

(1997) 04 NCDRC CK 0068

In the National Consumer Disputes Redressal Commission

JAY SHREE TEA and INDUSTRIES LTD.

APPELLANT

Vs

JANTA TRUCK UNION

RESPONDENT

Date of Decision : 03-04-1997

Acts Referred:

Citation : 1998 1 CPJ 35 : 1998 1 CPR 619

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

Final Decision : Enquiry disposed of

Judgement

1. THIS shall dispose of the Notice of Enquiry (NOE) issued on 12th July, 1991, by the Commission under Section 10(a)(i) read with Section 37 of the MRTP Act charging the Janta Truck Union (hereinafter referred to as the respondent union) and its office bearers of having indulged in certain restrictive trade practices falling within the provisions of Sections 33(1)(a), (c), (ja) and (f) read with Section 2(o) of the MRTP Act, 1969. Briefly the facts contained in the application moved by the complainant Jayshree Tea Industries Ltd. on the basis of which the NOE was issued, are as follows : 1. The members of the respondent union do not have sufficient number of trucks to fulfil the requirement of the complainant company and they do not allow the non-members to operate in the area in which the complainant company is interested. In case non-members try to ply their trucks for lifting the goods of the complainant, they are assaulted by the members of the respondent union.

2. THE respondent union dictates the rates that will be charged by its members which are higher than the rates prevalent in the open market and also those quoted by non-members. The complainant Company engaged one M/s. Shiv Shakti Roadlines, a non-member of the respondent union to carry its goods. M/s. Shiv Shakti Roadlines sent two trucks to lift the goods at the factory of the complainant. The members of the respondent union did not allow the drivers of M/s. Shiv Shakti Roadlines to lift the goods but threatened them with dire consequences and as a consequence the trucks had to return without carrying the goods.

The rates quoted by M/s. Shiv Shakti Roadlines were much lower than the rates quoted by the respondent union. 5 The respondent union does not permit the plying of the complainant's trucks for loading its own goods. The driver of the truck complained to the Manger of the complainant that he had been threatened with dire consequences. 2. On the basis of the allegations in the complaint, the NOE was issued calling upon the respondent union and its office bearers to file a reply and defend themselves. A detailed reply was filed by the respondents to the NOE. The reply is summarised herein below : 1. The respondents have preliminary objections to this enquiry as : (a) the complainant has no locus standi to move this Commission under the MRTP Act. (b) The complaint is vague and irrelevant and the allegations are baseless, unsubstantiated, misconcieved and disclose no cause of action. (d) The existence of a restrictive trade practice is a condition precedent to the exercise of jurisdiction by the Commission. The rule of reason has to be applied and not the principle of per se. (c) The requisite particulars and material have not been adduced in proof of the allegations. Therefore, the complaint deserves to be dismissed in limine. 2. The respondents deny that they are indulging in any restrictive trade practice at all. 3. The respondent union is a loose union not registered and thus cannot be sued. 4. The averments made in the complaint have no bearing to the case and merit no consideration.

3. IT has not been established that the trucks in question hired by the complainant were detained by the respondent union. The respondents deny that the drives of M/s. Shiv Shakti Roadlines were prevented by them from lifting goods or that they were threatened.

4. THE rates charged by the respondent union are lower than those of M/s. Shiv Shakti Roadlines or other non- members. In any case if the Commission were to conclude that the respondents are indulging in the alleged restrictive trade practices, they are entitled to the gateways enumerated in Sections 38(1)(a), (b), (c), (e), (h) and (k) of the MRTP Act. Issues were framed on 10th April/1992 which are as under : 1. Whether the Notice of Enquiry is not maintainable for the reasons stated in the written reply filed by the respondent ? 2. Whether the respondents or any of them have indulged in restrictive trade practices as made out in the Notice of Enquiry? 3. If issue No. 2 is decided in the affirmative, whether such restrictive trade practices are not prejudicial to public interest under any of the clauses of Section 38 of the MRTP Act, 1969 ? 4. Relief. 3. Two witnesses were examined on behalf of the complainant. They are Shri M.M. Mittal, proprietor of M/s. Shiv Shakti Roadlines and Shri S.S. Bhalotia, Works Manager of the complainant company. The two witnesses filed their affidavits by way of examination-in-chief and were cross examined by the nsel for the respondents. No evidence was adduced by the respondents at all. In fact after 26th April, 1996 when Shri A.P. Singh, Counsel for the respondents withdrew from the case, none appeared on behalf of the respondents subsequently during the hearings despite notices sent to them by RPAD. 4. In the absence of any controverting evidence and in the absence of any arguments advanced by the

respondents, we have no option except to deal with the reply filed by the respondents to the NOE and adjudicate in the matter. 5. The first issue deals with the maintainability of the NOE in the light of the preliminary objections taken by the respondents. Essentially, the respondents' argument is that the complainant has no locus standi to move this Commission. This is totally incorrect as the complainant company as a consumer of services rendered by the respondent union has locus to move the Commission under Section 10(a)(i) of the Act. The only other important objection taken by the respondents is that the rule of reason and not the principle of per se should apply in this case. In cases relating to the restrictive trade practices, the Commission has been giving decisions analysing facts and the legal propositions in detail. To presume that the rule of reason will not be applied by the Commission has no basis at all. 6. The other preliminary objections are too general and do not merit any consideration whatsoever. The first issue is, therefore, decided against the respondents and in the negative. 7. The second and third issues are taken up together. We have the detailed affidavit of Shri M.M. Mittal and Shri S.S. Bhalotia. Nothing was brought out against the charges in the NOE at the time of cross examination of these two witnesses. All the documents filed by the complainant are in support of the charges in the NOE. Even the reply of the respondents to the NOE has no substance whatsoever except bare denial of the charges. It would have been another matter if the respondents had adduced some evidence in support of the denial of the charges. We have no hesitation in arriving at the conclusion that the alleged restrictive trade practices stand established in the light of the affidavits of Shri Mittal and Bhalotia and the documents, the complainant has filed in support. 8. Insofar as the pleading of gateways is concerned, the respondent union and its office bearers have not adduced any evidence or shown to us as to how they are entitled to the gateways. We have absolutely no hesitation in rejecting this plea of the respondents for gateways and hold that the restrictive trade practices already established are gravely prejudicial to public interest. We have certain decisions of this Commission where we have taken a similar view. Two of them for illustration are 1. Mewar Chamber of Commerce and Industry v. Bhilwara District Truck Transport Union and Ors., (1995 3 CTJ 7) : 2. In the matter of : Truck Operators" Union, Nilokheri, District Karnal, Haryana, (1995 3 CTJ 70) In which the Commission has held that similar restrictive trade practices as in this case need to be prohibited and ceased. Similarly, we direct that the respondents shall cease the restrictive trade practices indicated in the NOE and desist from indulging in them in future. The respondents shall file an affidavit in compliance within four weeks from the date of this order. The respondent union shall pay an amount of Rs. 1000/- to the complainant by way of costs. Enquiry disposed of.