
(1996) 10 NCDRC CK 0060

In the National Consumer Disputes Redressal Commission

CHHATAR CHEMICALS LTD.

APPELLANT

Vs

KARNAL HARYANA TRUCK UNION

RESPONDENT

Date of Decision : 18-10-1996

Acts Referred:

Citation : 1997 1 CPJ 4

Hon'ble Judges : Sardar Ali Khan , U.P.Singh J.

Final Decision : Enquiry disposed of

Judgement

1. THIS order shall dispose of the above Enquiry based on the complaint filed by M/s. Chhatar Chemicals Ltd., 6 KM, Kaithal Road, Karnal (Haryana). Subsequently this Enquiry was entrusted to the Director General in public interest. It has been alleged by the complainant that respondent No. 1, i.e., M/s. Karnal Haryana Truck Union, Karnal and through its office bearers /employees / members did not allow the complainant to hire any truck from the open market. It was also complained that the Union allowed the complainant to hire the truck from the open market after paying Rs. 250/- per truck to the Union. It was further complained that the respondent did not allow the applicant to negotiate the freight rate and the individual members were not free to negotiate the freight rate which amounted to caterisation in fixing freight rates. It was suggested by the complainant that the trade practice of not allowing the applicant to hire trucks from the open market and not allowing the members to freely negotiate the freight and to charge the freight below the freight rate fixed by the respondent are restrictive trade practices attracting Section 33(1)(a), (d) and (f) of the M.R.T.P. Act, 1969. Moreover the practice of granting permission to hire trucks from the open market after collecting charges amounting to Rs. 250 / - per truck was restrictive trade practice of manipulation of conditions of delivery with a view to cause unjustified cost on the users of transport services attracting the provision of Section 2(o)(ii) of the MRTP Act, 1969. The applicant also filed an application under Section 12A of the MRTP Act seeking ex-parte ad interim injunction restraining the respondent from indulging into the restrictive trade practices of not allowing the applicant to hire trucks from the open market. The

Commission, on 23.3.94, passed the order granting an interim injunction as under: "We have heard Mr. S. Gupta, Authorised representative of the complainant at some length and gone through the contents of the complaint as well as Injunction Application. The office bearers of the respondent union shall also be individually impleaded as respondents in this case in both the complaint as well as 12-A application. He has also brought to our notice the Full Bench decision of this Commission in RTPE No. 26/84 dealing with an identical situation. We are of the opinion that a prima facie case has been made out against the respondent for holding enquiry under Section 10(a)(i) read with Section 37(1) of the MRTP Act returnable on 4th May, 1994 and we order accordingly. We are also of the opinion that if an ad interim injunction is not issued, the complainant as well as others similarly situated shall suffer irreparable loss. We accordingly direct that pending further orders of the respondent and its office bearers shall stand restrained from preventing the complainants from hiring trucks from the open market for transporting goods. The respondents are further restrained from realising any amount whatever from the complainant and others in regard to the hiring of trucks from the open market."

2. THE Commission issued the Notice of Enquiry returnable on 4.5.94. On this date none appeared for the respondents. Fresh notice was issued on 8.7.94 returnable on 18.8.94. On this date also nobody appeared for the respondents. Similarly on subsequent dates no body appeared for the respondents. However, one respondent Shri Bhagat Ram wrote to the Commission on 23.5.94 that he was falsely implicated and he had nothing to do with the above enquiry. THEREafter even Shri Bhagat Ram did not appear nor sent any letter. This Commission then directed the Director General to take up the case in the public interest. Accordingly the Notice of Enquiry was issued under Section 10(a)(iv) of the MRTP Act, 1969 returnable on 1.11.95. THE Director General (I&R) submitted its report on 5.2.96. It was pointed out by the Director General that the respondent No. 2 had expired. After ascertaining the fresh addresses of the surviving respondents a fresh Notice of Enquiry was issued on 14.2.96 returnable on 26.3.96. None appeared on behalf of the respondents. THE Commission treated the respondents as ex-parte and the Director General was directed to file his evidence in the form of affidavits alongwith the supporting documents. THE case was listed for final arguments on 27.8.96. On 27.8.96 nobody appeared on behalf of the respondents. THE Director General relied upon the complaint alongwith the Annexures of the complainant M/s. Chhatar Chemicals Ltd. Mr. C. Shunmugam, ADG for DG argued the case in the light of the complaint and evidences. He also relied on the decisions of this Court already passed in similar circumstances in RTPE 128 of 1990, 104 of 1990 and 105 of 1990. He pointed out that there are other cases also of similar nature decided by the Commission. In RTPE No. 128 of 1990 where the facts are similar to this enquiry this Commission had observed in para 7 as under: "7. These letters as well as the Rules being enforced by the respondent Association clearly established that the respondents are indulging in the restrictive trade practices as defined under Section 2(o) and

Section 33(1)(a) read with Section 37 of the MRTP Act. By preventing the manufacturers and others from engaging other truck operators within the area of Bhiwadi the respondent Association are plainly preventing, distorting and restricting competition and also obstructing the flow of capital into the stream of production. In fact by physically stopping other truck operators from carrying on their business within Bhiwadi the respondents are effectively eliminating competition. The insistence on allowing only those truck operators who have the respondent Association's permission slip as well as demanding exaction called "Dharmada" from others furnishes conclusive proof of the charge of restrictive trade practice contained in the Notice of Enquiry."

As the facts are similar in this case with the above Enquiry as well as the others quoted, we entirely agree with the ratio of the decision and the observation quoted above in RTPE 128 of 1990. We further observe that not allowing the complainant by the respondents to hire truck from the open market as also charging Rs. 250/- per truck for allowing the complainant to hire from the open market are restrictive trade practice falling within Section 33(a), (b) and (f) of the MRTP Act, 1969. Similarly not allowing the complainant or the public to negotiate the freight to hire a truck from the open market without paying Rs. 250/-per truck to the respondent will be covered by Section 2(o) of the MRTP Act as it amounts to preventing, distorting and restricting the competition.

3. IN the result, the respondents are ordered to cease and desist from indulging in the restrictive trade practices set out in the Notice of Enquiry, in particular, from preventing the complainant and public to hire the trucks from the open markets. The Notice of Enquiry is therefore discharged and the parties are left to bear their own cost. Enquiry disposed of.