(2000) 09 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION) APPELLANT

Vs

MOTHER DAIRY RESPONDENT

Date of Decision : 29-09-2000

Acts Referred:

Citation : 2000 3 CPJ 65

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

Final Decision : NOE discharged

Judgement

1. A complaint was received from certain consumers regarding sudden increase in the per litre prices of milk supplied by the Mother Dairy in Delhi in poly packs as well as through vending booths. It was complained therein that the price of milk in poly packs had been increased toRs. 12/-per litre and of toned milk to Rs. 11 /-per litre with effect from 8.5.1996. The complaint was sent to the Director General (Investigation and Registration) (the DG) for investigation. After investigation the DG submitted a Preliminary Investigation Report (PIR) stating therein that the respondent, Mother Dairy was a part of the National Cooperative Sector and had been created in order to stop the exploitation of milk producers by offering them reasonable prices for the milk supplied by them and also to ensure that milk and milk products were made available to the consumers at reasonable prices. In conclusion, it was mentioned that the price increase in question, was unjustified and, therefore, attracted the provisions of Section 2(o)(ii) of the MRTP Act, 1969 (the Act for brief).

2. BASED on the PIR, a Notice of Enquiry dated 28.7.1997 was issued to the respondent, Mother Dairy. The respondent, in its reply has stated that it is a subsidiary unit of the National Dairy Development Board but it is not getting any subsidy from the Government or any other agency and has to maintain its economic viability like any other commercial undertaking. It has been admitted that there was a price increase of full cream milk by Rs. 1.50 per litre in May, 1995 and further Re. 1 /- per litre in February, 1996 and similarly price of toned milk by 50 paise per litre in 1995 and Rs. 2/- per litre in May, 1996. However, the

allegation of adoption of and indulgence in restrictive trade practices within the meaning of Section 2(o) (ii) of the Act has been denied and it has been clarified in the reply that the prices of toned and poly pack milk were increased due to the increase in the procurement prices of milk paid by the respondent to the State Cooperative Dairy Federations of U.P., Rajasthan, Punjab, Haryana and Gujarat. The details of the prices paid during the years 1995 and 1996 have also been furnished alongwith the reply. It has been further stated that the price increase was also necessitated by the upward revision of the electricity tariff and also the railway freight by 36% and 100% respectively. A copy of the notification issued by DESU increasing the tariff per unit of electricity has also been enclosed. Likewise, copies of the railway receipt dated 5th January, 1996, before the increase in freight and receipt dated 12th March, 1996 after the increase have been annexed with the reply. It has also been highlighted that the increase in the prices of milk was also due to reasons of economic viability of the respondent and further clarified that while the respondent made a profit of Rs. 5.96 crores and Rs. 4.05 crores in 1993-94 and 1994-95 respectively, in 1995-96 it showed a deficit of Rs. 5.90 crores on account of higher prices paid for procurement of milk and other inputs and in order to earn a marginal profit of 2-3%, it had to increase the prices of milk. On completion of pleadings, the following issues were framed : (1) Whether the present complaint is maintainable ? (2) Whether the respondent has been indulging in restrictive trade practices as alleged in the NOE ? (3) Whether these restrictive trade practices are not prejudicial to the public interest ?

On behalf of the DG, Mr. Nand Kumar appeared as a witness. He is a signatory to the complaint made to the Commission with regard to the increase in the prices of milk with effect from 8.5.1996 while Shri B.S. Mathur, Deputy General Manager of the respondent filed his affidavit of evidence and was cross-examined by the DG''s Advocate.

3. WE have heard the learned Advocates representing the DG and the respondent. The fact that there was increase in the prices of milk supplied by the respondent is not disputed or denied. In fact, it is on record that the respondent issued a public notice through newspapers notifying the increase in the prices and stating that the increase was on account of the higher procurement price, electricity tariff and railway freight. It is also not in dispute that the respondent is a subsidiary of the National Dairy Development Board and is procuring milk from various State Cooperative Dairy Federations and that there was an increase in the procurement price of milk paid by the respondent in 1995-96. Likewise, there is evidence to suggest that there was upward revision of electricity tariff as well as railway freight due to which the expenditure incurred by the respondent on procurement, collection and processing of milk and milk products went up. The respondent has also furnished copies of balance sheets and income and expenditure account for the years 1993-94,1994-95 and 1995- 96 which reveal that it is making only marginal profits and is barely maintaining its economic viability. It also transpires that the procurement prices of the milk as well as cost

of other inputs have been rising from time to time and, therefore, it became necessary for the respondent to increase the prices of milk supplied in poly pack as well as toned milk. To determine whether the respondent has been indulging in restrictive trade practices or the prices increase effected by the respondent falls within the ambit of Section 2(o)(ii) of the Act, it is necessary to look at the wording of the section which is reproduced below : "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 particular- (i) which tends to obstruct the flow of capital or resources into the stream of production; or (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."

4. CLEARLY Sub-clause (i) of Clause (o) is not applicable in the present case and has, therefore, not been invoked. The DG''s case is that only Sub-clause (ii) is attracted. The provisions of Clause (o) and Sub-clause (ii) of Section 2 of the Act have been analysed by Their Lordships of Hon''ble'' Supreme Court in Civil Appeal Nos. 14994 and 15096 of 1996, Rajasthan Housing Board v. Smt. Parvati Devi and Rajasthan Housing Board v. Shri Dilsukh Chand Bhandari, reported in 2000 CTJ 165 Supreme Court (MRTP). It has been held that Sub-clause (ii) has to be read alongwith the main ingredient of preventing, distorting or restricting competition in any manner and Section 2(o) will not be applicable in a case where a trade practice has no effect, actual or probable of preventing, distorting or restricting competition in any manner. The above order of the Hon''ble Supreme Court is based on the judgment in Mahindra and Mahindra Ltd. v. Union of India, (1993) CTJ 182 (SC) (MRTP). It thus follows that a trade practice can be construed to be a restrictive trade practice if it has the effect of preventing, distorting or restricting competition and an enquiry into a restrictive trade practice is related to the effect of the trade practice on competition. In other words, the touchstone under Section 2(o) is effect of the trade practice on competition. In the instant case, the defence of the respondent is that apart from the respondent, the Delhi Milk Scheme as well as private dairies and individuals are also supplying milk in Delhi. Further the respondent was constrained to increase the price of toned and full cream milk on account of the higher cost of processing of the milk coupled with higher procurement prices paid to the State Cooperative Dairy Federations. It is pertinent to state here that there is no evidence to suggest that the price increase by the respondent had the effect of lessening or distorting or restricting competition. No evidence has been led by the DG to show that the price increase effected by the respondent had prevented or distorted the competition in any manner. It has not been disputed that there are many suppliers of milk in Delhi and private dairies were selling milk at prices higher than those of the respondent, Mother Dairy. It has also not been suggested by the DG either in PIR or in the complaint of the consumers that the price was hiked by other suppliers or that milk was in short supply. In that view of the matter, the price increase cannot be said to be a restrictive trade practice

as it did not have actual or probable effect of preventing, distorting or restricting competition in the supply of milk particularly in the background that the respondent procures milk from State Cooperative Dairy Federations with a view to giving incentive to the farmers to increase the production of milk. In other words, by giving higher procurement price, the respondent ensures better and more supplies of milk and milk products. Sub-clause (ii) of Clause (o) of Section 2 refers to manipulation of prices. Dictionary meaning of "manipulation" is managing a situation to one''s advantage unfairly or unscrupulously. Again, there is no evidence to the effect that the respondent in the present case, is selling milk at higher prices which result in unjustified cost on the consumers. The rationale and the justification for the impugned price increase has been given by the respondent and it appears that procurement prices paid to State Cooperative Federations or electricity tariff or railway freight are beyond the control of the respondent and the burden has necessarily to be passed on to the consumers if the respondent has to remain economically viable. Thus the essential ingredients of Section 2(o) are missing in the present case and, therefore, it can be safely concluded that there is no case of adoption of or indulgence in restrictive trade practices by the respondent, Mother Dairy.

5. IN view of the affidavit of evidence filed on behalf of the respondent coupled with its detailed reply to the Notice of Enquiry, duly supported by relevant documents, there is no escape from the conclusion that the provisions of Section 2(o)(ii) are not attracted and, therefore, our findings on the issues are that the respondent is not guilty of adoption of or indulgence in restrictive trade practices. Accordingly, the Notice of Enquiry is hereby discharged. NOE discharged.