
(2001) 07 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION)

APPELLANT

Vs

Carborundum Universal Ltd.

RESPONDENT

Date of Decision : 17-07-2001

Acts Referred:

Citation : 2002 1 CPJ 36

Hon'ble Judges : R.K.Anand , Moksh Mahajan J.

Final Decision : R.P. allowed

Judgement

1. AN application under Section 13(2) of the MRTP Act, 1969 (the Act for brief), has been filed, on behalf of the complainant/informant, seeking review of the Commission's order dated 29.6.1999, by virtue of which the ex-parte injunction order, passed on 18.10.1996 on the complainant/informant's application under Section 12A of the Act, was vacated. It is pertinent to recapitulate the facts of the case here. Briefly stated, the complainant/ informant filed a complaint petition under Sections 10(a)(i), 36A, 36B(a) of the Act charging the respondent with adoption of and indulgence in unfair and restrictive trade practices within the meaning of Section 33(1)(a) and (e) and Section 36A of the Act. It was complained therein that the respondent, which had been supplying engineering goods, abrasives, millstones to the complainant/informant for the past 30 years pursuant to a dealership agreement, stopped the supplies from April, 1996. Besides, the complainant / informant also filed an interim relief application under Section 12A of the Act.

2. THE complaint petition and the interim relief application were considered by the Commission on 18.10.1996 and as a prima facie case of unfair and restrictive trade practices was made out, a Notice of Enquiry was ordered to be issued and an order was also passed directing the respondent to continue the supplies to the complainant/informant against cash payment. It was also mentioned in the order that it would be open to the respondent to seek any clarification, modification or alteration of the order, by virtue of which, the above said interim relief had been granted to the complainant/informant. It may be mentioned here that in the

meantime, when it came to the Commission's notice that the complainant/informant was a trader, the Notice of Enquiry was ordered to be amended accordingly, and relevant provisions of Sections 10(a) (iv) and 36 B (d) were invoked. Both the learned Senior Advocates Mr. O.P. Dua for the complainant/informant, and Mr. Joseph Velapalli for the respondent were given a hearing and the contentions and submissions of the rival parties including the respondent's reply to the complainant/informant's interim relief application were considered. In fact the contention of the respondent that the dealership agreement stood terminated on 31.3.1996 and that the supply of goods was discontinued w.e.f. 1.4.1996 on account of poor performance of the complainant/informant and also lack of interest on its part in . promoting the products of the respondent was also highlighted in the Commission's order of 29.6.1999 which is impugned by the complainant/informant. Likewise, the submissions made on behalf of the complainant/informant that it was not true that there was no dealership agreement between the parties or that the supply of goods was stopped due to unsatisfactory performance of the complainant/informant are also discussed in that very order. However, as a dealership agreement was not produced before the Commission at that time, it was observed in the order, under review, that non-supply of goods to a dealer did not amount to refusal to deal and, therefore, did not constitute a restrictive trade practice within the meaning of Section 33(1) (a) of the Act and the essential ingredient of effect of the restrictive trade practice on competition was missing in this case and accordingly, the ex-parte order passed on 18.10.1996, was vacated.

Aggrieved by this order, the above mentioned review application has been filed. It has been urged before us that the dealership agreement was renewed for the years 1998 to 2000 and a copy of the certificate appointing the complainant/informant, as an authorised dealer, by the respondent for its abrasive products, has also been produced before us in addition to copies of the correspondence between the parties indicating long term relationship between them and the respondent's desire to continue the same. A letter from the respondent dated 5.8.1998 has also been produced and in that letter, addressed to the complainant/informant, while sending the price list, the reasons for the price increase of Bonded Abrasives have been explained and hope that the complainant/informant will continue to support the respondent as in the past, has been expressed. It has also been explained and clarified by the learned Senior Advocate for the complainant/informant that these relevant documents were not produced earlier at the time when the impugned order of 29.6.1999 was passed as the same were misplaced by the learned Advocate's clerk. It has been urged before us that in view of the relevant facts which have been brought to the notice of the Commission, the order of 29.6.1999 may be recalled and the earlier order of 18.10.1996 be restored.

3. IN this context, the scope of Section 13(2) of the Act, interpreted by their Lordships of the Hon"ble Supreme Court, in the case Mahindra and Mahindra v. Union of INDia & Anr., AIR 1979 Supreme Court 798, is relevant for deciding the

present review petition. It has been observed in the aforesaid order of the Hon"ble Supreme Court : "Every case of an application under Section 13(2) would have to be decided on its own distinctive facts and the Commission would have to find whether it is a proper case in which, having regard to the relevant considerations, the order made by it should be amended or revoked. The fact that an appeal lies against the order under Section 55 but has not been preferred, would be no ground for refusing to exercise the power under Section 13(2) of the Act". IN view of the aforesaid order, we are of the view that the scope of Section 13(2) permits review of the Commission's order of 29.6.1999. Moreover, the facts which are germane to the present case and have been brought on record now, provide an additional ground for review the order of 29.6.1999. From the documentary evidence brought on record, it appears to us that the interim relief granted to the complainant/ informant by the Commission's order of 18.10.1996 was fully warranted and called for. There was an agreement between the parties and at any rate, the respondent had been supplying goods to the complainant/informant for the past 30 years and as prima facie, a case of restrictive trade practices had been made out, the respondent was appropriately, directed to continue the supplies to the complainant/informant against cash payment. IN view of our above discussion, the review petition is allowed and Commission's order dated 29.6.1999 is set aside. R.P. allowed.