

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION (L) NO. 114 OF 2014**

Indian Council of Investors .. Petitioner
vs.
Union of India and ors. .. Respondents.

Ms Armin Wandrewala i/b Mr. Sutapa Saha for the Petitioner.
Mr. Vijay H. Kantharia a/w. Mr. R.A. Lokhande for Respondent No.1-UOI.
Ms Harshada Nagare i/b Daya Gupta for Respondent No.4.
Mr. Rafique Dada, Sr. Advocate a/w. Mr. Omprakash Jha i/b The Law Point for Respondent No.5-SEBI.
Mr. H.V. Kode for Respondent No.9.

**CORAM: MOHIT S. SHAH, C.J. &
M.S.SONAK, J.**

**JUDGMENT RESERVED ON : 10 OCT. 2014
JUDGMENT PRONOUNCED ON : 15 JAN. 2015**

JUDGMENT (PER M.S. SONAK, J.) :

1] By this petition, styled as '*Public Interest Litigation*', the petitioner, a company incorporated under Section 25 of the Companies Act, 1956 and having as its objective, the promotion and protection of the interest of investors in primary and secondary markets, seeks the following reliefs:-

“(a) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing:

- (i) the Respondent No.1 to frame the guidelines setting up vigilance structure for all Autonomous Regulators including, inter alia, Respondent Nos.3 to 7;*
- (ii) the Respondent No.2 to take necessary corrective actions in the case of Regulatory Bodies, over which it*

exercises vigilance administration and/or jurisdiction and/or superintendence and in particular in the case of the affairs of Respondent No.5 in the light of the irregularities set forth herein;

(iii) to order and direct Respondent Nos.1 and 2 to ensure that all CVOs in all Autonomous Regulatory Bodies including, inter alia, Respondent Nos.3 to 7 are appointed with the prior approval of Respondent No.2 and further that such appointment is in consonance and in conformity with the various circulars and guidelines, as issued from time to time by Respondent Nos.1 and/or 2, and to take corrective measures where necessary;

(iv) to direct Respondent Nos.1 and / or 2 to examine the recruitment and posting of the officials and more particularly the CVOs of all Autonomous Regulatory Bodies including, inter alia, Respondent Nos.3 to 7 and to ensure that the same conforms with the requirements of the CVC Act, guidelines and the circulars issued by Respondent Nos.1 and/or 2 in that behalf, and to take corrective measures where necessary;

(v) to direct that the views of the present CVO of Respondent No.5 should be disregarded in his interactions with other agencies such as CBI/CVC due to conflict of interest.

(b) that pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to direct Respondent No.5 not to go ahead with the re-appointment of the CVO / Executive Director, Investigation Department;

(c) that, pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to direct that the views of the present CVO of Respondent NO.5 should be disregarded in his interactions with other agencies such as CBI/CVC due to conflict of interest.

(d) for interim/ad-interim relief in terms of prayer clauses (b) and (c) above;

(e) for costs;

(f) for such other and further reliefs as the nature and circumstances of the case may require.”

2] Although the reliefs in the petition are couched in wide and general terms, Ms Armin Wandrewala, learned counsel for the petitioner laid particular emphasis upon the apprehended continuance of Mr. R. K. Padmanabhan (respondent No.9) in the post of Executive Director (*Investigation Department*) and Chief Vigilance Officer (CVO), SEBI, *inter alia*, on the ground that such appointment/continuance was in breach of the Central Vigilance Commission Act, 2003, Guidelines and Circulars issued by respondent Nos.1 and 2 from time to time. The learned counsel contended that the holding of such twin posts would lead to issues of conflict of interest. At the stage when this petition was filed, i.e., on or about 13 September 2014, it was stated that the term of respondent No.9 was to expire by the month end and there was an apprehension that respondent No.9 would be reappointed to the post of Executive Director (Investigation Department) and CVO.

3] In support of the petition, Ms Wandrewala made reference to several correspondences concerning the issue of appointment of CVO on full time/part time posts as well as desirability of combining in a single incumbent, the posts of Executive Director (Investigation Department) and CVO. On basis thereof, Ms Wandrewala submitted that directions have been issued by the Central Vigilance Commission from time to time in the matter of appointment of full time/part time CVO in public sector undertaking autonomous institutions and statutory bodies. Such directions/directives clearly contemplate the appointment of eligible persons without any blemish whatsoever as well as

persons, who are themselves not assigned with any executive functions, which are likely to require vigilance sensitivity. Ms Wandrewala made reference to and relied upon the Office Memorandum dated 30 November 2012 issued by Ministry of Personnel, Department of Personnel and Training (DoPT) containing guidelines for strengthening of vigilance set up in Ministries/Departments. Clause 3(i) of Office Memorandum dated 30 November 2012 reads thus:

“3.

(i) *It should be ensured that the Administration and Vigilance Wing are exclusively separate from each other in each Ministry/Department. Para 2.9 of vigilance manual issued by CVC indicates that participation in decision making or close association of vigilance staff in such matters over which they might be required, at a later stage, to sit in judgment from vigilance point of view, should be avoided. Therefore, vigilance functionaries should not be a party to processing and decision-making processes or in other similar administrative transactions of such nature, which are likely to have clear vigilance sensitivity. While it may not be difficult for full -time vigilance functionaries to comply with this requirement, the compliance of these instructions could be achieved in respect of part-time vigilance functionaries by confining their duties, other than those connected with vigilance work, as far as possible, to such items of work that are either free from vigilance angle or serve as input to vigilance activities such as inspection, audit, etc. These instructions should be adhered to strictly”.*

4] Ms Wandrewala also placed reliance upon the decision of the Supreme Court in case of *Centre for PIL and anr. V/s. Union of India and another*¹, to submit that person holding the position of CVO must be without any blemish whatsoever and such appointments ought not to be made merely because a person may

¹ (2011) 4 SCC 1

be eligible to be considered for the post. Further in making appointments to such sensitive posts, institutional integrity and not merely, the personal integrity ought to be primary consideration. In making such appointments, it has to be ensured that the appointee is both independent and impartial, which attributes can be achieved only when the CVO is not assigned any other significant or vigilance sensitive duties in the executive branch.

5] Mr. Rafique Dada, learned senior advocate for SEBI (respondent No.5), at the outset raised the preliminary objections to the maintainability of the petition on grounds of non-compliance with the provisions of Bombay High Court Public Interest Litigation Rules, 2010. Without prejudice, Mr. Dada pointed out that SEBI has been following a practice for several years that one of the senior officers is given the charge of CVO as a part time responsibility and that this practice is in keeping with the practice in several other similar organizations and in accordance with CVC Guidelines. Further, the SEBI has already requested the Central Vigilance Commission (CVC) for guidance in the matter, which is awaited. Mr. Dada further submitted that such an issue may not be gone into in the present petition, particularly as the SEBI has assigned the function of part time CVO to some other Executive Director and the apprehension expressed by the petitioner no longer survives. This position has been informed to CVC vide SEBI letter dated 26 September 2014 and specific guidance has been sought regarding appointment of

CVO in SEBI on part time basis. In such circumstances, Mr. Dada submitted that grievance of the petitioner stands adequately redressed and no useful purpose would be served in entertaining the present petition.

6] As noted earlier, although the reliefs in the petition were couched in wide and general terms, the controversy during the course of arguments narrowed down to the apprehended continuance of respondent No.9 in the posts of Executive Director(Investigation) and CVO for yet another term. In the matter of appointments of CVO, respondent Nos.1 and 2 have issued guidelines from time to time, which undoubtedly make it clear that the CVO ought not to be a party to processing and decision making process or in other similar administrative transactions of such nature, which are likely to have clear vigilance sensitivity. The guidelines note that while it may not be difficult for full-time vigilance functionaries to comply with such guidelines, compliance could be achieved in respect of part-time vigilance functionaries by confining their duties, other than those connected with vigilance works, as far as possible, to such items of work that are either free from vigilance angle or serve as input to vigilance activities such as inspection, audit etc. Obviously, such guidelines are to ensure that there arises no issue of conflict of interest. However, at the same time, such guidelines do not completely rule out the appointments of CVOs on part time basis. The CVC Annual Report 2013, upon which reliance was placed by learned counsel for respondent No.5 suggest that out of total 607

CVOs in 607 departments/organizations, almost 410 CVOs are acting as part time CVOs.

7] In the present case, the apprehension with which the petitioner has approached this Court no longer survives. The grievances raised by the petitioner, in particular, related to apprehended continuance of respondent No.9 in the post of Executive Director (Investigation) and CVO. In the return filed by and on behalf of SEBI-respondent No.5 it has been clearly stated that the part time CVO function has now been assigned to another Executive Director Mr. Gyan Bhushan. Para 12 of the affidavit-in-reply filed by and on behalf of SEBI, in this regard reads thus:

“12. Meanwhile in view of the pressure of work with ED (Investigations) and SEBI's enhanced focus on quick disposal of investigation cases; the part time CVO function has been assigned to another Executive Director, Shri. Gyan Bhusan. This has also been informed to CVC vide SEBI letter dated 26.09.2014 and specifically guidance has been sought regarding CVOs work in SEBI as part time work.”

8] There are several guidelines in the matters of setting up of vigilance structure in respect of PSUs Autonomous Institutions and Statutory Authorities. The allegation in the petition that the appointments of CVOs is not in consonance with various Circulars and Guidelines issued from time to time by respondent Nos.1 and 2 is vague and on basis thereof no reliefs can be granted to the petitioner in this petition. Besides from the correspondence and other material on record, it does appear that respondent Nos.1 and 2 are alive to and are taking steps to ensure

that PSUs, Autonomous Institutions and Statutory Authorities have set up appropriate vigilance structure, in order to deal with vigilance issues.

9] For all aforesaid reasons, we are of the opinion that no further useful purpose would be served by entertaining the present petition. The petition is, accordingly, dismissed. There shall be no order as to costs.

CHIEF JUSTICE

(M.S.SONAK, J.)