
(1999) 02 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

KHAJAN SINGH

APPELLANT

Vs

DLF Universal Ltd.

RESPONDENT

Date of Decision : 11-02-1999

Acts Referred:

Citation : 2000 3 CPJ 12

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

Final Decision : Application accepted

Judgement

1. THE applicant has approached this Commission under Section 13(2) of the Monopolies and Restrictive Trade Practices Act, 1969 (the MRTP Act for brief) for review of the order passed by this Commission on 9th October, 1998 summarily rejecting the complaint as not maintainable at the stage of its preliminary hearing. Learned Advocate Mr. Aditya Narain for the respondent has resisted this application at the time of hearing without filing any formal reply thereto.

2. THE main ground on which the complaint of the applicant came to be summarily rejecting as not maintainable at the stage of its preliminary hearing was on interpretation of Section 2(1)(d) read with Section 2(1)(m) of the Consumer Protection Act, 1986 (the C.P. Act for brief). It was held by this Commission at that stage that, being a Company registered under the Companies Act, 1956 (the Companies Act for brief), it would not be a person within the meaning of Section 2(1)(m) and as such not a consumer within the meaning of Section 2(1)(d) of the C.P. Act. It is not possible for this Commission to distinguish the binding ruling of the High Court of Delhi in the case of Ballarpur Industries Ltd. v. The Director General (Investigation and Registration) reported in (1988) 64 Company Cases at P. 884, on the ground that the word "consumer" has been defined in the Explanation to Section 38 of the MRTP Act. At this stage it would be quite proper to look at the binding dictum of law pronounced by the Hon'ble Supreme Court in its ruling in the case of Ballabhdas Mathuradas Lakhani & Ors. v. Municipal Committee, Malkapur, reported in AIR 1970 Supreme Court at P. 1002, to the effect that a binding ruling cannot be

distinguished on the ground that it is sub silentio or that a particular provision of law has not been considered by the Court in question. In that view of the matter, it is not possible for us to agree with the submission urged before us by learned Advocate Mr. Samy for the applicant that, since the word "consumer" has been defined in the Explanation to Section 38 of the MRTP Act, we need not follow the binding ruling of the High Court of Delhi in the case of Ballarpur Industries (supra).

Learned Advocate Mr. Samy for the applicant is however on a firmer footing in view of the Division Bench ruling of the High Court of Delhi in the case of Ravi Kant v. National Consumer Disputes Redressal Commission, reported in 66 (1997) DLT 66=1997 (40) DRJ at P. 775. It has been held therein that a Company would be a person within the meaning of Section 2(1)(m) of the C.P. Act. The aforesaid Division Bench ruling of the High Court of Delhi is binding to this Commission in view of the Full Bench ruling of this Commission in the case of The Director General (Investigation and Registration) v. Holy Angels School, reported in (1998) 6 CTJ at P. 129. As pointed out hereinabove, in its ruling in the case of Ballarpur Industries (supra), the High Court of Delhi has taken the view that the word "consumer" has not been defined in the MRTP Act and its definition for the purpose of the MRTP Act should be adopted from its definition contained in the C.P. Act.

3. IT is difficult to agree with the submission urged before us by learned Advocate Mr. Aditya Narain for the respondent to the effect that the aforesaid Division Bench ruling of the High Court of Delhi in the case of Ravi Kant (supra), is distinguishable in view of Section 2(y) of the MRTP Act. IT has been provided therein that "words and expressions used but not defined in this Act (the MRTP Act) and defined in the Companies Act, 1956 (1 of 1956), have the meanings respectively assigned to them in that Act". According to learned Advocate Mr. Aditya Narain for the respondent, the MRTP Act provides for various provisions pertaining to Companies, Undertakings and like Corporate Bodies and their meanings will have to be ascertained in the context of the Companies Act if definitions thereof are not found in the MRTP Act. According to learned Advocate Mr. Aditya Narain for the respondent, the provisions relating to Companies and Undertakings and like Corporate Bodies in the MRTP Act have been brought on the Statute Book in contra-distinction with the word "consumer" occurring in Section 10(a)(i) and Section 36B(a) of the MRTP Act. We are unable to accept the aforesaid submission urged before us by learned Advocate Mr. Aditya Narain for the respondent for the simple reason that the word "person" has been defined neither in the MRTP Act nor in the Companies Act. In that view of the matter, reference to the Companies Act for the purpose of ascertaining the meaning of the word "person" in accordance with Section 2(y) of the MRTP Act will serve no useful purpose. As pointed out hereinabove, in view of the binding ruling of the High Court of Delhi in the case of Ballarpur Industries (supra), the definition of "consumer" for the purposes of the MRTP Act will have to be adopted from its definition contained in the C.P. Act. According to the definition of

"consumer" contained in Section 2(1)(d) of the C.P. Act, a consumer has to be a person in the first instance. As pointed out hereinabove, the word "person" has not been defined in the MRTP Act. It has not been defined in the Companies Act either. In that view of the matter, its meaning will have to be ascertained from its definition contained in Section 2(1)(m) of the C.P. Act in the context of the definition of "consumer" contained in Section 2(1)(d) thereof. Since the High Court of Delhi in its aforesaid ruling in the case of Ravi Kant (supra), has taken the view that the definition of "person" contained in Section 2(1)(m) of the C.P. Act would include a Company and since the aforesaid ruling of the High Court of Delhi in the case of Ravi Kant (supra) would be binding to this Commission by virtue of the Full Bench ruling of this Commission in the case of Holy Angels School (supra), we have to accept the submission urged before us by learned Advocate Mr. Samy for the applicant that the applicant in the present proceeding would be a consumer within the meaning of Section 36B(a) of the MRTP Act and its complaint there under would be maintainable.

4. IN view of our aforesaid discussion, we are of the opinion that this Review Application deserves to be accepted and the order passed by this Commission on 9th October, 1998 summarily rejecting the complaint of the applicant as not maintainable deserves to be recalled. IN the result, this Review Application is accepted. The order passed by this Commission on 9th October, 1998 in C.W. No. 252/98 is recalled and the matter is ordered to be restored to file for appropriate judicial orders holding it maintainable under Section 36B(a) of the MRTP Act. It is however clarified that this order shall not be construed as maintainability of the aforesaid complaint of the applicant if otherwise it is not maintainable in law. There shall be no order as to costs on the facts and in the circumstances of the case. Application accepted.