(2000) 12 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION) APPELLANT

Vs

Tata Tea Ltd. RESPONDENT

Date of Decision : 22-12-2000

Acts Referred:

Citation : 2001 1 CPJ 55

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

Final Decision : N.O.E. discharged

Judgement

1. DIRECTOR General of Investigation and Registration (DG I&R in short) in its application has challenged certain clauses of the agreement as entered into between M/s. Tata Tea Limited (hereinafter referred to as respondent No. 1) and M/s. Shafi Traders (hereinafter referred to as respondent No. 2). It is contended that Clause 7 in general and Clause 7(a)(i) in particular requiring the stockists to keep adequate stocks as decided by respondent No. 1 falls foul of Clause (b) of Sub- section (1) of Section 33 of the Monopolies and Restrictive Trade Practices Act (hereinafter referred to as the Act). This apart, the price lists dated 1.8.1994 and 5.11.1994 do not contain the stipulation that the stockists are free to sell goods at lower than the printed prices. Such practices fall within the ambit of Clause (f) of Section 33(i) of the Act. As the stockists can sell goods only at prices fixed by the respondent such like practices are deemed to be restrictive trade practices within the provisions of Section 33 of the Act. The dealers/ distributorship agreement needs to be amended and the respondent No. 1 is to be directed to cease and desist from indulging in such like trade practices.

2. THE respondent in response to Notice of Enquiry issued by the Commission, refuted the charges by contending that it has neither restrained the stockists/ dealers from selling the goods to any person or class of persons nor it has also required its stockists /dealers to buy other goods as a condition of purchase of its goods so as to attract the provisions of Clause (b) of Section 33(1) of the Act. Clause 9 of the standard agreement clearly provides that stockists /dealers are free to sell goods at lower than maximum prices fixed for the products. Under

the provisions of the Standard and Weight Measure Act and other enactments, the respondent sells its goods in such packets containing the date of manufacture and the maximum retail price. THEre is no restriction imposed on the respondent No. 2 regarding the price to be charged by it. It is argued that the clause regarding the maintenance of adequate stock is only for the convenience of the consumer in particular and public at large. It by no means impairs or restricts the competition. In the circumstances, the Notice of Enquiry as issued needs to be discharged, contended the respondent. On completion of pleadings the issues were framed as under : (1) Whether the respondents have indulged in the alleged restrictive trade practices contained in the DCs application ? (2) Whether the alleged restrictive trade practices are not prejudicial to the public interest ? (3) Relief.

Both the parties relied on the same standard agreement interpreting the various clauses in their own favour. The Advocates representing the parties stressed their view points in their arguments.

3. WE have carefully considered the rival submissions and have also gone through the various clauses of standard agreement alongwith the price lists in question. As interpretation of Clause (b) of Sub-section (1) of Section 33 is involved, we may as well quote the relevant clause which reads as under : "33. Registrable agreements relating restrictive to trade practices- (1) (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- (a) (b) any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;...."

The plain reading of the clause shows that it speaks of only tying arrangements under which seller agrees to sell product or service only on the condition that the buyer buys a second product from the seller by this arrangement. The buyers are forced to forego their choice among products and are compelled to buy the tied product. This is certainly restrictive in its nature and has been so recognised in law. Clause 7(a) nowhere postulates such a situation. The standard agreement only provides for keeping adequate stocks to be decided by the respondent No. 1. This is certainly not covered under the aforesaid clause. It is also not the case of the D.G. that maintenance of adequate stocks as determined by the respondent No. 1 is covered under some other clause of Section 33(1) of the Act. Deeming provisions of Section 33 have to be read strictly and that too in the context and the pretext they have been brought on the Statute. Clause (7)(a) of the standard agreement does not fall in the Section 33(1)(b) of the Act. As regards the other charge pertaining to the price fixed by the respondent No. 1 we find that Clause 9 of the standard agreement reads as under: "You will not sell the products at prices exceeding the maximum prices, viz. the purchase prices plus octroi, taxes and any other statutory levies and cesses applicable, and adding thereto a maximum of three percent of the aggregate amount of the purchase prices. You will be free to charge prices lower than maximum prices above fixed for the products."

It is true that the price lists issued alongwith the aforesaid standard agreement do not contain a similar clause. However the contents of the price list are to be read in the context of Clause 9 of the standard agreement. Performance of any act is to be in line with the conditions set in the agreement. As stated earlier, under Clause 9 of the standard agreement there is a specific condition that the stockists/ dealers are at liberty to sell the products at lower than maximum price fixed for the product. There is further provision for cancellation of appointment in case of breach of any term of the agreement in question. Non- mentioning of the same in the price lists which is agreement in question. Non-mentioning of the same in the price lists which is to be read in terms of agreement cannot be construed to mean that products are to be sold at MRP alone as indicated in the price list. Any price list issued is to be read in context of the agreement entered into between the parties. Accordingly, we are of the considered view that no charge under Section 33(1) has been established against respondent No. 1. 9. Accordingly the Notice of Enquiry deserves and is directed to be discharged qua both charges as alleged on behalf of the D.G. No order as to costs in the facts and circumstances of the case. N.O.E. discharged.