

# SUPREME COURT OF INDIA

Rajesh Patel

Vs.

Monopolies and Restrictive Trade P. Comm

C.A.No.1993 of 1997

(Mrs.Ruma Pal and P. Venkatarama Reddi JJ.)

15.04.2004

## JUDGMENT

### **Ruma Pal, J.**

1. The subject matter of this appeal is an order passed by the Monopolies and-Restrictive Trade Practices Commission holding that the appellant had violated the Commission's earlier order dated 23.8.1989 and directing the prosecution of the appellant in accordance with the provisions of the *Monopolies Restrictive Trade Practices Act, 1969* (hereinafter referred to as 'the Act').

2. The appellant used to carry on business of hire purchase as a sole proprietor of a firm. In connection with his business, he issued certain advertisements pertaining to the sale of products such as refrigerators, colour T.V. Sets, mopeds, etc. A complaint was filed by an organisation claiming to be a consumer protection society against several persons including the appellant alleging that they had indulged in unfair trade practices within the meaning of the Act. Two preliminary enquiry reports were filed by the Director General who had been appointed by the Commission to hold an enquiry on the basis of the complaint against the several parties. As far as the appellant is concerned it was noted that he had contended that he merely ran a hire purchase business. No further particulars were given. It was also noted that although the appellant had not offered any gift to any of its members', since no particulars had been given of the higher purchase scheme by the appellant 'its silence tantamounts to admission of indulgence into unfair trade practice.

3. The appellant filed a reply before the Commission on 8.2.1988 in which he stated that he had only advertised his hire purchase business and had not conducted any lottery or contest. He also stated that he had discontinued its business of hire purchase much earlier and had not issued any advertisement thereafter and therefore did not wish to contest the enquiry. However, on the assumption that the impugned advertisement as mentioned in the notice of enquiry amounted to an unfair trade practice, the appellant undertook that he would not give any such advertisement in future.

4. On this basis an order was passed by the Commission on 23.8.1989, which we quote verbatim wherein the appellant is referred to as the respondent:

"We have perused the FIR and supplementary FIR, the Notice of Enquiry and since the respondent is not willing to contest the allegation made against him in the Notice of Enquiry on the basis of the statement of respondent's counsel at Bar we hereby pass an order under Section 36(D)(1) of the MRTP Act directing that respondent shall not issue advertisement announcing the scheme for the sale of his products and shall not indulge in the impugned unfair trade practice as per the notice of enquiry. The respondent shall not repeat the impugned trade practice by any advertisement or any other publicity material. The respondent is burdened with a cost of Rs.500/-, which he shall pay within two months from the date of receipt of this order. This enquiry stands disposed of."

5. It is noteworthy that there was no independent finding of the Commission either that the appellant had indulged in the impugned practice or that the practice impugned was an unfair trade practice within the meaning of Sec. 36A of the Act.

6. Subsequently but prior to 8th January, 1990, an advertisement was issued by the appellant in connection with a housing scheme in which a lottery was announced for giving of gifts to successful allottees of the flats. A second complaint was filed by the same consumer society before the Commission alleging that the appellant had violated the order dated 23.8.1989 passed by the Commission. This application was disposed of by the impugned order. The Commission held that an order of discontinuation of a particular practice issued under Sec. 36(D)(A) of the Act was a clear instruction to the party concerned in respect of any trade or business or provision of services in which that party may be engaged in future. It was therefore held that despite the fact that second advertisement pertained to real estate. The earlier order prohibited the appellant from issuing any advertisement in connection with such trade or business. It was found that the appellant therefore violated the order. Accordingly, the prosecution was launched under Sec. 36A of the Act.

7. The appellant has questioned the order of the Commission on the ground that no enquiry was held prior to the Commission coming to the conclusion that the appellant had violated the order dated 23.8.1989 and that it was incumbent on the Commission to do so under Sec. 13 A of the Act. It is also contended that in fact there was no violation of the order dated 23.8, 1989. It is pointed out that real estate was included in Section 2(r) of the Act only on 27.9.1991 much after the impugned advertisement had been published and also after the order of the Commission. It is also submitted that there was no finding of the Commission that the second advertisement amounted to any unfair trade practice within the meaning of Sec. 36A of the Act.

8. The original complainant has not appeared despite having been duly served. The Commission is represented through counsel.

9. We are of the view that the order; under appeal cannot be sustained. Section 36A of the Act which defines 'unfair trade, practice' provides that 'unfair trade practice' means a trade practice of the kind mentioned in that Section for the purpose of promoting the sale, use or supply of any goods or for the provision of any services. It is not clear as to whether the order dated 23.8.1989 was in respect of the sale use or supply of goods, or for the provision of services. The Commission had not applied its mind on the merits of the first complaint as we have already indicated. The order was based on the concession of the appellant since it was not carrying on the business advertised anymore. There is no finding as to what the particular unfair trade practice was which was forbidden. Therefore the order under Sec. 36(D)(1)(a) that 'the practice shall be discontinued or shall not be repeated' itself become somewhat nebulous and vague.

10. In any event we are of the view that before holding that the appellant was guilty of violating its order dated 23.8.1989, the Commission should have directed an investigation to be carried out under Sec. 13 A by the Director General in the circumstances of the case and based its reasoning on the report of the Director General.

11. The finding of the Commission that the practice forbidden by the earlier order dated 23, 8.1989 also covered the housing scheme as advertised by the appellant is erroneous for the additional reason that 'service' in connection with real estate was brought within the parameters of the Act only by an amendment of the definition of services in Sec. 2(r) with effect from 27.9.1991

12. Therefore the order-dated 23.8.1989 could not have related to advertisements pertaining to real estate. Besides the advertisement in question was made much prior to the amendment. We therefore allow the appeal and set aside the order of the Commission without any order as to costs.

Appeal allowed.