Mahindra and Mahindra Ltd.

Vs

Union of India and Another

Civil Appeal No. 860 of 1978

(P. N. Bhagwati, Jaswant Singh, A. P. Sen JJ)

24.01.1979

JUDGMENT

BHAGWATI, J. –

1. This appeal under Section 55 of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the Act) raises interesting questions of law relating to the interpretation and application of certain provisions of the Act. The facts giving rise to the appeal are for the most part undisputed and they may be briefly stated as follows :

2. The appellant is a public limited company engaged in manufacture and sale of jeep motor vehicles and their spare parts and accessories. Since 1947 the appellant was marketing and distributing jeep motor vehicles and it has set up a large and complex net work of dealers, who were described as distributors, for marketing and after sale service of such vehicles. In or about 1956 the appellant started manufacturing its own jeep motor vehicles and since then it has been manufacturing such vehicles and distributing and marketing the same through its network of distributors. The appellant has appointed these distributors for marketing and sale of jeep motor vehicles on certain terms and conditions contained in a standard distributorship agreement. The material clauses of this agreement read as follows :

> Section (3) : Territory of Distributor - The Company grants to Distributor the non-exclusive privilege (except as hereinafter provided) of selling at retail and the right (except hereinafter provided) to appoint in writing by forms of agreements approved by the Company, Dealers to sell at retail the products enumerated in Section 2 of this agreement, within the following territory and also demarcated in the map attached hereto and which forms a part of this agreement.

Distributor accepts the above retail setting privileges and agrees to develop with diligence the sales of sale products in said territory in accordance with this agreement and undertakes to achieve the quantum of sales in the territory as may be fixed by the Company from time to time.

Section (4) : Limitations on Territorial Rights - (i) Distributor agrees not to solicit outside of the territory described in Section 3 - the purchase of any products.

Section (6) : Price and Payment - Distributor will pay for products the company's established Distributor net prices in effect on date of despatch. Price lists will be furnished to Distributor by the Company, but the Company reserves the right to change prices at any time without notice.

Section (11) : Price Changes - If the Company reduces its published suggested retail list price, for any current model of 'Jeep' motor vehicles, the company will make an allowance to Distributor as hereinafter provided. The allowance shall be made in respect of new and unused "Jeep" Motor Vehicle of the then current model in respect of which the price change had been made which have been purchased by Distributor from the Company within a period of 30 (thirty) days prior to the effective date of such decrease in suggested list price, and which distributor shall have in his unsold stock on such effective date. The allowance shall be equal to the difference between the net amount paid to the Company for such 'Jeep' Motor Vehicle (less all allowance thereto granted), and the net amount which would have been paid had such 'Jeep' motor vehicle been purchased at the reduced price. No allowance, however, shall be made unless there is a reduction in the RETAIL list price and increases in discounts, bonuses and the like shall in no event be considered as a reduction in price.

Section (17) : Care of owner and customer relations

Distributor agrees -

> (e) To refrain from selling or offering for sale any competing product. The Company shall be the sole judge as to whether a product is competing or not.

The appellant by its letter dated January 27, 1971 submitted to the Registrar of Restrictive Trade Agreement (hereinafter referred to as the Registrar) certified copies of agreements entered into by the appellant with the Distributors for registration, since in the opinion of the appellant, they were registrable under the provisions of Chapter V of the Act. The appellant also submitted to the Registrar along with its letter dated May 19, 1972 four copies of the standard distributorship agreement for registration in terms of clause (ii) of Rule 12 of the Monopolies Restrictive Trade Practices Rules, 1970 (hereinafter referred to as the Rules) and the standard distributorship agreement was registered by the Registrar under Section 35 of the Act.

30 On December 17, 1975 the Registrar made an application to the Monopolies and Restrictive Trade Practices Commission (hereinafter referred to as the Commission) under Section 10(a)(iii) of the Act pointing out to the Commission that the standard distributorship agreement entered into by the appellant with the distributors was filed by the appellant for registration in the office of the Registrar and the same had been duly registered under Section 35 of the Act. The Registrar drew the attention of the Commission to clauses (3), (4), (5), (6), (11), (13), (14), (17) and (20) of the standard distributorship agreement and claimed that the provisions contained in these clauses related "to restrictive trade practices relating to imposing restrictions on persons and classes of persons to whom goods are sold and from whom goods are bought; tie-up sales/full-line forcing; exclusive dealing; granting or allowing concessions; discounts, overriding commission, etc. in connection with or by reason of dealings; resale price maintenance; and allocation of area/market for disposal of products covered under the agreement, respectively attracting clauses (a), (b), (c), (d), (e), (f) and (g) of Section 33(1) and/or Section 2(o) of the Act" and that these restrictive trade practices had and might have the effect of preventing, distorting and restricting competition and tended to bring about monopolisation of prices and conditions of delivery and to affect the flow of supplies in the market relating to goods covered under the standard distributorship agreement in such manner as to impose on the consumers unjustified costs and restrictions and the same were prejudicial to public interest. The Registrar prayed on the basis of these allegations that the Commission be pleased to inquire into the restrictive trade practices indulged in by the appellant, under Section 37 of the Act and pass such orders as it might deem fit and proper. The Commission, on receipt of this application, decided, in exercise of the powers conferred upon it under Section 10(a) and 37 of the Act, to hold inquiry into

the restrictive trade practices complained of by the Registrar and issued notice dated January 2, 1976 under Regulation 53 of the Monopolies and Restrictive Trade Practices Commission Regulations, 1974 (hereinafter referred to as the Regulations) to the appellant that if the appellant wished to be heard in the proceedings before the Commission, it should comply with the requirements of Regulations 65 and 67 filing which the Commission would proceed with the inquiry in the absence of the respondent. The appellant, by its letter date February 3, 1976, acknowledged receipt of the notice and intimated to the Commission that it did not wish to be heard in the proceedings before the Commissioner but put forward its submissions in regard to the restrictive trade practices alleged by the Registrar in his application. The appellant pointed out that the clauses of the standard distributionship agreement complained of by the Registrar did not constitute restrictive trade practices for the reasons explained in the letter and requested the Deputy Secretary to place their submissions before the Commission at the enquiry to be held by it. The letter was purported to be submitted in terms of Regulation 36(3), but the reference to this Regulation was obviously under some misapprehension because this Regulation occurred in Chapter V which provided the procedure for reference under Chapter III and IV and it had no application in case of an inquiry under section 37 of the Act. The Joint secretary (Legal) of the Commission pointed out to the appellant by his letter dated February 11, 1976 that if the appellant wished to be heard in the proceedings, the appellant should comply with the requirements of Regulations 65 and 67 and it is only if the appellant did so, that it could file a reply in answer to the application of the Registrar and moreover, the reply had to be properly drawn and duly verified and declared as provided in those Regulations. The Joint Secretary (Legal) made it clear that in view of this legal position obtaining under Regulations 65 and 67, it was not possible to take note of the contents of the letter addressed by the appellant setting out the explanation for the various clauses impugned in the application of the Registrar. Though this position in law was specifically pointed out by the Joint Secretary (Legal) on behalf of the Commission, the appellant did not comply with the procedure et out in Regulations 65 and 67 with the result that the Commission decided to proceed ex parte against the appellant. The Registrar filed an affidavit of the Assistant Registrar dated May 10, 1976 in support of the allegations contained in the application but this affidavit surprisingly did not contain any further or other material than that set out in the application. No other evidence, oral or documentary, was produced by the Registrar and the Commission proceeded to decide the issues arising in the enquiry on the basis of the application supported by the affidavit of the Assistant Registrar. The Commission, after going through the application and the affidavit of the Assistant Registrar and hearing the Registrar, made an order dated May 14, 1976, the operative part of which was in the following terms :

> (1) The respondent is hereby restrained and prohibited by any agreement with any distributor to restrict by any method the persons or classes of persons to whom the goods are sold whether such person be retail purchaser or a dealer.
>
> (2) The respondent is hereby restrained and prohibited from restricting in any manner, any purchaser whether a dealer or otherwise in the course of its trade from acquiring or otherwise dealing in any goods other than those of the respondent of the goods of any other person.
>
> (3) The respondent is hereby restricted and prohibited from selling any goods to any distributor, dealer or otherwise on the condition that the prices to be charged on resale by the purchaser shall be the prices stipulated by the respondent unless it is clearly stated that prices lower than those prices may be charged. The respondent is hereby directed that in all future price lists it must state on the cover or on the front

page that the prices if any indicated therein as resale prices are maximum prices and that the prices lower than those prices may be charged.

(4) The respondent is hereby restrained and prohibited from allocating any area or market to any distributor or dealer for the disposal of the respondent's goods.

(5) The respondent is hereby restrained and prohibited from preventing any distributor from appointing any dealer of its own choice on such terms and conditions may be mutually agreed upon between distributors and dealers in cases where the respondent does not undertake any obligation, liability or responsibility in respect of the dealers.

(6) The clauses in the agreements relating to the above restrictive trade practices are hereby declared to be void. The practices arising therefore, shall be discontinued and shall not be repeated.

(7) The respondent shall within 3 months from the date of service of this order on it make and file an affidavit before the Commission setting out the manner in which his order has been given effect to. A copy of the said affidavit shall simultaneously be furnished to the Registrar.

(8) There will be no order as to costs.

Since the appellant was required to file an affidavit of compliance within three months as directed by clause (7) of the Order, the appellant filed an affidavit dated September 10, 1976 stating that the appellant had fully implemented in practice the directions contained in paragraphs (1) and (5) of the Order and refrained from enforcing against the distributors any of the clauses which had been declared void by the Commission. The appellant also pointed out that a draft of a new distributorship agreement was being finalised by the appellant with a view to giving effect to the "restrictions and prohibitions" contained in the Order. The Registrar filed an affidavit of the Deputy Registrar dated September 27, 1976 seeking particulars from the appellant showing how the appellant had implemented the directions contained in the Order. The appellant by its reply dated November 11, 1976 pointed out that since the date of receipt of the Order, the appellant had not given effect to the trade practices covered by paragraphs (1) to (5) of the Order nor required any of the distributors to abide by the clauses of the standard distributorship agreement relating to those trade practices and on the contrary, intimated to the distributors that the old distributorship agreement would have to be substituted by a new revised agreement. The appellant submitted that since the clauses of the standard distributorship agreement declared void by the Commission were not enforceable in law by the appellant, it did not make any difference whether or not they were deleted from the existing distributorship agreement and in view of the fact that a new revised agreement was being prepared which would comply with the directions contained in the Order, it was not necessary to effect any amendments in the existing distributorship agreement. It seems that there was a hearing before the Commission on this issue as regards compliance with the directions contained in the Order and the draft of the revised distributorship agreement prepared by the appellant was considered and pursuant to the suggestion made by the Commission, the appellant agreed to amend two clauses in the draft and the Commission by its Order dated December 7, 1976 directed that the revised distributorship agreement should be filed by the appellant by March 31, 1977.

4. Now, it appears that subsequent to the Order of the Commission dated December 7, 1976 an important decision was given by this Court in Tata Engineering & Locomotive Co. Ltd., Bombay v. Registrar of the Restrictive Trade Agreement, New Delhi ((1977) 2 SCC 55 : (1977) 2 SCR 685 : AIR 1977 SC 973) relating to the interpretation of some of the relevant provisions of the Act bearing on restrictive trade practices. This decision was given in an appeal preferred by Tata Engineering Locomotive Co. Ltd. (hereinafter referred to as the Telco) against an order made by the Commission in an enquiry under Section 37 and it reversed the view taken by the Commission in several important respects. Though this decision was given on January 21, 1977, it was not fully reported until March 1977 and on reading it, the appellant felt that the order of the Commission dated May 14, 1976 required reconsideration, as it was contrary to the law laid down in this decision. The appellant accordingly made an application to the Commission March 31, 1977 where, besides asking for extension of time for filing a copy of the revised distributorship agreement on the ground that the dealers were spread out all over India and it would take considerable time for execution of the revised distributorship agreement by them, the appellant pointed out that it had not contested the enquiry proceeding under Section 37 in the first instance because the decision given by the Commission in the Telco case was directly applicable, but since that decision of the Commission was reversed by this Court in appeal, the appellant was advised to move a suitable application for amendment and/or modification of the Order dated May 14, 1976 and that was also an additional reason why the time for filing the revised distributorship agreement should be extended, so that the revised distributorship agreement could be in accordance with the directions, if any, which might be given by the Commission on the proposed application. The Commission acceded to the request contained in this application and extended the time for filing the revised distributorship agreement up to June 4, 1977.

5. The appellant thereafter made an application dated May 30, 1977 under Section 13(2) of the Act read with Regulation 85 for revocation, amendment or modification of the Order of the Commission dated May 14, 1976. The appellant set out in this application various facts and features relating to its trade of manufacture and sale of Jeep motor vehicles and their spare parts and accessories and enumerated a number of grounds on which the order of the Commission dated May 14, 1970 deserved to be revised, revoked, amended or otherwise modified. The application was opposed by the Registrar by filing a reply dated August 17, 1977. The parties were thereafter heard by the Commission on August 26, 1977 and pursuant to the directions given by the Commission, affidavits of documents were filed and evidence was recorded on both sides. It appears that in the course of the evidence the appellant came to know that in November 1977 Hindustan Motors Ltd. had introduced in the market diesel trekker which was clearly a competing vehicle and the appellant thereupon applied to the Commission on January 30, 1978 for amendment of the application by adding a plea that the fact that since November 1977 Hindustan Motor Ltd. had started manufacturing and selling diesel trekker which was a highly competitive product was another material change in the relevant circumstances which justified the revocation, amendment or modification of the Order dated May 14, 1976. This application for amendment was opposed by the Registrar on the ground that it was made at a very late stage of the proceeding. The Commission did not pass any order on this application for amendment and kept it pending and proceeded to dispose of the main application by an Order dated February 28, 1978 by which it rejected the main application with costs and added a short order on the same day stating that in view of the order on the main application, there would be no order on the application for amendment. The appellant thereupon preferred the present appeal in this Court under Section 55 challenging the validity of the order made by the Commission rejecting the application of the appellant.

6. Before we set out the rival contentions of the parties in the appeal, it would be convenient at this

stage to refer to the relevant provisions of the Act and the Regulations. Section 2 is the definition section and clause (u) of this section defines 'trade practice' to mean any practice relating to the carrying on of any trade, and includes -

> (i) anything done by any person which controls or affects the price charged by, or the method of trading of, any trader or any class of traders,
>
> (ii) a single or isolated action of any person in relation to any trade.
>
> 'Restrictive trade practice' is defined in Section 2, clause (o) to mean
>
> a trade practice 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
>
> (ii) which tends to bring about manipulation of prices, or conditions of delivery or to affect 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.

Section 5, sub-section (1) provides for the establishment of the Commission which is to consist of a Chairman and not less than two and not more than eight other members to be appointed by the Central Government and sub-section (2) of Section 5 lays down that the Chairman shall be a person who is or has been or is qualified to be a judge of the Supreme Court or of a High Court. It is obvious from these two sub-section of Section 5 that the Legislature clearly contemplated that the Commission must have a Chairman who would provide the judicial element and there must be at least two other members who would provide expertise in subjects like economics, law, commerce, accountancy, industry, public affairs or administration, so that there could be a really high - powered expert commission competent and adequate to deal with the various problems which come before it. It, however, appears that the Central Government paid scant regard to this legislative requirement and though the office of Chairman fell vacant as far back as August 9, 1976, it failed to make appointment of Chairman until February 24, 1978. Of the two other members of the Commission one had already resigned earlier and his vacancy was also not filled with the result that the Commission continued with only one member for a period of about 18 months. This was a most unfortunate state of affairs, for it betrayed total lack of concern for the proper constitution and functioning of the Commission and complete neglect of its statutory obligation by the Central Government. We fail to see any reason why the Central Government could not make the necessary appointments and properly constitute the Commission in accordance with the requirements of the Act. It is difficult to believe that legal and judicial talent in the country had become so impoverished that the Central Government could not find a suitable person to fill the vacancy of Chairman for a year and a half. Moreover, it must be remembered that the appointments, after all, have to be made from whatever legal and judicial talent is available and the situation is not going to improve by waiting for a year or two : a new star is not going to appear in the legal firmament within such a short time and the appointments cannot be held up indefinitely. Indeed, it is highly undesirable that important quasi-judicial or administrative posts should remain vacant for long periods of time, because apart from impairing the efficiency of the functioning of the statutory authority or the administration, inexplicable delay may shake the confidence of the public in the integrity of the appointments when made. Turning back to the provisions of the Act, we find that Section 10(a)(iii)

empowers the Commission to inquire into any restrictive trade practice upon an application made to it by the Registrar. The powers of the Commission while holding an enquiry under the Act are enumerated in Section 12 and Section 13, sub-section (2) provides that "any order made by the Commission may be amended or revoked at any time in the manner in which it was made". Then follow Section 14 to 19 which deal inter alia with the procedure to be followed by the Commission. We are not concerned with Sections 20 to 32 which occur in Chapters III and IV because they deal with topics other than restrictive trade practices. Chapter V relates to registration of agreements relating to restrictive trade practices and it consists of Sections 33 to 36 of which only Sections 33 and 35 are material. Sub-section (1) of Section 33 provides that any agreement relating to a restrictive trade practice falling within one or more of the categories specified there shall be subject to registration in accordance with the provisions of Chapter V and proceeds to enumerate the categories of restrictive trade practices covered by that provision and Section 35 lays down the time within which an agreement falling within Section 33, sub-section (1) shall be registered and the procedure to be followed for effectuating such registration. Sections 37 and 38 are the next important sections and they occur in Chapter V headed "control of certain restrictive trade practices." Sub-section (1) of Section 37 provides that :

The Commission may inquire into any restrictive trade practice, whether the agreement, if any, relating thereto has been registered under Section 35 or not, which may come before it for inquiry and, if, after such inquiry it is of opinion that the practice is prejudicial to the public interest, the Commission may, by order, direct that. -

> (a) the practice shall be discontinued or shall not be repeated;
>
> (b) the agreement relating thereto shall be void in respect of such restrictive trade practice or shall stand modified in respect thereof in such manner as may be specified in the order.

Section 38, sub-section (1) enacts that for the purposes of any proceedings before the Commission under Section 37, a restrictive trade practice shall be deemed to be prejudicial to the public interest unless the Commission is satisfied of any one or more of the circumstances set out in that sub-section and is further satisfied, after balancing the competing considerations, that the restriction is not unreasonable. These circumstances specified in sub-section (1) of Section 38 render a trade practice permissible even though it is restrictive and provide what have been picturesquely described in the English law as "gateways" out of the prohibition of restrictive trade practices. Section 55 is the next relevant section and it provides that any person aggrieved by any order made by the Central Government under Chapter III or Chapter IV or as the case may be, of the Commission under Section 13 or Section 37 may, within 60 days from the date of the order, prefer an appeal to the Supreme Court on "one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908". This is the section under which the present appeal has been preferred by the appellant. The last section to which we must refer is Section 66 which confers power on the Commission to make Regulations for the efficient performance of its functions under the Act. The Commission has, in exercise of the power conferred by this section, made the Regulations of which three are material, namely, Regulations 65, 67 and 85. These Regulations, insofar as material, read as follows :

> Section 65 : Appearance of Parties - Every respondent who wishes to be heard in the proceedings shall, within 14 days of the service upon him of the copy of the notice of enquiry, enter an appearance in the office of the Commission by delivering to the

Secretary six copies of a memorandum stating that the respondent wishes to be heard in the proceedings and containing the name of his advocate having an office in Delhi or New Delhi and duly authorised to accept service of processes and the Secretary shall send one copy of the memorandum to the Registrar in case where proceedings are initiated under sub-clause (iii) of clause (a) of Section 10, and in all other cases to the Director of Investigation.

Section 67 : Reply to the Notice - Every respondent who has entered an appearance shall within four weeks of his entering appearance deliver to the Secretary a reply to the notice (5 copies) which shall include :-

(a) particulars of each of the provisions of Section 38 of the Act on which he intends to rely; and

(b) particulars of the facts and matters alleged by him to entitle him to rely on such provisions.

Section 85 : Amendment or Revocation of Order etc. - An application under sub-section (2) of Section 13 of the Act for amendment or revocation of any order made by the Commission in any proceedings shall be supported by evidence on affidavit of the material change in the relevant circumstances or any other fact or circumstances on which the applicant relies. Unless the Commission otherwise directs notice of the application together with copies of the affidavits in support thereof, shall be served on every party who appeared at the hearing of the previous proceedings and every such party shall be entitled to be herd on the application and the provisions of Section 114 and Order XLVII of the Code of Civil Procedure, 1908 (5 of 1908), shall as far as may be, apply to these proceedings.

It is against the background of these provisions of the Act and the Regulations that we have to determine the questions arising for consideration in the appeal.

7. The contention of the appellant in support of the appeal was that the Order dated May 14, 1976 suffered from various infirmities and was liable to be revoked or in any event modified under Section 13(2) of the Act. It was said that the application of the Registrar on which the Order dated May 14, 1976 was made did not set out any facts or features showing how the trade practices referred to in the application were restrictive of competition so as to constitute restrictive trade practices and merely contained a bald rectal of the impugned clauses and mechanical reproduction of the language of the relevant sections without anything more. The application of the Registrar was thus not in accordance with the law laid down in the decision of this Court in the Telco case and no order could be made upon it by the Commission. It was also urged that there was no material placed before the Commission by the Registrar on the basis of which the Commission could possibly come to the conclusion that the trade practices referred to in the application were restrictive trade practices. Even if the Commission was justified in proceeding ex parte against the appellant, the highest that could be assumed in favour of the Registrar was that the facts set out in the application and the supporting affidavit of the Assistant Registrar would be deemed to be admitted, but, apart from the impugned clauses, no other facts were set out either in the application or in the affidavit of the Assistant Registrar and there was accordingly no evidence on which the order dated May 14, 1976 could be made by the Commission. It was also contended that the Order dated May 14, 1976 did not set out any facts peculiar to the trade of the appellant or the conditions before and after the imposition of the restraint or the actual or probable effect of the restraint nor did it indicate as to

how the trade practices referred to in the impugned clauses constituted restrictive trade practices; it was a non-speaking order which did not give any reasons at all for holding that the trade practices complained of were restrictive trade practices and hence it was vitiated by a legal infirmity. The appellant further urged that the Order dated May 14, 1976 was a continuing order as it required the appellant not merely to cease but also to desist from the restrictive trade practices set out in the order and it was, therefore, required to be continually justifiable and since the facts and features of the trade set out in the application of the appellant clearly established that the trade practices referred to in the impugned clauses did not constitute restrictive trade practices, the Order dated May 14, 1976 was not justified and in any event could not be continued and it was accordingly liable to be revoked or amended under Section 13(2). It was submitted that in any event the Order dated May 14, 1976 was contrary to the law declared by this Court in the Telco case and since the decision in the Telco case was a fact or circumstance subsequent to the making of the Order it justified the invocation of the power under Section 13(2) for revoking or modifying the Order. Lastly, it was contended that in any view of the matter there was a material change in the relevant circumstances subsequent to the making of the Order dated May 14, 1976 in that Hindustan Motor Ltd. started manufacturing and marketing competing utility vehicles since June 1976 and this was sufficient to warrant reconsideration of the Order under Section 13(2). The respondents raised a preliminary objection against the maintainability of the appeal on the ground that under Section 55 read with the newly substituted Section 100 of the Code of Civil Procedure, 1908, an appeal could lie to this Court only on a substantial question of law and since the contentions raised on behalf of the appellant did not raise any substantial question of law, the appeal was not maintainable. The respondents also urged that on a proper construction of Section 13(2) read with Regulation 85, the Commission could revoke or amend the Order dated May 14, 1976 only if there was a material change in the relevant circumstances since the making of the Order or any of the grounds specified in Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 was available to the appellant. The second and third grounds specified in Order XLVII, Rule 1 obviously did not exist in the present case and the claim of the appellant for exercise of the power under Section 13(2) could, if at all, rest only on the first ground, namely, error of law apparent on the face of the record. But, said the respondents, there was no error of law apparent on the face of the record so far as the Order dated May 14, 1976 was concerned, nor was there any material change in the relevant circumstances subsequent to the making of the order and hence Section 13(2) was not attracted. The respondents contended that what the appellant was seeking to achieve by the application under Section 13(2) was reconsideration of the Order dated May 14, 1976 which was clearly impermissible, since Section 13(2) could not be used as a substituted for Section 55 and that too, without the restrictive condition of the section. It was also urged on behalf of the respondents that, in any event, the appellant was precluded from challenging the Order dated May 14, 1976 by an application under Section 13(2) by reason of its subsequent conduct in acquiescing in the Order and unconditionally accepting the same. The appellant clearly waived the defects or infirmities, if any, in the Order dated May 14, 1976 and was precluded from rising any contention against the validity of the Order. The respondents disputed validity of the contentions raised on behalf of the appellant and urged that in any event even if any of these defects or infirmities were present they did not render the Order void as being without jurisdiction and hence the validity of the Order could not be challenged in the collateral proceedings under Section 13(2). The respondents also contended that in any view of the matter the Order dated May 14, 1976 was justified inasmuch as the trade practices complained of by the Registrar were restrictive trade practices. These were the rival contentions urged on behalf of the parties and we shall now proceed to examine them.

8. The first question that arises for consideration on the preliminary objection of the respondents is

as to what is the true scope and ambit of an appeal under Section 55. The section provides inter alia that any person aggrieved by an order made by the Commission under Section 13 may prefer an appeal to this Court on "one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908". Now at the date when Section 55 was enacted, namely, December 27, 1969, being the date of coming into force of the Act, Section 100 of the Code of Civil Procedure specified three grounds on which a second appeal could be bought to the High Court and one of these grounds was that the decision appealed against was contrary to law. It was sufficient under Section 100 as it stood then that there should be a question of law in order to attract the jurisdiction of the High Court in second appeal and, therefore, if the reference in Section 55 were to the grounds set out in the then existing Section 100, there can be no doubt that an appeal would lie to this Court under Section 55 on a question of law. But subsequent to the enactment of Section 55, Section 100 of the Code of Civil Procedure was substituted by a new section by Section 37 of the Code of Civil Procedure (Amendment) Act, 1976 with effect from February 1, 1977 and the new Section 100 provided that a second appeal shall lie to the High Court only if the High Court is satisfied that the case involves a substantial question of law. The three grounds on which a second appeal could lie under the former Section 100 were abrogated and in their place only one ground was substituted which was a highly stringent ground, namely, that there should be a substantial question of law. This was the new Section 100 which was in force on the date when the present appeal was preferred by the appellant and the argument of the respondents was that the maintainability of the appeal was, therefore, required to be judged by reference to the ground specified in the new Section 100 and the appeal could be entertained only if there was a substantial question of law. The respondent leaned heavily on Section 8(1) of the General Clauses Act, 1897 which provides :

> Where this Act or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

and contended that the substitution of the new Section 100 amounted to repeal and re-enactment of the former Section 100 and, therefore, on an application of the rule of interpretation enacted in Section 8(1), the reference in Section 55 to Section 100 must be construed as reference to the new Section 100 and the appeal could be maintained only on ground specified in the new Section 100, that is, on a substantial question of law. We do into think this contention is well founded. It ignores the distinction between a mere reference to or citation of one statute in another and an incorporation which in effect means bodily lifting a provision of one enactment and making it a part of another. Where there is mere reference to or citation of one enactment in another without incorporation, Section 8(1) applies and the repeal and re-enactment of the provision referred to or cited has the effect set out in that section and the reference to the provision repealed is required to be construed as reference to the provision as re-enacted. Such was the case in the Collector of Customs v. Nathella Sampathu Chetty ((1962) 3 SCR 786 : AIR 1962 SC 316) and New Central Jute Mills Co. Ltd. v. Assistant Collector of Central Excise ((1970) 2 SCC 820 : (1971) 2 SCR 92 : AIR 1971 SC 454). But where a provision of one statute is incorporated in another, the repeal or amendment of the former does not affect the latter. The effect of incorporation is as if the provision incorporated were written out in the incorporating statute and were a part of it. Legislation by incorporation is a common legislative device employed by the legislature, when the legislature for convenience of drafting incorporates provisions from an existing statute by reference to that statute instead of setting out for itself at length the provisions which it desires to adopt. Once the incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed

and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporation statute. Lord Esher, M. R., while dealing with legislation in incorporation in In re Wood's Estate ((1886) 31 Ch D 607) pointed out at page 615 :

> If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all.

Lord Justice Brett, also observed to the same effect in Clarke v. Bradlaugh ((1881) 8 QBD 63, 69):

> . . . . . there is a rule of construction that, where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third statute does not affect the second.

This was the rule applied by the Judicial Committee of the Privy Council in Secretary of State for India in Council v. Hindustan Co-operative Insurance Society Ltd. (58 IA 259) The Judicial Committee pointed out in this case that the provisions of the Land Acquisition Act, 1894 having been incorporated in the Calcutta Improvement Act, 1911 and become and integral part of it, the subsequent amendment of the Land Acquisition Act, 1894 by the addition of subsection (2) in Section 26 had no effect on the Calcutta Improvement Act, 1911 and could not be read into it. Sir George Lowndes delivering the opinion of the Judicial Committee observed at page 267 :

> In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second : see the cases collected in Craies on Statute Law, 3rd, ed. pp. 349, 350 . . . . . The independent existence of the two Acts is, therefore, recognized; despite the death of the parent Act, its offspring survives in the incorporating Act.

It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition.

So also in am Sarup v. Munshi ((1963) 3 SCR 858 : AIR 1963 SC 553), it was held by this Court that since the definition of 'agricultural land' in the Punjab Alienation of Land Act, 1900 was bodily incorporated in the Punjab Pre-emption Act, 1913, the repeal of the former Act had no effect on the continued operation of the latter. Rajagopala Ayyangar, J., speaking for the Court observed at pages 868-896 of the Report :

> Where the provisions of an Act incorporated by reference in a later Act the repeal of the earlier Act has, in general, no effect upon the construction or effect of the Act in which its provisions have been incorporated.

In the circumstances, therefore, the repeal of the Punjab Alienation of Land Act of 1900 has no effect on the continued operation of the Pre-emption Act and the expression 'agricultural land' in the later Act has to be read as if the definition in the Alienation of Land Act, 1900, had been bodily transposed into it.

The decision of this Court in Bolani Ores Ltd. v. State of Orissa ((1974) 2 SCC 777 : (1975) 2 SCR 138 : AIR 1975 SC 17) also proceeded on the same principle. There the question arose in regard to the interpretation of Section 2(c) of the Bihar and Orissa Motor Vehicles Taxation Act, 1930 (hereinafter referred to as the Taxation Act). This section when enacted adopted the definition of 'motor vehicle' contained in Section 2(18) of the Motor Vehicles Act, 1939. Subsequently, Section 2(18) was amended by Act 100 of 1956 but no corresponding amendment was made in the definition contained in Section 2(c) of the Taxation Act. The argument advanced before the Court was that the definition in Section 2(c) of the Taxation Act was not a definition by incorporation but only a definition by reference and the meaning of 'motor vehicle' in Section 2(c) must, therefore, be taken to be the same as defined from time to time in Section 2(18) of the Motor Vehicles Act, 1939. This argument was negatived by the Court and it was held that this was a case of incorporation and not reference and the definition in Section 2(18) of the Motor Vehicles Act, 1939 as then existing was incorporated in Section 2(c) of the Taxation Act and neither repeal of the Motor Vehicles Act, 1939 nor any amendment in it would affect the definition of 'motor vehicle' in Section 2(c) of the Taxation Act. It is, therefore, clear that if there is mere reference to a provision of one statute in another without incorporation, then, unless a different intention clearly appears, Section 8(1) would apply and the reference would be construed as a reference to the provision as may be in force from time to time in the former statute. But if a provision of one statute is incorporated in another, any subsequent amendment in the former statute or even its total repeal would not affect the provision as incorporated in the latter statute. The question is to which category the present case belongs.

9. We have no doubt that Section 55 is an instance of legislation by incorporation and not legislation by reference. Section 55 provides for an appeal to this Court on "one or more of the grounds specified in Section 100". It is obvious that the legislature did not want to confer an unlimited right of appeal, but wanted to restrict it and turning to Section 100, it found that the grounds there set out were appropriate for restricting the right of appeal and hence it incorporated them in Section 55. The right of appeal was clearly intended to be limited to the grounds set out in the then existing Section 100. Those were the grounds which we before the Legislature and to which the Legislature could have applied its mind and it is reasonable to assume that it was with reference to those specific and known grounds that the Legislature intended to restrict the right of appeal. The Legislature could never have been intended to limit the right of appeal to any ground or grounds which might from time to time find place in Section 100 without knowing what those grounds were. The grounds specified in Section 100 might be changed from time to time having regard to the legislative policy relating to second appeals and it is difficult to see any valid reason why the Legislature should have thought it necessary that these changes should also be reflected in Section 55 which deals with the right of appeal in a totally different context. We fail to appreciate what relevance the legislative policy in regard to second appeals has to the right of appeal under Se__ction 55 so that Section 55 should be inseparably linked yoked to Section 100 and whatever changes take place in Section 100 must be automatically read into Section 55. It must be remembered that the Act is a self-contained Code dealing with monopolies and restrictive trade practices and it is not possible to believe that the Legislature could have made the right of appeal under such a code dependent on the vicissitudes through which a section in another statute might pass from time to time. The scope and ambit of the appeal could not have been intended to fluctuate or vary with every change in the grounds set out in Section 100. Apart from the absence of any rational justification for doing so, such an indissoluble linking of Section 55 with Section 100 could conceivably lead to a rather absurd and startling result. Take for example a situation where Section 100 might be repealed altogether by the Legislature - a situation which cannot be regarded as wholly unthinkable. If the construction contended for on behalf of the respondents were accepted, Section

55 would in such a case be reduced to futility and the right of appeal would be wholly gone, because then there would be no grounds on which an appeal could lie. Could such a consequence ever have been contemplated by the Legislature ? The Legislature clearly intended that there should be a right ofppeal, though on limited grounds, and it would be absurd to place on the language of Section 55 an interpretation which might, in a given situation, result in denial of the right of appeal altogether and thus defeat the plain object and purpose of the section. We must, therefore, hold that on a proper interpretation the grounds specified in the then existing Section 100 were incorporated in Section 55 and the substitution of the new Section 100 did not affect or restrict the grounds as incorporated and since the present appeal admittedly raises questions of law, it is clearly maintainable under Section 55. We may point out that even if the right of appeal under Section 55 were restricted to the ground specified in the new Section 100, the present appeal would still be maintainable, since it involves a substantial question of law relating to the interpretation of Section 13(2). What should be the test for determining whether a question of law raised in an appeal is substantial has been lid down by this Court in Sir Chunilal v. Mehta and Sons Ltd. v. The Century Spinning and Manufacturing Co. Ltd. (1962 Supp 3 SCR 549, 557-558 : AIR 1962 SC 1314) and it has been held that the proper test would be whether the question of law is of general public importance or whether it directly and substantially affects the rights of the parties, and if so, whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views.

The question of interpretation of Section 13(2) which arises in the present appeal directly and substantially affects the rights of the parties and it is an open question in the sense that it is not finally settled by this Court and it is, therefore, clearly a substantial question of law within the meaning of this test. We must, therefore, reject the preliminary objection raised on behalf of the respondents against the maintainability of the present appeal.

10. That takes us to a consideration of the merits of the appeal and the first question that arises on the merits is as to the true scope and magnitude of the curial power conferred on the Commission under Section 13(2). That section provides that "any order made by the Commission may be amended or revoked at any time in the manner in which it was made". The words "in the manner in which it was made" merely indicate the procedure to be followed by the Commission in amending or revoking an order. They have no bearing on the content of the power granted under Section 13(2) or on its scope and ambit. That has to be determined on an interpretation of Section 13(2) in the light of the context or setting in which it occurs and having regard to he object and purpose of is enactment. Now, one thing is clear that the power conferred under Section 13(2) is a corrective rectificatory power and in is conferred in terms of widest amplitude. There are no fetters placed by he Legislature to inhibit the width and amplitude of the power and in this respect it is unlike Section 22 of the English Restrictive Trade Practices Act, 1956 which limits the power of the Court under that section to discharge a previous order made by it by providing in terms clear and explicit that leave to make an application for discharging the previous order shall not be granted except on prima facie evidence of material change in the relevant circumstances. This provision is markedly absent in Section 13(2) and no express limitation is placed on the power conferred under that section. It is left to the discretion of the Commission whether the power should be exercised in a given case and if so, to what extent. But it must be remembered that this discretion being a judicial or in any event a quasi judicial discretion, cannot be 'arbitrary, vague or fanciful' : it must be guided by relevant considerations. It is not possible to enumerate exhaustively the various relevant considerations which may legitimately weigh with the Commission in exercising its discretion, not would it be prudent or wise to do so, since the teeming multiplicity of circumstances and situations which may arise from time to time in this kaleidoscopic world cannot be cast in any definite or rigid mould or

be imprisoned in any strait-jacket formula. Every case of an application under Section 13(2) would have to be decided on its own distinctive facts and the Commission would have to find whether it is a proper case in which, having regard to the relevant considerations, the order made by it should be amended or revoked. The fact that an appeal lies against the order under Section 55 but has not been preferred, would be no ground for refusing to exercise the power under Section 13(2). The power conferred on the Commission under Section 13(2) is an independent power which has nothing to do with the appellate power under Section 55. It is not correct to say that the power under Section 13(2) cannot be exercised to correct an order which could have been set right in appeal under Section 55. The argument of the respondents that, if such a view is taken, it would permit Section 13(2) to be used as a substitute for Section 55 and that too, without its restrictive condition has no force and does not appeal to us. There is no question of using Section 13(2) as a substitute for Section 55. Both are distinct and independent powers and one cannot be read as subject to the other. The scope and applicability of Section 13(2) is not cut down by the provision for appeal under Section 55. It is perhaps because the right of appeal given under Section 55 is limited to a question of law that a wide and unfettered power is conferred on the Commission to amend or revoke in order in appropriate cases. An order under Section 37 or for the matter of that, under any other provision of the Act, is not an order made in a mere inter partes proceedings having effect limited only to the parties to the proceeding. Not only in its radiating potencies, but also by its express terms, it affects other parties such as the whole network of distributors or dealers who are not before the Commission. It also affects the entire trade in the product including consumers, dealers and manufacturers in the same line. The provisions of the Act are infected with public interest and considerations of public interest permeate every proceeding under the Act. Hence it is necessary to ensure that if, by reason of ineptitude or negligence of a party to the proceeding or on account of any other reason, an erroneous order has been made, it should be possible to correct it, lest it may, instead of promoting competition, produce an anti-competitive effect or may turn out to be prejudicial to public interest. It is also possible that there may be some fact or circumstance which may not have been brought to the attention of the Commission, though having a crucial bearing on the determination of the inquiry, and which, if taken into account, may result in a different order being made, or some fact or circumstance may arise which may expose the being made, or some fact or circumstance may rise which may expose the invalidity of the order or render it bad and in such cases too, some provision has to be made for correcting or rectifying the order. So also, there may be a material change in the relevant circumstances subsequent to the making of the order which my affect the essential reasoning on which the order is based and this too may necessitate a reconsideration of the order. After all, an order under Section 37 is made in a given constellation of economic facts and circumstances and if that constellation undergoes material change, the order would have to be reviewed in the light of the changed economic situation. No order under Section 37 can be immutable. It is by its very nature transient or pro tempore and must be liable to be altered or revoked according as there is material change in the relevant economic facts and circumstances. It is obviously for this reason that such a wide and unusual power is conferred on the Commission under Section 13(2) to amend or revoke an order at any time. It is a curial power intended to ensure that the Order passed by the Commission is and continues to be in conformity with the requirements of the Act and the trade practice condemned by the order is really and truly a restrictive trade practice and it must, therefore, be construed in a wide sense so as to effectuate the object and purpose of the grant of the power. But howsoever large may be the amplitude of this power, it must be pointed out that it cannot be construed to be so wide as to permit re-hearing on the same material without anything more, with a view to showing that the order is wrong on facts. This is the only limitation we would read in Section 13(2). Outside of that, the power of the Commission is large and ample and the Commission may, in the exercise of such power, amend or revoke an

order in an appropriate case.

11. The respondents relied strongly on Regulation 85 but we fail to see how that Regulation assists the respondents in limiting the width and amplitude of the power under Section 13(2). Regulation 85 does not say that an application under Section 13(2) shall be entertained only on certain specific grounds. It is true that is open to a statutory authority to lay down broad parameters for the exercise of the power conferred upon it, so long as those parameters are not based on arbitrary or irrational considerations and do not exclude altogether scope for exercise of residuary discretion in exceptional cases. But we do not think that even broad parameters for exercise of the power under Section 13(2) are laid down in Regulation 85. That Regulation is in two parts. The first part provides that an application under Section 13(2) "shall be supported by evidence on affidavit of the material change in the relevant circumstances or any other fact or circumstances on which the applicant relies". This is a procedural provision which prescribes that if the applicant relies on any material change in the relevant circumstances or on any other facts or circumstances in support of the application, he must produce the necessary evidence in proof of the same by affidavits. This provision merely lays down a rule of procedure and it has nothing to do with the grounds on which an application under Section 13(2) may be maintained and it is difficult to see how it can be pressed into service on behalf of the respondents. The second part states that unless the Commission otherwise directs "notice of the application together with copies of the affidavits in support thereof, shall be served on every party who appeared to the hearing of the previous proceedings and every such party shall be entitled to be heard on the application and the provisions of Section 114 and Order XLVII. Rule 1 of the Code of Civil Procedure, 1908 shall, as for as may be, apply to these proceedings". This part first deals with the question as to which parties shall be served with the notice of the application and who shall be entitled to appear at the hearing of the application. This is purely procedural in nature and does not throw any light on the issue before us. But this part then proceeds to add that the provisions of Section 114 and Order XLVII, Rule 1 shall, as far as may be, apply to the proceedings in the application can this provision be read to mean that an application under Section 13(2) can be maintained only on the grounds set out in Section 114 and Order XLVII, Rule 1 ? The answer must obviously be in the negative. The words "as fas as may" occurring in this provision are very significant. They indicate that the provisions of Section 114 and Order XLVII, Rule 1 are to be invoked only to the extent they are applicable and if, in a given case, they are not applicable, they may be ignored but that does not mean that the power conferred under Section 13(2) would not be exercisable in such a case. The reference to the provisions of Section 114 and Order XLVII, Rule 1 does not limit the grounds on which an application may be made under Section 13(2). In fact, the respondents themselves conceded that the grounds set out in Section 114 and Order XLVII, Rule 1 were not the only grounds available in an application under Section 13(2) and that the application could be maintained on other grounds such as material change in the relevant circumstances. It is, therefore, clear to our mind that even if a case does not fall within Section 114 and Order XLVII, Rule 1, the Commission would have power, in an appropriate case, to amend or revoke an order made by it. If, for example, a strong case is made out showing that an order made under Section 37 is plainly erroneous in law or that some vital fact or feature which would tilt the decision the other way has escaped the attention of the Commission in making the order or that the appellant was prevented by sufficient cause from appearing at the hearing of the inquiry resulting in the order being passed ex parte, the Commission would be entitled to interfere in the exercise of its power under Section 13(2). These examples given by us are merely illustrative and they serve to show that Regulation 85 does not in any manner limit the power under Section 13(2).

12. Before we proceed to consider whether any case has been made out by the appellant for the exercise of the power under Section 13(2), we may briefly dispose of the contention of the

respondents based on acquiescence and estoppel. The argument of the respondents was that the appellant, by his subsequent conduct, acquiesced in the making of the Order dated May 14 1976 and was, in any event, estopped from challenging the same. We find it difficult to appreciate this argument. We do not see anything in the conduct of the appellant which would amount to acquiescence or rise any estoppel against it. It is obvious that the appellant did not wish to be heard in the proceeding before the Commission because the decision of the Commission in the Telco case held the filed at that time and it was directly against the appellant. Otherwise, there is no reason why the appellant should not have entered an appearance under Regulation 65 and filed a proper reply as provided in Regulation 67 and appeared at the hearing of the inquiry to oppose the application of the Registrar. The appellant did make its submissions in writing by its letter dated February 3, 1976, but since the appellant did not enter an appearance as required by Regulation 65, it was precluded from filing a reply under Regulation 67 and the Commission was legally justified in refusing to look at the submissions contained in the letter of the appellant, though we may observe that it would have been more consonant with justice if the Commission had, instead of adopting a technical and legalistic approach, considered the submissions of the appellant before making the Order dated May 14, 1976. Be that as it may, the Commission declined to consider the submissions of the appellant and proceeded to make the Order dated May 14, 1976 ex parte in the absence of the appellant. Now, once the Order dated May 14, 1976 was made, it was the bounden duty of the appellant to obey it, until it might be set aside in an appropriate proceeding. The appellant, therefore, started preparing a draft of the revised distributorship agreement in conformity with the terms of the Order dated May 14, 1976 and since in conformity with the terms of the Order dated May 14, 1976 and since the preparation of the draft was likely to take some time, the appellant applied for extension of time which was granted up to March 31, 1977. However, before the extended date was due to expire, this Court reversed the decision of the Commission in the Telco case and as soon as this new fact or circumstance came to its knowledge, the appellant made an application date March 31 1977 stating that in view of the decision given by this Court in the Telco case, the applicant was advised to move a suitable application for amendment and/or modification of the Order dated May 14, 1976 and the time for filing the revised distributorship agreement should, therefore, be further extended and on this application, the Commission granted further extension of time up to June 4, 1977. It is difficult to see how any acquiescence or estoppel could be spelt out from this conduct of the appellant. It is true that the appellant did not prefer an appeal against the Order dated May 14, 1976, but the application under Section 13(2) being an alternative and perhaps a more effective remedy available to it, the failure of the appellant to prefer an appeal cannot be construed as acquiescence on its part. The appellant undoubtedly asked for extension of time from the Commission for the purpose of implementing the Order dated May 14, 1976 but that also cannot amount to acquiescence, because until the decision of the Commission in the Telco case was reversed in appeal by this Court, the appellant had no reason to believe that the Order dated May 14, 1976 was erroneous and as soon as the appellant came to know about the decision of this Court reversing the view taken by the Commission, the appellant immediately pointed out to the Commission that it was moving an application for amendment or revocation of the Order dated May 14, 1976 under Section 13(2). The appellant did not at any time accept the Order dated May 14, 1976 knowing that it was erroneous and its elementary that there can be no acquiescence without knowledge of the right to repudiate or challenge. Moreover, it may be noted that the appellant did not, tight up to the time it made the application under Section 13(2), implement the Order dated May 14, 1976 by entering into revised distributorship agreement with the distributors. There was, therefore, no acquiescence on the part of the appellant so far as the Order dated May 14, 1976 is concerned. Nor could there be any estoppel against the appellant precluding it from challenging the Order by an application under Section 13(2), for estoppel can arise only if a party to a proceeding has altered his position on the faith of a

representation or promise made by another and here there is nothing to show that the Registrar had altered his position on the basis of the application for extension of time made by the appellant. Both the contentions, one based on acquiescence and the other on estoppel, must, therefore, be rejected.

13. That takes us straight to the consideration of the question whether the appellant has made out any case for the exercise of the power of the Commission under Section 13(2). The first ground canvassed by the appellant was that the application on which the Order dated May 14, 1976 was made was not in accordance with law inasmuch as it did not set out any facts or features which would show that the trade practices complained of by the Registrar were restrictive trade practices. Now, it is true, as laid down by this Court in the Telco case, that an application by the Registrar under Section 10(a)(iii) "must contain fact which, in the Registrar's opinion, constitute restrictive trade practice" and it is not sufficient to make "mere references to clauses of the agreement and bald allegations that the clauses constitute restrictive trade practice." The application must set out facts or features "too show or establish as to how the alleged clauses constitute restrictive trade practice in the context of facts". The application of the Registrar in the present case was, therefore, clearly to the law laid down by this Court in the Telco case, but on that account alone it cannot be said that the Order dated May 14, 1976 was vitiated by a legal infirmity. Even if the application did not set out any facts or features showing how the trade practices complained of by the Registrar were restrictive trade practices, the Registrar complained of by the Registrar were restrictive trade practices, the Registrar could still at the hearing of the inquiry, in the absence of any demand for particulars being made by the appellant, produce material before the Commission disclosing facts or features which would go to establish the restrictive nature of the trade practices complained of by him and if the Registrar did so, the defect in the application would not be of much consequence. But unfortunately in the present case the only material produced by the Registrar was the affidavit of the Assistant Registrar which did nothing more than just reproduce the impugned clauses of the distributorship agreement and the words of the relevant sections of the Act. There was no material at all produced by the Registrar before the Commission which would show how, having regard to the facts or features of the trade of the appellant, the trade practices set out in the offending clause of the distributorship agreement were restrictive trade practices. The Order dated May 14, 1976 was, therefore, in the submission of the appellant, based on no material at all and was accordingly vitiated by an error of law. The respondents, however, contended that it was not necessary to produce any material before the Commission in support of the claim of the Registrar, because the trade practices referred to in the offending clauses were per se restrictive trade practices and in any event, even if any supporting material was necessary, it was to be found in the admission of the appellant contained in its letter submitting the distributorship agreement for registration under Section 33. We do not think there is any force in this contention of the respondents and the Order dated May 14, 1976 must be held to be bad on the ground that it was based on no material and could not possibly have been made by the Commission.

14. It is now settled law as a result of the decision of this Court in the Telco case that every trade practice which is in restraint of trade is not necessarily a restrictive trade practice. The definition of restrictive trade practice given in Section 2(o) is a pragmatic and result-oriented definition. It defines 'restrictive trade practice' to mean a trade practice which has or may have the effect of preventing, distorting or restricting competition in any manner and in clauses (i) and (ii), particularises two specific instances of trade practices which fall within the category of restrictive trade practice. It is clear from the definition that it is only where a trade practice has the effect, actual or probable, of restricting, lessening or destroying competition that it is liable to be regarded as a restrictive trade practice. If a trade practice merely regulates and thereby promotes competition, it would not fall within the definition of restrictive trade practice, even though it may be, to some

extent, in restraint of trade. Whenever, therefore, a question arises before the Commission or the Court as to whether a certain trade practice is restrictive or not, it has to be decided not on any theoretical or a priori reasoning, but by inquiring whether the trade practice has or may have the effect of preventing, distorting or restricting competition. This inquiry obviously cannot be in vacuo but it must depend on the existing constellation of economic facts and circumstances relating to the particular trade. The peculiar facts and features of the trade would be very much relevant in determining whether a particular trade practice has the actual or probable effect of diminishing or preventing competition and in the absence of any material showing these facts or features, it is difficult to see how a decision can be reached by the Commission that the particular trade practice is restrictive trade practice.

15. It is true that on the subject of restrictive trade practices, the law in the United States has to be approached with great caution, but it is interesting to note that the definition of "restrictive trade practice" in our Act echoes to some extent the 'rule of reason' evolved by the American Courts while interpreting Section 1 of the Sherman Act. That section provides that "every contract, combination in the form of truest or otherwise, or conspiracy, in restraint of trade or commerce is hereby declared to be illegal" and literally applied, it would outlaw every conceivable contract which could be made concerning trade or commerce or the subjects of such commerce. The Supreme Court of United States, therefore, read a 'rule of reason' in this section in the leading decision in Standard Oil Company v. United States (221 US 1 : 55 L Ed 609). It was held by the Court as a 'rule of reason' that the term "restraint of trade" means what it meant at common law and in the law of the United States when the Sherman Act was passed and it covered only those acts or contracts or agreements or combinations which prejudice public interest by unduly restricting competition or unduly obstructing the due course of trade or which injuriously restrain trade either because of their inherent nature or effect or because of their evident purpose. Vide also United State v. American Tobacco Co. (221 US 106 : 55 L Ed 663). It was pointed out that the 'rule of reason' does not freeze the meaning of "restraint of trade" to what it meant at the date when Sherman Act was passed and it prohibits not only those acts deemed to be undue restraints of trade at common law but also those acts which new times and economic conditions make unreasonable. This 'rule of reason' evolved by the Supreme Court in the Standard Oil Company case and the American Tobacco Co. case has governed the application of Section 1 of the Sherman Act since then and though it does not furnish an absolute and unvarying standard and has been applied, sometimes more broadly and sometimes more narrowly, to the different problems coming before the courts at different times, it has held the field and, as pointed out by Mr. Justice Reed in the United States v. E. I. Du Pont (351 US 377), the Supreme Court has not receded from its position on this rule. The 'rule of reason' has, to quote again the words of the same learned Judge "given a workable content to anti-trust legislation". Mr. Justice Brandies applied the 'rule of reason' in Board of Trade v. United States (62 L Ed 231) for holding that a rule prohibiting offers to purchase during the period between the close of the call and the opening of the session on the next business day for sales of wheat, corn, oats or rye at a price other than at the closing bid, was not in "restraint of trade" within the meaning of Section 1 of the Sherman Act. The learned Judge pointed out in a passage which has become classical :

> Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality 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. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed the nature of the restraint, and its effect, actual or probable. The history of the restraint,

> the evil believed to exist, the reason for adopting the particular remedy, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation, or the reverse; but because knowledge of intent may held the court to interpret facts and to predict consequences.

It will thus be seen that the 'rule of reason' normally requires an ascertainment of the facts or features peculiar to the particular business; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable; the history of the restraint and the evil believed to exist, the reason for adopting the particular restraint and the purpose or end sought to be attained and it is only on a consideration of these factors that it can be decided whether a particular act, contract or agreement, imposing the restraint is unduly restrictive of competition so as to constitute 'restraint of trade'. The language of the definition of "restrictive trade practice" in our Act suggests, that in enacting the definition, our legislature drew upon the concept and rationale underlying the 'rule of reason'. That is why this Court pointed out in the Telco case in words almost bodily lifted from the judgment of Mr. Justice Brandeis : (SCC p. 63)

The decision whether trade practice is restrictive or not has to be arrived at by applying the rule of reason and not on that 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. 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 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.

These various facts and features set out in the judgment of Mr. Justice Brandeis and reiterated in the decision of this Court in the Telco case would, therefore, have to be considered before a decision can be reached whether a particular trade practice is restrictive or not. It is possible that a trade practice which may prevent or diminish competition in a given constellation of economic facts and circumstances may, in a different constellation of economic facts and circumstances, be found to promote competition. It cannot be said that every restraint imposed by a trade practice necessarily prevents, distorts or restricts competition and is, therefore, a restrictive trade practice. Whether it is so or not would depend upon the various considerations to which we have just refereed. Of course, it must be pointed out that there may be trade practices which are such that by their inherent nature and inevitable effect they necessarily impair competition and in case of such trade practice, it would not be necessary to consider any other facts or circumstances, for they would be per se restrictive trade practices. Such would be the position in case of those trade practices which of necessity produce the prohibited effect in such an overwhelming proportion of cases that minute inquiry in every instance would be wasteful of judicial and administrative resources. Even in the United States a similar doctrine of per se illegality has been evolved in the interpretation of Section 1 of the Sherman Act and it has been held that certain restraints of trade are unreasonable per se and "because of their pernicious effect on competition and lack of any redeeming virtue" they are "conclusively presumed to be unreasonable, and, therefore, illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use". In such cases "illegality does not depend on a showing of the unreasonableness of the practice and it is unnecessary to have a trial to show the nature, extent and degree of its market effect". Vide American Jurisprudence 2nd Ed. Volume 54, p. 687, Article 32. We are concerned in the present appeal with clauses of the distributorship agreement imposing restriction as to territory, area or market and providing for

exclusive dealership and according to the decision of this Court in the Telco case, such trade practices are not per se restrictive trade practices. Whether such trade practices constitute restrictive trade practices or not in a given case would depend on the particular facts and features of the trade and other relevant considerations discussed above which would show the actual or probable effect of such trade practices on competition. It was, therefore, absolutely necessary to produce the necessary material before the Commission to show that the impugned trade practices had the actual or probable effect of diminishing or destroying competition and were, therefore restrictive trade practices. The burden was clearly on the Registrar for it was the Registrar who wanted the Commission to strike down these trade practices as restrictive. The Registrar however did not produce any material at all before the Commission and the Order dated May 14, 1976 had no basis at all on which it could be sustained.

16. There is no doubt that the appellant by its letter dated May 19, 1972 submitted the distributorship agreement to the Registrar for registration under Section 33, but we do not see how this act of the appellant or the letter forwarding the distributorship agreement for registration can be construed as admission on the part of he appellant that the trade practices referred to in the offending clauses of the distributorship agreement constituted restrictive trade practices. In the first place, the question whether a trade practice is restrictive trade practice or not is essentially a question of law based on the application of the definition in Section 2(o) to the facts of a given case and no admission on a question of law can ever be used in evidence against the maker of the admission. Therefore, even if there was any admission involved in submitting the distributorship agreement for registration, it could not be used as evidence against the appellant in the inquiry under Section 37. Moreover, we do not think that in submitting the distributorship agreement for registration, the appellant made an admission that any particular clauses of the distributorship agreement constituted restrictive trade practices. There is nothing in the letter of the appellant to show which were the particular clauses of the distributorship agreement regarded by the appellant as restrictive trade practices on the basis of which it made the application for registration. It is possible that the appellant might have taken the same view which the Commission did in the Telco case, namely, that the moment an agreement contains a trade practice falling within any of the clauses of Section 33(1), the trade practice must, irrespective of whether it falls within the definition in Section 2(o) or not, be regarded as a restrictive trade practice and the agreement must be registered and on that view, the appellant might have submitted the distributorship agreement for registration. The submission of the distributorship agreement for registration cannot, therefore, possibly be construed as admission on the part of the appellant that the particular clauses of the distributorship agreement faulted by the Commission constituted restrictive trade practices. There was, accordingly, no admission of the appellant on which the Commission could rely for the purpose of making the Order dated May 14, 1976.

17. We must, in the circumstances, hold that, since there was no material at all on the basis of which the Commission could find that the trade practices referred in the offending clauses of the distributorship agreement were restrictive trade practices, the Order dated May 14, 1976 was contrary to law. This clearly attracted the exercise of the power of the Commission under Section 13(2). The decision of this Court in the Telco case exposed the invalidity of the Order dated May 14, 1976 and showed that it was bad as being based on no material whatsoever. When the Commission passed the Order dated May 14, 1976, the decision of the Commission in the Telco case held the field and according to that decision, any trade practice which fell within one of the clauses of Section 33(1) would be a restrictive trade practice and that is perhaps the reason why the Registrar did not produce any material before the Commission and even though there was no material before it, the Commission proceeded to invalidate the trade practices referred to in the

offending clauses as restrictive trade practices, since they fell within one or the other clauses of Section 33(1). But this view was reversed in appeal and it was held by this Court that a trade practice which does not fall within the definition in Section 2(o) cannot become restrictive trade practice merely because it is covered by one or the other of the clauses of Section 33(1) : what Section 33(1) requires as the condition for registration is that the agreement must relate to a trade practice which is restrictive trade practice within the meaning of Section 2(o) and such restrictive trade practice must additionally fall within one or more of the categories specified in that section. It was because of this decision in the Telco case that the necessity for production of material to show that the trade practices complained of were restrictive trade practices became evident and it came to be realised that the Order dated May 14, 1976 were bad. The conclusion is, therefore, inescapable that the power of the Commission under Section 13(2) was exercisable in the present case and the Order dated May 14, 1976 was liable to be revoked.

18. Before we part with this aspect of the case, we must refer to one other decision of this Court which was relied upon on behalf of the respondents and that is the decision in Hindustan Lever Ltd. v. M. R. T. P. ((1977) 3 SCC 227 : (1977) 3 SCR 455) The judgment in this case was delivered by Beg, C.J., speaking on behalf of himself and Gupta, J. and though Beg, C.J. was also a party to the judgment in the Telco case, this judgment seems to strike a slightly different note and hence it is necessary to examine it in some detail. Two clause of the Redistribution Stockists' Agreement were assailed in this case as constituting restrictive trade practices. One was clause (5) which in its last portion provided that the redistribution stockists shall purchase and accept from the Company such stock as the Company shall at its discretion send to the redistribution stockiest for fulfilling its obligations under the agreement and the other was clause (9) which imposed a restriction as to area or market by providing that the redistribution stockist shall not rebook or in any way convey transport or despatch parts of stocks of the products received by him outside the town for which he was appointed redistribution stockist. The Commission held, following the view taken by it earlier in the Telco case, that the last part of clause (5) as well as clause (9) constituted restrictive trade practices and declared them void. This view was affirmed by Beg, C.J. in the appeal preferred by Hindustan Lever Ltd. We are not concerned with the merits of the question whether the last part of clause (5) and clause (9) were on the facts of that case rightly held to be restrictive trade practices, but certain observations made by the learned Chief Justice in that judgment call for consideration, since they seem to be inconsistent with what was laid down by a Bench of three Judges of this Court in the Telco case.

19. In the first place, the learned Chief Justice distinguished the judgment in the Telco case by observing that the agreement in that case could not be understood without reference to the actual facts to which it was sought to be applied and extraneous evidence in regard to those facts for explaining "the nature of the special agreement for restricting or distribution of areas" was, therefore, admissible under Section 92, clause (6) of the Evidence Act, but in the Hindustan Lever case the meaning of the impugned clauses was plain and certain and the principle of Section 92, clause (6) was clearly inapplicable to let in extraneous evidence and hence no oral evidence could be led to deduce their meaning or vary it in view of the provisions of Sections 91 and 92. It was on this view that the learned Chief Justice held that oral evidence for the purpose of showing that the trade practices in the impugned clauses were not restrictive was shut out and all that was necessary for the court to do was to interpret the impugned clauses. Now, this view taken by the learned Chief Justice does not, and we say so with the utmost respect, appear to be correct. We do not see how Sections 91 and 92 of the Evidence Act come into the picture at all when we are considering whether a particular trade practice set out in an agreement has or may have the affect of preventing, distorting or restricting competition so as to constitute a restrictive trade practice. It is the actual or probable

effect of the trade practice which has to be judged in the light of the various considerations adverted to by us and there is no question of contradicting, varying, adding to or sub-stracting from the terms of the agreement by admitting any extraneous evidence. The meaning of the particular clause of the agreement is not sought to be altered or varied by reference to the various factors which we have discussed above, but these factors ar required to be taken into account only for his purpose of determining the actual or probable effect of the trade practice referred to in the particular clause. The reliance placed by the learned Chief Justice on Section 91 and 92 was, therefore, quite inappropriate and unjustified and we do not think that the learned Chief Justice was right in shutting out oral evidence to determine the actual or probable effect of the trade practices impugned in the case before him. It may be pointed out that the decision in the Telco case did not proceed on an application of the principle embodied in Section 92, clause (6) of the Evidence Act and with the greatest respect, the learned Chief Justice was in error in distinguishing that decision on the ground that extraneous evidence was considered in that case in view of the principle underlying Section 92, clause (6), while in the case before him that principle was not applicable and hence extraneous evidence was not admissible. The learned Chief Justice was bound by the ratio of the decision in the Telco case.

20. Secondly, the learned Chief Justice seemed to take the view in his judgment at page 465 of the Report (SCC pp. 236, 237) that if a clause in an agreement relates to a trade practice which infringes any of the clauses of Section 33(1), it would be bad and it would be unnecessary to inquire whether the trade practice falls within the definition of 'restrictive trade practice' in Section 2(o). There were two places in the judgment where the learned Chief Justice used expressions indicating this view. He said at one place : "The last part of clause (5) - would be struck by Section 33(1)(b)", and at another place "Inasmuch as clause (5) - expressly gives the stockist the discretion to sell at lower than maximum retail prices stipulated, the agreement was not struck by Section 33(1)(b)". This view is plainly, and again we say so with the greatest respect, contrary to the law laid down by a Bench of three Judges of this Court in the Telco case. We have already pointed out that, according to the decision in the Telco case, a trade practice does not become a restrictive trade practice merely because it falls within one or the other clause of Section 33(1), but it must also satisfy the definition of 'restrictive trade practice' contained in Section 2(o) and it is only then that the agreement relating to it would require to be registered under Section 33(1). It is, with the greatest respect to the learned Chief Justice, not correct to say that a particular clause in an agreement is struck by on or the other clause of Section 33(1). It is not Section 33(1) which invalidates clause in an agreement relating to a trade practice, but it is the restrictive nature of the trade practice as set out in Section 2(o) which makes it void. The view taken by the learned Chief Justice on this point cannot, therefor, be accepted.

21. Lastly, the learned Chief Justice held that the introduction of a clause in an agreement itself constitutes a trade practice and if such clause confers power which can be used so as to unjustifiably restrict trade it would constitute a restrictive trade practice. The learned Chief Justice pointed out that the definition of trade practice is wide enough to include any practice relating to the carrying on of any trade and observed that it cannot argued that the introduction of the clauses complained of does not amount to an action which relates to the carrying on of a trade. If the result of that action or what could reasonably flow from it is to restrict trade in the manner indicated, it will, undoubtedly, be struck by the provisions of the Act.

The interpretation placed by the learned Chief Justice was that if a clause in an agreement is capable of being used to prevent, distort or restrict competition in any manner, it would be liable to be struck down as a restrictive trade practice, regardless of what is actually done under it, for it is not the

action to be taken which is unduly restrictive of competition, that is material for determining whether there is a restrictive trade practice. The learned Chief Justice emphasized that if a clause in an agreement confers power to act in a manner which would unduly restrict trade, the clause would be illegal and it would be no answer to say that the clause is in fact being implemented in a lawful manner. This view taken by the learned Chief Justice cannot, with the utmost respect, be accepted as wholly correct.

22. It is true that clause in an agreement may embody a trade practice and such trade practice may have the actual or probable affect of restricting, lessening or destroying competition and hence it may constitute a restrictive trade practice and the clause may be voided, but it is difficult to see how the introduction of such a clause in the agreement, as distinguished from the trade practice embodied in the clause itself, can be a restrictive trade practice. It is not the introduction of such a clause, but the trade practice embodied in the clause, which has or is reasonably likely to have the prescribed anti-competitive effect. Therefore, whenever a question of restrictive trade practice arises in relation to a clause in an agreement, it is the trade practice embodied in the clause that has to be examined for the purpose of determining its actual or probable effect on competition. Now, a clause in an agreement may proprio vigor on its own terms, impose a restraaint such as allocating a territory, area or market to a dealer or prohibiting a dealer from using machinery or selling goods of any other manufacturer or supplier or requiring the dealer to purchase whatever machinery or goods in the particular line of business are needed by him from the manufacturer or supplier entering into the agreement. Where such restraint produces or is reasonably likely to produce the prohibited statutory effect - and that would depend on the various considerations referred to by us earlier - it would clearly constitute a restrictive trade practice and the clause would be bad. In such a case it would be no answer to say that the clause is not being enforced by the manufacturer or supplier. The very presence of the clause would have a restraining influence on the dealer, for the dealer would be expected to carry out his obligations under the clause and he would not know that the clause is not going to be enforced against him. This is precisely what was pointed out by Mr. Justice Day in United Shoe Machinery Corporation v. United States (258 US 708 : 66 L Ed 451) where the question was whether the restrictive-use, exclusive-use, and additional-machinery clauses in certain lease agreements of shoe-machinery were struck by the provisions of Section 3 of the Clayton Act : "The power to enforce them", that is, the impugned clauses "is omnipresent and their restraining influence constantly operates upon competitions and lessees. The fact that the lessor, in many instances, forbore to enforce these provisions, does not make them any less agreements within the condemnation of the Clayton Act". There would be no difficulty in such a case in applying the definition of restrictive trade practice in accordance with the law laid down in the Telco case as explained by us in this judgment.

23. Then there may be a clause which may be perfectly innocent and innocuous such as a clause providing that the dealer will carry out all directions given by the manufacturer or supplier from time to time. Such a broad and general clause cannot be faulted as restrictive of competition, for it cannot be assumed that the manufacturer or supplier will abuse the power conferred by the clause by giving directions unduly restricting trade. So much indeed was conceded by the learned Additional Solicitor General appearing on behalf of the respondents. But a genuine difficulty may arise where a clause in an agreement does not by itself impose any restraint but empowers the manufacturer or supplier to take some action which may be restrictive of competition. Ordinarily, in such a case, it may not be possible to say that the mere presence of such a clause, apart from any action which may be taken under it, has or may have the prohibited anti-competitive effect. The manufacturer or supplier may take action under the clause or he may not, and even if he takes action, it may be in conformity with the provisions of the Act and may not be restrictive of competition. The mere

possibility of action being taken which may be restrictive of competition would not in all cases affect the legality of the clauses. In fact a consistent course of conduct adopted by the manufacturer or supplier in acting under the clause in a lawful manner may tend to show that the clause is not reasonably likely to produce the prohibited statutory effect. What is required to be considered for determining the legality of the clause is not mere theoretical possibility that the clause may be utilised for taking action which is restrictive of competition, for it does not necessarily follow from the existence of such possibility that the actual or probable effect of the clause would be anti-competitive. The material question to consider is whether there is a real probability that the presence of the clause itself would be likely to restrict competition. This is basically a question of market effect and it cannot be determined by adopting a doctrinaire approach. There can be no hard and fast rule and each case would have to be examined on its own facts from a business and commonsense point of view for the purpose of determining whether the clause has the actual or probable effect of unduly restricting competition. We cannot accept the proposition that in every case where the clause is theoretically capable of being so utilised as to unjustifiably restrict competition, it would constitute a restrictive trade practice.

24. There is also another infirmity invalidating the Order dated May 14, 1976. We have already pointed out, and that is clear from the decision of this Court in the Telco case, that in an inquiry under Section 37 the Commission has first to be satisfied that the trade practice complained of in the application is a restrictive trade practice within the meaning of that expression as defined in Section 2(o) and it is only after the Commission is so satisfied, that it can proceed to consider whether any of the 'gateways' provided in Section 38(1) exists so that the trade practice, though found restrictive, is deemed not to be prejudicial to the public interest and if no such 'gateways' are established, then only it can proceed to make an order directing that the trade practice complained of shall be discontinued or shall not be repeated. There are thus two conditions precedent which must be satisfied before a cease and desist order can be made by the Commission in regard to any trade practice complained before it. One is that the Commission must find that the trade practice complained of is a restrictive trade practice and the other is that where such finding is reached, the Commission must further be satisfied that none of the gateways pleaded in answer to the complaint exists. Here in the present case the appellant did not appear at the hearing of the inquiry and no 'gateways' were pleaded by it in the manner provided in the Regulations and hence the question of the Commission arriving at a satisfaction in regard to the 'gateways' did not arise. But the Commission was certainly required to be satisfied that the trade practices complained of by the Registrar were restrictive trade practices before it could validly make a case and desist order. The Order dated May 14, 1976 did not contain any discussion or recital showing that the Commission had reached the requisite satisfaction in regard to the offending trade practices. But we can legitimately presume that the Commission must have applied its mind to the offending clauses of the distributorship agreement and come to the conclusion that the trade practices referred to in those clauses were restrictive trade practices before it made the Order dated May 14, 1976. There is in fact inherent evidence to show that the Commission did apply its mind to the clauses impugned in the application of the Registrar, because it struck down only a few out of those clauses and did not invalidate the rest. This circumstance clearly shows that the Commission considered with reference, to each impugned clause whether it related to restrictive trade practice and made the Order dated May 14, 1976 only in respect of those clauses where it was satisfied that the trade practices were restorative. The charge that the Order dated May 14, 1976 suffered from non-application of mind on the part of the Commission cannot, therefore, be sustained. But the Order dated May 14, 1976 was clearly bad inasmuch as it did not disclose the reasons which weighed with the Commission in directing the appellant to cease and desist from the trade practices set out in the order. The Order

dated May 14, 1976 was a non-speaking order. It consisted merely of bald directions given by the Commission and did not set out any reasons whatsoever why the Commission had decided to issue those directions. It had a sphynx-like face, which goes ill with the judicial process. It is true that the Order dated May 14, 1976 was an ex parte order, but the ex parte character of the order did not absolve the Commission from the obligation to give reasons in support of the order. Even though the Order dated May 14, 1976 was ex parte, the appellant would have been entitled to prefer an appeal an appeal against it under Section 55 and it is difficult to see how the appellant could have possibly attacked the order in the appeal, when the order did not disclose the reasons on which it was based. It is now settled law that where an authority makes an order in exercise of a quasi judicial function, it must record its reasons in support of the order it makes. Every quasi judicial order must be supported by reasons. That is the minimum requirement of law laid down by a long line of decisions of this Court ending with N. M. Desai v. Testeels Ltd. (CA 245 of 1970, decided on 17th December, 1975) and Siemens Engineering and Manufacturing Co. v. Union of India. ((1976) 2 SCC 981 : 1976 Supp SCR 489 : AIR 1976 SC 1785) The Order dated May 14, 1976 was, therefore, clearly vitiated by an error of law apparent on the face of the record inasmuch as it contained only the final and operative order made by the Commission and did not record any reasons whatsoever in support of it and the appellant was, in the circumstances, entitled to claim that the Order should be revoked by the Commission.

25. This view taken by us rendered it unnecessary to consider whether there was any material change in the relevant circumstances justifying invocation of the power under Section 13(2) and hence we do not propose to deal with the same. The Commission has devoted a part of the order impugned in the present appeal to a consideration of this question and taken the view that there was no material change in the relevant circumstances subsequent to the making of the Order dated May 14, 1976. We do not wish to express any opinion on the correctness of this view taken by the Commission, since we are setting aside the impugned order made by the Commission and also revoking the Order dated May 14, 1976 and sending the matter back so that the application of the Registrar under Section 10(a)(iii) may be disposed of afresh.

26. We accordingly allow the appeal, set aside the order of the Commission rejecting the application of the appellant under Section 13(2), revoke the Order dated May 14, 1976 and remit the case to the Commission so that the Commission may dispose of the application of the Registrar under Section 10(a)(iii) in the light of the observations contained in this judgment. The Commission will give an opportunity to the appellant to file a proper reply in conformity with the requirements of the Regulations and after taking such relevant evidence as may be produced by both parties, proceed to dispose of the application of the Registrar on merits in accordance with law. There will be no order as to costs of the appeal.

</html