

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

%

Date of decision: 17th March, 2015

+

LPA No.154/2015

DELHI DEVELOPMENT AUTHORITY & ORS. Appellants

Through: Mr. Neeraj Kishan Kaul, ASG with
Mr. Rahul Goel, Ms. Anu Monga and
Mr. Neeraj Lalwani, Advs.

Versus

COMPETITION COMMISSION OF INDIA & ANR.. Respondents

Through: Mr. Pallav Saxena, Adv. for R-1.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the order dated 23rd February, 2015 of the learned Single Judge of this Court of dismissal of CM No.2982/2015 filed by the appellants for clarification of the order dated 12th January, 2015 disposing of the W.P.(C) No.6892/2014 preferred by the appellants.

2. The counsel for the respondent No.1 Competition Commission of India (CCI) appears on advance notice and considering the nature of the controversy and with the consent of the ASG for the appellant and the counsel for the respondent No.1 CCI, we have heard them finally on the appeal. Though none

appears for the respondent No.2 Dr. Adla Satya Narayan Rao but again considering the nature of the controversy, we dispense service of notice of this appeal on the respondent No.2.

3. The respondent No.1 CCI, on information furnished by the respondent No.2 alleging contravention by the appellant Delhi Development Authority (DDA) of Section 4 of the Competition Act, 2002, vide order dated 11th June, 2013 under Section 26(1) of the said Act directed its Director General (DG) to investigate the alleged contravention. The appellants, vide letter dated 2nd December, 2013 of their advocate called upon the respondent No.1 CCI to first examine and decide on the following fundamental questions of law:

- “(i) Whether DDA owing to its statutory functions, being a State under Article 12 of the Constitution of India can be construed to be an ‘Enterprise’ (Section 2(h) of the Competition Act, 2002)?
- (ii) Whether DDA not being an ‘Enterprise’ in terms of Section 2(h) of the Competition Act, 2002 is amenable to Hon’ble Commission’s jurisdiction and can be investigated under the Competition Act, 2002?

(iii) Whether functioning of DDA, *inter alia* under the provisions of the Delhi Development Authority (Management and Disposal of Housing Estates) Regulations, 1968, can be construed to be in violation of the Competition Act, 2002?”

4. The respondent No.1 CCI considered the aforesaid request of the DDA in its meeting held on 1st May, 2014 and without giving any reasons, decided to hear the parties on the issues raised at the time of final determination of the matter, after the receipt of the DG report. Aggrieved therefrom the writ petition from which this appeal arises was filed and which was entertained and vide interim order wherein, it was directed that in the event CCI passes a final order under Section 27 of the Competition Act, the same shall not be given effect to for a period of four weeks to enable the appellants herein to take recourse to appropriate measures in that behalf. On 21st January, 2015, the learned Single Judge was informed that DG had already placed its report. The learned Single Judge thus observed that the only outstanding grievance of the appellants was that the issue of jurisdiction ought to be decided in the first instance before CCI proceeds to decide the matter on merits. It was the contention of the respondent No.2 informant before the learned Single Judge on that date that CCI had already decided the question of jurisdiction in the order dated 11th June, 2013

under Section 26(1) of the Act. The counsel for the appellants controverted, contending that if that was so, there was no necessity for the CCI to on 1st May, 2014 hold that the question of jurisdiction would be decided at the time of final determination of the matter only. In the light of the said rival contentions, the learned Single Judge disposed of the writ petition with the following order:

- “5. *Having regard to the above, the writ petition is disposed of with a direction that the CCI will determine the issue of jurisdiction, and in doing so, will take into account the contention of respondent no.2 that this issue had been adjudicated upon vide order dated 11.06.2013. If the CCI were to come to a conclusion that it has jurisdiction in the matter, it will immediately proceed to decide the matter on merits. It is also made clear that, the CCI, would have liberty to rely upon the DG’s report, which has already been, placed before it.*
6. *The writ petition and the application are, accordingly, disposed of.”*

5. The matter was thereafter taken up by the respondent No.1 CCI in its meeting held on 4th February, 2015 when *inter alia* the following order was passed:

- “3. *It was submitted by the senior counsel appearing on behalf of the Opposite Parties that in terms of para 5 of the aforesaid order, the Commission is required first to decide the issue of jurisdiction and to pass a separate order in this regard. It was also submitted that in the event, the Commission were to pass an order holding jurisdiction, the Opposite Parties may be given four weeks’ time from the date of such order to file their replies / objections to the report of the DG whereafter the matter can be heard by the Commission on merits. The counsel also sought to make certain submissions on the issue of jurisdiction by contending that the Commission had erred by interfering with the statutory functions discharged by the Opposite Parties in accordance with the governing law and regulations etc., framed thereunder. It was also argued that as the matter does not raise any competition law concern, the Informant may agitate the issues before an appropriate forum and not before the Commission.*
4. *On the other hand, counsel appearing for the Informant disputed the interpretation sought to be placed upon the aforesaid order of the Hon’ble High Court by the senior counsel and submitted that the Opposite Parties have been resorting to dilatory tactics. It was argued that the Opposite Parties have still not filed their replies / objections to the report of the DG. Furthermore, it was pointed out that the report of the DG also contained certain findings upon the issue of jurisdiction of the Commission and in the absence of replies / objections filed by the Opposite Parties thereto, the*

Informant would not be in a position to make its submissions effectively. It was also contended that the submissions sought to be made by the Opposite Parties essentially related to the merits of the case and not to the issue of jurisdiction alone. Accordingly, it was requested on behalf of the Informant that it be provided with a copy of the submissions / replies / objections which were filed by the Opposite Parties to the DG report so that the same could be appropriately responded to.

5. *The Commission has heard the counsel for the parties besides perusing the order of the Hon'ble High Court of Delhi passed on 21.01.2015.....*
6. *On a careful perusal of the order, it is evident that the Hon'ble High Court directed the Commission to determine the issue of jurisdiction, and if the Commission were to come to a conclusion that it has jurisdiction in the matter, it is to immediately proceed to decide the matter on merits. It is pertinent to point out that the Hon'ble High Court further made it clear that the Commission would be at liberty to rely upon the report of the DG in this regard. It may be seen that the report of the DG contains findings on merits as well as on jurisdictional issues. Accordingly, it would be appropriate that the Opposite Parties file their replies to the DG report to enable the Commission to decide the issues in this case as directed by the Hon'ble High Court.*

7. *Hence, the Opposite Parties are directed to file their replies / objections to the DG report and submissions on jurisdictional issues along with their financial details within a period of four weeks from the date of this order i.e. 04.03.2015. The Opposite Parties shall also provide a copy of their submissions / replies / objections to the Informant within the said period. Rejoinder thereto, if any, may be filed by the Informant within a period of one week from the receipt of the submissions / replies / objections of the Opposite Parties.*
8. *It is made clear that the parties shall be at liberty to agitate all issues including jurisdictional issues so that if the Commission were to come to a conclusion that it has jurisdiction in the matter, it can immediately proceed to decide the matter on merits, as desired and directed by the Hon'ble High Court.*
9. *In view of the above, the parties are directed to appear before the Commission either in person or through duly authorized representative(s) on 18.03.2015 at 10.30 AM."*

6. It is thereafter that the appellants filed CM No.2982/2014 before the learned Single Judge seeking clarification of the aforesaid order dated 21st January, 2015 and for a direction to the respondent No.1 CCI to determine the issue of jurisdiction by separate order before requiring the appellants to furnish any response on merits to the report of the DG. The said application came up

before the learned Single Judge on 23rd February, 2015 when the same was dismissed by the following order:

“CM No.2982/2015 (u/S 151 CPC by petitioner)

This is an application seeking clarification of this court’s order dated 25.01.2015 (sic 21.01.2015). In my view, no clarification is required.

The application is dismissed.”

7. The learned ASG appearing for the appellants has contended that vide order dated 21st January, 2015, the respondent No.1 CCI was directed to in the first instance determine the issue of jurisdiction and only if ‘concluded’ that it had jurisdiction, to proceed to decide the matter on merits; however the CCI in utter violation of the said direction, vide order dated 4th February, 2015 has without deciding the issue of jurisdiction directed the appellants to file their reply / objections to the report of the DG along with their financial details.

8. Needless to state that the contention of the counsel for the respondent No.1 CCI is to the contrary and he has contended that there is no direction in the order dated 21st January, 2015 to deal with the question of jurisdiction separately and all that the said order provides is that CCI should also decide the question raised by the appellants of jurisdiction before deciding the matter on

merits. It is further contended that from the use in para No.5 of the order dated 21st January, 2015 of the words “immediately proceed to decide the matter on merits”, the only conclusion is that the decision on the question of jurisdiction is to immediately precede the decision on merits, in the same order.

9. We have at the outset enquired from the learned ASG whether not the dismissal by the learned Single Judge of the application filed by the appellants for clarification is indicative of the learned Single Judge also in the order dated 21st January, 2015 not meant or intended that the question raised by the appellants of jurisdiction is to be decided like a preliminary objection and the decision on merits is to be thereafter only. We have further enquired that in this view of the matter, whether not it was incumbent upon the appellants to file an appeal against the order dated 21st January, 2015 also.

10. The learned ASG has contended that there is no ambiguity whatsoever in the order dated 21st January, 2015 and it was so understood by all concerned including the respondent No.1 CCI as is evident from the proceedings before the CCI on 4th February, 2015. It is further contended that since the said order dated 21st January, 2015 is in favour of the appellants, there is no need for the appellants to file an appeal thereagainst. It is contended that the grievance of

the appellants is against the order dated 23rd February, 2015 of dismissal of the application filed for clarification; it is argued that the learned Single judge has erred in refusing to render the clarification inspite of a need therefor having arisen. It is yet further argued that even if learned Single Judge on 23rd February, 2015 read his own order dated 21st January, 2015 to be not providing for the questions raised of jurisdiction to be decided as a preliminary issue, then the same is on a misreading by the learned Single Judge of his own order dated 21st January, 2015 which admits of no ambiguity.

11. We find considerable weight in the contention of the learned ASG. We may in this regard notice that the appellants had filed the writ petition from which this appeal arises aggrieved from the order dated 1st May, 2014 of the CCI refusing to decide the issue of jurisdiction as a preliminary issue and directing the same to be decided at the time of final determination of the matter. No direction was needed for CCI to, at the time of final determination also consider the objection taken by appellants as to jurisdiction. There was no other question for adjudication in the writ petition. Had the learned Single Judge been of the opinion that the objection raised by the appellants of the jurisdiction of the CCI over the appellants was not to be decided as a preliminary issue and was to be dealt with at the time of final determination

only, as ordered by the CCI also on 1st May, 2014, the writ petition would have been dismissed and there would have been no need for the learned Single Judge to issue a direction “that the CCI will determine the issue of jurisdiction..... If the CCI were to come to a conclusion that it has jurisdiction in the matter, it will immediately proceed to decide the matter on merits”. The very fact that the writ petition was not dismissed but was disposed of with the direction aforesaid, read with the grievance urged in the petition, leads to unequivocal conclusion that the direction in para no.5 of the order dated 21st January, 2015 though not most happily worded is for the issue of a jurisdiction to be decided as a preliminary issue i.e. in the first instance and only if CCI were to hold that it has jurisdiction in the matter, is the CCI to proceed with the decision on merits. We are also unable to hold that the use of the words in para 5 of the order dated 21st January, 2015 “immediately proceed to decide the matter on merits” negate the said intention.

12. It is in the said circumstance, of the decision in this appeal being limited to interpretation of the order dated 21st January, 2015 and the matter being listed before the CCI tomorrow i.e. 18th March, 2015, that we have dispensed with the notice of this appeal to the respondent No.2 informant.

13. Neither the CCI in its order dated 4th February, 2014 has so stated nor has the counsel for the respondent No.1 CCI argued that there is any impediment to the legal issues raised by the appellants to the jurisdiction of the CCI being decided in the first instance.

14. On enquiry, learned ASG states that the appellants, for the purpose of addressing on the question of jurisdiction, do not need / require to file any reply / response / objections to the report of the DG. It is stated that the question raised of jurisdiction is a pure question of law.

15. We therefore allow this appeal and set aside the order dated 23rd February, 2015 of the learned Single Judge of dismissal of CM No.2982/2015 filed by the appellants for clarification of the order dated 21st January, 2015 in the writ petition. A need for clarification is felt in the light of the order dated 4th February, 2015 of the CCI. It is clarified that in terms of the order dated 21st January, 2015 disposing of the writ petition, the CCI is required to first decide the questions of jurisdiction of the CCI over the appellants and in the subject matter, raised by the appellants and to confine the hearing thereon only. Only if CCI rejects the objections raised by the appellants as to the jurisdiction of the CCI over the appellants and in the subject matter and holds that it has

jurisdiction, will the CCI give an opportunity to the appellants to file their reply / response / objections to the report of the DG and shall then proceed to decide the matter on merits. We also deem it expedient to clarify that in accordance with the order dated 21st January, 2015, it will be open to the respondent No.2 informant to at the time of the hearing on the aspect of jurisdiction contend that the said issue has already been adjudicated by the CCI in the order dated 11th June, 2013. We further clarify that even for hearing and decision on the aspect of jurisdiction, CCI would have liberty to rely on the report of the DG and with respect whereunto the learned ASG has stated that no reply / response / objection vis-à-vis the aspect of jurisdiction needs to be filed.

No costs.

Copy of this order be given dasti under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

MARCH 17, 2015

‘gsr’