(1999) 07 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

In the Matter of :J.K. CHEMICALS LTD. APPELLANT

Vs

State RESPONDENT

Date of Decision : 16-07-1999

Acts Referred:

Citation : 2001 3 CPJ 105

Hon'ble Judges : A.N.Divecha , S.K.Parthasarathy J.

Final Decision : N.O.E. discharged

Judgement

1. A Notice of Enquiry (NOE) was issued on 24.6.1997 to J.K. Chemicals Limited, Mumbai under Section 10(a)(iv) of the Monopolies and Restrictive Trade Practices Act, 1969 (for brief the Act) charging it with indulgence in restrictive trade practices based on a Preliminary Investigation Report (PIR) submitted by the Director General of Investigation and Registration (the DG).

2. THE respondent who manufactures and markets its products entered into a wholesale distributor agreement with its wholesalers/stockists/dealers for sale of its products. Clause (1) of the agreement allocated territories to the wholesalers. Clause (16) of the agreement requires the wholesale distributors to bill the stockists according to the recommended price-list of the Company which stipulated not only the profit margin for the wholesale dealers but also its selling price to the stockists. THE margin of profit to the stockists as well as for the retailers has been fixed by the respondent with the result that the footnote that the retailers are free to charge a price lower than the maximum recommended retail price becomes redundant and the conditions imposed by the respondent has the effect of resale price maintenance. THE price lists of the Company also provided for an incentive scheme for the stockists and retailers which tantamount to grant of concessions or benefits in connection with or by reason of dealings. THE NOE alleged that the above clauses of agreement attracted the provisions of Section 33(1)(g), (f) and (e) of the Act. During the course of the enquiry the Senior Manager of J.K. Ansell Limited, Mumbai filed an affidavit stating that the concerned product division of the respondent has since been

taken over by J.K. Ansell Limited. An application supported by an affidavit has been filed by J.K. Ansell Limited under Section 37(2) of the Act.

As regards the territorial restrictions the respondent has stated in the application that it never had the intention to restrict or limit the supply of goods for disposal in a specified area and the respondent is willing to modify Clause (1) of the wholesale distributors agreement to read as follows : "The wholesale distributors having promised to make available adequate storing facilities in all the States of India for stocking the products of the seller may appoint distributors and/or directly sell the products of the seller in such areas as it may deem commercially expedient to operate on the terms and conditions hereinafter mentioned."

3. AS regards Clause (16) of the wholesale distributors agreement, the respondent has stated that it was never its intention to impose a condition on the distributors to sell the goods only on the recommended price mentioned in the price list. The respondent has stated it is willing to clarify and modify the Clause (16) of the agreement as follows : "The seller agrees to pay 5% sales commission to the wholesale distributor on the recommended prices mentioned in the Price Lists issued by it from time to time. The distributor and/or the retailers appointed by him shall not sell the products at prices higher than those recommended but are free to sell the products on prices lower than those recommended in such price lists." As regards the incentive scheme, the respondent has clarified that no benefit was intended to be provided to the wholesale distributors/stockists/retailers and such benefits were always passed to the ultimate consumer. The respondent has offered to modify the agreement and introduce an additional clause to its agreement to read as follows : "That if any additional benefit is decided to be given or conferred upon by the seller during the course of sale of its products, the wholeseller and/or the retailer appointed by him shall pass on such benefits to the ultimate consumer."

4. THE respondent has in the application prayed that the modifications as suggested may be approved and the NOE issued against the respondent be discharged. We gave a hearing to Mr. S.K. Sharma, Advocate for the DG as well as Mr. Sandeep Narain, Advocate for the respondent on the application filed by the respondent under Section 37(2) of the Act. Mr. S.K. Sharma, Advocate for the DG stated that the modifications suggested by the respondent are acceptable and if they are approved, they would ensure that the restrictive trade practices as found in the wholesale distributors agreement would no longer be prejudicial to the public interest. We are satisfied that if the respondent modifies the clauses of agreement as proposed in its application they will no longer attract the provisions of Section 33(1)(g), (f) and (e) of the Act. We, therefore, accept the application of the respondent and direct it to modify the relevant clauses of the agreement as proposed in the application filed by it under Section 37(2) of the Act within a period of eight weeks and file an affidavit of compliance. We also direct that the NOE be discharged subject to the compliance with our directions as above. There is no order as to costs. N.O.E. discharged.

