

(2014) 11 DEL CK 0060

In the Delhi High Court

Case No : Writ Petition (Civil) 7186/2014

Super Cassettes Industries Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Competition Act, 2002 — Section 27(b)
Constitution of India, 1950 — Article 14

Citation : (2014) 11 DEL CK 0060

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Sunil Gupta, Sr. Adv., Neel Mason and Ankit Relan, Advocate for the Appellant; Sanjay Jain, ASG, Sanjeev Narula, Tushar Gupta, Vidur Mohan, Abhimanyu Chopra, Noor Anand, Rajshekhar Rao, Jasleen Oberoi and Surbhi Mehta, Advocate for the Respondent

Judgement

CM No.18102/2014 (Of The Petitioner For Stay).

1. The writ petition impugns various provisions of the Competition Act, 2002 as well as certain regulations of the Competition Commission of India (General) Regulations, 2009 as unconstitutional being in violation of Article 14 of the Constitution of India. In addition, the petition also impugns the Final Order dated 1st October, 2014 of the Competition Commission of India W.P.(C) 7186/2014 page 1 of 11 (CCI) in case No.40/2011, imposing a penalty on the petitioner in the sum of Rs.2,83,28,000/- payable within 60 days and directing the petitioner to file undertaking in terms of directions contained in para 216 (i) of the order within a period of 30 days from the date of receipt of the order.

2. The petition came up before this Court on 17th October, 2014 when it was ordered to be re-notified for 27th October, 2014. On 27th October, 2014 the petition came up before this Bench and was ordered to be re-notified on 28th October, 2014 along with the batch of connected matters. Since then the petition is being taken nearly on a day to day basis along with the connected batch of

matters, and we have already heard the counsels for some of the petitioners and the hearing is underway.

3. The writ petition was accompanied with CM No.16889/2014 for stay of the order dated 1st October, 2014 of the CCI during the pendency of the writ petition but till date, inspite of the matter having been heard / taken up on 28th October, 2014, 29th October, 2014, 30th October, 2014, 31st October, 2014, 3rd November, 2014 and 5th November, 2014, the said application for stay was not pressed. Now this fresh application for the same interim relief has been filed inter alia stating that the time of 30 days for the petitioner to file an undertaking is expiring tomorrow and thus it is imminent for the petitioner to get interim stay.

4. The batch of connected matters comprises of W.P.(C) No.6610/2014, W.P.(C) No.6634/2014, W.P.(C) No.7087/2014, W.P.(C) No.7121/2014, W.P.(C) No.7306/2014, W.P.(C) No.7321/2014, W.P.(C) No.7327/2014, W.P.(C) No.7334/2014, W.P.(C) No.7406/2014 and W.P.(C) No.7417/2014. All the said petitions impugn the common order dated 25th August, 2014 of the CCI against each of the petitioners therein. Of the said batch of petitions, W.P.(C) No.6610/2014 and W.P.(C) No.6634/2014 had come up before us first on 26th September, 2014 when one of the contentions of the counsel for the petitioners therein was that owing to vacancies, the Competition Appellate Tribunal (CompAT) to which appeal admittedly was maintainable against the order dated 25th August, 2014, was non-functional. In view of this circumstance, notice of the said two petitions was issued and the operation of the order dated 25th August, 2014 against the said two petitioners stayed till 30th September, 2014.

5. On 30th September, 2014 we were told that though appointment to the Office of the Chairperson of the CompAT had been made but appointments to the Office of the Members of CompAT were still pending though expected to be made soon. The counsels for the petitioners in W.P.(C) No.6610/2014 and W.P.(C) No.6634/2014 on that date also argued that though the order dated 25th August, 2014 was signed by only the Chairperson and two other members of the CCI but the hearing preceding the same was by other members also. Challenge was made also to Section 27(b) of the Competition Act on the ground of the powers conferred thereunder being unguided and amounting to excessive delegation. We, vide detailed order of that date i.e. 30th September, 2014, while posting the said two petitions for hearing made the earlier interim order absolute till the decision of those petitions. While doing so, we also considered the availability of the alternative remedy of appeal to the CompAT but expressed a prima facie opinion that if the petitioners were to succeed in the challenge in the writ petitions to the vires of certain provisions of the Act and which challenge could not be made before CompAT, the order dated 25th August, 2014 would not be sustainable and it would not be appropriate that this Court as well as CompAT be vexed with the question of validity of the order dated 25th August, 2014.

6. Thereafter as aforesaid the hearing began. Thereafter other petitions along with applications for interim relief were filed but no interim relief granted therein.

However during the hearing on 31st October, 2014, considering the fact that the order impugned in the other petitions was the same as the order impugned in W.P.(C) No.6610/2014 and W.P.(C) No.6634/2014, we extended the interim order in W.P.(C) No.6610/2014 and W.P.(C) No.6634/2014 to the other writ petitions also in the batch, save this petition. Though the counsel for the petitioner herein was present on 31st October, 2014, but on that date also did not press the application for interim relief and has now filed this application.

7. The star argument of the senior counsel for the petitioner is that the challenge by this petitioner also is to the same provisions of the Act and the Regulations which are under challenge in the other petitions in the batch and thus not granting the same interim order to this petitioner would amount to discriminating this petitioner vis-à-vis the other petitioners in the batch. We may notice that the aforesaid argument has been made inspite of the learned ASG appearing for the CCI having at the very outset stated that since the hearing is underway, the respondent no.2 CCI will not take any precipitative action against the petitioner also. It is further stated that the petitioner may file the undertaking for filing whereof tomorrow is stated to be the last date, without prejudice to the rights and contentions in this petition and / or subject to the outcome of this petition.

8. However the same is not acceptable to the petitioner. Though we put to the senior counsel for the petitioner that since the learned ASG has already made the statement aforesaid, it is for the petitioner to take a call to file the undertaking as suggested or to in the event of dismissal of the writ petition face the consequences of having not filed the undertaking within the time granted therefor, but the senior counsel for the petitioner chose to press this application.

9. We are however not inclined to grant any interim order as sought, for the following reasons:-

(a) Today and in fact even at the time when the present writ petition came up first, CompAT was/is functioning and the appeal if preferred by the petitioner to CompAT would have been taken up for hearing along with the application for interim relief which would have been filed therewith. Thus this petition cannot be compared with other petitions in the batch, interim relief wherein came to be granted in the circumstances aforesaid.

(b) If the same interim order were to be extended to this petition as well as all other petitions which may also be filed impugning the provisions of the Competition Act and the Regulations thereunder, the same would lead to none approaching CompAT, thereby making CompAT non-functional.

(c) We, in these petitions, are not concerned with the challenge even if made to the merits of the order of the CCI as indeed we cannot be and had clarified so at the initial hearing only. In the hearing till now also, none of the counsels has made arguments on the merits of the order of the CCI. The hearing in these petitions is confined to the challenge to certain provisions of the Act and the Regulations thereunder and to the query raised by us in the order dated 30th

September, 2014 supra. We do not see any reason for multiplying the petitions. If the said challenge is to succeed, the judgment would bind all those covered thereby. Thus merely on the ground of having made the same challenge, the persons aggrieved from the orders of the CCI cannot avoid approaching CompAT which as aforesaid is now functional or from seeking the interim relief from CompAT.

(d) The contention of the petitioner of discrimination by the Court is misconceived. A judgment / order of the Court can never be challenged under Article 14 of the Constitution of India. What is applicable to the Courts is the principle of binding precedent, which also is not applicable in the matter of interlocutory orders. We are however mindful of the need for consistency of approach and uniformity in the exercise of judicial discretion respecting similar cases and the desirability to eliminate occasions for grievances of dissimilar treatment.

(e) However, what may be good in one particular case, may not remain good when the Court realizes that replicating the same in all cases may make another statutory fora non-functional, particularly when there is no challenge to the constitution or the powers of that fora. Public interest has now been universally recognized as the fourth ingredient on the anvil whereof the grant / non grant of interim relief is to be tested. We are of the considered opinion that public interest is not in favour of so making CompAT non functional.

(f) The Supreme Court in Rural Litigation and Entitlement Kendra Vs. State of U. P., , while dealing with the demand of similar treatment to all "A" category mine owners held that there can be no two opinions about the Court extending equal treatment to all equally placed petitioners before it. The Court, though at a later stage in the proceedings did not find tenable the distinction between the "A" category mines located within and outside the municipal limits and on the basis of which distinction orders entailing different treatment had been made earlier, nevertheless held that "there are certain situations where in the interest of general benefit to the community, interest of individual citizens may be overlooked" and, refused to allow the "A" category mines within the municipal limits to operate as those outside the municipal limits had been allowed to and further held that "even if some of the mine owners are worse affected than some others, permission to reopen the mines" cannot be granted "with a view to compensating them for being placed at par with the less affected group." We may add, that the Court can always say that it is "wiser".

(g) Rather we find the stand taken by the petitioner to be unfair. The petitioner, if has faith in the challenge made by it in the writ petition and if notwithstanding the statement aforesaid by the learned ASG on behalf of CCI, not desirous of filing the undertaking as directed by the order of the CCI, should be willing to suffer the consequences thereof.

(h) The petitioner even in the writ petition has pleaded (as demonstrated by the

counsel for the respondent no.3 HT Media Ltd. at whose information the proceedings against the petitioner were initiated in the CCI) that this petition is without prejudice to its rights to pursue W.P.(C) No.2037/2013 pending before the learned Single Judge and to its right to prefer and appeal against the order dated 1st October, 2014 to CompAT. The petitioner now wants to change the stand and piggy ride on the interim order in the other petitions.

(i) The proceedings against the petitioner before the CCI are pending since the year 2010 to 2011 and the challenge earlier made by the petitioner by W.P.(C) No.1119/2012 to the jurisdiction of the CCI did not find favour and the petitioner was denied interim relief even in W.P.(C) No.2037/2013 supra.

(j) The petitioner thus, cannot be said to be similarly situated as the petitioners in writ petitions where interim relief has been granted.

10. This application as well as CM No.16889/2014 are thus dismissed; however CCI shall remain bound by the statement supra.