the business in shares and the notification dated August 31, 1957, and the subsequent notification dated November 30, 1957, imposed unreasonable restrictions on his said right; (2) the notification dated August 31,

1957, is void inasmuch as it is not sanctioned by the provisions of s. 4 of the Act; and (3) the condition 2(i)(a) of the said notification classifying members of the Indian Stock Exchange Limited as active members and members who were not active infringes the fundamental right enshrined in Art. 14 of the Constitution and that as the said condition is not severable the entire notification is bad.

Learned Solicitor-General in addition to controverting the said contentions pressed on us to hold that as the *vires* of the Act was not questioned, the notification issued thereunder could not be questioned by the petitioner on the ground that it contravened one or other of the said fundamental rights.

It would be convenient to take first the contention of the learned Solicitor-General as it is in the nature of a preliminary point. He says that as the validity of the Act was not questioned the notification issued in the exercise of the power conferred thereunder cannot also be questioned. There is a fallacy underlying this contention. Under Art. 13(2) of the Constitution, the State shall not make any law which takes away or abridges the rights conferred by Part III thereof; and "law" is defined under Art. 3(a) to include a notification. Therefore, the validity of a notification issued by the State, it being law, is as much vulnerable to attack as that of the Act itself on the ground that it infringes any of the fundamental rights. If an Act is a self-contained one and the notification issued thereunder only restates the provisions of the Act, the validity of the notification cannot obviously be questioned as the validity of its contents were accepted. But if the Act confers a power on the State in general terms and the notification issued thereunder infringes one or other of the fundamental rights, the validity of the Act cannot equally obviously prevent an attack on the notification. In the former case the notification only reflects the provisions of a valid Act and in the latter it is the notification and not the Act that infringes the fundamental rights. Take an example of an Act imposing restrictions on the freedom of speech. The Act authorizes the State to impose conditions on

1960

Madhubhai Amathalal Gandhi v. The Union of India

Subba Rao J.

the said freedom in the interests of security of State. The Act is constitutionally valid. But, if a notification issued under that Act imposes unreasonable restrictions infringing the said rights, it is liable to be challenged on the ground of unconstitutionality. So too, in the instant case s. 4 of the Act empowers the Central Government to issue a notification recognising a stock exchange subject to certain conditions expressed in general terms. The general terms can comprehend both reasonable and unreasonable restrictions. If the notification imposes unreasonable restrictions—if the contention of the learned counsel for the petitioner be accepted, the restrictions imposed would certainly be unreasonable—it is liable to be set aside. We cannot, therefore, accept this contention.

Re. (1): Article 19(1)(g) of the Constitution states that every citizen shall have the right to carry on any business; but the State in empowered under cl. (6) of the said Article to make any law imposing in the interest of the general public reasonable restrictions on the exercise of the said right. Briefly stated, the argument is that the combined effect of the two notifications is that the petitioner is driven out of his business of stock exchange in as much as, it is said, they confer a monopoly on the Stock Exchange, Bombay, and the rules of the said Stock Exchange exclude any outsider from becoming its member without obtaining a nomination and that too only in the place of an existing member. To put it differently, the argument proceeds that under the rules of the Stock Exchange, Bombay, membership is not thrown open to the public. This leads us to the consideration of the relevant provisions of the Stock Exchange Rules, Bye-laws and Regulations, 1957. Under r. 3 the membership of the Exchange shall consist of such number of members as the Exchange in general meeting may from time to time determine. It is common case that the membership of the Exchange is not limited. Under the heading "Election of New Members", the Rules prescribe the conditions of eligibility for election as a member of the Exchange. These Rules adopt the provisions of r. 8 of the Securities

Contracts (Regulation) Rules, 1957. The Rules do not contain any limitation on the eligibility of a person to be elected as a member such as that the person should be nominated in the manner provided by the Rules or that he should come only in the vacancy caused by another member ceasing to be one in one of the ways mentioned thereunder. The words "no person" in r. 17 are comprehensive enough to take in any outsider seeking for election as a member. Rule 22 provides for an application for admission in the form prescribed in Appendix A to the Rules. This rule also does not impose any such limitation. The admission application form in Appendix A is also general in terms and enables any person of India to apply for membership provided he agrees to abide by the conditions imposed therein. In the form also there is no such limitation. But it is contended that a fair reading of the provisions of rr. 20 and 21 makes it clear that a candidate for admission is confined only to two categories, viz., (1) a candidate nominated by a member or a legal representative of a deceased member seeking admission to membership in the place of the deceased; and (2) a person recommended for admission to membership in the place of a member who has forfeited his right to membership. A careful scrutiny of the Rules does not bear out the contention; nor do they enable us to cut down the wide amplitude of rr. 17 to 22. Rule 10 says:

"When a right of membership is forfeited to or vests in the Exchange under any Rule, Bye-law, or Regulation of the Exchange for the time being in force it shall belong absolutely to the Exchange free of all rights, claims or interest of such member or any person claiming through such member and the Governing Body shall be entitled to deal with or dispose of such right of membership as it may think fit."

Rule 54 is to the following effect:

"A member's right of membership shall lapse to and vest in the Exchange immediately he is declared a defaulter."

Rule 11 is as follows:

1960

Madhubhai Amathalal Gandhi
v.
The Union of India

Subba Rao J.

"(a) A member of not less than seven years' standing who desires to resign may nominate a person eligible under these Rules for admission to membership of the Exchange as a candidate for admission in his place.

(b) The legal representatives of a deceased member or his heirs or the persons mentioned in Appendix C to these Rules may with the sanction of the Governing Board nominate any person eligible under these Rules for admission to membership of the Exchange as a candidate for admission in the place of the deceased member. In considering such nomination the Governing Board shall be guided so far as practicable by the instructions set out in Appendix C to these Rules."

Appendix B gives the nomination forms Nos. 1 and 2 to be filled by a member or a legal representative, as the case may be, under r. 11 (a) and (b). Now it would be convenient to read rr. 20 and 21. They are as follows:

Rule 20: "A candidate for admission except a candidate applying for a membership vesting in the Exchange must obtain a nomination in the manner provided in these Rules."

Rule 21: "A candidate for admission must be recommended by two members none of whom should be a member of the Governing Board. The recommenders must have such personal knowledge of the candidate and of his past and present circumstances as shall satisfy the Governing Board."

The argument is that under r. 20 a candidate for admission falls under two categories, namely, (1) a candidate who must obtain a nomination in the manner provided in the Rules, i.e., r. 11 (a) and (b); and (2) a candidate applying for a membership vesting in the Exchange; and, therefore, these two categories exhaust the candidates for admission and that when under r. 21 the same words, "a candidate for admission", are used they must carry the same meaning as in r. 20, that is, they must be confined only to the two categories comprehended by r. 20. This argument appears to be plausible and even incontrovertible, if

rr. 20 and 21 are taken out of their setting and construed independently of other rules. But in the setting in which they appear they can bear only one meaning, namely, that r. 20 provides for nomination only in the case of a candidate for admission who requires a nomination in the manner provided by the rule and r. 21 provides, for all the candidates for admission, that they should be recommended by two members who have personal knowledge of the candidates. To put it in other words, under the Rules candidates for admission fall under three groups, viz., (1) candidates falling under r. 11, (a) and (b); (2) candidates applying for membership vesting in the Exchange; and (3) other candidates. All the three categories of candidates must be recommended by two members. But the candidates belonging to the first category shall in addition be nominated in the manner provided by the Rules. We, therefore, hold that the Stock Exchange Rules do not operate as a bar against the petitioner becoming a member of the Stock Exchange subject to the rules governing such application. The petitioner has the right to do business in shares: in spite of the notifications he can still do business in spot delivery contracts. He can apply to become a member of the Stock Exchange subject to the conditions laid down by the Rules. The Act, the validity of which he has not chosen to question, enables the State to give or refuse recognition to any Stock Exchange and it has chosen to give recognition to the Stock Exchange, Bombay, subject to the conditions prescribed. The restrictions, in our view, are not unreasonable, having regard to the importance of the business of a stock exchange in the country's national economy and having regard to the magnitude of the mischief sought to be remedied in the interest of the general public. At another place we have already dealt with the necessity for stringent rules governing this type of business. For the reasons mentioned we reject the first contention.

Re. (*2*): The second contention also has no merits. The criticism is that condition 2(i)(a) annexed to the notification cannot be supported on the basis of any

1960

Madhubhai Amathalal Gandhi v. The Union of India

Subba Rao J.

of the provisions of s. 4 of the Act. Condition 2 (i) reads as follows:

"The Members of the Indian Stock Exchange Limited, Bombay, will be entitled to apply for Membership of the Stock Exchange, Bombay, provided they fulfil or comply with the following terms and conditions:—

(a) they have been active members of the Indian Stock Exchange Limited, for twelve months immediately preceding the 6th August, 1957.

Explanation: "Active Members" for purpose of this condition means members who have themselves transacted business regularly on the floor of the Indian Stock Exchange Limited either on their own account or on account of their clients.

....."

To appreciate the argument it is also necessary to read the material provisions of s. 4 of the Act.

Section 4: "(1) If the Central Government is satisfied, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require,—

(a) that the rules and bye-laws of a stock exchange applying for registration are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors;

(b) that the stock exchange is willing to comply with any other conditions (including conditions as to the number of members) which the Central Government after consultation with the governing body of the stock exchange and having regard to the area served by the stock exchange and its standing and the nature of the securities dealt with by it, may impose for the purpose of carrying out the objects of this Act; and

(c) that it would be in the interest of the trade and also in the public interest to grant recognition to the stock exchange;

It may grant recognition to the stock exchange subject to the conditions imposed upon it as aforesaid and in such form as may be prescribed.

(2) The conditions which the Central Government

may prescribe under clause (a) of sub-section (1) for the grant of recognition to the stock exchanges may include, among other matters, conditions relating to,—

(i) the qualifications for membership of stock exchanges;

(ii) the manner in which contracts shall be entered into and enforced as between members;

(iii) the representation of the Central Government on each of the stock exchanges by such number of persons not exceeding three as the Central Government may nominate in this behalf; and

(iv) the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Central Government."

The argument proceeds that condition 2(i)(a) enables only the active members of the Indian Stock Exchange Limited to apply for membership of the Stock Exchange, Bombay and that such a condition can be imposed only if it amounts to a qualification of membership within the meaning of sub-s. (2) of s. 4, as the other conditions in that sub-section are obviously inapplicable. It is further pointed out that sub-s. (2) refers back to sub-s. (i)(a) and under that clause the condition imposed must only be that prescribed by the Rules made under the Act and that the condition imposed by the notification is not a condition so prescribed. There is force in this argument; but, the acceptance of this contention does not advance the case of the petitioner, for, if the condition is not covered by cl. (a) of s. 4(1), it falls under cl. (b) thereof. Under that clause, the Central Government may grant recognition to a stock exchange if the said stock exchange is willing to comply with "any other conditions". It is said that the other conditions in s. 4 (1)(b) must only be conditions relating to the area served by the stock exchange, its standing and the nature of the securities dealt with by it. This is not what cl. (b) of s. 4(1) says. The conditions under cl. (b) of s. 4(1) no doubt shall be such as may be imposed by the Government, having regard to the aforesaid three considerations, but they need not necessarily be

1960

Madhubhai Amathalal Gandhi v. The Union of India

Subba Rao J.

confined only to the said considerations. The Government may impose any conditions, no doubt germane to the recognition of a stock exchange, after consultation with its governing board, and having regard to the said considerations. It cannot be said that condition 2(i)(a) imposed on the Stock Exchange is not a condition germane to its recognition. The record discloses that the Central Government in recognising the Stock Exchange sought to avoid the consequential hardship on the members of the rival stock exchange and therefore imposed the said condition on the Stock Exchange, Bombay, as a condition for its recognition. The condition is germane to recognition of the Stock Exchange and is, therefore, a condition within the meaning of "any other conditions" in cl. (b) of sub-s. (1) of s. 4 of the Act.

Re. (*3*): Learned counsel for the petitioner advanced a forcible argument questioning the validity of condition 2(i)(a) of the notification on the ground that it infringed Art. 14 of the Constitution. Elaborating his argument, the learned counsel stated that the said condition classified members of the Indian Stock Exchange Limited into two groups, one active members and the other who were not active members, and that that classification was arbitrary and had no reasonable relation to the object sought to be achieved by the notification. He further pointed out that the defining of active members as those who had themselves transacted business regularly on the floor of the Indian Stock Exchange Limited either on their own account or on account of their clients for 12 months immediately preceding August 6, 1957, was not only arbitrary and vague but also, if analysed, would lead to anomalies destructive of any standard of reasonableness. It is alleged in the affidavit filed by the petitioner that from the inception of the Indian Stock Exchange Limited, 199 members of the said Stock Exchange were actually trading on the floor of the said Exchange from time to time but for some reason or the other were not trading during the period of 12 months immediately preceding August 6, 1957; that there were 34 members of the said Stock Exchange who were regularly

transacting business on the floor of the said Stock Exchange prior to August 6, 1956, and for some time after August 6, 1956, but not during the entire period of 12 months from August 6, 1956 to August 6, 1957; and that there were 24 members of the said Stock Exchange who started transacting business regularly on the floor of the said Stock Exchange some time after August 6, 1956 and continued to transact business right upto and after August 6, 1957. It was asked what was the reasonable basis for confining the definition of active members to those who were carrying on business during the period of 12 months from August 6, 1956 to August 6, 1957, while excluding the aforesaid three categories who were equally active members and indeed more active than those included in the definition. It was further asked what was the justification for excluding a member who was an active member for years before the crucial year and irregularly conducted business on the floor of the Stock Exchange during the crucial year while including a member who might have been a newcomer or who might have been earlier a nominal member but began to do business regularly only during the said year. Emphasis was also laid upon the alleged elastic and indefinite content of the word "regular" and it was suggested that the said word could not possibly afford a precise standard. These are all weighty considerations and we must confess that there is force in them. But there is the other side of the picture. It is well-settled that a classification must have reasonable relation to the object sought to be achieved. The standard of reasonableness is inextricably conditioned by the extent and nature of the evil and the urgency for eradicating the same. The object of the notification is twofold. The main object is to carry out the purpose of the Act, namely, to prevent undesirable transactions in securities by regulating the business in them. The subsidiary object is to assuage the hardship that recognition of only one stock exchange would cause to the members of the other association. To achieve this twin object the classification is made between active members and inactive members. While

1960

Madhubhai Amathalal Gandhi
v.
The Union of India

Subba Rao J.

on the one hand the Government found it necessary to exclude the nominal members who would add their deadweight to the recognised association and bring down its efficiency and affect its disciplined conduct of business, on the other hand it gave opportunity to persons who were actively interested in the business to become regular members of the Stock Exchange, Bombay. There is every justification for excluding members who had not been taking active interest in the business, for, as we have already pointed out, the efficient carrying out of the business of the Stock Exchange depends upon the moral stature, high calibre, and genuine and active interest evinced by the members. The active members justified themselves to the preferential treatment by their sustained interest in the business whereas the members who were not active showed their continued indifference to that line of business. But the crux of the question is, what is the justification for fixing twelve months immediately preceding August 6, 1957, as the standard for active membership? The Under Secretary to the Government of India, Ministry of Finance, filed an affidavit describing the circumstances whereunder this classification was made. It discloses that the notification was issued after taking into consideration the representations made on behalf of both the Stock Exchanges and also the facts pertaining to the course of business conducted by the Indian Stock Exchange Limited. It also gives the vicissitudes through which the said Stock Exchange passed from the date of its formation and the circumstances under which the membership of that Exchange was divided into full members and associate members. It points out that the Indian Stock Exchange Limited became moribund in a few years and to revive its activities it allowed the members of the East India Chamber of Commerce, by relaxing its entrance fee and security deposit requirements in 1950-51 and created a new class of Associate Members, which facilitated the enrolment of hundreds of Associate Members on payment of a nominal entrance fee of Rs. 100. The Government on a consideration of the necessary data and presumably

having regard to the record of the activities of the various members fixed the activities in the crucial year 1956-57 as the standard of activity for membership.

There is a presumption in favour of the State that there is a reasonable basis for the classification. Except the mere allegations in the affidavit which are not admitted, the petitioner has not placed before us any materials to ascertain that any other members, who were regularly doing business on the floor of the Indian Stock Exchange Limited before August 6, 1956, temporarily suspended their business for one reason or other over which they had no control. No statement from the accounts has been produced to enable us to evaluate the activities of the members before the crucial date so as to enable us to form a view that really active members were excluded by the fixing of this period. Nor are we in a position to verify whether any of the members excluded were regularly doing business during a part of the year in continuation of their business in the earlier period. We cannot also say that the words "carrying on business regularly" are so vague that the parties did not understand their connotation, for it is admitted that some of the regular members applied for membership of the Stock Exchange, Bombay and most of them were admitted. There is also the fact that though three years have elapsed since the date of the notification no other member of the Indian Stock Exchange Limited thought fit to question the notification on the ground that the period fixed was unreasonable and that really active members were excluded from membership of the Stock Exchange, Bombay. So far as the petitioner is concerned, he was admittedly not an active member, though he now pretends that he was doing business through other members. There is also no material placed before us to support the said assertion. If the classification, between active members and others who were not, is justifiable—we hold it is—the Government has to draw a line somewhere and to fix a period of activity reasonable in its opinion as a

1960

Madhubhai Amathalal Gandhi v. The Union of India

Subba Rao J.

standard to satisfy the test of "active member". The burden which lies upon the petitioner who impeaches the validity of the classification to show that it violates the guarantee of equal protection has not been discharged. On the material placed before us we cannot say that the period fixed by the Government as the standard for ascertaining the active membership is arbitrary or unreasonable. We must make it clear that this finding must be confined only to the validity of the impugned notification dated August 31, 1956.

The petition accordingly fails and is dismissed with costs.

Petition dismissed.

1960

August 17.

M/S. ZORASTER AND CO.

v.

THE COMMISSIONER OF INCOME TAX, DELHI, AJMER, RAJASTHAN AND MADHYA BHARAT (NOW) MADHYA PRADESH.

(S. K. Das, M. Hidayatullah and J. C. Shah, JJ.)

Income-tax — Reference — Power of High Court to call for supplemental statement of case — Indian Income-tax Act, 1922 (11 of 1922), s. 66(4).

The appellant entered into contract with Government for the supply of goods, and in the assessment year 1942-43 Rs. 10,80,653 and in the assessment year 1943-44, Rs. 17,45,336 were assessed as its income by the Income-tax Officer. The supplies to Government were made f. o. r. Jaipur by the appellant, and payment was by cheques which were received at Jaipur. The contention of the appellant was that this income was received at Jaipur outside the then taxable territories. This contention was not accepted by the Income-tax Appellate Tribunal, Delhi. The appellant then applied for a reference to the High Court under s. 66(1) of the Indian Income-tax Act, and by its order dated December 10, 1952, the Tribunal referred the following question for the decision of the High Court.

"Whether on the facts and circumstances of the case the profits and gains in respect of the sales made to the Government