

Super Engg. Corpn

v.

S Maheshwari Bros. & Another

HON'BLE MR. JUSTICE RUMA PAL HON'BLE MR. JUSTICE H.K. SEMA

(Supreme Court Of India)

Civil Appeal No. 15008-10 Of 1996 | 19-02-2004

1. Three appeals are disposed of by this judgment. All three appeals have been preferred from an order passed by the MRTP Commission (hereinafter referred to as 'the Commission') on 31.5.1996. The impugned order had been passed by the Commission on three separate complaints filed by the respondents between 25.4.1987 and 27.6.1987. The separate grievances in the three appeals raised by the respondents related to : (1) alleged unfair trade practice resorted to by the appellant under the MRTP Act, 1967 (referred to as 'the Act'); (2) restrictive trade practice resorted to by the appellant under the Act; and (3) compensation payable by the appellant to the respondent. Enquiry notices had been issued by the Commission in respect of the first two complaints.

2. The basis of the three complaints related to an offset machine which had been delivered by the appellant to the respondent in February 1987 at a price of Rs. 1,04,000 (Rupees one lakh four thousand). It appears that the respondent had written to the appellant claiming that the machine was not performing satisfactorily. According to the appellant it had deputed its engineers to look into the complaint and necessary steps were taken to rectify, what the appellant claims were feeling troubles. However, the respondent persisted with his complaint and ultimately filed the first complaint before the Commission, being UTPI No. 264 of 1987. While that complaint was pending, an attempt was made to reconcile the disputes between the parties by National Small Industries Corporation Limited (for short 'NSIC').

3. It appears from the letter dated 4.7.1987 written by NSIC to the respondent that this effort was made by NSIC because of a complaint lodged by the

respondent with it on 25.4.1987. NSIC had called for a response to the complaint of the respondent and has recorded in its letter that:

"At this stage the basic design of the machine supplied to you cannot be changed. However, if you are interested to replace the machine with a new one the suppliers are agreeable to cooperate to that extent. If you so desire, please arrange to send the machine to the suppliers and collect the new machine after test and trial at the supplier's works in Bombay. In this way the to-and-fro transportation charges will have to be borne by you. Kindly intimate us your final decision so that the problem is resolved once for all."

4. This offer of replacement, was not taken up by the respondent, who then filed the two other complaints referred to earlier before the Commission .

5. While the complaints were pending before the Commission, the appellant again offered to replace the machine pursuant to the letter dated 4.7.1987.

6. A preliminary investigation was held by the Director General of Investigation and Registration (INR). A report was submitted on 30.6.1988 by the Director General in which the Director General was of the view that the allegations made by the complainant were prima facie correct. It is noteworthy that the Director General while taking note of the offer of the appellant to replace the machine found the offer to be prima facie evidence that the machine originally supplied was defective in nature. It does not appear to us that the reasoning of the Director General was based on any firm fact but was an exercise based on assumption and conjectures. However, on the basis of this report, the Commission held an enquiry. The Commission noted the facts as have been narrated by us earlier and came to the conclusion that the complaints had been substantiated and that the appellant was guilty of unfair and restrictive trade practices and that the respondent was entitled to compensation. In disposing of the matter, however, the Commission directed the appellant to pay compensation of Rs. 1,50,000 (Rupees one lakh fifty thousand) plus interest at 18% per annum from 3.2.1987 up to the date of payment together with interest at Rs. 5000/- to the respondents. The amount was directed to be paid within a

period of four weeks subject to the condition that the machine in question would be returned by the respondent to the appellant, if not already done.

7. The appellant's appeals were entertained by this Court and after issuance of notices this Court stayed the operation of the Commission's order on 5.5.1997.

8. Today, nobody appears on behalf of the respondents. On the basis of the submissions made by the appellant, we are of the view that the order of the Commission cannot be sustained. At the outset, we may note that the complaint of restrictive trade practice made by the respondent arose from the termination of the distributorship agreement of the appellant's agent. Although the appellant's erstwhile agent had given evidence before the Commission, the agent had not itself filed any complaint before the Commission impugning the termination. We are unable either to see nexus between the termination of the agency by the appellant and the claims made by the respondents before the Commission, relating to the supply of an alleged defective printing machine or how a decision on the alleged illegality on such termination could be given at the instance of the respondent. The appellant had also put forward reasons for impugning the finding of the Commission that the termination of the agency was illegal. It is not necessary to go into the correctness of those reasons in view of our earlier observations.

9. As far as the complaint regarding unfair trade practice and compensation is concerned, the Commission erred in rejecting out of hand the offer made by the appellant from the beginning to replace the machines without prejudice to its contentions that the first machine was not defective. There was no reason to suspect the bona fides of NSIC and the correctness of the contents of the letter which we have already referred to. The Commission appears to have been swayed by the fact that the respondent had not signed the letter written by NSIC. that is a matter of no moment, as the genuineness of the offer to replace could not be doubted. No explanation was called for from (sic by) the Commission from the respondent as to why the respondent had not responded to the offer of replacement. Had the complaint been genuine, the complainant should have at least responded to such offer. Indeed, even after the order of the Commission no attempt has been made by the respondent to return the machine and take the benefit of the order of the Commission. In the circumstances, we are of the view that the Commission erred in holding that the appellant was

guilty of restrictive trade practice or unfair trade practice and in allowing compensation.

10. A long time has elapsed between the original delivery, namely, February 1987 and today. It would be inequitable to ask the appellant to replace the machine now. Besides, we also note that it was the contention of the appellant all along that the respondent had used the machine and had, even in 1987, obtained 20 thousand copies therefrom. The evidence before the Commission by the partner of the respondent is also significant when he said in the cross-examination 'right from the date of installation of our machine, the machine has never worked at least not according to the specification". The machine has therefore been in use. In the circumstances the appeals are allowed. The order of the MRTP Commission is set aside. There will be no order as to costs.