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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 26 September, 2022

+ W.P.(C) 8958/2022, CM APPL. 26941/2022

BUILDERS ASSOCIATION OF INDIA

..... Petitioner

Through: Mr. Percival Billimoria, Sr. Adv.
with Ms. Anu Monga, Mr. Rahul
Goel and Mr. Shobhit Sharma, Advs.

versus

COMPETITION COMMISSION OF INDIA

..... Respondent

Through: Mr. Saurabh Kirpal, Sr. Adv. with
Mr. Samar Bansal, Mr. Madhav
Gupta and Mr. Vedant Kapur, Advs.
for CCI.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. The Builders Association of India has approached this Court challenging the order of 29 December 2021 passed by the **Competition Commission of India**¹ in terms of which its prayer for being impleaded as an informant in proceedings before the Commission came to be rejected. The Commission has in the impugned order noticed that the investigation itself had commenced based on an order dated 01 July 2019 passed under

¹ Commission

Section 26(1) of the **Competition Act, 2002**². The Commission further took into account the fact that the application by the petitioner had come to be made only on 07 December 2021. On an overall conspectus of the aforesaid, the Commission proceeded to hold that bearing in mind the advanced stage at which the investigation had reached, it was not inclined to accede to the request made by the petitioner for impleadment at that stage.

2. The challenge to the aforesaid order as was addressed, was noticed by the Court in its order of 01 June 2022 which reads thus:

“The instant writ petition impugns the order passed by the Competition Commission of India [Commission] refusing an application made by the petitioner here for being impleaded as an informant in the ongoing investigation and to participate in proceedings before the Commission. According to Mr. Billimoria, learned Senior Counsel appearing in support of the writ petition, the investigation has commenced based upon a complaint which was made by the petitioner and which was in turn forwarded to the Commission for investigation. Learned Senior Counsel has also drawn the attention of the Court to the summons which were issued to the petitioner on 22 January 2021 by the Office of the Director General. In view of the aforesaid, learned Senior Counsel submit that unless the petitioner is accorded a participatory role in the investigation which is presently being undertaken by the Director General, they would not be afforded the right of cross examine or to question the disclosures which may be made by cement manufacturers before the Director General. Learned Senior Counsel has also placed reliance upon the principles enunciated by a Division Bench of the Court in **Google Inc. & Ors. vs. Competition Commission of India** [2015 SCC OnLine Del 8229] as well as the decision of the Supreme Court in **Competition Commission of India vs. Steel Authority of India Ltd.** [(2010) 10 SCC 744] to contend that the nature and scope of the enquiry which is undertaken by the Director General, and as has been explained in the two decisions aforementioned, is far wider and than that which is

² the Act

undertaken by the Commission. Viewed in the aforesaid context, learned Senior Counsel would submit that the refusal to implead is clearly illegal.

Mr. Saurabh Kirpal, learned Senior Counsel appearing for the Commission, on the other hand, states that the present investigation has been commenced by the Director General pursuant to the Commission itself taking *suo moto* cognizance of certain issues which had fallen for its notice. Learned Senior Counsel submits that in view of the above, it would be incorrect for the petitioner to contend that it is an informant in the proceedings which are presently pending before the Director General.

The Court also takes note of the provisions contained in Section 26(5) of the Competition Act, 2002 as well as Regulation 2(1)(i) of the Competition Commission of India (General) Regulations, 2009 on the basis of which the petitioner seeks to contend that it would have the right to intervene in the ongoing investigation. The issues which are canvassed would warrant further consideration by the Court.

Consequently, list again on 26.09.2022.”

3. Today when the matter was taken up for consideration, Mr. Billimoria, learned Senior Counsel appearing in support of the petition, while reiterating the contentions which were noticed on the earlier occasion, addressed the following submissions. Mr. Billimoria argued that on 08 February 2019 a complaint had been addressed by the petitioner to the Hon’ble Prime Minister of India with regard to the abnormal increase of cement prices due to the cartelization by cement manufacturers. It was his submission that the aforesaid complaint was also forwarded to the Commission as would be evident from the summons which were received by the petitioner on 22 January 2021. Those facts, according to Mr. Billimoria, would clearly demonstrate that the proceedings had been initiated at the behest of the petitioner and which was consequently liable to be recognised as an “information provider” and thus impleaded in the investigation. According to learned Senior Counsel the aforesaid summons

which required the petitioner to duly appear before the Director General is further evidence of its interest in the proceedings which were pending and therefore meriting its impleadment in the ongoing investigation and the proceedings now pending before the Commission. Mr. Billimoria further argued that in terms of Section 26(4) of the Act, the Commission is obliged to forward a copy of the report that may be drawn by the Director General on conclusion of investigation to the “parties concerned”. It was submitted that unless the petitioner is duly impleaded as a party in the investigative process it would not only be deprived of the right to receive a copy of the investigation report but also denied the right to refute or challenge the findings or conclusions that may be recorded therein.

4. However, when the matter was taken up for consideration today, it was conceded that the investigation had since concluded and that the report of the Director General has been duly placed for the consideration of the Commission before which proceedings have been fixed for 28 September 2022. That thus leaves the Court to consider the extent of relief if any which is liable to be accorded to the petitioner at this stage of the proceedings.

5. Mr. Billimoria, in support of the assertion that the petitioner was entitled to be impleaded in the investigation which had ensued, has firstly referred to regulation 2(i) of the **Competition Commission of India (General) Regulations, 2009**³ to contend that a trade association as well as an information provider is entitled to be impleaded as a party in

³ 2009 Regulations

proceedings which may be initiated as also to intervene. It was contended that since the entire investigation itself had commenced based upon a complaint which had been made by the petitioner and of which cognizance had been duly taken by the respondents themselves, there existed no justification to deny the petitioner the right to intervene in the proceedings. It was further argued that since the petitioner was only an information provider, its intervention in the proceedings would neither delay nor derail the investigation and in view of the above it was the submission of learned Senior Counsel that the view as taken by the Commission is clearly unjustified and arbitrary.

6. Assailing the order passed by the Commission on a more fundamental ground, Mr. Billimoria submitted that the fundamental principles of natural justice and a right of hearing which an informant could claim under the provisions of the Act and the 2009 Regulations clearly mandate and require a copy of the investigation report being provided to the petitioner. It was contended that unless that report is provided to the petitioner, it would be unable to frame an effective and comprehensive opinion for the consideration of the Commission.

7. Controverting the aforesaid contentions Mr. Kirpal, learned Senior Counsel appearing for the Commission, firstly submitted that it was wholly incorrect for the petitioner to assume that proceedings had commenced based upon the complaint made by it to the Hon'ble Prime Minister of India. Mr. Kirpal submitted that the Commission had received various complaints with respect to cartelization amongst cement manufacturing

companies situate in different geographical regions during the period December 2018 to May 2019. It was submitted that while the complaint of the petitioner also fell in a list of those representations which had been received by the Commission, it had ultimately taken cognizance of the issue *suo moto* and proceeded to analyze the complaints. Mr. Kirpal submitted that since the action was initiated by the Commission *suo moto* and on an analysis of the numerous complaints which had been received by it, it could not be said that the petitioner was an informant or a party concerned. Mr. Kirpal would contend that if the Director General were to implead or permit the intervention of each and every person which may have provided information to the Commission, it would clearly impede a speedy and effective investigation being undertaken by the Director General. It was his submission that ultimately the aforesaid issue must be left to the sound discretion and judgment of the Director General as well as the Commission.

8. Mr. Kirpal further argued that ultimately the petitioner only stands in the shoes of an informant and thus cannot stake a position in an adversarial capacity. Learned Senior Counsel submitted that ultimately it is for the Director General to seek and elicit information from various parties and for the Commission to implead or permit the intervention of only such parties which may have a direct interest in the investigation or who in the estimation of the Commission may be in a position to provide information which may be considered relevant and critical to the ongoing investigation. Mr. Kirpal then argued that the question of permitting the impleadment or intervention of a party in proceedings which may be pending before the Commission is a question which must stand reserved for its consideration in

the first instance bearing in mind the fact that the Act empowers the Commission to formulate and regulate its own procedure in light of Section 36 of the Act.

9. Mr. Kirpal lastly argued that the petitioner is clearly guilty of having raised the instant challenge with inordinate delay as would be evident from the following facts. It was contended that the proceedings themselves had emanated from the complaints which had been received by the Commission commencing from December 2018. It was pointed out that the direction for an investigation being undertaken by the Director General was framed way back on 01 July 2019. Mr. Kirpal highlighted the fact that the petitioner sought intervention and impleadment in that investigation process for the first time by way of an application which came to be filed on 07 December 2021. That application, as was noticed by above, came to be rejected by the Commission on 29 December 2021. The aforesaid order was ultimately assailed by the petitioner by instituting the present proceedings on 09 April 2022. According to Mr. Kirpal, the aforesaid facts would clearly establish that the petitioner had failed to raise a challenge with due expedition and that this would clearly disentitle him from claiming the relief as framed in the writ petition. In any case, according to learned Senior Counsel, the challenge is clearly rendered infructuous in light of the investigation having itself come to an end and the report having being placed before the Commission.

10. Mr. Kirpal then submitted that the challenge, as raised, is clearly misconceived and founded on an unfounded and unsubstantiated

apprehension that the material, which has been gathered in the course of investigation, and which would include the allegations leveled by the petitioner against the cement manufacturers, would not be duly taken into consideration by the Commission. Mr. Kirpal submitted that it would ultimately be for the Commission to consider the entire material that had been received in respect of the allegations levelled against the cement manufacturers, to evaluate the evidence gathered during the course of investigation and frame a final view in the matter. It was submitted that since parties would have the right to assail any final order that may ultimately come to be passed by the Commission, there existed no justification for the Court to entertain or continue the challenge as raised by the petitioner here.

11. Having noticed the rival submissions which have been addressed, the Court firstly bears in mind the undisputed fact that upon conclusion of investigation, the Director General has already submitted a report which is to be taken up by the Commission for consideration on 28 September 2022. Viewed in that light it is evident that the prayer of the petitioner to the extent that it sought to be impleaded in the investigation proceedings has rendered infructuous.

12. The Court also notes that while rejecting the application for impleadment which was made on 07 December 2021 the Commission had taken into consideration the fact that the proceedings before the Director General were “at an advanced stage of investigation”. It was in that backdrop that the Commission had declined the request made by the

petitioner here. The Court also notes that the petitioner cannot, strictly speaking, claim to have a direct interest in the investigation process especially when it only stood in the shoes of an informant. While therefore the respondents may have been justified in taking the stand that the petitioner would not fall within the ambit of the expression “parties concerned”, *stricto sensu*, coupled with the stage at which the investigation had reached, no prejudice as such stands caused to the petitioner for the following reasons.

13. The Court takes note of the following provisions as are made in Regulation 25. That provision is extracted hereinbelow:

“25. Power of Commission to permit a person or enterprise to take part in proceedings.

(1) While considering a matter in an ordinary meeting, the Commission, on an application made to it in writing, if satisfied, that a person or enterprise has substantial interest in the outcome of proceedings and that it is necessary in the public interest to allow such person or enterprise to present his or its opinion on that matter, may permit that person or enterprise to present such opinion and to take part in further proceedings of the matter, as the Commission may specify.

(2) The application referred to in sub-regulation (1) shall be accompanied by proof of payment of fees, in accordance with regulation 49.

(3) The application referred to in sub-regulation (1) shall contain,—

- (a) legal name of the person or the enterprise making the request;
- (b) address in India for service of notice or documents;
- (c) telephone number, facsimile number and electronic mail address, if available;
- (d) the mode of service of notice or documents to be used;
- (e) a concise statement of the matters in issue in the proceedings which affect the person or the enterprise making the request;

(f) documents or affidavits or evidence in support of the statement, with a list thereof.

(4) On an order made under sub-regulation (1), –

(a) on an application made by a party, Secretary shall furnish to the person or enterprise permitted to participate in the proceedings, copies of such documents previously filed in the matter by other parties as may be decided by the Commission within ten days of the order;

(b) the person or enterprise permitted to participate in the proceedings shall furnish copies of all documents filed under sub-regulation (3) to all other parties to the proceedings within ten days of the order.”

14. Undisputedly and upon conclusion of investigation, the report of the Director General is to now come up for consideration before the Commission. At that stage, it becomes open to any party, person or enterprise which has a substantial interest in the outcome of proceedings or who is able to establish that its presence before the Commission is necessary in the public interest, to seek a right of audience before the Commission and to present its opinion for its consideration. That is a right which is still open to be asserted by the petitioner. The Court also bears in mind the fact that the report that may be drawn by the Director General is neither determinative nor conclusive since it is ultimately for the Commission to take all aspects including views that may be expressed before it into consideration before passing final orders.

15. Both Regulations 21 as well as 25 thus provide an opportunity to parties to address all submissions before the Commission for its consideration. In view of the above, the Court finds that not only would it be open for the petitioner to apply to the Commission in terms of

Regulation 25 and to seek a right to address submissions, it could also, if so chosen and advised, address a prayer for being provided a copy of the investigation report or the extracts thereof. Ultimately the interest of bodies like the present petitioner is limited to providing inputs and information to the Commission which may enable it to come to a just conclusion. Since that right is still available to be exercised, the Court finds no justification to issue any peremptory directions except to observe that it would be open to the petitioner to move the Commission under Regulation 25 and to address all issues before the said body.

16. Consequently, the writ petition along with the pending application shall accordingly stand disposed of with liberty to the petitioner reserved to the aforesaid extent. Since the matter is stated to be posted before the Commission on 28 September 2022, it shall be open to the petitioner to apply to the Commission prior to the aforesaid date. Any such application that may be ultimately made by the petitioner, may be considered by the Commission in accordance with law. All contentions of respective parties on merits are otherwise kept open to be addressed before the Commission.

YASHWANT VARMA, J.

SEPTEMBER 26, 2022

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