

(1975) 09 CAL CK 0038
In the Calcutta High Court
Case No : C.R. No. 4256 (W) of 1974

I.T.C. Ltd.

APPELLANT

Vs

M.R.T.P. Commission and Others

RESPONDENT

Date of Decision : 16-09-1975

Acts Referred:

Monopolies and Restrictive Trade Practices Act, 1969 — Section 10, 11, 2, 37(1)
Restrictive Trade Practices (Enquiry) Regulations, 1970 — Regulation 4, 47

Citation : (1976) 46 CompCas 619

Hon'ble Judges : Amiya Kumar Mookerji, J

Bench : Single Bench

Advocate : R.C. Deb, N.C. Chakraborty, S. Sen, R.C. Nag, Rathin Bhattacharyya and Mihir Chakraborty, for the Appellant; Satyabrata Mukherjee, Ranadeb Chowdhury and Samar Banerjee for respondent Nos. 1, 4 and 6, Gouri Mitra, General, Dipankar Ghosh, Bhaskar Sen and D.P. Bhattacharjee, for the Respondent

Judgement

Amiya Kumar Mookerji, J.—This rule is directed against a notice dated 18th of May, 1974, under Regulation 7 of the Restrictive Trade Practices (Enquiry) Regulations, 1970, issued by the Monopolies and Restrictive Trade Practices Commission, calling upon the petitioner and the respondent No. 5 to comply with the provisions of Regulations 14 and 16 of the Restrictive Trade Practices (Enquiry) Regulations, 1970, as the Commission has decided to institute an enquiry into the restrictive trade practices in exercise of the powers conferred on it by Section 10(a)(iv) read with Section 37 of the Monopolies and Restrictive Trade Practices Act, 1969.

2. Petitioner-company (ITC) was incorporated under the Indian Companies Act in the name of Imperial Tobacco Co. of India Ltd. on the 24th August, 1910. It carried on the business of manufacturing and selling cigarettes for domestic and export markets. Respondent No. 5, Vazir Sultan Tobacco Company Ltd. (hereinafter referred to as " VST ") was incorporated in 1930 in the Nizam's State of Hyderabad under the Hyderabad Companies Act, 1930. On 20th May,

1970, the Imperial Tobacco Co.'s name was changed into India Tobacco Co. Ltd. On 1st June, 1970, the Monopolies and Restrictive Trade Practices Act (hereinafter referred to as the said " Act") was brought into force. On and from 1st August, 1970, the Central Government established the Monopolies and Restrictive Trade Practices Commission (hereinafter referred to as "the Commission"). The petitioner-company is an undertaking registered u/s 26 of the Act. It is a dominant undertaking within the meaning thereof having 47% of production, distribution and supply of the total goods produced, distributed and supplied in India. On or about December 9, 1971, the Commission received a complaint signed by twenty-seven consumers requesting for an enquiry and an investigation under Sections 10 and 11 of the Act. In the said complaint, allegations were made that the petitioner and the respondent No. 5 were indulging in several restrictive trade practices. The said complaint was considered by the Commission and it was decided in the month of March, 1972, that it should be referred to the Director of Investigation. Thereafter, the Director of Investigation started a preliminary investigation and issued a letter to the company. The company by its letter dated 3rd May, 1972, addressed to the Director of Investigation asked for a summary of the alleged complaint u/s 10(a) (i) of the Act and by a subsequent letter dated 30th May, 1972, the petitioner made a request to the said Director that they might be given a personal hearing before the Commission. The Director of Investigation forwarded a gist and extracts of relevant portions of the complaint to the petitioner-company. On the 24th June, 1972, the Director wrote to the petitioner that if as a result of the preliminary investigation, the Commission was satisfied that the complaint against the petitioner required to be enquired into, the petitioner would be given full opportunity to meet the allegations which would be enquired into by the Commission. On the 29th September, 1973, the Director wrote to the petitioner that as a result of the preliminary investigation u/s 11 of the Act, a prima facie case regarding certain restrictive trade practices was found against the petitioner and the respondent No. 5. On 20th November, 1973, the petitioner wrote a letter to the Director complaining of violation of principles of natural justice and fair play for nondisclosure of the alleged complaint and order of the Commission directing preliminary investigation. It is also stated in the said letter that the alleged tentative findings could not be and, in fact, were based on the alleged complaint and the impugned trade practices did not and could not amount to restrictive trade practices within the meaning of Section 2(o) of the Act. On the 14th December, 1973, the Director sent a gist of the matters in respect of which the Commission had directed to carry out the preliminary investigation. Again, on the 15th January, 1974, the petitioner by its letter reiterated that in the absence of a copy of the complaint and that of the specific order of the Commission directing preliminary investigation, there had been violation of natural justice and it maintained that the purported gist did not constitute a complaint within the meaning of Section 10(a)(i) of the Act. On the 19th January, 1974, the Director sent a letter enclosing extracts from paragraphs 13 to 15 of the complaint. On the 29th January, 1974, the petitioner again reiterated its request for complete

copy of the complaint and the specific order of the Commission. It also indicated the infirmities in the complaint in the absence of verification as required under Regulation 4 of the Restrictive Trade Practices (Enquiry) Regulations, 1970. It was pointed out that although in the Director's letter of 19th April, 1972, it was stated that the complaint was made by twenty-five consumers, it was then written that the complaint was made by twenty-seven consumers. It was contended by the petitioner in the said letter that the preliminary investigation was being conducted outside the scope of complaint and attempt was being made to make out a new case de hors the alleged complaint. On the 31st January, 1974, M/s. J.B. Dadachanji & Company, advocate, wrote to the Director submitting a note on legal submissions on behalf of the petitioner raising substantial questions of law including interpretation of Section 2(o), Sections 10 and 11 and other provisions of the Act and the regulations as well. Arguments were advanced by a senior counsel on the 16th February, 1974, before the Director of Investigation in a personal hearing given to the petitioner. On the 18th March, 1974, the Director submitted his report to the Commission and in that report the Director prima facie found that the petitioner and the respondent No. 5 were indulging in several restrictive trade practices. On the 1st April, 1974, the India Tobacco Company's name was changed into ITC limited. On the 16th May, 1974, the Commission recorded an order to the effect that, as the complaint received from the twenty-seven consumers had not been properly verified in accordance with Regulation 4 of the RTP (Enquiry) Regulations, 1970, the Commission wrote to the complainants for such verification. Such verification has not been received. The Commission has, therefore, decided to enquire u/s 10(a)(i) of the MRTP Act. However, as the Director of Investigation has gone into the subject-matter of the complaint and made a preliminary investigation regarding the alleged trade practices indulged in by the abovementioned ITC and VST and notwithstanding the fact that the complainant has not verified as required by the Regulation, the Commission has derived knowledge and information from the preliminary investigation report and the Commission has reason to believe that certain practices were being followed by the ITC and VST. Therefore, in exercise of the powers conferred u/s 10(a)(iv) of the Act, the Commission has decided to institute an enquiry u/s 37 of the Act. On the 18th May, 1974, the impugned notice under Rule 7 of 1970 Regulation was served upon the petitioner and the respondent No. 5. The petitioner being aggrieved by the impugned notice, moved this court in an application under Article 226 of the Constitution and obtained the present rule on the 27th July, 1974.

3. Before I deal with the arguments of the parties, it is necessary to refer to certain provisions of the Act.

4. The purpose of the Act is to control concentration of economic power to the common detriment and check of restrictive and monopolistic trade practices. Section 2(o) defines restrictive trade practices. Section 5 provides for establishment of the Commission consisting of a minimum 3 and a maximum 9 members including the Chairman who has been qualified to be a judge of the

Supreme Court or the High Court. Section 10 deals with jurisdiction of the Commission to enquire into monopolistic or restrictive trade practices. Section 11 provides for a preliminary investigation by the Director of Investigation for satisfying the Commission that a complaint requires to be enquired into. Powers of the Commission have been enumerated in Section 12. The Commission shall, for the purpose of any enquiry under the Act, have the same powers as are vested in a civil court under the CPC while trying a suit, in respect of certain matters. Section 37 deals with investigation into restrictive trade practices by the Commission and the practices prejudicial to public interest have been enumerated in Section 38. Section 55 provides an appeal to the Supreme Court on points of law. u/s 66, the Commission have been given powers to make Regulations.

5. It is contended by Mr. Deb, appearing on behalf of the petitioner that the Commission has not acted in good faith. It has exercised its power for collateral purposes. There has been a complete non-application of mind by the Commission. Two different number of complainants was mentioned in two different letters of the Director of Investigation. The Commission knew from the very beginning that the alleged complaint was invalid. Even then, it directed the Director of Investigation to cause a preliminary investigation u/s 11 of the Act. Subsequently, the Commission itself decided not to proceed in the matter relating to the said complaint as it was not verified in accordance with Regulation 4 of the Restrictive Trade Practices (Enquiry) Regulations, 1970. Information, collected during the course of such invalid preliminary investigation, could not lawfully form the basis of the Commission's own knowledge or information within the meaning of Section 10(a)(iv). It is argued that each of the clauses in Section 10(a) is a separate and distinct source of jurisdiction of the Commission and those alternatives are mutually exclusive. Any one of them could not be superimposed on the other. Information derived from an invalid report on an invalid complaint could not constitute the Commission's "information " to enable it to issue a notice under Regulation 7 to institute an enquiry u/s 37 of the Act.

6. The complaint was produced before me. I found that in the first paragraph it was stated " we twenty-five consumers ", but the complaint was signed by twenty-seven persons. The signatures of the twenty-seven persons were counted subsequently. That is the reason for mentioning two different figures in two letters of the Director of Investigation.

7. u/s 10, the Commission may inquire into any restrictive trade practice upon (i) receiving a complaint about the same from any trade or consumer's association which has at least twenty-five members or from twenty-five consumers, (ii) a reference made to it by the Central Government/State Government, (iii) an application made to it by the Registrar, or (iv) its own knowledge or information.

8. Section 11 of the Act provides that in respect of any restrictive trade practice of which complaint is made tinder Sub-clause (i) of Clause (a) of Section 10, the Commission shall, before issuing any process requiring the attendance of the

person complained against, cause a preliminary investigation to be made by the Director, in such manner as it may direct, for the purpose of satisfying itself that the complaint requires to be inquired into. The provision of Section 11 is mandatory. It makes it obligatory upon the Commission on receipt of a complaint to cause a preliminary investigation by the Director of Investigation. Regulation 4 of the Restrictive Trade Practices (Enquiry) Regulations, 1970 (hereinafter referred to as " 1970 Regulations"), lays down that every complaint shall be verified at the foot by the party or parties acquainted with the facts of the case. The person verifying shall specify what he authorised on his own knowledge and what he authorised upon information received and believed to be true. The verification shall be signed by the person or persons making it and shall state the date on which and the place at which it was signed. Regulation 47 provides that failure to comply with any requirement of these Regulations shall not invalidate any proceedings unless the Commission so directs and, subject to the provisions of the Act and these Regulations, the Commission shall have power to regulate its own procedure.

9. So, even without a verification, the enquiry on the basis of the complaint could have proceeded. Non-compliance of Regulation 4 of 1970 could not invalidate the complaint in view of Regulation 47. The Commission decided on May 16, 1974, not to proceed in the matter relating to the complaint. So, until that decision, the complaint was valid. It follows therefore, that the report of the Director of Investigation cannot be said to be invalid inasmuch as it did not relate to an invalid complaint. The report of the Director of Investigation was received by the Commission before 16th of May, 1974. So, assumption of jurisdiction by the Commission u/s 10(a)(i) and exercising powers u/s 11 were neither illegal nor without jurisdiction.

10. Mr. Mukherjee, appearing on behalf of the respondents, contended that four alternatives in. Section 10(a) of the Act are not mutually exclusive. The principle as laid down by the different High Courts in interpreting three clauses in Section 190 of the Criminal Procedure Code should be applied. Reliance was placed on the decision of the Full Bench of the Patna High Court in Bharat Kishore Lal Singh Deo Vs. Judhistir Modak, .

11. Section 190 of the Criminal Procedure Code lays down the various ways in which a Magistrate can take cognizance of an offence. Cognizance can be taken in three ways, (a) upon complaint, (b) upon police report and (c) upon information other than police officer or Magistrate's own knowledge or suspicion, that an offence has been committed.

12. A Full Bench of the Patna High Court held that while considering Section 190 it cannot be treated that the three alternatives upon which a Magistrate may take proceedings are mutually exclusive. It is not correct that a Magistrate while taking cognizance of an offence should have done it under some of the alternatives to the exclusion of the other.

13. A single Bench of the Bombay High Court in *Shankarlal Bholaram Vs. Mohammad Ayyub, Madaran Momin and Others*, . followed the above Full Bench decision of the Patna High Court and held that there is nothing in Sub-section (1) of Section 190 to indicate that the grounds for proceeding are mutually exclusive, and that if one of the grounds is already there, the Magistrate must reject a request to proceed on other grounds.

13. It follows from those decisions that under Clause (a) of Section 190 if the first information report suffers from an infirmity of not containing sufficient factual allegations constituting a cognizable offence, yet there is no bar of taking cognizance of an offence if the information furnishes reasonable grounds to suspect commission of a cognizable offence.

14. Mr. Deb points out that the provisions of Section 190 of the Criminal Procedure Code are not similar to the provisions of Section 10(a) of the MRTTP Act. Under Clause (c) of Section 190 of the Criminal Procedure Code, even on mere suspicion a Magistrate can take cognizance of an offence. Such a provision is absent in Clause (iv) of Section 10(a) of the MRTTP Act. Moreover, the object, purpose and scheme of the two Acts are different.

15. In *Pandit Ram Narain Vs. The State of Uttar Pradesh and Others*, the Supreme Court made a note of caution against construing expressions used in one Act with reference to their use in another Act. The Supreme Court observed that it is not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act. The meaning of words and expressions used in an Act must take their colour from the context in which they appear.

16. In my opinion, provisions of Section 10(a) are mutually exclusive but that does not mean that any information derived from any source or even from an invalid complaint cannot be used by the Commission as its own knowledge and information under Clause (iv). Only limitation is that there could not be any simultaneous enquiry on different alternatives enumerated in Section 10(a).

17. In *Nirlon Synthetic Fibres and Chemicals Ltd. and Another Vs. R.D. Saxena, Director of Investigation and Others*, (Writ petition No. 1409 of 1974) decided on December 13, 1974, by a Division Bench of the Delhi High Court, a complaint of twenty-three persons was received by the Commission. No preliminary investigation was made by the Director of Investigation as the complainants were less than twenty-five persons. The Commission issued a notice under Regulation 7 of the 1970 Regulations upon the petitioner as it decided to hold an enquiry u/s 10(a)(iv) read with Section 37 of the Act. It was contended that a defective complaint could not be treated to be " own knowledge or information " of the Commission. The Division Bench affirmed the decision of the Monopoly Commission and held that there was nothing in Section 10 to impose a limitation on the jurisdiction of the Commission u/s 10(a)(iv) to the effect that the knowledge or information of the Commission must be derived in the course of

another independent enquiry. There is also nothing to indicate that it may not be derived from a complaint made by a single consumer.

17. In my opinion, the Commissioner's jurisdiction to enquire into restrictive trade practices upon its own knowledge or information u/s 10(a)(iv) of the said Act is not restricted only to the information derived from a proceeding u/s 12(3) of the Act. Upon information derived from an invalid or irregular complaint or even from an anonymous letter or from a complaint made by less than 25 consumers the Commission is competent to exercise its jurisdiction u/s 10(a)(iv) of the Act.

18. In the instant case, there was no simultaneous proceeding. By the order dated 16th May, 1974, the Commission did not proceed with the complaint but on the basis of the information derived from the preliminary report of the Director of Investigation, the Commission decided to enquire u/s 37, and it took cognizance u/s 10(a)(iv) of the Act.

19. In my opinion, there was no lack of bona fides on the part of the Commission. It acted within its powers and jurisdiction conferred upon it by the statute. There was no conversion of a proceeding u/s 10(a)(i) into 10(a)(iv) of the Act as urged by the petitioner.

20. In *Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others*, the Supreme Court held that information gathered from the documents even if seized illegally cannot be excluded from evidence. If it is admissible, the court is not concerned how it was obtained.

21. In *H.N. Rishbud and Inder Singh Vs. The State of Delhi*, the Supreme Court held that an illegality committed in the course of an investigation does not affect the competence or jurisdiction of the court for trial. The same propositions have been reiterated in *Munna Lal Vs. State of Uttar Pradesh*, .

22. Therefore, assuming that the complaint was defective, the infirmities in the complaint did not vitiate the report of the Director of Investigation. Obviously, there was no bar on the Commission to use such a report for the purpose of an enquiry u/s 37.

23. Mr. Noni Coomar Chakraborty, who appeared with Mr. Deb for the petitioner, raised two additional points. In the first place, he contended that as the complaint was a nullity the report of the Director of Investigation also was a nullity. Informations derived from such an invalid document could not be the foundation of the Commission's own information.

24. The complaint was not a nullity. It was not void ab initio. It suffered only from some procedural defects. In view of Regulation 47, the complaint remained valid until the Commission decided on 16th of May, 1974, that it did not proceed with the complaint. Therefore, in my view, the report of the Director of Investigation which was submitted to the Commission prior to 16th of May, 1974, was not a nullity.

25. In the second place, Mr. Chakraborty contended that the principles of natural justice had been violated by the Director of Investigation as the petitioner repeatedly requested the Director to supply them with the copy of the complaint. But neither the Commission nor the Director did accede to the prayer of the petitioner. In support of his contention Mr. Chakraborty relied upon the following decisions of the Supreme Court:

A.K. Kraipak and Others Vs. Union of India (UOI) and Others, State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, AIR 1971 963 (SC) The Government of Mysore and Others Vs. J.V. Bhat and Others, Russell v. Duke of Norfolk, [1949] 1 All ER 109 The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others, and also a decision of this court in S. Lal & Co. Ltd. v. P. Jha, Dy. Secretary, Government of Bihar [1975] CHN 298 .

26. It is not disputed that the extracts of the complaint were given to the petitioner. The petitioner was also given an oral hearing by the Director of Investigation in the course of the preliminary enquiry.

27. In S. Lal & Co.'s case, I have considered all those cases referred to by Mr. Chakraborty and observed that the requirement of natural justice depends upon the nature of the power, the conditions under which it has been exercised and its impact on the interest of individual, all these things must be taken into account. Where in the case of arriving at a decision which may have to be based on consideration of policy and expediency, in such a situation there is no duty to give notice or opportunity to be heard orally.

28. The preliminary investigation conducted by the Director of Investigation u/s 11 of the Act is in the nature of a fact-finding investigation. Materials collected by him are for the consideration and satisfaction of the Commission to come to a prima facie conclusion in determining whether or not an enquiry u/s 37 should be instituted. The relevant materials gathered in the preliminary investigation would be examined by the Commission in open court during the course of enquiry u/s 37 of the Act and at that time the petitioner shall have every opportunity to controvert each and every information, document or material that might be brought on record and which might be used by the Commission against the petitioner during the course of the enquiry for arriving at the conclusion as to whether or not the petitioner-company is indulging in any restrictive trade practices or whether such trade practices are prejudicial to the interest of the public.

29. A mere provision for an enquiry at the preliminary stage before coming to a decision in such a context does not make the decision a quasi-judicial one. In Robinson v. Minister of Town and Country Planning [1947] 1 All ER 851 it was held that the preliminary enquiry was for the purpose of informing the mind of the minister and not for considering any issue between the minister and the objectors.

30. In Province of Bombay Vs. Kusaldas S. Advani and Others, Kania C.J.

observed that the respondents' arguments that whenever there is a determination of a fact which affects the rights of parties, as the decision is quasi-judicial, does not appear to be sound. It is broadly stated that when the facts have to be determined by an objective test and when that decision affects the rights of someone, that decision or act is quasi-judicial. The last statement overlooks the aspect that every decision of the executive generally is a decision of fact and in most cases affects the rights of someone or the other. Because an executive authority has to determine certain objective facts as a preliminary step to the exercise of certain powers conferred on it, it does not follow that it must determine those facts judicially.

31. In *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, Subba Rao J. (as he then was) observed whether an administrative Tribunal has a duty to act judicially should be gathered from the provisions of the particular statute and the rules made thereunder, and they clearly express the view that if an authority is called upon to decide respective rights of contesting parties or, to put it in other words, if there is a lis, ordinarily there will be a duty on the part of the said authority to act judicially.

32. In cases where an administrative order abridges or takes away the rights of a citizen without complying with the principles of natural justice, the courts have imported the principles of natural justice or *audi alterant partem* into this area (vide *Union of India (UOI) Vs. K.P. Joseph and Others*,). But in all these cases, there are certain rights of the citizens which are statutory in character and were sought to be affected by an administrative order in violation of the principles of natural justice.

33. In the instant case, the investigation which was conducted by the Director of Investigation was for the purpose of informing the mind of the Commission whether the Commission on the basis of those materials collected would decide to hold an enquiry against the petitioner u/s 37 of the Act. In that investigation, there was no lis between the petitioner and the Director of Investigation. The report of the Director of Investigation is neither a decision nor an administrative order which affects prejudicially the rights of the petitioner. It is urged that the report of the investigation would affect the reputation and goodwill of the petitioner-company. In my opinion, this argument is not well-founded. Unless and until there is a decision by the Commission u/s 37 of the Act, the petitioner's goodwill and business reputation are not likely to be affected.

34. Considering the nature of the powers exercised by the Director of Investigation u/s 11 of the Act and the nature of the enquiry conducted by him, in my view, there is no implied obligation upon the Director to disclose the entire contents of the complaint or allow the petitioner opportunity to refute the allegations made in the complaint at that stage of preliminary investigation. The Director of Investigation is not required to act judicially but at the same time he must act with justice and fair play. Only complaint of the violation of natural justice is, that copy of the complaint and the order of the Commission directing

to hold a preliminary enquiry were not given to the petitioner. In my opinion, when the relevant extracts and lists of the complaint were supplied by the Director of Investigation to the petitioner there has been no denial of justice and fair play. At that stage of enquiry it was not necessary that full text of the complaint or order of the Commission should have been made known to the petitioner when the petitioner would be given every opportunity to refute the charges at the time of the open enquiry u/s 37 of the Act.

35. It is contended by Mr. Deb that the question of any enquiry u/s 37(1) of the Act as to the existence of the trade practice being prejudicial to the public interest could arise only after the conclusion of the first enquiry u/s 10(a) of the said Act as to the existence of restrictive trade practices. The words " come before it" in the said Section 37(1) indicate that the enquiry should be at the instance of a party or authority other than the Commission and do not contemplate a suo motu enquiry. It is the foundation and pre-condition of an enquiry u/s 37(1) of the Act that the restrictive trade practices, which could be the subject of an enquiry under that section, has to come before the Commission from a source other than that of the Commission's own knowledge or information. In other words, there must be a relator who should bring the" trade practice before the Commission for an enquiry to attract the provisions of Section 37(1). The Commission having sought to proceed against the petitioner-company suo motu, and, without any such relator, no enquiry could be instituted under the said section 37(1).

36. Section 37(1) deals with investigation into restrictive trade practice by the Commission. It may enquire into any restrictive trade practices which may come before it for an enquiry and, if, after such enquiry, it is of opinion that the practice is prejudicial to the public interest, the Commission may by order direct that the practice shall be discontinued or shall not be repeated. Against any order passed by the Commission u/s 37 of the Act, there is a provision for an appeal to the Supreme Court u/s 55. The Commission exercises its control over the restrictive trade practices through investigation. Section 10 deals with a preliminary enquiry. In the case of an enquiry under Clause (i) the Commission shall first order for a preliminary enquiry and report by the Director of Investigation u/s 11. In case under Clauses (ii), (iii) and (iv), the Commission also may order such preliminary investigation by the Director under Regulation 19(2) of the 1974 Regulations. Under Regulation 23 of the 1974 Regulations, where the Commission after considering the report of the Director of Investigation is of opinion that an enquiry shall be held into restrictive trade practice, it shall so order such enquiry and the enquiry shall be held in accordance with the procedure prescribed in Chapter IX of the said Regulation. Chapter IX deals with proceedings u/s 37 of the Act. Regulation 19(2)(c) of the 1974 Regulations provides that even under Sub-clause (iv) of Section 10(a) of the Act, the Commission may order a preliminary investigation by the Director of Investigation. In the instant case the preliminary investigation has been held by the Director upon a complaint under Sub-clause (i) of Section 10(a) of the Act.

The Commission after completion of the enquiry at the subsequent stage decided not to proceed on the complaint on the ground that the complaint was not properly verified and in spite of the repeated requests by the Commission to all the complainants to verify the complaint, none of them came forward to verify the same. Under these circumstances the Commission decided not to proceed on the complaint but at the same time it decided to start an enquiry u/s 37 of the Act. It is true that without anything coming before the Commission for an enquiry it cannot direct an enquiry u/s 37(1) of the Act. In the present case, the Commission took that report of preliminary investigation of the Director of Investigation as if it "come before it" for an enquiry and assumed jurisdiction u/s 37(1) of the Act. In my opinion, the assumption of jurisdiction by the Commission u/s 37(1) of the Act is neither illegal nor without jurisdiction. The powers u/s 37 of the Act are not confined to preliminary enquiry by the Director of Investigation. Even without any enquiry, upon "its own knowledge or information", the Commission is competent to direct an enquiry u/s 37 of the Act. So the words "come before it" do not necessarily mean that it would come before the Commission only after an independent enquiry as contended by the petitioner. It is not necessary that to hold an enquiry u/s 37 of the Act, there must be a relator in each and every case and there must be an independent enquiry from other source. In my opinion, without any relator or without any preliminary enquiry, the Commission is competent to institute an enquiry u/s 37(1) read with Section 10(a)(iv) of the Act.

37. It is next contended that the Commission has completely misdirected itself regarding the perspective of the Act. The Commission described the petitioner in the impugned notice as a "monopolistic undertaking" for the purpose of making an investigation u/s 37(1) of the Act. The alleged existing circumstances as stated in the impugned notice do not make it possible for any reasonable body to form an opinion that the petitioner-company indulges in any restrictive trade practices within the meaning of the Act. The opinion, on the basis of which the decision has been taken by the Commission has been formed, if at all, on collateral and extraneous grounds. Both the opinion and the grounds were altogether beyond the scope of the said Act. Those grounds have no bearing whatsoever on the question involved u/s 10(a)(iv) and Section 37(1) of the Act.

38. In the impugned notice the petitioner-company has been described as "monopolistic undertaking". Mr. Mukherjee, appearing on behalf of the respondents, frankly admitted that it was a wrong description and it should not have been there. A wrong description, in my view, does not invalidate the notice, if other things fulfilled the requirements of the statute.

39. In *M.A. Rasheed and Others Vs. The State of Kerala*, the Supreme Court said that where powers are conferred on public authorities to exercise the same when "they are satisfied" or when "it appears to them", or when "in their opinion" a certain state of affairs exists; or when powers enable public authorities to take "such action as they think fit" in relation to a subject-matter, the courts will not

readily defer to the conclusiveness of an executive authority's opinion as to the existence of a matter of law or fact upon which the validity of the exercise of the power is predicated.

40. It has also been observed by the Supreme Court in Rasheed's case , that administrative decisions in exercise of powers even if conferred on subjective terms are to be made in good faith on relevant consideration. The courts inquire whether a reasonable man could have come to the decision in question without misdirecting himself on the law or the facts in a material respect. The standard of reasonableness to which the administrative body is required to conform may range from the court's own opinion of what is reasonable to the criterion of what a reasonable body might have decided.

41. The restrictive trade practices have been defined in Section 2(o) of the Act. " Restrictive trade practices " means a trade practice which has, or may have, the effect of preventing, distorting or restricting competition in any manner and in particular :

(i) which tends to obstruct the flow of capital or resources into the stream of production, or

(ii) which tends to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers unjustified costs or restrictions.

42. The words " may have " indicate that mere possibility of preventing, distorting or restricting competition in any manner may come within the definition of Section 2(o) of the Act. The impugned notice is annexure "P" to the petition. The first reason enumerated in that notice is that ITC is getting some of its brands of cigarette from VST and some other smaller cigarette manufacturing companies. The Director of Investigation in his letter dated 29th September, 1973, has pointed out that trade practice of getting cigarettes manufactured from competitors and paying them different rates of manufacturing charges has or may have the effect of preventing, distorting or restricting competition. Against item IV of the impugned notice, the Director has indicated in the said letter that the above arrangement increases the market share of the company in the cigarette industry and these practices may have the effect of preventing, distorting or restricting competition. It appears that against each and every item mentioned in the said impugned notice, the reasons have been stated by the Director of Investigation in his said letter. It is well-settled that if reasons have been stated for the formation of opinion, sufficiency of that reason cannot be canvassed in proceeding under Article 226 of the Constitution. So, I am unable to accept the contentions of Mr. Deb that the grounds as appearing from the impugned notice have no bearing on the question involved u/s 10(a)(iv) and Section 37(1) of the Act. It could not be said that the formation of opinion was made on collateral and extraneous grounds or no reasonable person could form such an opinion on the basis of the materials placed before him.

43. It is strenuously argued by Mr. Deb that the conclusion arrived at in the impugned notice that the petitioner-company is a monopolistic undertaking is without any basis and is against the evidence and information on records. No enquiry has been held so far into the question as to whether the petitioner-company is a monopolistic undertaking or not within the meaning of Section 2(j) of the Act. It is contended that the said question is irrelevant and immaterial for the purpose of the purported enquiry u/s 10(a)(iv) and Section 37(1) of the Act.

44. On 25th day of July, 1975, Triloki Nath Pandey, Secretary to the Monopolies and Restrictive Trade Practices Commission, affirmed an affidavit in pursuance of the leave granted to him by this court on 24th July, 1975, wherein he said that the Director of Investigation did not carry out any investigation u/s 10(b) of the MRTP Act and confined his investigation to restrictive trade practices alleged to have been carried on by the petitioner-company and Vazir Sultan Tobacco Company Ltd. In the premises, no report has been submitted by the Director of Investigation regarding any monopolistic trade practices carried on by the petitioner-company and the respondent No. 5 for the consideration of MRTP Commission. In view of the above statements made in the affidavit, it is not necessary for me to deal with the point urged any further.

45. Learned Advocate-General, appearing on behalf of the respondent No. 5, Vazir Sultan Tobacco Company Ltd., adopted the arguments of Mr. Deb and contended that there was no material on the basis of which the Commission had reason to believe that restrictive trade practices have been indulged in by the respondent No. 5. Reliance was placed on the decision of *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, .

46. In *Barium Chemical's* case, the meaning of the word " opinion " of the Central Government as contained in Section 237(b) of the Companies Act, 1956, was construed by the Supreme Court. It was observed by Shelat J. (as he then was), that there can be no doubt that where a legislation has provided for the opinion of the Government and not of the court, such an opinion is not subject to a challenge on the ground of propriety, reasonableness or sufficiency. But the authority is required to arrive at such an opinion from circumstances suggesting what is set out in three different sub-clauses of Section 237(b) of the Companies Act. If the circumstances were not existent, " can the Government say the same thing where the circumstances relevant to the clause do not exist ? " Obviously, if those three conditions are not satisfied, the opinion could not be formed. There is no such condition in the MRTP Act. Therefore, in my view, the said observations of the Supreme Court in *Barium Chemical's* case is of no assistance to the respondent No. 5.

47. I have already said hereinbefore that the reasons have been stated by the Director of Investigation in his letter dated 29th September, 1973, against each and every item mentioned in the impugned notice. It is for the Commission to come to a final conclusion in an enquiry to be instituted u/s 37 of the Act whether respondent No. 5 have indulged in restrictive trade practices which are

prejudicial to the public interest or not. If the petitioner and respondent No. 5 were aggrieved by any such decision, they could prefer an appeal to the Supreme Court u/s 55 of the Act. The petitioner and respondent No. 5 have come up to this court only against the impugned notice under Regulation 7 of the 1970 Regulations. No enquiry has been started as yet.

48. As all the points raised by the petitioner fail, this rule is discharged. There will be no order as to costs.

49. All interim orders are vacated.