

Judicial Function in SEC V. Jarquesy VS. Quasi-Judicial Function in NSDL V. SEBI: Doctrinal Parallels

Dr Harsha Rajwanshi

Assistant Professor of Law, Gujarat National Law University

Abstract

This article analyses the role of the Securities and Exchange Board of India (SEBI) as a regulatory agency with a varied role of legislative, executive, and adjudicatory functions. It reviews the decision of the Supreme Court of India in National Securities Depository Ltd. v. SEBI, (2017) 5 SCC 517, whereby the Court in its judicial oversight analyses the SEBI's legislative framework, the SEBI Act, to delineate its distinct functions conferred upon the regulator under various statutory provisions within SEBI Act. The Court's inquiry underscores the extent to which judicial deference is warranted in the context of regulatory authority, thereby illustrating the judiciary's active role in shaping regulatory governance. The article draws a comparative parallel with the 2024 decision of the United States Supreme Court in SEC v. Jarquesy, highlighting how core legal principles remain central to regulatory analysis, even within different legal frameworks and economic structures. Through this comparison, the article provides evidence on how judicial engagement continues to influence and redefine the contours of regulatory power through enduring legal principles.

Keywords: SEBI, Quasi-Judicial Functions, NSDL v. SEBI, SEC v. Jarquesy, Judicial Functions, Regulators, Securities Market, Securities Law, Separation of Powers, Securities litigation.

INTRODUCTION

Legal scholarship conceptualises "Regulation" as the exercise of governmental authority to steer market behaviour through the formulation and enforcement of laws, rules, and standards. This regulatory function encompasses elements traditionally associated with all three branches of government: legislative, executive, and judicial. Contemporary regulatory agencies, in particular, often perform a combination of these functions, engaging in rule-making (quasi-legislative), enforcement (executive), and adjudication (quasi-judicial). As such, the institutional design and functional scope of regulatory bodies raise complex legal questions, inviting both scholarly scrutiny and judicial oversight. While these agencies are formally situated within the executive branch, their expansive roles in norm-creation and dispute resolution position them beyond purely executive characterisation, making them pivotal actors in the modern administrative state.

The Case of SEC v. Jarquesy

In line with the evolving assessment of foundational legal principles, the U.S. Supreme Court's landmark decision in SEC v. Jarquesy, offers a compelling lens to examine the intersection of judicial oversight and

redefining regulatory authority. The case arose from a 2011 investigation by the Securities and Exchange Commission (SEC) into George Jarkesy and his firm, Patriot28, LLC, for alleged violations of federal securities laws. In 2013, the SEC initiated enforcement proceedings not in a federal court, but through its internal adjudicatory mechanism, presided over by an Administrative Law Judge (ALJ) appointed by the agency. The ALJ found Jarkesy liable for securities fraud and imposed civil monetary penalties. Dissatisfied with the outcome, Jarkesy appealed to the U.S. Court of Appeals for the Fifth Circuit, which reversed the SEC's decision on the ground that adjudicating such claims through an internal process violated his Seventh Amendment right to a jury trial. On June 27, 2024, the U.S. Supreme Court affirmed the Fifth Circuit's ruling, holding that claims involving civil monetary penalties are 'legal in nature' and fall within the ambit of the Seventh Amendment's protection of jury trials in "suits at common law." The Court underscored that the nature of the remedy sought, a civil penalty designed to punish and deter rendered the proceeding legal rather than equitable, thereby triggering constitutional safeguards. Significantly, the Supreme Court of India employed a similar interpretive approach in *National Securities Depository Limited v. Securities and Exchange Board of India*, way back in 2017, wherein it assessed the statutory framework of the SEBI Act to determine the legal nature of specific regulatory actions subject to appellate jurisdiction. The Court observed that when SEBI exercises quasi-judicial functions under the Act, such actions are subject to appeal and must adhere to prescribed adjudicatory procedures. Both decisions, although situated in distinct legal and constitutional and statutory frameworks, demonstrate a shared judicial recognition of the importance of procedural fairness for adjudication and the legal character of regulatory adjudication in preserving the rule of law.

NSDL v. SEBI

In *National Securities Depository Ltd. v. SEBI*, (2017) 5 SCC 517 : 2017 SCC OnLine SC 256, the Supreme Court of India was presented with a significant legal question whether an administrative circular issued by the Securities and Exchange Board of India (SEBI) under Section 11(1) of the SEBI Act, 1992, qualifies as an appealable order under Section 15-T of the same statute.

In November 2005, SEBI, under the caption "review of dematerialisation charges" issued an administrative circular under Section 11(1) of the SEBI Act to protect the interests of investors in securities and to promote the development of, and to regulate the securities market. Through this administrative circular, Depositories, the institutions within securities market which hold securities in dematerialisation form, were advised to amend all relevant bye-laws, rules and regulations with effect from January 2006, so that no charges shall be levied by a depository on Depository participants (DP), an intermediary between depository and investor, when a beneficiary owner transfers all securities lying in his account to another branch of the same DP or to another DP of the same depository or another depository, provided the BO account at transferee DP and that at transferor DP are identical in all respects.

In this case, a preliminary objection was raised in the appeal filed by SEBI before the Securities Appellate Tribunal (SAT). SEBI argued that under the SEBI Act, SEBI has administrative, legislative and quasi-judicial functions and appeals preferred to the Securities Appellate Tribunal can only be from quasi-judicial orders, and not administrative and legislative orders. SAT rejected the preliminary objection and proceeded with the merits of the arguments against the impugned circular, and dismissed the same. However, SAT held that the expression "order" under Section 15T is extremely wide, and there being nothing in the Act to restrict an appeal only against quasi-judicial orders, appeals would lie against all three types of orders under the Act i.e. administrative orders, legislative orders as well as quasi-judicial

orders which was purportedly following the decision in *Clariant International Ltd. v. SEBI* [Clariant International Ltd. v. SEBI, (2004) 8 SCC 524].

Cross appeals were filed before the Supreme Court, with the National Securities Depository Limited (NSDL) challenging the decision on merits, while the Securities and Exchange Board of India (SEBI) filed a civil appeal contesting the Securities Appellate Tribunal's (SAT) rejection of its preliminary objection. The central issue in dispute concerned the interpretation of the statutory term "order" as used in Section 15-T of the SEBI Act, 1992, which governs the right of appeal to the SAT. Specifically, Section 15-T provides that any person aggrieved by (a) an order of the Board made, on or after the commencement of the Securities Laws (Second Amendment) Act, 1999, under the SEBI Act or the rules or regulations framed thereunder; or (b) an order made by an adjudicating officer under the Act, may prefer an appeal before the Securities Appellate Tribunal having jurisdiction in the matter.

Section 15-T further stipulates that every appeal under sub-section (1) must be filed within a period of forty-five days from the date on which the aggrieved party receives a copy of the order passed by the Board or the adjudicating officer, as the case may be. The appeal must be submitted in the prescribed form and be accompanied by the requisite fee. Upon receipt of such an appeal, the Securities Appellate Tribunal (SAT), after affording the parties an opportunity to be heard, is empowered to pass such orders as it deems appropriate, including confirming, modifying, or setting aside the order under appeal. Additionally, sub-section (5) mandates that the SAT shall transmit a copy of every order it issues to the Board, the parties to the appeal, and the concerned adjudicating officer.

In addressing the legal issue, the Supreme Court closely examined the SEBI Act and particularly referenced Section 15-M, which stipulates that the Presiding Officer of the Securities Appellate Tribunal (SAT) must be a sitting or retired judge of the Supreme Court, a sitting or retired Chief Justice of a High Court, or a sitting or retired High Court judge with a minimum of seven years' judicial service. The Court interpreted this legislative design as indicative of the legislature's intent to constitute the SAT as a forum primarily for adjudicating quasi-judicial orders. It reasoned that appeals before the SAT are to be instituted by "persons aggrieved" either by an order of the SEBI under the Act, its rules or regulations, or by an order of an adjudicating officer under the Act.

To reinforce this reasoning, the Court observed that Section 15-T(3) provides a specific limitation period of forty-five days for filing an appeal, commencing from the date the aggrieved person receives a copy of the impugned order. This procedural requirement, the Court noted, presupposes the personal delivery of the order—an attribute typically associated with quasi-judicial decisions rather than administrative directions or legislative regulations, which are not personally served upon individuals.

Further, the Court found that Section 15-T(5), which requires that a copy of the SAT's order be sent to the SEBI, the parties to the appeal, and the concerned adjudicating officer, underscores the quasi-judicial nature of the appellate proceedings. The Court reasoned that such a provision is logically applicable only to those who are parties in an adjudicatory process. Finally, with regard to Section 15-Z, which provides for an appeal to the Supreme Court from SAT orders on questions of law, the Court concluded that this appellate route further affirms that the jurisdiction of the SAT is confined to reviewing quasi-judicial determinations, and does not extend to administrative decisions or legislative instruments as these matters are pertaining to questions of law in its quasi-judicial quality.

It is pertinent to note that the Supreme Court, in resolving the issue, relied on established jurisprudence to delineate the criteria under which the actions of an administrative body may be characterised as quasi-judicial. Referring to foundational principles laid down in *R v. Electricity Commissioners*, ex parte London

Electricity Joint Committee Co. and the seminal definition articulated by Lord Justice Atkin, the Court underscored that where any body of persons is legally empowered to determine questions that affect the rights of subjects, and is under a duty to act judicially, its actions, if exceeding legal authority fall within the scope of the supervisory jurisdiction of the King's Bench Division, exercised through writs.

Drawing upon its own precedents, the Court held that three essential conditions must be fulfilled for an administrative act to assume the character of a quasi-judicial act: 1. The existence of legal authority vested in the administrative body. 2. The exercise of this authority must involve the determination of questions affecting the rights of individuals; and 3. There must be a statutory obligation to act judicially.

The Court summarised the legal principle in the following terms: "Where (a) a statutory authority is empowered under a statute to perform an act (b) which would prejudicially affect the rights of a subject (c) even in the absence of a lis or two contesting parties—where the dispute is between the authority and the subject—and (d) the authority is required to act judicially under the statute, then the act of the authority assumes a quasi-judicial character." Furthermore, the Court clarified that while the presence of a lis (i.e., a formal dispute) between parties may suffice to establish the quasi-judicial nature of an authority, such a classification may also be warranted in the absence of a lis, so long as the authority is under a duty to act judicially.

The Court acknowledged the difficulty of crafting a definition that satisfactorily distinguishes administrative orders from judicial orders in all contexts. It recognised that the mere fact that a power is conferred upon a person who functions as a court is not determinative of the judicial nature of the act. Rather, an administrative order typically pertains to the regulation or supervision of matters, whereas a judicial order determines rights or confers/refuses entitlements after adjudication. One test to discern a judicial decision, the Court noted, is whether the discretion exercised by the authority particularly a court is guided by objective rather than purely subjective criteria.

Although it has often been posited that the essence of a judicial proceeding lies in the presence of two contesting parties and an issue (lis) to be adjudicated, the Court cautioned that while the presence of a lis strongly supports the conclusion that the proceeding is judicial in nature, the absence of a lis does not, by itself, negate the judicial character of the order.

Quasi-Judicial functions of SEBI

The Securities and Exchange Board of India (SEBI) performs several functions that are subject to appellate scrutiny before the Securities Appellate Tribunal (SAT), with a further right of appeal to the Supreme Court of India on substantial questions of law. These include the issuance of directions and imposition of penalties under Sections 11(4) and 11B of the SEBI Act, 1992, which empower SEBI to take preventive and remedial measures in the interest of investors and to maintain the integrity of the securities market. Additionally, SEBI exercises adjudicatory powers under Sections 15A to 15J of the Act, through which it levies monetary penalties for breaches of statutory obligations. These adjudication proceedings are quasi-judicial in nature and form a critical component of SEBI's enforcement mechanism. Further, under Section 12(3) of the Act, SEBI conducts enquiry proceedings to suspend or cancel the registration of intermediaries found to be in violation of applicable rules or regulations. Each of these functions involves legal determinations affecting rights and obligations, and therefore, qualifies for appellate review before SAT under Section 15T, with subsequent recourse to the Supreme Court under Section 15Z, where questions of law are involved.

Other remedies

Administrative orders, including circulars and notifications issued under the Securities and Exchange Board of India Act, 1992 and the rules or regulations framed thereunder, fall outside the scope of the appellate jurisdiction of the Securities Appellate Tribunal (SAT). These instruments, being administrative in nature and not involving adjudication of disputes or determination of rights, do not constitute "orders" within the meaning of Section 15T of the SEBI Act. Consequently, their validity or legality cannot be challenged before the SAT. Instead, any grievance arising from such administrative actions must be addressed through constitutional remedies by invoking the writ jurisdiction of the High Courts under Article 226, or that of the Supreme Court under Article 32 of the Constitution of India.

Doctrinal Parallels

In *Jarkesy* decision, Chief Justice Roberts, writing for the majority, emphasised that civil penalties imposed by the SEC are intended not to compensate but to punish and deter, thus aligning them with the traditional conception of “legal” remedies at common law. Consequently, such penalties implicate the protections of the Seventh Amendment, which guarantees the right to a jury trial in suits at common law. The Court concluded that remedies of this nature must be adjudicated by courts, rather than by administrative law judges, unless they fall within a narrow set of exceptions involving core “governmental prerogatives” such as revenue collection, customs, immigration, public benefits, and public land administration, exceptions which the Court appeared to interpret narrowly.

The reasoning in *Jarkesy*, when read in conjunction with Indian jurisprudence such as *NSDL v. SEBI*, underscores a converging transnational judicial concern with maintaining procedural fidelity and constitutional safeguards even in highly specialised regulatory contexts. Both decisions illustrate that where disputes are legal in character, implicating rights, liabilities, and enforcement actions, the mere statutory creation of a regulatory agency does not exempt such proceedings from core judicial guarantees. Thus, these cases may operate to limit the scope of regulatory adjudications and reinforce the imperative that regulatory action must conform to the fundamental procedural norms inherent in the rule of law.

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