(1996) 03 DEL CK 0051

In the Delhi High Court

Case No : Civil Writ Petition No. 665 of 1996 and Civil Writ Appeal No''s. 547, 556, 666 and 683 1996

R.C. Sood and Co. (P) Ltd. APPELLANT

Vs

Monopolies and Restrictive Trade Practices Commission RESPONDENT

Date of Decision : 21-03-1996

Acts Referred:
Monopolies and Restrictive Trade Practices Act, 1969 — Section 12

Citation : (1996) 86 CompCas 626 : (1996) 62 DLT 272 : (1996) 38 DRJ 118

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : M.L. Sachdev, V.P. Sharma and Avnish Gupta, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) RULE.

(2) By this writ petition, the petitioners challenge the notice issued by the first respondent dated June 29, 1994 calling upon the petitioners to appear before it in connection with the application of the second respondent u/s 12-B of the Monopolies and Restrictive Trade Practices Act, 1969 (for short ''the Mrtp Act'') claiming compensation from the petitioners. Briefly stated, the facts are as follows:-

(3) The second respondent who is a member of Eros Garden Colony, Charmwood Village Suraj Kund Welfare Association, booked a flat with the petitioners in Eros Garden Colony, Charmwood Village. In the year 1993 possession of the flat was taken by the second respondent. On April 6, 1994 the second respondent filed an application before the first respondent Mrtp Commission u/s 12-B of the Act staling that the petitioners had indulged in restrictive trade practices in the mailer of sale of flat to the second respondent as a result of which he suffered huge loss. The second respondent in the application alleged several instances of restrictive trade practices carried on by the petitioners. However, for the decision

of the writ petition it is not necessary to dwell upon them. It would be sufficient to state that the second respondent apart from seeking other reliefs, has claimed compensation for loss caused to him as a result of the restrictive trade practice carried on by the petitioners.

(4) The first and the second petitioners on receipt of a notice of the application, filed a reply in which it was interalia pleaded that the application was not maintainable. On September 4, 1995 the Commission framed issues. The first issue framed by the Commission relates to the maintainability of the application. This issue reads as follows:-

"Whether the application is not maintainable for the reasons/objections taken by the respondents in their reply as preliminary objections?

(5) The grievance of the petitioners is that instead of deciding the first issue relating to the maintainability of the application the Commission has called upon the second respondent to adduce evidence relating to all the issues. Mr. Sachdev, learned counsel appearing for the petitioners submitted that an application for award of compensation u/s 12-B of the Act can be entertained only after it is established in an inquiry held by the Commission under sections 10, 36-B and 37 that the undertaking or any person against whom the application has been made, had indulged in monopolistic or restrictive or unfair trade practice as defined by section 2(i) or section 2(0) or Section 36-A of the Act, and loss or damage had been caused to the applicant as a result thereof. Learned counsel contended that the Commission without instituting n enquiry in accordance with the provisions of Sections 10, 37(1) and 36-B of the Act could not have proceeded with the application.

(6) Counsel for the respondents has produced an attested true copy of the order of the Commission in R.A. No. 10/94 dated October 19, 1995. From the order it appears that the Association, of which the petitioner is a member, had moved a composite application under sections 36-B, 12-B and 10 of the Act. The order also reveals that the application was moved inter-alia for seeking directions : (a) for launching an investigation in respect of construction of buildings in Eros Garden Charmwood Village; (b) to the petitioners to provide certain facilities to the members of the association; (c) to the petitioners to refund principal amount and interest paid by the members of the association on account of delay in handing over of possession by the former to the latter; (d) for refund of certain extra amounts charged by the petitioners from the members of the association; and (e) to the petitioners for payment of compensation to the tune of Rs.l lakh to each of the members. The order further reveals that the Commission gave liberty to the individual members of the association to file separate applications for compensation and at the same time directed the Director General (Investigation and Registration) to inquire into the allegations of the assocation. The Director General was also directed to submit its report within six weeks from the date of the above said order. Therefore, the contention of the learned counsel for the petitioners that no such enquiry was ordered by the Commission is not correct.

Since the petitioner is a member of the Association at whose instance the enquiry had been directed, it is not necessary that in the individual applications the Director General should have been asked to make separate inquiries. Even otherwise having regard to Section 12-B of the Act, I am satisfied that it is not necessary to take cognizance of the application only after it is established in an inquiry held by the Commission under sections 10, 36-B and 37 that the undertaking or any person against whom the application is made had indulged in monopolistic or restrictive or unfair trade practice. At this stage, it will be appropriate to refer to Section 12-B of the Act, which reads as under:- "(1) Where, as a result of the monopolistic or restrictive, or unfair trade practice, carried on by any undertaking or any person, any loss or damage is caused to the Central Government, or any State Government or any trader or class of traders or any consumer, such Government or, as the case may be, trader or class of traders or consumer may, without prejudice to the right of such Government, trader or class of traders or consumer to institute a suit for the recovery of any compensation for the loss or damage so caused, make an application to the Commission for an order for the recovery from that undertaking or owner thereof or, as the case may be, from such person, of such amount as the Commission may determine, as compensation for the loss or damage so caused. (2) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Commission, make an application, under that sub section, for and on behalf of, or for the benefit of, the persons so interested, and thereupon the provisions of Rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Commission and the order of the Commission thereon. (3) The Commission may, after an inquiry made into the allegations made in the application filed under sub-section 1), make an order directing the owner of the undertaking or other person to make payment, to the applicant, of the amount determined by it as realisable from the undertaking or the owner thereof, or, as the case may be, from the other person, as compensation for the loss or damage caused to the applicant by reason of any monopolistic or restrictive, or unfair, trade practice carried on by such undertaking or other person. (4) Where a decree for the recovery of any amount as compensation for any loss or damage referred to in sub-section (1) has been passed by any court infavour of any person or persons referred to in sub-section (1) or, as the case may be, sub-section (2), the amount, if any, paid or recovered in pursuance of the order made by the Commission under sub- section (3) shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance, if any, left after such set off."

(7) As is apparent from the reading of section 12-B(1) of the Act, the legislature

has conferred an additional right on a consumer to file an application for compensation for loss or damage caused to him/her as a result of monopolistic, restrictive, or unfair trade practice carried on by any undertaking or person, apart from the right to institute a suit for recovery of compensation. Having regard to the the language of clause 12-B(1) it is not necessary that the Commission should first inquire or investigate into the allegations of monopolistic, restrictive and unfair trade practices carried on by any person or undertaking under sections 10, 36-B and section 37(1) of the Act before issuing notice in the application filed u/s 12-B of the Act. In the application for compensation the consumer is entitled to prove loss or damage caused to him as a result of the monopolistic or restrictive or unfair trade practice carried on by any person or undertaking. Sub- section (3) of section 12-B is the key to the intention of the legislature. It clearly reflects that the Commission is required to make an inquiry into the allegations set out in the application filed under sub-section (1) and after making such an inquiry pass an order directing ''he owner of the undertaking or the person who has indulged in monopolistic or restrictive or unfair trade practice, to make payment to the applicant of the amount determined by it. In other words, the inquiry into the allegations of restrictive or unfair trade practices u/s 12-B of the Act is to be made during the course of the proceedings of the application. It does not conceive of an inquiry under sections 10, 36-B and 37 of the Act. The remedy envisaged u/s 12-B is akin to a civil suit. As issuance of summons in a suit is not preceded by any inquiry or investigation by the court, similarly the issuance of a notice u/s 12-B is not made contingent upon inquiry under sections 10, 36-B and 37 of the Act. Therefore, the contention of the learned counsel for the petitioners that the Commission did not have the jurisdiction to issue notice and proceed with the application, is not sustainable in law.

(8) Accordingly, the writ petition is dismissed.

