
(1976) 07 BOM CK 0008

In the Bombay High Court

Case No : Miscellaneous Petition No"s. 627 and 628 of 1975

Crompton Greaves Ltd.

APPELLANT

Vs

Monopolies and Restrictive Trade Practices Commission and
Others
 Philips India Ltd. Vs Monopolies and Restrictive
Trade Practices Commission and Others

RESPONDENT

Date of Decision : 05-07-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Monopolies and Restrictive Trade Practices Act, 1969 — Section 10, 18, 2, 26, 33

Citation : (1979) 49 CompCas 757

Hon'ble Judges : R.L. Aggarwal, J

Bench : Single Bench

Advocate : A.B. Divan and A.M. Setalvad, for the Appellant; T.R. Andhyarujina,
for the Respondent

Judgement

Aggarwal, J.—Both these petitions have been argued together and can be disposed of by a common judgment.

2. In Miscellaneous Petition No. 627 of 1975 under Art. 226 of the Constitution of India, the writ petitioner is Crompton Greaves Ltd., having its registered office at Bombay. The 1st respondent is the Monopolies and Restrictive Trade Practices Commission. The 2nd respondent is the Chairman and the 3rd and 4th respondents are the Members of the Commission. The 5th respondent is the Registrar of Restrictive Trade Agreements. The 6th respondent is the Director of Investigation. The 7th respondent is Electric Lamp Manufacturers (India) Private Ltd., having its registered office at Calcutta. The 8th respondent is General Electric Lamp of India Ltd., also having its registered office at Calcutta (the petitioner in Calcutta High Court Writ Matter No. 134 of 1975). The 9th respondent is Mazda Lamps Company Ltd., having its registered office at Calcutta. The 10th respondent is Philips India Ltd. (the petitioner in Misc. Petition No. 628 of 1975), having its registered office at Calcutta and head office at Bombay. The 11th respondent is N. V. Philips Gloeilampenfabrieken, a company

incorporated under the laws of Netherlands and having its office at Eindhoven, Holland. The 12th respondent is General Electric Co. Ltd., a company incorporated in the United Kingdom and having its office at London. The 13th respondent is Crompton Parkinson Ltd., a company incorporated in the United Kingdom and having its office at York, U.K. The 14th respondent is Mazda Lamp Company Ltd., also a company incorporated in the United Kingdom and having its office at Leicester, U.K.

3. According to the petitioner, in or about 1940, the 11th, 12th, 13th and 14th respondents entered into an agreement to promote the 7th respondent, viz., Electric Lamp Manufacturers (India) Private Ltd. As a result of this agreement, the 7th respondent company was established and started manufacturing activities.

4. On or about 29th May, 1963, the 11th to 14th respondents entered into an agreement with the 7th respondent, whereunder a common lamp manufacturing program was agreed upon. According to the petitioner, the 7th respondent has filed the aforesaid agreement with the Registrar of Restrictive Trade Agreements, the 5th respondent, under the provisions of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as "the MRTP Act").

5. The 5th respondent submitted an application dated 17th August, 1974, before the MRTP Commission under s. 10(a) (ii) of the MRTP Act, which provides for an enquiry into restrictive trade practices by the Commission upon an application made to it by the Registrar. It is alleged in the said application that by entering into the said agreement dated 29th May, 1963, and otherwise the 11th to 14th respondents are indulging in restrictive trade practices. It is further alleged in the application that in pursuance of the said agreement and/or common understanding/arrangement, the subsidiaries/associates/nominees of the foreign companies, namely, Philips India Ltd., GEC of India Ltd., Crompton Greaves Ltd., Mazda Lamp Co. Ltd., get their supplies of lamps and components thereof from the 7th respondent for sale under their respective brand names. It is further alleged that the 11th respondent established a subsidiary company, viz., Philips India Ltd. (respondent No. 10) in India for the manufacture and sale of electrical goods including electric lamps and components thereof wherein the 11th respondent holds 60 per cent. of the equity capital. The 10th respondent-Philips India Ltd. is engaged in the manufacture and trading of electric lamps and components, fixtures, holders, ballasts, etc., radio receivers, record-players, electronic components/apparatus, communication system, etc., and is registered under s. 26 of the MRTP Act. It is further alleged that the 10th and the 7th respondents are inter-connected undertakings as both are under the same management within the meaning of s. 307(1B) of the Companies Act, 1956. The 10th respondent controls production in the factories of the 7th respondent and Hind Lamps Ltd. which is also prompted by the 11th to 14th respondents for the manufacture and supply of electric lamps and components thereof for resale by them and M/s. Bajaj Electricals Ltd. and/or their subsidiaries/associates/

nominees under their respective brand names. The appointment of factory manager in the 7th respondent-company as well as Hind Lamps Ltd. is controlled by the 10th respondent. The 7th respondent together with Hind Lamps Ltd. and the 10th respondent controls more than 50 per cent. of the production of GLS lamps and fluorescent tubes and their components, and as such the 7th and the 10th respondents are monopolistic undertakings within the meaning of s. 2(j) of the MRTP Act.

6. In para. 14 of the application, the Registrar of Restrictive Trade Agreements, the 5th respondent, has set out cls. 3, 5, 8, 9 (a), 11, 13(a), 15(g), 4, 12 and 13 of the agreement and submitted that, by virtue of these clauses in the agreement and/or by common understanding/arrangement arrived at between the respondents, they are indulging in restrictive trade practices of the following nature :

- (a) restricting persons/parties from whom goods are bought and/or to whom goods are sold;
- (b) entering into understanding/arrangement to sell goods only at agreed terms, conditions and prices, thereby eliminating competition or a competitor;
- (c) agreeing to purchase goods only at prices and on terms and conditions agreed upon;
- (d) restricting output and supply of electric lamps and components thereof, thereby imposing unjustified costs on the consumers; and
- (e) restricting employment of any method, machinery or process in the manufacture of goods produced by respondent No. 7.

7. It is further alleged in para. 16 of the application that the respondents have quoted identical rates for supply of lamps to the DGS & D. In the open market also the prices of their brands of electric lamps are almost identical, resulting from the clandestine understanding between them as to the common fixation of prices of their goods. The understanding/arrangement amongst the respondents for uniform tendering and/or uniform fixation of selling prices is a restrictive trade practice and is prejudicial to public interest.

8. In para. 17 of the application, it is alleged that the restrictive trade practices set out above and in particular in paras. 14 to 16 which have been and are being indulged in by the respondents prevent, distort and restrict competition/have the effect of preventing, distorting and restricting competition and obstruct/tend to obstruct the flow of capital and resources into the stream of production, bring about manipulation of prices, affect the flow of supplies in the market in a manner so as to impose on the consumers unjustified costs and restrictions and are prejudicial to public interest. On the basis of these allegations, the Registrar of Restrictive Trade Agreements - the 5th respondent - prayed for an enquiry into the restrictive trade practices indulged in by the petitioners and others under s. 37 of the MRTP Act.

9. It appears that on the basis of the said application, the MRTP Commission directed the Director of Investigation - the 6th respondent - to investigate into the complaint. The Director of Investigation by his letter dated 6th September, 1974, addressed to the petitioner sought information. Thereafter, correspondence was exchanged between the petitioner and the Director of Investigation. According to the petitioner, they by their letter dated 20th November, 1974, furnished the requisite information to him. It appears that the Director of Investigation submitted a report to the Commission. Thereafter, the Commission has issued a notice of enquiry dated 22nd February, 1975, addressed to the petitioner and the 7th to 14th respondents, stating therein that the Commission has decided to hold an enquiry into the alleged restrictive trade practices complained of in the said application dated 17th August, 1974. A copy of the said application was furnished to the petitioner along with the notice of enquiry. The said notice was given under regln. 58 of the Monopolies and Restrictive Trade Practices Commission Regulations, 1974, and it stated that if the petitioners wished to be heard in the proceedings before the Commission, they should comply with the requirements of reglns. 65 and 67, failing which the Commission would proceed with the enquiry in the absence of the petitioners, so failing, to comply with the said Regulations.

10. On receipt of the said notice, the petitioner made an application to the Commission for delivery of further and better particulars. The petitioner also demanded a copy of the report made by the Director of Investigation on the preliminary investigation made by him, as in that case the application has been based on the said report and grave prejudice would be caused to the petitioner if the same is not furnished, and the failure to furnish the report would also be contrary to the principles of natural justice. The petitioner stated in detail the nature of the full and better particulars required by them in order to enable them to file their reply to the notice, and it was submitted that the allegations in the notice are ambiguous, vague and evasive.

11. It appears that the application of the petitioner along with the application of Philips India Ltd. (the petitioner in Misc. Petition No. 628 of 1975) came together for consideration and the Commission has passed the following order on 2nd May, 1975 :

"The notice of enquiry contains the facts constituting restrictive trade practices which are alleged against these respondents. In view of judgment dated 10th February, 1975, in Restrictive Trade Practices Enquiry No. 26 of 1974 in All India Motor Transport Congress v. Goodyear India Ltd. [1976] 46 Comp Cas 315 (MRTPC) and the judgment dated 10th February, 1975, in Restrictive Trade Practices Enquiry No. 31 of 1974 in In re Singer-TVS Ltd. [1976] 46 Comp Cas 183 (MRTPC) and our judgment dated 25th February, 1975, in Restrictive Trade Practices Enquiry No. 27 of 1974 in In re Raymond Woollen Mills Ltd. [1976] 46 Comp Cas 395 (MRTPC), this application does not lie at this stage and is dismissed with costs fixed at Rs. 150 each. Time for filing reply extended by one

week from today."

12. The petitioner alleges that the said order dated 2nd May, 1975, has caused grave prejudice to them and is void, illegal, without the authority of law, arbitrary, without jurisdiction or in excess or wrongful exercise of jurisdiction not vested in it, and seeks a writ of certiorari to quash the same and a writ of mandamus directing the Commission to furnish to the petitioner a copy of the report and the particulars sought by the petitioner in their application dated 18th April, 1975, and for a writ of prohibition prohibiting the Commission from proceeding with the hearing of the enquiry without furnishing the report and the particulars to the petitioner.

13. The 5th respondent has made an affidavit in reply denying that the allegations contained in paras. 15, 16 and 17 of the application are vague and that it was not possible for the petitioner to deal with the same and file a reply unless the alleged requisite particulars were furnished. It is submitted that the disclosure of the report can only be made in accordance with the Regulations of the Commission which are made in exercise of the powers conferred on the Commission under ss. 18 and 66 of the MRTP Act and, therefore, no question of the application of natural justice arises where the question is governed by statutory regulations. It is denied that the investigation by the Director of Investigation is the basis and foundation on which the notice was issued and submitted that the petitioner has no right of disclosure or inspection of the Director's report made to the Commission. It is contended that the petition is not bona fide and is only designed to arrest and delay the proceedings before the Commission by obtaining a stay of proceedings.

14. The 6th respondent, the Director of Investigation, has filed an affidavit in reply to the petition. It is stated that on receipt of the application of the 5th respondent the Commission directed an investigation and, accordingly, an investigation was made into the restrictive trade practices and a report was submitted to the Commission. It is stated that a preliminary investigation is only for the satisfaction of the Commission before it decides to issue a notice of enquiry. It is denied that the report of the Director of Investigation is the foundation of the notice of enquiry.

15. The petitioner has filed an affidavit in rejoinder to the affidavit of the 5th and the 6th respondents denying their various contentions and submissions.

16. With reference to the allegations contained in paras. 14 and 15 of the application of the 5th respondent setting out the various clauses of the agreement, Mr. Divan, the learned counsel appearing for Crompton Greaves, contended that the source of these allegations is two-fold, firstly, the clauses in the agreement, and, secondly, common understanding/arrangement arrived at between the respondents. He submitted that there are no particulars of the alleged common understanding/arrangement referred to in para. 15 of the application. The allegation in para. 16 relate to quoting identical rates, but it is

not mentioned when, which year, whether by all the respondents or some of the respondents. He commented upon the words "almost identical" and styled the allegations in this paragraph as breezy. With reference to para. 17 of the application, he stated that it was merely paraphrasing s. 2(o) of the MRTP Act. He submitted that, in order to give a reply to the notice, the petitioner must get the barest of facts to plead gateways. He further submitted that the whole idea of fundamental principles of justice is to tell the man what the case he has to meet, to assist the Tribunal for a fair decision. He also submitted that the basic facts are missing in the present case. The sort of allegations contained in paras. 15 and 16 of the application of the 5th respondent can apply to any one at any point of time.

17. Mr. Andhyarujina drew my attention to the replies submitted by the petitioner, Crompton Greaves, in reply to the queries raised by the Director of Investigation. By query No. 2.2, the Director had asked for details of electric lamps and lamp components, other than those manufactured by the petitioner along with the name of the producer, the quantity purchased and the rate at which each item was purchased during the last three calendar years. The petitioner, Crompton Greaves, while submitting reply to this query, did not furnish the rates at which the products were purchased. Mr. Andhyarujina contended that by purposely giving incomplete answer, valuable information had been withheld by Crompton Greaves and this indicates that their conduct was not straight forward.

18. By query No. 3.1, the Director of Investigation had asked for a detailed statement showing the full range of the various items of electric lamps and lamp components manufactured and/or marketed by the petitioner, Crompton Greaves, during the last three calendar years. They were called upon to state separately the quantity and value for each year in respect of the said items. The petitioner, Crompton Greaves, in reply, submitted a statement showing the approximate quantity and the approximate value of the lamps (not in voltage/watts) sold by them during the calendar years 1971, 1972 and 1973. In this connection, Mr. Andhyarujina pointed out that appendix "B" gives no particulars and the rates are also missing. Mr. Divan submitted that the answer to the question involved exhaustive analysis and that the prices charged by the E.L.M.I. (7th respondent) to the petitioner were mentioned in appendix "C", Part A.

19. By query No. 8, the Director of Investigation had asked if there was any understanding, arrangement or agreement between the petitioner, Crompton Greaves, and any other parties in the matter of production, supply and distribution of products manufactured by the petitioner and for purchase of goods by the petitioner from other parties. If so, details thereof may be furnished for electric lamps and lamp components only. The petitioner in reply stated that they do not manufacture lamps and, therefore, the question of their entering into any arrangement, understanding, etc., for the sale or distribution of their manufacture does not arise. They do purchase lamps from the three parties

mentioned earlier, viz., E.L.M.I. (7th respondent to the petition), Hind lamps Ltd., and Toshiba Anand Lamps Ltd., on a principal to principal basis and on terms and conditions as mutually agreed from time to time between each of the said parties on the one hand and the petitioner on the other. Mr. Andhyarujina contended that the answer to this question is evasive and misleading having regard to the said agreement dated 29th May, 1963. This answer shows that the petitioner was keeping back information and did not give straight and honest answers. There is considerable justification in this criticism.

20. At this juncture, we may also take stock of the answers given in the companion petition of Philips India Ltd. There, Mr. Andhyarujina took me through the answers given by Philips India Ltd. to the queries raised by the Director of Investigation. In answer to the second query, the details of lamp components are not given; the rates at which each item is purchased during the last three years are not given. Again, in answer to the fourth query, the rates are not disclosed. The price of lamp components quoted to DGS & D is not furnished in the sixth query. In connection with the eighth query, it was asked if there was any understanding, arrangement or agreement between the petitioner, Philips India Ltd., and any other parties in the matter of production, supply and distribution of products manufactured by the petitioner, Philips India, and for purchase of goods by the petitioner, Philips India, from other parties. If so, detailed information need be furnished for electric lamps and lamp components only. The petitioner, Philips India, answered in one word "none". Mr. Andhyarujina contended that the answer is patently false to the knowledge of Philips India. In this connection and also in connection with Crompton Greaves' answer to query No. 8, he referred to cls. 10 and 11 of the said agreement dated 29th May, 1963. Clause 10 refers to the first four parties to that agreement about submitting in writing to the manufacturing company (7th respondent) estimates of its lamp requirements for India for the 12 months, etc. That clause further states that all reference in that clause to parties shall be deemed to include the relative party's subsidiary distributing and associated companies. Clause 11 states that the manufacturing company (the 7th respondent) shall be operated solely as a manufacturing enterprise for the benefit of the parties of the first four parts and their respective distributing subsidiary and associated companies and no product of the manufacturing company (7th respondent) shall be sold except to or through the parties thereto and their respective accredited representatives in India or such other companies or firms as the parties of the first four parts may from time to time agree by a four-fifth majority. It goes on to say that the parties of the first four parts undertake each with the others of them that they and their subsidiary, distributing and associated companies will obtain from the manufacturing company the whole of their respective requirements for India of lamps of such types and sizes as in the opinion of the Board the manufacturing company is for the time being able to supply in sufficient quantities and at reasonable times. With regard to the answers to the various questions, Mr. Andhyarujina submitted that though no grievance was made by the Director of Investigation that the

answers were inadequate or that requisite information was not given, none the less the fact remains that the answer to query No. 8 particularly was misleading in one case and false in the other.

21. It can be noted that both the petitioners - Crompton Greaves and Philips India Ltd. - have referred to the said agreement dated 29th May, 1963, and the correspondence in their respective petitions. Both of them had promptly filed in court copies of the said agreement and the correspondence containing the said answers to the queries raised by the Director as per my directions during the course of the hearing.

22. On behalf of the petitioners, it was urged that the Commission has not specifically pleaded that the answers to the questionnaire were not correct. The Commission did not complain about it when the petitioners' applications came for hearing, nor in the affidavit in reply to these petitions, nor any grievance was made by the Director of Investigation between November, 1974, till the issue of the notice of enquiry. It was also submitted that there was no question of suppression of the agreement as the same was before the Commission. For all these reasons, it was contended that Mr. Andhyarujina should not be allowed to urge this point as it goes beyond the pleadings and thereby denies the petitioners an opportunity to meet this case. I am not impressed by these arguments. The petitioners did not ask for an opportunity to file a supplemental affidavit.

23. In proceedings under art. 226 of the Constitution, the conduct of the party before the presentation of the petition is material. If a party deliberately and/or in a calculated manner had sought to sidetrack or hood-wink the investigating machinery in the course of the enquiry by giving evasive answers or knowingly suppressed full information, the party could be guilty of improper conduct depending upon the nature of the investigation and the consequences resulting from such conduct, provided it can be shown that the party was equipped with complete information or the facts were within its knowledge. In the companion matter of Raymonds (Misc. Petition No. 322 of 1975) (since reported in [1979] 49 Comp Cas 686, we have examined the nature and object of the MRTP Act. The preliminary investigation under the MRTP Act involves the public interest, the economic well being of the public throughout the length and breadth of the country. Both the petitioners - Crompton Greaves and Philips India - are enjoying the rights, privileges and the special benefits arising out of the said agreement dated 29th May, 1963. This has been going on for umpteen years even before this agreement. Both of them rely upon this agreement in their respective petitions and both of them have filed copies of the same in the court. The fact that they are in possession of the document or the information was not disputed and in fact could not be disputed. What has been pointed out by Mr. Andhyarujina cannot be said to have given a surprise to either of the petitioners. The question is merely one of looking at the answers to the queries. The answers are clear and plain. In the case of Crompton Greaves, the answers are evasive

and not straight forward and have a clear tendency to keep back the full facts when examined in the light of the said agreement dated 29th May, 1963, and the correspondence on the subject. It cannot be described as a mistake. These replies are given knowingly to the investigating machinery of MRTP Commission. In the case of Philips India, the answer is patently false. It is false to the knowledge of the company. There can be no manner of doubt about it. In these circumstances, it is reasonable to infer that such answers were given in order to mislead the investigators or to gain time. In either situation, the company stands to gain by gaining time. In the first place, a preliminary investigation takes place. It is then followed by a regular enquiry before the Commission under s. 37(1) and (4). In the meantime, the party continues its trading activities without any check or restriction or without any liability to account for the gains and profits made. In my opinion, the conduct of both the petitioners - Crompton Greaves and Philips India - before the presentation of their respective petitions has been such which disentitles them to obtain discretionary relief under art. 226 of the Constitution. However, I do not propose to dismiss the petitions on this technical aspect. The matters have been argued at length. It is, therefore, necessary that they should be examined on merits.

24. Reverting to Mr. Divan's contention set out above that the basic facts are missing resulting in the petitioner - Crompton Greaves - being handicapped in not being able to plead the gateways, Mr. Andhyarujina referred to the various clauses of the agreement dated 29th May, 1963, entered into between the 11th respondent on the first part, A.E.I. Lamp & Lighting Co. Ltd. of London on the second part, the 12th respondent on the third part, the 13th respondent on the fourth part, and the 7th respondent on the fifth part, and pointed out how the various clauses fall under s. 33 of the MRTP Act, which provides that any agreement relating to a restrictive trade practice falling within one or more of the categories mentioned in cls. (a) to (1) of sub-s. (1) thereof shall be subject to registration in accordance with the provisions of Chap. V of the Act. Several clauses of the said agreement fall within cls. (a), (g), (h), (d) and (j) of s. 33(1). The restrictive trade practices of the type mentioned in these clauses of the section are so conspicuous and patent in the agreement that hardly any effort is required to bring home the type of the restrictive trade practices to which they make reference.

25. Mr. Andhyarujina pointed out that the 8th respondent herein, General Electric Lamp of India Ltd., had filed a Writ Petition No. 134 of 1975, in the Calcutta High Court challenging the common notice of enquiry dated 22nd February, 1975, and for prohibiting the Commission and the Registrar continuing any proceedings under the said notice or giving any effect thereto. The present petitioners, Crompton Greaves Ltd., and also Philips India Ltd. and the remaining respondents out of respondents Nos. 7 to 14, were also parties to the Calcutta writ petition. This petition has been decided on 19th December, 1975. In that case, the learned judge has considered the allegations in the light of s. 33 of the MRTP Act which are contained in para. 15(a), 15(b), 15(c), 15(d), 15(e) and

para. 16 of the application under s. 10(a)(iii) and has come to the conclusion that on the basis of these allegations a prima facie case for which an enquiry has been made out.

26. In connection with para. 15 (a) it is stated :

"This certainly comes within the category specified in clause (a) of sub-section (1) of section 33 which refers to "any agreement which restricts, or is likely to restrict, by any method, the persons or classes of persons to whom goods are sold or from whom goods are bought". In this context reliance is placed on clause 11 of the said Agreement which provides, inter alia, that the manufacturing company, i.e., the respondent No. 3 (respondent No. 7 before us) herein shall be operated solely as a manufacturing enterprise for the benefit of the other parties to the said Agreement and their respective distributors, subsidiaries and associated companies and that no product of the respondent No. 3 (respondent No. 7 before us) shall be sold except to or through them. It further provides that the said party and their subsidiaries, distributors and associated companies will obtain from the respondent No. 3 herein (respondent No. 7 before us) the whole of their respective requirement for India of lamps. If the petitioner No. 1 has been and is acting in such a manner pursuant to such agreement or pursuant to some other understanding or arrangement as alleged, it may very well be contended that the same amounts to restrictive trade practice inasmuch as it restricts or is likely to restrict the persons or classes of persons to whom goods are sold or from whom goods are bought."

27. In connection with paragraph 15(b), the learned judge said :

"In this context I may point out that an agreement to sell goods at such prices as would have the effect of eliminating competition or a competitor is one of the categories of agreements relating to restrictive trade practice as would appear from clause (j) of section 33(1) of the said Act. Further, an agreement to purchase or sell goods or to tender for the sale or purchase of the goods only at prices or terms or conditions agreed upon between the sellers or purchasers is one of the agreements relating to a restrictive trade practice as would appear from clause (d) of section 33(1) of the said Act. In this context let us examine clauses 12 & 15(g) of the said Agreement. Clause 12 of the said Agreement provides that the Board of the respondent No. 3 (respondent No. 7 before us) shall from time to time fix the prices to be charged for lamps supplied. Clause 15 contemplates the situation upon withdrawal of a party from the said Agreement including provisions for supply of lamps to the withdrawing party. It may be contended that the same amount to restrictive trade practice within the meaning of the aforesaid clauses of the said Act. It would be ultimately for the Commission to decide the same, whether on some evidence or otherwise but a prima facie case has certainly been made out at this stage for such an enquiry by the Commission."

28. In connection with para. 15(c) it is said :

"That the respondents to the said application, including the petitioner No. 1 herein, have been agreeing to purchase goods only at prices and on terms and conditions agreed upon. In this connection reliance is placed on behalf of the Registrar on clauses 12 and 15(g) of the said Agreement referred to above, and clause (d) of the section 33(1) of the said Act which deals with the categories of agreements to purchase or sell goods or to tender for the sale or purchase of goods only at prices or on terms or conditions agreed upon between the sellers or purchasers."

29. In connection with para. 15 () it is said by the learned judge :

"The respondents to the said application, including the petitioner No. 1 herein, have been restricting output and supply of electric lamps and components thereof, thereby imposing unjustified costs on the consumers. Clause (g) of section 33(1) of the said Act deals with the categories of agreements which limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal of the goods. In this context reliance is placed on clauses 3 and 15(g) of the said Agreement referred to above. Clause 3 provides that the respondent No. 3 (respondent No. 7 before us) shall manufacture lamps of wattage and types of lamp components as listed in annexure I thereof. It further provides that other types of lamps or lamp components may only be made by the respondent No. 3 herein by virtue of a decision of the four parties by a four-fifth majority. I have already set out the provisions of clause 15(g) of the said Agreement."

30. In connection with para. 15(e) it is said :

"The respondent to the said application, including the petitioner No. 1 herein, are restricting employment of method, machinery or process in the manufacture of goods produced by the respondent No. 3 herein (respondent No. 7 before us) and thereby indulging in restrictive trade practices. In this connection reliance is placed upon the provisions of the clause (g) of section 33(1) of the said Act which relates to an agreement not to employ or which restrict the employment of any method, machinery or process in the manufacture of goods. In this connection reference is made to clauses 5, 8, 9A and 13A of the said Agreement. Clause 5 provides, inter alia, that the respondent No. 3 herein (respondent No. 7 before us) shall purchase from one of the parties to the said Agreement who is one of the respondents to the said application all machinery, equipments, parts and materials required by the respondent No. 3 (respondent No. 7) for the production of lamps. It further provides that to the extent the same are not manufactured in India by Hind Lamps Limited of Shikohabad, lamp caps shall be purchased by the respondent No. 3 herein (respondent No. 7 before us) from Lamp Caps Limited of England. Hind Lamps Limited is one of the respondents to the said application. It is to be remembered that one of the allegations in the said application of the Registrar is that Hind Lamps Limited was also promoted by the said four foreign companies which promoted the respondent No.3 (respondent No. 7 before us). It is further alleged that between themselves these

four companies hold all the shares of Hind Lamps Ltd. I have already set out the said clause 5 hereinabove. Clauses 8 and 9 relate to the conditions regarding the appointment and removal of factory manager and the accountant of the respondent No. 3 (respondent No. 7 before us) and their respective portions. Clause 13A of the said Agreement provides that all lamps manufactured and sold under the said Agreement shall be branded in the manner specified. It further provides that the respondent No. 3 (respondent No. 7 before us) would not acquire any title to the trade marks with which lamps shall be branded."

31. The aforesaid analysis was not challenged on behalf of the petitioners. The said agreement dated 29th May, 1963, is being acted upon by the petitioner although they are not made parties to it as one of the signatories or executants. They are undoubtedly among the beneficiaries under the said agreement. Clause 2 of the said agreement which covers the subsidiary company of the first four parts removes any doubt on the point. There is, in my opinion, no ambiguity or vagueness in the allegations of restrictive trade practices mentioned in clause 15(a), (b), (c), (d) and (e) of the application of respondent No. 5 by virtue of the said agreement. Mr. Divan leveled strong criticism of the use of the words "common understanding/arrangement arrived at between the respondents" as mentioned in the said para. 15. Mr. Divan submitted that the Commission ought to have ordered particulars about "common understanding or arrangement" and in the absence of these particulars, it is not possible for the petitioners to meet the case. I am not impressed by this criticism. In the first place, the petitioner is not one of the executants of the said agreement dated 29th May, 1963. It is by virtue of being a subsidiary of the 13th respondent and/or as an associate or nominee that it is drawing the benefit and advantages of the said agreement. On what arrangement of understanding this benefit is drawn is not made known, although it is the case of the petitioner that they are purchasing electric lamps and lamp components from the 7th respondent (who is the manufacturing company under the said agreement) on the basis of principal to principal and on terms and conditions as mutually agreed from time to time. Secondly, along with the said agreement, there is reference to the an agreement dated 1st July, 1949, which speaks of verbal understanding. Thirdly, the definition of the word "agreement" in s. 2(a) of the MRTP Act says that "agreement" includes any arrangement or understanding, whether or not it is intended that such agreement shall be enforceable (apart from any provision of the Act) by legal proceedings. In these circumstances, the Registrar was justified in making an averment relating to common understanding or arrangement in para. 15 of the application, apart from referring to the said agreement dated 29th May, 1963.

32. Coming to the comments of Mr. Divan on para. 16 of the application, the learned counsel contended that as regards "identical rates" quoted by the respondents for supply of lamps to DGS & D, it is not stated when, which year, whether by all the respondents or some by the respondents said in which quotations the rates were given. Foreign companies cannot tender to DGS & D. The allegations are breezy, submitted Mr. Divan. Now, as regards "identical rates"

being charged for supply of lamps to DGS & D by the petitioner as well as the other respondent to the notice, there is sufficient evidence on record. While submitted its reply to the queries raised by the Director of Investigation, the petitioner stated that the price charged to DGS & D by them for 25 watts for the year 1970-71 was Rs. 1-10 per unit and that in 1971-72 was 1-12 per unit and in 1972-73 was Rs. 1-15 per unit. Philips India Limited one of the respondents in their reply to similar queries, submitted the rates in the basis of 100 pieces. It is reasonable to say from the record that the rates quoted are identical and, therefore, there is no substance in the comments offered by Mr. Divan. Another ground of attack was on the use of the expression "almost identical" in relation to the prices charged in the open market by the respondents including the petitioner of their brands of electric lamps. The expression "almost identical" rates presents no difficulty in understanding or appreciating in the context in which it is found. It is the case of the 5th respondent that the respondents to the application have entered into some understanding/arrangement for uniform tendering and/or uniform fixation of selling prices and this could be a product of clandestine understanding between them. It cannot be a miracle that all these respondents should quote identical rates for supply of lamps to DGS & D and also quote almost identical prices in the open market. The respondents concerned to the application have a common cause and a common interest under the said agreement dated 29th May, 1963. They work together under a rigid code as postulated in the said agreement. If regard be also had to the answers given to the queries of the Director of Investigation discussed above, there seems to be a valid reason for the 5th respondent to describe the understanding as clandestine. One cannot overlook the fact that for such trade practices it is not uncommon to employ back-door methods or enter into corporate conspiracy to achieve their own common goal.

33. Coming to the comments on para. 17 of the application that it is merely paraphrasing of s. 2(o) of the MRTP Act, it is but natural that in marketing a formal charge paraphrasing is unavoidable or necessary to lay a firm foundation of the charge with its ingredients.

34. This exploration into the various paragraphs of the application shows that a prima facie case has been made out against the petitioners - Crompton Greaves and Philips India - and that the various comments and criticism offered against the application of the 5th respondent is without substance. According to Crompton Greaves as well as Philips India, they and respondents Nos. 8 and 9 - General Electric Lamp of India Ltd. and Mazda Lamps Co. Ltd. respectively - "vigorously compete in the said sale of electric lamps in the Indian market, and such lamps are sold at different prices" (vide para. 3 of the petition). Therefore, the burden would be on the Commission/Director of Investigation, submitted Mr. Andhyarujina. In these circumstances, there is no question of pleading gateway and the controversy raised by Mr. Divan about the petitioners being unable to plead a gateway in the present state of allegiance also loses its force. Nevertheless, the application contains all the constitutive facts as regards

commodity, parties for filing a reply to the notice of enquiry. In any event, as held by me in the Raymond's Petition (Misc. Petition No. 322 of 1975) (since reported in [1979] 49 Comp Cas 686 heard along with these two petitions, the stage for obtains further and better particulars is after the pleadings are complete and when an application for directions is made under the regulations.

35. The other contentions raised by Mr. Divan are : Firstly, the order rejecting the application or the petitioner is vitiated because the Commission has dismissed the application on the ground that it is premature as held by it in three other cases. Secondly, the Commission has, therefore, failed to exercise jurisdiction and debarred itself from dealing with the application on merits. Thirdly, on a true construction of the order, the Commission has not dealt with the application on merits. Neither the facts nor the various demands for particulars have been dealt with. All this has led to patent error on the fact of the order, read with the three orders referred to therein.

36. As regards the first point, in view of the opinion expressed by me in Raymonds' petition (Misc. Petition 322 of 1975) (since reported in Raymond Woollen Mills Ltd. Vs. Monopolies and Restrictive Trade Practices Commission and Others, that the Commission was right in taking the view that the Raymond's application was premature for the reasons stated in its order, there is no merit in this point. Likewise, there is no merit in the second point that the Commission has failed to exercise jurisdiction, as I have already expressed my view in Raymonds' petition that the Commission has acted thereunder according to the provisions of the MRTTP Act and Regulations made there in rejecting the application for full and better particulars and for furnishing a copy of the report of the Director of Investigation in the light of those provisions.

37. As regards the third point, it is necessary to refer to the affidavit dated 9th April, 1976, filed by the 5th respondent the Registrar of Restrictive Trade Agreement, both in the petitions of the Crompton and Philips. He says on oath as follows in para. 4 :

"..... I say that the impugned order of the Commission which has been annexed as Exhibit "I" states at the beginning itself that "the notice of enquiry contains the facts constituting restrictive trade practices which are alleged against these respondents". I am informed by the Chairman of the Commission that no attempt was made by the petitioners or by their advocate then appearing for the respondents in the inquiry on 2nd May, 1975, to argue that the notice u/s 37 did not contain sufficient particulars and was vague, or even the other question of disclosing the report of the Director of Investigation or any other point in the application of the petitioners dated 16th April, 1975, (Ex. "C"). The said advocate knew of the decisions in All-India Motor Transport Congress v. Goodyear India Ltd. dated 10th February [1976] 46 Comp Cas 315 (MRTPC) and in In re Singer-TVC Ltd. judgment dated 25th February [1976] 46 Comp Cas 183 (MRTPC) and in In re Raymond Woollen Mills Ltd., judgment dated 25th February [1976] 48 Comp Cas 395 (MRTPC) on the precise point of law raised by the

petitioner in their application dated 6th April, 1975 (Ex. "C"), and that the Commission had been following these judgments. The advocate of the respondent is the enquiry was in fact also the advocate in the enquiries relating to Raymond Woollen Mills Ltd. and in Singer-TVS Ltd. Besides, in the March, 1975, this hon"ble court had been pleased to issue in two petitions of Firestone & Co. and Raymond Woollen Mills rule nisi and interim injunction restraining the Commission from acting on the orders of the Commission in All-India Motor Transport Congress v. Goodyear Ltd. [1976] 46 Comp Cas 315 (MRTPC) and in Raymond Woollen Mills Ltd. [1976] 46 Comp Cas 395 (MRTPC) and this fact was also known. Apparently, for those considerations, no attempt was made on the part of the said advocate to argue the application for particulars or even any other point with respect to the petitioner's application dated 16th April, 1975 (Ex. "C"). In any event I submit that the Commission has stated in its order that the notice of enquiry contains the facts constituting the restrictive trade practices which are alleged against the respondents Nos. 2 and 4 in the enquiry. I therefore, deny the allegation (and submitted) that the Commission has not applied its mind and has mechanically and without any application of mind followed the earlier orders."

38. The aforesaid statements have remained uncontroverted. From whatever is stated by the Registrar, it is reasonable to say that the learned advocate for the Crompton and Philips did not choose to argue the matter and accepted the position emerging from the earlier decisions of the Commission with regard to the questions in the both the application Dated 16th April, 1975. In these circumstances, there is no justification to come forward with a grievance that their applications had been disposed of on the facts of their cases. This apart, in my opinion, the observations of the Commission to the effect that the notice of enquiry contains the fact constituting restrictive trade practices which are alleged against the petitioners, viz., Crompton and Philips, sufficiently indicate that the Commission has applied its mind to the extent it was found necessary by the Commission to dispose of both the applications. The reading of the three judgments in All India Motor Transport Congress v. Goodyear (India) Ltd. [1976] 46 Comp Cas 315 (MRTPC) Singer-TVS Ltd. [1976] 46 Comp Cas 183 (MRTPC) and Raymond Woollen Mills Ltd. [1976] 46 Comp Cas 395 (MRTPC) shows that the Commission was bearing in mind its earlier decisions and, therefore, it seems that it did not consider it necessary to go into the details of the applications which were admittedly filed at the stage after the service of the notice and before the petitioners, Crompton and Philips, had filed their reply. The principal demand made by them was relating to full and better particulars and for a copy of the report of the Director of Investigation. In the three decisions referred to in the order and the two applications of Crompton and Philips, common questions were involved and, therefore, it is not possible to accept the argument that the order suffers from the vice of error apparent on the face of the record.

39. Several other points raised by Mr. Divan have been dealt with in Raymonds's

petition (Misc. Petition No. 322 of 1975) (Since reported in Raymond Woollen Mills Ltd. Vs. Monopolies and Restrictive Trade Practices Commission and Others, Mr. Divan also adopted the arguments of Mr. Parekh who appeared on behalf of Raymonds and Mr. Setalvad who appeared on behalf of Philips India and they to be covered in Raymond's judgment. The question of prejudice remains to be specifically dealt with in this petition. In para. 15 of the petition, it is alleged that grave and irreparable prejudice will be caused to the petitioner as they would be unable to adequately defend themselves in the proceedings without perusing a copy of the investigation report and with out obtaining the required particulars. In this connection, the arguments of Mr. Divan can be recapitulate at the cost of repetition.

40. Mr. Divan contended that the petitioner would be prejudiced, inasmuch as they would be at the mercy of the Commission for further and better particulars and for amendment of the pleadings. The Commission might not allow the application. The petitioner would have a adverse publicity and they will have to bear the cost of litigation, harassment and dig out old records on order to fact the enquiry. In this connection, Mr. Andhyarujina contended that, as regards publicity, there is no direct charge of economic crookery, misfeasance or malfeasance. There are no allegations of bribery, misappropriation, smuggling, etc., against the petitioners. The commission merely makes an enquiry. The petitioners can justify that the alleged trade practices are in public interest. They can justify them as actually beneficial to public interest. In my view, there is considerable merit and force in the arguments of Mr. Andhyarujina. The petitioners have failed to show that they have been really prejudiced on account of the alleged non-observance of the principles of natural justice. Even what is suggested as causing prejudice is worthless. As regards the suggestion that the petitioner would be at the mercy of the Commission, it can be said that every one who has occasion to appear before judicial and quasijudicial tribunals and court as well is at their mercy. The fear expressed particulars for amendment of the pleadings is unfounded and does not deserve to be considered. The Commission is a high-powered body composed of men of ability, integrity and standing, who have adequate know ledge or experience or have capacity to deal with the problems, inter alia, relating to law. The chairman is person who has been or is qualified to be a judge of the Supreme Court or of a High Court. The Commission will exercise its discretion in these matters and not capriciously. As regards another suggestion that the petitioners would be oppressed by harassment, trouble and expense to which they would be put by having to under go the trouble of making a reply to a defective notice of enquiry and the ordeal of an enquiry, I cannot agree with the same. An enquiry into the restrictive trade practices or the determination of the status of the petitioner, Philips India, as a monopolistic undertaking does not involve any more or even as much mental anxiety, physical trouble or expense for the subject does a prosecution for a criminal offence. The present enquiry is for preventing further gratification from the alleged restrictive trade practices. At this stage, the petitioner is not in the

position is not in the position of an accused. It is upon conclusion of the enquiry that the restrictive trade practice shall be ordered to be discontinued and not repeat and the agreement relating there to be shall be rendered and declared void in respect of such practice or the Commission may modify the agreements. In the intervening period, the petitioner happily continues the trade practices. No embargo can be placed on the party pending the enquiry. The party is not accountable for the gains and profits yielding from such trade practices. It is the public interest that is at stake. If the enquiry is delayed or postponed, it is the public interest that suffers and not that of the petitioner on whom no kind of limitations, restrictions and conditions can be imposed. In such a case as this, in circumstances like in the present case, I cannot think of granting relief under art. 226 of the Constitution of India.

41. Miss. Petition No. 628 of 1975.

42. The facts in this petition are common to those in Misc. Petition No. 627 of 1975. In the present Petition, the Petitioner is Philips India Ltd. They are also respondent No. 10 in Misc. Petition No. 627 of 1975. The agreement dated 29th May, 1963, is common. The application made by the Registrar of Restrictive Trade Agreements is also common. The notice of enquiry dated 22nd February, 1975, issued by the Commission under s. 10(a) and s. 37 of the MRTP Act and regn. 58 of the MRTPC Regulations, 1974, is also common. The petitioner herein had made an application dated 16th April, 1975, for further and better particulars in respect of each and every allegation made by the Registrar as set out in paras. 10, 12 and 13 of the petitioner's application and inspection of various published and unpublished documents, deeds, writings, reports, figures, results of studies, facts, data and information on which the Registrar has referred to or relied upon. The order made on this application is dated 2nd May, 1975, which is also common.

43. Mr. Setalvad, the learned counsel appearing for the petitioner, submitted that his real complaint was not about the notice of enquiry but about the application of the Registrar enclosed therewith. The application does not give particulars of common understanding or arrangement. In the absence of these particulars, the petitioner cannot meet the case as they do not know when and where that understanding was arrived at. He further submitted that the notice of enquiry read with the application is void, vague and does not give the petitioner an effective opportunity of defending themselves or invoking the provisions of s. 38 of the MRTP Act. The Commission, therefore, ought to have looked at the petitioner's application instead of rejecting it on theoretical grounds. In substance, these arguments are the same as those raised in the Crompton's petition. For the reasons stated in the companion petition these submissions are rejected.

44. The impugned order dated 2nd May, 1975, was attacked by Mr. Setalvad on the ground on that the commission has taken a certain erroneous view and precluded itself from examining the case of the petitioner. The petitioner feels

that they are entitled to particulars and the report of the Director of Investigation. The petitioner did not get a judgment. The petitioner was confronted with the difficulty that the Commission had already decided. As regards the observation of the commission that the notice of enquiry contains the facts constituting restriction trade practices which are alleged against the petitioner, Mr. Setalvad submitted that this sentence is neither here nor there. The commission has not looked into the merits of the application. I do not find any substance in these contentions. The Registrar has made an affidavit dated 10th April, 1976. The relevant extract has been reproduced in the companion case of Crompton. For the reasons indicated above, these contentions stand rejected.

45. Another point raised by Mr. Setalvad that the Commission has no power to enquire into the monopolistic status of his client in an enquiry under s. 37(1) has been dealt with in the Raymond's petition. On the question of prejudice, the averments in the petition are on the same lines as in Crompton Greaves. No separate argument was advanced on this question. In view of the opinion expressed in the petition of Raymonds and Crompton Greaves on this question, for the same reasons, I hold that the petitioner has failed to show that it has actually suffered any prejudice.

46. In the result, both the petitions fail and are dismissed. Rule is discharged. The interim stay is vacated.

47. Each petitioner is directed to pay respondents Nos. 1, 5 and 6 costs fixed at Rs. 2,000. These two petitions along with the Raymond's petition were heard together and the time consumed in the hearing excluding the judgment was about eighty hours. Hence, in each petition fixed costs of Rs. 2,000 are awarded.

48. The petitioners made an application for continuing the interim stay as they desire to go in appeal against this order. I have rejected the application observing as follows :

"Having regard to the nature of the enquiry u/s 37 of the MRTP Act, it is not in the interest of justice as well as in the interest of public to reimpose the injunction which has been vacated by my order dated 5th July, 1976."