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

+ **W.P.(C) 6881/2016 & CM Nos.28269/2016 & 34504/2016**

AUTOMOTIVE TYRE MANUFACTURES
ASSOCIATION OF INDIA

..... Petitioner

Through : Mr Rajiv Nayar, Senior Advocate
with Mr G.R. Bhatia, Mr Abdullah
Hussain, Ms Kanika Chaudhary
Nayar, Ms Nidhi Singh and Ms
Perna Parashar, Advocates.

versus

THE COMPETITION COMMISSION OF
INDIA & ANR.

..... Respondents

Through: Mr T. Srinivas Murthy and Mr Ankur
Singh, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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07.09.2017

1. The petitioner has filed the present petition, *inter alia*, challenging the order dated 27.07.2016 (hereafter 'the impugned order'), passed by the Competition Commission of India (hereafter 'the CCI') in Ref. Case No. 08 of 2013. By the impugned order, the CCI permitted respondent no.2 (Sh. S.P. Singh), Convenor of All India Tyre Dealers Federation (AITDF), to participate in the proceedings at the stage of enquiry under Section 26 of the Competition Act, 2002 (hereafter 'the Act').
2. It is the petitioner's case that the aforesaid enquiry was commenced under section 19(1)(b) of the Act, by a reference made by the Central

Government and, therefore, respondent no.2 could not be permitted to participate in the said proceedings as an informant.

3. The learned counsel appearing for CCI had submitted that although the enquiry commenced on the reference made by the Central Government, the same was occasioned by complaints made by respondent no.2 to Central Government, which were then forwarded to the CCI. In the circumstances, respondent no.2 could not be considered as an informant under Section 19(1) of the Act, since the case in question was on reference made by the Central Government and was also registered as such. He, however, submits that respondent no.2 could be considered as a party in terms of the Competition Commission of India (General) Regulations, 2009 (hereafter as 'Regulations'), and CCI was not precluded from entertaining an application of respondent no.2 for permitting him to participate in the proceedings.

4. Section 2(1)(i) of the aforesaid regulation reads as under:-

"2(1)(i) "Party" includes a consumer or an enterprise or a person defined in clauses (f), (h) and (l) of section 2 of the Act respectively, or an information provider, or a consumer association or a trade association or the Director-General defined in clause (g) of section 2 of the Act, or the Central Government or any State Government or any statutory authority, as the case may be, and shall include an enterprise against whom any inquiry or proceeding is instituted and shall also include any person permitted to join the proceedings or an intervener;"

5. It is apparent from the above that CCI does have the power to permit any person to join proceedings or as an intervener.

6. In terms of Regulation 25 of the Regulations, the CCI also has the

power to allow a person to present his opinion in the matter. Regulation 25 is set out below:-

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

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

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

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

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

- (a) on an application made by a party, Secretary shall furnish to the person or enterprise permitted to participate in the proceedings, copies of such documents previously filed in the matter by other parties as may be decided by the Commission within ten days of the order;
- (b) the person or enterprise permitted to participate in the proceedings shall furnish copies of all documents filed under sub-regulation (3) to all other parties to the proceedings within ten days of the order."

7. It is apparent from the plain reading of sub-regulation (1) of regulation 25 of the Regulations that three conditions need to be met before the CCI can permit a third person to participate in the inquiry at the stage of Section 26(8) of the Act. First, the CCI can entertain a person or an enterprise only on an application made in writing; second, the CCI would have to be satisfied that a person or enterprise has substantial interest in the outcome of the proceedings; and third, that CCI must also be satisfied that it is necessary in public interest to allow such person or enterprise to present his opinion on the matter.

8. In terms of sub regulation (2) to regulation 25 of the Regulations, an application referred to in sub-regulation (1) of Regulation 25 is required to be accompanied along with proof of payment of fees. In the present case, although, respondent no.2 has filed an application, the said application is not accompanied by proof of payment of fees.

9. The question whether respondent no.2 could be permitted under

regulation 25 of the Regulations, and whether the conditions as specified therein were satisfied has been rendered academic, since CCI has already completed the enquiry under Section 26(8) of the Act and by an order dated 01.12.2016, deferred orders. The inquiry under Section 26(8) of the Act having been completed, CCI has to either drop the proceedings or make an order under Section 27 of the Act.

10. In this view, it is not necessary to address the controversy whether respondent no.2 qualifies as a party under Regulation 25 of the Regulations.

11. The petition and all pending applications are, accordingly, disposed of.

VIBHU BAKHRU, J

SEPTEMBER 07, 2017
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