(2001) 05 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION) APPELLANT

Vs

FEENA PETRO PRODUCTS LIMITED RESPONDENT

Date of Decision : 21-05-2001

Acts Referred:

Citation : 2001 2 CPJ 55

Hon'ble Judges : C.M.Nayar , Moksh Mahajan J.

Final Decision : Complaint disposed of

Judgement

1. BY this order we dispose of complaint filed under Section 10(1)(iii) read with Section 37 of the Monopolies and Restrictive Trade Practices Act, 1969 (in short, the Act). The facts in brief are that the respondent M/s. Feena Petro Product Limited is a public limited Company registered under the Companies Act, 1956. Its Registered Office is at 622, Mount Road, Madras. The Company is engaged in the business of sale and distribution of liquified petroleum gas (LPG) under brands - name Feena Gas. For sale and distribution of its products, the respondent Company appointed dealers on the terms and conditions as laid down in the agreement executed at Madras. Perusal of the Standard Agreement revealed that certain clauses, namely, Clauses (1), (2), (5), (13) and 34 are stated to be restrictive in their nature and squarely covered under the provisions of Clauses (g), (f) and (c) of Section 33(1) of the Act. Accordingly, the Director General (Investigation and Registration) moved an application before the Commission under Section 10(a)(iii) of the Act with the prayer that the order be passed by the Commission directing the respondent to cease and desist from indulging in such restrictive trade practices or to delete/amend the impugned clauses of the agreement. In addition, a prayer was also made for awarding the cost.

2. PURSUANT to the Notice of Enquiry issued, the respondent in its reply states that as the impugned agreement had not been issued to the dealers/distributors, the same has not come into existence. The impugned agreement is subject to approval, which would be accordingly amended as and when directed by the

Commission. On merits, it is stated that the areas have been demarcated in the interest of the consumers so that they may be served uniformly. It has been further stated that the respondent is ready to delete or modify the impugned clauses of the agreement as suggested. On completion of the pleadings, the following issues were framed : (i) Whether the respondent has indulged in any restrictive trade practices as indicated in the Notice of Enquiry ? (ii) If the answer to the foregoing issue is in the affirmative, whether the restrictive trade practices are not prejudicial to the public interest ?

As the respondent did not attend the proceedings subsequent to the reply furnished, it was set ex-parte.

Mr. C. Badrinath Babu, learned Advocate for the DG advanced ex-parte arguments.

3. THE material brought on record has been perused in the light of the charges framed against the respondent in the Notice of Enquiry. While the only evidence placed on record by the DG is the payment of security/advance by certain dealers in response to the letters issued to them, there is no material to indicate that the agreement impugned was not the proposed one as contended by the respondent. What is pertinent to note is that at the initial stages of the proceedings, the respondent agreed to modify or amend /delete the objectionable clauses as indicated in the Notice of Enquiry. As stated in its reply/ the respondent not only offered to delete Clauses 2 and 5 relating to territorial restriction but also agreed to amend Clauses 1 and 13. It, however, defended Clause 34 on the ground of business interest so that the public at large does not suffer considering the nature of the product dealt in by it. Despite willingness shown on the part of the respondent to carry out any modification as suggested by the Commission, we are pained to observe that the proceedings have been unnecessarily prolonged and not brought to an end at the stage of the reply. Suffice to stage that the direction which could have been given somewhere in the year 1994 are being given in the year 2001 i.e., after a period of seven years. This is more so when the material collected by the DG in support in no way advances its case. Without offering any comments on the merits of the case, we would like to direct the respondent to delete Clauses 2 and 5 of the agreement which read as under : "2. THE area of dealership allotted or assigned to the dealer comprises__________. 5. THE dealer shall during the continuance of this Agreement confine himself to effect the sales only in the area of territory specified hereinabove."

As regards Clause No. 1 of the Agreement, the same may be retained deleting the last line reading as "in the allotted territory of dealership area.

4. CLAUSE 13 should also be amended on the suggested lines by the respondent so as to read the same with insertion of the following sentences : "The Dealer shall sell the Feena Gas and equipments at the maximum list price, however, he is free to sell them at prices lower than such maximum rates." Respondent is

also directed to delete CLAUSE No. 34 as it puts restriction on the dealers/ distributors in terms of CLAUSEs (a) and (c) of Section 33(1) of the Act. The respondent shall give effect to this order within six weeks from the date of the receipt of the order and file an affidavit of compliance within four weeks thereafter. There is no order as to costs on the facts and in the circumstances of the case. Complaint disposed of.