

**In The High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**W.P.O No.305 of 2022
IA NO: GA 1 of 2022**

**M/s. Dalmia Securities Private Limited and Another
vs
The Calcutta Stock Exchange Limited and Another**

For the petitioner : Mr. S.N. Mookherjee, Sr. Adv.,
Mr. Ratnanko Banerjee, Sr. Adv.,
Mr. Shaunak Mitra,
Ms. Nandidni Khaitan,
Mr. Pratik Shanu,
Mr. Naman Choudhury,
Mr. Mehul Bachhawat.

For the
respondent no.1/
Calcutta Stock Exchange: Mr. Anirban Ray, Sr. Adv.,
Mr. Jayanta Sengupta,
Mr. Uttam Kumar Mandal,
Mrs. Maitree Roy
Ms. Uditā Mandal

For the
respondent no.2/
SEBI : Mr. P.K. Dutta, (VC)
Mr. S.K Dutta, (VC)
Mr. Syamantak Banerjee, (VC)

Heard on : 05.09.2023, 22.11.2023, 23.11.2023,
28.11.2023, 30.01.2024, 21.02.2024,
27.02.2024, 28.02.2024, 04.03.2024,
22.04.2024, 08.08.2025, 31.10.2025,
21.11.2025, 28.11.2025, 05.12.2025
& 19.12.2025

Reserved on : 19.12.2025

Judgment on : 09.01.2026

Sabyasachi Bhattacharyya, J:-

1. The writ petitioner no.1, M/s Dalmia Securities Private Limited, is a Company registered with the Securities and Exchange Board of India (SEBI), which is the second respondent, as a Stock Broker for carrying on activities of buying, selling and dealing in securities. The second petitioner is a Director of the petitioner no.1-Company. The respondent no.1 is the Calcutta Stock Exchange Limited (CSE).
2. The writ petition was filed challenging the withholding of excess security amount deposited by the petitioner no.1 with CSE and for ancillary reliefs. Initially, by an order dated February 2, 2022, the writ petition was disposed of by a learned Single Judge of this Court with an observation that the CSE should take a final call on the investigation that the claim is still pending against the petitioner without prejudice to the rights and contention of the parties, directing a final decision to be taken within a period of 45 days from the date of the order. The learned Single Judge further directed that in the event the CSE finds in its final order that the petitioners are not guilty of violation of any provisions of the Exchange or that continuation of the proceeding is no longer feasible, a suitable decision to that effect may be taken that the deposit together with the accrued interest shall be refunded to the writ petitioner. The petitioners were directed to cooperate in the said proceeding of the CSE and any final decision was directed to be taken strictly in terms of the applicable Rules, Bye-Laws and/or Statute.

3. The writ petitioners challenged the said order in an appeal bearing no. APO No.25 of 2022, which was disposed of by a judgment dated March 29, 2022. The Division Bench, while disposing of the appeal, observed that the plea of the appellants that the respondent were bound by their own earlier action, in respect of the claim of refund of the appellants to be decided subject to legal settlement of the cases pending between the parties, needed to be examined, on which ground the order of the learned Single Judge was set aside and the learned Single Judge was requested to decide the issue afresh.
4. The Division Bench further observed that meanwhile, the 45 days' period fixed by the learned Single Judge to take final decision having expired, such final decision, if any, taken meanwhile, could also be challenged before the learned Single Judge. Such final decision, it was held, would be subject to the final outcome of the writ petition. The appeal was disposed of accordingly.
5. Pursuant to such direction of the Division Bench, the matter came up for hearing before this Court. During pendency of the writ petition after remand, GA No.1 of 2022 was filed by the petitioners, challenging the final decision taken by the respondent no.1-CSE on March 15, 2022, *inter alia* imposing penalty on the writ petitioner on the ground of violation of the Bye-Laws of the CSE as mentioned in the said order.
6. At the outset, learned senior counsel appearing for the CSE raises an objection as to maintainability of the application bearing GA No.1 of 2022, on the ground that the relief sought therein furnished a fresh cause of action, and was beyond the prayers made in the original writ petition

and/or the pleadings therein. Learned senior counsel for the CSE argues that the writ court cannot grant any relief beyond the pleadings made in the original writ petition.

7. Secondly, it is argued by the CSE that the writ petition ought to be dismissed in view of availability of equally efficacious alternative remedy available to the writ petitioners by way of arbitration. Clause XXXI of the CSE Bye-Laws, under Chapter XVIII, contains an arbitration clause. It is argued that by dint of the said clause, any dispute arising out of transactions under the said Bye-Laws between the writ petitioner no.1, a registered member of the CSE, and the CSE, is required to be referred to arbitration.
8. Thirdly, it is argued that complex questions of fact are required to be adjudicated in order to examine the grant of reliefs sought in the writ petition, which is beyond the writ court's permissible jurisdiction. It is argued that without taking evidence and/or appreciating the materials on record at length, the writ petition cannot be disposed of and, as such, the application under Article 226 of the Constitution ought not to have been entertained.
9. Although at the initial stages, the CSE had argued that the writ petition is not maintainable against the CSE, which is a registered Company and is an autonomous body not coming within the purview of article 12 of the Constitution of India, the said argument was not pursued seriously in the final arguments, as reflected in the written notes of arguments filed by the CSE as well.

10. The issue of maintainability is controverted by the writ petitioners by placing reliance on *Trilochana K. Doshi vs Stock Exchange of India and Another* reported at 2000(4) Mh.L.J, delivered by a Division Bench of the Bombay High Court. Learned senior counsel appearing for the petitioners also cites *K.C Sharma vs. Delhi Stock Exchange and Others* reported at (2005) 4 SCC 4. Both the above judgments are relied on for the proposition that writ petitions lie against stock exchanges.
11. Learned senior counsel appearing for the CSE cites *Bachhaj Nahar vs Nilima Mandal and Another* reported at (2008) 17 SCC 491 in support of the proposition that no amount of evidence can be looked into on a plea which was never put forward in the pleadings and the court cannot decide a question which did not arise from the pleadings and was not the subject-matter of an issue.
12. Learned senior counsel appearing for the CSE also cites a Division Bench judgment of this Court in the matter of *Bharat Bhari Udyog Nigam Ltd. vs. Jessop And Co. Ltd. Staff Association*, reported at (2003)4COMPLJ333(CAL) on the proposition that reliefs beyond the pleadings cannot be granted in a writ petition.
13. On the proposition that disputed and complex questions of facts cannot be adjudicated by the writ court unless the action is *male fide* and that in commercial matters, the courts should not risk their judgments for that of the bodies to which the task is assigned, learned senior counsel for the CSE cites the following judgments:

- i. *Karnataka State Industrial Investment and Development Corporation Ltd. vs. Cavalet India Ltd and Others* reported at (2005) 4 SCC 456
- ii. *K. Vidya Sagar vs. State of U.P and Others* reported at (2005) 5 SCC 581
- iii. *State of Kerala and Others vs. M.K. Jose* reported at (2015) 9 SCC 433

14. Learned senior counsel appearing for the writ petitioners next argues that no Show Cause Notice (SCN) was issued before the penal action was taken against the writ petitioners by the CSE. The purported notice dated March 4, 2004, relied on by the writ petitioners, it is argued, is not an SCN at all, since it does not specify the contemplated penal action to be taken against the writ petitioners, nor specifies the grounds or materials on the basis which such action was to be taken.

15. Learned senior counsel cites *Gorkha Security Services vs. Government (NCT of Delhi) and Others*, reported at (2014) 9 SCC 105, for the proposition that the fundamental purpose behind the serving of SCN is to make the noticee understand the precise case set up against him which he has to meet and to enable the noticee to meet the grounds on which the action is proposed against him. It was also held in the said report that the materials/grounds which according to the department necessitates an action are required to be stated in the SCN, as well as that the particular penalty/action which is proposed to be taken is to be disclosed.

16. Learned senior counsel for the writ petitioners further argues that there was palpable violation of the principles of natural justice on the part of

the CSE in not furnishing copies of the documents relied on by the latter while passing the impugned order dated March 15, 2022.

17. By way of example, learned senior counsel argues that the inspection report and the decision of the Disciplinary Action Sub-Committee, which were referred to and relied on by the CSE in the impugned order dated March 15, 2022, were never disclosed to the writ petitioners to enable the latter to deal with the same. Even in the affidavit-in-opposition filed by the CSE to GA No.1 of 2022, it was mentioned that certain other documents were relied on while passing the said order, which documents were also not furnished to the writ petitioners, thereby denying the latter the opportunity to deal with the same.

18. In support of such contention, learned senior counsel cites *Kavi Arora vs. Securities & Exchange Board of India*, reported at (2022) SCC OnLine SC 1217. It is contended that in the absence of such opportunity, the impugned order dated March 15, 2022 is fundamentally contrary to the principles of natural justice.

19. Learned senior counsel appearing for the CSE controverts the argument that no SCN was served and points out that the specific violations committed by the writ petitioners were clearly mentioned in the notice dated March 4, 2004, which was thus a valid SCN. Moreover, it is argued that the correspondence continually taking place between the parties left no manner of ambiguity as to what were the exact charges against the writ petitioners. The writ petitioners, it is argued, continuously warded off the queries of the CSE by pleading that the documents disclosed by them were sufficient and that they had no other documents to disclose, also

citing the preoccupation of the writ petitioners for not giving detailed explanations in reply to the questions posed by the CSE.

- 20.** Insofar as violation of natural justice is concerned, learned senior counsel for the CSE argues that all relevant particulars were mentioned in the SCN and in the further correspondence from the end of the CSE and the mere non-mention of the proposed penal action in the SCN did not, in any manner, prejudice the writ petitioners. It is contended that since the writ petitioner no. 1 is a registered member of the CSE, the petitioners were all along well aware as to the penal consequences in terms of the Bye-Laws of the CSE for the infractions committed by them.
- 21.** It is argued that unless real prejudice has been caused to a party aggrieved by an order due to non-grant of any formal opportunity of cross-examination or hearing, the absence of such opportunity *per se* does not invalidate or vitiate the decision arrived at fairly. In support of such contention the CSE cites *K.L. Tripathi vs. State Bank of India and Others* reported at (1984) 1 SCC 43.
- 22.** Learned senior counsel for the CSE also relies on the *State of Uttar Pradesh vs. Sudhir Kumar Singh and Others* reported at (2021) 19 SCC 706, for the proposition that natural justice is a flexible tool in the hand of the judiciary to reach out in fit cases to remedy injustice. Breach of the *Audi Alteram Partem* Rule, however, cannot by itself, without more, lead to the conclusion that prejudice is thereby caused. Where procedural and/or substantive provisions of law embody principles of natural justice, their infraction *per se* does not lead to invalidity of orders passed, unless prejudice is caused to the litigant, except in case of mandatory provisions

of law which are conceived not only in individual interest but also in public interest.

23. Learned senior counsel appearing for the writ petitioners next argues that there was ante-dating of the purported order dated March 15, 2022, which is evident from the fact that a letter issued by the learned advocate for the writ petitioners on the self-same date was also referred to in the order, which would not have been possible unless the order was authored subsequently, pre-dating it to suit the 45-day timeline given by the learned Single Judge.

24. Such contention, of course, is controverted by the CSE.

25. The writ petitioners further submit that there was no pending investigation which could culminate in the penal action taken by the impugned decision of the CSE. It is submitted that the alleged infractions took place long before. Even going by the stand of the CSE, the SCN was issued in 2004 whereas the impugned actions took place in the year 2002.

26. The long gap of 18 years in-between clearly shows that the CSE was fully satisfied of due compliances by the writ petitioners. In the correspondence between the parties in the meantime, there was no specific mention of any ongoing investigation by the CSE, it is submitted.

27. Learned senior counsel for the writ petitioners places reliance on a communication by the SEBI to indicate that the SEBI itself exonerated the writ petitioners from any allegations levelled against the writ petitioners. It is argued that since the CSE cites instruction by the SEBI to undertake the purported investigation against the writ petitioners on the ground of

alleged financials scams by certain groups with which transactions were purportedly entered into by the writ petitioners, no cause of action remains further for the CSE to continue with such investigation after the SEBI itself let off the writ petitioners of the charges. A letter dated April 24, 2002 issued by the SEBI to the CSE, annexed to GA No.1 of 2022, which was the purported genesis of such investigation, is relied on in such context.

- 28.** Learned senior counsel also relies on a letter dated October 11, 2007, whereby the CSE itself clearly gave a 'No Dues' Certificate to the writ petitioners, thereby leaving no scope of further investigation or imposition of penalty.
- 29.** The petitioners next argue that the 18 years of delay in-between renders the purported resurrection of the investigation harassive and illusory.
- 30.** It is argued that the procedure provided in the Bye-Laws of the CSE itself for giving prior notice of hearing and other formalities, including the timeline of one month in coming to a decision as to alleged violations or illegal transactions, was not adhered to by the CSE, thereby vitiating the entire investigation as well as the resultant order dated March 15, 2022.
- 31.** Lastly, it is argued that the constitution of the Board, comprised of only three Public Interest Directors, which took the impugned decision dated March 15, 2022, being contrary to Regulation 23 of the Securities Contract (Regulation) (Stock Exchanges and Clear Corporations) Regulation, 2018, was bad in law. As per the provisions of Regulation 23(1), the Governing Board of every recognised stock exchange is to mandatorily include Shareholder Directors, Public Interest Directors and

Managing Director. Although sub-clause (4) of Regulation 23 provides that 'Managing Director' shall be included in the category of 'Shareholder Directors', the scheme envisaged in sub-clauses (10) and (11) of Regulation 23 clearly indicate that the presence of Shareholder Directors is mandatory.

32. Despite the CSE having cited a letter by the SEBI exempting the CSE from appointing any Managing Director, such exemption, it is argued, did not exonerate the CSE of the liability to incorporate Shareholder Directors within the Board in terms of Regulation 23. In the present case, all three members of the Board were Public Interest Directors and as such, in the absence of any Shareholder Director in the Board, the quorum required to take a valid decision was not met, which vitiates the impugned order in any event.

33. Learned senior counsel appearing for the writ petitioners cites a judgment of a learned Single Judge of this Court in *Surendralal Girdharilal Mehta vs. Union of India & Ors.*, reported at (2018) SCC OnLine Cal 2937, for the proposition that indifference, disinterest and lack of diligence on the part of the authorities in causing inordinate delay vitiates an action of a criminal or quasi criminal nature. Learned senior counsel also cites a decision of the Securities Appellate Tribunal, Mumbai, in *Street, Fort, Mumbai 400 023 vs. Securities and Exchange Board of India*, reported at (2013) SCC OnLine SAT 67 for the proposition that synchronized trade is *per se* not illegal but would be illegal if it is executed to manipulate the market, is dubious in nature and executed with a view to avoid regulatory detection, does not involve change of beneficial ownership or is executed

to create false volume resulting in upsetting market equilibrium etc. In the absence of any circumstantial evidence to suggest the same, it cannot be inferred that synchronized trading by itself is a violation of any regulation governing brokers. It is further argued that no insider trading or illegal action on the part of the writ petitioners has been established by the CSE.

- 34.** The CSE, it is submitted, overlooked the fact that the so-called off-market transactions of the writ petitioners were all registered duly with other stock exchanges, including the National Stock Exchange. Thus, the penalty imposed on the writ petitioners, it is argued, is unlawful.
- 35.** Learned senior counsel for the CSE controverts such submissions and contends that the impugned order dated March 15, 2022 is well-reasoned and the action of the writ petitioners are in clear violation of the CSE Bye-Laws.
- 36.** It is contended that the writ petitioners were guilty of negotiated deals and fraudulent as well as non-*bona fide* transactions, having been engaged with several groups of companies which were established to have dubious and unlawful market transactions. It is argued that the SEBI instruction to the CSE to conduct investigation was not restricted to violation of SEBI regulations but also the regulations of the CSE itself. Thus, the so-called clean chit given by the SEBI did not exonerate the writ petitioners of the liability in respect of the infraction of CSE Bye-Laws.
- 37.** Thus, it is argued that the writ petition as well as GA No.1 of 2022 ought to be dismissed.

38. Upon hearing the arguments of the parties, the issues raised can be divided into two categories - Threshold Issues and Merits. This Court proposes to adjudicate on the threshold issues first.

Threshold Issues

i) Maintainability of writ petition

39. Although this objection was not canvassed seriously at the final arguments, for the sake of completion, the same is also dealt with. The writ petitioners have cited *Trilochana K. Doshi (supra)*¹ as well as *K.C Sharma (supra)*² for the proposition that applications under Article 226 of the Constitution of India lie against stock exchanges.

40. This Court respectfully agrees with the ratio laid down in the said judgments to the effect that a stock exchange comes within the purview of State within the meaning of Article 12 of the Constitution of India.

41. The premise of such observation is that stock exchanges such as the CSE render public utility services, which come within the domain of the functions of the State. The basic framework of the financial and trading activities of an economy, which is an integral part of the functions of the State, are discharged by stock exchanges and, as such, infractions on the part of such entities are amenable to the writ jurisdiction under Article 226 of the Constitution of India.

42. In addition thereto, it cannot be denied that by the impugned action the right of the writ petitioners to do business, protected under Article 19 of

¹ *Trilochana k.Doshi vs Stock Exchange of India and Another* reported at [2000(4) Mh.L.J]

² *K.C Sharma vs. Delhi Stock Exchange and Others* reported at (2005) 4 SCC 4

the Constitution of India, has been allegedly violated without due process of law. Thus, the writ court definitely has the jurisdiction to examine such issue within the ambit of Article 226 of the Constitution of India.

43. Thus, the writ petition is maintainable.

ii) Alternative remedy by arbitration

44. Clause XXXI of the CSE Bye-Laws and Regulations under Chapter XVIII thereof, pertaining to the Settlement Guarantee Fund (SGF), is an arbitration clause. It is not in doubt that the writ petitioner no.1, being a registered member of the CSE, is bound by the said clause otherwise. However, the very premise of arbitration is party autonomy and consensus between the parties to subject themselves to the Alternative Dispute Resolution mode of arbitration.

45. Thus, it is open to the parties to waive such right and choose to opt for a regular forum of adjudication, beyond the pale of arbitration, which is the other side of the party autonomy coin.

46. Section 8 of the Arbitration and Conciliation Act, 1996 clearly specifies that only upon an application under the said provision being made on or before the submission of the first statement on the merits of the defence can a reference to arbitration be sought before a judicial authority. Thus, by necessary implication, unless such an application is filed, the defendants/respondent before a judicial authority in any legal action shall not be entitled to seek reference to arbitration. An arbitration agreement, *per se*, does not operate as an absolute bar to adjudication of the disputes between the parties to such clause before a regular judicial forum/court.

The parties, at any point of time subsequent to entering into an arbitration agreement, can waive the right to go to arbitration to resolve the disputes between themselves.

47. Hence, since the writ court is also a “judicial authority” under the contemplation of Section 8, in the absence of any application akin to one under the said provision, it cannot be said that the jurisdiction of the writ court is barred.

48. The next question which comes up for consideration on this aspect of the matter is whether an arbitration clause can be an absolute bar to the exercise of the jurisdiction of High Courts under Article 226 of the Constitution. The answer is obviously in the negative, since the power of a High Court under Article 226 of the Constitution of India is derived directly from the Constitution of India, which is the *Grund norm* of the legal framework of the country. Being a constitutional remedy, the same cannot be curtailed or taken away by any subordinate legislation, since the Parliament itself derives authority under the Constitution itself to make laws. Moreover, in the absence of any specific bar in any law, including the 1996 Act, to adjudication by a regular court/forum despite the existence of an arbitration clause, the present writ petition is very much maintainable.

49. Even otherwise, the so-called arbitration clause, incorporated in Clause XXXI of the Bye-Laws, would be hit by Section 12 read with the Fifth and Seventh Schedules of the 1996 Act, since it is the Executive Director of the Exchange who is supposed to act as an Arbitrator or nominate the Arbitrator under the said Clause. The Executive Director, being an

employee of the CSE, one of the parties to arbitration, is ineligible to act as or to appoint an Arbitrator. Thus, the above objection of the CSE is not tenable in the eye of law and the present writ petition is maintainable despite the existence of the arbitration clause.

iii) Complex questions of fact.

50. CSE cites *Cavalet India Ltd (supra)*³ for the proposition that complex questions of fact cannot be entered into under Article 226 of the Constitution, since the High Court does not sit as an appellate authority under the said provision. It was also held in *K. Vidya Sagar (supra)*⁴ that under normal circumstances, disputed questions of fact cannot be resolved under Article 226 of the Constitution of India.

51. In *M.K. Jose (supra)*⁵, the Supreme Court reiterated that contractual matters are not generally interfered with under Article 226 of the Constitution of India.

52. However, in the present case, it is not merely erroneous appraisal of the evidence on record which is the primary ground of challenge but the infraction of basic principles of natural justice as well as violation of the Bye-laws of the CSE itself, which, being at a jurisdictional level, definitely hit at the root of the matter and is amenable to writ jurisdiction. This court is fully aware of its limitations as a writ court and cannot enter into a re-appreciation of detailed evidence on intricate and complex questions

³ *Karnataka State Industrial Investment and Development Corporation Ltd. vs. Cavalet India Ltd and Others* reported at (2005) 4 SCC 456

⁴ *K. Vidya Sagar vs. State of U.P and Others* reported at (2005) 5 SCC 581

⁵ *State of Kerala and Others vs. M.K. Jose* reported at (2015) 9 SCC 433

of fact. However, the objection taken by the CSE on such count is premature at this stage, since the premise of the challenge, as mentioned earlier, hits at root of the jurisdiction of the CSE, being allegedly violative of fundamental principles of natural justice and infraction of the CSE Bye-laws. Thus, such objection cannot but be turned down.

iv) Whether GA No.1 of 2022 is maintainable.

53. The CSE cites *Bachhaj Nahar (supra)*⁶ for the proposition that a court cannot make out a case not pleaded. However, the said judgment is premised on the scope of Section 100 of the Code of Civil Procedure and is not apt in respect of the present consideration at all.

54. That apart, a co-ordinate Bench judgment in the matter of *Bharat Bhari (supra)*⁷ has been relied on for the proposition that where there is no pleading in the writ petition, and/or relief sought, such relief beyond the pleadings cannot be granted on the basis of a new case made in supplementary affidavits. It was held in the said report that the parties cannot be permitted to travel beyond their pleadings in the writ petition.

55. However, such proposition is squarely inapplicable in the present case in view of the Division Bench judgment, in terms of which the writ petition was remanded and is now being heard afresh by this Court.

56. In the Division Bench judgment dated March 29, 2022, passed in APO No.25 of 2022, the learned Division Bench, while setting aside the initial disposal order of the learned Single Judge in the present writ petition on

⁶ *Bachhaj Nahar vs Nilima Mandal and Another* reported at (2008) 17 SCC 491

⁷ *Bharat Bhari Udyog Nigam Ltd. vs. Jessop And Co. Ltd. Staff Association* reported at (2003)4COMPLJ333(CAL)

the limited ground that the aspect of withdrawal of previous litigation by the petitioners, allegedly at the instigation of the CSE, was not looked into, requested the Single Judge to decide the said issue afresh.

57. Simultaneously, it was categorically observed that since the 45 days' period fixed by the learned Single Judge to take final decision had expired on the date of passing of the Division Bench judgment, such final decision, if any taken meanwhile, can also be placed/challenged before the learned Single Judge and would be subject to the final outcome of the writ petition. Thus, it was the clear intention of the Appellate Bench to clarify that if any final decision was taken in the meantime, it can be challenged before the learned Single Judge taking up the writ petition itself, instead of filing a fresh writ petition. Going one step further, the Division Bench further clarified that such decision would be subject to the final outcome of the writ petition. Hence, the order dated March 15, 2022, which was passed by way of the final decision referred to by the Division Bench, is amenable to challenge in the present writ petition itself and would also abide by the final outcome of the same.

58. In any event, the writ court is not bound by hyper-technicalities. Since the impugned decision dated March 15, 2022 is the culmination of the bundle of facts which furnished the cause of action for the writ petition, there is no bar in the writ court looking into the veracity of the same. Even otherwise, in the event the investigation leading to the said order is set aside, the order itself would automatically be rendered a nullity.

59. Hence, it is not a case where relief beyond pleadings are sought in an interlocutory application, but the challenge to the final decision dated

March 15, 2022 by way of GA No.1 of 2022 is squarely in terms of the leave granted by the Appellate Bench itself and comes within the broader ambit of the writ petition. Thus, the proposition laid down in the judgments cited by the CSE are not applicable in the present case at all. Accordingly, this objection as to maintainability of GA No. 1 of 2022 is also turned down.

Merits

i) No Show Cause Notice (SCN)

60. The notice issued by the CSE on March 4, 2004 to the petitioner no.1- Company was elaborate, both in terms of the infractions allegedly committed by the writ petitioner no. 1 as well as the exact nature of the alleged illegalities committed by the petitioner no.1, with clear reference to the concerned Circulars. Although the caption of the notice referred to the inspection of the books of accounts and records under the relevant Rules of 1957, the contents of the notice categorically mentioned seriatim the alleged violations on the part of the petitioner no.1, as observed from the books and documents produced by the writ petitioners. The said notice, under separate heads, pointed out the fund transactions with tainted business houses, off-market deals by the petitioner no.1 and its associated firms, with specific details of each of such transactions, along with particulars of the circular activity and contraventions of SEBI Regulations as well as of the CSE Bye-Laws, including fraudulent transactions and collusive trade deals, all of which were elaborately mentioned in the said notice.

- 61.**Item-wise explanation was also sought and an opportunity given to the writ petitioners in the self-same notice to furnish proper explanations. However, the writ petitioners deliberately chose not to avail of such opportunity but shot off a reply on March 18, 2024, primarily containing evasive denials without full particulars, with an insinuation that the CSE had acted in an irresponsible manner with a *mala fide* intention to harass the writ petitioner. However, the reason for such *mala fide* intention has never been disclosed.
- 62.**In fact, a subsequent notice was again issued by the CSE on March 23, 2004, seeking specific particulars and documents, asking the petitioners to produce the NSE's TR File and MW File, NSE order book, Sauda book with mandatory client codes, along with payment receipt/payment made to these clients for each and every off-market transactions as mentioned in the petitioner's letter, as well as transfer of securities (pay in/pay out) by those entities with the petitioner no.1-Company.
- 63.**In the said notice, in furtherance of the initial SCN, it was also made clear that the writ petitioner no.1 had entered into synchronized transactions, which were put through CSTAR Trading System, which would not be possible unless the price, scrip, date and time were predetermined by the two brokers. Indulgence of the petitioner no.1 in matched transactions/non-*bona fide* transactions with M/s Doe Jones Inv. and Cons (P). Ltd., which increased the defaulted amount of the defaulting member by Rs. 2.11 Crore was also alleged. It was made clear that the statement of the petitioner no.1 that the transactions were done for its

own client was not acceptable as the CSTAR system showed that those transactions were shown as 'self transactions'.

64. Yet, in a further reply dated March 26, 2004, issued by the petitioner no.1, the petitioner no.1 stonewalled such queries by merely citing the contract notes, client obligations, client ledger, cash/bank ledger, which had been furnished to the CSE. The writ petitioners, instead of disclosing and explaining away the particular infractions alleged by giving further details and producing the documents sought by the CSE, merely stated in their letter dated March 26, 2004 that the relevant data can be "vouched with NSE" for the satisfaction of the CSE. Not stopping there, the petitioners were brash enough to state that they would have to collate each and every transaction of the year 2000-2001 along with their respective settlements, which was a huge task and would take time owing to the massive volume of transactions of the petitioner no.1 across all exchanges and that it was for the CSE to get in touch with the petitioners at a later date, as the petitioners were "presently pre-occupied with other matters and year-end pressure".

65. Hence, instead of complying with the specific queries and documents sought by the CSE in terms of the spirit of the learned Single Judge's order, which was not set aside on that point by the Division Bench, the writ petitioner chose not to co-operate with the investigation.

66. Hence, the argument that no SCN was issued is not tenable. Even otherwise, the law does not mandate any specific SCN to be issued in case of such infractions. Yet, this Court finds from the records that sufficient opportunity over a long period of time was continuously given to the writ

petitioners to disclose all particulars, whereas the writ petitioners consistently warded off such attempts and evaded the investigative process. Even in their last letter dated March 15, 2022, a stand was taken by the writ petitioners through their learned Advocate that no further documents would be furnished by them apart from those which had already been sent.

67. Hence, this issue is decided against the writ petitioners.

ii) Violation of Natural Justice

68. The writ petitioners argue that an inspection report was not given to them. However, from the impugned order dated March 15, 2022 itself, it is evident that the inspection report was the basis not of the said order but of the initial SCN issued on March 4, 2004. Thus, the entire contents of the inspection report were reproduced in the SCN itself, since admittedly it was the inspection report which was the very basis of the SCN. Since the SCN was admittedly served on the petitioners and replied to by them, non-furnishing of such prior inspection report was entirely immaterial.

69. Insofar as the decision of the Disciplinary Action Sub-Committee or Defaulter Committee is concerned, it is clear from the records that numerous opportunities were given to the writ petitioner for furnishing further documents, the nature of which were categorically specified in the communications of the CSE, as well as to furnish item-wise explanation, which was never done at any point of time by the writ petitioners. Thus, there was substantial compliance of the procedure laid down in Clause

XXVII, sub-clause (B) of the CSE Bye-Laws and Regulations on the part of the CSE.

70. Insofar as the portion of the abovementioned Clause relating to the timeline of one month for taking a final decision is concerned, nothing in the Bye-Laws provides that such timeline is mandatory, particularly since there is no sanction if such timeline is exceeded. There is nothing within the four corners of the CSE Bye-Laws and Regulations to vitiate a final decision merely because it is taken after one month. Moreover, in the present case, it is the dilatory and protracting tactics adopted by the writ petitioners which was substantially instrumental in the delay occasioned in taking a final decision.

71. Insofar as other documents relied on in the impugned order dated March 15, 2022 are concerned, those were primarily items of correspondence between the parties as well as governing Circulars of the SEBI and the CSE, which were either public knowledge or within the direct knowledge of the writ petitioners.

72. In paragraph 18 the affidavit-in-opposition filed by the CSE to GA No.1 of 2022, no further documents have been mentioned, contrary to the arguments of the writ petitioners. Only a general statement has been made that other documents were relied on by the CSE in passing the order dated March 15, 2022. There is no indication that such documents were extraneous or further documents in addition to the ones already mentioned above. Hence, the writ petitioners cannot seek refuge under the protective umbrella of non-disclosure/non-service of essential

documents relied on by the CSE to argue violation of principles of natural justice.

73. In fact, opportunities were given to the writ petitioners *ad nauseam*, for appearing before the CSE Authorities and giving proper item-wise explanation as well as furnishing further specific documents sought by the CSE, which were repeatedly flouted by the writ petitioners. After a decision is taken by the Disciplinary Action Committee/Sub-Committee or Defaulter Committee, there is no further scope of hearing being given to the defaulter under the CSE Bye-Laws and it only remains for the Board to take a final call on the penal action to be taken.

74. It is, thus, rightly argued by the CSE that the writ petitioners have failed to satisfy the “prejudice test”. No substantive purpose would be subserved if copies of documents which were allegedly not given were given to the petitioners; rather, the writ petitioners were given ample opportunity to comply with the queries of the CSE but failed to do so.

75. The principle laid down in *K.L. Tripathi (supra)*⁸ and *State of Uttar (supra)*⁹ are relevant in the context and support the proposition that mere breach of the *Audi Alteram Partem* Rule cannot by itself, without more, lead to a conclusion that prejudice is thereby caused. In the present case, there was no mandatory provision of law to mandate further hearing being given to or further documents being furnished to the writ petitioners and even otherwise, sufficient opportunity was given by a stream of correspondence from the end of the CSE. The CSE Bye-Laws, particularly

⁸ *K.L. Tripathi vs. State Bank of India and Others* reported at (1984) 1 SCC 43.

⁹ *State of Uttar Pradesh vs. Sudhir Kumar and Others* reported at (2021) 19 SCC 706

the Section thereof pertaining to the SGF, in Clause XVIII thereof, amply provide for action to be taken against a defaulter in case of negotiated, fraudulent and non-*bona fide* deals, as alleged against the writ petitioners.

76. Thus, in view of substantial compliance of all regulations on the part of the CSE and in view of ample opportunity of hearing and explanation having been recurringly given to the writ petitioners, the argument of violation of natural justice raised by the writ petitioners is hereby held to be merely a bogey and such objection is turned down.

iii) Ante-dating of the order dated March 15, 2022

77. There is absolutely no proof in the above regard from the end of the writ petitioners, but a mere bald allegation to that effect. The mere fact that a letter dated March 15, 2022, issued by the learned Advocate of the writ petitioners, was mentioned in the order of even date cannot, *per se*, vitiate the said order. The order does not mention any specific time when it was passed and, as such, it could very well be that the same was passed only after taking on record the letter issued on behalf of the writ petitioners on the self-same date. The mere fact of mention of the letter in the order does not automatically prove that the order was ante-dated.

78. In any event, nothing much hinges on the present issue, since there was no statutory mandate to pass the order within 45 days. Moreover, since the Division Bench has already granted leave to challenge any final decision taken subsequently and making it clear that the same would be subject to the outcome of the writ petition, there was no compulsion on

the part of the CSE or any incentive to ante-date the order. As such, the said objection is turned down and held to be irrelevant as well.

(iv) No pending investigation

79. It has been vociferously argued on behalf of the writ petitioners that there was no pending investigation at all which could culminate in the impugned order dated March 15, 2022 or could prompt the CSE to withhold the refund of the excess security deposit.
80. Before proceeding further on such score, the provision regarding security deposit is required to be looked into.
81. As per SEBI Circular No. CIR/MRD/DRMNP/36/2012 dated December 19, 2012, annexed to the supplementary affidavit filed by the writ petitioners themselves, the stock brokers/trading members are to maintain Base Minimum Capital (BMC) to the tune of Rs. 10,00,000/- in case of only proprietary trading without Algorithmic Trading (Algo). The writ petitioners claim exemption under sub-clause (e) of Clause 3 of the Circular, which provides that for stock brokers/trading members of exchanges *not* having nation-wide trading terminals, the deposit requirement shall be 40% of the above BMC deposit requirements. However, in the correspondence issued on behalf of the writ petitioners to the CSE as well as the pleadings of the writ petitioners, it has been categorically admitted and iterated by the writ petitioners that they have been carrying on stock broking transactions with several other stock exchanges and terminals, including the National Stock Exchange (NSE). Thus, in any event, the premise of the claim of refund in the writ petition

based on Clause 3(e) of the SEBI Circular dated December 19, 2019 is misconceived.

- 82.** Even otherwise, the withholding of the refund on the ground of the pending investigation was justified, since under Regulation 332 of the Bye-Laws and Regulations of the CSE, every member of the stock exchange would be liable to various penal measures, including fine, if found guilty of the breach of the Bye-Laws. Thus, the refund of security deposit would obviously be subject to adjustment of the penalty imposed on the writ petitioner no. 1, which is a registered member of the CSE, if found guilty of such breach.
- 83.** The writ petitioners also allege that the CSE is sitting tight over the request of the petitioner no. 1 to terminate its membership. However, since the investigation was pending, which could result in imposition of penalty on the petitioner no. 1, the withholding of permission to terminate membership was also justified.
- 84.** The writ petitioners cite apparent delay of 18 years in initiating the investigation. However, there was continuous correspondence all through between the parties during the relevant period and, as discussed above, it is the writ petitioners who themselves delayed the process of investigation by stalling the explanations sought by the CSE as well as withholding relevant documents specifically asked for by the CSE.
- 85.** That apart, several litigations, being two writ petitions and a suit, were pending at the behest of the writ petitioners during the relevant period,

pertaining to the intimations of the CSE for the petitioners to produce further information and documents.

86. The writ petitioners argue that it is on the insistence of the CSE that they withdrew such litigations, therefore casting a liability on the CSE to refund the excess security amount. However, such argument is flimsy.
87. In the relevant letters sent by the CSE, it never insisted that the writ petitioners *withdraw* the earlier writ petitions and/or suit or other proceedings initiated by them. The categorical statements made in the said communications of the CSE was to the effect that the refund would be “subject to settlement” of the legal proceedings between the parties. The term “settlement” is not restricted to withdrawal or mutual settlement out of court but can be equated with the expression “resolution” of the dispute. Hence, the CSE never insisted that it would refund excess security deposit allegedly lying with it to the writ petitioners only upon the writ petitioners withdrawing their pending legal proceedings. The insistence of the settlement of the legal dispute in the legal proceedings as a pre-condition of refund was fully justified, since under its Bye-Laws, the CSE is entitled to take penal action in monetary terms against a defaulting member if fraudulent or non-*bona fide* or other categories of transactions, as alleged against the writ petitioners, had been undertaken by such member.
88. Thus, the delay in culmination of the investigation itself does not vitiate the process of investigation, more so, since such delay was a result more of the attempts of the writ petitioners to thwart the investigation than inaction on the part of the CSE.

- 89.** The writ petitioners rely on their purported exoneration on the part of the SEBI. However, the letters of the SEBI in that regard do not exonerate the writ petitioners as such, but clearly let off the writ petitioners with a warning, iterating that there were irregularities on the part of the writ petitioners but stopping short of taking penal measures against the writ petitioners. Hence, the SEBI never granted any “clean chit” to the writ petitioners at all.
- 90.** Moreover, the initial letter of the SEBI to the CSE, which was the genesis of the investigation, was not restricted to violation of SEBI Regulations alone but also touched infraction of the Bye-Laws of the CSE itself. Even if we proceed on the premise that SEBI did not take any action on the infraction of its own regulations, the investigation remained alive insofar as the violation of the CSE Bye-Laws and Regulations is concerned.
- 91.** The writ petitioners further rely on purported “No Dues Certificate” being issued by the CSE. However, the so-called No Dues Certificate dated October 11, 2007 is a communication by the CSE restricted to there being no dues otherwise on the part of the writ petitioners to the CSE. However, the expression “without prejudice to rights in other matters” suffixed such statements in the communication, thereby keeping it open for the CSE to take penal action on other infractions. The issuance of a communication stating thereby that there were no trading dues cannot, by any stretch of imagination, operate as estoppel against the steps taken upon an investigation for violation of CSE Bye-Laws and Regulations, which have the force of law. It is well-settled that there

cannot be any estoppel against law. Moreover, the “no dues” mentioned in the letter dated October 11, 2007 could not, by any stretch of imagination, cover the penalty which might be imposed for violations of CSE Bye-Laws otherwise.

92. Another important facet of the matter is that no objection was raised by the writ petitioners at any point of time regarding there being no pending investigation, in their replies to the repeated queries of the CSE or otherwise. Even in the last Advocate’s letter dated March 15, 2022 issued on behalf of the writ petitioners, a stand was taken by the writ petitioners that they reserved their right to challenge any decision taken by the CSE, thus making it clear that the writ petitioners had all along submitted to the investigation and had participated in the same, thereby precluding them from raising frivolous objection of non-pendency of any investigation.

93. The proposition laid down in *Surendralal Giridhailal Mehta (supra)*¹⁰ is not applicable here, since the investigation in the instant case was ongoing in all relevant points of time and was not re-commenced after a hiatus. Thus, this issue is decided against the writ petitioner.

(v) Whether constitution of the Board of Directors was illegal

94. Admittedly, the Board of Directors or the governing body of the CSE, which took the impugned decision dated March 15, 2022, was comprised of three members, all of whom were Public Interest Directors. Rule 23 (1) of the Securities Contracts (Regulation)(Stock Exchanges and

¹⁰. *Surendralal Giridhailal Mehta vs. Union of India & Ors.*, reported at (2018) SCC OnLine Cal 2937

Clearing Corporations) Regulations, 2018 provides that the Governing Board of every recognized stock exchange shall include:

- a) Shareholder Directors;
- b) Public Interest Directors; and
- c) Managing Director.

95. Thus, the expression “shall” mandates the incorporation of all such three categories of Directors.

96. In the present case, the CSE was exempted by the SEBI by a specific written instruction, on the request of the CSE itself, from appointing a Managing Director. Sub-clause (4) of Regulation 23 provides that the Managing Director shall be included in the category of Shareholder Directors. However, such expression does not automatically imply that a Managing Director can be equated with a Shareholder Director. The inclusion of a Managing Director in the category of Shareholder Directors maintains a distinction between the two but only deems to equate the two only for the purpose of the subsequent provisions of Regulation 23, such as the sub-clauses (10) and (11) thereof. As per sub-clause (10), the number of Public Interest Directors shall not be less than the number of Shareholder Directors to constitute the quorum for the meetings of the Governing Board. Again, as per sub-clause (11), the voting on a resolution in the meeting of a Governing Board shall be valid when the number of Public Interest Directors that have cast their vote on such resolution is equal to the number of Shareholder Directors.

97. Thus, a Managing Director, only for the purpose of provisions such as sub-clauses (10) and (11), would come under the category of Shareholder

Directors to determine the voting ratio between Public Interest Directors and Shareholder Directors, since there is no separate provision in the Regulation in that regard vis-à-vis a Managing Director.

- 98.** As such, although the non-inclusion of a Managing Director in the Board can be understandable otherwise, the same does not justify the non-inclusion of other Shareholder Directors.
- 99.** As per the above discussion, sub-clause (4) of Regulation 23 *per se* does not equate a Managing Director with a Shareholder Director but merely brings the former within the category of the latter for specific purposes of compliance of Regulation 23. Thus, the SEBI exemption regarding appointment of Managing Director, due to the funds crunch of CSE and on its own prayer, cannot automatically imply that the appointment of Shareholder Directors in the Governing Board was also exempted.
- 100.** Moreover, the scheme of sub-clauses (10) and (11) and the other sub-clauses of Regulation 23 clearly make the presence of both Shareholder Directors and Public Interest Directors in the Board essential, apparently to strike the balance between the interest of the investors and the shareholders of the CSE. Thus, coupled with the term “shall” in Regulation 23(1) of the 2018 Regulations, there cannot be any manner of doubt that the Board of Directors which took the impugned decision dated March 15, 2022 being comprised only of three Public Interest Directors, was unlawfully constituted, in the absence of any Shareholder Director.

101. Accordingly, although not on merits, the order impugned in GA No. 1 of 2022 has to be set aside on the technical ground of unlawful constitution of the Board of Directors which took such decision.

CONCLUSION

102. Thus, in conclusion, this Court finds that the investigation by the CSE up to the impugned order dated March 15, 2022 was valid in the eye of law. However, the subsequent decision dated March 15, 2022, being taken by a Board constituted unlawfully and without proper quorum, has to be set aside.

103. Accordingly, WPO No. 305 of 2022, along with GA No.1 of 2022, are disposed of with the following directions:

- (i) The Order dated March 15, 2022, impugned in GA No.1 of 2022, is hereby set aside only on the ground that the Board of Directors passing the same, being devoid of any Shareholder Director, was unlawfully constituted and without proper quorum. It is, however, made clear that the merits of the said order have not been gone into otherwise.
- (ii) However, the investigation undertaken by the CSE, till immediately prior to the passing of the order dated March 15, 2022, is legal and valid in the eye of law. Accordingly, the CSE shall immediately take steps for constitution of a valid governing Board in terms of Regulation 23(1) of the 2018 Regulations, comprised both of Public Interest Directors as well as Shareholder Directors. However, there need not be

any Managing Director in the said Board to confer validity on the same, in view of the exemption in respect of appointment of Managing Director granted to the CSE by the SEBI and since a Managing Director stands on the same footing as Shareholder Directors for the purpose of forming a quorum as per Regulation 23 (4) of the 2018 Regulations.

- (iii) Upon such constitution, the said Board shall take a fresh decision in respect of the allegations against the writ petitioners on the basis of the relevant documents and materials before it and the preceding investigation, which has been held to be valid above, without being prejudiced in any manner by the observations made in this judgment or the order dated March 15, 2022.
- (iv) The entire exercise of formation of a Board as well as taking a final decision on the investigation against the writ petitioners shall be concluded as expeditiously as possible, preferably within three months from the date of this order.
- (v) The security deposit made by the writ petitioners with the CSE shall be withheld till a final decision is taken by the newly constituted governing Board, as directed above. The quantum lying in such deposit shall be subject to such final decision and will be adjusted with the penalty, if any, imposed on the writ petitioners. By way of clarification, in the event the penalty imposed is higher than the security deposit lying with the CSE, the security deposit shall be adjusted with the

quantum of such penalty and it will be open to the CSE to take appropriate legal recourse for recovery of the balance amount of penalty from the writ petitioners. On the other hand, in the event the security deposit exceeds the penalty imposed, the excess amount of security deposit, after deduction of the penalty, shall be returned to the writ petitioners within a month from the final decision being taken. However, in the latter eventuality, no interest shall be paid thereon, since, in view of the pending litigation till date, the liability for the delay in making such payment cannot be attributed to the CSE.

104. There will be no order as to costs.

105. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)