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

% **Date of decision: 22nd April, 2016**

\+ **W.P.(C) 11411/2015 & CM No.30075/2015 (for stay)**

ORIENTAL RUBBER INDUSTRIES PRIVATE LIMITED ..... **Petitioner**

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. Amitabh Kumar, Mr. Gautam Sahai & Ms. Ella Bali, Advs.

Versus

COMPETITION COMMISSION OF INDIA & ANR .... **Respondents**

Through: Mr. Prashanto Chandra Sen & Mr. Prasenjit Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 226 of the Constitution of India was filed pleading-

a. that the petitioner is a manufacturer of several rubber products including manufacturing of fabric re-enforced rubber conveyor belts and ancillary products;

b. that on 2nd June, 2015 the petitioner received a notice dated 27th May, 2015 from the respondent No.2 Director General, Competition Commissioner of India (DG) in *suo motu* case no. 06/2013 in pursuance of the order of the Competition Commission of India (CCI) under Section 26(1) of the

Competition Act, 2002 wherein the petitioner was one of the opposite parties in the case related to a cartel/bid-rigging;

c. that though the notice aforesaid sought detailed information and documents from the petitioner but the petitioner was not provided with any documents/evidence which formed the basis of investigation;

d. that the petitioner on 4th June, 2015 requested for inspection of records with the respondent no.1 CCI in order to understand the context in which notice aforesaid was issued;

e. that on 18th June, 2015 DG issued another notice to the petitioner to show cause why its acts and conduct should not be treated to be in contravention of Section 3 of the Competition Act;

f. that though the DG supplied a copy of the unreasoned order of the CCI under Section 26(1) of the Act but neither the CCI nor the DG explained which particular conduct of the petitioner had contravened the provisions of the Competition Act; no other documents/evidence on the basis of which impugned inquiry had been initiated and notices issued were also disclosed.

g. that the application of the petitioner seeking information was rejected by the CCI on 23rd June, 2015 stating that the matter was ‘confidential’.

h. that further attempts of the petitioner to gather information also did not meet with any success.

i. that on 24th November, 2010 the petitioner was served with summons dated 23rd November, 2015 of the DG under Section 41(2) r/w Section 36(2) of the Companies Act addressed to Mr. Vishal Makar and Mr. Prem Kumar Madali, officers of the petitioner, to appear before DG on 14th December, 2015 in respect of the inquiry / investigation.

j. that the CCI/DG were thus conducting inquiry/investigation against the petitioner, asking the petitioner to join in the same, without giving access to the petitioner the evidence/documents based on which such inquiry/investigation was being conducted.

k. that as per Section 36(1) of the Competition Act, the CCI, in discharge of its functions, is to be guided by principles of natural justice and the CCI/DG by failing to provide an opportunity to the petitioner to inspect the file and by failing to provide certified copies of documents sought for, not complying with the principles of natural justice.

l. that the DG was conducting inquiry/investigation unfairly and unreasonably without following due process of law.

m. that the DG also does not permit the parties being examined to be assisted by their counsel.

n. that under Regulations 37 and 50 of the Competition Commission of India (General) Regulations 2009, the petitioner is entitled to inspection of records but which was being denied to the petitioner.

o. that the petitioner cannot present its case to the CCI/DG in a fair and reasonable manner in the absence of documents/evidence.

p. that once the DG furnishes its inspection report, CCI does not generally accept new evidence.

Accordingly, reliefs of (i) seeking a direction to the CCI/DG to allow the petitioner to inspect of documents/evidence that were being relied upon while making allegations against the petitioner; (ii) seeking a direction to the CCI/DG to grant opportunity to the petitioner to cross-examine the witnesses whose statements may have been recorded by the CCI/DG in the matter, were claimed in the petition.

2. The petition came up first before this Court on 9th December, 2015 when the following order was passed.

> "3. The petitioner in the petition itself has stated that the controversy in the present petition is factually as well as legally the same as W.P.(C) No.11072/2015 titled ***Forech India Ltd. Vs. Competition Commission of India & Anr.*** disposed of vide order dated 2nd December, 2015 and sought disposal of this petition in the same manner.

4. The counsel for the respondents appearing on advance notice does not controvert and states that the petition be disposed of in the same manner as order dated 2nd December, 2015 supra save that it be clarified that the petitioner shall be entitled to only those documents which are relevant to and pertain to the petitioner and that the petitioner will have an opportunity to cross examine only those witnesses whose oral statement pertains to the petitioner.

5. The counsel for the petitioner is agreeable.

6. At this stage, on request of the counsels, list on 11th December, 2015."

3. In ***Forech India Ltd*** supra, the following orders were passed on 30th November, 2015-

"1. The petition impugns the order dated 6th November, 2013 of the respondent No.1 Competition Commission of India (CCI) under Section 26(1) of the Competition Act, 2002 as well as denial by the respondent No.2 Director General (DG), CCI of information in the form of inspection of documents and evidence against the petitioner sought by the petitioner from the DG, CCI.

2. On enquiry from the senior counsel for the petitioner, as to how the challenge to the order dated 26(1) which is more than two years old i.e. of 6th November, 2013, is maintainable now, the senior counsel for the petitioner states that the petitioner for the first time learnt of the said order only on receipt of first notice dated 27th May, 2015 from DG, CCI. It is clarified that prior thereto, the petitioner was not investigated at all.

3. The order under Section 26(1) directs the DG, CCI to complete the investigation and submit a report within sixty days. It has as such been enquired from the counsel for the respondents appearing on advance notice, as to how the investigation is continuing till now. The senior counsel for the petitioner in this

regard also draws attention to Regulation 20(2) of the Competition Commission of India (General) Regulation, 2009 which provides for the CCI, while directing the DG, CCI, to investigate, to submit a report within such time as may be specified by the CCI which ordinarily shall not exceed sixty days from the date of receipt of the directions.

4. The counsel for the respondents on oral instructions states that the period was extended from time to time but is unable to state, till what time it is valid now. It is stated that extension was often on the request of the opposite parties.

5. *Prima facie*, it appears that when there are several parties against whom an order of investigation has been made, extension of time at the behest of one or several parties without hearing the others, may not be appropriate.

6. The information pursuant to which the order under Section 26(1) has been made in the present case is of cartelisation of as many as seventeen opposite parties to determine the tender price of conveyor belt. A question arises that when the allegation of cartelisation is against several persons, why investigation against one should be initiated after a long gap of one and a half years.

7. It is also the contention of the senior counsel for the petitioner that the petitioner has also been denied the material if any against it and the right to cross-examine the witnesses, if any whose statement has been recorded and which is found to be against the petitioner. The senior counsel for the petitioner has in this regard drawn attention to Regulation 41(5) of the Regulations supra and contended that the same provides for a right of cross-examination.

8. The counsel for the respondents states that there is no right of cross-examination and it is in the discretion of the DG, CCI, whether to give an opportunity to cross-examine the witnesses or not.

9. It has however been enquired from the counsel for the respondents, as to how a person being investigated against would know, whether to apply for cross-examination or not, unless the

evidences, if any, recorded against such person are made available / known to him.

10. The counsel for the respondents states that even if the right of cross-examination is not given by the DG, CCI, the same can be sought before the CCI, after the DG, CCI has submitted the report.

11. The senior counsel for the petitioner in this regard has drawn attention to Regulation 43 which bars a party from producing any additional evidence before the CCI and which was not produced before the DG, CCI.

12. At this stage, the counsel for the respondents states that he has received instructions that as of now, the time for submitting the report is till 30th December, 2015 and before the report is submitted, all materials available will be furnished to the petitioner and if the petitioner desires to cross-examine any witness recorded, would also be given an opportunity to cross-examine.

13. The senior counsel for the petitioner states that the material should be made available before the statement of the representatives of the petitioner is recorded and for which purpose they have been summoned tomorrow i.e. 1st December, 2015 and on 3rd December, 2015.

14. The counsel for the respondents seeks time to obtain instructions.

15. List tomorrow i.e. 1st December, 2015",

on 1st December, 2015 -

"1. The counsel for the respondents states that complete instructions have not been received as yet.

2. List on 2nd December, 2015.

3. In the meanwhile, the hearing listed before the Director General, Competition Commission of India (CCI) for today be deferred to 3rd December, 2015."

and on 2nd December, 2015-

"1. This order is in continuation of the previous orders dated 30th November, 2015 and 1st December, 2015.

2. The counsel for the respondents states that without prejudice to the rights and contentions of the respondents and without constituting a precedent, the respondents are ready to furnish all the documents of investigation available with the respondents, save those with respect to which any party has claimed confidentiality, to the petitioner on the date when the statement of the official of the petitioner who has been summoned to appear is recorded and after confronting the said official with some of the documents with which it is deemed expedient to confront him.

3. It is further stated that the respondents will similarly give an opportunity to the petitioner to cross examine any witness whose oral statement pertaining to the petitioner has been recorded. It is yet further stated that the petitioner shall be given an opportunity to make a further statement after copies of the documents have been given to the petitioner and after the official of the petitioner has been confronted with some of the documents.

4. The senior counsel for the petitioner has expressed apprehension that the respondents, in the guise of confidentiality, may deny all documents to the petitioner.

5. The counsel for the respondents states that the orders passed on the application of any other person claiming confidentiality with respect to any document / material shall also be supplied to the petitioner.

> 6. In this view of the matter, the petition is disposed of keeping all contentions of both the parties open and giving liberty to the parties to apply if any difficulty arise."

4. When this petition was listed next on 11th December, 2015, the following order was passed:

> "1. This order is in continuation of the previous order dated 9th December, 2015.
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> 2. The counsel for the respondents states that the respondents are willing to provide copies of the documents to be used against the petitioner to the petitioner and to allow the petitioner the right to cross examine the witnesses whose evidence is intended to be used against the petitioner but object to the additional relief claimed in the petition of allowing the summoned officials of the petitioner to be accompanied by advocates. It is contended that the advocates would be permitted to cross examine the witnesses whose evidence is intended to be used against the petitioner but would not be allowed to accompany the officials of the petitioner whose statement is to be recorded by the Director General (DG), Competition Commission of India (CCI).
>
> 2. Attention of the counsel for the respondents has been drawn to Section 30 of the Advocates Act, 1961 which confers a right of practice In the advocates before authorities competent to take evidence and DG, CCI under the provisions of the Competition Act, 2002 is empowered to take evidence.
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> 3. The counsel for the respondents seeks time to consider.
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> 4. List on 14th December, 2015.
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> 5. The date given of 14th December, 2015 for the summoned persons of the petitioner to appear before the DG, CCI be deferred."

5. Thereafter on 14th December, 2015, the following order was passed.

"1. This order is in continuation of the order dated 11th December, 2015.

2. Though the counsel for the respondents initially stated that the insistence if any for being accompanied by the Advocate should be of the officials of the petitioner summoned by the respondents and cannot be of the petitioner but upon the counsel for the petitioner stating that he would implead the said officials also as petitioners, the counsel for the respondents has not pressed the said objection.

3. Arguments on the right of the said officials to be accompanied by advocates have been heard.

4. Order reserved.

5. Since the question is of some significance and since the respondents have not filed any counter affidavit, it is deemed appropriate that an opportunity to file the written submissions be given to the respondents.

6. Written submissions be filed by first week of January, 2016 with advance copy to the counsel for the petitioner. The petitioner may also file its written submission within the said time with advance copy to the respondents.

7. Appearance by the officials of the petitioner before the DG, CCI is deferred till the pronouncement of the judgment.

8. At this stage, the counsel for the respondents states that the respondents at this stage are not insisting upon the personal appearance of the said officials; the respondents will give a questionnaire to be answered by the said officials and to which replies may be submitted by the said officials.

9. The senior counsel for petitioner, under instructions, is agreeable thereto."

6. The counsel for the petitioner in his written submissions has addressed the entire controversy but which, as recorded in the orders reproduced above,

stands conclusively resolved. With respect to the aspect of right of the officials of the petitioner to be accompanied by advocates at the time of recording of their statement before the DG, reliance is placed on the ***Google Inc. vs. Competition Commission of India*** MANU/DE/1271/2015 where a Division Bench of this Court held that the investigation by DG tantamounts to commencement of trial/inquiry on the basis of an *ex party prima facie* opinion and it is contended that the Competition Appellate Tribunal also in its order dated 11th December, 2015 in Appeal No.105/2012 titled ***Lafarge India Limited Vs. Competition Commission of India*** and other connected appeals has held that the procedure required to be followed by the DG as a prelude to the passing of an order under Section 27 of the Act is akin to the provisions to be followed by a Civil Court in deciding a civil suit except that the DG is not bound by the technicalities of the procedure contained in the Code of Civil Procedure.

7. The respondents CCI/DG in their written submissions handed over on 28th January, 2016 have contended –

a. The Competition Act belongs to the family of legislation which deals with economic offences such as Foreign Exchange

Regulation Act, 1973 (FERA), Customs Act 1962 and Foreign Exchange Management Act, 1999 (FEMA).

b. Section 40 of the FERA gives power to a gazetted officer to summon persons to give evidence and produce documents and the said proceedings are deemed to be judicial proceedings under Section 193 and Section 228 of the Indian Penal Code, 1860; under the Customs Act also a gazetted officer is empowered to summon persons and to take evidence under the Act and to ask persons for production of documents.

c. While interpreting the provisions of the aforesaid laws, the Courts have consistently held that a person who is called to give his / her statement by way of evidence cannot insist as a matter of right that he be accompanied by a lawyer; reliance in this regard is placed on ***Poolpandi Vs. Supdt., Central Excise*** (1992) 3 SCC 259 and ***Satyanarayan Nandlal Nuwal Vs. Chief Enforcement Officer*** 1998 (1) Mh L.J. 548 and ***Paradip Port Trust Vs. Workmen*** (1977) 2 SC 339.

d. The rationale for not permitting an advocate at this stage is that the person who is called to give in his statement is not an accused and the proceeding is merely an ongoing investigation process.

e. At the stage of investigation, when the person being questioned is not an accused, the question to self-incrimination would not arise; reliance in this regard is placed on ***Percy Rustomji Basta Vs. State of Maharashtra*** (1971) 1 SCC 847; ***Surjeet Singh Chabra Vs. Union of India*** (1997) 1 SCC 508; and ***K.T.M.S. Mohd. Vs. Union of India*** (1992) 3 SCC 178.

f. The legislature can carve out a different procedure and the principles of natural justice can be moulded while carving out such procedures; reliance is placed on ***Swadeshi Cotton Mills Vs. Union of India*** (1981) 1 SCC 664; ***Union of India Vs. W.N. Chadha*** 1993 Supp (4) SCC 260; ***Union of India Vs. Tulsiram Patel*** (1985) 3 SCC 398 and ***Sahara India (Firm) Vs. CIT*** (2008) 14 SCC 151.

g. That principles of natural justice can be sub-served to larger public interest; reliance is placed on ***Satyanarayan Nandlal Nuwal Vs. Chief Enforcement Officer*** supra.

h. Larger public interest calls for expeditious investigation in order to investigate economic offences which have serious implications and sufficient opportunity is there to ensure that there is compliance of principles of natural justice.

i. That CCI/DG is not barring advocates from practicing before it but a person being investigated has no right to be represented by an advocate during investigation when there is only a fact finding.

8. I have considered the rival contentions on the aspect of officials of the petitioner if summoned by DG to be accompanied by advocates.

9. I have, speaking for the Division Bench of this Court, in ***Google Inc.*** supra, with respect to the proceedings before the DG held as under-

> "18. We, for the following reasons conclude that order of the CCI/direction to the DG, CCI in exercise of power under Section 26(1) of the Act, to cause investigation, is capable of review/recall:
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> …………..
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> (C) The DG, during the course of such investigation, by virtue of Section 41(2) read with Section 36(2) of the Act has the same powers as are vested in a Civil Court under the Code

of Civil Procedure, 1908, while trying a suit in respect of, (i) summoning and enforcing the attendance of any person and examining him on oath, (ii) requiring the discovery and production of documents, (iii) receiving evidence on affidavit, (iv) issuing commissions for the examination of witnesses and documents, and (v) requisitioning public records or documents from any public office. The DG is further empowered by Section 41(3) read with Sections 240 and 240A of the Companies Act, 1956 to keep in its custody any books and papers of the person/enterprise investigated against/into for a period of six months and to examine any person on oath relating to the affairs of the person/enterprise being investigated against/into and all officers, employees and agents of such person/enterprise are also obliged to preserve all books and papers which are in their custody and power.

(D) Failure to comply, without reasonable cause, with any direction of the DG, under Section 43 of the Act has been made punishable with fine extending to rupees one lakh for each day of failure, subject to a maximum of rupees one crore.

(E) It would thus be seen that the powers of the DG during such investigation are far more sweeping and wider than the power of investigation conferred on the Police under the

Code of Criminal Procedure. While the Police has no power to record evidence on oath, DG has been vested with such a power. Our experience of dealing with the matters under the Competition Act has shown that not only statement on oath of witnesses summoned during the course of investigation is being recorded but the said witnesses are being also permitted to be cross-examined including by the informant/claimant and which evidence as part of the report of the DG forms the basis of further proceedings before the CCI. Thus while in investigation by Police under the Cr.P.C., the rule of *audi alteram partem* does not apply, there is no such embargo on the DG, CCI.

(F) Thus, investigation by DG, CCI tantamount to commencement of trial/inquiry on the basis of an ex parte prima facie opinion. Though the Supreme Court in Para 116 of ***SAIL*** (supra) [(2010) 10 SCC 744] has held that inquiry by CCI commences after the DG, CCI has submitted report of investigation but, in the facts of that case, had no occasion to consider that the DG, CCI in the course of investigation has powers far wider than of the Police of investigation. Para 29 of the judgment also notices that the counsels had addressed arguments on issues not strictly arising for adjudication in the facts of that case; however since it was felt that the said questions were bound to arise in future, the Supreme Court proceeded to deal with the said contentions also.

(G) The investigation by the DG ordered by the CCI thus stands on a different pedestal from a show cause notice, the scope of judicial review whereof, though lies, is very limited and from investigation/inquiry pursuant to an FIR by the Police which in some cases has been held to be not causing any prejudice and thus furnishing no cause of action for a challenge thereto.

(H) Before registration of an FIR the concerned Police Officer is not to embark upon an inquiry and is statutorily obliged (under Section 154(1) of the Cr.P.C.) to register a case and then, if has reason to suspect (within the meaning of Section 157(1) Cr.P.C.) to proceed with the investigation against such person. Per contra, as noticed above, investigation by the DG under the Competition Act commences not merely on the receipt of reference/information but only after CCI has formed a prima facie opinion of violation of the provisions of the Act having been committed.

(M) Just like an investigation by the Police has been held in ***Bhajan Lal*** (supra) [1992 Supp (1) SCC 335] to be affecting the rights of the person being investigated against and not immune from interference, similarly an investigation by the DG, CCI, if falling in any of the aforesaid categories, cannot be permitted and it is no answer that no prejudice would be caused to the person/enterprise being investigated into/against or that such person/enterprise, in the event of the report of investigation being against him/it, will have an opportunity to defend.

(N) The Supreme Court, in ***Rohtas Industries*** (supra) 1969 (1) SCC 325 and the Calcutta High Court in ***New Central Jute Mills Co. Ltd.*** (supra) [AIR 1966 Calcutta 151], cited by the counsel for the respondent No. 2/complainant, also has held that an investigation against a public company tends to shake its credit and adversely affects its competitive position in the business world even though in the end it may be completely exonerated and given a character certificate and that the very appointment of Inspector (in that case under Section 237(b) of the Companies Act to investigate the Company's affairs) is likely to receive much press publicity as a result of which the reputation and prospects of the Company may be adversely affected.

(O) When the effect of, an order of investigation under Section 26(1) of the Competition Act can be so drastic, in our view, availability of an opportunity during the course of proceedings before the CCI after the report of the DG, to defend itself cannot always be a ground to deny the remedy under Article 226 of the Constitution of India against the order of investigation. Though we do not intend to delve deep into it but are reminded of the principle that in cases of violation of fundamental rights, the argument of the same causing no prejudice is not available (see A.R. Antulay Vs. R.S. Nayak (MANU/SC/0002/1988 : 1988) 2 SCC 602)."

10. A Division Bench of this Court of which the undersigned was a member, in ***Punjab National Bank vs. Kingfisher Airlines Limited*** MANU/DE/4118/2015 was concerned with the question whether a person who is proposed to be a classified as a willful defaulter by the banks or financial institutions and who in accordance with the Reserve Bank of India's Circular has been conferred with an opportunity of being heard by the Grievance Redressal Committee of bank/financial institutions to oppose such a proposal has a right to be represented by an advocate in the said hearing. It was noticed that Section 30 of the Advocates Act 1961 as under-

> "30. Right of advocates to practise-Subject to provisions of this Act, every advocate whose name is entered in the [State roll] shall be entitled as of right to practise throughout the territories to which this Act extends,-
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> (i) in all courts including the Supreme Court;
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> (ii) before any tribunal or person legally authorised to take evidence; and

(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise."

which though earlier had not been notified and was thus not in operation, had been notified on 19th June, 2011.

11. It was *inter alia* held –

"17. Having given our thoughtful consideration to the matter, we, with respect are unable to concur with the view taken by the High Courts of Calcutta and Bombay and for the reasons hereafter appearing hold that a proposed wilful defaulter, in the hearing before the GRC, would have a right of representation though an advocate.

…………

(Q) That takes us to Section 30 of the Advocates Act supra conferring in the advocates a right to practice. Chief Justice of India Justice T.S. Thakur speaking for the High Court of ***Karnataka in M/s. Kothari Industrial Corporation Limited v. The Coffee Board*** MANU/KA/0414/1999 held that the right of an advocate to practice before any Court or Tribunal, contained in Section 30 of the Advocates Act, necessarily means that a litigant before any such Court, Tribunal, Authority or person will have a right to engage and avail the services of an advocate.

(R) Supreme Court in ***N.K. Bajpai*** supra [(2012) 4 SCC 653] after noticing Section 30 of the Advocates Act held that the right to practice is not only a statutory right but would also be a fundamental right under Article 19(1)(g) of the Constitution.

(S) Supreme Court in ***Dr. D.C. Saxena, Contemnor v. Hon'ble the Chief Justice of India*** MANU/SC/0627/1996 : (1996) 5 SCC 216 held that advocacy touches and asserts the primary value of freedom of expression so dear in a democracy. It was further held that freedom of expression produces the benefit of the truth to emerge and assists stability by tempered articulation of grievances and plays its part in securing the protection of fundamental human rights.

(X) Though the counsel for the respondents, from Clause 3(ii) of the Master Circular requiring the decision taken on classification as a wilful defaulter to be well documented and supported by requisite evidence contended that the GRC is authorized to take evidence but we find the words 'legally authorized to take evidence' meaning, authorized to compel presence of any person as a witness and which we do not find the GRC to be authorized to. It thus cannot be said that the GRC is legally authorized to take evidence.

(NN) A Division Bench of the High Court of Punjab and Haryana in ***Paramjit Kumar Saroya v. Union of India*** MANU/PH/0765/2014, in the context of the provision in the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 debarring representation through an advocate before the Tribunals constituted under the said Act, held that after the coming in to force of Section 30 of the Advocates Act, there cannot be an absolute bar to the assistance by legal practitioner to before a Tribunal."

12. Section 30 of the Advocates Act confers on an advocate a right to practice *inter alia* before any person legally authorized to take evidence. The DG, by the Competition Act, has been legally authorized to take evidence. Once that is so, in the light of dicta aforesaid of the Division Bench in ***Kingfisher Airlines Limited*** supra, has but to be held that an advocate has a

right to practice before DG and which right to practice would include accompanying a person who has been summoned before the DG for investigation.

13. As far as the judgments cited by the counsel for the respondent are concerned,

i. ***Poolpandi*** supra is of an era before Section 30 of the Advocates Act had come into force and hence would not be applicable hereto. Moreover, what was for consideration therein and adjudicated was, whether a person summoned during investigation under the Customs Act is entitled to protection of Article 20(3) of the Constitution of India and suffers mental torture by being called away from the comfort of his house and office and being questioned. Both were answered in the negative. It was held that since the person so summoned is not an accused, Article 20(3) has no application and that there is no constitutional right to claim comforts to which the person is used to, during investigation.

It is settled principle that a judgment is a precedent on what was for decision and decided therein and not for what may be logically deduced therefrom. Supreme Court, in the said judgment, was not concerned with the question, as in this petition i.e. whether a person has been called for giving statement before a person who is authorized to take evidence has a right to avail services of an advocate and whether an advocate under Section 30 has a right to practice before such person.

ii. the judgment of the Division Bench of the Bombay high Court in ***Satyanarayan Nandlal Nuwal*** supra merely follows ***Poolpandi*** supra

iii. ***Paradip Port Trust*** supra was concerned with the Industrial Dispute Act which contained a specific provision debarring the advocates from appearing before the Industrial Tribunal. However there is no such corresponding provision in the Competition Act debarring the advocates from practicing before the DG. Thus the same would be of no relevance.

iv. ***Percy Rustomji Basta, Surjeet Singh Chabra*** and ***K.T.M.S. Mohd.***supra are on the evidentiary value of the statements which were factually found to have been voluntarily made before the officers under the FERA and also did not consider the question aforesaid under consideration herein.

v). ***Swadeshi Cotton Mills*** supra is on the applicability of the principle of *audi alteram partem* in emergent situations and under the provisions of Industries (Development and Registration) Act, 1951 and the extent of judicial review against such decisions.

vi). Similarly, ***W.N. Chadha*** supra also is on the aspect of affording opportunity of being heard to an accused before issuing a letter rogatory at the stage of investigation.

vii). ***Tulsiram Patel*** supra again is with respect to the circumstances under which a departmental enquiry is dispensed with under the second proviso to Article 311(2) of Constitution of India and the exclusion of principles of natural justice thereunder.

viii). Similarly, ***Sahara India (Firm)*** supra is with respect to applicability of principles of natural justice, in that case, before passing an order requiring special audit under Section 142(2A) of the Income Tax Act, 1961.

I do not find any of the aforesaid judgments requiring me to take a different view from that emerging from a combined reading of ***Google Inc.*** and ***Kingfisher Airlines Limited*** surpa.

14. Lord Denning M.R. in ***In Re: Pergamon Press Ltd.*** (1971) 1 Ch. 388, after noting that the Inspectors of an investigation under Section 165(b) of the (U.K.) Companies Act, 1948 were not a Court of law, their proceedings not judicial or even quasi-judicial for they decided and determined nothing and only reported, observed that the same would however not minimise the significance of their task because the report which they prepared had wide repercussions owing to containing findings of facts accusing, condemning and leading to judicial proceedings and exposing those against whom they are directed to criminal prosecution or to civil action and may bring winding up of a company or may be used as basis to wind up the company and held that for the reason of the consequences flowing from their report, the Inspectors "must act fairly" owing to the duty—even though only administrative, which they performed. It was further observed that before the Inspectors condemned or criticised, they must give the person a fair opportunity of correcting or contradicting what is said against the person. In my opinion the aforesaid is true of the role of the DG also and as a part of the duty to act fairly, DG ought to allow the officials of the petitioner summoned, if so desire, to be accompanied by Advocates. The fear of the

DG of the Advocates is also not understandable. DG has full discretion to regulate its proceedings and ensure and control that the presence of the advocates does not delay its proceedings, as was the apprehension expressed. Sachs L.J., in his opinion in the aforesaid judgment observed that there must be "fairplay in action" though it may be "flexible" depending upon the situation so that the same does not result in "unsuitable procedures". It was also noted that many men have deep rooted fear of becoming involved as defendants in actions arising out of their depositions and that it is difficult to even persuade a citizen to give evidence in road accident cases and that the Inspectors must in public interest take into account the fears of potential witnesses. Buckley L.J. in his opinion in the said judgment held that fair treatment required the Inspectors to give to persons being investigated the material against him and must put to him their proposed conclusions therefrom to give him fair opportunity to explain.

15. The objection of the respondent CCI/DG, to the officials of the petitioners summoned by the DG being accompanied with an advocate is thus overruled and it is declared that the officials of the petitioner summoned by the respondent shall be entitled to be accompanied by the advocate(s).

16. Else, the petition is disposed of in terms of the orders dated 9th December, 2015 and 11th December 2015.

RAJIV SAHAI ENDLAW, J.

APRIL 22, 2016.

M..