Nirlon Synthetic Fibres and Chemicals Ltd. and Another Vs R.D. Saxena, Director of Investigation and Others

Court: Delhi High Court

Date of Decision: Dec. 13, 1974

Citation: (1976) 46 CompCas 419

Hon'ble Judges: T.P.S Chawla, J; S.N. Shankar, J

Bench: Division Bench

Judgement

1. On September 30, 1973, the Monopolies and Restrictive Trade Practices Commission (hereafter called ""the Commission""), issued notice,

annexure B, under Regulation 7 of the Restrictive Trade Practices (Inquiry) Regulations, 1970, stating that the Commission had reasons to believe

that the companies mentioned in the notice including the petitioners had entered into an agreement on September 9, 1973, and were indulging in

restrictive trade practices of the nature specified in the notice. In response, the petitioners filed applications contesting the validity of the notice and,

amongst others, urged that the agreement referred to in the notice already had the approval of the Central Government within the meaning of

Section 33(3) of the Monopolies and Restrictive Trade Practices Act, 1969 (hereafter called ""the Act""), and, Therefore, it was outside the purview

of Sections 20 and 37 of the Act. It was further urged that on the face of it the agreement did not operate to result in restrictive trade practice

within the meaning of Section 2(o) of the Act and the Commission, Therefore, had no jurisdiction to proceed in the matter. These objections were

treated by the Commission as preliminary objections and were decided against the petitioners by, the impugned orders dated March 5, 1974, and

October 21, 1974, which are assailed by this petition under Article 226 of the Constitution.

2. The learned counsel appearing for the petitioner has argued at length but we see no prima facie case. The Commission is not unanimous on the

question as to whether the agreement can be said to have the approval of the Central Government for purposes of the Act even though two of the

three members have taken the view that it did not have the said approval. We need not, however, enter into that controversy. Assuming that the

agreement did have the approval of the Central Government, the inquiry before the Commission would still be competent under the Act. For this

purpose, we may refer to Section 37 of the Act, relevant part of which reads as under:

37. (1) The Commission may inquire into any restrictive trade practice, whether the agreement, if any, relating thereto has been registered u/s 35

or not, which may come before it for inquiry and, if, after such inquiry it is of opinion that the practice is prejudicial to the public interest, the

Commission may, by order direct that.....

3. According to this section the Commission has the jurisdiction to hold investigation and make inquiry irrespective of the fact whether the

agreement is registered u/s 35 of the Act or not. It makes no exception in cases where the agreement has the approval of the Government.

4. Our attention was drawn to Sub-section (3) of Section 33 which provides that no agreement falling within this section shall require registration

under this Chapter if ""it is expressly authorised by or under any law for the time being in force or has the approval of the Central Government or if

the Government is a party to such agreement"". The learned counsel conceded that the agreement in question is not authorised by or under any law

in force nor is the Government a party to the agreement but he said that this agreement had the approval of the Central Government. As we have

stated earlier, this approval has nothing to do with Section 37 of the Act. This approval has reference only to the registrability of the agreement.

Sub-section (3) of Section 33 for that reason is of no avail to the petitioners.

5. The agreement provides that 75 per cent. of the production of the parties named therein including the petitioners, who are the major producers

of nylon yarn in the country, will be sold at concessional rates to a restricted class of users. It cannot be disputed that nylon yarn is in short supply.

The result of the agreement is that only 25 per cent. of the actual production of the country as far as the manufacturers mentioned in this agreement

are concerned is available for sale in the open market. The Commission on the basis of this agreement has observed that it operates to limit, restrict

and withhold the output, or supply of filament yarn within the meaning of Section 33(1)(g) of the Act and tends to bring about the manipulation of

prices and affects the flow of supply in the market and imposes on the consumer unjustified cause of restrictions within the meaning of Section 2(o)

of the Act. This finding cannot be said to be a finding without evidence inasmuch as it is based on the agreement itself which was not disputed

before the Commission. All that is held in the impugned order dated October 21, 1974, is that the result of the operation of the agreement is the

coming into being of a practice in the nature of a restrictive trade practice. The Commission, after deciding the preliminary issues in the impugned

order, has observed as under :

The preliminary issues having been answered, the matter will now proceed to final hearing, inter alia, for determining whether the restrictive trade

practices found are not prejudicial to public interest and as to what orders u/s 37(1) will be appropriate.

6. The above referred observations of the Commission, Therefore, are not a final decision. The matter has yet to be looked into with reference to

the criteria provided by Section 38 of the Act. We are, Therefore, unable to agree with the learned counsel that the question has been finally

decided as, indeed, if that were so, Section 55 of the Act which provides that any person aggrieved by an order made by the Commission u/s 37

can prefer an appeal to the Supreme Court would provide a conclusive answer to this writ petition.

7. An attempt was made to urge that Section 38 of the Act itself is ultra virus of Articles 14 and 19(1)(f) and (g) of the Constitution. We find, as

stated earlier, that no final order with reference to Section 38 of the Act has so far been made against the petitioners ; and as such it is premature

to consider this plea. This is especially so because on the facts of the case the Commission has to give reasons if it comes to a conclusion that the

restrictive trade practice is prejudicial to the public interest. In the absence of those reasons, to embark upon an inquiry into the constitutionality of

Section 38 of the Act would be purely academic.

8. It was also urged that in the instant case a complaint was filed by the Crimpier Association on the basis of which the Commission issued the

notice and because provisions of Section 11 of the Act were not complied with, the whole proceedings are void ab initio. We see no substance in

this argument. Section 10 authorises the Commission to inquire into any restrictive trade practice not only upon receiving a complaint but also

upon its own knowledge and information."" It is true that the Crimpier Association had filed the complaint but thereafter the Commission has taken

upon the matter itself and we see no bar to its doing so. This aspect of the matter was fully gone into by the Commission in its order dated March

5, 1974, with which we agree.

9. In paragraph 5 of the petition, the petitioners have split up the contentions already dealt with by us into sub-paragraphs. It is unnecessary to deal

with each sub-paragraph individually in view of what we have already said. The conclusions which we have stated above briefly sufficiently dispose

of the contentions.

10. Civil Writ Petition No. 1409 of 1974 is dismissed in liming.