(1999) 05 NCDRC CK 0107

In the National Consumer Disputes Redressal Commission

IN THE MATTER OF : J.K. SYNTHETICS LIMITED APPELLANT

Vs

State RESPONDENT

Date of Decision : 05-05-1999

Acts Referred:

Citation : 1999 2 CLT 190 : 1999 3 CPJ 43 : 1999 3 CPR 92

Hon'ble Judges : S.K.Parthasarathy J.

Final Decision : NOE discharged

Judgement

1. A Notice of Enquiry (NOE) was issued to the respondent, J.K. Synthetics Limited, Kamla Tower, Kanpur under Section 10(a)(iv) of the Monopolies of Restrictive Trade Practices Act, 1969 (for brief, the Act) on the basis of a Preliminary Investigation Report (PIR) submitted by the Director General (Investigation and Registration) (for brief, the DG).

2. THE NOE charged that the respondent entered into an agreement with its dealers/ stockists, which contained clauses falling within the meaning of restrictive trade practices as defined in the Act. Short details of the two clauses of the agreement and the sections of the Act which are violated, as contained in the NOE, are briefly indicated below : (i) Clause 5 of the agreement prohibits dealers from selling cement over and above the maximum price printed on the cement bag without giving any liberty to the dealers/stockists to sell cement at prices lower than that. It is in violation of Section 33(1)(f) of the Act. (ii) The respondent allows quantity discounts an slab basis ranging from Rs. 0.50 to Rs. 2.00 per bag of cement attracting provisions of Section 33(1)(e) of the Act.

The respondent filed a reply to the NOE in which it had indicated that it was willing to suitably modify Clause 5 of the agreement to fall in line with the provisions of the Act. As regards the charge that the quantity discounts allowed to the dealers/stockists violated the provisions of Section 33(1)(e), the respondent pointed out that it would amount to a restrictive trade practice only if it was allowed "in connection with or by reasons of dealings" and in any case, the respondent was entitled to gateway provided in Section 38(1)(h) of the Act.

3. AFTER the pleadings were complete, the following issues were framed : (i) Whether the respondent has indulged in the restrictive trade practices as alleged in the NOE ? (ii) Whether the alleged restrictive trade practices are not prejudicial to public interest ? (iii) Relief.

While the DG preferred to rely only on documentary evidence, on behalf of the respondent, Mr. S.N. Aggarwal, Dy. General Manager of the respondent Company was produced as a witness. The witness of the respondent stated on affidavit that information collected from selected markets in U.P., Haryana and Rajasthan revealed that the carrying cost of dealers/stockists, who lifted higher quantity of cement was higher than those who lifted lower quantity. In view of this, the quantity discount on slab basis had no effect on competition.

4. DURING the enquiry, the respondent also filed an application under Section 37(2) of the Act. The respondent has stated that the impugned Clause 5 of the agreement has been suitably modified and a circular was issued on 25.11.1996 to all stockists indicating that the stockists are free to sell cement at prices lower than that indicated in the price lists and on cement bags. I gave a hearing to Mr. C. Shanmugham, ADG for the DG and Mr. Jeevan Prakash, Advocate for the respondent. I have carefully gone through the records of the case, the evidence produced and taken into account the arguments advanced at the time of final hearing. The respondent has filed an application under Section 37(2) of the Act modifying Clause 5 of the agreement by giving liberty to the dealers/ stockists to charge prices lower than the one indicated in the price lists or on the cement bags. The application filed by the respondent is accepted and in view of this, it is not necessary to pass any order against the respondent with reference to this clause of agreement.

5. THE Advocate for the respondent argued that as regards the offering of quantity discounts on slab basis, no restrictive trade practices can be made out unless it was shown that the discounts were given in connection with or by reasons of dealings. If discounts are given to all buyers of goods and not exclusively to dealers/stockists or where discounts are given to dealers they are without discrimination on quantity lifted, the practice is not objectionable. Admittedly, in this case, the discounts are given only to distributors / stockists and are based on slab basis i.e., the discounts vary with quantity lifted. THEre is, therefore, no force in the arguments that the discount scheme is not in connection with or by reasons of dealings. As this clause of agreement falls within the meaning of Section 33(1)(e) of the Act, it is a restrictive trade practice as determined by the Act itself. It is, however, open to the respondent to establish that the said practice is not prejudicial to the public interest. THE Commission has already held by an Order dated 10.5.1993 in RTPE No. 32/95 in the matter of Saraikella Glass Works Limited Reported as (1993) 1 CTJ 292 (MRTPC) that gateway under Section 38(1) (h) can be claimed where differential discount is negligible and so insignificant that it is not likely to affect competition to any material degree. In this case, the discount granted on slab basis was only

between Rs. 0.50 to Rs. 2.00 per bag of cement. THE respondent has also established that the carrying cost borne by the dealers who lifted the larger quantities is higher than those who lifted smaller quantities and the discount scheme did not really provide any advantage to them. Under the circumstances, I am satisfied that the offering of discounts by the respondent in this case does not affect competition to any material degree and the respondent can be permitted to avail of the gateway under Section 38(1)(h) of the Act. In the premises, I hold that the restrictive trade practice of offering quantity discount on slab basis in this case is not prejudicial to public interest.

6. TO sum up, the application filed by the respondent under Section 37(2) of the Act is accepted. The offering of quantity discount by the respondent on slab basis in this case even though is a restrictive trade practice, is not prejudicial to public interest. In view of these reasons, I direct that the NOE issued against the respondent be discharged. There is no order as to cost NOE discharged.