(2000) 04 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION) APPELLANT

Vs

UNIVERSAL CYLINDER LTD. RESPONDENT

Date of Decision : 07-04-2000

Acts Referred:

Citation : 2000 3 CPJ 39

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

Final Decision : NOE disposed of

Judgement

1. THIS order shall dispose of an Enquiry No. 90/94 instituted under Section 10(a)(iii) read with Section 37 of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the Act) on the basis of the application filed by the Director General (Investigation and Registration) (hereinafter referred to as DG) under Section 10(a)(iii) of the Act against M/s. Universal Cylinder Ltd. (hereinafter referred to as the respondent). After going through the application of the DG, the Commission issued Notice of Enquiry dated 8.12.1994 against the respondent, which reads as under : "Whereas the respondent, namely, Universal Cylinder Ltd. is inter alia engaged in the business of sale and distribution of Liquified Petroleum Gas (LPG) under the brand name ''Ravi Gas''. And whereas for the purpose of sale and distribution of ''Ravi Gas'', the respondent is reported to have appointed dealers on the terms and conditions contained in the agreement entered with the dealers. And whereas the Director General (Investigation and Registration) has filed an application under Section 10(a)(iii) stating that the following clauses of the Trade Agreement are restrictive trade practices : Clause 4 : Your dealership shall be liable to be cancelled by the Company and the Company can appoint a new dealer, if you fail to achieve prescribed business targets, fulfil all or any of the terms and conditions of your appointment and / or ceases to meet the eligible criteria of dealership. Clause 18 : The area allowed to you is the binding limits of your dealership. You shall not go beyond that area for booking of connections/refilling of cylinders. Clause 21 : The case you are already holding / will hold at any time the dealership of LPG of any other Company / firm / person, your dealership shall stand

terminated with effect. The trade practice whereby the area of operation of a dealer is restricted, the trade practice whereby a distributor is restrained from dealing in any other business or a competing business and the trade practice whereby the business target is fixed unilaterally and in the event of non-attainment thereof, the respondent arms itself with the right to terminate the distributorship, are deemed Restrictive Trade Practices attracting the provisions of Sections 3(1) of the MRTP Act, 1969."

2. IN response to the Notice of Enquiry the respondent filed its reply only on 6.4.1995 controverting the allegations made in the Notice of Enquiry. Thereafter the DG filed its rejoinder to the reply filed by the respondent and reiterated its stand mentioned in the Notice of Enquiry. After completion of the pleadings, the following issues were framed on 12.7.1995 : (1) Whether the respondent 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 ?

Thereafter the DG fried his documentary evidence and the respondent filed affidavit of three witnesses in defence, namely Shri Narayan, Shri N.S. Kumar, Shri M. Prakash, who were examined and cross-examined by the DG. After several adjournments the arguments were heard on 24.9.1999 and the order reserved.

We have gone through the documents placed on record, the evidence led by the parties and the arguments advanced and written synopsis filed by the parties.

3. THE DG has objected to three clauses of the agreement in his application. THE respondent has admitted the clauses of the agreement and have claimed gateways under Section 38(1) of the Act. Clause 4 of the agreement imposes the condition on the dealer to achieve prescribed business targets, fulfil all or any of the terms and conditions. THE dealership is liable to be cancelled in the event of failure to achieve the target. This condition of the respondent is a restrictive trade practice and falls within the mischief of Section 33(1) of the Act, which is prejudicial to the interest of the public. THE respondent is, therefore, directed to discontinue the said trade practice and not to repeat the same in future. THE respondent is also directed to amend the said Clause 4 of the agreement and to fix the quantity as per the requirement of the customers of the concerned area and file an affidavit to this effect. The respondent has allotted a particular area to the dealer as per his Clause 18 of the agreement. For this condition also the respondent has claimed the "parallel marketing" policy as enunciated in Govt. Notification No. GSR 529(E) dated 3.8.1993 issued by the Ministry of Petroleum and Natural Gas. It is argued by the respondent that the area is fixed in the interest of the dealer so that the dealer is aware about the supply of the product. It is also claimed that the product "LPG" is an essential item of daily consumption and requires continuous supply at the doorsteps of the consumer to his satisfaction and claimed gateways under Section 38(1)(k) of the Act. Keeping in view the nature of product, we allow the gateways to the respondent in regard to

area restriction.

4. THE third charge levelled against the respondent is that the dealer shall deal with the product of the respondent only and in the event of dealing with the product of others, the dealership shall stand terminated with immediate effect. In this connection the respondent like the Public Sector Undertakings putting restriction to deal with its product in view of the Government policy. A distributor/ dealer is allowed to have only one godown in one area and he is not allowed to keep the cylinder of other Company in that" godown keeping in view safety measures. THE respondent produced one witness Shri M. Prakash, former Deputy Chief Controller of Explosives in this regard, who deposed that safety standards are laid down in Gas Cylinder Rules, 1981. THE respondent has stated that its market share is less than 1% and imposition of exclusive dealing will not prevent or materially effect the competition in the market. THE respondent has relied two judgments of the Commission, viz. Director General v. Western Pattern Diamond Ltd., reported as 1998 CTJ p. 220, wherein in para 10 the Hon''ble Commission had clearly stated that even 3% of the total all India turnover of the product in question do not materially effect competition and respondent would be entitled to gateways under Section 38(1)(h). THE other judgment titled as Association Classic Manufactures v. Alkli and Chemical Corporation of India, reported at 1979 Tax Law Reporter page 2096, states that this case is covered by this judgment and is entitled for gateways under Section 38(1)(h). We agree that the respondent is entitled to gateways under Section 38(1)(h) of the Act in regard to its exclusive dealing in view of two judgments of the Commission referred to above. This condition of the respondent is covered by these judgments and we allow the respondent to continue Clause 21 in the agreement. On the facts and in the circumstances of the case the parties are left to bear their own costs. NOE disposed of.