(2004) 01 NCDRC CK 0123

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION) APPELLANT

Vs

JAYANT PAPER MILLS LTD. RESPONDENT

Date of Decision : 23-01-2004

Acts Referred:

Citation : 2004 2 CPJ 8

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

Final Decision : Application disposed of

Judgement

1. THE respondent is a public limited company having its registered office at Utran (District Surat), Gujarat. It is engaged in the business of manufacture and sale or distribution of Newsprint, White Duplex Board, Grey Board, Tubing Chip Board, Unbleached Board, Carton Board Amn. etc. for marketing its products. It appoints dealers/wholesalers by way of agreements executed with them. Copies of a few appointment letters/agreement entered into by the respondent with its wholesale dealers namely J.K. Traders, Ahmedabad, M/s. Smurti Trading Company, Ahmedabad, M/s. Shah Paper Corpn., Bangalore, M/s. Natraja Enterprises, Sivakasi, M/s. Somasundaram Cottage Industries, Vilhunagar, M/s. Subramaniyam & Co., Chennai and M/s. Paper Combines, Cochin reveal that there are certain clauses which are of restrictive nature. THEse are covered under Sections 33(1)(e) and (f) of the Monopolies and Restrictive Trade Practices Act, 1969 (for brief the Act). In view of deeming provisions of the said section i.e., 33 of the Act, Director General (Investigation and Registration) was of the opinion that the impugned clauses contained in the agreement need to be deleted or altered. Accordingly an application under Section 10(a)(iii) read with Section 33 of the Act was filed with the prayer that the respondent be directed to cease and desist from following such restrictive practices. In the alternative the impugned clauses may be deleted or amended by way of revised agreements.

2. PURSUANT to the application filed the Commission issued a Notice of Enquiry under Sections 10(a)(iii), 37, 33(1)(e) and (f) of the Act. In reply thereto the respondent took a plea that the application is misconceived for want of specific

allegations levelled against the respondent. Shelter was taken under Regulation 47 of the MRTPC Regulations, 1991 wherein facts leading to restrictive trade practice under Sub-clause (iii) of Clause (a) of Section 10 need to be detailed. In absence of mandatory provision being followed, it is the contention that the application needs to be dismissed. It is further contended that effect of such restrictive trade practice on the competition is to be established before the respondent can be faulted. Relying on the ratios laid down in the decisions of the Commission namely Jethmal Kasat v. Maha Nagar Telephone Nigam in RTPE No. 72/1994 decided on 24.7.1996 as well as on that of Hon''ble Surpreme Court in Tata Engineering and Locomotive Co. Ltd. v. RRTA, AIR 1977 SC 973 it is contended that the case is not covered under the cited provisions as every trade agreement restrains or binds either person, place or price in some manner or other. It is clarified that in case of Somasundram Cottage Industries, a discount of 5% interest on net sale value is allowed in the form of service charges for quantity lifted. In absence of any proof that unjustified cost or restriction has been placed on consumer, it is the stand of the respondent that Notice of Enquiry issued is not maintainable. After the pleadings were complete, the following issues were framed: (1) Whether the respondent has been indulging in restrictive trade practices as alleged in the Notice of Enquiry? (2) Whether the alleged restrictive trade practices are not prejudicial to the public interest?

While DG supported its case by way of affidavit of evidence as well as the copies of agreements entered into with a few wholesale dealers, as mentioned above, the respondent furnished the information in respect of few wholesale dealers appointed for sale of different varieties of the products manufactured by it. No oral evidence has been rendered on either side. The respondent was heard ex parte as he failed to address arguments on the stipulated date. Its application filed under Section 13(2) of the Act stood rejected for the reasons stated in detailed order of 12th December, 2003.

We have considered the material brought on record on both sides. While the impugned clauses of the various agreements are clearly covered under the cited provisions of Section 33 as mentioned by the Director General (Investigation and Registration) in its application, the respondent avoided to defend its case on merits. The reply furnished is vague and general. While there is no quarrel with the propositions laid down in the decision cited, their applicability to the respondents case has not been shown. Apparently, the respondent has no clear answer to the restrictive nature of the clauses as impugned by the DG. Out of two cited clauses, one relates to the payment of commission. Clause 6 of M/s. Smurti Trading Co. which is almost similar to other clauses incorporated in agreements of other dealers runs as under : "As the wholesale dealer you will be allowed 10% discount on the sale price of the said products fixed by us from time-to-time excluding excise duties, sales tax town duties, transport charges or any other charges."

Different rates of discounts have been allowed to different dealers. Allowance of incentive in itself is not a restrictive trade practices in case it is allowed uniformity to all and is in consumer''s interest . The reasons for allowance of differential rates of discounts to different wholesalers/dealers have not been explained. There appears to be no rationality behind the same. In fact unequal treatment of dealers in respect of grant of discounts/commission tantamounts to discrimination. In absence of reasonable and rational basis detailed they are deemed to be injuries to the competition and thus to the consumers at large. Respondent has failed to show that the discounts/commission so paid does not affect the competition and is in the interest of public.

3. THE other clause relates to prices. THE wording of Clause 9 as given in case of M/s. J.K. Traders run as under: "You shall be at liberty to sell our products at such price as you may deem proper." It shows vide discretion given to the dealers to charge price. THEre is no fixed price laid down by the manufacturer below which the dealers are also allowed to sell the products. On the other hand they are at liberty to charge any price which promotes their individual interest at the cost of the consumer. Even the basis on which the prices are to be fixed by the dealers from time-to-time have not been laid down for the public. Variation in prices vis--vis dealers, places where they are located, purchasers, is certainly injurious to the competition and the consumers at large who are not even aware of the prices they are supposed to pay at the time of purchase. These clauses definitely come within the purview of Section 33(1)(e) and Section 33(1)(f) of the Act respectively. Accordingly, the respondent is to be restrained from following such practices and continuing the same in future. On the facts and circumstances of the case, respondent is directed to either modify or alternate the clause as impugned or cease and desist from following such practices. It is further directed to file an affidavit of compliance within four weeks after the receipt of the order. Application disposed of.