

(1999) 06 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION)	APPELLANT
Vs	
GILL INTERNATIONAL LIMITED	RESPONDENT

Date of Decision : 28-06-1999

Acts Referred:

Citation : 1999 3 CPJ 18

Hon'ble Judges : S.K.Parthasarathy , R.K.Anand J.

Final Decision : N.O.E. discharged

Judgement

1. AN application has been made by the Director General (Investigation & Registration (the DG) under Sections 10(a)(iii) and 37 of the MRTP Act, 1969 (the Act for brief) charging the respondent with adoption of and indulgence in restrictive trade practices. The DG's case is that the respondent is engaged in the sale and distribution of Liquefied Petroleum Gas (LPG) and for distribution thereof had entered into a trade agreement with its distributors and dealers and that this trade agreement contained objectionable clauses such as exclusive dealership, restrictions of area/ territory, ceiling on the number of connections in the respective areas of operation and also stipulation regarding price on which the supply was to be made to the consumers. It has been alleged that these objectionable clauses in the agreement constitute restrictive trade practices and attract the provisions of Sections 33(1)(g), (f) and (c) of the Act.

2. A Notice of Enquiry was issued to the respondent. In reply thereto the respondent while denying the allegation of restrictive trade practices has stated that the restriction with regard to the area/territory of operation was incorporated in the agreement in order to provide LPG gas cylinders to the consumers at a short notice in view of the fact that the demand is far in excess of available supply. It has been clarified that for storage and sale of LPG gas cylinders, a licence is required to be obtained from the Deputy Chief Controller of Explosives, Agra/Bombay and this licence is given to the dealers only on the request and recommendation of the respondent and the name of the respondent is noted in the licence and the dealers can store and supply only the

respondent's LPG gas cylinders. As regards the restriction on the number of connections it has been stated that the same has since been withdrawn and there is no restriction on the number of connections booked by a dealer. Similarly, it has been mentioned that the restriction with regard to price to be charged from the consumers has also been done away with. On completion of pleadings, the following issues were framed : 1. Whether the respondent is or has been indulging in the restrictive trade practices as indicated in the Notice of Enquiry ? 2. If the answer to the foregoing issue is in the affirmative, whether the restrictive trade practices are not prejudicial to the public interest ?

Both DG as well as the respondent have filed their affidavits of evidence and documents. On behalf of the respondent, the affidavit of its Director, Shri R.N.S. Gill was tendered and even though opportunity for cross-examination was afforded to the DG, the witness was not cross-examined. We have heard the ADG for the DG as well as the Advocate for the respondent and perused the relevant Court record. With a view to determining and deciding whether the respondent has adopted and indulged in the said restrictive trade practices, it is necessary to examine the relevant clauses in Section 33(1) of the Act, alleged to have been attracted in the present case : 33(1)(c) "any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;" 33(1)(f) : "any agreement to sell goods on condition that the prices to be charged on resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that the prices lower than those prices may be charged;" 33(1)(g) : "any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal of the goods."

3. IT is pertinent to mention here that the respondent in its reply has stated that it has since withdrawn and deleted certain clauses in the agreement such as restriction on the area/ territory of operation, ceiling on the number of connections to be booked as also the stipulation with regard to the selling price of the LPG gas cylinders. IT has also been explained by the respondent that the restriction with regard to area/territory was incorporated in the agreement in the interest of prompt delivery of the LPG gas cylinders keeping in view the tight demand supply situation. IT has also been stated that the impugned trade agreement is in the nature of a set of guidelines only. As regards the price restrictions the respondent has clarified that the dealers are at liberty to sell the gas cylinders at prices lower than the maximum retail prices. From the affidavit of evidence tendered on behalf of the respondent it appears that it has no intention to infringe or violate the provisions of Section 33(1) of the Act and has since taken remedial steps to modify and delete the objectionable clauses in the trade agreement. As regards the restriction of ceiling on connections and exclusive dealership, it has been clarified by the respondent that for safety purposes, proper storage arrangements have to be made as LPG is highly inflammable and a licence is required to be obtained from the Deputy Controller of Explosives for storage of the gas cylinders. It has been further clarified that

LPG gas cylinders cannot be stored at any place and, therefore, certain restrictions are necessary in public interest.

4. IT may be noted here that under the provisions of Section 37(2) of the Act on the conclusion of an enquiry in the restrictive trade practices, only a cease and desist order can be passed by the Commission. In the present case, the respondent has already ceased the alleged restrictive trade practices insofar as they pertain to the number of connections, price to be charged from the customers by amending the agreement which is the cause of action for instituting the present enquiry. As regards the other objectionable clause of the agreement, the security precautions and requirements of licence for storage of gas cylinders cannot be construed or considered to be prejudicial to public interest. In that view of the matter no case of indulgence in restrictive trade practice prejudicial to public interest has been established. In view of the aforesaid discussion, the NOE deserves to be and is hereby discharged. N.O.E. discharged.