(2003) 01 NCDRC CK 0082

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION) APPELLANT

Vs

ALBERT DAVID LIMITED RESPONDENT

Date of Decision : 15-01-2003

Acts Referred:

Citation : 2003 1 CPJ 128 : 2003 3 CLT 279

Hon'ble Judges : C.M.Nayar , R.L.Sudhir J.

Final Decision : Complaint dismissed

Judgement

1. THE present proceedings arise out of Application filed by Director General (Investigation and Registration) under Section 10(a)(iii) with Section 37(1) of the MRTP Act, 1969 for institution of restrictive trade practice enquiry against the respondent. THE main areas of investigations are referred to in Paras 3, 4 and 5 which may be re-produced as below : "3. That the respondent, during the course of investigation vide its letter dated 8.4.1997 has furnished a specimen copy of the stokist appointment letter, names and addresses of stockist to whom the said stockist appointment letter has been issued for marketing its products. A copy of the said letter dated 8.4.1997 along with a specimen copy of the stockist appointment letter and list showing the names and addresses of stockists are enclosed and marked as Annexures I, II and III respectively to this application. THE respondent has also furnished the copies of various circulars issued by it since 1.4.1994 in regard to offers for free strips/bottles vide the aforesaid letter dated 8.4.1997. Circulars dated 1.4.1994, 28.9.1994, 5.4.1995, 15.5.1995, 21.8.1995, 1.4.1996 and 30.9.1996 are enclosed and collectively marked as Annexure IV to this application.

4. That the aforesaid specimen stockist appointment letter (Annexure II) contains, inter alia, the following restrictive clauses which constitute deemed RTP by virtue of the provisions of Sub-section (1) of Section 33 of the Act.

"Preamble Clause We acknowledge with thanks the receipt of your application dated .... together with the Demand Draft/Cheque No. .... dated .... for the amount of Rs. .... (Rupees .... only) and are pleased to appoint you as one of our accredited Stockist for the Area/Territory comprising of .... with effect from .... Clause II In order that no other Stockist feels aggrieved thereby it is only desirable that you should refrain from consciously over-stepping your own or intrude on Territories already catered on under charge of other Stockist(s) That in terms of the trade practice flowing from the aforesaid clauses of the stockist appointment letter, the stockists are permitted only to sell the products of the respondent only in the specified territory as allocated by the respondent and thereby explicity debarring the stockists from marketing the products outside the territory as demarcated which is a deemed RTP within the meaning of Section 33(1)(g) of the Act." "5. That the respondent has issued trade circulars (Annexure IV) to its stockists to avail ''free offer'', scheme launched by it from time to time. Circulars dated 1.4.1994 and 28.9.1994 provide that stockists are required to purchase a minimum quantity of products to avail the free offer. Besides, in the case of products viz., CYP-L 200 ml., ferro chelate Syp 200 ml., Sioril tab strip pack and Dext. Injection, the benefit of free gift is linked with quantum of off-take required to be lifted by the stockists as mentioned in the Circulars dated 1.4.1995 and 28.9.1994. Further, the remaining circulars dated 5.4.1995, 15.5.1995, 21.8.1995, 1.4.1996 and 30.9.1996 stipulate that the stockists can avail the benefit of free offer on purchase of minimum quantity of products. THE trade practice of providing benefit of free offer to stockists either on purchase of minimum quantity or linked with quantum of off-take of products is discriminatory and restricting competition amongst the stockists and thereby amounts to deemed restrictive trade practice within the meaning of Section 33(1)(e) of the Act."

2. THE averment against the respondent, therefore relates to territorial restriction as well as quantity discount as given by the respondent. In respect of these averments the respondent has filed a detailed reply which is part of the record of the present proceedings. We may refer to Paras 6 and 7 of the reply which may be referred to as below : "6. THE respondent submits that Preamble Clause read with Clause 11 of the specimen Stockist Appointment letter with its Stockist can not be said to be covered by Section 33(1)(g) of the Act as alleged or otherwise, is hereinafter explained. It is submitted that the impugned territorial Clause(s) pertains only to Stockist to the first line of wholesale distribution and not to the second and third lines of retail distribution. This territorial Clause(s) is beneficial to the retailers for ensuring adequate supplies of drugs including the saving drugs manufactured by the respondent to the consumers and also to make the Stockist accountable to provide marketing services on a more equitable and wider basis. This Hon''ble Commission in the matter of Director General (I & R) v. Jay Engineering Works Ltd. & Anr. reported at (1995) CTJ 13 (MRTPC) at Page 17 observed that "THE Commission further holds that the impugned restrictions being confined to the first point of distribution do not restrict or discourage competition to any material degree in the trade and that in any case they are not unreasonable having regard to the

balance between those circumstances and any detriment to the public". In the same order this Hon''ble Commission has also observed in Para 8 at Page 15 as under :

"8. We next take up the second issue. In R.T.P.E. No. 41 of 1976 in the matter of Shriram Pistons and Rings Ltd., this Commission vide its judgment dated 24.1.1978 (1979 Tax L.R. 2095), held that inasmuch as the territorial restriction under challenge in that case pertained only to distribution to the first line of a wholesole distribution and not to the second and third lines of retail distribution, the essence of such a practice could not be objected to and characterised as restrictive trade practice. We may quote with advantage, the relevant observations, which appear in paragraph 4 of this judgment : "Two other alleged restrictive trade practices which seem worth discussing are (1) territorial restrictions and (2) exclusive dealing. Since the said territorial restriction regarding distribution applies only to the first one line of wholesale distribution but not to the second line of retail distribution, the assence of this practice, as we understand it, cannot, in our view, be seriously objected to. In the circumstances we do not think that this allegation concerning territorial restriction should detain us further in this enquiry or that any order has to be specially passed with reference to this particular allegation."

A copy of the said order is enclosed and marked as Annexure A. 7. With regard to the restrictive trade practice under Section 33(1)(e) of the Act of free offer to stockists either on purchase of minimum quantity or linked with quantum of off-take of products, the respondent submits that the trade practice must sow the seeds of prejudice for the consumers in the shape of excess cost on purchase as a result of the elimination of competition when due to discrimination a Stockist. In the instant case the so called incentives/discounts was generally in the range of 5% to 10% in line with trade practice prevalent in entire Pharmaceutical Industry throughout country, therefore, the Stockist who was owing to small supply got only minimum discount and cannot have to put excess cost on the consumers which will prejudice him and also by that small discount cannot be said to have been the case of elimination of competition."

It is stated by the respondent that its share at pharmaceutical products in the Industry is less than 1% which is minimal. In this regard Paras 9 and 12 of the reply may be referred to as below : "9. The respondent submits its share of Pharmaceutical products in the industry is less than 1% which is minimal, and the principle of De minimis no curat lex is applicable. A copy of Retail Store Audit/ survey recently conducted by ORG-MARG Research Pvt. Limited, in this respect, on Pharam. Industry is enclosed and marked as Annexure-F. 12. The respondent craves leave of this Hon''ble Commission to add, alter or amend the submissions made herein and for this purpose to file a supplementary reply, if necessary."

The above reply as filed by the respondent clearly indicates that no case of restrictive trade practice is made out against the respondent under the relevant provision as stated in the application moved by the DG (I&R). We may also refer to the judgment of this Commission reported as 2001 CTJ 373 (MRTP) and 2001 CTJ 171 (MRTP) which clearly establishes that the quantity discount as contained in domestic sales policy of respondent and giving differential discount to customers by reason of dealings does not constitute restrictive trade practice. Such restrictions clearly apply to the first line of distribution and they are reasonable having regard to balance, in those circumstances and no detriment is caused to the public. Moreover, taking into consideration the share of the respondent with regard to pharmaceutical products being less than 1% it will not be necessary to invoke the relevant provisions of the Act. The present complaint is therefore dismissed. Notice of enquiry is discharged. Complaint dismissed.

