

18.05.2023
sayandeep
Sl. No. 04
Ct. No. 05
(For Orders)

WPA 10107 of 2023

Shyam Steel Industries Ltd & anr.
-Versus-
Union of India & Ors.

Mr. S.N. Mookherjee, learned AG
Mr. Ratnanko Banerji, Sr. Adv.
Mr. Soumya Majumder, Adv.
Mr. Sagardeep Rathi, Adv.
Mr. Naman Chowdhury, Adv.
Ms. Vaibhavi Pandey, Adv.
Ms. Sivangi Thard, Adv.

..... for the petitioner

Mr. Kumeresh Dalai, Adv.
Mr. Sailendra Kr. Tiwari, Adv.

.....for the UOI

Ms. Madhavi Divan, Learned ASG-I
Mr. Ajay Gaggar, Adv.
Ms. Nidhi Khanna, Adv.
Ms. T. Joarder, Adv.

.....for the respondent Nos. 2 & 3

1. The subject matter of challenge in the writ petition is a Summons dated 13.4.2023 which was issued to the 2nd petitioner and another Officer of the first petitioner by the office of the Director-General, Competition Commission of India/respondent no. 2.

2. The impugned Summons refers to an investigation being conducted by the respondent no. 2 into the alleged cartelization by Steel Manufacturer under the provisions of The Competition Act, 2002. The Summons mentions that the DG came to know that the 2nd petitioner may be in possession of evidence relevant

for the investigation. The 2nd petitioner was summoned on 25.4.2023 in exercise of the powers conferred under section 41(2) read with section 36(2) of the Act.

3. The 1st petitioner is engaged in the business of manufacture and sale of iron and steel products; the 2nd petitioner is a director and shareholder of the first petitioner.

3. The petitioners are aggrieved by the Summons and seek quashing of the same. The petitioners pray for interim protection from the Suo Motu case no. 02 of 2021 and the impugned Summons dated 13.4.2023.

4. Learned counsel appearing for the petitioners submits that the impugned Summons was issued without regard to the statutory mandate under section 26(1) of The Competition Act, 2002. Counsel submits that the requirement to form a prima facie opinion on the Commission must be fulfilled before the Director-General can be directed to cause an investigation. Counsel refers to an order of the Madras High Court dated 29.7.2021 in *Coimbatore Corporation Contractors Welfare Association vs. Central Bureau of Investigation* whereby the Court directed the Director-General to act in accordance with law. Counsel submits that the 1st petitioner was not named in the Madras High Court order and that the decision dated 23.8.2021 of the

Commission directing the DG to investigate the matter in terms of the said order was made available to the petitioners only on 21.4.2023. It is submitted that without recording the prima facie opinion on the existence of a case against the petitioners, all subsequent assumptions of jurisdiction are a nullity.

5. The learned Additional Solicitor General of India, appearing for the Competition Commission of India, seeks to defend the investigation and the impugned Summons with reference to the framework of the Act. Counsel submits that the Director-General did not have any choice after the order of the Madras High Court, but to conduct investigation into the matter. Counsel urges that the petitioners will have every opportunity to defend their case during the course of the investigation. Counsel dwells on the larger public interest aspect of the matter since the allegations relate to the manipulation of the price of steel. Counsel submits that the balance of convenience lies in favour of continuation of the investigation.

6. The decision of the Court rests on the following considerations.

Architecture of The Competition Act, 2002 for the purpose of the present proceeding:

7. Section 26(1) harks back to section 19 for outlining the procedure for inquiry. The inquiry contemplated under section 26(1) is based on:

- i) Receipt of a reference from the Central Government / State Government / Statutory Authority, or
- ii) On the knowledge of the Commissioner or information received under section 19 of the Act.

If the Commission is of the opinion that there exists a prima facie case, the Commission shall direct the Director-General to cause an investigation to be made into the matter.

8. Section 19, which forms one of the sources of information for initiation of an investigation under section 26(1), contemplates "*inquiry into certain agreements and dominant position of enterprise*". Section 19 empowers the Commission to inquire into any alleged contravention of the provisions contained in Sections 3(1) or 4(1) either on its own motion or on receipt of any information from any person / consumer association/ trade association or a reference made to it by the Central Government / State Government / statutory authority. Section 3 refers to anti-competitive

agreements and section 4 to abuse of dominant position.

9. Section 26(2) provides for closing of the matter without delay where the Commission, on receipt of a reference, is of the opinion that there exists no *prima facie* case for an inquiry.

10. Section 41(1) is a follow-up of section 26(1) and confers the Director-General with the power to investigate into any contravention of the provisions of the Act or any rules or regulations framed thereunder. The powers of the Director-General are such as are conferred upon the Commission under section 36(2) of the Act and are similar to those vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit. Section 41(3) draws a parallel with sections 240(2) and 240A(2) of The Companies Act, 1956 with respect to the investigation made by the DG.

11. Section 26(1) requires the Commission (referred to as “it/it’s” in the section) to form an opinion on the existence of a *prima facie* case after which the Commission shall direct the DG to investigate into the matter. The requirement of formation of opinion was recognized by the Supreme Court in *Competition Commission of India vs. Steel Authority of India Limited; (2010) 10 SCC 744*. Regulation 18 of The Competition

Commission of India (General) Regulations, 2009 reinforces the statutory mandate on the Commission to form an opinion on the existence of a prima facie case before the Secretary can convey the directions of the Commission to the Director-General to investigate the matter.

The intervention of the Madras High Court qua the architecture of the Act:

12. The order of the Madras High court dated 29.7.2021 was passed on a complaint made by the Coimbatore Corporation Contractors Welfare Association against the Central Bureau of Investigation and the Deputy Superintendent of Police alleging profiteering and hiking of steel prices by a syndicate of steel owners. The steel companies were named in the order - the 1st petitioner is not one of them. The Single Bench of the Madras High Court records the submissions of the learned Special Public Prosecutor for CBI on the anti-competitive activities of the steel companies resulting in artificial increase of the price of steel. The order sets out an extract of a letter dated 25.6.2021 with reference to a complaint of 6.3.2021 made by the Welfare Association which was forwarded to the Director-General (Investigation), CCI for taking necessary action. The Court was hence of the view that since the complaint has already been forwarded to the

DG (Investigation), CCI, the DG concerned should be directed to proceed further in this regard and take appropriate action on the complaint filed by the Welfare Association in accordance with law within a period of 4 weeks from the date of receipt of a copy of the order.

13. The complaint alleging anti-competitive activities, controlling supply of steel and creating artificial scarcity of steel through the concerted actions of the steel manufacturers causing artificial increase in the price of steel falls within the purview of sections 3(1) and 4(1) of the Act which in turn forms the substratum for an inquiry under section 19 and catalyses the procedure for inquiry under section 26(1) of the Act. Therefore, the Madras High Court order compresses and subsumes the sequential steps for the Commission to inquire into any alleged contravention on receipt of any information or information received under section 19 or on its own knowledge of such contravention/s.

14. The order in essence kick-starts the process from the stage of directing the Director-General to cause an investigation without exhausting the requirements preceding the Commission's direction to the Director-General under Section 26(1) of the Act.

15. The other conclusions are:

- i) The framework of sections 26(1) and 41 makes it clear that the CCI and the Director-General are two separate and distinct entities. Sections 18, 19, 36 and 41 also bear out the difference between the two entities. The Commission is defined under section 2(e) and established under section 7(1) of the Act. On the other hand, the definition of the Director-General is under section 2(g) to mean as appointed under section 16(1). Section 16(1) provides for the appointment of a Director-General by the Central Government for the purpose of assisting the Commission in conducting inquiries into contraventions of any of the provisions of the Act and for performing such other functions as may be provided under the Act.
- ii) Section 41 provides a clear statutory mandate for the Director-General to investigate contraventions. Hence, the statutory purpose and the role of a Director-General is only to investigate contraventions.
- iii) Investigation is to be conducted by the Director-General and not the Commission. The Act does not contemplate parallel investigations by the Commission and the Director-General.
- iv) By directing the Director-General to take necessary and appropriate action on the complaint, the

Madras High Court, through exercise of its extraordinary discretion, thought it fit to by-pass the requirement on the Commission to form an opinion under section 26(1) of the Act. The formation of opinion and all the conditions precedent for a direction on the Director-General to investigate were accelerated and made irrelevant by the Madras High Court.

v) The Director-General hence had no option but to act in terms of the direction of the Madras High Court and proceeded to obtain necessary permission from the Chief Metropolitan Magistrate, Patiala House, New Delhi under section 41 (3) of the Act on 16.12.2022 to carry out searches in the office of the petitioner.

vi) After the order of the Madras High Court, there was no space remaining within the framework of section 26(1) for the Commission to form a *prima facie* opinion before issuing a direction on the DG to investigate in the matter.

vii) Any attempts by the Commission to interdict the process would have amounted to overreaching the Madras High Court's order and interfering with the directions given by it.

viii) Section 26(1) mentions "... Director-General to cause an investigation to be made into the matter". This

means that the investigation may not necessarily be confined to a particular company / group of companies but have a larger canvas covering the matter of anti-competitive activities which the Act seeks to prohibit.

16. Significantly, the order passed by the Madras High Court was not challenged by any of the Steel Companies mentioned in the order or even by the 1st petitioner which would presumably be affected by the charges of cartelization and hike of prices by steel companies.

17. Further, directing the Director-General to cause an investigation is nothing more than an administrative and internal handing over of charge. The jurisdiction of the Commission, under 26(1), does not contemplate any adjudicatory function. The Supreme Court came to this view in *Steel Authority of India* and was also of the view that section 26(1) excludes the principles of natural justice by necessary implication.

18. It follows from the above that section 26(1) does not involve any adjudicatory processes and would also not cause any particular prejudice to the petitioners at the stage of investigation. In the absence of any adjudication, the petitioners would not be visited with civil consequences or any imminent threat of

irreversible prejudice. The petitioners will have every opportunity to challenge the investigation process or the decision arising therefrom at a later stage.

19. Therefore, in the absence of a jurisdictional error, the petitioners do not have any ground to obstruct the investigation and seek interruption of or interference with the process. Section 26(2) of the Act provides a further exit route to the petitioners where the entire process may be closed if the *prima facie* case ceases to exist. The petitioners have the opportunity to disprove the charges made against them and lead the proceedings to a close.

Balance of convenience:

20. Searches were conducted in the office of the petitioners in December, 2022; the present writ petition was however filed only on 24.4.2023 after the Summons dated 13.4.2023 was issued on the petitioner. It is inconceivable that the petitioners were not aware of the steps in aid of investigation until April, 2023. It appears that the writ petition has been filed to block the investigation by stalling the Summons.

21. The larger public interest angle also requires the investigation to continue. The allegations are of cartelization and manipulation of supply and price of

steel. The ramifications of such activities extend beyond a few to the public at large, including end-users, consumers and home buyers. The object of The Competition Act, 2002 is to prevent practices which adversely affect competition and to protect the interest of consumers. The ripple-effect of price manipulation reaches the margins of the social circumference and may be seen as actions *in rem*. The petitioners hence have a duty to assist in the process of investigation and permit the Director-General to comply with the direction of the Madras High Court.

22. Time is also of the essence since any delay in the process caused by an interruption in the investigation would result in irrevocable prejudice to the consumers - who would have suffered the effect of market manipulation and not be able to recoup the loss.

23. This Court therefore sees no pressing or compelling reason to interfere with the investigation by restraining the respondents including the Additional Director-General / Director-General (respondent no. 2) to stay their hands with reference to the Summons dated 13.4.2023 which in any event has become infructuous since the petitioners were to appear before the concerned respondent on 25.4.2023.

24. The other decisions cited have not been referred to since learned counsel appearing for the parties did not have an opportunity to deal with the cases.

25. Affidavit-in-opposition to be filed by 12.6.2023 and reply by 26.6.2023. List this matter on 28.6.2023.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)