ÿþhtml> head> meta http-equiv=Content-Type content="text/html; charset=unicode"> meta name=Generator content="Microsoft Word 12 (filtered)"> style> !-- /* Font Definitions */ @font-face {font-family:"Cambria Math"; panose-1:2 4 5 3 5 4 6 3 2 4;} /* Style Definitions */ p.MsoNormal, li.MsoNormal, div.MsoNormal {margin:0in; margin-bottom:.0001pt; font-size:12.0pt; font-family:"Times New Roman","serif";} a:link, span.MsoHyperlink {color:blue; text-decoration:underline;} a:visited, span.MsoHyperlinkFollowed {color:purple; text-decoration:underline;} p {font-size:12.0pt; font-family:"Times New Roman","serif";} .MsoChpDefault {font-size:10.0pt;} @page Section1 {size:8.5in 11.0in; margin:1.0in 1.0in 1.0in 1.0in;} div.Section1 {page:Section1;} --> /style> meta name=Template content="C:\PROGRAM FILES\MICROSOFT OFFICE\OFFICE\html.dot"> /head> body lang=EN-US link=blue vlink=purple leftmargin=50> div class=Section1> p align=center style='text-align:center'>b>SUPREME COURT OF INDIA/b>/p> p align=center style='text-align:center'>PRINCIPAL, APEEJAY SCHOOLbr> br> Vs.br> br> THE M.R.T.P. COMMISSION amp; ANR.br> br> 09/10/2001br> br> (N. Santosh Hegde amp; P. Venkatarama Reddi.)/p> p align=center style='text-align:center'>Appeal (civil) 2842 of 1991/p> p>b>JUDGMENT/b>/p> p>SANTOSH HEGDE, J. /p> p>This is a statutory appeal under Section 55 of the Monopolies amp; Restrictive Trade Practices Act, 1969 (for short the Act) preferred against the order of cease and desist passed on 24.4.1991 under Section 37(1) of the Act by the Monopolies amp; Restrictive Trade Practices Commission (the Commission). /p> p>The Commission instituted a suo motu enquiry under Section 10(a)(iv) of the Act vide order dated 11.12.1987 against the appellant alleging 3 specific violations of the Act. Since the first two charges thus levelled against the appellant having been found not established, it is unnecessary for us to go into the facts of those charges. By the impugned order, the Commission held that the appellant has violated the provisions of Section 2(o)(ii) of the Act, hence, it had passed the order of cease and desist against the appellant under Section 37(1) of the Act, as stated above, and has further directed the appellant to pay interest at the prevalent bank rate on all the securities collected from the students of the appellant Institution as refundable security deposit. /p> p>The charge with which we are presently concerned in this appeal, reads thus : /p> p>3. The School is reported to have accepted refundable Security to the extent of Rs.500/-. The Security does not carry interest and to that extent an unjustified cost is imposed on the parents of the students to whom education is being imparted. It also attracts section 2(o) of the M.R.T.P. Act, 1969. /p> p>Pursuant to the issuance of the said charge, a notice of enquiry was issued to the appellant by the Director General of the Commission enumerating the materials relied against the appellant in support of the above charge. The appellant had replied to the said charge stating that it does not carry on any trade or render any service as contemplated under the Act. It also contended that it has not indulged in any restrictive trade practice within the meaning of Section 2(o)(ii) or Section 2(r) of the Act nor has it imposed any unjustified costs on the parents of the students undergoing studies in the School. After hearing the parties, the Commission held in regard to the third charge that the non-payment of interest on the refundable security is prima facie objectionable and is a restrictive trade practice within the meaning of Section 2(o)(ii) of the Act inasmuch as it brings about manipulations of prices so as to impose on the consumers unjustified costs and not paying interest on the refundable security is prejudicial to public interest. Therefore, the Commission passed the impugned order. In this appeal, it is contended on behalf of the appellant that collection of refundable deposit without payment of interest is a general practice obtaining in all public Schools and the said practice does not amount to restrictive trade practice. Elaborating this argument, it is contended that the restrictive trade practice is a trade practice which prevents, restricts or distorts competition in any manner as per Section 2(o) of the Act. The practice of non-payment of interest on caution money which is followed by almost all public Schools is an

extremely relevant factor which demonstrates that the said practice does not prevent, distort or restrict competition in any manner and this relevant fact is not taken note of by the Commission. Based on this, the appellant contends that so long as this practice is prevalent in all Schools, the question of the said practice being a restrictive trade practice within the meaning of Section 2(o) of the Act does not arise. Therefore, the Commission did not have the power to proceed against the appellant under Section 37(1) of the Act. It is also alternatively contended by the appellant that the Commission did not have the power, authority or jurisdiction under the provision of Section 37(1) of the Act to direct the appellant to pay interest on the prevailing bank rate on all refundable securities since Section 37(1) of the Act does not empower issuance of such direction. It is also contended that the Commission has no jurisdiction to pass an order of cease and desist under the said Section particularly in view of the fact that the allegation in the notice of inquiry related only to imposition of unjust costs by collecting the security deposit without payment of interest which, assuming it to be true, does not by any stretch of imagination constitute restrictive trade practice within the meaning of Section 2(o)(ii) of the Act. /p> p>The appellant also strongly placed reliance on two judgments of this Court in Mahindra and Mahindra Ltd. v. Union of India amp; Anr. (1979 2 SCC 529) which was followed by a subsequent judgment of this Court in Rajasthan Housing Board v. Parvati Devi (Smt.) (2000 6 SCC 104). On behalf of the respondents, it is contended that this argument presently placed for our consideration in this appeal was not raised by the appellant before the Commission, therefore, the same should not be permitted for the first time in this appeal. /p> p>We are not impressed with this argument addressed on behalf of the respondents. This being a statutory appeal and the question raised before us being a question involving the jurisdiction of the Commission to pass the impugned order, we reject this objection raised on behalf of the respondents and will proceed to consider the case of the appellant on merits. This Court in the case of Mahindra amp; Mahindra (supra) had held : /p> p>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 facts which, in the Registrars 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 to show or establish as to how the alleged clauses constitute restrictive trade practice in the context of facts. /p> p>Bearing this principle of law in mind, if we consider the complaint of the appellant, it can be seen that the charge alleged against the appellant is not supported by the factual matrix so as to make the allegation of restrictive trade practice as defined in the Act applicable to the appellants case. In the absence of any material to establish that the practice adopted by the appellant has in any manner the effect of preventing, distorting or restricting competition, the question of applying Section 2(o) will not arise. Based on the material available on record, it is the case of the appellant that this is a practice which is adopted by almost all public Schools and by adopting this practice of collecting refundable security deposit without payment would not in any manner be a restrictive practice, hence, the Commission could not have come to a contrary conclusion so as to attract the provision of Section 2(o)(ii) or Section 37(1) of the Act. We find considerable force in this argument. This Court in the case of Rajasthan Housing Board (supra) while considering the applicability of Section 2(o)(ii) of the M.R.T.P. Act, following the earlier decision of this Court in Mahindra amp; Mahindra (supra) held that in the absence of any evidence to hold that the appellant (in that case) had indulged in restrictive trade practice, the direction given by the Commission that the appellant shall discontinue the alleged restrictive trade practice and not repeat the same in future, cannot be sustained. While coming to the said conclusion, this Court in Rajasthan Housing Board (supra) placed reliance on the following passage in the judgment of this Court in Mahindra and Mahindra case (supra) wherein it was held : /p> p>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 a restrictive trade practice. /p> p>If the above principles laid down by this Court in the case of Mahindra amp; Mahindra (supra) and Rajasthan Housing Board (supra) are to be applied to the facts of this case, then, we are convinced that the impugned order has to be set aside solely on the ground that there was no material before the Commission to come to the conclusion that the appellant by collecting refundable security deposit without interest has committed any restrictive trade practice within the meaning of Section 2(o)(ii) of the Act. In the said view of the matter, this appeal succeeds and the same is hereby allowed. The impugned order is set aside. /p> p>nbsp;/p> /div> /body> /html>