

RAYMOND WOOLLEN MILLS LTD.

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v.

M.R.T.P. COMMISSIONS AND ANR.

FEBRUARY 26, 1993

[KULDIP SINGH AND S. MOHAN, JJ.]

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The Monopolies and Restrictive Trade Practices Act, 1969/The Monopolies and Restrictive Trade Practices Commissions Regulation, 1974.

Sections 2(o), 33(1)(f), 37(1) and 55/Regulation 74—Restrictive trade practice—Price lists—No indication in price lists that rates prescribed are maximum recommended rates—Held appellant indulged in restrictive trade practice—‘Cease and desist’ order of M.R.T.P. Commission upheld.

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The M.R.T.P. Commission issued a notice of enquiry on 10.2.1987 *suo motu* alleging that the appellant in the appeal was indulging in the trade practice of re-sale price maintenance by not mentioning in its price list that the prices lower than those prices may be charged, and that this amounted to restrictive trade practices within the meaning of Section 33(1)(f) of the Monopolies and Restrictive Trade Practices Act, 1989. An application was filed by the appellant on 29.4.1987 for further and better particulars seeking directions from the Commission and requesting for a copy of the Preliminary Investigation Report and in pursuance thereto the Director- General (I & R) was directed to furnish the specific instances in support of the allegations in the notice of enquiry.

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A reply was filed by the appellant to the notice of the enquiry on 5.8.1987 and on 7.10.1987 a rejoinder was filed by the Director General under Regulation 74 of the Commission's Regulation, 1974 serving interrogatories upon the appellant.

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The Commission passed an order on 7.12.1987 upholding the objections raised by the appellant and modifying the interrogatories and on 22.4.1988, issues were duly framed by the Commission.

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On 3.8.1989 the Marketing Director of the appellant filed an affidavit rebutting the allegation of re-sale price maintenance and stating that the price lists issued by the appellant were merely recommendatory in nature

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- A and to ensure that the dealers do not re-sale their products at prices higher than those mentioned in the price lists, and that they have always been understood by the dealers to be the maximum recommended prices.

- B On 3.5.1991 the Commission passed an order holding that the appellant had been indulging in the restricting trade practice of re-sale maintenance and consequently passed a cease and resist order against the appellant.

- C In the appeal against the aforesaid order to this Court under Section 55 of the Act, it was contended on behalf of the appellant relying on *Tata Engineering & Locomotive Company Ltd. v. R.S.T.A.*, [1977] 2 SCR 685 and *Mahindra & Mahindra Ltd. v. Union of India*, [1979] 2 SCR 1038 at 1074 that the definition of restrictive trade practice in Section 2(o) of the Act "is a pragmatic and result-oriented definition", and that the legality of an agreement or regulation does not depend upon whether or not it restrains competition but the test is whether the restraint imposed is such as merely regulates, and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition.

Dismissing the appeal, this Court,

- E HELD: 1. Section 33 deal with agreements relating to restrictive trade practices. Therefore, it is not correct to content that this is only for the purpose of registration of agreements. Exhibits A-2 to A-5 are the copies of price list issued by the appellant. The dealers are required to display the price list in their show rooms. [134C, G]

- F 2. The price lists indicate the rate per metre of each of the textile product manufactured. There is nothing to indicate that the dealers could charge a price lower than those mentioned in the price list. [134H, 135A]

- G 3. The Commission has rightly pointed out that there is not even an indication in the price list that the rates prescribed are the maximum recommended rates. In the absence of the same, the dealers could sell their products even at lower rates. This will encourage the consumers to ask any rebate in the rates indicated in the price list. [135B]

- H 4. The definition of 'restrictive trade practice' in section 2(o) of the Act is an exhaustive one and not an inclusive one. It is for the price list, not having any indication as to the maximum price, that the charge is made

in the notice of the Commission dated 10.2.1987 of violation of restrictive trade practice under section 33(f) falling under section 2(o)(ii) of the Act. The whole case depends on the admitted price list issued by the appellant. In such a case no further evidence is necessary. [133B] A

Tata Engineering and Locomotive Co. Ltd. v. R.R.T.A., [1977] 2 SCR 685 at 694, not applicable. [131B] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4126 of 1991.

From the Judgment and Order dated 3.5.91 of the M.R.T.P. Commission in R.T.P. Enquiry No.5/86. C

Ashok K. Desai, Ravinder Narain, Rajan Narain and Aditya Narain for the Appellant.

The Judgment of the Court was delivered by D

MOHAN, J. This is an appeal under Section 55 of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the Act) against the order passed by the Monopolies and Restrictive Trade Practices Commission, New Delhi (hereinafter referred to as the Commission), being a 'cease and desist' order dated 3.5.91 under Section 37 (1) of the Act. The short facts leading to this appeal are as under: E

On 10.2.87, a notice of enquiry was issued *suo motu* by the Commission *inter alia* alleging that the appellant was indulging in the trade practice of re-sale price maintenance by not mentioning in its price lists that the prices lower than those prices may be charged. It amounted to restrictive trade practices within the meaning of Section 33 (1)(f) of the Act. F

On 29.4.87, an application was filed by the appellant for further and better particulars seeking directions from the Commission, requesting therein for a copy of the Preliminary Investigation Report. G

On the same date i.e. 29.4.87, an order was passed by the Commission directing the Director-General (I & R) to furnish to the appellant specific instances in support of the allegations in the notice of enquiry. Accordingly, a copy of the Preliminary Investigation Report was furnished to the appellant. H

A On 5.8.87, a reply to the notice of enquiry was made by the appellant.

On 7.10.87, a rejoinder was filed by the Director General (I & R) along with an application under Regulation 74 of the Commission's Regulation 1974 serving interrogatories upon the appellant.

B On 7.12.87, an order was passed by the Commission upholding the objections raised by the appellant and modifying the interrogatories.

On 21.4.88, the appellant filed its affidavit in reply to the interrogatories.

C On 22.4.88, issues were duly framed by the Commission. Director General (I & R) did not produce any witness to prove the allegation of re-sale price maintenance, but merely relied on the price list furnished by the appellant.

D On 3.8.89, an affidavit of the Marketing Director of the appellant was filed rebutting the allegation of re-sale price maintenance and stating that the price lists issued by the appellant were merely recommendatory in nature and to ensure that the dealers do no resell their products at prices higher than those mentioned in price lists. It was further stated therein that the prices mentioned in the price lists issued by the appellant are the maximum recommended prices and have always been understood by the dealers to the maximum recommended prices. The retailers have, in fact, been selling at prices lower than the maximum recommended prices. These statements made by the witnesses of the appellant were not controverted by the Director General (I & R).

F On 3.5.91, the impugned order was passed by the Commission *inter alia* holding that the appellant has been indulging in the restrictive trade practice of resale maintenance and consequently passed a cease and resist order against the appellant.

G It is against this order the appellant has preferred this appeal under Section 55 of the Act.

Mr. Ashok H. Desai, learned counsel for the appellant would urge the following for our consideration:

H The definition of restrictive trade practice in Section 2(o) of the Act "is

a pragmatic and result-oriented definition". The legality of an agreement or regulation does not depend upon whether or not it restrains competition but the test is whether the restraint imposed is such as merely regulates, and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. In this connection, he places reliance on *Tata Engineering and Locomotive Co. Ltd. v. R.R.T.A.*, [1977] 2 SCR 685 at 694 and *Mahindra and Mahindra Ltd. v. Union of India*, [1979] 2 SCR 1038 at 1074.

The Director General has to establish:

- (1) What facts are peculiar to the business to which the restraint is applied?
- (2) What was the condition before and after the restraint is imposed?
- (3) What is the nature of restraint and what is its actual and probable effect?

From this point of view the Director General will have to establish each of these points. Only when it is proved that there is a restrictive trade practice the burden shifts to the respondent to prove that it is entitled to pass through the gateways set out in Section 38(1) of the Act.

In the present case, the notice of enquiry makes no allegation about the facts and features of the trade, about the nature of restraint and its impact on trade and why it is anti-competitive. The notice only sets out that there is a price list. There was no evidence led in by the Director General to the effect that the dealers did not sell the goods of the appellant below the price in the price list. In any event, the evidence clearly demonstrates that the dealers understood the price list to mean that the dealers could charge lower prices and in fact did charge lower prices. The competition was not affected in any material degree and the gateway as under Section 38(1)(h) of the Act was fully available.

In order to appreciate the above submissions, it is necessary to look at the following provisions of the Act.

Section 2(o) of the Act defines restrictive trade practice. It reads as under:

"(o) 'restrictive trade practice' means a trade practice

A 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

B (ii) which tends to bring about manipulation of prices, or conditions of delivery to effect 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*."

C (Emphasis supplied)

This definition of restrictive trade practice is an exhaustive one and not an inclusive one. No doubt, this court laid down in *Tata Engineering and Locomotive Co. Ltd.* (supra) as follows:

D "The decision whether a trade practice is restrictive or not has to be arrived at by applying the rule of reason and not on the doctrine that any restriction as to area or price will *per se* be a restrictive trade practice. Every trade agreement restrains or binds persons or places or prices.

E The question is whether the restraint is such as regulates and thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine this question three matters are to be considered. First, what facts are peculiar to the business to which the

F restraint is applied. Second, what was the condition before and after the restraint is imposed. Third, what is the nature of the restraint and what is its actual and probable effect."

The notice was issued to the appellant in the following terms:

G "The Commission has information that the respondent abovementioned, which manufactures and sells textile goods, has been indulging in the following trade practices:-

(1) indulging in the trade practice of resale price maintenance by not mentioning in its price lists that prices lower than those prices may be charged; and

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(2) indulging in the trade practice of discriminatory pricing by offering varying rates of bonus linked with the quantity or material bought by dealers.

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It appears to the Commission that the above trade practices are restrictive trade practices within the meaning of clauses (f) and (e) of section 33(1) of the Monopolies and Restrictive Trade Practices Act, 1969. Further they have got the effect of manipulation of prices of textile goods in such a manner as to impose unjustified costs or restrictions on the consumers and thereby making them restrictive trade practices within the meaning of Section 2(o)(ii) of the Monopolies and Restrictive Trade Practices Act, 1969.

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AND THEREFORE, in exercise of the powers under section 10(a)(iv) and 37 of the M.R.P.T. Act, 1969, the Commission has ordered that an enquiry be instituted against the respondent abovementioned at the Commission's office in New Delhi to enquire into as to whether:

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(a) the said trade practices are restrictive trade practices as alleged; and

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(d) the said restrictive trade practices are prejudicial to public interest;

AND NOW THEREFORE a Notice under Regulation 58 of the M.R.T.P. Commission Regulations, 1974 is hereby given to the Respondent that if it wishes to be heard in the proceedings before this Commission it should file a reply 10 days before the date of hearing to the Notice of Enquiry and comply with the provisions of Regulation 11, 57, 65 and 67 copies of which are enclosed herewith for facility of reference, failing which the enquiry shall proceed *ex-parte* in the absence of the Respondent.

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IT IS FURTHER notified that the case shall come up before the Commission for a hearing on 23.3.1987 at 11.00 A.M.

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A GIVEN under my hand and seal of the Commission
at New Delhi, this the 10th day of February, 1987.

BY ORDER OF THE COMMISSION

SD/-

B (S.K. CHATTOPADYAY)
DEPUTY SECRETARY"

From this, it will be clear that what is alleged against is restrictive trade practice within the meaning of the above definition under Section 2(o)(ii). Section 33 deals with agreements relating to restrictive trade practices. That *inter alia* says:

C "33. Registerable agreements relating to restrictive trade practices. -

D (1) Every agreement falling within one or more of the following categories shall be deemed, *for the purposes of this Act*, to be an agreement relating to restrictive trade practices and shall be subject to registration in accordance with the provisions of this Chapter, namely-

E (a) to (e)

(f) any agreement to sell goods on condition that the prices to be charged on resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged;

F (g) to (I)

(Emphasis supplied)

G It has to be carefully noted that this Section applies for the purposes of the Act. Therefore, it is not correct to contend that this is only for the purpose of registration of agreement. Exhibits A-2 to A-5 are the copies of price list issued by the appellant. The dealers are required to display the price list in their show rooms. In so far as it was admitted by the appellant that there are no separate price lists for the Mill's own outlets and for the dealers. The price lists indicate the rate per metre of each of
H the textile product manufactured. There is nothing to indicate that the

dealers could charge a price lower than those mentioned in the price list. A

As rightly pointed out by the Commission there is not even an indication in the price list that the rates prescribed are the maximum recommended rates. In the presence of the same, the dealers could sell the products even at lower rates. This will encourage the consumers to ask any rebate in the rates indicated in the price list. B

The Commission observes as follows:

"The object of clause (f) of Section 33 is that when specified rates are mentioned in the price list issued by the manufacturer and the sale and purchase including resale of the products was governed by those rates, there should be a clear mention in the price list that the dealers can sell at prices lower than those shown therein so that the ultimate consumers may not be led or misled by the fact that the prices mentioned in the price list are final and not subject to negotiation. In this view of the matter, the fact that in actual practice some of the retailers might have sold the products at prices lower than those mentioned in the price list would not be material and the situation would be fully covered by clause (f)." C D E

We are in entire agreement with this finding.

The submission of Mr. Desai, relying on *Tata Engineering and Locomotive Co. Ltd.* case (supra), that no evidence was let in by the Director General cannot be accepted. It is on the price list, without any indication as to the maximum price, the charge is made of violation of restrictive trade practice under section 33 (f) falling under section 2(o)(ii) of the Act. In such a case, we are unable to see as to why evidence is necessary. The whole case depends on the admitted price list issued by the appellant. The ruling of *Tata Engineering and Locomotive Co. Ltd.* (supra) has no application to the facts of the present case because that was a case of distributorship where distributor takes care of the post sale service that is peculiar to the nature of the trade there, namely, the Locomotives, which cannot be so in this case, the trade being of textile and nothing peculiar to this trade. F G H

A Accordingly, we find no merit in the appeal which is hereby dismissed. However, there shall be no orders as to cost.

N.V.K.

Appeal dismissed.