



CASE STUDY 03

SEPTEMBER 2013

**POWERS AND LIMITATION OF CCI & COMPAT
COMPETITION COMMISSION OF INDIA vs. STEEL AUTHORITY OF INDIA & ANR**

FORUM:

The Supreme Court of India at New Delhi

ACTS/SECTIONS REFERRED:

Competition Act, 2002

1. Section 19: *Inquiry into certain agreements and dominant position of enterprise*
2. Section 26(1): *Procedure for inquiry under section 19.*
3. Section 33: *Power to issue interim orders.*
4. Section 53A (1): *Establishment of Appellate Tribunal.*
5. Section 57: *Restriction on disclosure of information.*

PARTIES TO THE CASE:

Petitioner- Competition Commission of India

Respondent- Steel Authority of India

CASE BRIEF:

In October 2009, *Jindal Steel and Power Ltd. (JSPL)* invoked Section 19 r/w Section 26(1) of the Competition Act, 2002 by providing information to *the Competition Commission of India (CCI)* alleging that *Steel Authority of India (SAIL)* had *inter alia*, entered into an exclusive supply agreement with Indian Railways for the supply of rails. CCI, after finding that a prima facie case existed but without giving an opportunity to SAIL to file a detailed reply, referred the matter for investigation by the Director General (DG), This order was challenged by SAIL before *Competition Appellate Tribunal (COMPAT)*. COMPAT vide its order dated February 15, 2010 stayed the investigation proceedings by the DG and refused to implead CCI as a party before it. Aggrieved by this order of the COMPAT, the CCI approached the Supreme Court of India (SC).

This verdict of SC has effectively defined the limits of exercise of power by both the CCI and COMPAT.

ISSUES BEFORE SUPREME COURT AND ITS OBSERVATIONS THEREUPON

Issue 1: Whether a direction passed by the Commission u/s. 26(1) of the Act while forming prima facie opinion would be appealable u/s 53A(1) of the Act.

The Court concluded in negative and held that Section 53A (1) of the Act expressly provides decisions or orders or directions may be appealed before COMPAT, and this does not include a direction of CCI under Section 26(1) of the Act. The Court noted that right to appeal is a statutory right and if the statute does not provide for an appeal, the Court cannot presume such right.

Issue 2: What is the ambit and scope of power vested with the Commission under Section 26(1) of the Act and whether the parties, including the informant or the affected party, are entitled to notice or hearing, as a matter of right, at the preliminary stage of formulating an opinion as to the existence of the prima facie case?

The Hon'ble Court observed that with reference to Section 26 (1) of the Act, neither any statutory duty is cast on CCI to issue notice or grant hearing, nor any party can claim, as a matter of right, notice and/or hearing at the stage of formation of opinion by CCI.

However, CCI, being a statutory body exercising, *inter alia*, regulatory jurisdiction, even at that stage, in its discretion and in appropriate cases may call upon the concerned party(s) to render required assistance or produce requisite information, as per its directive.

CCI is expected to form such prima facie view without entering upon any adjudicatory or determinative process. CCI has the power in terms of Regulation 17 (2) of the Regulations to invite not only the information provider but even 'such other person' which would include all persons, even the affected parties, as it may deem necessary. In that event it shall be 'preliminary conference', for whose conduct

of business CCI is entitled to evolve its own procedure.

Issue 3: Whether the Commission would be a necessary, or at least a proper, party in the proceedings before the Tribunal in an appeal preferred by any party?

The SC observed that, in cases where the inquiry has been initiated by CCI, *suo moto*, CCI shall be a necessary party and in all other cases the CCI shall be a proper party in the proceedings before the Competition Tribunal. The presence of CCI, as a party before the Tribunal would help in complete adjudication along with effective and expeditious disposal of matters. Being an expert body, its views would be of appropriate assistance to the Tribunal. Thus, CCI in the proceedings before the Tribunal would be a necessary or a proper party, as the case may be.

Issue 4: At what stage and in what manner the Commission can exercise powers vested in it under Section 33 of the Act to pass temporary restraint orders?

SC held that during an inquiry and where CCI is satisfied that the act is in contravention of the provisions stated in Section 33 of the Act, it may issue an order temporarily restraining the party from carrying on such act, until the conclusion of such inquiry or until further orders without giving notice to such party, where it deems it necessary.

This power has to be exercised by CCI sparingly and under compelling and exceptional circumstances. The power under Section 33 of the Act to pass temporary restraint order can only be exercised by the Commission when it has formed prima facie opinion and directed investigation in terms of Section 26(1) of the Act.

Issue 5: Whether it is obligatory for the Commission to record reasons while forming prima facie opinion?

SC held that in consonance with the settled principles of administrative jurisprudence, CCI is expected to record at least some reason even while forming a prima facie view. However, while passing directions and orders dealing with the rights of the parties in its

adjudicatory and determinative capacity, it is required of CCI to pass speaking orders (written/reasoned orders), upon due application of mind, responding to all the contentions raised before it by the rival parties.

Issue 6: What directions, if any, need to be issued by the Court to ensure proper compliance in regard to procedural requirements while keeping in mind the scheme of the Act and the legislative intent?

The Court directed that (i) all proceedings, including investigation and inquiry be completed by CCI/ DG most expeditiously and wherever during a course of an enquiry the CCI passes an interim order, it should pass a final order in that behalf as expeditiously as possible and in any case not later than 60 days; and (ii) DG should submit the report in terms of section 26(2) of the Act within the time as directed by CCI, but in all cases not later than 45 days from the date of the directions issued under section 26(1) of the Act.

ANALYSIS OF THE JUDGEMENT

The Judgement of the Hon'ble SC in the instant matter is the stepping stone towards the development and expansion of the Indian competition jurisprudence. This case not only defines the extent of powers of CCI but also its limitations.

Through this judgement, the Hon'ble Supreme Court has erased ambiguities pertaining to the interpretation of the provisions of the Competition Act, 2002 and more precisely it has put to rest the various controversies with regard to the demarcation of the power of the COMPAT and CCI.

However, all the powers attributed to CCI through this judgement come with a caution i.e. to uphold utmost responsibility and the underlying spirit of the Act. It also postulates the greater responsibility of maintaining confidentiality by CCI as provided under Section 57 of the Competition Act, 2002.

Prepared By: Molshree Bhatnagar, CIRC