

(2002) 10 SC CK 0003
In the Supreme Court Of India
Case No : Civil Appeal 9337 of 1994

Kirloskar Oil Engines Ltd.

APPELLANT

Vs

M.R.T.P. Commission and Others

RESPONDENT

Date of Decision : 31-10-2002

Acts Referred:

Monopolies and Restrictive Trade Practices Act, 1969 — Section 2

Citation : (2002) 10 JT 53

Hon'ble Judges : S. B. Sinha, J;H. K. Sema, J;G. B. Pattanaik, J

Bench : Full Bench

Final Decision : Allowed

Judgement

1. This appeal by Kirloskar Oil Engines Ltd. is directed against the order of the M.R.T.P. Commission holding that the appellant has indulged in the restrictive trade practice as alleged in the notice of inquiry and imposing penalty by way of compensation and cost of the claim-jant. The impugned order indicates that the commission came to the ultimate conclusion that the appellant has indulged in restrictive trade practice on the basis of three allegations made in the complaint in question. In course of inquiry before the commission the appellant filed an objection appending some documents, but ultimately did not lead any evidence to prove those documents. On 20th January, 1993 an application had been filed by the appellant before the commission for permission to lead evidence, but that application stood rejected on a finding that sufficient opportunity had been given but the appellant had not availed of that opportunity. One of the contentions raised in this Court by the appellant is with regard to the refusal of the commission to grant an opportunity to lead evidence for establishing the correctness of the documents that were appended to the objection filed by the appellant. Having regard to appellant's own statement in the course of inquiry and his conduct, we do not find any fault on the part of the commission in not permitting the appellant to lead evidence at a later stage.

2. Notwithstanding the aforesaid conclusion of ours, it yet remains to be

considered whether the ultimate finding that the appellant had indulged in the restrictive trade practice can be sustained. The expression "restrictive trade practice" has been defined u/s 2(o) of the Monopolies and Restrictive Trade Practices Act, 1969 to mean a practice which has or may have the effect of prevailing, distorting or restricting competition in any manner and in particular which tends to obstruct the flow of capital or resources into the stream of production of 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.

3. Having regard to the aforesaid definition of restrictive trade practice and on examining the materials on the basis of which the commission ultimately came to a finding that there has been a restrictive trade practice, we are of the opinion that the necessary ingredients for establishing indulgence of restrictive trade practice has not been found or established. The complainant, though noticed, has not been present in the court. On behalf of the director general Mr. Kailash Vasdev, learned senior counsel, however, states that at least so far as the third allegation of inquiry is concerned, the director general in the course of inquiry has recorded the statement and has given a finding on that score and the commission had not committed any error in coming to the ultimate finding as to whether the appellant has indulged in the restrictive trade practice or not. As we find the so-called conclusion of the director general, which was of a preliminary nature, was only on the basis of oral evidence and no documentary evidence had been adduced before the director general. That apart, on the basis of that inquiry alone it is difficult for us to sustain the ultimate conclusion of the monopoly commission that the appellant has indulged in the restrictive trade practice inasmuch as there has been no finding as to the ingredients engrafted in Section 2(o)(i) or (ii).

4. In this view of the matter, the conclusion that the appellant had indulged in the restrictive trade practice as alleged in the notice of inquiry cannot be sustained and we set aside that conclusion. Consequently, the ultimate direction regarding payment of money and cost of claim, cannot be sustained. In the aforesaid premise, the impugned order of the commission is quashed and the appeal is allowed.