(1999) 11 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION) APPELLANT

Vs

J.K.CORP. LTD. RESPONDENT

Date of Decision : 08-11-1999

Acts Referred:

Citation : 2000 1 CPJ 25 : 2000 2 CLT 467 : 2000 2 CPC 462

Hon'ble Judges : Sardar Ali Khan , R.L.Sudhir J.

Final Decision : Enquiry discharged

Judgement

1. THIS enquiry begins with the filing of an application by the Director General of Investigation and Registration (DG in brief) under Section 10(a)(iii) of the MRTP Act, 1969 (MRTP Act in brief) charging the respondent with the adoption of and indulgence in restrictive trade practices.

2. BRIEFLY, the facts of the case are that Orissa Synthetics Limited which subsequently changed over to J.K. Corp. Limited (respondent) is engaged in the manufacture of Polyster Staple Fibres. The DG received a complaint from East India Synthetics Limited, New Delhi (complainant) alleging that the respondent has cancelled its firm orders for supply of Trilobal Staple Fibre (TSF) and has refused to supply the same in the subsequent months also. The complainant placed an order for the supply of three truck loads of TSF on 27.5.1993 and again for the supply of two truck loads of TSF on 18.6.1993 with the request to supply the latter order in July, 1993. The respondent, however, supplied only two truck loads of TSF and declined to supply the remaining quantity presumably to supply the same to other customers at high prices. The DG investigated this complaint and arrived at the following conclusions : (a) The respondent is following a discriminatory policy in the allocation of TSF amongst its customers which tends to bring about manipulation of conditions of delivery so as to impose unjustified costs and restrictions on the customers. This restrictive trade practice attracts the provisions contained in Section 2(o) of the MRTP Act. (b) The respondent''s decision for making supplies to customers is based on a number of factors. One of the factors is whether the customer is interested in buying only a

particular product or is also willing to buy certain slow moving items alongwith that product. This practice constitutes the restrictive trade practice of tie up sales as defined in Section 33(1)(b) of the MRTP Act.

Based on the above conclusions, DG has approached the Commission to enquire into the alleged restrictive trade practices under Section 37(1) of the MRTP Act.

A Notice of Enquiry (NOE) was issued to the respondent on 12.10.1994. Later when the fact of amalgamation of the company with J.K. Corporation Ltd., was brought to the notice of the Commission, an amended NOE was issued on 2.4.1997 to clarify that the name of the respondent shall be read as J.K. Corporation Limited instead of Orissa Synthetics Limited. The amended NOE was further amended on 26.6.1997 to clarify that J.K. Corporation Limited may be read as J.K. Corp. Ltd. The respondent filed its reply to the NOE on 19.4.1995. The DG. filed his rejoinder to the respondent''s reply on 19.5.1995. After the completion of the pleadings, the following issues were framed : 1. Whether the respondent is or has been indulging in restrictive trade practices as indicated in the NOE ? 2. If the answer to the foregoing issue is in the affirmative, whether the restrictive trade practices are not prejudicial to public interest ?

3. AS for evidence, DG relied on the documents filed by him. The respondent filed its list of reliance and also produced a witness by way of oral evidence. Arguments addressed by Ms. Anjana Gosain, Advocate for the DG and Mr. Neeraj Gupta, Advocate for the respondent were heard on 17.9.1999. Learned Advocate for the DG dwelt on the twin charges of discrimination and tie up sales in the allocation and supply of goods to the customers. In this connection, she invited our attention to the details of orders placed and supplies made as given in para 5 of the application filed by the DG. These details show that the respondent did not follow the uniform basis or any acceptable system for making supplies to the customers during the period when there was a short fall in production. Highlighting the grievance of the complainant, learned Advocate for the DG stated that the respondent cancelled the entire order of 18 MT placed by the complainant in the month of June, 1993, while the remaining customers were given substantial supplies during the same month. Similarly, in the month of July, 1993, the respondent supplied 9MT of the product to the complainant against its order of 18MT while Indorama Synthetics Limited at serial No. 2 in the table for July, 1993 was supplied the entire quantity of 27MT ordered during that month. Jaipur Polyspin Limited at serial No. 5 was supplied 18 MT of the product against its order of 27MT in July, 1993. From this, she argued, it is apparent that the respondent showed arbitrariness and discrimination in making supplies to its customers. This also goes to suggest that some customers were given preference over others in the matter of supply of the product. It was also contended that the respondent did not follow the ''first-cum-first serve'' principle in making supplies to the customers. The respondent took into account various factors, one of which was also their willingness to buy the slow moving items, alongwith the product ordered. This amounts to tie up sales which tantamounts to restrictive trade

practice as defined in Section 33(1)(b) of the MRTP Act. The discriminatory trade practice adopted by the respondent falls within the mischief of Section 2(o)(ii) of the MRTP Act. The learned Advocate for the respondent explained that the root cause of the problem which gave rise to the complainant''s grievance is the fact that during that period, the respondent Company was passing through a bad phase. Due to technical problems, its actual production had come down to 50% of the planned production which is evident from the details of production given in para 4 of the application filed by the DG. The technical problems insurmountable as they were, finally led to the closure of the production unit in August, 1993. Learned Advocate for the respondent further stated that the respondent Company has always been keen to fully meet the demands of all the customers. However, the short fall in production which was beyond the control of the management forced the respondent to resort to cancellation of orders. It was also argued that the cancellation of the orders cannot be done on a pro rata basis because of a number of factors such as, (a) the status of customers i.e. whether they are regular customers or casual buyers; (b) the quantum of order i.e. whether the order is a bulk order or a small order of a full truck load or less than that and (c) availability of transport etc. The learned Advocate for the respondent also contended that it is neither mandatory nor always possible to make supplies on a first-cum-first serve basis because of the constraints in a given situation. It is an accepted business practice that during the time when a Company is faced with shortage of production, the regular buyers have to be accommodated to the extent possible in preference to the causal customers. The learned Advocate for the respondent also refuted the applicant''s charge of tie up sales. He pointed out that the DG also has no where mentioned in his application the slow moving items which were forced upon the customers by way of tie up sales. It was further submitted that after the supply position improved, the respondent was against in a position to satisfy the demands of all the customers. In this context, he particularly invited our attention to the affidavit of Shri N.P. Garodia, the Managing Director of the complainant Company. In this affidavit sworn on 14.10.1998, the Managing Director of the firm has confirmed that after the facts and the background of the matter were explained by the respondent in detail, they got convinced that their orders in question have been treated in the same manner in which other similar orders were treated by the respondent. This affidavit also confirms that the outstanding orders of the complainant were supplied by the respondent to its entire satisfaction. It further adds that all the claims and grievances of the complainant namely the East India Syntex Limited have been settled and the complainant does not have any objection if the present enquiry against the respondent is closed.

4. THE scenario thus emerging from the facts discussed above has to be weighed and considered in the light of the provisions contained in Section 37(1)(b) and Section 2(o)(ii) of the MRTP Act which are alleged to have been violated by the respondent. For proper appreciation of the facts, it will be worthwhile to reproduced these provisions of the MRTP Act. Section 33(1)(b) of the MRTP Act

reads as follows : "Every agreement falling within one or more of the following categories shall be deemed, for the purposes of this Act, to be an agreement relating to restrictive trade practices and shall be subject to registration in accordance with the provisions of this Chapter namely- (b) any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods. Section 2(o)(ii) of MRTP Act reads as follows : "restrictive trade practice" means a trade practice which has, or may have the effect of preventing, distorting or restricting competition in any manner and in parti-cular - (ii) which tends to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers unjustified costs or restrictions."

For the restrictive trade practice to qualify to fall within the provisions of Section 33(1)(b), there must be an agreement requiring the purchaser of goods to purchase some other goods as a condition of such purchase. The grounds given in the DG''s application do not satisfy any of these ingredients. Also, this has neither been the grievance nor the experience of the complainant himself nor there has been any other complaint to this effect from other buyers. In view of this, the charge made under Section 33(1)(b) of the MRTP Act, fails. As regards Section 2(o)(ii) of the MRTP Act, the alleged restrictive trade practice should tend to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner as to impose on the customers unjustified costs or restrictions. In his application, the DG has just made an allegation about the manipulation of conditions of delivery in supplies without corroborating it and also without appreciating the fact that due to technical problems which were beyond the control of the respondent, there was a steep fall in production during the months of April, May, June and July, 1993 which finally led to the closure of the unit in August, 1993. From the break up of supplies made against the orders placed by the customers as given in para 5 of the application filed by DG, it is obvious that in the month of May, the complainant himself was not made to suffer from any cancellation of orders. In July also, the complainant was supplied 50% of its order which appears understandable in the face of the fact that actual production had come down to 50% of the planned production. In view of these facts and also in view of the factors governing actual supplies to the customers as explained by the respondent, the charge of manipulation of delivery also does not stand proved. What appears on the face of it a discriminatory practice was in actual fact a compulsion brought upon the respondent by a steep short fall in production due to technical problems. We also take note of the fact that in the affidavit filed by the Managing Director of the complainant Company in which he has clarified the confusion and has also expressed his satisfaction over the supplies made to the complainant after the supply position improved in the manufacturing unit of the respondent. In the premises, this enquiry deserves to be and is hereby discharged with no order as to costs in view of the facts and circumstances of this case. Enquiry discharged.

