IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **28.03.2024**

Pronounced on : **30.04.2024**

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.Nos.6493, 6497 & 6502 of 2024
and
W.M.P.Nos. 7221, 7227, 7228, 7233 and 9707 of 2024

MRF Ltd.,
Rep. by its Senior General Manager
Institutional Sales, Mr.V.Gautam,
MRF Limited, Corporate Sales Office,
Dhun Building 2nd Floor,
872, Anna Salai, Chennai – 600 002

... Petitioner in all WPs

vs

1.Competition Commission of India
"B" Wing, HUDCO Vishala,
14, BhikajiCama Place,
New Delhi – 110 066.

2.Director General,
Competition Commission of India,
8th Floor Office Block – 1, NBCC Complex,
East Kidway Nagar, New Delhi – 110 023.

3.Joint Director General,
Competition Commission of India,
8th Floor Office Block – 1, NBCC Complex,
East Kidway Nagar, New Delhi – 110 023.

4.Additional Director General,
Competition Commission of India,
8th Floor Office Block – 1, NBCC Complex,
East Kidway Nagar, New Delhi – 110 023.

5.Deputy Director General,
Competition Commission of India,
8th Floor Office Block – 1, NBCC Complex,
East Kidway Nagar, New Delhi – 110 023.

6.State of Haryana
Through its Director General,
Directorate of State Transport Haryana
2nd Floor, 30 Bays Building, Sector – 17,
Chandigarh – 160017

... Respondents in all WPs

PRAYER in W.P.No.6493 of 2024: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the first respondent and quash the order 01.11.2019 made Reference Case No.01 of 2019.

PRAYER in W.P.No.6497 of 2024: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the 5th respondent and quash the impugned notice No.DG/CCI/IW/1/11/2019/46 dated 02.02.2024.

PRAYER in W.P.No.6502 of 2024: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the first respondent and quash the order 26.08.2020 made Reference Case No.01 of 2019.

In all W.Ps.

For Petitioner : Mr. AL.Somayaji
Senior Counsel
For M/s.King&Patridge

For Respondents : Mr.N.Venkatraman
Additional Solicitor General
assisted by Mr.R.Thirunavukkarasu
Central Government Standing Counsel
- R1 to R5
No appearance – R6

COMMON ORDER

In these three Writ Petitions, the petitioner challenges orders dated 01.11.2019 (in short, first order/order No.1), 26.08.2020 (in short, second order/order No.2) and notice dated 02.02.2024. Consent of the parties, including specifically of respondent counsel, has been sought and obtained, for final disposal of the matter at this stage.

2. The genesis of the matter is a reference that had been made by the Directorate of State Transport, Haryana/R6 under Section 19(1)(b) of the Competition Act, 2002 (in short 'Act') as against JK Tyres & Industries Limited (in short 'JK Tyres'). An order came to be passed on 01.11.2019 by the Competition Commission of India (in short 'R1) directing investigation to be made into the matter and for submission of an investigation report within a period of 60 days from date of receipt of that order.

3. It is notable that only JK Tyres was arrayed as opposite party in that reference. The reference was made based on the following factual pattern. R6 had invited online tenders on 21.09.2018 for purchase of new steel radial tyres of different sizes and specifications. The tyre sets were required at 25 different destinations to replace worn-out tyres on the buses run by Haryana Roadways. There was only one bidder, i.e., JK Tyres. Technical and financial scrutiny was conducted and the matter was thereafter referred to the High Power Purchase Committee (in short, HPPC) since the procurement value exceeded a sum of Rs.1.00 crore.

4. In the meeting held on 13.11.2018, it was felt that the rates quoted by JK Tyres were considerably higher than the last purchase rates. The ensuing negotiations attempted with JK Tyres were not fruitful and the bidder remained firm on its quoted prices. Furthermore, JK Tyres had been the single bidder in tenders floated on three different occasions.

5. For the aforesaid reasons, HPCC suspected cartelization and rigging of prices by tyre manufacturing firms. At paragraph 11 of the first order, a tabulation of other companies manufacturing comparable radial tyre models have been set out, including the petitioner herein. They are five in number, being JK Tyres, Apollo, MRF (petitioner), Birla and CEAT.

6. A prima facie opinion was expressed by R1 to the effect that there was cartelization by the tyre manufacturers in contravention of provisions of Section

3(1) read with Section 3(3) of the Act. R1 was of the view that a detailed investigation was to be carried out to unearth the modus operandi for the suspected rigging, and the Director General (in short, R2/DG) was directed to cause such investigation. Order No.1 is subject matter of challenge in W.P.No.6493 of 2024.

7. Pursuant to order dated 01.11.2019, notices were issued to the petitioner commencing with notice dated 24.04.2020 calling for various particulars. In light of the fact that the petitioner has responded to the notices, the acquiescence on its part to inclusion in the proceedings per se, cannot be disputed. However it is relevant to note that such participation was only as a 'third party' and not as a 'party' to the proceedings. Paragraph 2 of notice dated 24.04.2020 states as much emphasising that the call for participation of the petitioner in the proceedings was only in the status of 'third party'.

8. In notice dated 24.04.2020, 12 categories of information had been sought, including details of participation by the petitioner in tenders of State Transport Undertakings from the year 2014 till March, 2019. The petitioner responded on 18.06.2020 seeking some time to cull out the particulars, as the world was under the grip of the covid-19 pandemic. On 20.07.2020, the material was collected and sent.

9. This was followed by another notice dated 14.08.2020 under Section 41(2) read with Section 36(2) of the Act seeking e-mail dump for the e-mail ids

of two persons, V.Gautam and Narayanan, for the period 01.01.2015 to 31.12.2019.

10. Vide communication dated 21.08.2020 sent in reply to notice under Section 41(2), the petitioner has emphasised its status as a third party. The petitioner states specifically that a request had been made seeking a copy of order dated 01.11.2019 which had been rejected by the authority on the ground that the petitioner was not entitled to the same as it its status in the proceedings was only as a third party. This has not been denied either in subsequent communications from the respondents or before me.

11. The authority has itself drawn a categoric distinction between a 'party' to the proceedings and a mere participant, being a 'third party' and this distinction thus, assumes relevance. The clear and apparent inference that I draw is that the two are not to be treated on par with each other. A participant/third party is treated on a far lower threashold when compared with a 'party' to the proceedings, as can be seen from the rejection of the petitioner's request for a copy of the order of reference stating that it is not entitled to the same.

12. Thereafter, communications were exchanged inter se the parties, culminating in order dated 26.08.2020, impugned in W.P.No.6502 of 2024. That order reads thus:

'ORDER

1. In this matter, the Commission vide order dated 01.11.2019 passed under Section 26(1) of the Competition Act, 2002 had directed the Director General (DG) to cause an investigation into the matter and submit a report.

2. Now, the DG has moved a Note dated 17.08.2020 stating therein that it proposes to investigate the following tyre manufacturers in the matter: CEAT Ltd., Birla Tyre Ltd., Michelin Tyre Ltd., Continental, Apollo Tyres, MRF Ltd. and Bridgestone.

3. Today, the Commission considered the aforesaid Note of the DG and observed that in the Reference though J. K. Tyre and Industries Ltd. alone was impleaded as the Opposite Party, yet it was averred therein that other tyre manufacturers had not participated in the tenders floated by the Informant. In these circumstances, it was directed by the Commission that the DG shall be at liberty to investigate the role of other tyre manufacturers who have not been specifically arrayed as Opposite Parties, as may be required for the investigation purpose.

4. In view of the aforesaid, no other or further direction is required to be passed on the present Note of the DG and the Commission takes note of the proposal for adding the aforesaid tyre manufacturers and accordingly, they stand impleaded in the present Reference as OP-2 to OP-8 respectively.

5. The Secretary is directed to communicate to the DG, accordingly.'

13. Order No.2 is appealed on three main points. Firstly, it is based on order dated 01.11.2019 which order the petitioner did not the benefit of when

order dated 26.08.2020 was passed. Secondly, it refers, at paragraph 2, to a note moved by DG on 17.08.2020 proposing to investigate several tyre manufacturers including the petitioner which also the petitioner had not been provided with.

14. Thirdly, paragraphs 3 and 4 refer to the direction of the Commission that the DG shall be at liberty to investigate the role of other tyre manufacturers as well, which indicates that the scope and ambit of the investigation stood expanded, as a conscious move. Accordingly, the other tyre manufacturers stood impleaded as opposite parties 2 to 8 respectively.

15. The petitioner has advanced several arguments on the challenges laid. However, the main argument turns on the change in status from a *'participant'* in the investigation as against JK Tyres to an '*opposite party'* in the reference made by R6 without any opportunity granted to it in that respect.

16. Heard the detailed submissions of Mr.AL.Somayaji, learned Senior Counsel appearing for M/s.King & Patridge, learned counsel on record for the petitioner and Mr.N.Venkatraman, learned Additional Solicitor General, assisted by Mr.R.Thirunavukkarasu, learned Central Government Standing Counsel for R1 to R5. No notice has been issued to R6.

17. The first issue that arises for consideration is as to whether the challenge to orders dated 01.11.2019 and 26.08.2020 are belated and whether the Writ Petitions suffer from laches.

18. I am of the view that there is no delay in filing of these Writ Petitions, since one of the impugned orders have been provided to the petitioner only very proximate to the filing of the Writ Petitions. A copy of order dated 01.11.2019 was supplied to the petitioner under cover of letter dated 14.09.2020. At that juncture, the stand of the respondents had been that the role of the petitioner as a participant was only in the capacity of a 'third party'.

19. Since a copy of order dated 26.08.2020 has been supplied only on 01.03.2024, the petitioner was unaware that the furnishing of order dated 01.11.2019 was on account of the upgradation of its status. Thus, the participation of the petitioner in the proceedings does not either militate against the present challenges or amount to acquiescence thereof. Importantly, a photostat copy of order dated 26.08.2020 has been supplied to the petitioner only 01.03.2024 and the present writ petitions have been filed on 07.03.24. There is thus no delay in the petitioner approaching this Court.

20. The larger issue that arises for consideration is as to whether the change of status of the petitioner from 'participant' to 'party'/'opposite party' in the reference is material and whether it is contrary to the provisions of law and the procedure contemplated under the Act and connected Regulations.

21. The records reveal that the petitioner has responded to the notices issued post passing of the first order, on the clear understanding that it is only a third party participant in the proceedings. The change in status to 'party' was

never intimated to it, and neither was the petitioner put to notice prior to such change in status. It is only when order dated 26.08.2020 was furnished to the petitioner on 01.03.24, that the petitioner was aware of the change/enhancement in status.

22. It is also my considered view that there has been considerable opaqueness in the manner of conduct of the proceedings and considerable delay on the part of R1 to R5 in making available order dated 26.08.2020 to the petitioner. Having expressly stated under letter dated 24.04.2020 that the role of the petitioner is only as a third party, it was incumbent upon the authorities to have solicited the response of the petitioner prior to changing the status, which change has serious and grave implications.

23. Instead order dated 26.08.2020 has been passed exparte and based solely upon Note of R2 dated 17.08.2020 which was not even supplied to the petitioner. Order dated 26.08.2020 was not even served and a copy was supplied only on 01.03.2024. Clearly, the proceedings lack transparency.

24. In my considered view, an entity is entitled to know the status under which its presence and participation is sought in statutory proceedings. The application of the statutory provisions and connected Regulations, their consequences, as well as available protections would vary depending on the status of the party. Thus, unless a party is aware as to the specific provision

under which its involvement is sought and obtained, it would be in the dark as to the measures available to it under the law.

25. Section 2 of the Act defines various terms. When notified on 31.03.2003, there was no definition for the term *'party',* despite the term finding place in Sections 4, 5 and 26 dealing with 'abuse of dominant position', 'combination' and 'procedure for inquiry'.

26. The Competition Commission of India (General) Regulations, 2009 (in short 'General Regulations'), notified on 21.05.2009 define the term 'party' as including *a consumer or an enterprise or a person defined in clauses (f), (h) and (l) of section 2 of the Act respectively, or an information provider, or a consumer association or a trade association or the Director General defined in clause (g) of section 2 of the Act, or the Central Government or any State Government or any statutory authority, as the case may be, and shall include an enterprise against whom any inquiry or proceeding is instituted and shall also include any person permitted to join the proceedings or an intervener.*

27. The Competition Law Review Committee had been constituted to review the Competition Law framework and in its report submitted on 26.07.2019 suggested that the term '*party'* be defined. Based on those recommendations, a definition was inserted under clause (ka) that reads as follows:

"(ka) "party" includes a consumer or an enterprise or a person or an information provider, or a consumer association or a trade association, or the Central Government or any State Government or any statutory authority, as the case may be, and shall include an enterprise or a person against whom any inquiry or proceeding is instituted; and any enterprise or person impleaded by the Commission to join the proceedings;"

28. The rationale for the suggestion was that the definition of *'party'* in the General Regulations includes an intervener and the Director General, which is inappropriate seen in the context in which the term *'party'* is used in the Act.

29. The instances of use of the word *'party'/'parties'* in the Competition Act, 2002 are tabulated below:

PARTY

Section	Title
2 (ka)	Definitions
12 (1)(a)	Restriction on employment of Chairperson and other Members.
21(1)	Reference by statutory authority
21A (1)	Reference by Commission.
32 (b), 32 (e)	Acts taking place outside India but having an effect on competition in India
33 – two times	Power to issue interim orders.
35 (1) 35 (2)	Appearance before Commission
38 (2) (b)	Rectification of orders
41 (3) 41 (3) (a) 41 (4) 41(5) 41 (6) (a) 41 (6) (b) 41 (8) 41 (10) (c) 41(11)	Director General to investigate contraventions
44	Penalty for making false statement or omission to furnish material information

PARTIES

Section	Title
4 (2) (d)	Abuse of dominant position
5 (a) (i)	Combination.
20 (4) (e)	Inquiry into combination by Commission
26 (2) 26 (4) 26 (5) 26 (6)	Procedure for inquiry under section 19
27 (b)	Orders by Commission after inquiry into agreements or abuse of dominant position
29 (1) 29 (1A) 29 (2) – twice 29 (4) 29 (5)	Procedure for investigation of combinations.
31 (3) 31 (4) 31 (5) 31 (6) – twice	Orders of Commission on combinations

31 (7) *31 (8) – twice* *31 (9)* *31 (12) – twice* *31 (13)*	
53B (3) *53B (4)*	*Appeal to Appellate Tribunal*
64 (2) (fc)	*Power to make regulations*

30. The respondents have cited three cases in the context of impleadment i) *Excel Crop Care Ltd. V. Competition Commission of India*[1], ii)*Cadila Health Care Ltd. and others V. CCI and others*[2] and iii) *Competition Commission of India V. Grasim Industries*[3]. The judgements are prior to the amendment in 2023 inserting a specific definition for the word '*party'*. That apart, the impact that such upgradation has on a party must also be considered.

31. There are serious consequences to an order passed by the Commission under Section 27 of the Act whereunder it may direct any enterprise found guilty of abuse of dominant position, to discontinue from, and not re-enter such agreement. It may also impose penalties as it may deem fit, upto 10% of the average turnover or income for the last three preceding financial years when the entity is found to have abused its dominant position.

32. There are several provisions in the Act that use the term 'party' or 'parties' that ought not to stand attracted in the case of a mere participant. The Act addresses violations by a 'party'/'opposite party' only, and nowhere is there

[1](2017) 8 SCC 47
[2]255 2018 DLT 647
[3]265 2019 DLT 535

any indication that the consequences for violations would stand attracted in the case of an entity other than a party to the proceedings.

33. The Act is divided into nine Chapters. Chapter II entitled 'Prohibition of Certain Agreements, Abuse of Dominant Position and Regulation of Combinations' deals with 'Anti-competitive agreement' in Section 3, 'Abuse of dominant position' in Section 4, 'Combination'in Section 5 and'Regulation of Combination' in Section 6, encompassing the statutory areas where prohibition is envisaged and imposed.

34. Chapter III deals with the Competitive Commission of India and Chapter IV deals with the Duties, Powers and Functions of the Commission. Chapter V contains Section 41, the sole provision empowering the DG to investigate into contraventions. A composite scheme of enquiry thus comprises a common reading of Sections 19 and Section 41 and the procedure for such enquiry is set out under Section 26 of the Act.

35. In the present case, a reference has been made by R6 on the basis of which the DG would directed to investigate the matter. The powers of the DG under Section 41 thus stand triggered. Section 41 provides for the powers to investigate similar to the powers under Section 136(2) conferred on the Commission.

36. Sub-section (3) states that it shall be the duty of all officers, other employees and agents of a party under investigation to afford all assistance to

the DG to investigate and to trigger and produce all information, books, documents and records relating to the party under investigation when sought. Section 41(3) thus relates to the party under investigation only.

37. Sub-section (4) empowers the DG to require a third party, i.e., a party other than the party under investigation to furnish information / produce books or records at the behest of the DG. Section 41(4) thus relates to a third party. A clear distinction is thus made between the party under investigation/party arrayed as opposite party in the reference, and a third party to the investigation.

38. Section 26 which sets out the procedure for enquiry under Section 19 states in sub-section (3) that the DG shall submit a report with his findings. Sub-section (3A) states that if after consideration of the DG's report further investigation is required, the Commission may direct him to cause such further investigation.

39. In the present case, a report dated17.08.2020 has been furnished by the DG which has not been furnished to the petitioner. Sub-section (4) provides for the Commission to forward a copy of the report referred to in sub-section (3) and (3B) to the parties concerned. The term used in Section 26(4) is '*parties'*. Since a copy of the report u/s 26(3) has not been furnished to the petitioner, it is clear that it is still being treated on par with a third party to the proceedings. This is despite the updation in status exparte to contesting party, under order dated 26.08.2020 furnished to the petitioner in 2024.

40. Neither Section 41 nor Section 26(4) elaborate on the procedure to be followed when a third party is escalated to the position of contesting/opposite party. However it is clear that this escalation is triggered by virtue of the reports of the DG under Section (3) and (3B).

41. If the reports under Section (3) and (3B) contain recommendations that there is no contravention of the statutory provision, the Commission, under sub-section(5), shall invite objections or suggestions from the concerned Government. On consideration of the objections as well as suggestions of the concerned Government, the Commission could close the matter if it agrees with the recommendations of the DG.

42. If the objections/suggestions of the Government are contrary to the reports of the DG and if the Commission concurs, it may direct further investigation into the matter. If on the other hand, the reports under sub-section (3) and (3B) recommend contravention of statutory provisions and if the Commission is of the opinion that further enquiry is called for, it shall cause such further enquiry under sub-section (8) of Section 26.

43. Sub-section 8 contains two limbs. The first limb refers to the adverse report of the DG under Sub-section (3) and (3B) of Section 26. The second limb empowers the Commission to call for further enquiry if it believes it necessary. Thus, the scheme of Section 26 makes it possible for the report of the DG under sub-section (3) and (3B) to be the final word on the matter, if the concerned

Government concurs and the Commission is of the opinion that the enquiry by the DG has been comprehensive. It thus becomes all the more incumbent for opportunity to be afforded to a third party, prior to conversion of its status from *'third person'* to *'contesting party'*.

44. Section 27 which I have referred to earlier sets out the scope of orders that may be passed by the Commission, and provides for strict penalties. Thus, for a party to be the subject to the rigour of Section 27, it must be afforded sufficient opportunity to contest its inclusion/impleadment as a contesting party/opposite party and must be put on notice.

45. The petitioner has stated on affidavit that it has not been furnished the report of the DG under Section 26(3) whereas Section 26(4) makes it statutorily mandatory for the Commission to supply a copy of the report to the parties. This compounds the irregularity in procedure.

46. In light of the discussion as above, this Court is of the view that the petitioner ought to have been given notice prior to impleadment as a party and the satisfaction of the authority as to the justification for such impleadment ought to have been made out by way of a speaking order.

47. W.P.No.6493 of 2024 is dismissed and W.P.Nos.6497 and 6502 of 2024 are allowed. Order dated 26.08.2020 and Notice dated 02.02.2024 are quashed. The respondents are at liberty to proceed with the matter in line with

the observations set out in the decision above, in accordance with law. No costs.

Connected Miscellaneous Petitions are closed.

30.04.2024

Index : Yes
Speaking order
Neutral citation: Yes
Sl/vs

To

1.The Competition Commission of India
"B" Wing, HUDCO Vishala,
14, BhikajiCama Place,
New Delhi – 110 066.

2.The Director General,
Competition Commission of India,
8th Floor Office Block – 1, NBCC Complex,
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8th Floor Office Block – 1, NBCC Complex,
East Kidway Nagar, New Delhi – 110 023.

4.The Additional Director General,
Competition Commission of India,
8th Floor Office Block – 1, NBCC Complex,
East Kidway Nagar, New Delhi – 110 023.

5.The Deputy Director General,
Competition Commission of India,
8th Floor Office Block – 1, NBCC Complex,
East Kidway Nagar, New Delhi – 110 023.

6.State of Haryana

Through its Director General,
Directorate of State Transport Haryana
2nd Floor, 30 Bays Building, Sector – 17,
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DR.ANITA SUMANTH,J.

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