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CASE COMMENTARY: VISHAL TIWARI V. UNION OF INDIA & ORS. /ADANI-HINDENBURG CASE (2024)

~Vishnu K Reji

Citation: Writ Petition (C) No. 162 of 2023

FACTS OF THE CASE

On January 24 2023 Hindenburg Research LLC, a U.S based investment research firm with a focus on activist short-selling and creating public reports on corporate fraud and malfeasance, released a report accusing the Adani Group of multinational conglomerates of financial malpractices like stock manipulation through a network of offshore tax havens, regulatory violations and accounting fraud prompting the Securities and Exchange Board of India (SEBI) to launch an investigation on the matter. Following the report's release Adani group companies lost about \$150 billion in value and the group responded by accusing Hindenburg of "launching a calculated attack on India" with the research firm responding by accusing Adani of resorting to threats with a cover of nationalism instead of engaging with the issues raised and dared them to sue in the US outside the purview of the allegedly compromised Indian government and judiciary (a challenge which the group still hasn't accepted). The report and further allegations of SEBI's investigations being suspect lead to a petition being filed seeking judicial intervention on the firm's allegations, negligent and suspicious investigation of SEBI, role of public sector banks such as in loan disbursements for Adani group, launch of a court monitored investigation by an external special investigation team (SIT) or CBI and filing of FIR against Hindenburg firm for short selling activities. The report and the subsequent case captured the attention of the financial world and the political landscape of India with many implications to the nature of the allegations of institutional cronyism, corruption and erosion of confidence of investors and public trust on our institutions.

ISSUES RAISED

Drastic fall in the securities market, its impact on investors, lack of redressal available and the disbursement of loans to the Adani group without due procedure.

*Violation of rule 19A of the Securities Contracts (Regulation) Rules, 1957 by the Adani group by manipulation of its shares in the market.

*Transfer of investigation from SEBI and constitution of a committee monitored by a retired judge of the Supreme Court to investigate the Hindenburg report, investigation by competent agencies on the transactions of the Adani group and the role of LIC and SBI on these transactions under supervision of a sitting judge of the Supreme Court, a court monitored investigation by a SIT or by the CBI into the allegations of fraud and the purported role played by top officials of public sector banks and lender institutions.

*Registration of an FIR against Nathan Anderson (founder of Hindenburg research) and his associates for short selling activities.

*Further judicial review of SEBI's regulatory frameworks.

CONTENTIONS

Respondents:

- 1.) Twenty-two out of the original twenty-four investigations assigned to the respondents had been conducted and duly completed.
- 2.) The delay by SEBI in filing and reproducing the necessary reports was for only ten additional days which was unintentional and not deliberate/malicious.
- 3.) The efforts made by SEBI in adopting various measures as identified by the Expert Committee to improve their practices and procedures be acknowledged by the Court.
- 4.) The OCCRP (Organized Crime and Corruption Reporting Project) report relied on by the petitioner party lacks documentary support and important facts pertaining to the source of the report had been concealed.
- 5.) The respondents also argued that the existing regulatory framework was developed and put into application in a well thought and nuanced manner.

Petitioners:

- 1.) SEBI's conscious negligence on making out a case against the Adani group and willful delaying of the submission of their reports and findings before the Court.
- 2.) Certain Foreign Portfolio Investments (FPI) alleged to be owned by shell companies outside India connected to the Adani group made investments in Adani group stocks in the Indian stock market leading to artificial inflation of their stocks in the market through manipulation.
- 3.) The investigative findings of the Organized Crime and Corruption Reporting Project highlighted certain FPI's in Adani groups stocks were facilitated through two Mauritius based funds in violation of Rule 19-A of the Securities Contracts (Regulation) Rules, 1957.
- 4.) SEBI's disregard of a letter by the Directorate of Revenue on 31/01/2014 concerning Adani groups illegal activities of stock market manipulation.

JUDGEMENT

The Court ruled that its powers to enter the regulatory domain and impose its own judgement on regulatory policies of SEBI in framing delegated legislation is limited and that the scope of judicial review when examining a policy framed by a specialized regulator is to only scrutinize whether it violates fundamental rights. No valid grounds or facts were brought up for it to direct SEBI to revoke its regulation amendments which were all made in exercise of its delegated legislative power and the procedures followed in the process does not suffer from irregularity according to the Court. The Court acknowledged that SEBI had completed twenty-two out of twenty-four investigations on the allegations against Adani group and to expedite the remaining investigations within three months of the judgement which won't be interfered by the Court. The Court rejected the OCCPR report and DRI letter citing third party origin of the organization and lack of verification of its authenticity for the former and the already settled status by DRI's Additional Director General and the Court for the latter. The Court rejected the plea for transfer of the investigation to an SIT or the CBI from SEBI citing such action is taken in extraordinary circumstances and in the face of strong evidence. The Court further ordered the Union Government and SEBI to consider the suggestions and recommendations laid out by the Expert Committee in its report to strengthen its regulatory framework and ensure the orderly and ethical functioning of the securities market. The Court also ordered the relevant investigative agencies to probe into whether Indian investors suffered any loss due to the Hindenburg firms short selling activities.

CONCLUSION

The Court concluded its judgement by emphasizing how Public Interest Litigations under Article 32 of the Constitution is there to ensure access to justice for all and provide ordinary citizens with the opportunity to bring attention to legitimate causes but cautioned against frivolous petitions that lack the adequate research/rationale and rely on unverified and unrelated material which is counter-productive at best and malicious at worst. This is the basic essence of the rationale behind the Supreme Court's verdict on this case; primarily concerning the inherent unfeasibility of the Court to meddle with the legislative powers of SEBI owing to its statute-based executive authority status, the unethical concept of the Court enforcing its own views and wisdom on how such organizations should function instead of being overseen by the relevant appointed experts and the unwarranted request for transferring the investigation into the hands of an SIT in the absence of bona fide evidences. While the Court had ordered SEBI to complete the remaining investigations preferably within three months, as on the date of writing this the status of the pending reports is unknown to the public. Meanwhile the saga further continues as a plea was filed in the SC on June 7 2024 requesting the Court to direct SEBI to file its remaining reports on the Adani group-Hindenburg investigation which is still presumably pending to the Supreme Court, issue some kind of statement regarding the findings of the pending reports to the public and to publicize a status report on whether SEBI had implemented the reforms suggested by the expert committee.

CITATIONS:

- 1.) "Adani Group: How the World's 3rd Richest Man Is Pulling The Largest Con In Corporate History"- (Hindenburg, 2023)
- 2.) Supreme Court judgement (2024)