(2000) 10 NCDRC CK 0037

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION) APPELLANT

Vs

Raymond Woollen Mills Ltd. RESPONDENT

Date of Decision : 12-10-2000

Acts Referred:

Citation : 2001 1 CPJ 17

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

Advocate : S.S.Chawla , Brijesh Kalappa , J.B.Dadachanji

Final Decision : Disposed Of

Judgement

1. A complaint dated the 15th January, 1988 made by M/ s. Roop Milan of Bombay, a dealer in readymade garments and hosiery, was received in the Commission and also the Deptt. of Company Affairs alleging therein that M/s. Raymond Woollen Mills Ltd. had made placement of order for substantial quantity of trousers, a condition for the supply of blazers, suits and safaris to its dealers. On receipt of the complaint, the Director (Research) was asked to investigate and submit a Preliminary Investigation Report (PIR).

2. BEFORE submitting the PIR, Director (Research) deputed a team of officers to Bombay in connection with the investigation into this complaint and they contacted a number of dealers of the garments manufactured by J.K. (Bombay) Ltd. including the complainant/ informant, Roop Milan who complained that it was appointed as a retail dealer on 19th April, 1982 and that it was getting regular supplies of blazers, suits, safaris and trousers till December, 1986 when the respondents stipulated that blazers, suits and safaris would be supplied only if substantial orders were placed for readymade trousers. From the information furnished by the complainant/ informant it transpired that out of 139 items supplied by the respondents, 119 were trousers and the balance 20 were blazers and suits. It has been reported in the PIR that similar allegation of tie-up sales was made by two other retailers, Ossian Fashion and Rupal of Bombay but they requested that their names should not be disclosed and they should not be asked to appear as witnesses in the event an inquiry is instituted against the

respondents as they apprehended that they would not get supplies of readymade garments from the respondents. It transpires from the PIR that Raymond Woollen Mills Ltd. supplied fabrics to its wholly owned subsidiary, J.K. (Bombay) Ltd. which manufactures and markets readymade garments such as men''s trousers, blazers, safaris and suits and these ready to wear clothes are sold through showrooms owned by Raymond Woollen Mills, its franchise dealers and a network of dealers and retailers. It is also revealed from the PIR that J.K. (Bombay) Ltd. does not own any retail showroom nor it has any formal agreement with the retailers except that a token security deposit of Rs. 5,000/- bearing interest, is accepted from the dealers and retailers and orders are booked for spring season in November/December and for summer and winter in February/March and July/ August respectively.

Finally, it was recommended in the PIR that a case of restrictive trade practice was made out against the respondents and an enquiry may be instituted under Section 33(1)(b) read with Section 2(o)(ii) of the MRTP Act, 1969 (the Act for brief). It was also recommended that J.K. (Bombay) Ltd. may also be made a respondent as it was a subsidiary of Raymond Woollen Mills and was manufacturing and marketing readymade garments.

3. ON the basis of the PIR, a Notice of Enquiry dated the 2nd July, 1990 was issued to both the respondents, Raymond Woollen Mills Ltd. (respondent No. 1), and J.K. (Bombay) Ltd. (respondent No. 2). In their respective replies thereto, the respondents denied the allegations of adoption of and indulgence in restrictive trade practices within the meaning of Section 2(o)(ii) and Section 33(1)(b) of the Act. It was stated by respondent No. 1 in its reply that it was not involved in the manufacture and sale of readymade garments and therefore, the question of adoption of restrictive trade practices by it did not arise. Respondent No. 2 in its reply while denying the allegation of tie-up of sales of trousers with other garments like blazers, safaris and suits, submitted that readymade garments manufactured by it were in great demand in the market and were supplied to the dealers in pursuance of orders placed by them and subject to availability of stocks. On completion of the pleadings, the following issues were framed : (1) Whether the Notice of Enquiry is liable to be quashed for the reasons given in the reply to the Notice of Enquiry ? (2) Whether the respondents are or have been indulging in the restrictive trade practices as stated in the Notice of Enquiry ? (3) If reply to Issue No. 2 is in the affirmative, whether the aforesaid restrictive trade practices are not prejudicial to the public interest ? (4) Relief.

4. SHRI Viren Shah, a partner of Roop Milan, dealer in readymade garments in Bombay and the complainant/ informant on whose complaint, Director (Research) was asked to carry out investigation and submit a PIR, appeared as a witness. It was stated by him in his deposition that his dealings with the respondents virtually came to an end in July, 1987 when respondent No. 2 compelled it to place an order for trousers alongwith an order for blazers, safaris

and suits. It was also stated by him that a complaint to this effect was made by him to the Deptt. of Company Affairs and alongwith the complaint he had also filed copies of the correspondence with the respondent. In his cross-examination it was mentioned by him that on account of his failure to place orders for trousers the dealership was terminated and the security deposit of Rs. 5,000/ - was refunded. Shri Pradeep H. Hiranandani appeared as a witness on behalf of respondent No. 2. It was stated by him that readymade garments including trousers manufactured and marketed by respondent No. 2 enjoy good demand in the market and supply of garments is made to the dealers on the basis of orders placed by them and subject to availability of stocks. It was also mentioned by him that the manufacture of readymade garments was reserved for the small scale sector and the respondent had a negligible market share. From the evidence both oral and documentary brought on record it transpires that 133 trousers were supplied to the complainant/informant in the year 1985-86. However, no record of the orders placed with the respondent could be produced but the complainant/informant stated that he was compelled by the respondent to place substantial order for trousers in order to get supplies of blazers, safaris and suits. The invoices which were produced as part of evidence revealed the quantity of garments supplied by the respondent and undoubtedly, the quantity of trousers is substantial. The fact that a complaint was made by the complainant/informant alleging that the respondents were compelling him to buy a substantial quantity of trousers in order to get supply of blazers, safaris and suits goes to show that there was pressure on him to accept a much higher quantity of trousers than his requirement or he could sell and when he showed his unwillingness to accept the large quantity of trousers supplied to him,, his dealership was terminated and the security deposit was refunded to him. Thus the allegation of tie-up of sales of trousers with other garments supplied by respondent No. 2 appears to have been fully established. The invoices which form part of the record also show that the quantity of trousers supplied by-respondent No, 2 in 1986 is much higher than that of other garments and far in excess of what could be easily sold by the complainant/ informant.

5. IT is a difficult matter that the other dealers who had the same grievance against the respondents did not come forward to give evidence as they did not want to lose the dealership. Their apprehension is understandable considering the fact that the complainant/ informant who made an issue of tie-up sales and made the complaint, lost the dealership. Thus a case of adoption of and indulgence in restrictive trade practices within the meaning and of Section 33(1)(b) of the Act can be said to have been made out against the respondents. While it has been contended by respondent No. 1 that as it is not manufacturing or marketing readymade garments, the notice of enquiry issued to it may be discharged, the fact remains that respondent No. 2 is its wholly owned subsidiary and apart from supplying fabrics to it, it can''t be denied that it has a say and role in its management, production pattern and marketing strategy. Therefore, both the respondents are liable for action under the Act and have been rightly

proceeded against.

6. TERMINATION of dealership or respondents'' refusal to deal with a well-established retailer, as in this case, is bound to have an adverse effect on competition insofar as it will reduce the number of retail dealers in the local market and thus will have the effect of restricting and lessening of competition in the sale and supply of readymade garments and therefore, would also be prejudicial to public interest. By restricting and reducing the supply of ready to wear garments would also attract the provisions of Section 2(o)(ii) of the Act. The trade practices listed in Section 33(1) are deemed to be restrictive trade practices. Even in terms of effect of such trade practices on competition, it can be said to result in restricting or lessening of competition. Tie-up sales of garments as in the present case, can be said to be prejudicial to the public interest as it will restrict the choice of consumers and affect the avail ability of readymade garments and therefore, a cease and desist order is warranted and called for. Accordingly, our findings are that the trade practice adopted by and indulged in by the respondents is a restrictive trade practice and is prejudicial to public interest and should be stopped forthwith. We, therefore, direct the respondents to cease the aforementioned restrictive trade practice forthwith and furnish an undertaking that they shall not repeat or indulge in same or similar trade practices in future. The respondents are further directed to file an affidavit of compliance within six weeks of the pronouncement of this order. Complaint disposed of.

