IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.3581 OF 2019

Dr.Prannoy Roy & another … Petitioners

Vs

Securities and Exchange Board of India & another … Respondents

Ms.Fereshte D. Sethna with Mr.Adhiraj Malhotra i/b DMD Advocates for the Petitioners

Mr.J.J. Bhatt, Senior Advocate with Mr.Mihir Mody and Mr.Arnav Misra i/b K.Ashar & Co. for Respondent No.1 - SEBI

CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.

DATED: JANUARY 6, 2020

P.C.:

1. By this petition under Article 226 of the Constitution of India, the petitioners seek the following reliefs:

> “(a) that this Hon’ble Court be pleased to issue a writ of certiorari and/or mandamus and/or prohibition, or any writ, order or direction analogous thereto, calling for the records and proceedings pertaining to the Impugned Notice dated 31 August 2018 issued by Respondent No.1 and after examining the validity, legality and propriety thereof, quash and/or set aside the same and declare it *non est,* void and unenforceable;

(b) that this Hon'ble Court be pleased to issue a writ of mandamus, or any writ, order or direction analogous thereto, to Respondent No.1 for the grant of full, free and unhindered inspection of all material gathered in the course of investigations by Respondent No.1, which culminated in the Investigation Report bearing No.IVD/ID2/2015-16/11 and/or the Impugned Notice dated 31 August 2018 issued by Respondent No.1, and further to permit the Petitioners to full opportunity to controvert all statements, if any, relied upon by Respondent No.1 in relation to the Impugned Notice;

(c) that pending the hearing and final disposal of this petition, this Hon'ble Court be pleased to issue *rule nisi* in terms of prayers (a) and (b) above, by way of ad-interim/interim reliefs;

(d) that pending the hearing and final disposal of this petition, this Hon'ble Court be pleased to restrain Respondent No.1 from the conduct of proceedings against the Petitioners in pursuance of the Impugned Notice;

(e) for ad-interim/interim reliefs in terms of prayer clauses (c) and (d);

(f) such further or other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. This Writ Petition was argued before us extensively on 2.1.2020 and it was posted today only to facilitate Ms.Sethna, appearing for the petitioners, to take instructions on whether the petitioners are inclined to invite an adverse order or would take an appropriate decision.

3. We expressed our disinclination to interfere with the show-cause notice dated 13.8.2018 issued by respondent No.1.

4. The allegation is that it is issued 10 years after the alleged trading activity in violation of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.

5. Exhibit A to the petition is a copy of the show-cause notice and that says that the Securities and Exchange Board of India (SEBI), the respondent No.1 before us, has received certain complaints from New Delhi Television Limited, referred to hereinafter as ‘NDTV’, on 16.7.2013, 27.12.2013 and 9.1.2014 *inter alia* alleging that Sanjay Dutt and certain entities referred in paragraph 1 of the notice were involved in dealing with securities of NDTV in violation of the aforenoted regulations.

6. The period covered by the show-cause notice is from September 2006 to June, 2008 and the copies of the complaints are attached as Annexure 1 to the show-cause notice. The SEBI alleges that it conducted investigation into the suspected insider trading in the scrips of NDTV during the period from September 1, 2006 to June 30, 2008 and the observations of the investigations

are dealt with in subsequent paragraphs of the notice. After the observations are extensively referred in this show-cause notice, it concludes by calling upon the petitioners before us to show cause as to why directions under section 11B of the Securities and Exchange Board of India Act, 1992 including direction for the disgorgement of illegal gains be not issued against the petitioners for the aforementioned alleged violations of the SEBI Act, 1992 and PIT Regulations.

7. The petitioners do not dispute that they are in receipt of this notice but in further paragraphs of the petition and particularly, from paragraphs 3 to 10, they say that respondent No.1 initiated adjudication proceedings against the petitioners vide the impugned notice for alleged violation, *inter alia,* of sections 12A(d), (e) of the SEBI Act read with Regulation 3(i) and Regulation 4 of the PIT Regulations. The principal allegation in the impugned notice is that the petitioners, being promoters, and qualifying as insiders, traded in the shares of NDTV while in possession of UPSI. That the petitioners say is the abbreviation of the words, unpublished price sensitive information. The petitioners say that on receipt of this notice, correspondence was initiated so as to seek inspection

of all documents, records, internal file notings, relevant to or supporting or adverse. The petitioners do not deny that the authorised legal representatives of the petitioners took inspection of the documents provided by respondent No.1 but complain that the petitioners were not provided inspection of the investigation report, internal file notings or orders. The petitioners did file a reply to the show-cause notice on 31.7.2019 and *inter alia* urged that the notice was hopelessly time barred. There was a hearing on this show-cause notice scheduled on 26.9.2019 and the petitioners do not deny that this hearing was offered and was adjourned from time to time. However, the entire petition proceeds on the allegation or averment that only partial inspection has been granted. The inspection is not full, fair and complete. It is also not denied that a Writ Petition with a similar grievance was filed in the Honourable High Court of Delhi being Writ Petition (Civil) No.9114 of 2018 which came to be disposed of with the following order:

> "<u>CM APPL.35181/2018 (for exemption)</u>
>
> Allowed, subject to all just exceptions.
>
> <u>W.P. (C) 9114/2018 & CM APPL.35180/2018 (for interim relief)</u>
>
> Issue notice, Ms.Sandhya Kohliar, Advocate for respondent No.1 and Mr.Anurag Ahluwalia, Advocate for respondent No.2 accept notice.
>
> We have heard learned counsel for the parties.
>
> It is apparent that no notice of inquiry has been issued

by the respondent-Securities and Exchange Board of India (hereinafter 'SEBI'), which can result in an adverse finding. In these circumstances, the investigation – which is alleged to be carried out by SEBI would not be presently interfered with.

The SEBI shall ensure the inspection of all materials that have been investigated pertaining to the show cause notice, which is the subject matter of the investigation, is provided. However, if there is any confidential material concerning a third party, which too might be under investigation or other confidential material, which SEBI feels would be prejudicial, it is open to it to segregate or de-tag such material while complying with the order.

List on 27^{th} November, 2018.

A copy of the order be given *dasti* under the signatures of the Court Master."

8. This Writ Petition says that despite the High Court of Delhi observing as above, the show-cause notice will proceed without the inspection of all materials being provided to the petitioners.

9. We do not think that we should allow the petition to be prosecuted as its obvious purpose is to delay the adjudication of the show-cause notice. It is not as if the petitioners cannot appear before SEBI without prejudice to their rights and contentions and complaint that they were not provided full, free and unhindered inspection of the relevant records and documents. The petitioners can participate in the hearing or adjudication of the show-cause notice without prejudice to all their rights and contentions including on the above point. They can very well substantiate their primary

contention that on the face of it, the show-cause notice is time barred. We do not think that we should interfere with the show-cause notice as that relief could have been claimed but advisedly not claimed earlier. It may be that the Writ Petition filed before the Hon'ble High Court of Delhi is filed by another entity and not the petitioner. Secondly, when that High Court passed the order, the present petitioners were not served with the show-cause notice. However, even that High Court expressed its reluctance to interfere with the investigations by SEBI. Pertinently, Ms.Sethna does not seek the relief of quashing of the show-cause notice. We fail to understand the reluctance of the petitioner to appear before SEBI reserving its rights and contentions.

10. The Writ Petition before this Court with virtually the same complaint should not be entertained as that would mean that this Court can be approached challenging such a show-cause notice, when the petitioners were aware that they first approached through their promoter group, the High Court of Delhi. The grievance being more or less the same, we do not think that this Petition should be entertained only on the ground of alleged lack of inspection. We do not think that the petitioners cannot properly defend

themselves. The petitioners can participate in the adjudication or the hearing and in the event any adverse order is passed, while challenging the same, the petitioners can highlight all the grievances and grounds projected in the petition before the High Court of Delhi and this High Court. They can very well complain that no inspection of the records or documents, which have been relied upon to render an adverse finding, was provided and, therefore, there is a gross violation of the principles of natural justice and the adjudication is unfair, arbitrary and discriminatory. Once all such courses are open and can be taken recourse to, all the more, we are disinclined to entertain this Writ Petition.

11. It is accordingly dismissed. No costs.

(R.I. CHAGLA, J.) **(S.C. DHARMADHIKARI, J.)**

Vishwanath S. Sherla

Digitally signed by Vishwanath S. Sherla
Date: 2020.01.10 11:06:32 +0530