

(2010) 11 DEL CK 0171

Delhi High Court

Case No: Writ Petition (C) 7766 of 2010 and CM Application No. 20135 of 2010

Gujarat Guardian Limited

APPELLANT

Vs

The Competition Commission of
India and Others

RESPONDENT

Date of Decision: Nov. 23, 2010

Acts Referred:

- Competition Act, 2002 - Section 18, 26(1), 3(1), 4(1), 66
- Monopolies and Restrictive Trade Practices Act, 1969 - Section 11(1), 11(2)

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: H.S. Chandhiok, G.R. Bhatia, Tarun Dua and Kanika Choudhary, for the Appellant; Rajeev Saxena, for R-1 and R-2 and Rohit K. Aggarwal, for R-3, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Muralidhar, J.

The Petitioner Gujarat Guardian Ltd. ("GGL") challenges an order dated 19th May 2010 passed by Respondent No. 1 Competition Commission of India ("CCI") and seeks the quashing of all proceedings consequent to notice dated 29th July 2010 issued to it by the Director General ("DG"), CCI. The main point urged is that the proceedings before the CCI are entirely without jurisdiction.

2. An article was published in Outlook Business in 2008 suggesting the existence of cartel-like behavior in the float glass industry in India, of which GGL is a part. It was alleged that there existed an oligopoly which was dominated by three big manufacturers of float glass, viz., Saint Gobain India, Asahi India Glass and GGL. On the basis of the above article, the Director General (Investigation and Research) ("DG (I and R)") acting u/s 11(2) of the Monopolies and Restrictive Trade Practices Act,

1969 ("MRTP Act") undertook a suo moto preliminary investigation in September 2008. On 22nd September 2008 Monopolies and Restrictive Trade Practices Commission ("MRTPC") issued a direction instituting an inquiry u/s 11(1) of the MRTP Act whereby the DG (IandR) was asked to carry out an investigation and submit a preliminary report within 90 days.

3. On 17th September and 19th November 2008 the DG (IandR) issued two letters to GGL and other glass manufacturers seeking information and documents.

4. Writ Petition (Civil) No. 8747/2008 was filed by the All India Flat Glass Manufacturer Association in this Court challenging the aforementioned two letters. A similar Writ Petition (Civil) No. 8741/2008 was also filed by Asahi India Glass. By an order dated 25th September 2009, Writ Petition (Civil) No. 8741/2008 was dismissed by this Court, leaving it open to the Petitioner therein to raise the objections and pleas against furnishing of information and document sought, which would then be examined by the DG (IandR) and a reasoned order passed.

5. On 15th May 2009, the Competition Act ("CA") was brought into effect from 20th May 2009.

6. On 19th May 2010 an order was passed by the CCI purportedly u/s 26(1) of the CA, inter alia, stating that matter has been transferred to the CCI consequent upon the repeal of the MRTP Act. The CCI was of the opinion that there existed a prima facie case for making a reference to the DG to undertake an investigation into the matter. The CCI called for a report of the DG within 60 days.

7. On the basis of the above order dated 19th May 2010, the DG, CCI, issued a notice dated 29th July 2010 to GGL stating that the CCI had received information in terms of Section 18 of the CA about cartel-like practices indulged in by the manufacturers of float glass which contravened Sections 3(1) and 4(1) of the CA.

The Petitioner was called upon to furnish information/documents by 10th August 2010.

8. On 18th August 2010, the Petitioner wrote to the CCI stating that CCI had inadvertently assumed jurisdiction in terms of Section 66(6) of the CA, and that the case ought to have been transferred to the Competition Appellate Tribunal ("CAT") u/s 66(3) of the CA. In the above circumstances, the present petition was filed.

9. It was first submitted by learned Counsel for the Petitioner that the case ought to have transferred to the CAT u/s 66(3) of the CA and not to the CCI u/s 66(6) of the CA. On this point, however, this Court has already rendered a judgment dated 6th October 2010 in [Interglobe Aviation Limited Vs. The Secretary, Competition Commission of India and Others](#), wherein, in similar circumstances, an identical plea was rejected. In this case as well, this Court finds that investigation was being carried out by the DG (IandR) but remained incomplete when the CA come into effect and, therefore, the investigation was correctly transferred to the CCI u/s 66(6)

of the CA.

10. It was then submitted that there could not have been any order passed u/s 26(1) of the CA and that the CCI had to proceed under the provisions of the MRTP Act as it stood on the date on which suo moto notice was taken by the DG (IandR). This Court finds that the investigation entrusted to the DG (IandR) was transferred to CCI correctly in terms of Section 66(6) of the CA. Thereafter, the matter was again considered by the CCI at its meeting on 19th May 2010. After considering all the materials on record the CCI came to a prima facie conclusion to proceed u/s 26(1) of the CA.

11. It was urged that Section 66(6) of the CA, did not make it clear whether the CCI should proceed only under the provisions of the MRTP Act as it stood on the date of its repeal or should exercise its powers under the CA. Section 66(6) of the CA reads as under:

Section 66(6): All investigations or proceedings, other than those relating to unfair trade practices, pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.

12. This Court finds that since the investigation was incomplete the matter was rightly transferred to the CCI. On further consideration of the material on record the DG, CCI formed a prima facie opinion to proceed u/s 26(1) of the CA. This was not contrary to Section 66(6) of the CA. It is possible in the course of investigation that the DG, CCI forms a prima facie opinion to proceed under the provisions of the CA, 2002 itself. There is no illegality per se in such action of the DG, CCI.

13. It was then submitted that in the notice dated 29th July 2010 a reference was made to information having been received u/s 18 of the CA, which is obviously not the case.

14. This Court would like to observe that mere reference to certain provisions in the notice issued by the CCI will not be determinative of whether the power is being exercised or information received in terms of those very provisions.

All that this Court wishes to observe at this stage is that in exercising its powers, the CCI will strictly abide by the CA, 2002. Insofar as matters transferred to it which were pending investigation when the MRTP Act stood repealed, the CCI will abide by the scheme of Section 66 of the CA.

15. It was pointed out by learned Counsel for the Respondents, appearing on advance notice, that the Petitioner has already filed a reply to the aforementioned notice dated 29th July 2010. Such reply will be considered on merits by the CCI and an appropriate order passed. If aggrieved by such order, it will always be open to

the Petitioner to seek further statutory remedies as may be available to it under the CA.

16. No case is made out to grant any relief to the Petitioner as prayed for. The petition is dismissed as such in the above terms. The pending application is also dismissed.