

(1998) 01 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

MARUDHAR TRUCK OPERATORS ASSOCIATION (REGISTERED)	APPELLANT
Vs	
BARMER ZILA TRUCK OPERATORS' UNION	RESPONDENT

Date of Decision : 08-01-1998

Acts Referred:

Citation : 1998 3 CPJ 25

Hon'ble Judges : Sardar Ali Khan , U.P.Singh J.

Final Decision : NOE discharged

Judgement

1. THIS order shall dispose of a Restrictive Trade Practices Enquiry instituted under Section 10(a)(i) and Section 37 of the Monopolies and Restrictive Trade Practices Act, 1969 and Regulation 51 of the Monopolies and Restrictive Trade Practices Commission Regulations, 1991. (respondent in brief). On receipt of a complaint from Marudhar Truck Operators" Association (Registered), 21, Automobiles Market, Industrial Area, Barmer- 344001 (complainant in brief) and after hearing Mr. B.C. Parakh, Counsel for the complainant, the Commission issued notice to all the five respondents. Since the notices sent to the respondents were received back with the remark "refused", the Commission left with no option except to proceed ex parte. After hearing the Advocate and going through the annexures, the Commission was satisfied that this is a fit case to be enquired into and ordered issuance of Notice of Enquiry.

2. NOTICE of Enquiry (NOE) was issued against the respondents under Sections 10(a)(i) and 37 of the MRTP Act. Contents of NOE are reproduced below for proper adjudication of this case: "Whereas respondent No. 1, namely, Barmer Zila Truck Operators" Union is an Association of truck owners/operators in Barmer (Rajasthan) and is inter alia engaged in providing transport services on payment and respondent Nos. 2 and 3, namely Shri Govind Ram Bishnoi and Shri Shankar Lal Pahadaiya are Vice-Presidents, and Shri Chima Ram Chaudhary and Shri Chain Singh Bhatti are Secretaries. And whereas the Commission has information that the registration of the respondent Union was issued by the Registrar of Trade Union, Government of Rajasthan, Jaipur, which has since been

cancelled on 14.9.1993. It is also learnt that the President of the respondent Union, namely, Shri Abdul Hadi had already resigned from his post two years back, but the name of Shri Hadi was used in the price-lists and for other illegal rules and regulations. It is also learnt that Shri Hadi, the then President of Barmer Zila Truck Operators Union had also informed the Collector, Barmer, "giving his resignation two years back from respondent Union".

And whereas the complainant, namely, the Marudhar Truck Operators" Association is registered with the Registrar of Trade Union, Jodhpur, under the Trade Union Act and is carrying on the business for transportation of goods and has filed an application under Section 10(a)(i) stating that the said respondents are indulging in the following restrictive trade practices : 1. That the respondents are not allowing any truck owner/operator, who is not a member of the respondent Union, to lift the goods from Barmer district for transportation. 2. That no incoming truck is allowed to lift the goods from Barmer District for any other destination and the same is forcibly sent back empty without loading any goods. That if any person wants to carry goods in his own truck, he is permitted to do so only when he has obtained the permission slip from the respondent Union and that permission is issued after paying the specified amount of money under the head of "Union Subscription".

That the respondent Union is having exclusive monopoly in transport service dealings and has totally abolished free choice of the consumers/users and the owners of the trucks and even in Barmer District, if one is to send goods outside Barmer District, he is forced to send his goods through the members of the aforesaid Union alone and none else and for it, the respondent Union is using coercive methods.

3. THAT the employees and members of the respondent Union take law into their hands to prevent other truck owners to provide transport service to the bona fide industries, consumers etc. That the respondent Union restricts the free transport trade and monopolises the transport services within the territory of Barmer District.

4. THAT the respondents penalise the transporters, who do not obtain the permission slip from the respondent Union and penalise such members upto Rs. 500/- in arbitrary manner but receipts are issued under the name and style "Charity/Donation" and it is specifically mentioned that funds will be collected by way of member fee, donation, subscription, penalty, fund and compensation, which is prejudicial to the public at large. That the respondent Union has abolished the free and healthy competition of transport services within Barmer District. The respondent Union has no power to frame such rules and regulations, which control the free flow of transportation of goods. That the respondent Union arbitrarily charges price/freights of issuing mandate in charging price at an unreasonable level. In response to the increase in freight list, the Barmer District Grain Business Association has closed down their business since 9th April, 1995.

5. THAT the respondent Union had fixed the commission of 3% for the Commission Agents, whereas the prevailing rate in the market for Commission Agents is 5%. This rule of the respondent Union has caused economical loss to the agents who render their services as Commission Agents for the transport service.

6. THAT the truck owners have to register their names in the list with the respondent Union and truck owners can get goods for transportation as and when the concerned list is taken up for clearance by the respondent Union. As such, the transporters have to wait for 7-20 days for loading the truck otherwise transporters are compelled to go empty without goods from Barmer District. The transporters have to accept the material and destination as per directions of the respondent Union. That if any person who obstructs the business proceedings and order of the respondent Union, he will be penalised upto Rs. 500/- and Rs. 100/- will be recovered as a compulsory donation as recovery of compensation for the disobedience of the order/directions of the respondent Union.

That according to the Indian Trade Union Act, the respondent Union is not meant for fixing such kind of freight or frame such Rules or Regulations for controlling the transport business. Controlling the freights and collection of funds is contrary to the Indian Trade Union Act, which is prejudicial to the public at large.

7. THAT the respondent Union has compelled the consumers for minimum supply of goods for loading which means a consumer will have to supply minimum 13 tonnes material, whereas as per the Motor Vehicles Act and Rules, no truck can carry goods more than 9/10 tonnes. The respondent Union compels the consumers of Barmer District to pay freight for minimum 13 tonnes which is prejudicial to the public interest at large. That the respondent Union has issued instructions/Trucks in question had lifted the material according to the Union Rules." This rule clearly indicates that no truck will be allowed to transport the goods according to his choice, but had to act, according to the prescribed Rules of respondent Union.

8. THAT the respondent Union has closed down all the outgoing ways connecting by roads to the other parts of the country establishing various branches at Shiv, Sindari, Baitu, Ram Gi Ki Gole, Dhorimanna and Barmer and established other branch offices, who detail the trucks who have not obtained the permission slip and had not paid the subscription and fare/ freight according to the tariff list of the respondent Union. That the respondent Union is indulging in the hooliganism and forcibly preventing the members of the complainant Association from engaging the services of other truck operators. The respondent Union is also restricting other persons from transporting the goods through their own trucks. That the business men and industrialists of Barmer District had filed their representation about the said restrictive trade practices of the respondent Union before the Collector, Barmer on 8.4.1995.

9. THAT the Bentonite Association of Rajasthan, situated at Jodhpur, had also

filed a complaint before the Divisional Commissioner, Jodhpur on 8th April, 1995 informing that the complete production of Mines Industry had also been closed down due to the act of respondent Union.

10. THAT the respondent Union is an organisation of such persons who use their coercive methods against consumers of transport service at Barmer District. In this matter, the complaint has also been filed at the Gudamalani police station. That the respondent Union is charging Rs. 20/- for subscription/ chanda in addition to fare/freight being charged from the consumers. The trade practice of not allowing Union members to carry goods or not allowing the complainant to carry goods in their own trucks; or allowing the non-members or the complainant to carry goods in its own trucks on payment of certain amount/ subscription to the respondent tantamounts to a deemed restrictive trade practice falling under Sections 33(1)(i), (j) and 33(2); also manipulation of conditions of delivery with a view to causing unjustified cost/ restrictions attracting Section 2(o)(ii) of the MRTP Act, 1969. Such trade practices prevent/distort or restrict competition in the transport business and thereby attract the provisions of Section 2(o)(ii) of the MRTP Act/1969." 3. On the day of hearing, Mr. Narottam Vyas, Advocate appeared on behalf of the respondents and prayed for time to file the reply. The respondents filed their reply controverting the allegations levelled by the complainant. Since the complainant did not propose to file the rejoinder, the following issues were framed : 1. Whether the respondent is or has indulged in the restrictive trade practices as mentioned in the Notice of Enquiry ? 2. If the answer to the foregoing issue is in the affirmative, whether the restrictive trade practices are not prejudicial to public interest? 3. Relief ? My answers to the above issues are as follows : 1. In the affirmative. 2. In the affirmative. 3. As per the final order

The reasons for my giving the above conclusions have been discussed in this order in the succeeding paragraphs. 4. However, on the same date, namely 27.11.1995, after framing the issues, both the parties agreed that this matter can be disposed of on the basis of their affidavit and counter- affidavit. Liberty was given to both the parties to file their evidence by way of affidavit/counter-affidavit. The complainant Association filed its evidence by way of affidavit of one Shri Chetan Raj Lunia, Secretary. The respondent Union failed to file any counter-affidavit in support of their contentions brought out in their reply. 5. We gave a hearing to Mr. B.C. Parakh, Advocate for the complainant and Mr. Narottam Vyas, Advocate for the respondents. As prayed, liberty was given to both the parties to file their written synopsis in support of their arguments. Written synopsis was filed by the applicant only. 6. On critical analysis of the material on record and as admitted by the respondents in their reply, I find that the respondent No. 1 namely Barmer Zila Truck Operators was registered under the Indian Trade Unions Act, 1926 vide Registration No. 29/84 and this registration was cancelled by the Registrar, Trade Unions by order dated 20.7.1993. The members of the respondent Union raised a demand for enhancement of tariff for transportation of goods which was not agreed to by the business community trading at Barmer.

This dispute took ugly turn when the business community took the matter to the office of the District Administration, Barmer and the respondent Union started an agitation which could not be controlled by the police authorities (Station House Office, Kotwali, Barmer). A criminal complaint under Sections 384, 467, 471, 420 and 120-B of the PIC was registered against the respondent Union vide FIR No. 1231. The building owned by it was sealed and forcible possession of the campus was also taken over by the aforesaid police authorities in order to suppress the agitation. The respondent Union thereupon approached the Collector, Barmer but with no results. Left with no other alternative, the respondent Union filed a Civil Writ Petition No. 1136 of 1995 in the Hon"ble High Court, Jodhpur with a prayer to direct the police to hand over the possession of the office and campus premises. Judgment is still awaited. 7. I have also gone through the Rules of the Barmer Zila Truck Operators" Union i.e. the respondent. Some conditions/rules are mentioned below in order to have a clear picture of the deeds of the respondent Union. Condition 7(1) of Annexure-I specifies that funds will be collected by way of Member fee, donation, subscription, penalty, fund and compensation. Freight list of the respondent as enclosed to the complaint vide Annexure 3 shows the restrictions on the fee transport trade within the territory of Barmer. At the last page of this Annexure, there are 9 Rules framed by the respondent, which are prejudicial to the public interest. Rule 5 of Annexure 3 is for minimum supply of goods at 13 tonnes whereas as per Motor Vehicles Act maximum carriage can be 9 to 10 tonnes only. As per Rule 7 of Annexure 3, commission for the commission agents had been fixed at 3% instead of 5% arbitrarily thus, causing economical loss to the agents, who render their services. According to Indian Trade Union Act, respondent cannot fix such kind of freight or frame such rules for controlling the transport business. 8. The respondent Union had increased the rates of transportation arbitrarily as per Annexure 3-A, on account of which Barmer District Grain Business Association has closed down their business. 9. As established vide Paras 52, 46 and 45 of Annexure 2, the truck owners have to register their names in the list of the respondent for carrying the goods otherwise, they are compelled to go empty from Barmer. 10. Truck owners, who disobey or obstruct the business of the respondent are to be penalised upto Rs. 500/- and Rs. 100/- will be recovered as a compulsory recovery. In support of this, there are ample receipts on record. 11. Perusal of the receipts enclosed to Annexure 2 of the complainant shows that it is mentioned at the bottom portion of the receipts that "truck in question has lifted the material according to the UNION RULES". Hence, it is established that no truck is allowed to carry goods against the prescribed rules of the respondent Union. 12. We have further noticed that the respondent Union has its branches at most of the outlets of Barmer, who detain the trucks who have not obtained the permission slips from the respondent Union. 13. After perusal of the Rules of the respondent Union, some of which have been summarised above, we hold that the practice of not allowing the complainant Union members to carry goods in their own truck, or allowing the complainant Union or non-members to carry goods in their trucks on payment of certain subscription to the respondent attracts the

provisions of Sections 33(1)(j) and 33(2) of the MRTTP Act and tantamounts to be restrictive trade practices. We further hold that the trade practices of the respondent Union which prevent/ distortor restrict the competition in the transport business or manipulation of conditions of delivery with a view to cause unjustified cost/restrictions comes under the purview of Section 2(o)(ii) of the Act. Hence, we hold that the respondent has indulged in the restrictive trade practices, which are prejudicial to public interest. Accordingly, we pass "Cease and Desist Order" against the respondent and direct that the respondent shall not indulge in such or similar trade practices in future as mentioned in the Notice of Enquiry. 14. The respondent is also directed to pay the cost of the proceedings to the complainant Association, which we assess at an amount of Rs. 10,000/- within 4 weeks from the date of issue of this order. The respondent is further directed to file an affidavit of compliance within a further 4 weeks" time. 15. A copy of this order be sent to both the parties under R.P.A.D. NOE discharged.