

(2002) 05 NCDRC CK 0015

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

JOHNSON and JOHNSON LTD.

APPELLANT

Vs

MAHARASHTRA STATE CHEMISTS
AND DRUGGISTS ASSOCIATION

RESPONDENT

Date of Decision: May 3, 2002

Citation: 2002 2 CPJ 39

Hon'ble Judges: C.M.Nayar , Moksh Mahajan J.

Final Decision: Applications disposed of

Judgement

1. THIS order will dispose of two applications filed under Section 12A of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the Act) for issuance of an interim injunction against the respondents.

2. THE applicant/complainant filed a complaint under Section 10(a)(iv) read with Section 37, Section 2(o)(ii) and Sections 33(1)(a) and 33(1)(i) of the Act in respect of the alleged restrictive trade practice undertaken by the respondent Nos. 1 to 6 for boycotting or compelling the retailers/traders to boycott the applicant's/complainant's products and also for interfering with the distribution and sale of the products. It is contended that the applicant/complainant is suffering irreparable damage, injury and loss as a direct consequence of the actions of the respondents and as such they should be restrained from compelling or interfering in any manner with the distribution and sales of the complainant's products. In an application filed under Section 12A of the Act along with the complaint the applicant/complainant sought the following relief :

"(i) that pending the hearing and final disposal of the present complaint, the respondents, their affiliates, their office-bearers, officers, their agents, servants, subordinates and representatives be restrained by an interim order and injunction of this Hon"ble Commission from taking any action of any description directly or indirectly, for boycotting or compelling the boycott of the complainant's products by any trader/retailer, or interfering in any manner with the distribution and sale of the complainant's products."

After issuance of Notices both in respect of the complaint as well application under Section 12A of the Act and on replies submitted by the respondents the Commission on 29th January, 2002 passed the following order :

"Learned Counsel for the respondent Nos. 1 and 2 accepts notice and seeks time to file reply. Let the same be filed before the next date. Learned Counsel for the complainant states that respondent Nos. 3 to 6 have also been served and he will file affidavit of service during the course of the day. List the matter on 4th February, 2002. In the meanwhile, the respondents shall not interfere with the sale of surgical products and pharmaceutical drugs of the complainant consequent to the telegram issued by respondent No. 1 on 22nd January, 2002."

The complainant/applicant moved another application under Section 12A of the Act on 21.1.2002 claiming the same relief stating that the respondents have violated the order of the Commission dated 29th January, 2002 by issuance of circular dated 26th February, 2002 under the signatures of the President. These two applications filed under Section 12A of the Act were taken up for consideration.

3. THE learned Counsel for the applicant has contended that the respondents have no jurisdiction to propose the boycott of the sale of its product and an interim injunction has already been granted in similar circumstances as will be evident from the judgments reported as (1994) 2 CTJ 15 (MRTPC) in the matter of Karak Bazar Sayaji Ganj Beopari Mandal v. THE Chemists and Druggists Association & Ors., (1995) 3 CTJ 156 (MRTPC) in the matter of Director General (I&R) v. All Kerala Distributors Association, 1996 4 CTJ 97 (MRTPC) in the matter of D.G. (I&R) v. Bengal Chemists and Druggists Association & Ors., and 1999 CTJ 436 (MRTP) in the matter of D.G. (I&R) v. Retail and Dispensing Chemists Association & Ors.

The consensus which has been upheld by the judgments as referred to above clearly establishes that the boycott as indulged in by the respondents is prima facie restrictive trade practice and is prejudicial to public interest. Such boycotts are nothing but refusing to deal and forming it as restrictive trade practice under

Section 10(a)(i). We may also refer to the reply filed by the respondents wherein the allegation of boycott is specifically denied. Paragraph 14 of preliminary objections/submissions may be referred to as below :

"XIV. The allegation that there is boycott of the products of the complainant Company is incorrect. The complainant M/s. Johnson and Johnson has come forward with the allegation that there is boycott of its products by the answering respondent Association. It is stated that there is no such boycott of the products of the complainant Company by or at the instance of the answering respondent Association. The enclosed bills would show that there is sale and purchase of the products of the complainant M/s. Johnson and Johnson thereby disproving the allegation of boycott. Some of the invoices are annexed hereto as Annexure-R5(colly)."

Similar stand is taken in reply on merits. Paragraphs 6 and 7 may also be referred as below :

"6. Para 6 is denied. It is denied that for the first time there was protest in regard to reduction in the trade marginally in September, 2001. It is stated that the retailers and the Association have been protesting for a long time against the arbitrary and unilateral reduction by the complainant of the trade margin. The letter Annexure-B dated 24.9.2001 was not issued by the answering respondent Association. It is denied that any instruction of direction was issued by the Association to boycott the products of the complainant Association.

4. PARA 7 is denied. It is denied that there is any boycott as alleged. Sale invoices annexed to this reply would show that there is no boycott but there is sale and purchase of the products of M/s. Johnson and Johnson." 7. The respondents expressly denied that any boycott was initiated against the practice of the applicant/complainant though facts speak otherwise. The necessary circulars have been filed on record which will establish that respondent has in fact initiated the process of boycott against the applicant/complainant. In the above circumstances and particularly when in similar circumstances an ad interim injunction has been granted we have no ground to take a contradictory view. Moreover, the alleged dispute relates to the applicant, manufacturer and the wholesalers. The respondents cannot prima facie initiate any move to boycott the products of the applicant/complainant. This plea of the respondents will, however, require proper adjudication when the parties have led the respective evidence and the matter is taken to trial. Till that time the respondents are restrained from enforcing any boycott against the products of the applicant/complainant and they are directed not

to interfere with the sale of the products of the applicant/complainant by enforcing directly or indirectly boycott or compelling the boycott of the applicant's/complainant's products by any trader/retailer or interfering in any manner with the distribution and sale of the applicant's/complainant's products. The applications filed under Section 12A of the Act are disposed of in terms of above which will be subject to the respective contentions of the parties in the main petition. In view of a prima facie case of restrictive trade practice against the respondents Notice of Enquiry is directed to be issued to all the respondents returnable on 7th August, 2002. Applications disposed of.