



Vijay Gupta v. M/s Paper Merchants Association, Delhi & ors.* (Anticompetitive Agreements)

Forum:

Competition Commission of India¹

Legislative Provisions Referred:

Competition Act, 2002²-

1. Section 3- 'Anti-Competitive Agreements'
2. Section 4- 'Abuse of Dominant Position'

Parties to the Case:

1. Vijay Gupta (Informant)
2. M/s Paper Merchant's Association, Delhi (PMAD) (OP1)
3. Ms. Shashi Jain (OP2)
4. Mr. Ramesh Jain (OP3)

Facts of the Case:

The Informant did business with OP2, who was a member of OP1, an association registered under the Societies Registration Act, engaged in paper trade, commerce and industry. After a dispute over non-payment of bills, OP2 referred the dispute for arbitration. According to the arbitration conditions on the sale bill given on purchase to the buyer, the dispute had to be resolved through an arbitrator, appointed by OP1, but, the Informant objected to the same and claimed that OP1 was not empowered to do so, because consent of the Informant was not taken for the arbitration clause printed on the sale bill. The Commission referred the matter to the Director General (DG) and restrained OP1 from issuing notice to its members to prohibit business dealings with the Informant, as claimed by the latter. Also, the

*Vijay Gupta v. M/s Paper Merchants Association, Delhi, Case No. 7/2010, available at <http://www.cci.gov.in/menu/OrderVijay150411.pdf>, (last accessed on 5th of December, 2013).

¹ Hereinafter referred to as 'CCI'.

² Hereinafter referred to as 'the Act'.

Informant prayed for deletion of Clause 22 of Part XVI³ providing for directions to members, including not to deal with others, in case non-compliance of directions given by Quida Committee and clause 1 and 2 of Part XXX⁴-Arbitration Clause; as they were anticompetitive.

Main Issues:

1. Whether the Regulations and Constitution of Paper Merchant Association infringed the provisions of Section 3 of the Act?

OPs- As per OP1 and OP2, the arbitration award was in accordance with the Arbitration and Conciliation Act and was not illegal as it was not a 'sine qua non' for a binding and valid contract between parties, nor OP1 and OP3 had notified any of its members to stop business transactions with the Informant. According to OP3, the information filed by the Informant was not maintainable as he had already filed objections to the ex-parte award. Also, the terms and conditions on the sale bill amounted to a written contract between the parties and in case of non-compliance by either of the parties, OP1 was authorised to take action.

DG- According to the DG, Clause 22 of Part XVI, conditions on the sale bill and rules for arbitration in Part XXX of the Constitution and Regulations of OP1,

³ Clause 22 of Part XVI of Constitution and Regulations of the PMAD - It is mandatory for all members and non-members (dealing with any member) to comply with any instructions and directions of the Executive Committee of Paper Merchants Association of India (PMAD). Otherwise, the defaulters would be reported to 'Quida Committee', a disciplinary committee of PMAD, who may instruct all member of PMAD not to deal with the defaulters.

⁴ Clauses 1 and 2 of Part XXX of Constitution and Regulations of the PMAD - Clause 1 states that any dispute relating to non-payment of bills between members or between a member and non-member shall be decided by an arbitrator appointed by PMAD and the Award of the arbitrator shall be binding on the parties. Clause 2 states that the above condition shall be stamped or printed on any bill raised to a non-member, who shall be bound to the terms.

restricted supply of material in the market, through collective intent and decision. They were anticompetitive and against healthy competition, thus, OPs had violated section 3 of the Act.

CCI- It was observed that boycott of the Informant was collectively intended which consequently restricted supply to the disputing buyers in the market. Also, the provisions of dispute settlement and punitive action by 'Quida Committee' of OP1 in case of non-compliance had appreciable effects on competition. This deprived the Informant of his rights as a 'consumer'. CCI further noted that these actions and impugned clauses do not appear to attract any efficiency defence and thus cannot be justified under section 19 (3) of the Act. Thus, all members of OP1 were jointly and severally responsible.

2. Whether OP1 was in a dominant position under section 4 of the Act?

OPs- OP1 and OP2 contended that there was no irreparable loss to the Informant and that OP1 was not even in a dominant position as it was not a commercial organisation. It was argued that OP1 did not give any unfair advantage to its members nor imposed any unfair or discriminatory condition on any purchase, sale etc.

DG- The DG report observed that OP1 was not an 'enterprise' u/s 2(h) of the Act and OP2 did not fall u/s 4 of the Act as he did not deal in the relevant market and was only the arbitrator. Also, the Informant got supplies from other manufacturers directly and therefore OP2 was not a dominant player.

CCI- It was observed that the OP2 and OP3 were not dominant players in the market as there were several others in the relevant market. The question of dominance of OP1 was therefore not discussed by the CCI.

Decision of the Commission:

It was observed by the CCI that Clauses 1 and 2 of Part XXX and Clause 22 of the rules/regulations XVI of Constitution and Regulations of OP1 were anti-competitive and should be deleted/ modified, as they led to the contravention of Section 3(3) (b) of the Act. However, no penalty was levied on the violators.

Supplementary Order⁵:

On an appeal filed by the Informant before Competition Appellate Tribunal (COMPAT), an order for withdrawal of appeal was given and Informant was directed to approach the Commission for modification of the clauses by OP1. Therefore, in this application filed by the Informant, CCI issued directions for modification of the clauses as suggested by the Commission and observed that henceforth, the Arbitrator appointed by OP1 will have no jurisdiction over any dispute between the two parties.

Analysis of the Main Order:

The CCI observed that an arbitration agreement between a member and a non-member had to be written in express terms and if that is not done, the dispute could not be settled through arbitration. This was so because a written agreement in its opinion was an expression of consensus between the parties, on the terms and conditions of the arbitration clause in the agreement/contract.

As rightly observed by the Commission in this case, the regulations/rules of arbitration imposed upon the Informant not only took away the freedom of trade of the members of the Paper Merchants Association, but also made the threats, boycotts, denial of market access to disputing buyers and other such anticompetitive acts, an integral part of joint and collective decisions made by the members of the Association.

This case also highlighted the lack of awareness amongst business groups with regard to the existing competition law. Also, the CCI in this case threw light on the role of trade associations and curtly opined that though they have regulations and bye-laws to be abided by, by all members, despite that, due care must be taken to ensure that their regulations/joint decisions do not restrict the freedom of trade of its members.

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⁵ Order available at <http://www.cci.gov.in/May2011/OrderOfCommission/072010S.pdf>, (last accessed on 5th of December, 2013).