REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 435 OF 2007

SECURITIES AND EXCHANGE BOARD OF INDIA ....APPELLANT(S)

VERSUS

NATIONAL STOCK EXCHANGE MEMBERS ASSOCIATION AND ANR. ....RESPONDENT(S)

WITH

CIVIL APPEAL NO.5076 OF 2007

WITH

CIVIL APPEAL NO.3003 OF 2011

J U D G M E N T

Rastogi, J.

Civil Appeal No. 435 of 2007

1. The instant appeal is directed against the judgment and order dated 7th November, 2005 passed by the Division Bench of the High Court of Delhi, setting aside the finding returned by

the learned Single Judge of the High Court under judgment dated 26th October, 2004. The Division Bench has arrived at a conclusion that in terms of Section 12(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "the Act 1992"), a single registration with Securities and Exchange Board of India (hereinafter referred to as "SEBI") is sufficient even if the stock broker has various memberships and functions from several stock exchanges and, therefore, will have to pay the fee for the initial registration with SEBI and, accordingly, set aside paragraph (vi) of Part A of the Circular dated 28th March, 2002 issued by SEBI.

Factual backdrop

2. SEBI has been established under provisions of the Act, 1992 with an object to protect the interest of investors in the securities market and to promote the development of, and to regulate the securities market. SEBI was created as a regulator to regulate the securities' market which includes dealing in shares, debentures, derivates, etc. in recognised stock exchanges. It may be relevant to note that before SEBI was

formed, each stock exchange admitted members and the brokers/sub-brokers could deal in securities in accordance with bye-laws of each of such stock exchanges. The law that governed prior to the Act, 1992 was the Securities Contracts (Regulation) Act, 1956 read with Securities Contracts (Regulation) Rules, 1957. The Act and the Rules provide for recognition of the stock exchange and qualifications of members of the stock exchange.

3. After the formation of SEBI, the Central Government in exercise of power under Section 29 of Act, 1992 framed Securities and Exchange Board of India(Stock Brokers and Sub-Brokers) Rules, 1992 and in exercise of powers conferred under Section 30, the Board framed Securities and Exchange Board of India(Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as "Regulations 1992").

4. When SEBI levied the fees on the stock brokers in terms of Regulation 10 read with Schedule III, it was challenged before this Court in ***BSE Brokers' Forum, Bombay and Others v.***

Securities and Exchange Board of India and Others[1]. This Court upheld the validity of Regulation 10 read with Schedule III to the Regulations, 1992 and further held that the fees charged by SEBI is not a tax but is a fee and that is regulatory in nature and the element of *quid pro quo* is not strictly necessary. This Court passed further directions requiring SEBI to amend Regulations to incorporate the recommendations of the R.S. Bhatt Committee.

5. That keeping in view the directions of this Court in the afore-stated judgment, SEBI issued a Circular dated 28th March, 2002 clarifying that every stock broker who has a certificate of registration has to pay the fees prescribed in Schedule III for each and every certificate of registration that he holds. The relevant extract of the Circular dated 28th March, 2002 is reproduced hereunder:

> "SMD/POLICY/Cir-07/2002
>
> March 28, 2002
>
> The Executive Directors/Managing Directors
> All Stock Exchanges
>
> Dear Sir / Madam,

[1] (2001) 3 SCC 482

SUB : FEES PAYABLE BY STOCK BROKERS

SEBI has notified the SEBI (Stock Brokers and Sub-brokers) Regulations in 1992. Schedule III of the SEBI (Stock Brokers and Sub-brokers) Regulations 1992 which deals in detail with the payment of the fees was challenged by the brokers of the stock exchanges in their individual and representative capacity. The Hon'ble Supreme Court was pleased to deliver a judgment on February 01, 2001 on this issue inter alia directing SEBI to amend the Regulations incorporating the recommendations of the R. S. Bhatt Committee Report.

SEBI has amended the regulations on February 20, 2002 as per the judgment of the Hon'ble Supreme Court incorporating the recommendations of R. S. Bhatt Committee.

It may be mentioned that the incidence of fees payable to SEBI by brokers has been reduced by the R. S. Bhatt Committee. R. S. Bhatt Committee has suggested different rates of payment of fees depending on nature of the transactions entered into. SEBI has accepted the recommendations of the R. S. Bhatt Committee and many brokers have paid fees in the past as per schedule III read down with the recommendations of the R. S. Bhatt Committee and such fees have been accepted by SEBI.

Following the judgment of the Hon'ble Supreme Court, SEBI has received representations from the brokers in their individual capacities as well as their representative capacity. The issues have been examined by SEBI. Part A of this circular contains clarifications on the issues sought by the brokers.

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PART A

CLARIFICATIONS ON THE ISSUES ARISING OUT OF THE VARIOUS REPRESENTATIONS ON FEES TO BE PAID BY BROKERS TO SEBI.

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vi. Fees payable by composite corporate members :

> **It is clarified that Regulations require every broker who wants to receive a Certificate of registration from SEBI to make payment of fees to SEBI. This is irrespective of the number of cards which are held by the broker on the stock exchange. In case the broker has more than one registration certificate from SEBI on any stock exchange then he will be required to pay fees as per the Regulations for each and every certificate that he holds. In case the broker holds only one registration certificate and more than one card on any exchange it is clarified that registration fees are payable on the registration certificate and not on the number of cards held by the broker. The brokers' turnover will be the aggregate turnover of all cards."**
>
> (Emphasis supplied)

6. Respondent no.1 is an association of the trading members of the National Stock Exchange and as alleged, its members deal in sale and purchase of shares and securities in India and each stock broker has been registered under the Act, 1992 and pay fee for registration in accordance with the Regulations, 1992.

7. The association of trading members challenged the Circular dated 28th March, 2002 to the extent that paragraph (vi) of Part A provides the fees payable by a composite corporate member and requires that the stock broker who held more than one registration with SEBI, structured fee would be required to be paid for each registration. It was contended by the association that even if a stock broker has more than one

registration from SEBI, he was required to pay fees only with respect to the initial registration with SEBI irrespective of the number of cards held by the broker from the stock exchange and accordingly it was prayed that the clarification made by SEBI under its Circular dated 28th March, 2002 of which a reference has been made, is in contravention to the scheme of the Act, 1992 and deserves to be set aside.

8. Learned Single Judge of the High Court, after examining the scheme of Regulations and the Circular dated 28th March, 2002 and Reg. 6 read with Reg. 9 in particular along with Form 'A', arrived at the conclusion that multiple registrations are envisaged under the scheme of Regulations, and upheld the impugned Circular dated 28th March, 2002 holding that it only determines the mode and manner of the calculation and dismissed the petition by judgment dated 26th October, 2004.

9. On a Letters Patent Appeal being preferred by respondent no.1, the Division Bench of the High Court was of the view that the scheme only manifests one certificate of registration from SEBI even if a stock broker operates from several stock

exchanges in the country and was primarily influenced by the expression 'a certificate' as referred to in Section 12(1) of the Act, 1992 and while setting aside the finding returned by the learned Single Judge, allowed the appeal by a judgment dated 7th November, 2005 and held that single registration of SEBI is required even if a stock broker has a membership and functions from several stock exchanges and will have to pay registration fee for the first initial registration with SEBI even if he operates in several other stock exchanges with a further direction that if any of the stock broker has paid fees to SEBI for any subsequent registration after his first initial registration, the said fee has to be refunded by SEBI forthwith and declared paragraph (vi) of Part A of the Circular dated 28th March, 2002 to be inconsistent with Section 12(1) of the Act 1992. That became the subject matter of challenge in appeal before us.

10. It may be noticed that the procedure of requiring registration with SEBI for each stock exchange separately continued till the year 2014 and by amending the Regulations, SEBI now requires a single registration for a stock broker with one registration number. The broker has to apply to individual

stock exchanges for approval to trade in their exchange. Therefore, from 2014 onwards, the scheme requires one registration for multiple approvals from individual stock exchanges.

11. Learned counsel for the appellant submits that this is the second round of litigation initiated by the respondents having failed in their challenge to the validity of Regulation 10 read with Schedule III of the Regulations providing for imposition of fee, which was upheld in ***BSE Brokers' Forum, Bombay and Others***(supra) and the Circular dated 28th March, 2002 is nothing but a clarification and in terms thereof, the fee is to be paid by the stock broker which is in conformity with the scheme of Regulations 1992.

12. Learned counsel for the appellant further submits that the imposition is held to be a fee and not a tax and being a levy which is also regulatory in nature, in view of various activities of SEBI to regulate the business of the securities market mentioned in Section 11 of the Act, *quid pro quo* was not held to be a condition precedent for levy to constitute fee.

13. Learned counsel further submits that the scheme of the securities contracts clearly postulates that the application is to be made through a stock exchange for registration with SEBI and each stock exchange is separately registered under the Act and it was further emphasised that the scheme demonstrates that SEBI endorses different stock exchanges and so the fee has to be separate as its part of the regulatory mechanism.

14. Learned counsel further submits that the multiple registrations are envisaged and a bare reading of the scheme of Regulations indicates that wherever there is singular phraseology, the same is in reference to the registration in respect of a particular stock exchange and it is not disputed that stock brokers are enrolling themselves in different categories of memberships in stock exchanges, for example, like an equity segment, debt, derivative commodity segment etc., and thus brokers are conscious of the different nature of activities required and the expertise which may entitle them for registration to trade in one nature of securities but may not be so in respect of another nature of security.

15. In that background, learned counsel for the appellant further submits that the emphasis that has been laid by the Division Bench of the High Court on the expression "a certificate" as referred to under Section 12(1) of the Act appears to be a misnomer for the reason that the same term can be used for singular or plural expression and the High Court has completely overlooked the scheme of Regulations, 1992 and Form 'A' annexed to Reg.3 thereto and if the scheme of the Act, Rules and Regulations framed thereunder are examined in a holistic manner, it clearly manifests that the stock broker has to get the certificate of registration from SEBI for each of the stock exchange where he operates and accordingly the fee is to be paid pursuant to the Circular dated 28th March, 2002 which was only a clarification made, according to which the fee was payable by the composite corporate broker.

16. Learned counsel for the appellant further submits that the complaint of the association was only with respect to the fee payable under Schedule III and the computation of five years' period from the date of initial registration but the scheme of Regulations, 1992 makes it explicit that an application has to

be made by the stock broker through each of the stock exchanges where he wishes to be a member and the respective stock exchange forwards the application with its recommendations to SEBI, who will consider the application under Reg. 5 and grant registration under Reg. 6 after the necessary requirements are satisfied and an intimation of registration is to be sent to the individual stock exchanges, that enabled broker/sub-broker to apply to SEBI for reconsideration of his case of registration for a particular exchange, if refused.

17. Learned counsel further submits that a stock broker who had been a member of the Madras, Calcutta and Bombay Stock Exchanges, has to get himself separately registered with SEBI in respect of each of such stock exchanges and a certificate of registration may be applicable to each of such stock exchanges and it has been wrongly claimed by the respondents that one certificate of registration is required which is applicable to multiple stock exchanges.

18. Per contra, learned counsel for the respondents, on the other hand, while supporting the finding recorded by the Division Bench of the High Court under the judgment impugned

submits that the scheme of the Act and the Regulations framed thereunder nowhere suggest that separate registration is required with respect to each of the stock exchanges and has referred to certain provisions of the scheme of Regulations and Rules, 1992 and submits that only a semblance of a suggestion of multiple registrations can be found in Schedule III, wherein paragraph 1(1)(c), the word "initial registration" has been employed to indicate the starting point for the reckoning of five years for which ad valorem fees has to be paid.

19. Learned counsel further submits that the schedule annexed to the Regulations cannot override the scheme of the Regulations and further submits that the then prevailing practice of multiple registrations was sought by the stock brokers only out of abundant caution, after their initial registration, since the certificate issued in Form 'D' reflected the names of such stock exchanges of which they are members on the date of such initial registration. That apart, there is no provision to amend and insert the name of more stock exchanges in the certificate and this being a settled principle of law, this practice cannot be used in aid of interpretation if it is

contrary to the plain language of the statute and took assistance of the judgment of this Court in ***K.P. Varghese v. Income Tax Officer, Ernakulam and Another***[2].

20. Learned counsel for the respondents further submits that irrespective of whether a stock broker is required to hold a single registration or multiple registrations with each stock exchange, the payment of ad valorem fee will nonetheless happen only once, i.e., for five years from the first of such multiple registrations and further submits that there is no indication in the scheme i.e., the Act, Rules and Regulations, that a stock broker ought to register separately with respect to each stock exchange of which he is a member and even if multiple registrations are contemplated, still the ad valorem fee payable for five years can only be reckoned from the initial registration, i.e. the first of said multiple registrations with SEBI and on this premise at least the Circular dated 28th March, 2002 is *ultra vires* to the Act, 1992 insofar as it compels the stock brokers to pay ad valorem fee for multiple blocks of five years

[2] (1981) 4 SCC 173

from the dates of their multiple registrations which is otherwise not legally permissible and this what the Division Bench has examined in light of expression 'a certificate' in Section 12(1) of the Act, 1992 which does not call for further interference.

21. We have heard the submissions of the learned counsel for the parties and with their assistance perused the material on record.

22. From the arguments advanced before us, the following two questions arise for our consideration:-

(i) Whether under the Act 1992, a stock broker has to obtain a certificate of registration from SEBI for each of the stock exchanges where he operates or whether a single certificate of registration from SEBI is sufficient and the same would enable him to trade in all other stock exchanges?

(1) Whether the ad valorem fee to be paid for an initial period of five years will recur with every such registration?

23. Before we proceed to examine the questions that emerge for our consideration, it will be apposite to first have a bird's eye view of the scheme of the Act and the rules/regulations framed thereunder that will facilitate this Court to appreciate the submissions made by the parties.

24. The Board has been established under Section 3 of the Act, 1992 and it has various functions to discharge. The primary duty of the Board is to protect the interests of the investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. Section 11 provides various functions of the Board, including to register and regulate the working of stock brokers, sub-brokers and such other intermediaries who intend to associate with the securities market. Section 12 of Chapter V reinforces that every stock broker who fulfils the conditions of eligibility has to obtain a certificate of registration from the Board in accordance with the regulations made thereunder. Section 12 reads as under:-

> **"Registration of stock brokers, sub-brokers, share transfer agents, etc.**
>
> **12. (1)** No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to

> an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the (regulations) made under the Act :"…….
>
> [Emphasis Supplied]

25. Every stock exchange has to obtain recognition by the Central Government under Section 4 of the Securities Contracts (Regulation) Act, 1956 and the scheme contemplates/ recognises such of the stock brokers who are members of the stock exchange. No stock broker or sub-broker shall abide by and deal in securities unless he holds a certificate of registration granted by the Board. The Central Government has laid down the conditions of eligibility which the stock broker has to fulfil for the purpose of obtaining certificate of registration under the guiding principles prescribed under Rule 4 of Rules 1992.

26. That in exercise of power under Section 29 of the Act 1992, the Central Government framed the Rules for carrying out the purpose of this Act called the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Rules, 1992.

27. It will be apposite to take note of Rules 2(d), 2(e), 3 and 4 of the Rules, 1992 which have been extracted as under:-

> "2. In these rules, unless the context otherwise requires :
>
> (a) .....
> (b) .....
> (c) .....
> (d) "stock exchange" means a stock exchange which is for the time being recognised by the Central Government under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
> (e) "stock broker" means a member of a stock exchange;
> (f) .....
> (g) .....
>
> **Not to act as stock broker or sub-broker without registration.**
> **3.** No stock broker or sub-broker shall buy, sell, deal in securities, unless he holds a certificate granted by the Board under the Regulations :
>
> **Provided** that such person may continue to buy sell or deal in securities if he has made an application for such registration till the disposal of such application.
>
> **Conditions for grant of certificate to stock broker.**
> **4.** The Board may grant a certificate to a stock-broker subject to the following conditions namely :-
>
> **(a)** he holds the membership of any stock exchange;
> **(b)** he shall abide by the rules, regulations and bye-laws of the stock exchange or stock exchanges of which he is a member;
> **(c)** In case of any change in the status and constitution, the stock broker shall obtain prior permission of the Board to continue to buy, sell or deal in securities in any stock exchange;
> **(d)** He shall pay the amount of fees for registration in the manner provided in the regulations; and
> **(e)** He shall take adequate steps for redressal of grievances of the investors within one month of the date of the receipt of the complaint and keep the Board informed about the number, nature and other particulars of the complaints received from such investors."

28. The scheme of rules clearly postulates that a stock broker who is a member of any stock exchange, has to abide by the rules, regulations and bye-laws of the stock exchange or the stock exchanges of which he is a member apart from other conditions, for the grant of certificate of registration.

29. The Board, in exercise of its power under Section 30 of the Act has framed its Regulations 1992, which are duly notified in the Gazette. It provides a procedure/mechanism according to which the stock broker (in terms of Rule 2(e) a member of stock exchange), has to apply for grant of a certificate in Form 'A' which is to be routed through the stock exchange or stock exchanges of which he is a member and after the fee being deposited in terms of Reg. 10 as specified in Schedule III, such applications are considered by the Board in terms of the conditions of eligibility prescribed under Reg. 5 and after following the procedure for registration, as referred to under Reg. 6, the stock broker becomes eligible for grant of certificate of registration with the Board. The relevant extract of the provision of Regulations, 1992 is reproduced hereunder:-

"CHAPTER II

REGISTRATION OF STOCK BROKERS

Application for registration of stock broker.

3. (1) An application by a stock broker for grant of a certificate shall be made in 'Form A' through the stock exchange or stock exchanges, as the case may be, of which he is admitted as a member.

(2) The stock exchange shall forward the application form to the Board as early as possible but not later than thirty days from the date of its receipt.

(3) Notwithstanding anything contained in sub-regulation (1), any application made by a stock broker prior to coming into force of these regulations containing such particulars or as near thereto as mentioned in the 'Form A' shall be treated as an application made in pursuance of sub-regulation (1) and dealt with accordingly :

Provided that the requirement of the payment of fees shall be the same as is referred to in sub-regulation (1) of regulation 10.

Furnishing of information, clarification, etc.

4. .....

Consideration of application.

5. The Board shall take into account for considering the grant of a certificate all matters relating to buying, selling, or dealing in securities and in particular the following, namely, whether the stock broker—

(a) is eligible to be admitted as a member of a stock exchange;

(b) has the necessary infrastructure like adequate office space, equipments and man power to effectively discharge his activities;

(c) has any past experience in the business of buying, selling or dealing in securities;

(d) is subjected to disciplinary proceedings under the rules, regulations and byelaws of a stock exchange with respect to his business as a stock-broker involving either himself or any of his partners, directors or employees;

(e) is a fit and proper person.]

Procedure for registration.

6. The Board on being satisfied that the stock-broker is eligible, shall grant a certificate in 'Form D' to the stock-broker

and send an intimation to that effect to the stock exchange or stock exchanges as the case may be.

Effect of refusal of certificate of registration.

9. A stock-broker, whose application for grant of a certificate has been refused by the Board, shall not, on and from the date of the receipt of the communication under sub-regulation (2) of regulation 8 buy, sell, or deal in securities as a stock-broker.

Payment of fees and the consequences of failure to pay fees.

10. (1) Every applicant eligible for grant of a certificate shall pay such fees and in such manner as specified in Schedule III

Provided that the Board may on sufficient cause being shown permit the stockbroker to pay such fees at any time before the expiry of six months from the date on which such fees become due.

(2) Where a stock-broker fails to pay the fees as provided in regulation 10, the Board may suspend the registration certificate, whereupon the stock-broker shall cease to buy, sell or deal in securities as a stock-broker."

30. It may be relevant to note that the application for registration prescribed in Form 'A' annexed to Reg. 3 has to be filled up by the stock broker for seeking registration with the Board. Apart from the details which the stock broker has to indicate, recommendation has to be made by the stock exchange of which he is a member and through whom the application is processed/forwarded to the Board for the purpose of registration. After the compliance is made, the certificate of

registration is issued to the stock broker in Form 'D' annexed to Reg. 6.

"SCHEDULE I
FORMS

FORM A

Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992
[Regulation 3]

Application Form for Registration as Stock Brokers with Securities and Exchange Board of India

Name of the Stock Exchange :
1. Name of Member with Code No.
2. Address of Member
3. Trade name of Member
4. Form of Organisation—Sole proprietorship, partnership, corporate body, financial institution. Please give names of proprietor/partners/directors.
5. Educational Qualifications.
6. Date of admission to membership.
7. Whether member of more than one Stock Exchange? If so, please give name(s) of the Stock Exchange(s) with Code Number(s).
8. Indicate Fax, Telex and Phone Number(s) of office and residence.
9. In the case of members admitted on any Stock Exchange after February 21, 1992, the copy of the information given to the Stock Exchange at the time of admission.
I declare that the information given in this form is true to the best of my knowledge and belief.

.....
Dated.....
Signature

Recommendation of the Stock Exchange

This is to certify that.....is a member of this Exchange and is recommended for registration with the Securities and Exchange Board of India.

Signature

Name

Designation"

"FORM D
Securities and Exchange Board of India (Stock Brokers and Sub-brokers)
Regulations, 1992
[Regulation 6]
Certificate of Registration

In exercise of the powers conferred by sub-section (1) of section 12 of the Securities and Exchange Board of India Act, 1992, read with the rules and regulations made thereunder, the Board hereby grants a certificate of registration to.....a member of the.....Stock Exchange(s) as a Stock Broker for carrying on the activities of buying, selling or dealing in securities and carrying on such other activities as are permitted by such Stock Exchange(s) subject to conditions prescribed in the rules and in accordance with the regulations.
Registration number allotted is as under :
.....
..... This certificate shall be valid till it is suspended or cancelled in accordance with the regulations.

Date.....

By Order

For and on behalf of

Securities and Exchange Board of India"

31. At the given time, Schedule III annexed to Regulation 10 prescribes the fee to be paid by the stock broker for the purpose of seeking registration which is reproduced hereunder:-

"SCHEDULE III
Securities and Exchange Board of India (Stock Brokers and Sub-brokers)
Regulations, 1992
[Regulation 10]

I. **Fees to be paid by the Stock Broker**.

1. Every stock broker shall subject to paragraphs 2 and 3 of this Schedule pay registration fees in the manner set out below :

(a) where the annual turnover does not exceed rupees one crore during any financial year, a sum of rupees five thousand for each financial year;

(b) where the annual turnover of the stock-broker exceeds rupees one crore during any financial year, a sum of rupees five thousand plus one hundredth of one per cent of the turnover in excess of rupees one crore for each financial year;

[(bb) Notwithstanding anything contained in clause (b) it is clarified that the fee shall be recoverable as computed as under :

(i) in respect of jobbing transactions that is to say all transactions which are squared off during the same day which have not been undertaken by the broker on behalf of clients, the fees shall be computed at the rate of one two hundredth of one per cent in respect of the sale side of such transactions;

(ii) in respect of transactions in Government securities, the bonds issued by any Public Sector Undertaking and the units traded in a similar manner, the fee payable shall be computed at the rate of one thousandth of one per cent of the turnover;

(iii) in case of carry forward, renewal or badla transactions the fees shall be computed at the rate of one hundredth of one per cent of the turnover and the reverse off setting transactions shall not be counted as part of the turnover;

(iv) if brokers are carrying out transactions in securities without reporting them to the stock exchange, those transactions shall be taken into account for the purpose of turnover and the fees shall be computed at the rate of one hundredth of one per cent of the turnover;

(v) the trade put through on other stock exchanges shall be included in the turnover of that exchange if market for that security does not exist on the exchange of which he is a member and the fees shall be computed at the rate of one hundredth of one per cent of the turnover;

(vi) activity such as underwriting and collection of deposits shall not be taken into account for the purpose of calculating the turnover;]

> (c) after the expiry of five financial years from the date of initial registration as a stock-broker, he shall pay a sum of rupees five thousand for [every] block of five financial years commencing from the sixth financial year after the date of grant of initial registration to keep his registration in force."
>
> [Emphasis supplied]

32. It is not disputed that the rules and the regulations have been notified with the previous approval of the Competent Authority in the Official Gazette, of which a reference has been made above. Before a certificate of registration is issued as referred to under Section 12 of the Act 1992, the procedure has been prescribed for a stock broker who indeed to be a member of the stock exchange as defined/codified under Rule 2(e) of Rules 1992. The stock broker not only has to comply with the conditions for grant of certificate under Rule 4, but at the same time, has to disclose all the relevant information as required in the application form for registration in Form 'A', which has to be filled by him as referred to under Reg. 3.

33. The Board, after recording satisfaction that the stock broker is eligible, on fulfilment of the conditions as being disclosed by him in Form 'A', may issue a certificate of registration as prescribed in Form 'D' annexed to Reg. 6 of

Regulations 1992. For obtaining the certificate of registration, the stock broker has to pay such registration fees as prescribed in Schedule III annexed to Reg. 10 of Regulations 1992. If we look into Schedule III, it has been completely structured prescribing the fee to be deposited by the stock broker; not only the initial registration fee but also the fee which has to be paid by the stock broker for renewal of his registration.

34. Clause 1(1)(c) of Schedule III to Regulation 10 postulates that after expiry of five financial years from the 'date of initial registration', a stock broker, for the sixth financial year, after the grant of initial registration, has to pay the prescribed fee to retain registration in force. In reference to the expression 'date of initial registration' to which emphasis been made, it leaves no ambiguity that if more than one registration is permissible in terms of the scheme of rules/regulations framed by the Central Government/Board, as the case may be, the stock broker has to comply with the conditions prescribed in Form 'A' annexed to Regulation 3 and if he holds multiple registrations with the Board in his basket, after expiry of five years of the

certificate of registration from the initial registration in reference to the stock exchange of which he is a member, a fee has to be paid/deposited by him to keep his registration in force. In other words, each certificate of registration with SEBI remains co-terminus with the stock exchange(s) to which the stock broker is a member.

35. In the earlier round of litigation, the stock brokers through their brokers' forum challenged the validity of Regulation 10 read with Schedule III of the said regulations prescribing the fee to be charged for the purpose of obtaining certificate of registration with the Board. The objection was that the same is in the nature of a turnover tax but not a fee being charged by the Board for the purpose of obtaining certificate of registration.

36. This Court in ***B.S.E. Brokers' Forum, Bombay and Others***(supra) held in paras 45 and 47 as under:-

> **"45.** It cannot be disputed that the annual turnover of a broker is not the subject matter of the levy but is only a measure of the levy. In other words, the fee is not being levied on the turnover as such but the fee is being levied on the brokers making their annual turnover as a measure of the levy which is a fee for regulating the activities of the securities market and for registration of the brokers and other intermediaries in the said market. Therefore, it is futile to contend that such levy would be either a tax or a fee on

turnover. It is a settled principle in law that if the State has the authority to impose a levy then it has a wide discretion in choosing the measure of levy provided, of course, it withstands the test of reasonableness. Many levies may have a similar measure but by such similarity in the measure, the levies do not become the same. Therefore, if the impugned levy adopts a measure which is either similar to the one adopted while levying turnover tax or income-tax, the impugned levy ipso facto by adoption of such measure, would not become either an income-tax or a turnover tax or even a fee on income or a fee on turnover.

47. Therefore, it would be futile to contend that the impugned fee merely because it is levied on the basis of the turnover of the brokers would either amount to a turnover tax or a tax on income. While we accept the levy based on annual turnover of the brokers as valid, we have to notice that the Expert Committee appointed by the Board has in its report held that there should be certain changes brought about in the definition of annual turnover as also in the quantum of the levy pertaining to certain specific transactions which are treated as part of the turnover. It has recommended that for jobbing transactions the scale of fees may be reduced to One Two hundredth of 1 per cent, and in regard to carry forward, renewal or badla transactions, the off-setting entries made by the Exchange, may not be counted as part of the turnover, and further on Government securities, PSU Bonds and Units, the turnover will have to be calculated separately and a fee of one thousandth of one per cent may be charged on such turnover than the present scale of one hundredth of one per cent. It has also recommended that the activities such as underwriting and collection of deposits should not be taken into account for the purpose of calculating the turnover of the brokers. These recommendations of the Committee were, as a matter of fact, accepted by the Government of India also but as on date, the necessary changes have not been brought about by the Board in its Regulations. Consequently, to the extent of the recommendations made by the Expert Committee, we are of the opinion that the Board is bound to bring about corresponding changes so as to remove the anomalies pointed out by the Committee. This was pointed out to learned counsel for the respondents when it was submitted that the Board has accepted these recommendations and the proposed changes were not brought about because of the pendency of this petition and the necessary changes to incorporate the recommendations of the Bhatt Committee

> would be done after disposal of these petitions. We record this submission on behalf of the Board and direct that the said changes recommended by the Bhatt Committee will be incorporated in the Regulations. Subject to the above, we are of the view that the challenge made to the levy based on the measure of turnover has to be rejected."

37. This Court, in the earlier round of litigation, has approved the mechanism which was being followed by the Board in charging fees in terms of the procedure prescribed under Schedule III based on "annual turnover".

38. While accepting the anomalies pointed out by the R.S. Bhatt committee, this Court was of the view that the Board may make certain corresponding changes so as to remove those anomalies pointed out by the Committee and directed to incorporate the conditions/recommendations with regard to the levy based on the turnover.

39. In furtherance of the judgment of this Court in ***B.S.E. Brokers' Forum, Bombay and Others***(supra), the appellant came out with a circular dated 28th March, 2002 providing the procedure according to which the structure for obtaining the certificate of registration has been laid down providing the fees

to be deposited by the stock broker based on the 'annual turnover'.

40. The grievance of the respondents was in reference to paragraph (vi) of Part A to the Circular dated 28th March, 2002 which prescribed the fees payable by composite corporate members. It only clarifies that every stock broker who wants to obtain certificate of registration from SEBI irrespective of the number of registration cards which are held by the stock broker under stock exchange or stock exchanges, will be required to pay the fees, for each and every certificate of registration which he holds. That appears to be the primary cause of grievance which was assailed by the respondents through the association by filing of a writ petition before the High Court of Delhi and after examining the scheme of regulations and the circular of which reference has been made dated 28th March, 2002, and taking note of the judgment of this Court, while repelling the contentions advanced by the respondents, the learned Single Judge of the High Court upheld the Circular dated 28th March, 2002.

41. The Division Bench of the High Court was primarily persuaded with the expression 'a certificate' as referred to under Section 12(1) of the Act, 1992 and arrived at a conclusion that the expression 'a certificate' signifies a single certificate of registration irrespective of the fact that a stock broker is a member of various stock exchanges and the rules/regulations which are being framed either by the Central Government or the Board in exercise of power under Sections 29 and 30 of the Act, 1992 have to be in conformity with the mandate of the Act, 1992 and that will prevail over the subordinate legislation. Proceeding on the said premise, the Division Bench of the High Court arrived at the conclusion that only initial registration with SEBI is required for a stock broker even if he is a member of multiple stock exchanges and accordingly directed the appellant to refund the fee which had been deposited by each of the stock broker for multiple registrations.

42. The High Court, in our view, appears to be influenced by the expression 'a certificate of registration' referred to under Section 12(1) of the Act, 1992 but has failed to notice that the

expression 'a certificate' is not in reference to any number and it can be considered that the words in the singular shall include plural as well, and has failed to notice that certificate of registration has to be obtained from the Board in accordance with the regulations framed in exercise of power under Section 30 of the Act 1992. In this context, the very scheme of rules framed by the Central Government in exercise of power under Section 29 and regulations framed by the Board under Section 30 of the Act, 1992 has been completely misplaced which indeed has a statutory force. Although the scheme may be in the nature of subordinate legislation, the same has superior force and supplements a mechanism/ procedure according to which the member (stock broker) of the stock exchange has to obtain certificate of registration from the Board and issuance of certificate of registration from SEBI remain co-terminus with the stock exchange to which the stock broker is a member and that being the reason, Reg. 10 read with Schedule III lays down the procedure according to which the fees has to be paid/deposited by the stock broker in obtaining certificate of registration from SEBI in reference to the stock exchange and

for its renewal at a later stage for keeping its registration in force.

43. When the law has to be applied in a given case, it is for the Court to ascertain the facts and then interpret the law to apply on such facts. Interpretation, indeed, cannot be in a vacuum or in relation to hypothetical facts. It is always the function of the legislature to say what shall be the law and it is only the Court to say what the law is and this Court applied the principle of purposive construction while interpreting the law to apply to such facts. A statute has to be construed according to the intent that makes it and it is always the duty of the Court to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, it is always desirable of the Court to choose the interpretation which represents the true intention of the legislature. It is also well-settled that to arrive at the intention of the legislation, it is always depending on the objects for which the enactment is made, the Court can resort to historical, contextual and purposive interpretation leaving textual interpretation aside.

Thus, while interpreting the statutory provisions, the Court is always supposed to keep in mind the object or purpose for which the statute has been enacted.

44. ***Barak*** in his exhaustive work on "Purposive Construction" explains various meanings attributed to the term "purpose". It would be in the fitness of discussion to refer to "Purposive Construction" in *Barak's* words:

> "Hart and Sachs also appear to treat 'purpose' as a subjective concept. I say 'appear' because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator's shoes, they introduce two elements of objectivity : First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfil their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably."
> (Aharon Barak, *Purposive Interpretation in Law*, (2007) at p. 87.)

45. ***Francis Bennion*** in his book *Statutory Interpretation* described "purposive interpretation" as under:

> "A purposive construction of an enactment is one which gives effect to the legislative purpose by—
> (*a*) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or
> (*b*) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose."

46. In ***Chief Justice of Andhra Pradesh and Others v. L.V.A. Dixitulu and Others***[3], a Constitution Bench of this Court observed as under:

> "*66.* The primary principle of interpretation is that a constitutional or statutory provision should be construed 'according to the intent of they that made it' (Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean or evocative or can reasonably bear meanings more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation."

47. Thus, in our considered view, the conjoint reading of the expression "a certificate" as referred to in Section 12(1) of the Act read with the scheme of Rules, 1992 and Regulations 1992, leads to an inevitable conclusion that the stock broker not only has to obtain a certificate of registration from SEBI for each of

[3] (1979) 2 SCC 34

the stock exchange where he operates, at the same time, has to pay ad valorem fee prescribed in terms of Part III annexed to Regulation 10 of the Regulations, 1992 in reference to each certificate of registration from SEBI in terms of the computation prescribed under Circular dated 28th March, 2002 and fee is to be paid as a guiding principle by the stock broker which is in conformity with the scheme of Regulations 1992.

48. So far as the emphasis which was made to the expression 'date of initial registration' as referred to in Schedule III(I)(1)(c) is concerned, it is in relation to a certificate of registration which has been obtained by the stock broker from SEBI, which in turn is in relation to the stock exchange of which he is a member. After the expiry of five financial years from the date of initial registration, in reference to the stock exchange, the fee has to be deposited for the purpose of sixth financial year to keep his registration in force.

49. Insofar as the procedure of charging fees as prescribed under Schedule III annexed to Regulation 10 of the Regulations, 1992 is concerned, it has already been examined by this Court,

in ***B.S.E. Brokers' Forum, Bombay and Others***(supra) and needs no further deliberation of this Court.

50. During the course of arguments, and for our own clarification, we put a query to the learned counsel for the appellant that in consequence of refusal to grant certificate of registration to a stock broker in relation to one stock exchange, whether this disqualification will give adverse impact on registrations granted to the stock broker in other stock exchanges for the reason that the certificate of registration was granted based on membership of different stock exchanges, it has been contended by the appellant that certificate of registration was granted based on membership of different stock exchanges, and the applicant was to be admitted as member of different stock exchanges as per their own bye-laws, rules and regulations. However, in the case where stock broker is declared defaulter or disqualified to continue as a stock broker in reference to one of the stock exchanges, in terms of SEBI Circular SEBI/MIRSD/Master Cir-04/2010 dated 17th March, 2010, it has been notified that such stock exchange shall immediately inform all other stock exchange(s) the details

of the defaulter member such as name of the member, the names of the proprietors/partners/ promoters/dominant shareholders, as applicable. This may be a mechanism according to which if the stock broker who is a member of the stock exchange commits default, or on being disqualified to continue as a member, consequential actions could be taken against him pursuant to the circular to which a reference has been made. However, this is not a question to be examined by this Court in the instant proceedings.

51. Consequently, the appeal deserves to succeed and is accordingly allowed and the judgment and order passed by the Division Bench of the High Court is hereby quashed and set aside. No costs.

52. Pending application(s), if any, shall stand disposed of.

CIVIL APPEAL NO.5076 OF 2007
CIVIL APPEAL NO.3003 OF 2011

53. In view of the judgment passed by this Court in Civil Appeal No.435 of 2007, the appeals are allowed and the

judgment and order passed by the Division Bench of the High Court impugned is hereby set aside. No costs.

54. Pending application(s), if any, shall stand disposed of.

.....J.
(AJAY RASTOGI)

.....J.
(B.V. NAGARATHNA)

NEW DELHI
OCTOBER 13, 2022.