

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.17547 of 2022 (O&M)

Reserved on 09.08.2022.

Date of Decision:12.09.2022

MANISH GOEL

.....Petitioner

V/s.

**SECURITIES & EXCHANGE BOARD OF INDIA THROUGH ITS
CHAIRMAN AND ANOTHER**

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE HARMINDER SINGH MADAN

Present: Mr. Manish Goel, petitioner in person.

M.S. RAMACHANDRA RAO, J.

Background facts

Petitioner is an individual claiming to be involved for more than 14 years in the Securities Market and also claims to have expertise in Equity Research and Market Assessment.

On 16.05.2017, he had got registered himself with the Securities & Exchange Board of India (for short “the Board”) as a Research Analyst.

The Board, in exercise of powers conferred by sub-section (1) of Section 30 read with Clause (b) of sub-section (2) of Section 11 of the Securities and Exchange Board of India Act, 1992 (for short “SEBI Act”), had issued a notification on 01.09.2014 notifying the Securities and Exchange Board of India (Research Analyst) Regulations, 2014 (for short “the Regulations”).

The petitioner’s grievance is that on account of these Regulations, he has been deprived of his fundamental right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution

of India, the right to practice profession/business of his choice guaranteed under Article 19(1)(g) and 19(6) of the Constitution of India, and also right to liberty guaranteed under Article 21 of the Constitution of India due to the alleged unreasonable restrictions imposed by the said Regulations on the petitioner.

The petitioner alleges that the impugned Regulations restrict his fundamental Right of free speech and expression guaranteed by Article 19(1)(a) of the Constitution of India by making it mandatory for the petitioner to take Licence/Registration from the respondents just to speak or write regarding listed stocks, and for sharing stock related recommendations with others and on social media.

According to him, the citizens have a right to receive information and ideas, and if petitioner is prevented from exercising his right of free speech by making stock related recommendations, it would amount to denial to the general public of its right to receive information and ideas. He also alleges that the restrictions imposed by the said Regulations do not fall within the ambit of Clause (2) of Article 19 of the Constitution of India which permits certain reasonable restrictions to be imposed on the fundamental Right of free speech and expression.

It is his further grievance that his right to equality guaranteed by Article 14 of the Constitution of India is also violated because there are many businesses in India where citizens are doing consultancy, but which are not regulated by any Regulator. He gives illustration of the Astrologers and Management Consultancy done by the persons possessing qualification of the Masters in Business Administration.

According to him, the impugned Regulations are also not in pursuance to the directive principles of the State Policy guaranteed by Part IV of the Constitution of India.

Further his contention is that Article 19(1)(g) of the Constitution of India gives him a right/freedom to practice any profession or to carry on any occupation, trade or business; that such a freedom can only be curtailed to some extent by Article 19(6) of the Constitution of India which permits the State to impose, in the interest of the general public, reasonable restrictions in the exercise of right conferred by Article 19(1)(g), but the impugned Regulations including Regulations 2, 16(3), 27 and 31 do not fall within the purview of Article 19(6) of the Constitution of India as they are unreasonable, and are not in the interest of the general public.

As regards the challenge to Regulation 2 is concerned, the petitioner contends that the explanation to the definition of the word “*Research Analyst*” defined in Regulation 2(u) (which includes even people working in the office of the Research Analyst and mandating them also to get registered) violates Article 19(1)(g).

According to him, even providing opinion on specific stocks to Facebook friends or Twitter followers through Facebook and Twitter comes within the purview of Regulation 2(u), and the Regulations are arbitrary permitting the respondents to interpret them in any way they want and harass the general public.

Challenge to Regulation 27 (which empowers the Board to cause inspection of the books of accounts, records and documents relating

to a Research Analyst or a Research Entity) is alleged by the petitioner to be conferring excessive powers and unfettered discretion to harass anyone to settle personal scores. According to him, though there were no complaints against him, in November 2021, an inspection was launched against him under Regulation 27 to settle personal scores with him since he had earlier complained against the respondents to the higher authorities. He however admits that the respondents had launched an inspection based on a complaint received against him.

His challenge is also to Regulation 31 of the Regulations which entitles the Board, after consideration of the inspection report, and after giving reasonable opportunity of hearing to a Research Analyst or a Research Entity or its authorized representative to issue direction as it deems fit in the interest of securities market or the investors including a direction requiring the Research Analyst or Research Entity not to provide research recommendation for a particular period, requiring him or it to refund any money collected as fees, charges or commissions to from the clients along with requisite interest, and prohibiting the Research Analyst or Research Entity from operating in the capital market or accessing in the capital market for a specified period.

In his opinion, this amounts to conferring of unfettered, excessive and complete discretion on the respondents to take excessive and unreasonable action against the Research Analyst.

The doctrine of proportionality also, according to the petitioner, is violated by these Regulations.

CONSIDERATION BY THE COURT

We may point out that the SEBI Act was enacted to provide for the establishment of the Board to protect the interests of the investors in securities, and to promote the development of, and to regulate, the securities market, and for the matters connected therewith or incidental thereto.

Section 11 of the SEBI Act provides that *inter alia* it is the duty of the Board to protect the interests of the investors in securities, and to promote the development of, and to regulate securities market, by such measures as it deem fit which would include regulation of substantial acquisition of shares, and taking over of companies.

Coming to the impugned Regulations, before issuing the same, a consultation paper on the proposed Regulations of Research Analyst was issued by the Board for inviting public comments on 29.11.2013.

This document reveals that International Organizations of Security Commissions (IOSCO), in its objectives and principles of Securities Regulation, recognized that the entities that offer investors analytical or evaluative services should be subject to oversight and regulation appropriate to the impact their activities have on the market or the degree to which the regulatory system relies on them.

It further reveals that the Board of the SEBI in its 138th Board meeting held on 28.7.2011 had approved a proposal that SEBI may consider the IOSCO principles on analytical services and may consider regulating research analysts in Indian securities market through an exclusive and comprehensive regulation.

According to the said document, the International Advisory Board of SEBI, in its meeting held on 3.11.2012, discussed the issue of regulation of research analysts and a view emerged that the analysts providing services for a fee may be considered for regulation under the Investment Advisor Regulations and that for other analysts, a separate code or set of guidelines may be considered.

It was felt necessary to address the question of analysts' conflict of interest issue.

The consultancy paper recognizes the important role which Research Analysts play in providing timely and accurate information about investment products for making investment decisions by potential investors. It also recognizes that such advice from the investment analysts is many times prone to conflicts of interests that may prevent them from offering independent and unbiased opinions.

According to the consultation paper, these conflicts would hamper the neutrality of a research report which affects the investment decision of the investors; if some entity produces a biased research report to inflate the price artificially, the market at large gets affected; secondly, the quality of the analysis depends on the market and the industry experience of the Research Analyst, and it may be preferable to have appropriate regulations of Research Analysts that will not only ensure the *neutrality* of the research reports, but also improve the *quality* of the reports.

The consultative paper recognizes that there was no guideline to identify and deal with the conflict of interests by Research Analyst who are not registered by the Board, and absence of an exclusive and

comprehensive regulations to deal with the conflicts of interest by the Research Analyst posed regulatory gaps in the management and mitigation of possible conflicts of interest that may arise in their activities in the securities market.

According to the consultative paper, there was a need to have mechanism to ensure that business relationship of the intermediary or financial or trading interest of the Research Analyst or intermediary or compensation arrangement of the Research Analyst etc. do not prejudice research report or the recommendations. It was felt that the comprehensive regulatory framework would be required to address conflicts of interest and to minimize market malpractices so that at the end of the day, impartiality in the research reports is largely ensured.

With the above noble objectives in mind, the impugned Regulations have been enacted by the Board.

Regulation 2 (u) defines the term “Research Analyst” as under:-

“(u) “research analyst” means a person who is primarily responsible for,-

- i. preparation or publication of the content of the research report; or*
- ii. providing research report; or*
- iii. making 'buy/sell/hold' recommendation; or*
- iv. giving price target; or*
- v. offering an opinion concerning public offer,*

with respect to securities that are listed or to be listed in a stock exchange, whether or not any such person has the job title of 'research analyst' and includes any other entities engaged in issuance of research report or research analysis.

Explanation.-The term also includes any associated person who reports directly or indirectly to such a research analyst in connection with activities provided above;”

Regulation 2 (v) defines the term “Research Entity” as under:-

“(v) "research entity" means an intermediary registered with Board who is also engaged in merchant banking or investment banking or brokerage services or underwriting services and issue research report or research analysis in its own name through the individuals employed by it as research analyst and includes any other intermediary engaged in issuance of research report or research analysis;”

Regulation 2 (w) defines the term “Research Report” as under:-

“(w) “research report” means any written or electronic communication that includes research analysis or research recommendation or an opinion concerning securities or public offer, providing a basis for investment decision and does not include the following communications:-

- (i) comments on general trends in the securities market;*
- (ii) discussions on the broad-based indices;*
- (iii) commentaries on economic, political or market conditions;*
- (iv) periodic reports or other communications prepared for unit holders of mutual fund or alternative investment fund or clients of portfolio managers and investment advisers;*
- (v) internal communications that are not given to current or prospective clients;*
- (vi) communications that constitute offer documents or prospectus that are circulated as per regulations made by the Board;*
- (vii) statistical summaries of financial data of the companies;*

- (viii) technical analysis relating to the demand and supply in a sector or the index;*
- (ix) any other communication which the Board may specify from time to time;”*

Regulation 3 of the Regulations makes it necessary for the Research Analyst to obtain a Certificate of Registration from the Board under the Regulations after their commencement.

Regulation 7 of the Regulations prescribes the minimum qualifications to be possessed by an individual registered as Research Analyst or by individuals employed as Research Analyst and partners of Research Analyst. It states as under:-

“Regulation 7

(1) An individual registered as research analyst under these regulations, individuals employed as research analyst and partners of a research analyst, if any, engaged in preparation and/or publication of research report or research analysis shall have the following minimum qualifications, at all times:

(i) A professional qualification or post-graduate degree or post graduate diploma in finance, accountancy, business management, commerce, economics, capital market, financial services or markets provided by:

(a) a university which is recognized by University Grants Commission or by any other commission/council/board/body established under an Act of Parliament in India for the purpose; or

(b) an institute/association affiliated with such university; or

(c) an institute/ association/university established by the central government or state government; or

- (d) *autonomous institute falling under administrative control of Government of India; or*
- (ii) *professional qualification or post-graduate degree or post graduate diploma which is accredited by All Indian Council for Technical Education, National Assessment and Accreditation Council or National Board of Accreditation or any other council/board/body set up under an Act of Parliament in India for the purpose; or*
- (iii) *a graduate in any discipline with an experience of at least five years in activities relating to financial products or markets or securities or fund or asset or portfolio management.*
- (2) *An individual registered as research analyst under these regulations, individuals employed as research analyst and partners of a research analyst, if any, shall have, at all times, a NISM certification for research analysts as specified by the Board or other certification recognized by the Board from time to time:*

Provided that research analyst or research entity already engaged in issuance of research report or research analysis seeking registration under these regulations shall ensure that it or the individuals employed by it as research analyst and/or its partners obtain such certification within two years from the date of commencement of these regulations:

Provided further that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements.”

It is settled law that the power to impose restrictions on fundamental rights is essentially a power to ‘regulate’ the exercise of these rights; and in fact ‘regulation’ and not ‘extinction’ of that which is to be

regulated is, generally speaking, the extent to which permissible restrictions may go in order to satisfy the test of reasonableness.

In **Bennett Coleman & Co. v. Union of India**¹, the Supreme Court held :

“100. Permissible restrictions on any fundamental right, even where they are imposed by duly enacted law, must not be excessive, or, in other words, they must not go beyond what is necessary to achieve the objects of the law under which they are sought to be imposed. The power to impose restrictions on fundamental rights is essentially a power to “regulate” the exercise of these rights. In fact, “regulation” and not extinction of that which is to be regulated is, generally speaking, the extent to which permissible restrictions may go in order to satisfy the test of reasonableness. The term “regulate” has come up for interpretation on several occasions before American Courts which have held that the word “regulate” means “to adjust by rule, method, or established mode; to direct by rule or restrictions; to subject to governing principles or laws.” (See: Words and Phrases, Vol. 36, p. 687 by West Publishing Co.).”

The Court held in the said case that the true test is whether the effect of the impugned action is to take away or abridge fundamental rights.

Where more than fundamental right guaranteed by Part II of the Constitution is alleged to have been violated, the true test for determining the validity of a restriction imposed by a regulation/action is ‘against which of the freedoms is the restriction directly leveled against?’²

This is what the Supreme Court held in the decision of **Hamdard Dawakhana v. Union of India**³. In that case there was a challenge to the Drug and Magic Remedies (Objectionable Advertisement) Act (21 of 1954) on the ground that it violated Art.19(1) (a) of the

¹ (1972) 2 SCC 788, at page 828

² See Commentary on the Constitution of India by Sri Durga Das Basu , 8th Edition, 2007 vol.2 pg.2431

³ AIR 1960 SC 554

Constitution of India. The preamble of the Act stated that the object of the Act was to control the advertisement of drugs in certain cases i.e. diseases and to prohibit advertisements relating to remedies pretending to have magic qualities and provide for other matters connected therewith, and the title of the Act also shows that it is directed against objectionable advertisements. The definition section (Section 2) in clause (a) defines advertisements and in clause (b) drugs which include (i) medicines for use of human beings and animals, (ii) substances for use of diagnosis, treatment or prevention of diseases in human beings and animals, (iii) articles other than food which affect the organic functions of the body of human beings or animals, and (iv) articles intended for use as a component of any medicine etc., clause (c) defines magic remedies to include a talisman, mantra, kavacha and other charms and (d) relates to the publication of any advertisement and (e) what a venereal disease is. Section 3 prohibits advertisement of drugs for treatment of diseases and disorders. Clause (a) of Section 3 deals with procurement of miscarriage in women or prevention of conception, clause (b) with maintenance or improvement of capacity of human beings for sexual pleasure, clause (c) with diagnosis and cure of venereal and other diseases. Section 4 prohibits misleading advertisements relating to drugs. Section 5 similarly prohibits advertisements of magic remedies efficacious for purposes specified in Section 3. Section 6 prohibits the import into and export from India of certain advertisement. Section 14 is a saving clause which excludes registered practitioners, treatises or books, advertisements sent confidentially to medical practitioners, wholesale or retail chemists for distribution among registered medical

practitioners or to hospitals or laboratories. It also excludes advertisements printed or published by Government or with the previous sanction of the Government. Section 15 gives the Government the power to grant exemptions from the application of Sections 3, 4, 5 and 6 in certain cases.

The Supreme Court repelled the contention that the Act abridges the right to freedom of speech holding as under:

“17. An advertisement is no doubt a form of speech but its true character is reflected by the object for the promotion of which it is employed. It assumes the attributes and elements of the activity under Article 19(1) which it seeks to aid by bringing it to the notice of the public. When it takes the form of a commercial advertisement which has an element of trade or commerce it no longer falls within the concept of freedom of speech for the object is not propagation of ideas — social, political or economic or furtherance of literature or human thought; but as in the present case the commendation of the efficacy, value and importance in treatment of particular diseases by certain drugs and medicines. In such a case, advertisement is a part of business even though as described by Mr Munshi its creative part, and it was being used for the purpose of furthering the business of the petitioners and had no relationship with what may be called the essential concept of the freedom of speech. It cannot be said that the right to publish and distribute commercial advertisements advertising an individual’s personal business is a part of freedom of speech guaranteed by the Constitution.

...

It cannot be said therefore that every advertisement is a matter dealing with freedom of speech nor can it be said that it is an expression of ideas. In every case one has to see what is the nature of the advertisement and what activity falling under Article 19(1) it seeks to further. The advertisements in the instant case relate to commerce or trade and not to propagating of ideas; and advertising of prohibited drugs or commodities of which the sale is not in the interest of the general public cannot be speech within the meaning of freedom of speech and would not fall within Article 19(1)(a). The main purpose and true intent and aim, object and scope of the Act is to prevent self-medication or self-

treatment and for that purpose advertisements commending certain drugs and medicines have been prohibited. Can it be said that this is an abridgement of the petitioners' right of free speech. In our opinion it is not.

...

19. In the present case therefore (1) the advertisements affected by the Act do not fall within the words freedom of speech within Article 19(1)(a); (2) the scope and object of the Act, its true nature and character is not interference with the right of freedom of speech but it deals with trade or business; and (3) there is no direct abridgement of the right of free speech and a mere incidental interference with such right would not alter the character of the law;"

Coming to the impugned regulations, they deal with regulation of "Research Analysts" as defined in Regulation 2(u) of the Regulations.

A Research Analyst is essentially seeking to provide information of a specific area in which the public are interested, and claims to have professional expertise in the said area of interest namely the stock market related activities. He is, thus, professing to provide a professional advice/ service of a specialized nature. Such activities would undoubtedly fall under Article 19(1)(g) of the Constitution of India. In our opinion, considering the scope and object of the impugned regulations and their true nature and character, there is no direct abridgement of the right of free speech. There might be only an incidental interference with the said right.

So the restrictions sought to be imposed by the impugned regulations have to be considered from the said perspective and so ought to be tested as to their reasonableness under Art.19(6) of the Constitution of India.

Clause (6) of Article 19 of the Constitution of India empowers the State to make a law relating to the professional or technical

qualifications necessary for practicing any profession or carrying on any occupation, trade or business.

As regards the contention of the petitioner that the explanation to Clause (u) of Regulation 2 includes in the definition of the ‘Research Analyst’ *‘even an associate person who reports directly or indirectly to such Research Analyst in connection with the activities mentioned in the said regulation’* is concerned, it appears that such explanation is included in order to ensure that only professionally qualified people registered pursuant to the regulations are engaged and associated with a Research Analyst for preparation of research reports. This is obviously intended to maintain high quality and neutrality of the reports and to discourage people with sketchy or no knowledge of the subject from getting associated with the Research Analysts and contributing his views which form part of the reports of the Research Analysts for consumption of the public.

Regulation 7 which prescribes professional qualifications is also undoubtedly in public interest in view of the fact that the person who professes to be a Research Analyst should possess proper qualifications which would ensure that the research report which he authors maintains quality, and investors can rely on such professional advice with confidence.

Regulation 16(3) is challenged by the petitioner on the ground that it prohibits independent Research Analysts, individuals employed as Research Analysts by Research Entities or their associates from dealing or trading directly or indirectly in securities that he reviews in a manner contrary to his given recommendation. This provision occurs in Chapter III of the Regulations which deal with the Management of Conflicts of Interest

and Disclosure Requirements. Such a restriction is imposed for management of the issue of conflict of interest, and cannot be said to be in any way violative of Art.19(1) (g).

Regulation 27 deals with the power of the Board, upon receipt of information or complaint, to appoint one or more persons as inspecting authority to undertake inspection of books of accounts, records and documents relating to the Research Analyst or Research Entity for the reasons mentioned as under:-

- (i) to ensure that the books of account, records and documents are being maintained in the manner specified in these regulations;*
- (ii) to inspect into complaints received from any person, on any matter having a bearing on the activities of a research analyst;*
- (iii) to ascertain whether the provisions of the Act and these regulations are being complied with by the research analyst or research entity;*
- (iv) to inspect into the affairs of research analyst or research entity in relation to research activities, in the interest of the securities market or in the interest of investors.”*

Before ordering such inspection, Regulation 28(1) prescribes giving of 7 days’ notice, though Clause (2) of Regulation 28 also permits the Board to dispense with such notice if it is in the interest of the investors.

Regulation 31 states as under:

“Action on the inspection report.

Regulation 31:

The Board may after consideration of the inspection report and after giving reasonable opportunity of hearing to research analyst or research entity or its authorized representatives, without prejudice to any other action under

the Act, issue such directions as it deems fit in the interest of securities market or the investors including requiring research analyst or research entity not to provide research recommendation for a particular period;

(i) requiring the research analyst or research entity to refund any money collected as fees, charges or commissions or otherwise to the concerned clients along with the requisite interest.

(ii) prohibiting the research analyst or research entity from operating in the capital market or accessing the capital market for a specified period.”

A wide the range of powers is conferred on the Board under Regulation 31 since different corrective actions may have to be taken depending on the nature of the violation committed by the Research Analyst.

In a given case if such powers are exercised arbitrarily or disproportionately to the misconduct committed by a Research Analyst, the affected party can approach the Securities Appellate Tribunal or invoke the jurisdiction under art.226 of the Constitution of India. But the mere possibility of abuse of such a power cannot be ground to declare them as violative of Art.19(1) (g) of the Constitution of India.

In our opinion, Regulation 27 or Regulation 31 are not violative of rights conferred on the Research Analyst under Articles 19(1)(a) & 19(1)(g) or Art.14 of the Constitution of India.

The fact that the Astrologers or Management consultants are allowed to give consultancy, and are not regulated, does not mean that Research Analysts who provided investors with information on the basis of

which investment decisions are made, should also be excluded from regulation. So the plea based on Article 14 of the Constitution of India in that regard cannot be countenanced.

In this view of the matter, we do not find any merit in this Writ Petition. Accordingly, the same is dismissed.

No costs.

Pending application(s), if any, is disposed of accordingly.

(M.S. RAMACHANDRA RAO)
JUDGE

(HARMINDER SINGH MADAN)
JUDGE

September 12, 2022
Ess Kay

<i>Whether speaking / reasoned</i>	:	<i>Yes /No.</i>
<i>Whether Reportable</i>	:	<i>Yes/No</i>