

A OM PRAKASH POPLAI, RAJESH KUMAR MAHESHWARI
AND ORS. ETC.

v.

DELHI STOCK EXCHANGE ASSOCIATION LTD.
AND ORS./UNION OF INDIA AND ORS. ETC.

B JANUARY 14, 1994

[A.M. AHMADI AND M.M. PUNCHHI, JJ.]

C *Securities Contracts, (Regulation) Act, 1956 : Section 4—Delhi Stock Exchange—Proposal for increase in membership through public issue of shares and through dilution of shareholding—Approval of Central Government—Demand of deposit—Higher amount in case of members through public issue—Whether arbitrary and discriminatory—Constitution of Expert Committee appointed to Select members—Validity of—Allegation of bias—Whether proved—Selection made—Whether arbitrary and discriminatory.*

D *Constitution of India, 1950 : Article 14—Delhi Stock Exchange—Increase in membership through public issue and dilution of shareholding—Higher deposit demanded from one category—Constitution of Expert Committee and selection made by it—Whether arbitrary, discriminatory and violative of.*

E *Administrative Law : Policy matters—Decision taken by Government—Court always reluctant to interfere.*

F In pursuance of Section 4 of the Securities Contracts (Regulation) Act, 1956 providing for the necessity to secure recognition for trasacting business in securities, the Delhi Stock Exchange secured recognition from the Central Government. With the passage of time the volume of work increased and in view of the limited membership the Delhi Stock Exchange experienced difficulties in the matter of servicing the investors. Hence it proposed to increase the Membership. Central Government approved the proposal of increasing the membership by 250 members, that is 125 members through public issue of shares and 125 members through dilution for shareholding of each member from two shares to one share. All new members were to pay an admission fee of Rs. 1 lakh. The members admitted through public issue of shares and through dilution of existing
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H shareholding were required to pay an additional non-refundable deposit

of Rs. 3 lakhs and Rs. 1 lakh, respectively, which amount was to be utilised by the Stock Exchange for making provision to improve the services and providing a better infrastructure. A

The selection of 250 members was to be made on objective criteria taking into consideration the applicants' experience, professional qualifications and other relevant factors through an Expert Committee. The issue of shares through dilution of existing members was restricted to assistants of members of the Delhi Stock Exchange, daughters/sons or direct dependents of the members. By a subsequent letter, the Central Government modified the term regarding deposit money by making it transferable. B C

Two Writ Petitions came to be filed before the High Court, one challenging the terms of approval granted by the Central Government and the inclusion of Directors/Members of the Delhi Stock Exchange as Members of the Expert Committee, and the other challenging the non-selection of the Writ Petitioner. Both the Writ Petitions were dismissed and hence the present appeals. The Writ Petition filed in this Court also challenged the rejection of the Petitioner's application for being admitted to the membership of the Stock Exchange. D

Dismissing the matters, this Court E

HELD : 1. The High Court rightly rejected the plea of the appellants that the approval granted by the Central Government by letter of 5th February, 1987, was violative of Article 14 of the Constitution as those seeking membership through public issue of shares constitute a class by themselves only and distinct from the class comprising those seeking membership through dilution of shareholding of existing members. Therefore, the condition in regard to higher deposit from those belonging to the first category as compared to those belonging to the second category cannot be said to be unconstitutional. [127-F-G] F

Rajesh Kumar Maheshwari v. Union of India & Ors., reported in A.I.R. 1992 Delhi 68, approved. G

2. As per the Memorandum of Articles of Association of the Delhi Stock Exchange the selection of members for the Expert Committee was made by the Board of Directors. The validity of that provision was not put H

A in question. Therefore, it cannot be said that the constitution of the Expert Committee was arbitrary and violative of Article 14 of the Constitution of India. [128-D-E]

B 3.1. The selection of members by the Expert Committee had to be done on the basis of objective criteria taking into consideration experience, professional qualifications and similar related factors. Certain percentage of marks were allocated for each of these factors, namely, educational qualifications, experience, financial background and knowledge of the relevant laws and procedures pertaining to public issues etc. Of the total marks allocated only 20 per cent were reserved for interviews. Therefore, **C** the process of selection by the Expert Committee was not left entirely to the sweet-will of the members of the Committee. The area of play was limited to 20 per cent and having regard to the fact that the members of the Expert Committee comprised of two members nominated by the Central Government it is difficult to accept that they acted in an un-
D reasonable or arbitrary fashion. The constitution of the Expert Committee itself shows that one member was not in a position to influence the other members of the Committee so as to tilt the balance in favour of the members of his fraternity, that is, the Chartered Accountants. Merely because a large number of Chartered Accountants were selected and some of them had recently qualified is no ground to set aside the selection. Since **E** Chartered Accountants have special knowledge of the working of financial institutions and the mechanics of public issue of shares as well as dealings with the Controller of Capital Issues, etc., they could fare better at the interview, being abreast with law, guidelines and policies of the Central Government in this behalf. [128-F-H, 129-A-B]

F 3.2. Merely because the petitioner/appellant had past experience of Stock Exchange working and was a highly educated person is no ground to doubt the integrity of the members of the Expert Committee and their selection. It must be realised that the majority marks were given on the basis of the objective criteria and the interviews were arranged to ascertain **G** the knowledge of the candidates in regard to current developments in the field of capital issues, bouns issues, shareholder service and the like. The Court's role in such matters is limited and it does not function as an appellate authority over the selection done by an expert body unless it is shown by cogent and convincing evidence that the selection was biased, **H** capricious, whimsical or arbitrary. General allegations of the type made

cannot, nullify the selection process unless concrete facts are established to show that the members of the Expert Committee had at the behest of one member favoured the Chartered Accountants. Similarly, there is nothing on record to show that the members of the Expert Committee were biased against the petitioner/appellant. [129-E-G] A

4. The Petitioner's request for enhancing the number of members is not a matter in regard to which this Court would like to issue a mandate. It is a matter of policy which was worked out carefully after extended correspondence between the Delhi Stock Exchange and the Central Government and in such matters of policy this Court is always reluctant to interfere. [130-B] B C

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 4711-12 of 1990.

From the Judgment and Order dated 7.5.1990 of the Delhi High Court in W.P.No.1357 of 1990. D

WITH

Writ Petition (C) No. 878 of 1989.

(Under Article 32 of the Constitution of India) E

WITH

I.A. Nos. 13-16.

Ashwani Kumar, H.N. Salve, V.C. Mahajan, R.P. Bhatt, R.K. Jain, Sandeep Bhuraria, P.N. Gupta, Ms. Smitha Inna, S.S. Shroff, Sudarsh Menon, Manoj Swarup, D.N. Mishra, N.P.S. Panwar, S.N. Bhat, Rajiv Sahai Endlaw, Navin Prakash, K.B. Rohtagi, S. Ganesh, Ms. Lata Krishnamurti, Ashok Mathur, Prem Pd. Juneja, Sanjeev Puri, N. Ganpathy, Hemant Batra, R. Sasiprabhu, Gopal Subramaniam, S. Murlidhar, R.F. Nariman, R.N. Keshwani, Arvind Kumar, Ms. Laxmi Arvind, Sanjeev Anand, Ms. Roxna Swamy, K. Ram Kumar, Rajiv Dutta and Vipin Nair for the appearing Parties. F G

The Judgment of the Court was delivered by

1. AHMADI, J. The Delhi Stock Exchange Association Ltd. came H

A to be incorporated under the Companies Act, 1913 on 25th June, 1947. The Securities Contracts (Regulation) Act, 1956 was brought into force with effect from 20th February, 1957, with a view to preventing undesirable transactions in securities by regulating the business of dealing therein. Certain other incidental provisions prescribing prohibitions etc. were also made therein. Section 4 provided for the necessity to secure recognition for transacting business in securities. In pursuance thereof, the Delhi Stock Exchange secured recognition from the Central Government. With the passage of time the volume of work increased and the total number of members who could transact business in securities in the Delhi Stock Exchange being limited certain difficulties were experienced in the matter of servicing the investors. On the one hand there was the problem of servicing the investors; with the number of members being small there was also considerable difficulty experienced on account of the paucity of accommodation. Correspondence ensued between the Delhi Stock Exchange and the Central Government in this connection to find the ways and means to improve the working of the Delhi Stock Exchange with a view to providing improved services to the investors. Ultimately on 5th February, 1987, the Government of India while replying to the letter of the Delhi Stock Exchange dated 15th January, 1987, conveyed its approval to the proposal for increasing membership subject to certain conditions as under:

E "i) The membership of the Stock Exchange be increased by 250 members, that is :

(a) 125 members through public issue of shares; and

(b) 125 members through dilution of shareholding of each member from two shares to one share."

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H It was provided that all new members shall have to pay an admission fee of Rs. 1 lakh. New members admitted through public issue of shares and through dilution of existing shareholding were required to pay to the Delhi Stock Exchange an additional non-refundable deposit of Rs. 3 lakhs and Rs. 1 lakh respectively which amount was to be utilised by the Delhi Stock Exchange for making provision to improve the services and providing a better infrastructure. The selection of 250 members was to be made on an objective criteria taking into consideration the experience, professional qualifications and other relevant factors through an Expert Committee to be constituted for that purpose. The issue of shares through dilution of

existing members was, however, restricted to authorised assistants of members of Delhi Stock Exchange, daughters/sons or direct dependents of the members. The Delhi Stock Exchange was directed to take immediate steps to increase the membership on the aforesaid terms and conditions. By a subsequent letter dated 12th February, 1987, the Central Government modified the term in regard to the deposit money by making it transferable. While this correspondence was in progress a Writ Petition was filed by one Mr. Saigal, being Civil Writ Petition No.12223 of 1985, in which certain interim orders were made. It is, however, not necessary to refer to the same because after the Central Government's approval conveyed by the letter of 5th February, 1987, that Writ Petition became infructuous and was so disposed of by the order dated 18th February, 1987. However, on 10th June, 1987, one Rajesh Kumar Maheshwari filed a Writ Petition in the High Court of Delhi questioning the terms of the approval granted by the Central Government on the ground that they were arbitrary, illegal and void being discriminatory and contrary to public policy and prejudicial to public interest. Obviously, the challenge was based on Article 14 of the Constitution. The Constitution of the Expert Committee was also questioned as violative of Article 14 on account of the inclusion of Directors/Members of the Delhi Stock Exchange in the Expert Committee. The High Court rejected the contentions urged in support of the Writ Petition and dismissed the same by its judgment dated 18th April, 1990. It is this decision of the High Court which has given rise to Civil Appeal No.4712 of 1990.

2. Civil Appeal No.4711 of 1990 arises out of an order of the Division Bench of the Delhi High Court which rejected the Writ Petition No.1357 of 1990 filed by Om Prakash Poplai on 7th May, 1990. By that Writ Petition the petitioner had questioned his non-selection by the Expert Committee. The High Court noticed that the communication informing the petitioner of his non-selection (but it appears that he was placed on the waiting-list) was conveyed to him in July, 1988 whereas he had preferred the Writ Petition on 30th April, 1990. The High Court also did not find any merit in the Writ Petition and dismissed the same in limine. Thereupon, the petitioner approached this Court by special leave. His contention before the High Court and before us was that he was a double-graduate, B.A., LL.B., with a postgraduate qualification, LL.M. in Commercial Laws from Utkal University. He had worked as Member of the Punjab Stock Exchange, Lahore, from 1944 to 1947 before his migration to Delhi where he

A worked as a Member of the Delhi Stock Exchange from 1951 to 1965. Thereafter he practised law in the High Court of Delhi and Courts subordinate thereto between 1965 and 1976. He was also enrolled as an Advocate-on-Record in the Supreme Court of India. While he was practising he was also teaching in the Faculty of Law of the Delhi University between 1971 and 1976. In 1976 he gave up practice and joined the Delhi University as a full time lecturer in law. On 4th June, 1987, he applied for membership of the Delhi Stock Exchange at the age of 60 years. But the Expert Committee did not select him. It may here be mentioned that the Expert Committee constituted of nine members but according to the petitioner/appellant he was interviewed on 16th January, 1988, by (i) Mr. Prem Chand Jain (ii) Mr. Paul Joseph (iii) Mr. R.N. Bansal and (iv) Mr. R.K. Pandey. Mr. Prem Chand Jain was the President of the Expert Committee, Mr. Pandey was the Executive Director of Delhi Stock Exchange whereas the other two members were the nominees of the Central Government on the Board of Directors of the Delhi Stock Exchange. The case put up by the petitioner/appellant in the High Court was that he had answered all the questions correctly and has denied the averment that he was not able to answer questions put to ascertain his knowledge in current laws affecting capital issues norms for debentures, protection of shareholders, guidelines for bonus issues, etc. etc., which knowledge was essential for the effective functioning of the Stock Exchange and control of capital issues. A bald contention was raised in the petition that he was put only one question, namely, 'What are specified shares' to which he had given an appropriate and correct answer but no other question had been put to him as alleged in the counter filed on behalf of the Delhi Stock Exchange. His grievance that Chartered Accountants were favoured because Mr. R.N. Bansal had tried to favour members of his fraternity was countered by pointing out that the Chartered Accountants had special knowledge and were abreast with financial matters and mechanics of public issue of shares and were, therefore, able to perform better at the interview. Merely because the petitioner/appellant had worked in the Stock Exchange in the past did not entitle him to priority. He was out of touch with the Stock Exchange since 1965-66 and, therefore, he was not abreast with the current developments in the field of finance and capital issues. It is, further, pointed out that the percentage of marks reserved for the interview was only 20 and, therefore, is not right to contend that the decision of the Expert Committee was vitiated as being arbitrary and against the principles relevant to Article 14

of the Constitution. Reference was made to the case of one Smt. **Nirmala Kumari Jain** who was selected as the Member of the Stock Exchange. It was contended that this selection was in total violation of norms, standard of selection and betrayed nepotism and favouritism. The position, insofar as she is concerned, was clarified by her in paragraph 13 of her counter affidavit by pointing out that her husband late **Gian Chand Jain** was admitted to the Membership of the Stock Exchange on 24th April, 1990, as intimated by the telegram of 30th April, 1990 and a share certificate was issued in the joint names of her husband and herself dated 24th April, 1990. She being the joint shareholder along with her husband was entitled to be registered as a shareholder by virtue of Instruction No. 3 on the application form and was accordingly registered as a shareholder on 10th May, 1990 on the death of her husband. She, therefore, contended that the allegations made, insofar as her husband as a member is concerned, appear to be misplaced and the result of a lack of information. The Petition was dismissed by the High Court and hence the present appeal.

3. One **Kamlesh Kumar Jain** has preferred a Writ Petition No. 878 of 1989 under Article 32 of the Constitution claiming to be a double granduate, B.Com., LL.B. and a post-graduate M.Com. with 8 years' experience in Delhi Stock Exchange. He contends that the Expert Committee had wrongly rejected his application for being admitted to the membership of the Stock Exchange and has also prayed that the total membership should be increased to Rs. 500 and a fresh advertisement inviting applications from members of the public should be issued thereafter. The learned counsel appearing for the respective parties were heard at length. We find from the judgment of the Delhi High Court in *Rajesh Kumar Maheshwari v. Union of India & Ors.*, reported in A.I.R. 1992 Delhi 68 that the Division Bench rejected the contention on the ground that the approval granted by the Central Government by the letter of 5th February, 1987, was violative of Article 14 of the Constitution and those seeking membership through public issue of shares constitute a class by themselves only and distinct from the class comprising those seeking membership through dilution of shareholding of existing members. Therefore, the condition in regard to higher deposit from those belonging to the first category as compared to those belonging to the second category cannot be said to be unconstitutional. This is how the High Court answers the contention in paragraph 29 of its judgment :

"It appears to us that the argument regarding discrimina-

- A tion is not tenable. It is well settled that to sustain a plea of discrimination, it is essential to establish that all persons dis-similarly treated constitute a homogeneous class. In the present case, members of the public and authorised assistants of members of the Delhi Stock Exchange do not constitute a homogeneous class. The classification is based on the fact that persons who have been working over the years in the Stock Exchange have acquired a certain expertise as compared to the general public and, therefore, they constitute two different groups."
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- C We think that the High Court negated the challenge on correct principles.

4. Insofar as the challenge relating to the personnel of the Expert Selection Committee was concerned the High Court points out that under the Memorandum of Articles of Association, the selection of members is purely by members of the Board of Directors. The validity of that provision was not put in question. Consequently, the High Court found it difficult to appreciate how the constitution of the Expert Selection Committee could be said to be arbitrary when its members are from amongst the Directors of the Board of the Stock Exchange. We also fail to appreciate how the constitution of the Expert Committee can be said to be arbitrary and violative of Article 14 of the Constitution; in fact there is no basis on which a foundation to be laid for the challenge. We are, therefore, in agreement with the view taken by the High Court in this behalf.

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5. It is significant to note that the selection of members by the Expert Committee had to be done on the basis of an objective criteria taking into consideration experience, professional qualifications and similar related factors. In the present cases, we find that certain percentage of marks were allocated for each of these factors, namely, educational qualifications, experience, financial background and knowledge of the relevant laws and procedures pertaining to public issues etc. Of the total marks allocated only 20 per cent were reserved for interviews. Therefore, the process of selection by the Expert Committee was not left entirely to the sweet-will of the members of the Committee. The area of play was limited to 20 per cent and having regard to the fact that the members of the Expert Committee comprised of two members nominated by the Central Government it is difficult to accept the contention that they acted in an unreasonable or

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arbitrary fashion. The constitution of the Expert Committee itself shows that Shri Bansal was not in a position to influence the other members of the Committee so as to tilt the balance in favour of the members of his fraternity, that is, the Chartered Accountants. The allegation that as many as 69 selected persons who were Chartered Accountants found their way in the select list merely because Shri R.N. Bansal was a Chartered Accountant and favoured persons belonging to his fraternity must be rejected for want of reliable material on record. It is true that amongst the Chartered Accountants selected by the Expert Committee there are those who had passed in 1985, 1987 and 1988, as for example, Mahesh Chand Gupta, Satish Kumar Chhabra, Anup Jain, Ashok Gupta, Arun Kumar and Shyam Lal Sharma. Merely because a large number of Chartered Accountants were selected and merely because some of them had recently qualified is no ground to set aside the selection. The respondents have rightly emphasised that since Chartered Accountants had special knowledge of the working of financial institutions and the mechanics of public issue of shares as well as dealings with the Controller of capital issues, etc., they could fare better at the interview, being abreast with law, guidelines and policies of the Central Government in this behalf. So also, merely because the petitioner/appellant had past experience of Stock Exchange working and was a highly educated person is no ground to doubt the integrity of the members of the Expert Committee and their selection. It must be realised that the majority marks were given on the basis of the objective criteria and the interviews were arranged to ascertain the knowledge of the candidates in regard to current developments in the field of capital issues, bouns issues, shareholder service and the like. It must not be forgotten that the Court's role in such matters is limited and it does not function as an appellate authority over the selection done by an expert body unless it is shown by cogent and convincing evidence that the selection was biased, capricious, whimsical or arbitrary. General allegations of the type made cannot, in our opinion, nullify the selection process unless concrete facts are established to show that the members of the Expert Committee had at the behest of Shri Bansal favoured the Chartered Accountants. Similarly, it must be shown that the members of the Expert Committee were biased against the petitioner/appellant; however, none could be pointed out by counsel. We, therefore, find it difficult to uphold the contention of the petitioner/appellant in this behalf. Insofar as Smt. Nirmala's selection is concerned we think her explanation is quite satisfactory. Similarly, so far

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- A** as the petitioner Kamlesh Kumar Jain is concerned he too has not laid any foundation, besides stating his educational qualifications and past experience, to enable this Court to doubt the selection process. His request for enhancing the number of members is not a matter in regard to which this Court would like to issue a mandate. It is a matter of policy which, as we have pointed out earlier, was worked out carefully after extended correspondence between the Delhi Stock Exchange and the Central Government and in such matters of policy this Court is always reluctant to interfere.
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- C** The above are the reasons for the dismissal of both the appeals and the Writ Petition. The I.As. will also stand disposed of in the light of the above judgment.

G.N.

Matters dismissed.