In Re: Duncans Tea Ltd.

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Court : Monopolies and Restrictive Trade Practices Commission MRTPC

Decided On : May-03-1993

Judge : Author: A Varma

Appellant : In Re: Duncans Tea Ltd.

Judgement :
1. This enquiry has been initiated against Duncans Tea Ltd., the respondent under Section 10(a)(iv) and Section 37 of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the "Act"). The notice mentions two charges against the respondent : 1. The two letters written by the respondent on April 14, 1986, and June 4, 1986, to Shri Anup Aggarwal of Allahabad directed him to deal exclusively with Duncans products which is a restrictive trade practice within the meaning of Section 33(l)(c) of the Monopolies and Restrictive Trade Practices Act, 1969.

2. The price-list of the respondent effective from January 21, 1985, did not give liberty to distributors/retailers to charge a lower price than the price fixed by the respondent. This practice amounts to a restrictive trade practice within the meaning of Section 33(l)(f) of the Monopolies and Restrictive Trade Practices Act, 1969. It also attracts Section 39 of the Act.

2. The proceedings had originated with a complaint addressed to the Commission by one Shri Anoop Aggarwal of Allahabad vide his letters dated April 14, 1986, and June 4, 1986. The Commission, on receipt of the complaint, investigated by Director (Research) who submitted a preliminary report on April 24, 1989, stating

that prima facie Duncans Tea Ltd. had indulged in restrictive trade practices falling under Clauses (e) and (f) of Section 33(1) of the Act. On the basis of the Preliminary Investigation Report, the Commission issued notice of enquiry under Section 10(a)(iv). In response to the notice, the respondent filed its reply refuting the charges and denying the allegations made in the complaint.

3. Shortly, the respondent's case was that the complainant was never appointed as' its distributor and that he was purchasing goods on principal to principal basis and there was no agreement of agency. It was further stated that the price list produced by the complainant was not the price list of the respondent-company, and that the one issued by the company was annexed to the reply and is marked as annexure A in which it is stated that the retailers are free to sell the products at prices lower than that quoted in that list. The charge of exclusivity was also denied by the respondent. It was said that all that was intended to be conveyed to Shri Anoop Aggarwal through the company's letters dated April 14, 1986, and June 4, 1986, was that there was likelihood of contamination of tea if the same was stored, carted and distributed in the market along with other commodities such as detergents, etc. The complainant was never restrained from dealing in tea manufactured by other manufacturers.

4. On the pleadings of the parties, the following issues were framed by the Commission in its order dated October 22, 1990 : (1) Whether the respondent is or has been indulging in the restrictive trade practices as stated in the notice of enquiry.

(2) If the reply to issue No. 1 is in the affirmative, whether the aforesaid restrictive trade practices are prejudicial to the public interest or to the interest of any consumer or consumers in general.

5. In support of its evidence, the Director-General submitted three documents which were admitted by the respondent and marked as exhibits A-1 to A-8. With that the Director-General closed his evidence. Later, on the same date, i.e., August 21, 1991, learned counsel for the respondent submitted that he had by inadvertence wrongly admitted the price list submitted by the Director General.

6. On the next date fixed in the case, i.e., April 16, 1992, no one appeared on behalf of the respondent and the Commission decided to proceed ex parte.

7. On April 16, 1993, the date fixed for arguments, again no one appeared on behalf of the respondent. We, however, heard Ms. Anjana Gosain, learned counsel for the Director-General, on the merits of the case.

8. We will first take up issue No. 1. The evidence of the Director-General consists of the statement of Shri Anoop Aggarwal recorded on December 8, 1992, and two letters. A letter dated April 14, 1986, is addressed to Anup Aggarwal by the company and is marked exhibit AW-1/1 and the other letter dated June 14, 1986, is also addressed to Mr. Anup Aggarwal and is marked as exhibit AW-1/2. The price list annexed to this letter is marked as exhibit AW-1/3. The case turns entirely on these letters and the price list.

9. Reliance was placed by learned counsel for the Director-General in support of the charge of exclusivity falling under Clause (c) of Section 33(1) mainly and entirely on Clauses (1) to (3) of paragraph 4 of the letter dated April 14, 1986 (exhibit AW-1/1) which reads as under : 1. Two separate units with two separate salesmen and trolley men exclusively for dealing in Duncan products.

2. Your units should be ready by 9.30 a.m. and should be in the respective route by 10 a.m.

3. Some days of certain routes should be changed as it is coinciding with our competitors (Thursday's route is coinciding with Brooke Bond)." It was submitted by Ms. Gosain that the contents of these clauses conclusively prove the charge of exclusivity.

We are unable to agree. In order to appreciate the merits of this contention, it will be important to note the context in which these clauses were added. In paragraphs 2 and 3 of the letter, the company stated: "2. You are providing us two units which carry common stocks of Duncans, Shaw Wallace and Calcutta Chemicals. This creates lots of problems in the market place. Unnecessary time is wasted per shop where your salesman deals with all the products of these companies.

Here, I would like to mention that tea stocks are not supplied to a retailer if he has an outstanding in Shaw Wallace or Calcutta Chemicals Company.

3. Sometimes only one unit works in the market with combined products of these three companies".

10. A combined reading of these two paragraphs and the clauses referred to above clearly points to the conclusion that what was basically sought to be stressed by the company was that its stocks should not be mixed up with the stocks of other companies and consequently Shri Aggarwal should provide two separate units and salesmen as well as troileymen for exclusively handling the products of the respondent-company. The company has elaborated the reasons why it is necessary to have different stocks stored and marketed separately. In any case, a mere requirement that there should be two separate units, two separate salesmen and troileymen exclusively for the products of the respondent cannot by any stretch of imagination attract Clause (c) of Section 33(1).

11. The same picture emerges from a glance at the letter dated June 4, 1986 (exhibit AW-1/2). In this again the respondent has emphasised the importance and the need for handling the respondent's products separately. In the very first paragraph, the letter states that distribution of their products on a handcart with other products like soaps etc. is prejudicial to the respondent's interest inasmuch as products like soaps being marketed by the complainant contaminate the tea. Consequently, the complainant was requested that an exclusive unit for tea for covering the Allahabad market might be arranged. The two letters dated April 14, 1986, and June 4, 1986, which were made the sheet-anchor of the charge of exclusivity, thus not only do not prove the charge but completely negative the same.

12. That brings us to the price list dated January 21, 1985, AW-1/3.

The price list is headed "Packet tea price structure effective, January 21, 1985". The list sets out the invoice price per kg., price to retailer, price per pack to consumer and the price printed on the pack.

The price list does not state that they are the recommended maximum retail selling prices and/ or that the dealer is at liberty to charge a lower price from the consumer. The settled legal position that where the price list simply mentions the price without indicating or specifying that the dealer is at liberty to sell it at a lower price to the consumer, the list will immediately attract Clause (c) of Section 33(1) of the Monopolies and Restrictive Trade Practices Act. It is unnecessary to burden this order with a host of previous decisions on the point rendered by the Commission. We may, however, cite just one decision-a recent pronouncement of the Supreme Court approving the decision of the Monopolies and Restrictive Trade Practices Commission in the matter of Raymond Woollen Mills Ltd. v. M.R.T.P. Commission [1993] 78 Comp Cas 471 (SC). The Commission held in that case that the object of Clause (f) of Section 33 is that when specified rates are mentioned in the price list there should be a clear indication in the price list that dealers can sell at prices lower than those shown therein so that the ultimate consumers may not be misled by the price list. This view was approved by the Supreme Court in the appeal which was preferred by the company against the decision of the Commission.

13. That being so, the second charge stands proved against the respondent beyond any doubt. Indeed, the respondent itself appears to have realised this as is apparent from annexure 8 to its reply which is the price list effective from July I, 1987. It is headed 'Recommended Maximum Retail Selling Price'. At the bottom of the price list there is a note stating "retailers are free to sell the products at prices lower than above".

14. The upshot is that the first issue, in so far as the charge of exclusivity failing under Section 33(l)(c) is concerned, is answered in the negative and in favour of the respondent, while it is answered in the affirmative and against the respondent as regards the charge falling under Clause (f) of Section 33.

15. That brings us to the second issue which stands answered in terms of Section 38(1) of the Act against the respondent in so far as the second charge under Section 33(1)(f) is concerned. Section 38 raises a presumption of prejudice to the public interest if it is proved that the respondent has indulged in a restrictive trade

practice. Prejudice to public interest shall, therefore, have to be presumed in this case, in view of our finding that the respondent has indulged in restrictive trade practice while fixing the price to be charged by the purchaser on resale. The question of any prejudice in regard to the first charge of exclusivity, however, does not arise as the charge itself has failed.

16. In the result, the respondent is directed to stop the restrictive trade practice of fixing the resale price. It is further directed that while issuing price lists to the purchasers of its products it shall clearly state that the prices indicated in the list are the maximum recommended prices and that it will be open to the purchaser to resell the products at a lower price than indicated in the list. The respondent shall file an affidavit of compliance within six weeks of the date on which this order is served upon it. There will be, however, no order as to costs.