

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 11TH DAY OF NOVEMBER 2011

BEFORE

THE HON'BLE MR.JUSTICE B.S.PATIL

W.P.No.19760/2011 &
W.P.Nos.20485-89/2011 C/w
W.P.No.19759/2011 (GM-RES)

IN W.P.No.19760/2011 &
W.P.Nos.20485-89/2011:

BETWEEN:

1. Sri A.K.Jeevan
S/o Kushalappa
Aged 42 years
Sapthagiri Enterprises
17/14-3, Brahmins Valley
Madikere-571201,
District Kodagu.
2. Sri K.E.Prakash
S/o Eshwarappa
Aged about 55 years
208, C-G- Hospital road,
Davanagere.
3. Sri D.S.Guddodgi
S/o Shanmukappa
Aged about 66 years,
M/s. Guddodgi Pharmaceuticals,
Near Meenaxi Chowk, Tilak road,
Godbole mala,
Bijapura.
4. Sri Raghavendra R.Gandamali
S/o Ramachar,
Aged about 63 years,
Gurukrupa Agencies.

PB 74 Koppikar road,
Hubli.

5. Sri V.S.Burli
S/o Shivappa
Aged about 44 years
130 B, Gugawada Inamdar Building
main road, Athani,
Belgaum District.
6. Sri Ramesh S.Yadwad
S/o Shanmukhappa
Aged about 48 years
Rajalakshmi Enterprises,
Raichur.

... PETITIONERS

(By Sri Ashok Haranahalli, Sr.Counsel for
Sri Manmohan P.N., Adv.)

AND:

1. Competition Commission of India,
A Statutory Body incorporated under the
Provisions of the Competition Act, 2002
and having its address at Hindustan Times
House (3rd, 4th and 7th floor), 18-20
Kasturba Gandhi Marg,
New Delhi- 110 001,
Rep.by its Registrar.
2. The Director General,
Competition Commission of India,
Having his office at 'B' Wind, HUDCO Vishala,
14 Bikaji Came Place,
New Delhi-110 066.
3. The Belgaum District Chemist and Druggists
Association, Vishwaraj Enterprises,
1357/A, 2nd Cross,
Nehru Nagar, Belgaum-590 010,
Rep.by its Secretary.

... RESPONDENTS

(By Sri V.Y.Kumar, CGC, for R1 & 2,
Sri D.Prabhakar, Adv. for R3)

IN W.P.19759/2011:

BETWEEN:

The Karnataka Chemists and Druggists
Association,

An association registered under the Societies
Registration Act, 1860, having its registered
Office at III Floor, Lakshmi Complex,
K.R.Road, Opp. Vanivilas Hospital,
Bangalore-560 002,
Rep.by its President.

... **PETITIONER**

(By Sri Ashok Haranahalli, Sr.Counsel for
Sri Manmohan P.N., Adv.)

AND

1. Competition Commission of India.
A Statutory Body incorporated under the
Provisions of the Competition Act, 2002
and having its address at Hindustan Times
House (3rd, 4th and 7th floor), 18-20
Kasturba Gandhi Marg,
New Delhi- 110 001,
Rep.by its Registrar.
2. The Director General,
Competition Commission of India,
Having his office at 'B' Wind, HUDCO Vishala,
14 Bikaji Came Place,
New Delhi-110 066.
3. The Belgaum District Chemist and Druggists
Association, Vishwaraj Enterprises,
1357/A, 2nd Cross,
Nehru Nagar, Belgaum-590 010.
Rep.by its Secretary.

... **RESPONDENTS**

(By Sri V.Y.Kumar, CGC, for R1 & 2,
Sri D.Prabhakar, Adv. for R3)

Writ Petition No.19760/2011 & Writ Petition Nos.20485-89/2011 are filed under Articles 226 & 227 of the Constitution of India, praying to quash the notices dated 23.5.2011 issued by the 2nd respondent vide Annexures-D, D1, D2, D3, D4 and D5 dated 15.3.2011 and etc.

Writ Petition No.19759/2011 is filed under Articles 226 & 227 of the Constitution of India, praying to quash the notice dated 23.5.2011 issued by the respondent No.2 vide Annexure-D and etc.

These petitions coming on for Orders this day, the Court made the following:

ORDER

1. W.P.No.19759/2011 is filed by the Karnataka Chemists and Druggists Association, Bangalore, challenging the notice dated 23.05.2011 issued by the 2nd respondent-the Director General, Competition Commission of India, New Delhi vide Annexure-D thereby calling upon the petitioner to submit Balance Sheet, Profit and Loss Accounts (Income and Expenditure Statement) of the Association for the last 3 years, so that the same could be made available to the Commission to which the matter pertaining to investigation under Section 36(2) read with Section 41(2) of the Competition Act, 2002 (for short 'the Act') has been transferred from the office of the Director General (I & R) Monopolies and Restrictive Trade Practices Commission.



2. The notice also makes it clear that if the authorised representative of the petitioner intends to appear in the office of the Additional Director General, he would do so on 30.05.2011 at 11.30 AM. This is followed by another notice dated 26.05.2011 produced at Annexure-E issued by the Competition Commission of India whereunder the petitioner is informed that upon transfer of the matter as per Section 66(6) of the Act, it has formed a prima facie opinion that a case was made out under Section 26(1) of the Act and therefore the matter was referred to the Director General for investigation as per order dated 29.06.2010. The Director General in turn sent the investigation report to the Commission on 08.11.2010. The commission having considered the report of the Director General found it proper to obtain supplementary report on certain specific issues and therefore had directed the Director General accordingly.

3. Pursuant to this direction, the Director General appears to have issued notice under Section 41(2) read with Section 36(2) of the Act to the petitioner on 15.03.2011 to furnish the information regarding the balance sheet, profit and loss account of the association for the last three years but the



petitioner-Association failed to furnish the said information to the Director General and therefore the commission decided to initiate proceedings against the petitioner under Section 43 of the Act for non-compliance of the directions without any reasonable cause. It is in this background, the Commission has called upon the petitioner to show cause why penalty should not be imposed in terms of the provisions contained under Section 43 of the Act for violating the direction issued by the Director General.

4. The petitioner is also notified that the penalty to be imposed may extend to Rs.1,00,000/- for each day during which failure to comply with the direction of the Director General continues subject to a maximum of Rs.1,00,00,000/. Petitioner is called upon to submit his explanation in writing within fifteen days from the date of receipt of the notice as to why such penalty should not be levied. Petitioner is also informed that he could avail the opportunity of being heard in person or through an authorised representative on 13.06.2011 at 10.30 AM.

5. In the connected writ petitions bearing Nos.19760/2011 and 20485-489/2011, similar grievance is made by the

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petitioners who are none other than the members of the Karnataka Chemists and Druggists Association. The said writ petitions are filed as notices are issued as per Annexures-D, D1 to D5 against the office bearers who were called upon to furnish similar information with regard to their business.

6. As the facts involved and the question raised in these 2 set of writ petitions are similar, with the consent of learned counsel for both the parties, the same are taken up for consideration on merits.

7. The main contention urged by the learned Senior counsel Sri. Ashok Haranahalli appearing for the petitioners is that the 1st respondent-Commission has no authority or jurisdiction to proceed with the enquiry or investigation in the matters other than those relating to unfair trade practices that were pending before the Director General of Investigation and Registration under the Monopolies and Restrictive Trade Practices Act, 1969 (for short the MRTP Act). According to him, the present proceedings relating to the unfair trade practices have to be considered only by the National Commission constituted under the Consumer Protection Act, 1986. In support of this contention, learned Senior counsel has drawn the attention of



the Court to the provisions contained under Section 66 of the Act, particularly Sub-Clause 3 to 7 of Section 66. In other words, the submission of the learned Senior counsel is that the 1st respondent has acted without jurisdiction in taking up a matter which it was not entitled or empowered to consider. According to him, the order of the 1st respondent directing the 2nd respondent-Director General, Competition Commission of India, to investigate the matter under Section 26(1) of the Act is itself illegal and without authority of law. Therefore, the investigation report pursuant to such order submitted by the Director General has no force in law and hence the question of carrying out a supplementary investigation would not arise and therefore the proceedings initiated stating that the petitioner has not responded to the notice issued by the 2nd respondent-Director General entailing penal consequences under the provisions of the Act are unsustainable in law.

8. Learned senior Central Government Counsel appearing for respondents 1 and 2 submits that the notice issued vide Annexure-E provides opportunity to the petitioners to have their say in the matter and to take up all contentions open to them and therefore it is unnecessary for this Court to interfere



with such a notice at this stage. It is his contention that as per Section 41, the Director General is entitled to investigate into the contravention of the provisions of the Act or the rules or the regulations made thereunder when he is so directed by the Commission. In the instant case, counsel submits, as the Commission had directed the Director General to carry on supplementary investigation, notice was issued to the petitioners to which the petitioners have not responded and therefore show cause notice is issued by the 1st respondent-Commission vide Annexure-E calling upon the petitioners to have their say with regard to the penalty to be imposed for such contravention.

9. The 3rd respondent-Association, complainant before the Commission, though served has remained unrepresented.

10. Upon hearing the learned counsel for the parties and on consideration of the pleadings and the materials on record, it is seen from the impugned notice issued at Annexure-E that the petitioners are called upon to show cause why penalty for violation of the provisions contained under Section 43 of the Act shall not be imposed. An opportunity is provided to the petitioners to have their say in the matter. In fact, personal



hearing is afforded to the petitioners and the petitioners are also authorised to appear through their authorised representatives.

11. The contention urged by the learned Senior counsel touches upon the jurisdiction of the 1st respondent-Commission as also the 2nd respondent-Director General to continue the proceeding.

12. At the first instance, it is urged by the learned Senior counsel that once the enquiry having been completed by the Director General, it was not open for him to embark upon another enquiry to submit a supplementary report nor such report could have been called for by the Commission as the Commission had no jurisdiction to proceed with the matter in view of Section 66 of the Act. According to him, the proceeding has to be conducted in accordance with the provisions contained under the MRTP Act before the new forum as provided under Section 66 of the Competition Act. Since this is a jurisdictional point any further proceedings to be continued by the Commission will necessarily depend upon the Commission, taking a view in this matter one way or the other. It is absolutely essential that the Competition Commission



examines this question as a preliminary issue. It is not appropriate for this Court to examine these contentions in this writ petition. Therefore, this writ petition deserves to be disposed of with a direction to the petitioners to appear before the Commission and file their objections raising such preliminary objection regarding the jurisdiction of the Commission. If the 1st respondent-Commission comes to the conclusion that it has jurisdiction in the matter, It can proceed further in accordance with law with the proceedings initiated vide impugned notices-Annexures D and E in W.P.No.19759/2011 and Annexures-D, D1 to D5 in W.P.Nos.19760/2011 and 20485-489/2011. Petitioners are given two weeks time from the date of receipt of a copy of this order to file their objections, whereupon the 1st respondent-Commission will notify and hear the petitioners and decide the question regarding the jurisdiction as a preliminary issue and on pronouncing orders on the same, it may proceed in the matter in accordance with law if it finds that it has got jurisdiction.

13. All contentions are kept open. It is made clear that consideration of the question regarding imposition of penalty



will arise only after the commission pronounces upon its jurisdiction.

14. In terms stated above. Writ petitions are disposed of.

Sd/-
JUDGE

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