IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.12.2014
Delivered on: 04.02.2015

CORAM:

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

Writ Petition Nos.31808 and 31809 of 2012 and 26986 of 2014 and connected miscellaneous petitions.

W.P.Nos. 31808 and 31809 of 2012:

Hyundai Motor India Limited,
rep. by R.Sethuraman, Director. ... Petitioner

Vs.

1. The Competition Commission of India
(Competition Act, 2002)
7th Floor, HT House, 18-12 K.G.Marg,
New Delhi 110 001.

2. The Director General,
The Competition Commission of India,
B Wing, HUDCO Vishala, 14, Bhikaji Cama Place,
New Delhi - 110 066.

3. Additional Director General,
The Competition Commission of India,
B Wing, HUDCO Vishala,14, Bhikaji Cama Place,
New Delhi - 110 066. ... Respondents

W.P.No.26986 of 2014:

BMW India Private Limited, rep. by its
Director. ... Petitioner

Versus

1. The Competition Commission of India ("CCI")
The Hindustan Times House,
18-20, Kasturba Gandhi Marg, New Delhi.

2. The Director General ("DG") Competition Commission of India
B-Wing, HUDCO Vishala, 14, Bhikaji Cama Place,
New Delhi - 110 066. ... Respondents

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Petition filed under Article 226 of the Constitution of India.

Prayer in W.P.No.31808 of 2012 is: for the issuance of a writ of Prohibition restraining the first Respondent from continuing the impugned proceedings in Case No.03/2011 in File No.1(3)/2011-Sectt dated 26.04.2011 as against the petitioner and quash the same as the same is without jurisdiction, without authority of law, illegal, unconstitutional and in violation of principles of natural justice.

Prayer in W.P.No.31809 of 2012 is: for the issue of a writ of Certiorarified Mandamus to call for the records relating to the impugned Notice of the third respondent in File No.DG/CCI/IW/1/74/2011 dated 4.5.2011 and quash the same as the same is without jurisdiction, unconstitutional, without authority of law, illegal, null and void and against the principles of natural justice and to direct the first respondent not to make use of the report if any submitted by the third respondent in so far as the petitioner is concerned.

Prayer in W.P.No.26986 of 2014 is: for the issue of a writ of certiorari calling for the records of the first respondent culminating in the impugned order dated 26.04.2011 passed by the first respondent and proceedings/orders consequential thereto and quash the same.

For Petitioner	..	Mr.S.Vijay Narayan, Sr. Counsel for M/s I.P.N.Associates and Mrs.L.Maithili.
For Respondents	..	Mr.G.Rajagopalan, Additional Solicitor General assisted by Mr.P.Mahadevan,SCGSC.

COMMON ORDER

One Shamsher Kataria of New Delhi lodged a complaint on 17.01.2011 with the Competition Commission of India, under Sections 3 and 4 read with Section 19(1)(a) of the Competition Act, 2002, alleging abuse of dominant position and the practice of anti-competitive activities by three Automobile Manufacturers namely: (1) Honda Siel Cars India Limited; (2) Volkswagen India Private Limited; and (3) Fiat India Automobiles Limited.

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2. In the said complaint, the complainant Mr.Shamsher Kataria sought the reliefs of (1) an enquiry into the trade practices of the respondents and/or any other vehicle manufacturer; (2) a restraint order against the respondents to cease and desist from restrictive, unfair and monopolistic trade practices and (iii) other appropriate directions. The complainant also filed supplementary information on 27.01.2011.

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3. The complaint was taken on file by the Competition Commission in Case No.03/2011 and an order was passed under Section 26(1) of the Competition Act, 2002, on 24.02.2011 directing the Director General of Investigation to conduct an investigation into the matter and submit a report within sixty days. Accordingly, the Director General of the Competition Commission appears to have initiated an investigation and issued notice to the three respondents, named in the complaint. Thereafter, the Additional Director General filed a report before the Competition Commission on 19.04.2011 stating that the investigation made by him revealed that similar practices are adopted by other car manufacturers in India in the areas of after sales service and procurement of spare parts. Therefore, the Additional Director General sought the approval of the Competition Commission to expand the scope of the investigation to cover other car manufacturers.

4. On the note submitted by the Additional Director General on 19.04.2011, the Competition Commission passed an order on 26.04.2011, approving the request for expansion of the scope of the investigation. It was actually indicated in the said order of the Competition Commission that whenever an investigation is ordered, it need not be confined to the parties mentioned in the information.

5. Therefore, based upon the order of the Competition Commission dated 26.04.2011, the Director General ordered a notice dated 04.05.2011, to Hyundai Motor India Limited, under Section 36(2) read with Section 41(2) of the Competition Act, 2002. Immediately, the company appears to have submitted a request for inspection of the records. After the office of the Competition Commission gave a Compact Disk containing soft copies of the investigation report of the Director General, the petitioner sought copies of the note placed by the Additional Director General on 19.04.2011 and the order passed by the Competition Commission on 26.04.2011.

6. After getting the copies of those documents, the company namely Hyundai Motor India Limited, came up with two writ petitions in W.P.Nos. 31808 and 31809 of 2012, challenging respectively: (i) the order of the Competition Commission dated 26.04.2011; and (ii) the notice issued by the Director General on 04.05.2011. These writ petitions were admitted on 28.11.2012. Subsequently, there was yet another writ petition in W.P.No. 26488 of 2013 filed by yet another car manufacturer by name Nissan Motors India Private Limited, challenging the very same order of the Competition Commission dated 26.04.2011 passed in the very same Case No.03/2011, allowing the request of the Director General to expand the scope of the investigation. Therefore, the said writ petition was also tagged along with the two writ petitions filed by Hyundai Motor India Limited.

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7. Ultimately, by a final order dated 30.06.2014, all the three writ petitions were dismissed by a learned Judge, holding that the petitioners have an effective alternative remedy of approaching the Competition Appellate Tribunal.

8. However, as against the said order of the learned Judge, one of the parties namely Nissan Motors India Private Limited filed an Intra Court Appeal in W.A.No.1021 of 2014. The said appeal was allowed by a Division Bench of this Court by an order dated 06.08.2014, on the short ground that as against the order expanding the scope of investigation passed by the Competition Commission, no appeal would lie to the Appellate Tribunal under Section 53B of the Competition Act, 2002. Therefore, the Division Bench remitted the matter back to the single Judge for disposal of the writ petitions on merits.

9. After the order of remand dated 06.08.2014 passed by the Division Bench, but before the writ petitions could be taken up for disposal, the Competition Commission passed a final order dated 25.08.2014 as against 14 car manufacturers including Nissan Motors India Private Limited. Therefore, the writ petition W.P.No.26488 of 2013 filed by Nissan Motors India Private Limited became infructuous and hence the same was dismissed by me with liberty to the company to challenge the final order of the Competition Commission dated 25.08.2014 before the Competition Appellate Tribunal.

10. However, three car manufacturers namely (1) Maruti Suzuki India Limited; (2) BMW India Private Limited; and (3) Mercedes Benz India Private Limited appear to have filed writ petitions, instead of the statutory appeals, before the High Court of Delhi in W.P.(Civil) Nos.5145, 6359 and 6560 of 2014. The writ petition filed by BMW India Private Limited in W.P.(Civil) No. 6359 of 2014 was dismissed by the Delhi High Court by an order dated 22.09.2014 on the short ground that it would be appropriate for them to approach this Court (Madras High Court) in view of the heavy reliance placed by them upon the interim order passed by the Madras High Court on 24.09.2013. Therefore, in pursuance of the order dated 22.09.2014, passed by the Delhi High Court, BMW India Private Limited has come up with a fresh writ petition in W.P.No.26986 of 2014 before this Court, challenging the order of the Competition Commission dated 26.04.2011, permitting the Director General to include all car manufacturers within the scope of the enquiry conducted by them. On this writ petition notice was ordered on 10.10.2014. Thereafter, the same was tagged along with the two writ petitions filed by Hyundai Motor India Limited in W.P.No.31808 and 31809 of 2012.

11. I have heard Mr.Vijay Narayan, learned Senior Counsel appearing for the petitioners and Mr.G.Rajagopalan, learned Additional Solicitor General appearing for the respondents, assisted

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by Mr.P.Mahadevan, learned Senior Central Government Standing Counsel.

12. As we have seen earlier, all the three writ petitions challenge either the order of the Competition Commission dated 26.04.2011 permitting the Director General to expand the scope of the investigation undertaken by him or the notice issued by the Director General pursuant thereto. Out of the 3 writ petitions on hand, 2 are by Hyundai against whom no final order has yet been passed. The third writ is by BMW which has actually suffered a final order, but it has chosen to challenge the very initiation of the proceedings, instead of challenging the final order. The challenge in all these writ petitions, is primarily on three grounds namely:

(i) that the Director General of the Competition Commission has no suo motu power to initiate an investigation;

(ii) that even for the Commission to order an investigation, the formation of an opinion regarding the prima facie case is a sine quo non; and

(iii) that the Director General has overstepped the jurisdiction vested in him by law.

Contention No.(i):-

13. The first contention of the learned Senior Counsel for the petitioners is that the Director General does not have the power to initiate investigation suo motu. The Competition Act, 2002 was enacted on the basis of the S.V.S.Raghavan Committee Report. The said report of the High Level Committee on Competition Policy and Law indicated clearly in para 6.1.8 that the Director General will not have suo motu powers on investigation. Even the Standing Committee, which examined the Draft Bill, made it clear in its report tabled in the Lok Sabha on 21.11.2002 that the Director General would not have suo motu power of investigation, though under The Monopolies and Restrictive Trade Practices Act, 1969, he had such a power. Consequently the Preamble as well as the Statements of Objects and Reasons of the Competition Act, 2002 made it clear that the Director General can conduct an investigation only as per the directives of the Commission and not suo motu.

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14. Therefore, on the basis of the contents of the S.V.S.Raghavan Committee Report, the report of the Standing Committee and the Statements of Objects and Reasons, it is contended by Mr.Vijay Narayan, learned Senior Counsel for the petitioners that the Director General erred in initiating an investigation suo motu against all the car manufacturers, when the complaint of Shamsher Kataria was only against three car manufactures. The learned Senior Counsel relies upon a decision of the Delhi High Court in Grasim Industries Limited

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vs. Competition Commission of India reported in [2014 (124) SCL 79 (Delhi)], wherein it was held that the Director General is obliged to confine his report only to the allegations made in the information or the reference received by the Commission and that he is not entitled to travel outside the scope of the same. Drawing my attention to Section 19 of the Competition Act, 2002, the learned Senior Counsel for the petitioners contended that the Director General can collect information only from three sources of information indicated in Section 19. But, by making a request to the Competition Commission to widen the scope of the investigation, the Director General became an informant, which is prohibited by Object No.5 of the Preamble to the Act.

15. I have carefully considered the above submissions. I have no doubt in my mind that the Director General cannot initiate an investigation suo motu. This is very clear from paragraph 4.4.7 of the Ninety-Third Report of the Department Related Parliamentary Standing Committee on Home Affairs submitted to the Chairman of the Rajya Sabha in August 2002. The Report of the Standing Committee was actually in tune with the report of the S.V.S. Raghavan Committee. Therefore, the Act does not enable the Director General to initiate an investigation suo motu.

16. But, the question is as to whether in the case on hand, what was done by the Director General would tantamount to suo motu initiation of investigation or not.

17. As pointed out earlier, one Mr.Shamsher Kataria filed a complaint on 17.01.2011, followed by a supplementary complaint on 27.01.2011, before the Competition Commission, only as against three care manufacturers namely (1) Honda (2) Volkswagen and (3) Fiat. After taking note of the information provided by the complainant and the materials supplied by him, the Commission passed an order on 24.02.2011, directing the Director General to conduct an investigation. In the course of investigation, the Director General allegedly found that the practices adopted by the three respondents before the Competition Commission, were just the same as those carried on by the other car manufacturers. Therefore, the Director General placed a report on 19.04.2011, seeking the views of the Competition Commission. On the said report, the Competition Commission passed the order dated 26.04.2011 permitting the Director General to include within the scope of the investigation, the other car manufacturers also.

18. Keeping the above sequence of events in mind, if we now look at the records, the validity of the first contention raised by the petitioners can be tested. In paragraph 28 of the complaint dated 17.01.2011 lodged by Mr.Shamsher Kataria, he had listed out the reliefs sought by him. The reliefs mentioned in column Nos.(a), (c)

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and (d) read as follows:-

> "(a) hold an enquiry into the trade practices of the Respondents and/or any other vehicle manufacturer and their authorised dealers/service centers indulging in similar activities as detailed herein and give a finding that such parties have committed restrictive and/or unfair trade practices in contravention of the Act.
>
> ....
>
> (c) pass appropriate orders directing the Respondent No.1-3 and other contravening vehicle manufacturers and their authorised dealers/service centers to provide spare parts, technical information, diagnostic tools, software and any other information and goods required for the repair, maintenance and servicing of the vehicles to independent repair workshops and also make the same freely available in the open Indian automotive after market;
>
> (d) pass appropriate orders directing the Respondents and other contravening vehicle manufacturers to provide the relevant spare parts, diagnostic tools, technological information, technical training and equipment for repair, maintenance and service of the vehicles manufactured by them at the same time as it is made available to their authorised dealers/service centers."

19. From the very prayers made by the complainant before the Competition Commission, it will be clear that he wanted an investigation into the monopolistic, restrictive or unfair trade practices or anti corruption competitive practices adopted by all car manufacturers. Though he named only three car manufacturers, against whom, he had an immediate cause of action, the prayers in his complaint made it clear that he wanted the scope of the investigation to cover 'any other vehicle manufacturer'. Therefore, the contention that the main complaint was only against three car manufacturers and that the Director General suo motu roped in other car manufacturers may not be correct.

20. Keeping this factual aspect in mind, let me now go back to the provisions of the Act.

21. The preamble of the Act makes it clear that the Commission was established with a view to prevent practices having adverse effect on competition and to protect the interests of consumers. The Act is consumer-centric. By denouncing anti competitive practices, the Act intends to promote the interests of consumers.

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22. The Act seeks to achieve its objects by establishing a commission known as the Competition Commission of India. Chapter III of the Act lays down the procedure for establishment of the Competition Commission, its composition and the method of appointment and conditions of service of its Chairperson and the Members. Chapter IV of the Act deals with the duties, powers and functions of the Commission. Section 18 makes it the fundamental duty of the Commission to eliminate practices having adverse effect on competition and to promote and sustain competition and to protect the interests of consumers. These duties are to be discharged by the Commission by various methods, one of which is by making an inquiry into allegations of contravention of the provisions of the Act.

23. Section 19(1) of the Act prescribes as to how the Commission may inquire into the alleged contravention of the provisions of the Act. It reads as follows :

> "The Commission may inquire into any alleged contravention of the provisions contained in Sub-Section (1) of Section 3 or Sub-Section (1) of Section 4 either on its own motion or on—
>
> (a) receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or
>
> (b) a reference made to it by the Central Government or a State Government or a statutory authority."

24. A careful reading of Section 19(1) would show that an inquiry by the Commission may be carried out by three different methods. They are (i) an inquiry suo motu; (ii) an inquiry upon receipt of information from any person, consumer or their association or trade association; and (iii) an inquiry upon a reference made to it by the Central Government or a State Government or a Statutory Authority.

25. The methodology to be adopted for initiating an enquiry on its own motion, is not stipulated in Section 19(1). Similarly, the methodology to be adopted for initiating an inquiry, upon a reference made to it by the Central Government or State Government or a Statutory Authority, is also not spelt out in Section 19(1)(b).

26. It is only in cases falling under Section 19(1)(a) where an inquiry is initiated on receipt of any information that two requirements are to be satisfied. One relates to the person from whom such information was received; and the other relates to the manner in which such information should have been received. The expression

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'receipt of information' appearing in Section 19(1)(a) is regulated by what follows. The information should have been received in such a manner and should be accompanied by such fee as may be prescribed by the Regulations. Additionally, the information should have been received from any person, consumer or their association or trade association. If both these requirements are not satisfied, an inquiry under Section 19(1)(a) cannot be initiated. This is on account of the fact that the Act defines even the expressions "consumer" and "person". Section 2(f) defines a consumer to mean a person, who buys any goods for a consideration or hires or avails of any service for a consideration. The definition of the word 'consumer' in Section 2(f) is in pari materia with the definition of the same expression in the Consumer Protection Act, 1986.

27. The expression 'person' is defined in Section 2(l) to include (i) an individual; (ii) a Hindu undivided family; (iii) a company; (iv) a firm; (v) an association of persons or a body of individuals whether incorporated or not in India or outside India; (vi) any corporation established by or under any Central or State Government or Provincial Act or by a Government company as defined in Section 617 of the Companies Act, 1956; (vii) any body corporate incorporated by or under the laws of a country outside India; (viii) a cooperative society registered under any law relating to cooperative societies; (ix) a local authority; (x) every artificial juridical person not falling within any of the preceding sub-clauses.

28. On the basis of the definition of the expression "consumer" and "person" appearing in Sections 2(f) and 2(l), it is contended by Mr.Vijay Narayan, learned Senior Counsel appearing for the petitioners that the Director General, who sought permission to expand the scope of the investigation, will not fall within the purview of any one of these two expressions. Therefore, the information furnished by the Director General in the note submitted to the Competition Commission on 19.4.2011 does not qualify as information within the meaning of Section 19(1)(a), as it was not received either from a person as defined in Section 2(l) or from a consumer as defined in Section 2(f). It is the further contention of Mr.Vijay Narayan, learned Senior Counsel that the Competition Commission did not suo motu order the expansion of the scope of the enquiry. Therefore, the impugned order will not also come within the purview of suo motu initiation of enquiry by the Commission.

29. Hence, the only possibility for the respondents, according to the learned Senior Counsel for the petitioners, is to fall back upon Section 19(1)(a). But, to come within the purview of Section 19(1)(b), the reference should have been made either by the Central Government or by the State Government or by a Statutory Authority. In this case, no reference was made to the Competition Commission either by the Central Government or by the State Government. According to

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the learned Senior Counsel for the petitioners, the Director General, who sought the permission of the Competition Commission to expand the scope of the enquiry, would not even fall under the category of 'Statutory Authority'. The expression 'Statutory Authority' is defined in Section 2(w) as follows :

> "Statutory authority-means any authority, board, corporation, council, institute, university or any other body corporate, established by or under any Central, State or Provincial Act for the purposes of regulating production or supply of goods or provision of any services or markets therefor or any matter connected therewith or incidental thereto."

30. To come within the definition of the expression 'Statutory Authority', the following criteria should be fulfilled :

(i) the Authority should be a Board, Corporation, Council, Institute, University or any other body corporate;
(ii) It should have been established by or under any State or Central or Provincial Act;
(iii) It should have been so established for the purpose of regulating production or supply of goods or provision of any services or markets therefor; and
(iv) It should have been established at least for any matter indicated therewith or incidental thereto.

31. According to the learned Senior Counsel for the petitioners, the Director General is not an Authority established for the purpose of regulating the production or supply of any goods or services and therefore, he is not a Statutory Authority within the meaning of Section 19(1)(b) read with Section 2(w).

32. To test whether or not the above contention of the learned Senior Counsel for the petitioners is correct, let us now look at the provisions that deal with the post of Director General. The Director General is actually appointed under Section 16(1) of the Act by the Central Government by Notification in the Gazette. Section 16(1) indicates that the purpose of his appointment is to render assistance to the Commission in conducting inquiry into the contravention of any of the provisions of the Act and for performing such other functions as may be provided by or under the Act.

33. The duties of the Director General are enumerated in Chapter V of the Competition Act, 2002. Section 41(1) obliges the Director General, to assist the Commission in investigating into any contravention of the provisions of the Act or any Rules or Regulations made thereunder. But, he shall do so only "when so directed by the Commission." But, Sub-Section (2) of Section 41

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confers upon the Director General, the same powers as are vested upon the Commission under Section 36. In other words, the Director General has powers to summon and enforce the attendance of any person to examine him, to order the discovery and production of documents, to receive evidence on affidavit, to issue Commissions for the examination of witnesses or documents and to requisition the production of any public record or document. The provisions of Sections 240 and 240A of the Companies Act, 1956 are made applicable to an investigation made by the Director General, as they would apply to an Inspector appointed under the Companies Act.

34. As a matter of fact, if a person fails to comply, without reasonable cause, with a direction given by the Director General in terms of Section 41(2), such a person is liable to be punished with fine. Therefore, it is clear that the role of the Director General is actually to assist the Competition Commission in the effective discharge of its duties.

35. Interestingly, there are four places in the Act where a reference is made to a Statutory Authority. Section 2(w) defines the expression 'Statutory Authority'. Section 19(1)(b) speaks about the initiation of inquiry pursuant to a reference made to the Commission by a Statutory Authority. Apart from these two places, Section 21 of the Act also refers to Statutory Authority. Under Section 21(1), any Statutory Authority may make a reference of an issue to the Commission, when, in the course of a proceeding before it, a issue is raised by any party that any decision, which such Statutory Authority proposes to take, would be contrary to any of the provisions of the Act. Section 21 reads as follows :

> "21.(1) Where in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take is or would be, contrary to any of the provisions of this Act, then such statutory authority may make a reference in respect of such issue to the Commission:
>
> Provided that any statutory authority, may, suo motu, make such a reference to the Commission.
>
> (2)On receipt of a reference under sub-section (1), the Commission shall give its opinion, within sixty days of receipt of such reference, to such statutory authority which shall consider the opinion of the Commission and thereafter, give its findings recording reasons therefor on the issues referred to in the said opinion."

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36. The fourth place, in which, a reference is made to a Statutory Authority is Section 21A inserted by the Competition (Amendment) Act, 2007. A careful look at Sections 21 and 21A would show that one is the mirror image of the other. I have already extracted Section 21 in the preceding paragraph. Section 21A reads as follows:

> "21A.(1)Where in the course of a proceeding before the Commission an issue is raised by any party that any decision which, the Commission has taken during such proceeding or proposes to take, is or would be contrary to any provision of this Act whose implementation is entrusted to a statutory authority, then the Commission may make a reference in respect of such issue to the statutory authority:
>
> Provided that the Commission, may, suo motu, make such a reference to the statutory authority.
>
> (2) On receipt of a reference under sub-section (1), the statutory authority shall give its opinion, within sixty days of receipt of such reference, to the Commission which shall consider the opinion of the statutory authority, and thereafter give its findings recording reasons therefor on the issues referred to in the said opinion."

37. The Statutory Authorities referred to in Sections 21 and 21A should naturally be those other than the Authorities functioning under the Competition Act, 2002. Otherwise, Sub-Section (2) of Sections 21 and 21A cannot be given a meaningful interpretation. If we have a careful look at Section 21(2), it will be clear that the Statutory Authority referred to in Section 21, is a Statutory Authority which is vested with a power to record findings on the basis of the opinion of the Commission. If the expression "Statutory Authority" appearing in Section 21 includes the Director General also, then the Director General should have the authority to give findings. But that is not a scope of the Act. The Director General is an authority constituted to assist the Commission. But the Statutory Authority referred to in Section 21 is one which can derive assistance from the Competition Commission.

38. Similarly, the Statutory Authority contemplated in Section 21A is one from whom the Commission itself can seek an opinion. The Director General under the Act is not competent to give any opinion except conducting an investigation and assisting the Commission in the enquiry initiated under Section 19.

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39. Therefore, Section 19(1)(b) may have to be read and understood in the context of Section 21 and 21A of the Competition Act, 2002. If so done, it will be very clear that the word "Statutory Authority" found in Section 19(1)(b), Section 21 and Section 21A cannot include the Director General. There is yet another reason for my conclusion. The Proviso to Section 21(1) empowers a Statutory Authority to make a reference suo motu to the Commission. But the Director General is not empowered to initiate an investigation suo motu. Therefore, the Director General cannot come within the definition of the expression "Statutory Authority".

40. Therefore, I have no difficulty in accepting the contention of the learned Senior Counsel for the petitioner that the case on hand will not come within the four corners of Section 19(1)(b). The expansion of the scope of the enquiry to include all car manufactures has not been done by the Competition Commission suo motu, so as to fall within the main part of Section 19(1). Therefore, the order of the Competition Commission permitting the Director General to expand the scope of the enquiry, should either fall within Section 19(1)(a) or should be held to be invalid. Hence, let me again go back to Section 19(1)(a). Under Section 19(1)(a), an enquiry can be ordered on receipt of any information, in such manner and accompanied by such fee as may be determined by Regulations from any person, consumer or their association or Trade Association. But the argument of the learned Senior Counsel for the petitioner is that the case cannot fall under Section 19(1)(a), in view of the fact (i) that the receipt of information was not in a manner prescribed by Regulations and accompanied by the fee prescribed in the Regulations; and (b) that the receipt of information was not from any person or consumer or their association or Trade Association.

41. It is true that the Commission was in receipt of some information from the Director General, when the Director General filed a memo seeking permission to rope in other car manufactures. But the contention that it was not in such manner and accompanied by such fees as may be determined by Regulations, may not really tilt the balance. If the Commission has to receive information from the list of persons indicated in Section 19(1)(a), a procedure is prescribed by the Regulations. But the Regulations do not prescribe any fee or method of sending information to the Commission by the Director General. Moreover, the manner in which information is to be furnished, as stipulated in the Regulations, is merely procedural in nature. The form in which information is to be provided, cannot belittle the substance of the information. Therefore, merely because the information furnished by the Director General was not presented in such manner and accompanied by such fee as prescribed by the Regulations, it cannot be contended that the case will not fall under Section 19(1)(a).

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42. In so far as the other requirements is concerned, it is true that the information should have been received from (1) any person (2) consumer (3) their association and (4) Trade Association. The Director General cannot come within the definition of consumer, their association or Trade Association. But I failed to understand why the Director General will not even come within the definition of the expression "person".

43. The definition of the expression "person"as found in Section 2(l) is very exhaustive. As per Section 2(l)(x), every artificial juridical person not falling within any of the sub-clauses, may fall within the definition of the expression "person". To hold that the Director General will not come within the purview of the expression "person", would be to render the entire scheme of the Act very brittle and ductile. Therefore, I hold on the first contention that the permission to expand the scope of the enquiry cannot be construed as the initiation of investigation suo motu by the Director General. So long as the Competition Commission has the power to initiate an enquiry suo motu and take the assistance of the Director General in the conduct of such enquiry and so long as there is no bar for the Director General to provide information under Section 19(1)(a) of the Act, the petitioner cannot find fault either with the Director General or with the Commission. In this case the Director General did not rope in other car manufactures, of his own accord. The Director General, by filing a memo, merely brought to the notice of the Commission that there are other car manufactures who follow the very same practices, as followed by the three Respondents named by Mr.Kataria. The Commission directed the Director General to include the others also within the purview of the initiation of investigation suo motu by the Director General. Hence, the first contention is rejected.

Contention No.(ii):-

44. The second contention of the petitioner is that even if the Commission is to order an investigation, there must be the formation of an opinion regarding the existence of a prima facie case. This contention stems out of the express provisions of Section 26(1) of the Act. Section 26(1) reads as follows:-

> "26 (1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under Section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter:
>
> Provided that if the subject matter of an information

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received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information."

45. Since Section 26(1) requires to the Commission to direct the Director General to investigate into the matter, if it is of the opinion that there exists a prima facie case, it is contented by the petitioner that the formation of opinion is a sine qua non.

46. In Competition Commission of India v. Steel Authority of India Limited [(2010) 10 SCC 744], the Supreme Court held that the Commission must record its reasons for forming a prima facie opinion with reference to the information furnished to the Commission. After pointing out in para 93 of its decision that the functions performed by the Commission are in the nature of preparatory measures in contrast to the decision making process, the Supreme court nevertheless held in para 97 that at the stage of forming a prima facie view under section 26 (1), the Commission should record minimum reasons for formation of a prima facie opinion. Therefore, it is contended by the petitioner that since the order dated 26.04.2011 does not contain any reason and does not reflect the formation of a prima facie opinion, the impugned proceedings are vitiated.

47. It is also contended by the petitioner that though the original complaint made by Mr.Kataria was against 3 named car manufactures, the Director General converted the complaint from party-centric to issue-centric. But if it is actually issue-centric, the Commission or the Director General ought not to have left out 12 other car manufactures. Since the Commission as well as the Director General did not include within the purview of the investigation, 12 other car manufactures as well as the manufactures of two-wheelers, three-wheelers etc., it is contended that the investigation was not really issue-centric. Therefore, it is contended that the impugned order dated 26.04.2011 is not in accordance with the procedure prescribed by Section 26(1).

48. The learned Senior Counsel for the petitioners also relies upon the decision of the Delhi High Court in Grasim Industries Limited vs. Competition Commission (2014) 41 Taxmann.com. 333 (Delhi), wherein it was held in paragraph 10 that the Director General would have no power to undertake an investigation in respect of the complaint which the Commission did not consider while forming an opinion and directing investigation by the Director General.

49. But it appears that the Delhi High court lost sight of the Proviso to sub-section (1) of Section 26. Though sub-section (1) mandates the Commission to form an opinion that there exists a prima

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facie case, before directing the Director General to cause an investigation, the Proviso makes it clear that if the subject matter of an information received by the Commission is substantially the same as has already been received, then the Commission may club both information together.

50. The Proviso is of great significance. As a matter of fact, the Proviso was inserted under sub-section (1) of Section 26 only by the Competition (Amendment) Act, 2007. Prior to the Amendment under Competition (Amendment) Act, 2007, there was no Proviso under sub-section (1) of Section 26.

51. Moreover, in paragraph 11 of its decision, the Delhi High Court itself gave a small leverage by pointing out that it was permissible for the Commission to come to additional conclusions on the basis of the available information. Therefore, the decision of the Delhi High Court does not support the petitioner in full.

52. Keeping the insertion of the Proviso to Section 26(1) in mind, if we look at the facts of the present case, what had really happened was that on the original complaint as lodged by Mr.Kataria on 17.07.2011 and the supplementary complaint lodged on 27.01.2011, the Commission applied its mind and formed an opinion as required under Section 26(1) that there exists a prima facie case. Therefore, the Commission passed an order on 24.02.2011. This order is not assailed as not being in accordance with Section 26(1).

53. After the Commission passed the order dated 24.02.2011, taking note of the information furnished by Mr.Kataria, the Director General gave an information by filing a memo on 19.04.2011. This information is treated as an additional information, as per the Proviso to Section 26(1). When a case falls under the Proviso to sub-section (1) of Section 26, there is no necessity to record reasons all over again for the formation of an opinion. The formation of an opinion on the first information itself is sufficient.

54. As a matter of fact, one significant amendment made under the Competition (Amendment) Act, 2007 was that the expression "complaint" as found in Section 19(1)(a) was actually modified as "information". This is why Section 26(1) which did not talk about complaint but talked only about "knowledge" and "information" was also amended to incorporate the Proviso under sub-section (1). The Statement of Objects and Reasons for the Competition (Amendment) Bill, 2007 shows that it was intended to enlarge the powers of the Competition Commission. Therefore, the second contention of the petitioner cannot also be accepted.

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Contention No.(iii):-

55. The third contention of the petitioner is that the Director General has overstepped the jurisdiction vested in him in law. Section 41(3) of the Competition Act, 2002 circumscribes the duties of the Director General. His duties are akin to that of an Inspector under Sections 240 and 240A of the Companies Act, 1956. The Inspector performs only a fact finding role under those provisions of the Companies Act, as held by the Supreme Court in Raja Narayanlal Bansilal v. Maneck Phiroz Mistry [AIR 1961 SC 29]. In other words, the contention of the petitioner is that the Director General being a subordinate to the Commission, is obliged only to do what he is told to do by the Commission. But in this case by filing a memo on 19.04.2011, the Director General exceeded the jurisdiction that was conferred upon him by the order of the Commission dated 24.02.2011 read with Section 41(3).

56. I have carefully considered the above submissions.

57. Section 41(3) of the Act merely states that the provisions of Sections 200 and 200A of the Companies Act, 1956 shall apply to an investigation made by the Director General, as they apply to an Inspector appointed under the Companies Act, 1956. The petitioner has lost sight of the fact that Section 41(3) is not the source of power of the Director General. The Director General derives his powers in terms of Section 41(2), the moment the Commission directs him to investigate into a matter under sub-section (1) of Section 41. He has all the powers that are conferred by the Commission under Section 36 (2), by virtue of sub-section (2) of Section 41.

58. In this case all that the Director General did, was to simply place an additional information before the Commission. The Commission then passed an order on 26.04.2011. Thereafter, the Director General issued a notice to the writ petitioner on 04.05.2011, only in compliance of the directions issued under Section 41(1). The moment the Commission passed an order directing him to expand the scope of the investigation, Section 41(1) came into play. Therefore, I do not think that the Director General did anything in excess of what he was directed to do by the Commission.

59. As a matter of fact, sub-section (3) of Section 41 begins with a non-abstante Clause. Therefore, it is subject to sub-section (2) of Section 41.

60. The powers conferred upon an Inspector under Section 240 and 240A of the Companies Act, 1956 are just procedural in nature. The power conferred under these provisions include the power (i) to require any body corporate to furnish information or to produce such books and papers as he may consider necessary; (ii) to keep in his

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custody any books and papers; (3) to examine someone on oath; and (4) to seize documents. All that sub-section (3) of Section 41 says is that these powers can be exercised by the Director General, subject to the powers conferred by the Commission under sub-section (2) of Section 41 read with sub-section (2) of Section 36.

61. Therefore, the Director General merely placed an additional information before the Commission by his memo dated 19.04.2011. If the Commission had not issued a direction on 26.04.2011, the Director General could not have proceeded against all other car manufactures. The direction issued by the Commission on 26.04.2011 would tantamount to a directions under Section 41(1). Therefore, the question of overstepping of jurisdiction did not arise.

62. The contention that other car manufacturers and automobile manufactures have not been roped in, is actually a contention based upon Article 14. It is interesting to note that it is this very same contention that lead the Director General to make a request to expand the scope of the investigation. Therefore, this contention can always be raised by the petitioner before the Competition Commission. I have no problem and I suppose neither the Competition Commission nor the Director General would have any problem in a further expansion of the scope of the investigation to cover even other car manufactures and other automobile manufacturers.

63. Therefore, in fine, the third contention of the petitioner is also liable to be rejected.

64. The learned Senior Counsel for the petitioner placed heavy reliance upon the decision of the Delhi High Court in Grasim Industries Limited v. Competition Commission of India [2014(41) taxmann.com 333 (Delhi)]. In this case, an information was received by the Competition Commission about certain practices adopted by the manufactures of man made fibres. The Commission formed a prima facie opinion about the existence of material to order an investigation and hence passed an order on 22.06.2011 directing the Director General to cause an investigation. The Director General, after investigation, filed a report that though there was no violation of Section 3(3)(a), (b) and (c), he opined that the enterprise abused its dominant position. The Industry filed an application for setting aside the report of the Director General, primarily on the ground that it was beyond the scope of the powers conferred upon the Director General. The application to set aside the report was dismissed by the Commission. It was that order that was challenged before the Delhi High Court.

65. In other words, the petitioner before the Delhi High Court allowed the investigation to be completed and thereafter approached the Competition Commission against the findings recorded by the

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Director General. Therefore, the Court had the benefit of the report of the Director General and hence the Court observed in para 10 as follows:-

> "10. The scheme of the Act thus, does not permit investigation by Director General into any information which was not considered by the Commission, while forming opinion under sub-section (1) of Section 26 of the Act. The formation of opinion by the Commission and direction to cause an investigation to be made by the Director General being a pre-requisite condition for initiation of investigation, the Director General would have no power to undertake investigation in respect of the complaint which the Commission did not consider while forming an opinion and directing investigation by the Director General. If the Director General investigates an information which the Commission did not consider in the first instance, while forming opinion with respect to existence of a prima facie case, such an act on his part shall be ultra vires his power under the Act and, therefore, clearly illegal. It is settled legal proposition that when the provisions of a Statute requires an act to be done in a particular manner, such an act can be done only in the prescribed manner and not otherwise. Sicne the Act requires the Director General to investigate only such information which was considered by the Commission, while forming its opinion with respect to existence of a prima facie case, it cannot, of its own carry out investigation based upon an information which was not available to the Commission. It would be appropriate to note here that though MRTP Act, 1969 empowered the Director General to exercise suo motu power of investigation, the said power has been expressly denied to him under the Competition Act. In clause (5) of the State of Objects and Reasons for enacting the Competition Act, it is clearly stated that "the Director General would be able to act only if so directed by the Commission, but will not have any suo motu power for initiating investigation". If the Director General, is directed by the Commission to cause an investigation to be made into information 'X' and he, besides investigating information 'X' also investigates information 'Y'. which was not considered by the Commission, while directing investigation by him, that would amount to conferring suo motu, power of investigation upon the Director General which would clearly contravene the scheme of the Act, as far as investigation into complaint 'Y' is concerned".

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66. The learned Senior Counsel for the petitioners relies upon decisions of the Supreme Court in:-

(i) State of Uttar Pradesh vs. Singhara Sinh (AIR 1964 SC 358);

(ii) Rukumanand Bairoliya vs. State of Bihar (1971) 3 SCC 167; and

(iii) Hussein Ghadially vs. State of Guijarat [2014 (8) SCALE 598], in support of his contention that when a statute provides for a thing to be done in a particular manner, it shall be done only in that manner and not otherwise.

67. But I do not think that the Commission or the Director General had done anything in a manner otherwise than what is prescribed in the Act and the Regulations. As stated earlier, the Director General did not suo motu initiate any investigation. He merely placed before the Commission, an information already available in the complaint lodged by the individual. It was an additional information that could be taken note of under the Proviso to Section 26(1). The Commission had already formed a prima facie opinion and recorded its reasons in respect of the three named car manufacturers. Therefore, it was not necessary for the Commission to again and again record reasons. The Commission did not come to any conclusion with regard to the writ petitioners, on the basis of any special pleadings as against them. The decision taken by the Commission was only to expand the scope of the investigation. Therefore, I do not think that either the Director General or the Competition Commission overstepped the jurisdiction vested in them in law.

68. In fine, all the contentions of the petitioners are bound to be rejected. Accordingly they are rejected and the writ petitions are consequently dismissed without any order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gr/RS

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To

1. The Competition Commission of India
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2. The Director General,
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3. Additional Director General,
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   B Wing, HUDCO Vishala,14, Bhikaji Cama Place,
   New Delhi - 110 066.

4. The Competition Commission of India ("CCI")
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1 cc to M/s I.P.N.Associates ,Advocate, SR.No.6422
1 cc to Mr.P.Krishna Ravindran ,Advocate, SR.No.5767
1 cc to Mr.P.Mahedevan ,Advocate, SR.No.5840
1 cc to Mrs.L.Maithili Associates. ,Advocate, SR.No.6156

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