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(2001) 05 NCDRC CK 0062

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (IAndR) APPELLANT

Vs

BANVARI PAPER MILLS LIMITED RESPONDENT

Date of Decision : 16-05-2001

Acts Referred:

Citation : 2001 1 CLT 556 : 2001 2 CPJ 63

Hon'ble Judges : Moksh Mahajan J.

Final Decision : NOE discharged

Judgement

1. IN a complaint filed before the Commission, the Director General (INvestigation and Registration) has stated that the respondent Company is engaged in the business of manufacture, sale and distribution of Kraft paper. For the purpose of carrying on its trade, it has appointed distributors on certain terms and conditions which are contended to be restrictive in nature covered under Section 33(1) of the Monopolies and Restrictive Trade Practices Act, 1969 (in short, the Act). As per statement, the distributors do not operate beyond the territories allotted to them, squarely covered under Clause (g) of Section 33(1) of the Act. Allowance of commission linked with off-take is covered under Clause (e) of Sub-section (1) of Section 33 of the Act. These terms, on the basis of which the sale of its products is made, tantamount to restrictive trade practices as covered under Section 33 of the Act. It is prayed that the respondent be restrained from carrying on such trade practices and also to desist from repeating the same in future.

2. PURSUANT to Notice of Enquiry issued, the respondent stated that the existence of restrictive trade practices as defined under Section 2(o) of the Act is a condition precedent to the issue of Notice of Enquiry and accordingly, the same is not maintainable. Further the respondent which is a public limited Company engaged in marketing the Kraft paper has 1% share in the market of the products in question which is insignificant. Its case is accordingly covered under Section 38(b) of the Act. As regards, restriction of the territory, it is contended that the distributors are free to sell the goods outside their territory. The

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allocation of territory has been made with a view to improve marketing facilities, which is to the benefit of the customers. The division of the market into various territories promoting the product and providing the services cannot be considered as a territorial restriction as held by their Lordships of Hon''ble Supreme Court in case of RRTA v. Tata Engineering and Locomotive Co. Limited (RTP Enquiry No. 1 of 1974), Commission on the other hand provides necessary incentive to push up the sales. Non- payment of the commission to the distributor whose off take is below the given target is not a restrictive trade practice considering the intense competition prevailing in the market. The respondent''s case is otherwise covered under Section 38(1)(g) and (h) of the Act. The notice of enquiry accordingly needs to be discharged. On completion of the pleadings, the following issues were framed : (i) Whether the respondent has indulged in or is indulging in the restrictive trade practices alleged in the application of the DG ? (ii) Whether the alleged restrictive trade practices are not prejudicial to public interest ? (iii) Relief.

The DG in support of its arguments mainly relied on the letter of clarification dated 3.11.1997 as well the statement of sales for the years 1992-93 and 1993-94. The respondent on its part only filed an affidavit of evidence of the witness namely, Shri Subhash Chand Sharma, proprietor of M/s. Basant Papers. Thereafter, in absence of representation on the part of the respondent, its right to lead oral evidence was closed and it was set ex-parte. Ex-parte arguments advanced by Mr. S.P. Pahwa, Advocate for the DG were heard.

At the outset it may be pointed out that the agreement, if any, executed with the distributors by the respondent Company, has not been filed by the DG. The DG has merely relied on the letter of clarification and the statement of sales submitted by the respondent pursuant to the probe letter issued. No attempt has been made to gather further evidence/ material to support its case. The respondent Company on its part has not only denied the charges levelled against it but has tried to justify the alleged restrictive clauses impugned on behalf of the DG. Referring to the letter of clarification which is the sole basis for the issuance of the Notice of Enquiry, I find that against certain listed distributors in the Annexure, an area has been indicated. In its reply, however, the respondent has stated that "its dealers are free to operate in areas outside their limits". The said statement is also confirmed by the witness in its affidavit and has remained uncontroverted on the part of the DG. In para 3 of its letter, the respondent has stated as under : "There is no incentive or gift scheme or discount on quantitative off-take. Only a commission is paid - that too, to the Area Distributors only."

On commission, the letter runs as under : "We may also mention here that the commission to distributors vary according to the compliance of the terms of credit and prompt payment schedule maintained by them."

3. STATEMENT of sales for 1992-93 and 1993- 94 does not show that commission paid is linked to off-take. This at best can be inferred from the

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justification given for offering incentives. The respondent has pleaded gateways in terms of Section 38 of the Act. The contention that it has only 1% share in the market has not been denied by the DG. In that view of the matter the restriction does not restrict the competition to any material degree. In view of the rule of de- minimum being applicable, the respondent is allowed to pass through the gateways as contemplated in Section 38(1)(h) of the Act.

4. IN view of assertion of the respondent that the dealers are allowed to sell beyond the territory passing of cease and desist order would not be justified. In view of the above the charges having not been established, the Notice of Enquiry deserves and is directed to be discharged in this case. No order as to the costs on the facts and in the circumstances of the case. NOE discharged.

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