
(2000) 02 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

SANVEN PHARMACEUTICALS (P) LTD.

APPELLANT

Vs

CHARAK PHARMACEUTICALS (INDIA) LTD.

RESPONDENT

Date of Decision : 10-02-2000

Acts Referred:

Citation : 2000 2 CPJ 15

Hon'ble Judges : A.N.Divecha , R.L.Sudhir J.

Final Decision : Application rejected

Judgement

1. THE applicant/complainant has approached this Commission with its complaint under Section 10(a)(i) and Section 36B(a) of the Monopolies and Restrictive Trade Practices Act, 1969 (the MRTP Act for brief) charging the respondent with adoption of and indulgence in restrictive and unfair trade practices qua the agreement entered into between the parties for appointing the applicant/complainant as Regional Sales Agent. THE respondent has filed its reply to the complaint application and has resisted it on several grounds.

2. THE agreement has been on the record of the complaint proceeding. As transpiring from Clause 7 thereof, the applicant/complainant was required to effect sale of the respondent's products, retail or wholesale as per the price list supplied by the Company. Section 10(a)(i) of the MRTP Act empowers inter alia any trade association, any consumer or a registered consumers' association to approach this Commission with a complaint of adoption of and indulgence in restrictive trade practices by the complaine. Section 36B(a) of the MRTP Act also empowers any trade association, any consumer or a registered consumers' association to approach this Commission charging the compaine with adoption of and indulgence in unfair trade practices. The applicant/complainant is neither a trade association nor a registered consumer association. The question is whether or not it is a consumer for the purpose of the MRTP Act.

The word "consumer" has not been defined therein. However, in view of the Division Bench ruling of the Division Bench of the High Court of Delhi in the case of Ballarpur Industries Limited v. The Director General (Investigation and

Registration), reported in 1988 (64) Company Cases at p. 884, the definition of "consumer" contained in the Consumer Protection Act, 1986 (the CP Act for brief) will have to be adopted for the purposes of the MRTP Act. Section 2(d) of the CP Act excludes from the purview of the definition of "consumer" a person who purchases goods for resale or for commercial purpose. As pointed out hereinabove, under Clause 7 of the agreement between the parties, the applicant/complainant was required to effect sales of the respondent's product. It was obvious that the applicant/complainant purchased the respondent's products for resale. In that case, the applicant/complainant would fall outside the purview of the term "consumer" defined in Section 2(d) of the CP Act and consequently for the purposes of the MRTP Act in view of the aforesaid binding Division Bench ruling of the High Court of Delhi. It may be added that, by virtue 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, a ruling of a High Court is binding to this Commission unless a ruling of any other High Court or of the Hon'ble Supreme Court holding a contrary view is shown to this Commission. No ruling holding a view contrary to the view taken by the Division Bench of the High Court of Delhi in its aforesaid ruling is shown to us. In that view of the matter, there is no escape from the conclusion that the applicant/complainant is not a consumer for the purposes of the MRTP Act.

3. WITH a view to getting out of this legal position, the applicant/complainant has moved an application under Section 151 of the Code of Civil Procedure, 1908 (the CPC for brief) for converting its complaint application to an information application. We do not think we should permit such conversion on two grounds. The grievance voiced by and on behalf of the applicant/complainant before this Commission is against termination of the sales agreement between the parties with effect from 3rd August, 1996. It is an individual grievance. The agreement between the parties was in the nature of a negotiated contract. We do not think any public interest can be said to be involved therein. If the applicant/complainant has any grievance against such termination of a negotiated contract between the parties, it can very well approach a competent Civil Court for redressal of its grievances and for claiming damages, if any, for breach of the contract between the parties. We do not think that we should entertain the applicant/complainant's grievances in that regard to redressal. Besides, as aforesaid, the agreement between the parties has come to be terminated by the communication of 3rd August, 1996. That agreement is now no longer subsisting between the parties. The order that can be passed in an enquiry under the Act would be a "cease and desist" order. The contract between the parties has come to an end, and as such it ceases to have any effect qua the applicant/complainant. The respondent does not seem to be inclined to renew the agreement. As transpiring from the respondent's reply to the complaint application, the performance of the applicant/complainant was not found satisfactory and the respondent has terminated the agreement on that account. The appointment of a sales agent for effecting sales of a Company's products or

cancellation of such appointment would not fall within the purview of the MRTTP Act in view of the Division Bench ruling of this Commission in the case of Masvi Fabrics v. Arvind Mills Ltd., reported in (1993) 1 CTJ at p. 454.

4. IN view of our aforesaid discussion, we think that we need not permit the applicant/complainant to convert its complaint application as an information application. In the result, the application for conversion of the complaint application into an information application fails. It is hereby rejected, however, with no order as to costs on the facts and in the circumstances of the case. The complaint application also fails. It is hereby rejected, however, with no order as to costs on the facts and in the circumstances of the case. Application rejected.