(1999) 11 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION) APPELLANT

Vs

SEEMA TRADING CORPN. RESPONDENT

Date of Decision : 08-11-1999

Acts Referred:

Citation : 2000 1 CPJ 30

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

Final Decision : Enquiry disposed of

Judgement

1. THIS enquiry commenced with the filing of an application by the Director General of Investigation and Registration (DG in brief) under Section 10(a)(iii) of the Monopolies and Restrictive Trade Practices Act, 1969 (the Act in brief) alleging that Seema Trading Corporation, 7, Bhandar Complex, Anani Rao Circle, Bangalore (R-1 in brief) has indulged in certain restrictive trade practices in terms of Section 33(1)(a), (c) and (g) of the Act.

2. THE averments made in the application filed by the DG in brief are as follows : M/s. Seema Trading Corporation is run under the sole proprietorship of Shri N.G. Loknath Singh having its registered office at 7, Bhandar Complex, Ananda Rao Circle, Bangalore and is manufacturing, selling and distributing cooking gas under the brand name Seema Gas. For this purpose, it has appointed M/s. Karumpangattu Traders, Pullad, Thiruvalla, Pattanthita District, Karnataka (R-2 in brief) as its district distributor in terms of a distributorship agreement entered into between them. R-1 acted upon the terms and conditions contained in the said agreement.

Dg alleged in his application that certain clauses of the aforesaid agreement falls within the provisions of Section 33(1) of the MRTP Act, 1969. Details in brief are given below : Preamble and Clause 1 "And Whereas the second party offered to the first party for appointment as district distributor for the local limit of Calicut and Mahe District of Kerala State subject to certain Terms and Conditions." Clause 1 "The First Party does hereby appoint the Second Party for LPG/RLHG supplied under the Brand name of Seema Gas as distributor for Calicut and Mahe

District of Kerala State which are delineated in the map enclosed hereto."

Dg alleged that the territorial restrictions imposed by R-1 on R-2 as per aforesaid Preamble and Clause 1 of the agreement falls within the provisions of Clause (g) of Section 33(1) of the Act. Clause 3(c) "The second party shall not carry on the business of supplying cylinders, equipments, attachment etc., directly to the customers and shall always make such supplies to sub-dealers only." Since R-1 has imposed restriction that R-2 shall not carry on the business of supplying, cylinder, equipment, attachment etc. directly to the customer and shall make supplies to sub-dealers only, it attracts Clause (a) of Section 33(1) of the Act. Clause 4(a) "The second party shall place orders for a minimum of 100 cylinders filled with LPG/RLGH per month." In terms of aforesaid Clause R-1 imposed restriction on R-2 to place minimum order of 100 cylinders per month. Clause 11 "The second party shall deal only the type fuel supplied by the first party and shall not deal, directly or indirectly the fuel supplied by any other person however the second party may deal in stoves and the spares thereof, made by any person so long as the same shall confirm to the specifications prescribed by the first party."

R-1 imposed restriction on R-2 not to deal directly or indirectly the fuel supplied by any other person attracting the provision of Section 3(1)(c) of the Act.

3. IT has been further submitted by the DG in his application that the operation of the agreement/terms and conditions as aforesaid constitute restrictive trade practices as specified under Section 33(1) of the Act. Owing to its/their inherent nature and inevitable effect, the trade practices indulged into by R-1 necessarily impair competition and it does not demand to show under the Act other facts or circumstances for causing prejudice to public interest. Dg has also brought out in its application that with effect from 1st August, 1984 under the MRTP (Amendment) Act, 1984, every agreement falling within one or more categories listed in Section 33(1) of the Act is deemed to be an agreement relating to restrictive trade practices for the purpose of MRTP Act and are prejudicial to public interest.

4. THE DG has prayed that an enquiry may be instituted against the respondent and an order passed against it to cease and desist from indulging in the aforesaid restrictive trade practices. Considering the application of the DG, the Commission issued a Notice of Enquiry (NOE in brief) under Section 10(a)(iii) and Section 37 of the Act read with Regulation 51 of the MRTPC Regulations, 1991 to the respondents enclosing a copy of DG''s application and calling upon them to enter appearance and defend themselves against the charges. Inspite of sufficient opportunities given to them, the respondents never put in their appearance and on 16.12.1998, the proceedings against them were set ex parte. On this date, the applicant was directed to file ex parte evidence against the respondents with a copy to them. The respondents were given the liberty to participate in the final arguments. On the date of final arguments, since the respondents were not present despite of the notice sent by RPAD, we heard the ex parte arguments

advanced by Mr. Saud Ahmad, ADG for the DG.

5. THIS is a case of complete non-rebuttal. None of the respondents preferred to defend itself. After going through the complaint petition, evidence on affidavit, documents on record and arguments advanced by Mr. Saud Ahmad, ADG for the DG and in the light of facts and circumstances detailed above, we find that as the terms and conditions contained in the impugned distributorship agreement are deemed to be restrictive trade practices by its/their inherent nature and inevitable effect, they necessarily impair competition and hence does not warrant to show any other facts or circumstances for causing prejudice to public interest under the Act. It is not necessary that it must also fall within the definition of restrictive trade practices as given in Section 2(o) of the Act after the amendment of the MRTP Act in 1984. The Commission in the similar facts and circumstances in the case of RTPE No. 89/98 and RTPE No. 90/98 has passed ''cease and desist order'' against the same respondent. In view of the foregoing, we hold that the respondent No. 1 has been indulging in the restrictive trade practices within the provisions of Section 33(1) of the Act. We, therefore, direct that the respondent No. 1 shall cease the aforesaid restrictive trade practices forthwith and desist from indulging in the same in future under Section 37(1) of the Act. The respondents shall forthwith amend their standard agreement to remove the aforesaid restrictive trade practices as incorporated in Preamble and Clauses 1, 3(c), 4(a) and 11 of the impugned agreement and file a copy of the amended agreement in the Commission with a copy to the DG within 4 weeks from today. The respondent shall file an affidavit of compliance within the same time frame. No order as to costs. Enquiry disposed of.