

A

HINDUSTAN LEVER LIMITED

v.

DIRECTOR GENERAL (INVESTIGATION AND
REGISTRATION), NEW DELHI AND ANR.

B

JANUARY 10, 2001

[B.N. KIRPAL, RUMA PAL AND BRIJESH KUMAR, JJ.]

*Monopolies and Restrictive Trade Practices Act, 1969: Sections 2(0),
10(a)(iv) and 37.*

C

*Restrictive Trade Practice—Determination of—Cease and desist order—
Principle of natural justice—Applicability—Commission received complaints from
the erstwhile stockists of the manufacturer—After preliminary enquiry
Commission suo moto issued notice under S.10(a)(iv) and S.37—No
information and material which formed the basis of the notice had been
D furnished to the manufacturer—Commission found manufacturer indulged in
restrictive trade practice and wrongly terminated its agreement with a
stockist—Correctness of—Held: Termination of agreement with the stockist
not mentioned in the show cause notice—Therefore, manufacturer not called
upon to meet any allegation in connection therewith—Principles of natural
E justice require that manufacturer is entitled to know the case it has to meet—
Where civil consequences are likely to result, principles of natural justice
have to be followed—The manufacturer should have been put to notice
thereof—Hence, the order of the Commission is contrary to law and set aside.*

F

Words and Phrases:

*“Restrictive Trade Practice”—Meaning of—In the context of S.2(o) of
the Monopolies and Restrictive Trade Practices Act, 1969.*

G

**The Monopolies and Restrictive Trade Practices Commission received
certain complaints from the erstwhile stockist of the appellant. After
preliminary enquiry the Commission issued suo moto notice under Section
10(a)(iv) and Section 37 of the Monopolies and Restrictive Trade Practices
Act, 1969 read with Regulation 58 of the Monopolies and Restrictive Trade
Practices Commission Regulations, 1974. The appellant contended before
the Commission that the information and material, which formed the basis**

H

of the notice, had not been furnished to the appellant. The commission found that the appellant had been indulging in restrictive trade practice with its re-distribution stockists and that it wrongly terminated its agreement with one J. Hence, this appeal. A

Allowing the appeal, the Court

HELD : 1. As the plain reading of the definition of "restrictive trade practice" occurring in Section 2(o) of the Monopolies and Restrictive Trade Practices Act, 1969 itself discloses, and also as rightly understood by the Commission in issuing the notice, there are two parts to the definition-one which relates to carrying on of such trade practice which has or may have the effect of preventing, distorting or restricting competition in any manner and secondly the carrying on of such trade practice which *inter alia* has the effect of imposing unjustified costs or restrictions on the consumers. B C

[323-E-F]

2. Neither in the show cause notice nor in the additional particulars, which were supplied to the appellant, was there any mention of termination by the appellant of its stockist's agreement with J. The appellant was not, therefore, called upon to meet any allegation in connection therewith. The particulars, which were supplied to the appellant, did *inter alia* relate to the termination of other stockists' agreements. It is with respect to them that in the reply filed by the appellant it gave reasons for the termination of the agreements and the Commission came to the conclusion that the termination of agreement with those stockists was justified. [324-B-C] D E

3. Principles of natural justice would require that the appellant against whom an order of cease and desist could be passed under the provisions of the M.R.T.P. Act is entitled to know the case which it has to meet. Passing of an order like the present one results in civil consequences and it is now well settled that in such an event principles of natural justice have to be followed. It is for this reason that the Act and the Regulations required a notice to show cause to be issued. The notice, which is issued, either itself must provide, or an accompanying or subsequent document must indicate, to the person to whom notice is served, the case, which is required to be met. F G
It does appear that there was a complaint by J, which had been filed, with the Commission and if the Commission wanted to take that allegation/complaint into consideration, then the least, which could have been expected, was that the appellant should have been put to notice thereof. This was not done. On this ground alone, therefore, no order could be passed against the appellant H

A in relation to the termination of its agreement with J.[324-F-G-H; 325-A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2457 of 1987.

B From the Judgment and Order dated 4.8.1987 passed by the M.R.T.P. Commission, New Delhi in Enquiry No. 48 of 1983.

N.N. Goswami, Aditya Narain, Manish Misra, Brijesh Kalappa, C.V. Subba Rao and P. Parmeswaran for the appearing parties.

The Judgment of the Court was delivered by

C **KIRPAL, J.** The challenge in this appeal is to a cease and desist order passed by the Monopolies and Restrictive Trade Practices Commission (for short "the Commission") against the appellant herein.

D It seems that certain complaints by erstwhile stockists of the appellant were received by the Commission. These stockists used to sell detergents, soaps, chemicals, etc., manufactured by the appellant and their grievance had arisen by reason of their agreements having been terminated by the appellant.

E A preliminary inquiry was conducted by the Director General of Investigation & Registration whereupon a Restrictive Trade Practices Inquiry Notice No. 48/1983 dated 28th December, 1983 was issued to the appellant. This notice was issued by the Commission acting *sup moto* and in exercise of the powers conferred on it under Section 10(a)(iv) and Section 37 of the Monopolies and Restrictive Trade Practices Act, 1969 read with Regulation 58 of the Monopolies and Restrictive Trade Practices Commission Regulations, 1974. The relevant part of the said notice is as follows :

F "WHEREAS the Respondent above mentioned (M/s. Hindustan Lever Limited) is the manufacturer of detergents, detergent cakes, chemicals, bathing soaps, foods etc.;

AND WHEREAS it has come to the notice of the Commission that the Respondent has been indulging in the following trade practices :-

- G
- (i) Tie-up sales of soaps and detergents, manufactured by the Company which are in demand;
 - (ii) Area restriction on redistribution stockists;
 - (iii) Re-sale Price Maintenance;
- H (iv) Refusal to deal or supply;

- (v) Obtaining interest free and discriminatory security deposits/ advance from dealers; A
- (vi) Discriminatory dealings with Dealers;

AND WHEREAS it appears to the Commission that the said trade practices have or may have the effect of preventing, distorting or restricting competition amongst the dealers and may have the effect of imposing unjustified costs or restrictions on the consumers; B

AND, THEREFORE, in exercise of powers conferred upon it by Section 10(a)(iv) and Section 37 of the Monopolies and restrictive Trade Practices Act, 1969, the Commission has ordered that an inquiry be instituted against the respondent above mentioned at its office at New Delhi to enquiry into as to whether:- C

- (a) The Respondent above mentioned has been and/or is indulging in the trade practices as alleged;
- (b) the said trade practices have or may have the effect of preventing/distorting or restricting competition; D
- (c) the said trade practices have or may have the effect of imposing unjustified costs or restrictions on the consumers; and
- (d) such trade practices are prejudicial to public interest." E

The appellant was required to inform the Commission if it wished to be heard, failing which the Commission would proceed with the inquiry. The said notice does not indicate that any document or complaint or report was furnished to the appellant along with the said notice. According to the appellant, and there does not appear to be any serious dispute about it, it requested the Commission to supply to it the material or report on the basis of which the show cause notice had been issued. Along with an affidavit dated 8th October, 2000, the appellant has placed on record in this Court a document containing further and better particulars which were supplied to the appellant. F

On the receipt of the said particulars, reply was filed by the appellant to the show cause notice denying the allegations and the charge levelled against it. In particular, it stated in the said reply that there had been a denial of principles of natural justice because all information and material which was available with the Commission on the basis of which the notice had been issued had not been furnished to the appellant. G H

A Evidence was led, both oral and documentary, before the Commission on the following issues which had been framed:

“(i) Whether the enquiry is not maintainable for the grounds alleged by the Respondent in their reply dated 28.5.1984 to the Notice of Enquiry dated 28th December, 1983;

B

(ii) Whether the respondent has been indulging in the Trade Practices mentioned in the Notice of Inquiry dated 28th December, 1983;

C

(iii) If the answer to Issue No. (ii) is in the affirmative, then whether the said trade practices are Restrictive Trade Practices within the meaning of Section 2(o) of the MRTP Act, 1969;

(iv) If answer to Issue No. (iii) is in the affirmative, then whether the respondent is entitled to avail of the gateways provided under Section 38(1) (a)(b) and (h) read with the balancing clause.”

D By order dated 4th August, 1987, the Commission held as follows :

“74. Having held that the respondent has been indulging in the restrictive trade practices of (1) tying up sales of its slow-moving with fast-moving products and dictating its RSs to purchase such goods and in such combination as the respondent may decide, and (2) terminating the stockist-ship of its stockists resulting in refusal to deal with him, and having held that the presumption in regard to such restrictive trade practices being prejudicial to public interest has not been rebutted, we now proceed under Section 37(1) and direct the respondent that the aforesaid restrictive trade practices shall be discontinued and shall not be repeated. It logically follows that the respondent shall restore the stockists ship of M/s. Jain General Stores, Pulsudhar, the affected R.S. and resume dealings with him.”

E

F

In the appeal which had been filed against the said decision of the Commission, it has been contended by the learned counsel for the appellant that the said order of the Commission was not justified. On the contrary, Shri N.N. Goswami, learned senior counsel for the Commission and Shri Sanjay Parikh appearing for M/s. Jain General Stores contended that on the facts found by the Commission the order was justified and no question of law really arises for consideration by this Court.

G

H As we have indicated hereinabove, there were two reasons given by the

Commission for passing the order against the appellant. The show cause notice mentions the trade practices which were alleged to have been followed by the appellant like tie-up sales of soaps and detergents, refusal to deal or supply, etc., and then alleges that these trade practices appeared to the Commission to have or may have the effect of preventing, distorting or restricting competition amongst the dealers and may have the effect of imposing unjustified costs or restrictions on the consumers.

The aforesaid charge has been formulated in terms of the definition of "restrictive trade practice" occurring in Section 2(o) of the M.R.T.P. Act which, at the relevant time, was as under:

"(o) "restrictive trade practice" means a trade practice which has, or may have, the effect of preventing, distorting or restricting competition in any manner and in particular,—

- (i) which tends to obstruct the flow of capital or resources into the stream of production, or
- (ii) which tends to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers unjustified costs or restrictions."

As the plain reading of the said definition itself discloses, and also as rightly understood by the Commission in issuing the notice, there are two parts to the definition—one is which relates to carrying on of such trade practice which has or may have the effect of preventing, distorting or restricting competition in any manner and secondly the carrying on of such trade practice which *inter alia* has the effect of imposing unjustified costs or restrictions on the consumers.

The charge which the appellant was called upon to meet was that its trade practices resulted in preventing, distorting or restricting competition amongst the dealers and may have the effect of imposing unjustified costs or restrictions on the consumers. Even though oral evidence had been led, the order of the Commission does not record any categorical finding to the effect that the trade practices alleged to have been carried on by the appellant had resulted in preventing, distorting or restricting competition amongst the dealers. We need not go into the question whether terminating the agreements of the dealers would result in the attraction of the provisions of Section 2(o), but what we have to see is as to whether the appellant has been guilty of

A preventing, distorting and restricting competition amongst the dealers which was the allegation levelled against it. In the absence of such a finding and there not being even a whisper in the order that any action of the appellant had the effect of imposing unjustified costs or restrictions on the consumers, the Commission fell in error in passing the order against the appellant.

B Furthermore, we find that neither in the show cause notice nor in the additional particulars which were supplied to the appellant was there any mention of termination by the appellant of its stockist's agreement with Jain General Stores. The appellant was not, therefore, called upon to meet any allegation in connection therewith. The particulars which were supplied to the appellant did *inter alia* relate to termination of other stockists' agreements including that of M/s. Hiralal Bajaj and Sons. It is with respect to them that in the reply filed by the appellant it gave reasons for the termination of the agreements and the Commission came to the conclusion that the termination of agreement with said Bajajs was justified. It, however, found that the agreement of Jain General Store was wrongly terminated and in respect thereof it observed as follows :

E “58. In the context of the facts of the case of this RS we think that even if the respondent did carry its scheme of rationalisation of distribution system to reduce uneconomic outlets, there is preponderance of probability that he was covered by this scheme mainly because he was protesting against the respondent's practice of sending more slow moving goods and less of fast moving goods. We, therefore, hold that as far as this RS is concerned, the respondent's refusal to deal with him was a restrictive trade practice.”

F Apart from the fact that the evidence on record does not show that there was any protest by Jain General Stores to the appellant against the so-called practice of sending more slow moving goods and less of fast moving goods, we find that neither in the show cause notice nor in the additional particulars was there any mention with regard to Jain General Stores. Principles of natural justice would require that the appellant against whom an order of cease and desist could be passed under the provisions of the M.R.T.P. Act is entitled to know the case which it has to meet. Passing of an order like the present one results in civil consequences and it is now well settled that in such an event principles of natural justice have to be followed. It is for this reason that the Act and the Regulations required a notice to show cause to be issued. We would expect that the notice which is issued either itself

must provide or an accompanying or subsequent document must indicate to the person to whom notice is served the case which is required to be met. It does appear that there was a complaint by Jain General Stores which had been filed with the Commission and if the Commission wanted to take that allegation/complaint into consideration, then the least which could have been expected was that the appellant should have been put to notice thereof. This was not done. On this ground alone, therefore, no order could be passed against the appellant in relation to the termination of its agreement with Jain General Stores.

For the aforesaid reasons, we are of the opinion that the order of the Commission is contrary to law. We, accordingly, allow this appeal and set aside the said order.

Parties to bear their own costs.

V.S.S.

Appeal allowed.