

(2011) 09 DEL CK 0145
In the Delhi High Court
Case No : Writ Petition (C) 6744 of 2011

Anuj Kumar Bhati

APPELLANT

Vs

Sony Entertainment T.V. (SET) and Others

RESPONDENT

Date of Decision : 16-09-2011

Acts Referred:

Competition Act, 2002 — Section 19, 3, 4, 53(B)

Citation : (2011) 110 SCL 12

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sunder Khatri, for the Appellant; Pallav Saxena and Satya Prakash, Director (Law) Competition Commission of India, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the orders dated 25.07.2011 and 18.08.2011 of the Competition Appellate (Comp. AT).

2. The genesis of litigation is in a writ petition being W.P. (C) No. 2215/2006 earlier preferred by the Petitioner in this Court with respect to television show "Kaun Banega Crorepati-2 (KBC)", averring that though the Petitioner had spent large sums of monies in his attempt to participate in the said show but had not been able to; that the organizers of the show were duping the participants of crores of rupees and indulging in foul play and were selecting persons to finally contest the show and win the cash or kind prizes instead of the same being done as per the procedure advertised. The Petitioner had in the said writ petition claimed payment of the monies spent by him. The said writ petition was entertained. However, during the pendency thereof, the television show came to an end and when another season thereof was started, the writ petition was converted into a Public Interest Litigation (PIL).

3. The said writ petition was finally disposed of by a Division Bench of this Court vide order dated 27.04.2007. This Court held that since the relief claimed by the

Petitioner also was, that the matter be directed to be investigated inter alia by the Monopolies and Restrictive Trade Practices Commission (MRTPC), and finding subject matter of the petition to fall within the domain of MRTPC and further finding that the matter entailed disputed questions, the writ petition was disposed of with the direction to the Petitioner to approach the MRTPC.

4. The Petitioner thereafter approached MRTPC and upon promulgation and coming into force of the Competition Act, 2002, the said petition was transferred to the Comp. A.T.

5. The Petitioner also filed a independent complaint u/s 19 of the Competition Act before the Competition Commission of India (CCI) with the same grievance as in the complaint earlier preferred before MRTPC.

6. The CCI, vide order dated 29.03.2011 dismissed the complaint of the Petitioner u/s 19. It was inter alia held that the allegations of the Petitioner are to be tested in the light of the opposite party being in a dominant position and thus discriminating in selection of contestants for participation in the programme / show and adopting unfair means therein; however on the basis of viewership ratings, it was found that the share of viewers of the said television show was not so much for which it could be said that the show was in a dominating position. Accordingly, it was held that no case of violation of provisions of Section 3 or Section 4 of the Competition Act was made out and thus need was not felt to refer the matter to the Director General for further investigation.

7. The Petitioner preferred an appeal u/s 53B of the Competition Act against the order aforesaid of CCI to the Comp. A.T.

8. The Comp. A.T. vide order dated 25.07.2011 impugned in this petition, dismissed the proceedings received on transfer from MRTPC as infructuous for the reason of the Petitioner having preferred a complaint u/s 19 of the Competition Act on some facts and the same complaint having been dismissed and appeal having been preferred there against .

9. The Comp. A.t. vide order dated 18.08.2011 impugned in this petition has also dismissed the appeal of the Petitioner holding that the conclusions reached by the CCI that the television show was not in a dominant position was a factual conclusion, correctness whereof had not been questioned, and thus the confirmed the order of CCI

10. The argument of the counsel for the Petitioner is two fold. Firstly, that the CCI could not have returned a finding contrary to the findings of the Division Bench of this Court in the writ petition aforesaid and secondly, that without investigation being done, the complaint could not have been dismissed.

11. As far as the second of the aforesaid contentions is concerned, the counsel for the Petitioner admits that it was/is not mandatory, neither under the Monopolies & Restrictive Trade Practices Act, 1969 nor under the Competition

Act, 2002, that investigation by the Director General should be ordered immediately on receipt of the complaint / petition. In the face of the said admitted position in law, the Petitioner unless makes out a case for investigation, cannot insist upon the investigation. The counsel for the Petitioner has however contended that the finding of the CCI that the television show in question was not in a dominant position is conjecturous. It is contended that the said finding also could have been returned only after investigation.

12. It may however be noticed that neither in the writ petition it is stated that the finding of the subject television show not being in a dominant position is incorrect nor any document in this regard is shown. The viewership ratings / figures are now published / advertised widely and no error can be found especially when it was not disputed before the Comp. A.T. and not disputed before this Court that the finding of the CCI of the subject television show being not in a dominating position.

13. Coming back to the first contention of the counsel for the Petitioner, the counsel for the Petitioner has invited attention to para 6 of the order of the CCI upheld by the Comp. A.T. and contended that the observations therein are contrary to the observations in para 14 of the order of the Division Bench of this Court. Similarly, it is contended that the observations of the CCI in para 7 of the order are contrary to the observations in para 5 of the judgment of the Division Bench.

14. In this regard, it may also be noticed that the order of the Division Bench of this Court was subject matter of SLP (C) No. 8392/2007 which was disposed of on 16.08.2010 with the observation that MRTPC will not be influenced by observations of the Division Bench of this Court and shall make an independent assessment on the merits inter se of the parties.

15. Besides the aforesaid, I am unable to find any inconsistencies as alleged. Para 5 of the judgment of the Division Bench to which attention is invited merely records the contentions of the Petitioner before this Court and does not return any finding. Similarly, merely because this Court while disposing of the writ petition for the reasons of the matter required to be considered by the MRTPC observed that it may require investigation, did not mandate the CCI to investigate the matter if otherwise no case of maintainability of complaint was made out.

16. As far as the maintainability of the complaint is concerned, neither has any ground been taken in the writ petition nor has been urged during the course of hearing.

17. There is thus no merit in the petition. The same is dismissed. The Petitioner to deposit costs of Rs. 5,000/- with the Delhi High Court Bar Association Lawyers' Social Security & Welfare Fund within four weeks.