



\$~31

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2223/2024

DR. SUBRAMANIAN SWAMY

.....Petitioner

Through: Mr.Rajshekhar Rao, Sr. Adv. with
Ms.Aakanksha Kaul,
Ms.Meherunnisa Aanand Jaitley,
Mr.Areeb, Mr.Satya Sabharwal,
Mr.Aman Sahani, Mr.Ajay
Sabharwal, Ms.Tanya Arora,
Mr.Aakash Saxena, Advocates

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr.Kirtiman Singh, CGSC with
Mr.Waize Ali Noor, Mr.Varun Pratap
Singh, Mr.Varun Rajawat, Mr.Maulik
Khurana, Mr.Kartik Bajjal, Advocates
for UOI
Mr.Pratap Venugopal, Sr. Adv. with
Mr.Ashish Aggarwal, Advocate for
R-3/SEBI
Mr.Mukul Rohtagi, Sr. Adv. (through
VC), Mr.Rajiv Nayar, Sr. Adv. with
Mr.Raunak Dhillon, Ms.Madhavi
Khanna, Ms.Niharika Shukla,
Advocates for R-5/Axis Bank Ltd.
Mr.Nikhil Rohtagi, Mr.Shashank
Khurana, Advocates for R-6
Mr.Rahul Kumar, Advocate for R-
7/Axis Capital
Mr.Ramesh Babu MR, Ms.Monisha
Singh, Ms.Nisha Sharma, Ms.Jagriti
Bharti, Mr.Rohan Srivastava,
Ms.Tanya Chowdhary, Advocates for
RBI



2024:DHC:6222-DB



Mr.Sajan Poovayya, Sr. Adv. with
Ms.Vatsala Rai, Advocate for R-8
Ms. A Roy Chowdhury, Mr.Saurabh
Batra, Advocates for R-9

%

Date of Decision: 12th August, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. The petitioner has approached this Court in public interest under Article 226 of the Constitution of India seeking *inter alia* issuance of writ of Mandamus to form a committee consisting of experts in order to investigate the alleged fraudulent acts of M/s Max Life Insurance Co. Ltd. (hereinafter referred to as 'Max Life') and M/s Max Financial Services Ltd. (hereinafter referred to as 'Max Financial') in allowing their shareholder/Axis Bank Ltd. (hereinafter referred to as 'Axis Bank') and its group companies viz. Axis Securities Ltd. (hereinafter referred to as 'Axis Securities') and Axis Capital Ltd.(hereinafter referred to as 'Axis Capital') to make undue profits/illegal gains from the purchase and sale of equity shares of Max Life in a non-transparent and illegal manner.

2. Mr. Rajshekhar Rao, learned senior counsel for the Petitioner states that the Respondents No.5 to 9 are attempting to acquire shareholding in Max Life, an insurance company, by unfair and non-transparent ways using their experience in Insurance sector to manipulate the records and valuations



to serve their interests. He states that Axis Bank in accordance with Insurance Regulatory and Development Authority of India (hereinafter referred to as 'IRDAI') Regulations, 2015 is acting in the capacity of a corporate agent for Max Life and is also a shareholder in Max Life. He states that as per the disclosure made on 09th August, 2023, the Board of Directors of Axis Bank/ Respondent No.5 approved the infusion of Rs.1612 crores in Max Life/Respondent No.9 by way of preferential allotment, resulting in Axis Bank's direct stake in Max Life increasing to 16.22% and collective stake of Axis entities increasing to 19.02% as proposed in letters issued to stock exchanges. He states that Axis Bank sold its stake of 0.998% shares of Max Life in March 2021 to Max Financial and Mitsui Sumitomo International (hereinafter referred to as 'Sumitomo') for INR 166/- per share and subsequently, in March-April 2021 itself, Axis Bank and its group entities acquired 12.002% shares from Max Financial at price range of INR 31.51 – INR 32.12 per share. He states that Axis Bank has gained substantially while selling shares as the selling price has been exponentially more than the purchasing price which is contrary to the directions issued by the IRDAI in its letter dated 28th January, 2021.

3. He states that promoters of the insurer i.e. Max Financial and Sumitomo have been engaging in transfer of shares of the insurer to Axis Bank at a price, which is substantially lower than the fair market value and subsequently buying the same share from Axis Bank at a substantially higher price.

4. Mr. Mukul Rohtagi, learned senior counsel for the Axis Bank/Respondent no.5 raises a preliminary objection to the maintainability of the present writ petition on the ground that the Petitioner lacks locus-



standi to maintain the present writ petition. He submits that the principle of *locus standi* is relaxed in cases of public interest litigation but that is to be done only to ensure that poor or socially and economically backward or persons with disability are not denied their rights. He emphasises that the concept of public interest litigation is linked to enforcement of social and economic rights in India. In support of his submission, he relies on paragraph 9(d) of the Delhi High Court (Public Interest Litigation) Rules, 2010, *State of Uttarakhand vs. Balwant Singh Chauhan & Ors., (2010) 3 SCC 402* and *Guruvayoor Devaswom Managing Committee & Anr. vs. C.K. Rajan & Ors.,(2003) 7 SCC 546*.

5. In response, learned senior counsel for Petitioner states that the present Public Interest Litigation, if allowed is likely to benefit the public exchequer, which in turn, would benefit the citizens of this country. Since according to him, the class of persons affected by the fraudulent acts of the concerned Respondents are too numerous and have no direct/personal interest in the matter, they are unlikely to approach this Court on this issue. In any event, he submits that this Court is constitutionally entitled to intervene in situations such as the above, in exercise of its extraordinary jurisdiction.

6. At this stage, learned senior counsel for the Petitioner also refers to an additional affidavit dated 13th March, 2024 filed by the Petitioner wherein it is stated that Chairperson of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') was an additional director and director in Max Healthcare Institute Limited from 04th February, 2015 to 03rd April, 2017 respectively. He states that it is because of this fact that SEBI has not investigated the allegations with promptitude.



7. Learned counsel for IRDAI states that by way of two orders dated 13th October, 2022, IRDAI as a regulator has imposed maximum penalty of Rs.2 crores and Rs. 3 crores on Axis Bank and Max Life respectively. He further states that copies of the orders dated 13th October, 2022 have been forwarded to the Reserve Bank of India (hereinafter referred to as 'RBI') and SEBI for their examination and necessary action, if any.

8. Learned counsel for the SEBI has handed over an original notarised affidavit dated 9th August, 2024. The same is taken on record. In the said affidavit, it has been averred that pursuant to the order passed by the IRDAI, SEBI has initiated a preliminary examination in the said matter and the said investigation is at an advanced stage of completion. In the said affidavit, it has also been averred that the petitioner's letter dated 19th October, 2023 has been forwarded to RBI vide letter dated 17th November, 2023 considering the fact that Axis Bank and its subsidiaries are involved in transactions and the allegations primarily relate to the conduct of a bank. The relevant portion of the affidavit filed by the SEBI is reproduced hereinbelow:-

"5. I say that letter dated October 19, 2023, from the Petitioner (Dr. Subramanian Swamy) was received by SEBI on 30.10.2023. The allegations stated in the said letter were examined and the letter was forwarded to the Reserve Bank of India ('RBI') vide letter dated 17.11.2023, considering the fact that Axis Bank Limited and its subsidiaries/group are involved in the transactions and allegations primarily related to conduct of a Bank. The copy of the letter dated 17.11.2023 by SEBI to RBI is annexed herewith as Annexure R1.

6. I say that pursuant to an Order passed by the Insurance Regulatory and Development Authority of India ('IRDAI') dated 13.10.2022 (Annexure P-3), in respect of transactions by Axis Bank Ltd. in the shares of Max Life Insurance Company Ltd. ('MLIC'), and media articles SEBI had initiated preliminary examination in the said matter.



7. *I say that at the time of receipt of the letter dated October 19, 2023 from the Petitioner, there was already an ongoing examination by SEBI into the transaction between Max Finance Services Limited (MFSL)/MLIC and Axis Group including Axis Bank Limited, Axis Capital Limited and Axis Securities Limited with respect to any possible securities laws violations and the said examination is now under advanced stage of completion.*

8. *I say that in view of the fact that investigation has already been initiated, and the case is pending, the present petition is not maintainable and is liable to be dismissed.”*

9. Learned counsel for the RBI states that the letter forwarded by the IRDAI as well as SEBI shall be examined, if not already examined.

10. Having heard the learned counsel for the parties, this Court finds that the present writ petition has been filed under Article 226 of the Constitution questioning commercial transactions between (i) Respondent No.5/Axis Bank (a public listed company); (ii) Respondent No.6/Axis Securities (a public unlisted company/wholly owned subsidiary of Axis Bank); (iii) Respondent No.7/Axis Capital (a public unlisted company/wholly owned subsidiary of Axis Bank) (collectively referred to as ‘Axis Entities’); (iv) Respondent No.8/Max Financial (a public listed company), in relation to shares of Respondent No.9/Max Life, which is a non-government public unlisted company. Consequently, in essence, the Petitioner challenges purely commercial transactions undertaken by and between private entities involving acquisition of shares of a life insurance company i.e. Max Life, which is an entity regulated by the IRDAI.

11. This Court is of the view that where a field is regulated and where an appropriate regulator has either already taken note of and addressed the transaction or is investigating the said transaction, the Court in writ jurisdiction should not interfere. In such a situation, the regulator must be



allowed to do its job.

12. Further, the writ of Mandamus being a public law remedy may be issued against a private body discharging public functions, however, it cannot be used for enforcement of purely private contracts between parties.

13. The tendency to examine commercial transactions from the perspective of reasonableness in Article 226 jurisdiction is to be eschewed as it would make every valuation, sale, purchase of shares or property or every merger, acquisition, de-merger, subject to judicial review.

14. If according to the petitioner, there is a criminality involved in the aforementioned transactions, as seems to be unarticulated submission, the petitioner is always at liberty to file appropriate proceedings in accordance with law.

15. This Court also finds that though a personal allegation has been made against Chairperson SEBI, yet neither the writ petition has been amended nor she has been impleaded as a respondent. This Court is of the view that even if the Chairperson of SEBI has had a professional relationship with Max group in the past, it will not take away the Regulator's obligation and duty to decide the matter in accordance with law. Also, if the final decision of SEBI is in any manner influenced or affected because of the alleged erstwhile professional relationship of its Chairperson, the Petitioner shall surely be entitled to agitate the said ground at that stage.

16. Consequently, keeping in view the fact that the Petitioner challenges private commercial transactions between commercial entities as well as the fact that shareholders of the public limited company have approved the transactions and in addition insurance and banking sectors are regulated and the independent sectoral regulators, namely, SEBI and RBI are seized of the



controversy, this Court is of the view that it should not act as a ‘super regulator’ and interfere in exercise of Article 226 jurisdiction.

17. Accordingly, this Court disposes of the present writ petition with a direction to SEBI and RBI to complete the investigation as expeditiously as possible. If, after completion of any investigation, any further action is required to be taken, the same shall be taken by independent sectoral regulators in accordance with law.

18. This Court clarifies that the rights and contentions of all the parties are left open including with regard to the *locus standi* of the Petitioner and maintainability of the present writ petition.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

AUGUST 12, 2024
AS