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## DUE PROCESS AND DISCLOSURE IN MARKET REGULATION: A CASE COMMENT ON T. TAKANO V SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

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**Case Name:** T. Takano v. SEBI

**Case Number:** Civil Appeals Nos. 487-88 of 2022

**Equivalent citation:** (2022) 8 SCC 162

**Bench:** Justice Dr D.Y. Chandrachud and Justice Sanjiv Khanna

**Decided on:** February 18, 2022

**Relevant Acts:** SEBI Act 1992, SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003.

### I. Introduction

The judgment of the Supreme Court in *T. Takano v. Securities and Exchange Board of India* (2022) (**'T. Takano'**) represents a milestone in the regulation of securities markets in India. For long, the enforcement regime under the SEBI Act 1992,<sup>1</sup> and related regulations has granted the regulator broad investigative and adjudicatory powers. Yet the procedural safeguards available to persons targeted by enforcement actions, particularly with respect to access to underlying investigative materials remained uncertain. The opacity of such processes frequently led to criticism: regulated entities often found themselves facing serious allegations based on internal reports or data that were neither shared with them nor disclosed before adjudication, undermining their ability to defend themselves effectively.

In this context, the Court's decision in *T. Takano* breaks important ground by reasserting the

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<sup>1</sup> The Securities and Exchange Board of India Act, 1992 (Act 15 of 1992).

primacy of fairness, natural justice, and transparency over regulatory convenience. The ruling mandates that when a show-cause notice ('SCN') is issued on the basis of an investigation under the relevant regulations, the underlying investigation report must be disclosed to the notice, subject only to narrowly constrained redactions. By doing so, the Court restores balance between regulatory efficiency and individual rights, reinforcing trust in market enforcement mechanisms.

## II. Factual Background

The facts that gave rise to *T. Takano* are set against the backdrop of complex corporate governance and alleged financial misstatements. The appellant, Mr. T. Takano, served as Managing Director and Chief Executive Officer of Ricoh India Limited. In the financial year 2015–16, Ricoh's audits revealed troubling discrepancies: statutory auditors flagged doubts over the reliability of the company's financial statements for the quarters ending June and September 2015. Responding to these alarms, the company's Audit Committee engaged PricewaterhouseCoopers ('PwC') to conduct a forensic audit, aimed at unearthing any irregularities in accounting, inventory, sales, write-offs, or other corporate transactions that might distort the true financial health of the company.

PwC submitted first a preliminary forensic audit report in April 2016, followed by a final comprehensive report in November 2016. The findings, as contended by SEBI, included dubious sales with no actual inventory movement, suspicious write-offs, unwarranted transfers and adjustments — actions which allegedly led to artificial inflation of share price and misled investors or the public relying on the company's disclosures. On receipt of the forensic report and additional materials, SEBI initiated an investigation into alleged violations of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 ('PFUTP').<sup>2</sup> Subsequently, a show-cause notice was issued against several persons, including Takano, invoking the alleged misstatements and transactions as constituting fraudulent or unfair market practices.

However, despite relying heavily on the forensic report and other investigative materials, SEBI refused to disclose the same to Mr. Takano, essentially on two grounds "firstly, it was an internal document which could not be shared and secondly, its disclosure to the appellant would

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<sup>2</sup> SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003.

have resulted in disclosure and throwing of sensitive third-party information in the public domain”. According to SEBI, only those documents explicitly relied upon in the SCN needed to be disclosed, and internal investigation materials fell outside this ambit. Takano challenged this refusal before the Bombay High Court, which upheld SEBI’s position. Accordingly, Takano filed a special leave petition before the Supreme Court, which was finally decided in his favour in 2022.

### III. Statutory and Regulatory Framework

The decision in *Takano* must be understood against the statutory backdrop constituted primarily by the SEBI Act, 1992, and the PFUTP Regulations, 2003. The SEBI Act vests in the regulator broad powers — under Section 11, SEBI is mandated to protect investors’ interests and ensure orderly functioning of the securities market; under Section 11C and related provisions, it may summon persons, inspect books and records, and conduct inquiries or investigations.<sup>3</sup> For cases involving suspected fraudulent or unfair trade practices, the PFUTP Regulations empower SEBI to initiate a formal investigation under Regulation 9. Once the investigating authority submits its report, SEBI may proceed under Regulation 10 to determine whether a show-cause notice should be issued; and if satisfied, pass directions under Sections like 11 or 11B, or initiate adjudication proceedings imposing penalties. The report prepared under Regulation 9, therefore, is not peripheral, it is integral to SEBI’s determination of whether prima facie violations exist and whether to proceed to adjudication. Consequently, when SEBI resorts to this mechanism, the investigation report becomes the foundational basis for an SCN and any ensuing enforcement action. The PFUTP Regulations, however, do not explicitly stipulate whether or to what extent such internal documents must be shared with the persons against whom action is proposed. This lacuna set the stage for the legal challenge resolved in *Takano*.

### IV. Issues for Determination

Before the Supreme Court, the dispute crystallized around several interlinked legal questions.

1. Firstly, whether SEBI is under a statutory or common-law duty to disclose the entire investigation report (prepared under Regulation 9) to the noticee at the time of issuing

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<sup>3</sup> The Securities and Exchange Board of India Act, 1992 (Act 15 of 1992), s. 11.

a show-cause notice.

2. Secondly, whether SEBI can validly withhold such a report by labelling it “internal,” or because it claims not to have “relied upon” it explicitly in the SCN.
3. Thirdly, assuming disclosure is required, whether SEBI has the discretion to redact portions of the report, particularly those containing third-party data, market-sensitive information, or details of ongoing investigations, and if so, what limits apply to this discretion.
4. Finally, whether refusal to disclose the report violates principles of natural justice, fairness, and transparency that govern quasi-judicial or regulatory adjudicatory proceedings, especially when the stakes include civil penalties, market reputational risks, and potentially dire consequences for corporate leadership and investor confidence.

## V. Arguments Advanced by the Parties

The appellant, Mr. Takano, argued that granting him access to the investigation report was essential for him to meaningfully understand and contest the allegations. He maintained that the report constituted the very foundation upon which SEBI’s satisfaction rested, triggering issuance of the SCN under Regulation 10. Without access to that foundational document, he would be deprived of the ability to examine evidence, cross-check facts, challenge inferences drawn from the data, or prepare a considered defence. Labelling the report “internal” or refusing disclosure on the ground of confidentiality, he contended, would violate the principle of *audi alteram partem* — a core facet of fair adjudication and due process. Considering the gravity of consequences (financial, reputational, regulatory), he argued that SEBI’s discretion must yield to fundamental fairness and transparency.

SEBI, on the other hand, defended its refusal by asserting that investigation reports are internal documents, prepared for internal consideration and deliberation. It argued that only those documents explicitly relied upon in the SCN need to be disclosed; materials that are merely part of fact-finding or internal deliberations are exempt from the duty of disclosure. According to SEBI, mandatory disclosure of all investigative material, including sensitive third-party data or market-critical information, could compromise confidentiality, harm third parties,

jeopardize investigations, or destabilize market operations. SEBI contended that regulatory efficacy and flexibility must be preserved, and that strict disclosure requirements would hinder its ability to function effectively.

## VI. Judicial Determination

The Supreme Court comprehensively rejected SEBI's arguments and sided with the appellant. It held that when a show-cause notice is issued on the basis of a Regulation 9 investigation, the investigation report forms an intrinsic and indispensable component of the foundation for that notice. As such, it must be disclosed to the noticee, subject only to permissible redactions. The Court described SEBI's refusal, simply labelling the report "internal" or claiming it was not explicitly "relied upon" as an inadequate, unsupported assertion (*ipse dixit*), insufficient to override the noticee's right to a fair hearing.

The Court acknowledged the legitimate interest in confidentiality, third-party privacy, market sensitivity, or ongoing investigations, yet accepted that such interests may be balanced against the need for disclosure. Further, held that even if it was an inter-departmental investigation, the same must be disclosed. Referring to the judgment of *Khudiram Das v. State of West Bengal*, it was held that even if no reliance is based on the report, the authority cannot refrain from disclosing it to the noticee.<sup>4</sup> Referring further to the judgments of *Union of India v. Mohd. Ramzan Khan*,<sup>5</sup> *ECIL v. B Karunakar*<sup>6</sup> and *State of Patiala v. S.K. Sharma*<sup>7</sup>, the Court held disclosure should be the rule and denial an exception.

To that end, it held that redactions are permissible, but must be narrowly tailored, justified on necessity grounds, and not broader than required. The rationale is that while regulatory confidentiality is recognized, it cannot be allowed to swallow the fundamental right to fair adjudication. Consequently, the Court remanded the case to SEBI, directing it to provide Mr. Takano with the investigation report (with only necessary redactions) and to grant him a fresh opportunity to respond and be heard before passing any fresh order. This constituted a robust safeguard for procedural fairness and due process in SEBI's enforcement mechanism.

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<sup>4</sup> (1975) 2 SCC 81.

<sup>5</sup> (1991) 1 SCC 588.

<sup>6</sup> (1993) 4 SCC 727.

<sup>7</sup> (1996) SCC 3 364.

## VII. Ratio Decidendi

The binding principle emerging from *Takano* can be distilled thus: when a regulatory authority like SEBI initiates enforcement under the PFUTP Regulations based on an investigation under Regulation 9, the noticee is entitled to access the full investigation report that forms the basis for the show-cause notice. A blanket classification of such reports as “internal documents,” or a purely subjective claim that they were not relied upon, does not suffice to deny disclosure. However, disclosing entirely unredacted material is not mandated in all circumstances; limited redaction is permissible to protect third-party rights, sensitive data, or legitimate confidentiality, but only on a narrow, necessity-based, and case-by-case basis. In essence, the duty to disclose is mandatory and rooted in the principles of natural justice and fairness, even when the regulatory framework does not explicitly prescribe it.

## VIII. Critical Appraisal

The decision in *Takano* deserves unqualified commendation for re-endorsing due process and transparency in regulatory adjudication. First, by guaranteeing notice and meaningful opportunity to defend, the Court restores a semblance of courtroom-style fairness in quasi-judicial proceedings. It corrects a longstanding imbalance where powerful regulators could proceed on the basis of secret evidence, undermining the legitimacy of their orders. For companies, individuals and market participants, the judgment enhances predictability and fairness, strengthening confidence in regulatory processes.

Second, by insisting on narrow and justified redactions rather than blanket secrecy, the Court strikes a pragmatic balance between confidentiality and fairness. This approach recognizes the legitimate need to protect sensitive information, third-party privacy, commercially sensitive data, ongoing investigations, while not sacrificing the core right to know the case against one. This balancing act is critical in securities enforcement, where transparency builds market trust and legitimacy.

However, the judgment leaves open some important practical and operational challenges. The permissibility of redactions is acknowledged, but the Court does not lay down a detailed mechanism or guidelines for deciding what constitutes a permissible redaction. Without such guidance, there is a risk of over-redaction, rendering the disclosed report so heavily truncated as to defeat the very purpose of disclosure. In future cases, absence of structured redaction

standards may invite litigation over adequacy of disclosure.

Furthermore, requiring SEBI to disclose investigation reports may introduce delays in proceedings. Enforcement cases may become protracted: investigation → disclosure → response → fresh hearing → final order. For a regulator already under pressure to clear adjudication backlogs and maintain timely enforcement, this could strain institutional capacity and slow down regulatory responsiveness. There is also a possibility that, to evade disclosure, SEBI may rely more on public filings or external documents, reducing reliance on forensic audits or internal investigations — potentially weakening enforcement effectiveness against complex frauds.

Moreover, the burden of redacting and reviewing sensitive data, ensuring compliance with privacy and confidentiality norms, and managing record-keeping may impose additional administrative overhead. Over time, this could require SEBI to redesign its internal procedures and infrastructure, entailing costs and resource allocation.

Nevertheless, none of these potential drawbacks should outweigh the fundamental need for fairness and transparency. The risk of regulatory overreach, misuse of secret evidence, or arbitrary sanctions is far more pernicious to market integrity than the administrative inconvenience or delay that proper disclosure obligations may cause.

## **IX. Comparative Perspective**

Viewed in the light of global regulatory practices, the Court's decision aligns the Indian securities enforcement regime more closely with international norms. In mature regulatory jurisdictions, such as the United Kingdom under the Financial Conduct Authority, or in the United States under the Securities and Exchange Commission, procedural fairness and discovery-type rights are well recognized, even in administrative or regulatory proceedings. Respondents are generally entitled to access evidence or materials that underlie enforcement actions, with limited exceptions for privileged or sensitive content. The European Union's regulatory architecture under bodies like ESMA similarly demands fairness, access to materials, and reasonable opportunity to defend before imposition of sanctions.

By mandating disclosure with only narrow redactions, *Takano* brings Indian securities law into this global mainstream. It rejects the older model of “secret investigations plus public

punishment,” replacing it with “transparent investigations and reasoned enforcement.” This alignment not only boosts India’s credibility as a mature securities jurisdiction but also encourages responsible corporate governance and investor confidence, essential for attracting long-term capital flows and participation.

## **X. Conclusion**

The Supreme Court’s ruling in *T. Takano v. SEBI* (2022) is more than a procedural directive — it is a reaffirmation that regulatory power must be exercised within the framework of fairness, natural justice, and accountability. By compelling disclosure of investigation reports, subject only to narrow redactions, the Court ensures that persons targeted by enforcement actions are afforded a genuine opportunity to know the case against them and respond meaningfully. This decision mitigates the structural asymmetry inherent in regulatory adjudication, protects individual rights, and strengthens the legitimacy of regulatory outcomes.

While the judgment does present practical challenges, in redaction standards, administrative burden, possible delays, these are manageable trade-offs against the imperative of fairness. Over time, SEBI may need to overhaul its internal procedures, develop detailed redaction guidelines, and streamline hearings. Yet this procedural evolution will strengthen the foundation of securities law in India, ensuring that enforcement does not become arbitrary or opaque, but remains principled, fair, and deserving of public confidence.

For practitioners, compliance advisors, investors, and corporate leaders, *Takano* serves as a landmark precedent, one likely to shape SEBI’s enforcement actions and adjudication practices for years to come. In the dynamic landscape of securities markets, where the stakes are high, market confidence fragile, and investor protection paramount, such jurisprudential reinforcement of fairness and transparency is not merely welcome, it is essential.