(1994) 03 SC CK 0066

In the Supreme Court Of India

Case No : Civil Appeal No. 687 Of 1994

Altos India Ltd. APPELLANT

Vs

Suresh Goyal and Others RESPONDENT

Date of Decision : 04-03-1994

Acts Referred:

Citation : (1995) 3 SCC 734 Supp

Hon'ble Judges : S. P. Bharucha, J;J. S. Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard both sides.

2. The appellant is aggrieved by the order dated 1/2/1994 by which a Division bench of two members of the Monopolies & Restrictive Trade Practices Commission has restrained the appellant from utilising the proceeds of the issue of new shares for its own use in any manner until further order during the pendency of the proceedings initiated before the Commission by Respondents 1 and 2 while directing the holding of an inquiry into the alleged unfair trade practice. The grievance made by Mr Ashok Desai, learned counsel for the appellant is that the complaint filed before the Commission by Respondents 1 and 2 alleging the commission of an unfair trade practice by the appellant is not maintainable by virtue of the decision in CERC v. T.T.K. Pharma Ltd. by a full bench of the Monopolies and Restrictive Trade Practices Commission. He submits that the complaint itself being not maintainable there was no occasion for making the impugned order of injunction and directing the inquiry to be held against the appellant. This objection was taken also before the division bench of the Commission which while noticing it stated as under :

"This legal question may no doubt require a full and detailed discussion and we do not propose to give a final answer to this question, particularly because the same is under consideration in another full bench hearing of the Commission where the decision had not been announced. For our present purpose, it would suffice to say that in view of the aforesaid amendment of the Act the Commission is within its right to examine the unfair or restrictive trade practice if any in the matter of floating public or right issues of shares/debentures and other financial matters."

3. Having heard learned counsel for the parties, we are satisfied that the impugned order cannot be sustained inasmuch as it was incumbent on the Commission to first decide the question of maintainability of the complaint which objection was raised placing reliance on a full bench decision of the Commission itself. The division bench while making the impugned order was alive to this situation but it failed to appreciate the true effect of this objection and it seems to have been influenced by the fact that similar complaints had earlier been treated as maintainable by the division bench of the Commission notwithstanding the full bench decision because of the amendment made in the Act. In view of the fact that the effect of the amendment is under consideration of the full bench of the Commission, we deem it fit and appropriate not to express any opinion on that question leaving it to the full bench of the MRTP Commission to decide that question in the first instance. It is sufficient for the present purpose to observe that this fact alone makes it more appropriate that no Division bench of the Commission comprising of mere two members should in the meantime treat such complaint to be maintainable and consider itself competent to grant a temporary injunction or direct any such inquiry in the meantime. It would be appropriate for the division benches of the Commission to await the outcome of the matter pending before the full bench for decision on this point. In these circumstances, the impugned order of temporary injunction made against the appellant treating the complaint to be maintainable was unjustified and improper. The impugned order has to be set aside for this reason alone. We make it clear that the further steps in these proceedings may be taken in accordance with the outcome of the matter pending before the Full Bench for decision on this point.

4. Consequently, the appeal is allowed and the impugned order dated 1/2/1994 made by the division bench of the Commission is set aside. No costs.

