(2001) 05 NCDRC CK 0077

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (I And R) APPELLANT

Vs

FOUR WHEELER NISHAN OWNERS UNION RESPONDENT

Date of Decision : 08-05-2001

Acts Referred:

Citation : 2001 3 CPJ 67

Hon'ble Judges : R.K.Anand , R.L.Sudhir J.

Final Decision : Complaint disposed of

Judgement

1. ON a complaint filed by one Shri Subhash Rana, proprietor of M/s. Haryana Transport Company, Kundli Border, Sonepat, the Director General (Investigation and Registration) (DG in short), was directed to carry out an investigation into the allegations of restrictive trade practices made in the complaint and submit a Preliminary Investigation Report (PIR).

2. THE respondent union is stated to have 18 (eighteen) members, who are engaged in the same business as the complainant i.e., transportation of goods from one place to another. It has been stated that the complainant had entered into an agreement with M/s. Shriram Foods & Fertiliser Industries for transporting their goods from Kundli to various destinations. THE grievance of the complainant is that the respondent is preventing the complainant from transporting the goods belonging to M/s. Shriram Foods & Fertiliser Industries by insisting that the same should be transported by the members of the respondent union at freight rates fixed by the union. To give an example of how the respondents were physically obstructing the complainant from doing so, it has been stated that the respondent union had parked two of their tempos bearing Nos. Eicher Mitsubhishi DDL- 5942 and D.L.-IL-2361 at the gate of godown of M/s. Shriram Foods & Fertiliser Industries in front of their own Tempo No. HR-06/267 duly loaded with the goods of M/s. Shriram Foods & Fertiliser Industries. It has been alleged that the trade practice of depriving the non-members from transporting the goods of M/s. Shriram Foods & Fertiliser Industries and thereby compelling the non-members to become members of the

respondents union is a restrictive trade practice, which is causing financial loss to the complainant. In the PIR dated 17.10.1990 also DG has arrived at the conclusion that the respondents have been indulging in the restrictive trade practices within the meaning of Section 33(1)(c)/2(o) of the Monopolies and Restrictive Trade Practices Act, 1969 (the MRTP Act in short). A Notice of Enquiry was accordingly issued to the respondents under Section 10(a)(iv) read with Section 37 of the MRTP Act alleging indulgence in restrictive trade practices within the meaning of Section 2(o) and Section 33(1)(d)/33(2) of the MRTP Act by resorting to the following trade practices : (1) Compelling the transporters to load goods in their vehicles on the freight rates fixed by union. and (2) Restricting the non-members from lifting goods of the local trade and industry and thereby subjecting them to incur additional expenditure.

The complainant also filed an interim relief application under Section 12A of the MRTP Act. A prima facie case having been made out, the complainant''s application was accepted and an interim injunction was granted vide Commission''s order dated 27.12.1990 to restrain the respondents from obstructing the petitioners'' trucks carrying goods to various places loaded from the Kundli border. The injunction so granted was to remain in full force till the disposal of the main enquiry. The complainant later moved an application for amendment in the injunction order to the effect that the word "trucks" mentioned in the injunction order may be substituted by "vehicles". This application was also accepted and necessary amendment was made.

3. THE respondents filed their reply to the NOE. In their reply dated 8.2.1991, the respondents denied the allegations of restrictive trade practices. On completion of pleadings, the following issues were framed : (1) Whether the NOE is not maintainable for reasons mentioned in reply to the NOE ? (2) Whether the respondents or any of them has indulged in or is indulging in the RTPs alleged against them in the NOE ? (3) If answer to issue No. 2 is in the affirmative, whether the same are prejudicial to the public interest ? (4) What relief ?

4. SUBSEQUENTLY, the respondent union was split into two separate unions and as a consequence thereof, an amended NOE was issued to the successor respondents. In their reply to the amended NOE filed on 24.3.1993 also, the allegations of restrictive trade practices have been denied by the respondents. In the changed circumstances, the issues were reframed as under : (1) Whether the Notice of Enquiry is not maintainable for the reasons stated by way of preliminary objections in the written reply filed on behalf of the respondent Nos. 5 and 7 ? (2) Whether the respondents jointly or severally have indulged in the restrictive trade practice as alleged ? (3) If answer to issue No. 2 is in the affirmative, whether the said practice is not prejudicial to the public interest ? (4) Relief ?

On behalf of the parties, evidence was filed by way of affidavits of the witnesses and copies of supporting documents. During the enquiry, the respondents were represented by an Advocate, nearly all through except at the fag end when Mr.

V.S. Juneja, Advocate withdrew from the case. Thereafter, none appeared on behalf of the respondents. The respondents were, therefore, set ex-parte and their evidence was closed. In these circumstances, ex-parte arguments were heard on 16.4.2001.

5. WE have carefully considered the submissions made by the learned Counsel for the DG and have also gone through the pleadings on record. As the issue as to the maintainability of the NOE was not pressed by the learned Counsel for the respondents, the same was not considered and decided as a preliminary issue.

6. IN the NOE as well as the amended NOE, the respondents have been charged with indulgence in restrictive trade practices within the meaning of Section 2(o) and Section 33(1)(d)/33(2) of the MRTP Act. It has also been stated in the aforesaid NOEs that the respondents have been doing so firstly, by compelling the transporters to load goods in their vehicles on freight rates fixed by the union and secondly, by restricting the non-members from lifting the goods of the local trade and industry and thereby subjecting them to incur additional expenditure. It is undisputed that as stated in the PIR, the complainant/informant had entered into an agreement with M/s. Shriram Foods & Fertiliser Industries for transporting their goods from Kundli to various destinations in Haryana. In support of this agreement, DG has filed a copy of the letter dated 2.1.1990 (Annexure-I). We have no hesitation in accepting the contention of the learned Counsel for the DG that despite the aforementioned agreement the complainant/informant was prevented by the respondents from lifting the goods from the godown of M/s. Shriram Foods & Fertiliser Industries. Details of the manner in which the vehicle of the complainant/informant loaded with goods was prevented have already been given in the earlier part of the order and hence, we do not consider it necessary to burden the order with repetition. The respondents, on the other hand have failed to controvert this allegation. The cross-examination of the DG''s witness, Shri Subhash Rana further confirms the truth of this incident. In this view of the matter, the allegation of restricting the non-members from lifting the goods of local trade and industry stands proved against the respondents. As a natural consequence of this, the local trade and industry is compelled to hire the vehicles of the members of the union at the freight rates prescribed by it, which may lead to incurring of additional costs by the local trade and industry for transporting their goods.

As regards the allegation of compelling the transporters to transport goods at the freight rates fixed by the union, the evidence filed by the DG is adequate to prove the same. In the reply to the NOE/amended NOE, the respondents have denied this allegation but the same cannot be taken at its face value in view of the contradictions in the reply. Perusal of the reply reveals that the respondents are blowing hot and cold in the same breath. No reliance can, therefore, be placed on the denial of the respondents particularly in view of the list of freight rates fixed by the respondent union, a copy of which has been filed by the DG. The respondent union has also indirectly admitted the same and has tried to justify it on the ground that it has fixed the freight rates for regulating the transport business which is highly competitive and also with a view to giving an equitable distribution of business among all the members of the union. It has also been stated in the reply that the rates fixed by the respondent union are fair and reasonable when compared to the rates charged by other transporters. For comparison, rate lists of other transporters have been given but the respondents have failed to furnish any evidence to prove the authenticity of the rate lists thus filed. This leads us to believe that by fixing the maximum freight rates, the respondents are preventing the members of the union as well as others from charging the rates less than the rates prescribed by the union. This is obviously a restrictive trade practice within the meaning of Section 33(1)(d) of the MRTP Act as alleged in the NOE. The trade practices thus adopted by the respondents inevitably have the effect of preventing, distorting or restricting competition and, therefore, they attract the provisions of Section 2(o) of the MRTP Act also.

7. AS a last resort, the respondent in their reply have pleaded the gateways in Sub-clauses (a), (b), (c), (e), (h) and (k) of Section 38(1) of the MRTP Act. We are firmly of the view that the gateways pleaded by the respondents are not available to them because the restrictions imposed by them are neither reasonably necessary nor will the removal thereof deprive the public of any services or benefits. In fact, the removal of restrictions will promote competition, which will be in public interest. In sum, the allegations of restrictive trade practices made against the respondents stand proved. The trade practices adopted by the respondents attract the provisions of Section 33(1)(d) and Section 2(o) of the MRTP Act. The said trade practices are also prejudicial to public interest. We, accordingly, order the respondents to cease adoption of and indulgence in the restrictive trade practices discussed above and also to refrain from adopting the same or similar trade practices in future. No order as to costs. Complaint disposed of.