
(1992) 08 SC CK 0088

In the Supreme Court Of India

Case No : Civil Appeal No. 2690 Of 1992

U.P. Electronics Corpn. and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-08-1992

Acts Referred:

Citation : (1992) 2 SCC 750 Supp

Hon'ble Judges : P. B. Sawant, J;N. P. Singh, J;M. N. Venkatachaliah, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. This appeal is by the Uttar Pradesh Electronics Corporation Limited (Corporation) and others. It is directed against the order dated 28th January 1992 and the subsequent order dated 13th March 1992 in Restrictive Trade Practices Enquiry No. 12 of 1992 before the Monopolies and Restrictive Trade Practices Commission by which an interlocutory order granted parte on 28th January 1992 and which, in view, of the divergent opinion between the two members on the application for its vacation, is continuing to operate. The injunction restricts the appellant ".....from indulging in the restrictive trade practice by entering into any negotiation without making a general offer of shares to the public at large including the applicant.....".

2. The Corporation holds 40% of the share-holding in the company "Uptron Colour Picture Tubes Limited" (Company). Two other Japanese entrepreneurs hold 11% and 5% shares respectively. Public Financial Institutions hold 33% shares and the balance of 11% is with the general public. The Corporation, it seems, decided to shed its equity participation in that undertaking and decided to invite offers from reputed and established entrepreneurs to take over the equity holding of the Corporation, which carried with it, the participation in the control of the "company" and its enterprise. The advertisement issued in this behalf on the 10th of January 1992 reads :

"UPDC is intending to reduce its percentage share in equity holding in favour of reputed consumer electronics company having large turnover (Group turnover around ` 200 crores) am substantial interest in consumer electronics and good track-record in electronics exports. For obtaining forms and for further details regarding submitting offers and other information, please contact personally within 10 days."

3. The respondent No. 3 who is stated to be a dealer in stocks and shares filed an application before the Commission under Section 10(a)(i) read with Section 2(o) of the Monopolies and Restrictive Trade Practices Act, 1969 (Act) airing a grievance that this advertisement, in so far as it restricted the choice of transferee to those who had a group-turnover of ` 200 crores, was a trade practice restrictive in character and claimed certain reliefs said to arise therefrom. An application under Section 12A of the "Act" for an interlocutory injunction was filed and on 28th January 1992 an ex parte injunction in terms aforesaid came to be granted. The applicant's application for vacating that order has run into trouble as the two members before whom it came have differed and the conflict has no reasonable prospect of being resolved by a third member as the post of the Chairman remains unfilled for quite some time now. One of the members, in effect, held that the application was not entertainable under the Act as really no trade was at all involved. The other member took a diametrically opposite view.

4. Shri Ashok Desai, for the appellant, strenuously urged that the entire exercise before the Commission proceeded on a wholly erroneous conception of what the appellant sought to do by the aforesaid advertisement. Shri Desai said the transaction, or whatever was implicit in it, did not pertain to any "trade" and the Commission could not, therefore, go into the matter. He said respondent No. 3, who was a dealer in shares and not, on his own showing, a person interested in making an offer for the acquisition of the managerial interest in the "company" with all its accumulated losses and the obligation to continue the services of over 1200 employees, had no standing to sue. The whole thing, says counsel, proceeded before the Commission on an erroneous conception that the appellant wanted to difuse its share holding by offering it to the members of the public. It was urged that no trade or trade practice as implicit in the statute was at all involved and that the entire approach to the matter by the Commission was the result of a misconception of these fundamental issues.

5. Shri Salve, for the third respondent sought to point out that any pronouncement on this question at this stage would prejudice the final decision of the Commission and that, therefore, we should abstain from doing so, and that, at all events, in view of the subsequent advertisement dated 27th April, 1992 which is issued by the appellant avowedly in acknowledgment and implementation of the observations made by the member of the Commission who held against the appellant, the discussion of the merits becomes merely academic. He submitted that in view of the revised advertisement dated 27th

April 1992, the appeal itself becomes infructuous and should be disposed of accordingly leaving the parties to agitate all other questions in the main matter before the Commission.

6. We have perused the terms of the revised offer contained in the advertisement issued by the appellant on 27th April 1992. The advertisement recapitulates the antecedent litigation and referring to the need to make such revision of the terms says :

"In view of the order passed on 13th March 1992 in Injunction Application No. 3 of 1992 in RTPE No. 12 of 1992 and considering the view of Hon'ble Sri Sardar Ali, Member of MRTP Commission, the advertisement which appeared in various newspapers on 10th and 11th January 1992 regarding renunciation of UP Electronics Corporation's equity rights in Uptron Colour Picture Tubes Ltd. is hereby revised and published again for the information of the public as follows :"

Thereafter, the revised advertisement proceeded to do away with the requirement of the eligibility of the intending parties based on a "turnover of about ` 200 crores".

7. It is true that the revised advertisement dated 27th April 1992 allays whatever apprehensions - bona fide, legitimate or otherwise - of the third respondent after the alleged peccant terms of the earlier advertisement was deleted. It is not any longer the case of the third-respondent that even this advertisement suffers from the vice attributed to its predecessor. In that sense, the whole dispute appears defused. If the appellant desires to proceed with the transaction in terms of the revised advertisement dated 27th April 1992, there is, and could be, no impediment in its doing so. In the light of this advertisement, the need for the injunction dated 28th January 1992 and of the order dated 13th March 1992 no longer exists, even if, otherwise, it did.

8. The appropriate thing to do, therefore, at this stage is to take note of the revised terms and set aside the orders dated 28th January 1992 as well as those of 13th March 1992 keeping the contentions of the parties including that of the appellant that there was no trade or trade practice involved at all which was amenable to enquiry under the Act, open.

The appeal is disposed of accordingly.