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(1997) 06 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

IN THE MATTER OF: USHA SALES PVT. LTD. APPELLANT

Vs

State RESPONDENT

Date of Decision : 30-06-1997

Acts Referred:

Citation : 1998 3 CPJ 42

Hon'ble Judges : Sardar Ali Khan , S.Chakravarthy J.

Final Decision : Case disposed of

Judgement

1. WE are called upon to decide two applications filed by Usha International Ltd. (R-2 hereinafter), one filed under Regulation 65(1)(j) of the MRTPC Regulations, 1991 read with Regulations 71 and 72 thereof and the other filed under Regulation 65(1)(b) of the said Regulations read with Regulations 51 and 13 thereof. Before we proceed to deal with the said two applications, a brief mention of the facts in this enquiry is made herein below:

2. USHA Sales Pvt. Ltd. (R-I hereinafter) is a Private Limited Company of which USHA International Ltd. (R-2) in the proprietor. Allied Sales Corporation is the divisional sales office of R-1. The Divisional Manager of Allied Sales Corporation is in-charge of the Divisional Office and has been arrayed as the third respondent. He will be referred to as R-3 hereinafter. Shri C.G. Menon, Proprietor, Sewing Machine Sales and Service, Alleppey, Kerala has preferred a complaint against the three respondents under Section 10(a)(i) read with Section 33(1) and Section 2(o) of the MRTP Act, 1969 alleging that the trade practices carried on by the respondents are restrictive in nature and prejudicial to public interest.

The complaint of Shri C.G. Menon was referred to the Director General (Investigation and Registration) (DG for brief) for investigation and report. The DG submitted his Preliminary Investigation Report (PIR) which was considered on 1st September, 1992 by the Commission which thereupon directed the issuance of a Notice of Enquiry (NOE) treating the complainant as informant for this enquiry.

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3. ACCORDINGLY a Notice of Enquiry was issued on 8th December, 1992. The NOE clearly mentions the following: 1. The respondents appoint two types of dealers, namely, ordinary dealers and nominated dealers. According to the scheme operated by the respondents, a nominated dealer gets 2% less as commission/margin of profit/discount than an ordinary dealer. 2. A nominated dealer operates from the rented premises of the respondents. 3. The respondents stopped supply of products to Shri C.G. Menon (Proprietor, Sewing Machine Sales and Service, Alleppey, Kerala (hereinafter referred to as informant) a nominated dealer, since 1972. 4. The supplies were stopped since 1990 to the informant when he pointed out that he has been subjected to discriminatory commission/ benefits/discounts.

The NOE further mentions that the trade practices of refusal to supply to the nominated dealer (informant), and of offering discriminatory discounts/ commission/benefits constitute restrictive trade practices attracting Section 33(1)(a) and Section 2(o) of the Act.

4. THE respondents were communicated with a copy of the NOE alongwith the complaint application of the informant, for entering appearance and for defending themselves against the charges. No copy of the NOE was furnished to the respondents. Mr. Ravinder Narain, Mr Aditya Narain and Mr. Amitabh Marwah, Advocates represented R-l and R-2 from 6th November, 1992 onwards. R-3 did not enter appearance, but on 4th March, 1996 and 5th August, 1996 when arguments were heard, Mr. Aditya Narain stated that he was representing all the three respondents. Usha International Ltd. (R-2) filed two applications as mentioned at the outset of this order seeking further and better particulars and seeking the discharge of the NOE. We will take up these two applications for consideration. According to Mr. Aditya Narain, Advocate for the respondents, the applications need to be regarded to have been made by all the three respondents. Appliation under Regulation (65)(I)(b) of The MrTPC Regulations, 1991 Read with Regulations 51 & 13 thereof

5. IN this application, R-2 has pointed out that it is entitled to a copy of the PIR submitted by the D.G. or a concise statement of material facts, upon which, the NOE is based in terms of Regulation 51(1)(iv) of the MRTPC Regulations, 1991. R-2 has prayed that the NOE may be discharged as die PIR or the concise statement of material facts has not been furnished to it. Alternatively, it has prayed that a copy of the PIR and the concise statement of material facts may be furnished to it.

6. WE have perused the record carefully and note that while the NOE summarises the allegations against the respondents, they have been furnished with not only a copy of the NOE but also of a copy of the complaint petition of the informant. Thus all material facts have been furnished to the respondents. This satisfies Regulation 51(1)(iv) of the MRTPC Regulations, 1991. However, on principles of natural justice, we have no objection to furnish a copy of the FIR submitted by the DG to the respondents. WE are stating this because the

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Commission had originally referred the complaint petition of the informant to the DG for investigation and report and took a decision to issue the NOE, after the PIR was submitted and considered. The docket orders dated 20th April, 1992, 6th July, 1992 and 1st September, 1992 refer in this connection. In the premises, we direct the office to furnish a copy of the PIR to each of the three respondents within two weeks of the date of this Order. This disposes of the application under consideration. Appliation under Regulation (65)(l)(j) of The MRTPC Regulations, 1991 Read with Regulations 71 & 72 thereof R-2 has moved this application for discharging this enquiry on the ground that the same matter was considered by this Commission in three earlier enquiries and that the decisions thereon are final and binding in this enquiry on the principles of res judicata. The three enquiries referred to in the application are: 1. Registrar of Restrictive Trade Agreements v. Usha Sales Pvt. Ltd., RTPE 8/74 dated 27th Nov., 1975. 2. In Re. Usha Interational Ltd., RTPE No. 15/84 dated 1st April, 1986. and 3. Director General (I & R) v. Usha International Ltd., RTPE 1235/87 dated 26th Oct., 1988.

Furthermore, in its application, R-2 has contended that it transpires from the docket order dated 1st September, 1992, that the DG has mentioned in his PIR, that the impugned trade practices adopted by the respondents amount to a restrictive trade practice in terms of Section 2(o) of the Act, because the respondents had stopped supplies to the informant, a nominated dealer, without any reasonable grounds, and that the said observation of the DG does not take into account the commercial justification for the stoppage of supplies to the informant. The informant has outstanding bills payable to R-2 of more than Rs. 31,000/- relating to electric fans and about Rs. 5,300 / - relating to sewing machines. In view of this, R-2 had no option but to place the informant on advance payment terms as he was a defaulter. As the informant did not place any order on full payment basis with R-2, the question of "supplying goods to defaulting party cannot and does not arise". The informant lost interest in promoting the sale of goods supplied by R-2. The said respondent (R-2) has therefore prayed that, as the allegations in this enquiry are already covered by the three decisions of this Commission (supra), the Notice of Enquiry should be discharged.

In the alternative, R-2 has prayed that an issue may be framed as to whether the three Orders of this Commission will operate as res judicata in this enquiry.

7. THE Advocate for the DG on 5th February, 1993 stated at the Bar that the DG would not be filing any reply to the application. Consequently the matter was posted for arguments. We gave a hearing to Mr. O.P. Dua, Advocate for the DG and Mr. Ravinder Narain, Advocate for R-l and R-2, who was assisted by Mr. Aditya Narain and Mr. Amitabh Marwah, Advocates. Mr. O.P. Dua, Advocate for the DG essentially tried to argue that the three decisions of the Commission to which reference has been given earlier in this order, have cause of action different from the one, in this enquiry. According to him, each one of the three cases can be distinguished from the present enquiry and that consequently the

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principles of res judicata have no application.

8. MR. Ravinder Narain and MR. Aditya Narain pinned their arguments on the binding character of the decisions in these three cases and argued that this enquiry will be barred by the principles of res judicata. However, in the light of the prayers of R-2, in the alternative, in the application that an issue be framed whether the three earlier orders of the Commission will operate as res judicata, we agree to the framing of such an issue. That issue will be the very first issue among others yet to be framed. As we have agreed to furnish a copy of the FIR to the respondents, they may now file their detailed reply and issues will be framed/ as soon as rejoinder, if any, is filed by the DG to the replies to be filed by the respondents. With these observations, this application shall stand disposed of. The respondents are directed to furnish their replies to the NOE within four weeks of the receipt of the copy of the PIR. They shall furnish a copy of their reply to the DG, who on receipt of the same, shall file his rejoinder, if any, within a further two weeks thereof. The case shall stand listed for framing issues on 10th September, 1997. Case disposed of. _______________

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