

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.01.2017

PRONOUNCED ON : 01.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Writ Petition Nos.22162 & 22163 of 2013 and
M.P.Nos.1 of 2013 in
W.P.Nos.22162 & 22163 of 2013

Smt Mary Roseline .. Petitioner in W.P.No.22162 of 2013
Mr.Stephen .. Petitioner in W.P.No.22163 of 2013

Vs

1.Union of India,
Rep. By Secretary,
Department of Commerce and Industries,
New Delhi.

2.The Chairman,
Multi Commodity Exchange of
India Ltd.,
Exchange Square,
No.255, Suren Road,
Chakala,
Andheri (East) Mumbai - 400 093

3.The Senior Manager,
Legal & Compliance,
Geojit Comtrade Ltd.,
10th Floor, BNP Paribas
Corporate Office Building,
No.34/659-P Civil Line Road
Padivattom. Kochi - 682 024

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4.Mr.Justice E.Padmanaban
C/o Multi Commodity Exchange of
India Ltd.,
First Floor, Dhosi Towers,
No.1A & B, Poonamallee High Road,
Kilpauk, Chennai - 600 010.

5.Mr.S.Subramaniam
C/o Multi Commodity Exchange of
India Ltd.,
First Floor, Dhosi Towers,
No.1A & B, Poonamallee High Road,
Kilpauk, Chennai - 600 010.

6.Mr.N.Ramakrishnan
C/o Multi Commodity Exchange of
India Ltd.,
First Floor, Dhosi Towers,
No.1A & B, Poonamallee High Road,
Kilpauk, Chennai - 600 010.

... Respondents in W.P.No.22162/2013

1.Union of India,
Rep. By Secretary,
Department of Commerce and Industries,
New Delhi.

2.The Chairman,
Multi Commodity Exchange of
India Ltd.,
Exchange Square,
No.255, Suren Road,
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4.Mr.Justice E.Padmanaban
C/o Multi Commodity Exchange of
India Ltd.,
First Floor, Dhosi Towers,
No.1A & B, Poonamallee High Road,
Kilpauk, Chennai - 600 010.

5.Mr.A.C.C.Unni
C/o Multi Commodity Exchange of
India Ltd.,
First Floor, Dhosi Towers,
No.1A & B, Poonamallee High Road,
Kilpauk, Chennai - 600 010.

6.Mr.K.K.Balu
C/o Multi Commodity Exchange of
India Ltd.,
First Floor, Dhosi Towers,
No.1A & B, Poonamallee High Road,
Kilpauk, Chennai - 600 010.

.. Respondents in W.P.No.22163/2013

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of declaration declaring the Rule 15.22 in Bye-laws of MCX (Multi Commodity Exchange of India Ltd.,) prohibiting of the appearance through counsel of the litigant as ultravires to the constitution of India.

For Petitioner
in both W.Ps : Mr.V.Manohar

For R.1
in both W.Ps : Mr.A.Kumaraguru, CGSC

For R.2
in both W.Ps : Mr.S.Rajendra Kumar

For RR.4 to 6
in both W.Ps : No Appearance

COMMON ORDER

(Common order of the Court was made by S.Nagamuthu.J)

The petitioners have come up with these writ petitions challenging the Bye-law 15.22 of the second respondent - MCX (Multi Commodity Exchange of India Ltd.,). The Exchange is a National Commodity Exchange, duly recognized on a permanent basis as an Association (Commodity Exchange), by the Central Government under Section 6 of the Forward Contracts (Regulation) Act, 1952 (FCRA) and registered by the Forward Markets Commission (FMC) for the regulation and control of business

relating to Forward Contracts (also known as Future Contracts) under the provisions of FCRA and the orders, directives and guidelines issued by the Forward Markets Commission from time to time.

2.All claims, differences or disputes between the members inter se or between a member and a constituent member or between a member and a registered non-member client or arising out of or in relation to trades, contracts and transactions executed on the Exchange and made subject to the Bye-laws, Rules and Regulations of the exchange or with reference to anything incidental thereto or in pursuance thereof or relating to their validity, construction, interpretation or fulfillment and/or the rights, obligations and liabilities of the parties thereto and including any question of whether such trades, contracts and transactions have been entered into or not shall be submitted to arbitration in accordance with the provisions of these Bye-laws and Regulations that may be in force from time to time. Provided these Bye-laws shall not in any way affect the jurisdiction of the Exchange on the clearing member through whom such a member has dealt with or traded in regard thereto and such clearing member shall continue to remain responsible, accountable and liable to the Exchange in this behalf.

3.The Arbitrator shall be selected from the panel of Arbitrators. The Arbitral Tribunal means, one or more Arbitrators constituting a Tribunal to adjudicate a reference to arbitration. Thus, it is the Tribunal which adjudicates a reference, as already pointed out.

4.Bye-law 15.22 which is under challenge reads as follows:-

"15.22 Appearance of Counsel, Attorney or Advocate not permitted: In arbitral proceedings, the parties to the dispute shall not be permitted to appear by counsel, attorney or advocate."

5.According to the petitioners, such prohibition for engaging a counsel to appear before the Arbitrator on behalf of a party to the arbitration is illegal and as it is against the law of arbitration and also the Advocates Act. Aggrieved by such refusal by the Tribunal to permit a counsel, the petitioners have come up with these writ petitions challenging the Bye-law 15.22.

6. We have heard the learned counsel for the petitioners; learned Central Government Standing Counsel appearing for the first respondent; the learned counsel appearing for the second respondent and the learned counsel appearing for the third respondent. There is no representation for the respondents 4 to 6.

7. These writ petitions have been pending from the year 2013. It is brought to the notice of this Court that during the pendency of these writ petitions, the Forward Contracts (Regulation) Act 1952 was repealed and the Forward Market Commission (FMC) was merged with the Securities and Exchange Board of India (SEBI) with effect from 29.09.2015, in terms of Section 131 (B) of the Finance Act, 2015. Accordingly, the Regulation of Commodity Derivative Markets and the matter connected therewith are entrusted to SEBI. The exchange is now under the regulatory purview of SEBI pursuant to repeal of FCRA and merger of FMC with SEBI.

8. However, the Rules, Regulations and Bye-laws of the MCX approved under the provisions of the FCRA/SCRA (Securities Contract Regulation Act, 1956) and also the Circulars issued by the Exchange from time to time are valid and statutory in nature. Now, after obtaining approval from SEBI for the Rules and Bye-laws made under SCRA, the Exchange has published the same in Gazette of India on 24th September 2016. The said Bye-laws and Rules and Exchange made under SCRA coming into force from 29.09.2016. The new Bye-law 15.22 reads as follows:-

"Appearance in arbitral proceedings by counsel, attorney or advocate: In arbitral proceedings where both the parties are members, the parties shall not be permitted to appear through counsel, attorney or advocate but where one of the parties is a constituent/client, and then such constituent/client shall be permitted to appear through counsel, attorney or advocate, then the Member shall be granted a similar privilege".

9. Thus, the Bye-law 15.22 which was issued under the Forward Contract (Regulation) Act, 1952 and the Forward Markets Commission (FMC) is no more in force as the same has been repealed by the Bye-law 15.22 of the Bye-laws issued under the Securities Contract Regulation Act, 1956 with effect from 29.09.2016. But, the petitioners have not chosen to challenge the new Bye-law which has been introduced with effect from

29.09.2016. The petitioners continue to challenge only Bye-law 15.22 issued under FCRA. Since, there is no challenge to the new Bye-law and since, the Bye-law under challenge stands repealed, we are unable to examine the new Bye-law. Therefore, the writ petitions are liable to be dismissed.

10. In the result, the writ petitions fail and accordingly, the same are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Secretary,
Union of India,
Department of Commerce and Industries,
New Delhi.

+3cc to M/S.V.Manohar, Advocate Sr.13420, 13430, 13419
+1cc to Mr.A.Kumaraguru, Advocate Sr.13478
+1cc to Mr.P.Chandrasekar, Advocate Sr.14040
+2cc to M/S.Suresh Associates, Sr.13256, 13255

W.P.Nos.22162 & 22163 of 2013

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