
(1992) 09 CAL CK 0020
In the Calcutta High Court
Case No : Matter No. 3074 of 1992

Sushil Kumar Dalmia and Another

APPELLANT

Vs

Monopolies and Restrictive Trade Practices Commission and
Others

RESPONDENT

Date of Decision : 21-09-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Monopolies and Restrictive Trade Practices Act, 1969 — Section 2, 55

Citation : (1993) 2 CALLT 320 : (1994) 79 CompCas 568

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Aninyda Mitra, for the Appellant; Asoke Kumar Sen and Goutam Mitra, Respondent No. 4, N.N. Gooptu, Respondent No. 5 and Dipankar Ghosh, Respondent No. 6, for the Respondent

Judgement

Susanta Chatterji, J.—This case has a chequered background indeed. The writ petition was moved ex parte without notice to the respondents on September 11, 1992. Mr. Aninyda Mitra, learned counsel, appearing for writ petitioner No. 1, Sushil Kumar Dalmia, for self and on behalf of other subscribers to the issue of convertible debentures by Videocon Narmada Electronics Ltd. and petitioner No. 2, Mathew Easow, a financial consultant, pressed the writ application in seeking leave to sue in a representative capacity and prayed for a writ of mandamus commanding respondent . No. 1, the Monopolies and Restrictive Trade Practices Commission, having its office at Bikaner House, Shahjahan Road, New Delhi, to quash, recall and cancel the order dated September 2, and September 9, 1992, issued on Case No. 11A, 64 of 1992 and to refrain from entertaining the complaint lodged by respondent No. 2 and to refrain from proceeding with Enquiry Case No. 133 of 1992 in any manner whatsoever, and for injunction restraining any effect being given to or any action in reliance upon or from enforcing the impugned order dated September 2, and September 9, 1992, issued by respondent No. 1 in Cases Nos. 11A, 64 of 1992 in connection with

enquiry case UPTE No. 133 of 1992, issued by respondent No. 1 and also to direct respondent No. 4, Videocon Narmada Electronics Ltd., to extend the time for closure of the public issue of the said debentures which are to open on September 7, 1992, by a period of three more working days and to take necessary steps in that regard and complete the allotment of convertible debentures within ninety days from the date of closure of the issue.

2. While moving the said writ petition on September 11, 1992, learned counsel requested the court to pass an interim order. The matter remained heard in part and the petitioners were asked to serve immediate notice to respondent No. 2, namely, the Director-General of Investigation and Registration, and the matter was listed to appear on Monday, that is, on September 14, 1992, and no interim order was made at that stage.

3. On Monday, it was brought to the notice of the court that an appeal has been filed before the Hon'ble-Division Bench, and an ad interim order was obtained on September 11, 1992. Learned counsel for the petitioners submitted that there is no stay of further proceeding of the present writ petition, and it appears that this court was in the midst of hearing of the writ petition as to its maintainability and to consider the prima facie case, and before any specific order was made, the matter was taken in the appeal court. The appeal court, however, in its own wisdom, passed an ad interim order but since there is no stay of proceedings of the hearing before this court, learned counsel for the petitioner submitted that there is no bar and/or impediment to get the matter heard.

4. It is, however, not appreciated by this court as to why the petitioners have not served any notice upon the real respondents in spite of the specific direction on September 11, 1992. Curiously enough, at the time of hearing, senior lawyers appeared on behalf of respondents Nos. 4, 5 and 6 as indicated above and they wanted to argue the case separately and independently. They, however, contended frankly that all of them supported the case of the petitioners, It further appears that before this court the petitioners and respondents Nos. 4, 5 and 6 are sailing in the same boat. All of them have submitted that the present case should be entertained by this court and since there is an interim order passed by this appeal court, the matter should be gone into in depth.

5. It is contended that petitioner No. 1, Sushil Kumar Dalmia, moves this application for self and on behalf of other subscribers, to the issue of fully convertible debentures by Videocon Narmada Electronics Ltd. He is a subscriber of 50 fully convertible debentures which have been proposed to be issued by the respondent company under the prospectus dated July 29, 1992. Petitioner No. 2 is a shareholder of Gujarat Narmada Valley Fertilizers Co. Ltd. (GNFC) and he is one of the promoters of the said issue of debentures. The other promoters of the said issue are Videocon International Ltd., Videocon Appliances Ltd. and Videocon VCR Ltd. It is placed on record that petitioner No. 2, with his wife jointly holds 50 shares in GNFC. He has submitted a preferential offer for 25 preferential debentures in accordance with the said prospectus. It is placed on record that

respondent No. 3, Dr. Arabind Gupta, residing at New Delhi outside the jurisdiction of this court had written a letter to respondent No. 2, the Director-General of Investigation and Registration, having his office at the Bikaner House, Shahjahan Road, New Delhi, raising specific complaints regarding the issue and alleging the violation of restrictions and indulging in unfair trade practice in offering the debentures to the general public. On September 4, 1992, an application u/s 12A of the Monopolies and Restrictive Trade Practices Act, 1969, was verified by respondent No. 2, Director-General of Investigation and Registration. An interim order of injunction was passed on September 7, 1992, by the Monopolies and Restrictive Trade Practices Commission, restraining the company from charging and adopting any unfair trade practice in charging of price for equity shares. At the time of passing the said order, counsel for the company and one of the directors of the respondent-company were present and a copy of the application was handed over to them and the case was directed to be listed on September 8, 1992, instead of September 21, 1992, as already fixed. On September 9, 1992, respondent No. 1, the Monopolies and Restrictive Trade Practices Commission, having heard learned counsel for both sides, passed an order of injunction and refused to vacate the earlier order of September 7, 1992.

6. The petitioners as aforesaid have come to this court to challenge the impugned orders of respondent No. 1, the Monopolies and Restrictive Trade Practices Commission, on the ground that the proposed issue of the said debentures are not "goods" within the meaning of the Monopolies and Restrictive Trade Practices Act, 1969. The issue of debentures is not a trade practice of the respondent-company but is a mode of raising capital, it is not a commercial activity of the respondent-company and it does not come within the purview of trade under the Monopolies and Restrictive Trade Practices Act, 1969, and the Monopolies and Restrictive Trade Practices Commission has erroneously assumed jurisdiction and the impugned orders are as such without jurisdiction and this court sitting in writ jurisdiction should quash the proceeding and by restraining respondent No. 1 from entertaining the complaint filed by respondent No. 2, the Director-General of Investigation and Registration. The points of argument advanced by learned counsel for the writ petitioners and for respondents Nos. 4, 5 and 6 are absolutely same and similar. It appears before this court that the petitioners have practically been set up by respondents Nos. 4, 5 and 6 and they tried to delay the disposal of the writ petition even on the ground of maintainability by extending the period of injunction for an oblique reason to circumvent the orders of the Monopolies and Restrictive Trade Practices Commission.

7. The main points of argument of the petitioners and respondents Nos. 4, 5 and 6 are, namely : --

(a) Section 2(e) of the Monopolies and Restrictive Trade Practices Act, 1969, defines, "goods". "Goods" means goods as defined in the Sale of Goods Act,

1930, and includes ;

(i) products manufactured, processed or mined in India ; (ii) shares and stock including issue of shares before allotment;

(iii) in relation to goods supplied, distributed or controlled in India, goods imported into India."

In view of such definition the issue of debentures does not come among the goods.

(b) The attention of this court has been drawn to the definition of "trade" (Section 2(s)). It means any trade, business, industry, profession or occupation relating to the production, supply, distribution or control of goods and includes the provision of any services ;

The grievance is that within such definition of "trade", the issuance of debentures does not become a trade and the question of unfair trade practice does not arise and the complaint made by the Director-General of Investigation and Registration is inherently defective and. respondent No. 1, the Monopolies and Restrictive Trade Practices Commission, impugned orders are absolutely bad in law and this writ court should stay the operation of the interim orders of the Monopolies and Restrictive Trade Practices Commission pending hearing of the writ petition and ultimately should quash the entire proceeding before the Monopolies and Restrictive Trade Practices Commission.

(c) A long argument has been made to take this court through all the averments made in the writ petition in between the lines and to place before this court, the complaint lodged by the Director-General of Investigation and Registration before the Monopolies and Restrictive Trade Practices Commission and the impugned orders of the Monopolies and Restrictive Trade Practices Commission and the entire scope of the Monopolies and Restrictive Trade Practices Act, 1969, and the power and jurisdiction of the Commission to entertain complaints or to initiate proceedings sup motu to restrict the acts of the respondent-companies.

8. The attention of this court has also been drawn to Section 36A of the Monopolies and Restrictive Trade Practices Act, 1969, and to the definition of unfair trade practice. The attention of this court has also been drawn to Section 36B as to inquire into unfair trade practice by the commission which indicates, inter alia :

The Commission may enquire into any unfair trade practices :

(a) upon receiving a complaint of facts which constitutes such practice (from any trade or from any consumer or a registered consumers" association, whether such consumer is a trade of that consumers" association or not) ; or

(b) upon a reference made to it by the Central Government or a State Government ;

(c) upon an application made to it by the Director-General ; or (d) upon its own knowledge or information ;

(e) the attention of this court has been drawn to Section 12A as to the power of the Commission to grant temporary injunction vis-a-vis the scope of an appeal u/s 55 of the said Act to prefer an appeal to the Supreme Court on one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908.

9. Learned counsel cited reported decisions, namely, Union of India (UOI) Vs. Tarachand Gupta and Bros, and in particularly paragraph 21, thereof, and Narendra Kumar Maheshwari Vs. Union of India (UOI) and Others, , particularly paragraphs 75, 78 and 79. There is also reference to a decision by the Monopolies and Restrictive Trade Practices Commission in the case of Consumer Education and Research Centre v. T.T.K. Pharma Ltd. [1990] 68 CompCas 89.

10. With patience and with great anxiety this court has heard lengthy time-consuming arguments advanced by learned counsel appearing for the petitioners, and respondents Nos. 4, 5 and 6 separately, although supporting jointly, the case of the petitioners. Having heard their erudite submissions, this court finds that the grievance of the petitioners and respondent-companies, is that the Monopolies and Restrictive Trade Practices Commission has assumed erroneous jurisdiction to entertain the complaint of respondent No. 2. The impugned orders of respondent No. 2, dated September 7, 1992, and September 9, 1992, are quite speaking orders with reasons. The respondent-companies went before the Monopolies and Restrictive Trade Practices Commission to vacate the interim order dated September 7, 1992, and all the points of argument have been considered by the Monopolies and Restrictive Trade Practices Commission in the proper perspective and it has been found that till the investigation of the matter there is a prima facie case for passing interim orders of injunction. The investigation is not complete nor has the Monopolies and Restrictive Trade Practices Commission passed any effective and final order of adjudication for which the petitioners and the respondents have suffered anything. There are two dimensions in this case : one is as to whether the present writ petition is at all maintainable and as to the territorial jurisdiction of this court to entertain the present writ petition and to pass any interim order pending effective adjudication of the entire matter of dispute. It transpires that the Director-General of Investigation and Registration has filed a specific complaint under the provisions of the Monopolies and Restrictive Trade Practices Act, 1969. Respondent No. 1 has entertained the application and having heard the applicant and the respondent-companies, passed an interim order. Anybody aggrieved may either approach the Monopolies and Restrictive Trade Practices Commission itself, to vary and modify the order or can prefer an appeal before the Hon'ble Supreme Court u/s 55 of the said Act thereof. Unless a cause of action arises within the territorial jurisdiction of this court, no independent writ petition can be filed. Although, the cause of action is a bundle of facts, yet any part thereof has to arise within the territorial jurisdiction of this court. From the materials so far

disclosed, this court is of the view that the petitioners who have been set up by the respondent-companies who actually appeared before the Commission, should not find this venue as suitable to ventilate the grievance and to obtain reliefs from the writ court. From this angle of vision no part of cause of the action arises to enable this court to entertain the present writ petition.

11. Besides the question of territorial jurisdiction to enable this court to entertain the writ petition, this court has considered the maintainability of the writ petition on the merits. Upon perusal of the materials on record and in view of the settled principle of law, this court is of the view further, that the writ courts do not sit in appeal upon decision, of the statutory authority. They are to examine the decision making process as found by the Supreme Court in a recent decision in *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, . In examining the decision-making process, this writ court has to see as to whether there is any erroneous assumption of jurisdiction by the statutory authority or the statutory authority in adjudicating the rights of the petitioners has passed any perverse order. A court of equity should protect and preserve the rights guaranteed by the Constitution of India. The writ court may consider the case of balance of convenience and inconvenience. In the instant case, respondent No. 1 has elaborately dealt with the scope of complaint and the steps taken by the respondent-company which appeared to be contrary to and inconsistent with the permission granted by the Controller of Capital Issues, New Delhi, and there is deliberate suppression of facts in the prospectus and the steps taken by the respondent-company, and the acts done and caused to have been done by the respondent-companies are prima facie amounting to an unfair trade practice. "Trade practice" has well been defined in the Monopolies and Restrictive Trade Practices Act. Section 2(u) defines "trade practice". It means any practice relating to the carrying on of any trade and includes--

(i) anything done by any persons which controls or affects the price charged by, or the method of trading of, any trader or any class of traders ;

(ii) a single or isolated action of any person in relation to any trade.

12. It is not a debatable question whether the issuance of debentures amounts to shares or it can be termed as "goods" to enable the Monopolies and Restrictive Trade Practices Commission to assume the jurisdiction to adjudicate the complaint filed by respondent No. 2 or by the Monopolies and Restrictive Trade Practices Commission suo motu. But it is well within the jurisdiction of the Monopolies and Restrictive Trade Practices Commission to consider any trade practice which would be unfair and to restrict the same in accordance with the provisions of the Monopolies and Restrictive Trade Practices Act, 1969, or anything done by any person which controls or affects the price charged by or the method of trade of any trader or any class of traders and any practice relating to the coordination of any trade. It is a comprehensive term and this question is involved before the Monopolies and Restrictive Trade Practices Commission to cause investigation and to adjudicate the matter within the scope

of the said Act itself. It is absolutely premature for either of the petitioners or for the respondent-companies who appear to have set up the petitioners to move the writ petition before this court. This court does not find that respondent No. 1 by assuming the jurisdiction or by passing the impugned orders has committed anything necessitating any interference by this writ court. The petition appears to be misconceived and speculative and an attempt has been made to obtain orders behind the back of respondent No. 2 and no steps have been taken pursuant to the court's order to serve notice upon respondent No. 2 while the other respondents have come voluntarily to support the writ petitioners. They are very much found to make their submissions in support of the writ petitioners and to protect their own interest. Finding absolutely no merit in the writ petition and finding that this collusive petition has been filed by the petitioners and respondents Nos. 4, 5 and 6, with an ulterior motive to gain advantage by staying the operation of the orders of the Monopolies and Restrictive Trade Practices Commission, the writ petition is dismissed in limine.

13. There is no order as to costs.