

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 06.02.2018

Delivered on 06.03.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.35255 of 2015
and
M.P.Nos.2 to 4 of 2015
and
W.M.P.No.1323 of 2018

M/s. MRF Limited
rep. by its Company Secretary,
Mr.Ravi Mannath
124, Greams Road,
Chennai-600 006.

... Petitioner

vs.

1. Ministry of Corporate Affairs (MCA)
Rep. By Secretary to Government,
Government of India,
5th Floor, A-Wing,
Shastri Bhawan,
New Delhi - 110 001.
2. Competition Commission of India (CCI)
Rep. by its Secretary,
No.18-20, The Hindustan Times House,
Kasturba Gandhi Marg,
New Delhi - 110 001.
3. Additional Director General (DG)
Competition Commission of India,
'B'-Wing, HUDCO Vishala,
14, Bhikaji Cama Place,
New Delhi - 110 066.
4. All India Tyre Dealers' Federation (AITDF)
865/32, Guru Nanak House,
S.P.Mukherjee Marg,
New Delhi - 110 006.

5. M/s. Apollo Tyres Ltd.,
6th floor, Cherupushpam Building,
Shanmugam Road,
Kochi - 682031
6. M/s. CEAT Ltd.,
No.463, Dr.Annie Besant Road,
Worli,
Mumbai - 400 030
7. M/s. J.K.Tyres & Industries Ltd.,
Jaykaygram, P.O Tyre Factory,
Kankroli,
Rajasthan - 313 342
8. M/s. Birla Tyres Ltd.,
Birla Building, 8th Floor,
No.9/1, R.N.Mukherjee Road,
Kolkata - 700 001.
9. Automotive Tyre Manufacturers' Association (ATMA),
PHD House (4th Floor),
Opp. Asian Games Village,
Siri Fort Institutional Area,
New Delhi - 110 016. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the order dated 24.06.2014 made in Reference case No.8/2013 on the file of the second respondent and quash the same.

For Petitioners: Mr.T.R.Rajagopalan,
Senior Counsel
for M/s. Mani Sundargopal

For Respondents : Dr.V.Venkatesan,
SCGSC for R1
Mr.G.Rajagopal,
Additional Solicitor General
assisted by
Mr.P.Mahaadevan for R2 & R3
No appearance for R4
Mr.A.L.Somayaji,
Senior Counsel
for M/s.Suhrith Parthasarathy
for R5
Mr.P.S.Raman,
Senior Counsel
for M/s. Abishek Jenasen for R6

No appearance for R7 & R8
Mr.AR.L.Sundaresan,
Senior counsel for
M/s. BFS Legal for R9

O R D E R

This writ petition is filed challenging the order dated 24.06.2014 passed by the 2nd respondent under Section 26(1) of the Competition Act, 2002, in Reference Case No.8/2013.

2. The case of the petitioner is as follows:

(i) The petitioner is a tyre manufacturing Company, engaged in the manufacture and sale of various types of automobile tyres. The 4th respondent herein had send a representation to the 1st respondent, who in turn, forwarded the same to erstwhile MRTP Commission, wherein the 4th respondent made an allegation that although prices of natural rubber had gone down, the tyre manufacturers have increased the prices and therefore, there was a cartel.

(ii) The MRTP Commission, by order dated 13.02.2008 found that the allegation of Restrictive Trade Practice were not substantiated by the 4th respondent. However, by order dated 22.06.2010, investigation was ordered against the petitioner and respondents 6 to 8 herein. After enquiry, the 1st respondent, by order dated 30.10.2012, held that there was no sufficient evidence to hold a violation by the Tyre Companies of the provisions of Section 3(3) (a) and 3(3)(b) read with Section 3 (1) of the Competition Act. The 4th respondent, once again, adopted the same modus operandi by sending a representation dated 28.1.2013 to the 1st respondent. The said representation was forwarded by the 1st respondent to the 2nd respondent on 16.12.2013. The said representation does not qualify to be a reference as per Section 19 (1)(b) of the Competition Commission Act, as it does not conform to Regulation 2(j) read with Regulation 10(2), 11(2) and 15 of the CCI (General) Regulation, 2001. The 2nd respondent, by order dated 07.01.2014 decided to ask the 1st and 4th respondents to address preliminary arguments. The 2nd respondent on 18.02.2014 noted the statement made by the representative of the 1st respondent that they have no further submission to make in this regard and sought exemption from further proceedings, which was duly allowed by the 2nd respondent. The 2nd respondent heard the convener of the 4th respondent and Automotive Tyre Manufacturers Association, the 9th respondent herein, and passed the impugned order, ordering the 3rd respondent to conduct investigation in the matter.

(iii) The 4th respondent is a Body with no clear cut objects but with mixed up and doubtful objectives of purporting to represent Chinese tyre manufacturers, importers of Chinese tyres and other segments whose interest do not conform to the interest

of the dealers of the tyre manufacturers in India. The 4th respondent is acting on vested interest against the domestic manufacturers. On 11.03.2015, a notice under Section 36(2) read with Section 41(2) of the Competition Act, 2002, was sent by the 3rd respondent to the petitioner enclosing a copy of the impugned order herein, asking the petitioner to furnish certain informations. The petitioner, by letter dated 24.03.2015 sought certain clarifications from the 3rd respondent. The petitioner also sought copy of the representation made by the 4th respondent before the 2nd respondent, which formed the basis and resulted in the passing of the impugned order. It was also pointed out that the period of investigation 2009-2014 is overlapping with the period covered by Order dated 30.10.2012 passed by the 2nd respondent i.e., 2005-2010. On 27.03.2015, a letter was sent by the 3rd respondent to the petitioner giving the requisite clarifications and seeking additional information. On 13.04.2015, the petitioner, once again sought for a copy of reference made by the first respondent and the representation made by the 4th respondent. On 17.04.2015, the petitioner sent a detailed reply to the 3rd respondent furnishing information and document. The 3rd respondent called upon the Chairman and Managing Director and other managerial persons to personally attend the office of the 3rd respondent on 09.07.2015. The petitioner applied for certified copies of the reference made by the 1st respondent and the representation by the 4th respondent which were duly furnished later. On 09.07.2015, the Chairman cum Managing Director along with other Executive personnel attended the office of the 3rd respondent and the statement was recorded. The petitioner was issued with a notice on 23.09.2015 by the 3rd respondent requesting the petitioner to submit the travel details, both official and personal, including the overseas travel if any of Koshy K.Varghese, Executive Vice President (Marketing) of MRF from 01.01.2010 to 31.03.2014. The petitioner produced the official travel details. It was also stated that the Executive Vice President does not maintain any details of his personal travels. The 3rd respondent sent his email on 27.10.2015 to submit the information (e-mail dump) as sought for in notice dated 01.10.2015. Issuing such blank direction for producing all the e-mails for the purpose of conducting an investigation has a serious adverse impact on the constitutionally guaranteed right to privacy of the individual whose e-mail dump is sought. Thus, being aggrieved by the order dated 24.06.2014, the petitioner is constrained to approach this Court and file this Writ Petition.

3. The grounds of challenge are as follows:

(i) The reference made under Section 19(1)(b) does not fulfill the mandatory statutory requirement of Regulations 10, 11 and 15. The mandatory and necessary details as required under the Regulation are not provided in the reference. The reference has not been verified by the competent person. The reference signed by the Director is an officer below the rank of Joint

Secretary which is contrary to Regulation 11(2). The 2nd respondent ought not to have passed the impugned order on the basis of the forwarding letter from the 1st respondent enclosing the representation of the 4th respondent. The Section failed to consider that the purported information under Section 19(1)(b) was not an information as required under the provisions and Regulations. It is simply a forwarding letter.

(ii) The 3rd respondent failed to furnish the alleged information and the representation despite repeated request made by the petitioner. This violates the principles of natural justice. The period from 2005-2006 to July 2011 has already been considered earlier and therefore, the present investigation is unwarranted in view of the earlier order passed by the 2nd respondent dated 30.10.2012. Not allowing the petitioner to take part in the proceedings before passing an order under Section 26(1) violates the principles of natural justice. The 2nd respondent cannot pick and choose in inviting persons to participate in the proceedings before passing the order under section 26(1). The impugned order cannot be regarded as a direction simpliciter or an administrative order. The order of the 3rd respondent dated 01.10.2015 is violative of provisions of the Constitution of India. The direction to produce the email dump is wholly disproportionate to the object sought to be achieved and invades the Constitutional rights of the petitioner.

4. The first respondent filed a counter affidavit wherein it is stated as follows:

A copy of the representation dated 28.11.2013 from All India Tyre Dealers Federation addressed to the Ministry of Corporate Affairs was forwarded to Competition Commission of India under Section 19(1)(b) of the Competition Act on 16.12.2013. The role of the first respondent is to the extend of forwarding a letter dated 16.12.2013 to the second respondent forwarding therewith a copy of the representation dated 28.11.2013 received from the fourth respondent for appropriate action. The said letter dated 16.12.2013 was signed by the then Director, MCA, after being duly approved by the then Joint Secretary. As per Regulation 11(2) of the CCI (General) Regulation 2009, a reference has to be signed and authenticated by an Officer not below the rank of Joint Secretary to Government of India. However, as per the prevalent practice, letters issued by the Central Government were issued under the signatures of Under Secretary/ Deputy Secretary/ Director, after approval of the competent authority, which in the present case is Joint Secretary.

5. The 2nd and 3rd respondents filed a common counter affidavit wherein it is stated as follows:

The present writ petition is a gross abuse of process as it is an attempt to derail the process of investigation. The Director General is required to assist the Commission to

conduct the enquiry into the contraventions of the Act. The information sought by the Director General is specific in nature and relates to general business of the petitioner, the disclosure of which is a statutory duty of the petitioner under the Act. The present case has been referred by the Ministry of Corporate Affairs under Section 19(1)(b) of the Act against the Domestic Tyre Manufacturers and their Association. The case was supported by the representation of All India Tyre Dealers Federation. The Federation alleged that the petitioner along with 4 others controlled over 90% of the tyre production in India and were engaged in abuse of dominant position through price parallelism. It was contended that the petitioner along with 4 other tyre manufacturers raise the price of tyre and tubes on the pretext of increase in raise of Natural Rubber and other inputs but subsequent reduction in the price of these raw materials was not followed by a corresponding decrease in the price of tyres. The 2nd respondent Commission found that by not passing the benefit of reduction in prices of major raw materials, prima face, indicated lack of competition and some sort of understanding between the players and therefore, directed investigation by the Director General. The order impugned is a detailed and speaking order. The information received from the 1st respondent is in accordance with the provisions of Section 9(1)(b). The findings/ observations made by the Tariff Commission are nothing to do with the issues raised under the present Act. Regarding the contentions raised about overlapping with the period covered by order dated 30.10.2012, the petitioner can raise these objections before the Director General. The 3rd respondent acted within the ambit and scope of Section 36(2). The production of documents would not negate the rights of the petitioner guaranteed under Article 20 (3) of the Constitution of India. The petitioner will be supplied with a copy of the Director General's report and other relied upon documents for filing his reply or objections to the Director General's report before the Commission. The petitioner can raise all these contentions before the Commission at the time of hearing.

6. The 5th respondent filed a counter affidavit wherein it is stated as follows:

The 5th respondent is a tyre manufacturing Company. The 5th respondent was also a party to the enquiry conducted by the 2nd respondent in RTPE No.28 of 2008 and was exonerated of all the charges of alleged cartelization inquired/ investigated under the Competition Act, 2002. The 'reference' made by Ministry of Corporate Affairs in terms of Section 19(1)(b) of the Act and the provisions of Competition Commission of India (General) Regulations, 2009, is bad in law. The 5th respondent is not filing a substantive Writ petition to avoid multiplicity of legal proceedings. A prima facie order passed by the Commission is non-est and without the authority of law in the absence of

any legal and valid 'reference' in accordance with Section 19 (1)(b) of the said Act and Regulation 2(j) read with Regulation 10 and 11 of the Competition Commission of India (General) Regulations, 2009. Thus, issuance of various notices and further action taken by the Director General are also bad in law. The letter of the Ministry of Corporation Affairs dated 16.12.2013 and the representation of the 4th respondent dated 28.11.2013 do not conform to Regulation 10(2), 11(2) & 15 of the said Regulations. The 1st respondent has merely forwarded the representation letter of 4th respondent for appropriate action which does not amount to a reference. The Commission failed to follow the stipulated process for initiating an enquiry for the purposes of the reference. The Commission, while passing the order under Section 26(1), has arbitrarily chosen the parties for investigation, even though they were not named in the representation dated 28.11.2013 by the 4th respondent before the Ministry of Corporate Affairs. The arbitrary and selective picking of the parties by the Commission vitiates the entire enquiry procedure of the Commission as the same is in violation of Article 14 of the Constitution of India. The letter of the Ministry of Corporation Affairs dated 16.12.2013 did not contain any allegation whatsoever against any of the tyre manufacturers. Even the representation of 4th respondent did not contain any specific allegation against any of the tyre manufacturers. In the absence of any specific allegations against the present respondents, the Commission ought not to have directed the Director General to commence investigation. No prima facie case has been made out against these respondents for ordering investigation. In order to prove the existence of the cartel, it must be proved that there is creation of barriers to new entrants, driving out of existing players from the market or foreclosure of market and causing hindrance to the competition in the market. The cost of natural rubber is not the only factor that affect the price of the tyres. The Commission itself in its decision in RTPE No.20/2008 observed that it is against the rational business behaviour to lose market share to a rival in a cartel set up and such trend in market share movement is possible only in case of competitive environment. Therefore, in the present case of alleged cartelisation there is clear evidence to the contrary. Therefore, the 'prima facie' order of the Commission is perverse. During the course of investigation, the Director General issued a notice on 01.10.2015 asking for production of the entire e-mail of the Vice Chairman and Managing Director of of the 5th respondent The same is in violation of the right to privacy guaranteed under Article 21 of the Constitution. The power of the Director general under the Act seeking for production of documents is limited that pertains to the 'trade' of the relevant party. Therefore, compelling a party to produce the entire e-mail dump is beyond the powers of the Director General and amounts to breach of privacy of the parties. The investigation by the

Director General was carried out in a manner violative to principles of natural justice, since the notice of information not made available to the 5th respondent, the information sought for by the Director General was beyond the mandate of prima facie order by not permitting a counsel or legal representative to be present during the deposition before the Director General and by not granting opportunity for oral hearing.

7. The 6th respondent filed a counter affidavit wherein it is stated as follows:

The 6th respondent is engaged in the manufacture and marketing of tyres, tubes and flaps. The impugned order of the 2nd respondent is illegal as the same has been passed in the absence of any legal or valid reference as required under Section 19(1)(b) of the Act read with regulation 2(j) & 10 & 11 of the said Regulations. The reference does not even satisfy one of the requirements mentioned in the General Regulations. Therefore, the prima facie order of the 2nd respondent is bad in law and consequently, the entire investigation undertaken by the 3rd respondent also has to be set aside. The 2nd respondent has chosen the opposite parties in arbitrary manner without any rhyme or reason, even though they were not named in the complaint made by the 4th respondent or in the so called reference made by the 1st respondent. The complaint lodged by the 4th respondent only bereft and contains only general allegations. The impugned order passed only relied at cost of natural rubber is an over simplification of the entire issue, since the natural rubber is only one of the major raw material that go into the production of tyre and there are other several raw materials including power crude oil etc. administrative expenses, overhead costs, wages etc. that decide the actual cost of tyre. The question of liability of a person who was in charge and was responsible for the company alleged to have contravened the provisions of the act arises only under Section 48 and that the said provision can be invoked only after it is found by the Commission that the Company has committed a contravention of the Act. In such circumstances, the act of the 2nd respondent in directing the 3rd respondent to investigate the role of the persons even before rendering a finding about the contravention of the provisions of the Act, is entirely without jurisdiction and illegal.

8. The 9th respondent filed a counter affidavit wherein it is stated as follows:

The 9th respondent is an Association registered under the Companies Act. This respondent is not involved in the conduct or management of the affairs or day-to-day operations of any of its members. The 9th respondent has never provided a platform for its members to enter into any illegal or unlawful decision, agreement, arrangement, understanding or action in concert which in any manner limits, controls or attempts to control the

production, distribution, sale or price of tyres in India. The same was also investigated by the 2nd respondent in Case No.RTPE 20/2008 and vide order dated 30.10.2012, the 2nd respondent arrived at a conclusion that there was no providing a platform was found. The 4th respondent has undertaken a vexatious and persistent litigation/proceedings as retaliation for closure of the earlier matter before the 2nd respondent by order dated 30.10.2012. The 1st respondent, during the course of hearing before the 2nd respondent had indicated that they have no further submissions to make with regard to the reference and also sought exemption from future proceedings before the 2nd respondent. It clearly indicates that the said reference was made on the basis of unsubstantiated evidence and without application of mind. The 9th respondent pursuant to a press statement issued by the 4th respondent filed an application on 30.01.2014 under Regulation 50 of the said Regulations for inspection of documents. The 2nd respondent granted permission to undertake the inspection of documents. The 9th respondent filed intervention application on 14.02.2014 before the 2nd respondent. The said request was allowed by the 2nd respondent. The 9th respondent and the 4th respondent were directed to appear before the 2nd respondent on 05.03.2014 and both the parties were directed to file their written submissions. The 4th respondent has been making bald allegation time and again without any investigation whatsoever to prove the allegation and they are trying to misuse the precious time and resource of the courts and other forums by making such bald claims.

9. The petitioner filed a rejoinder affidavit to the counter affidavit filed by the first respondent, wherein it is stated as follows:

The first respondent has clearly and specifically admitted of having merely forwarded the representation dated 28.11.2013 through their letter dated 16.12.2013 to the Competition Commission of India. The first respondent has also admitted that the provision of Regulations 10, 11, & 15 of the said Regulations and Section 64 of the said Act have not been complied with. The 4th respondent had previously adopted the same modus operandi before the erstwhile MRTP Commission and the petitioner has to face the rigors of the enquiry and finally, the Competition Commission of India by order dated 30.10.2012 held that there was no sufficient evidence to hold that the Tyre Companies had contravened the provisions of the Act. The first respondent has not disputed that their own representation dated on 18.02.2014 that there is no further submission to make and sought exemption from future proceedings before the CCI. It is not disputed by the first respondent that the Tariff Commission has arrived at the findings that the 4th respondent does not have representative character. It is not disputed that the 4th respondent purported to represent chinese tyre manufacturers. Assuming that it is the usual practise of the Central Government

to issue letters signed by the Director after approval of the competitive authority, the same cannot be treated as the proper procedure for the purpose of issuing a reference under Section 19(1)(b), especially, when Regulation 10,11,12 prescribe certain specific procedures to be followed. The act of the Central Government in merely acting as forwarding agency and distancing itself from the enquiry by the Competition Commission of India is contrary to the provisions of the competition Act. The mere approval on a file note by the Joint Secretary cannot be a justification to dispense with the statutory requirement of the designated authority signing the reference. The representation dated 28.11.2013 contains two subjects out of which the first subject is requesting the Government to request the Competition Commission of India to suo motu take action against the tyre manufacturers. This subject can never be treated as a complaint under the provision of Competition Act. The Government of India has no jurisdiction to give any direction to the Competition Commission. The 2nd subject is only requesting the Government's intervention for immediate tyre price roll back. The said request is unrelated to the powers conferred under the Competition Commission of India. Therefore, there is no reference as contemplated under section 19(1)(b) of the Act.

10. The 9th respondent filed a rejoinder affidavit reiterating the contentions raised by the petitioner once again in support of the case of the petitioner, wherein it is stated as follows:

The first respondent in gross violation of the requirements enlisting under Regulation 10, did not provide details of the alleged contraventions of the Act or list of all documents, affidavits and evidence in support of outcome of the alleged contravention during the hearing before the Commission on 18.02.2014 and on the other hand, sought exemption from the future proceedings before the 2nd respondent, thereby recusing from the proceedings. The first respondent did not conduct its own detailed examination of the representation dated 28.11.2013. There is no evidence or proof that an examination / analysis into the facts of the representation dated 28.11.2013 was conducted by the Ministry of Corporation Affairs before they desire to forward the same to the CCI.

11. The 5th respondent filed a rejoinder affidavit reiterating the very same contentions as raised by the petitioner and the 9th respondent.

12. Mr.T.R.Rajagopalan, learned senior counsel appearing for the petitioner made his submissions extensively. The learned counsel for the petitioner also filed written argument. The sum and substance of the submissions made on behalf of the petitioner are as follows:

i) The Competition Commission of India can exercise only those powers conferred under the relevant statute, namely, the Competition Act, 2002. Such powers are regulatory, quasi-judicial and also to make subordinate legislation. The impugned order of the said commission is the one passed under Section 26 (1) of the said Act which is under its regulatory powers. The said order is not an appealable one under Section 53A(1)(a) of the said Act. Therefore, the present writ petition is maintainable. Neither the information received from the 4th respondent, nor the reference made by the 1st respondent is in conformity with the mandatory requirements of the relevant provisions under the above said Act and also the regulations made thereunder. The reference is invalid as per Regulation 15 (3), as it was not made in accordance with Regulations 10, 11 & 15 of the said Regulations.

ii) The letter dated 28.11.2013 sent by the 4th respondent only makes general and vague allegations and thus fails to allege contravention of any provisions under the Competition Act. The CCI has not sent notice to global tyre manufacturers and on the other hand, the investigation was against selected few Indian manufacturers only. The said letter dated 28.11.2013 though sought suo motu action in respect of tyres, the same was not accepted by CCI, as there is no suo motu action made by the CCI. The first respondent failed to consider that in the order dated 30.10.2012 passed by CCI, tyre Companies were exonerated of charge of Cartel, as complained by the very same 4th respondent. The 1st respondent before forwarding the representation to CCI, ought to have considered the tariff Commission Report made in December 2011, stating that comparison of selling price per Kg of tyre viz-a-vis raw material cost does not reflect indiscriminate increase in the prices of tyres. The 1st respondent also failed to take note of the fact that an order was passed by the Competition Appellate Tribunal dated 23.04.2013 dismissing the Appeal filed by the 4th respondent as not maintainable. None of the above vital factors were taken into consideration by the 1st respondent before forwarding the representation of the 4th respondent dated 28.11.2013.

iii) The order of reference does not state any reasons. Therefore, the same passed mechanically with non-application of mind and thus it cannot be the basis for action by CCI namely, taking cognizance of the same under Section 26(1) of the Act. In this aspect, the decision of the Supreme Court in 1990(4) SCC 594 is relied on.

iv) Before making a reference under Section 19(1)(b), the Government must form a prima facie view that there is a case for such reference. Regulations 10, 11 & 15 imposed that elaborate details have to be furnished in order to make a valid complaint or a reference.

v) The withdrawal of the 1st respondent from the proceedings before the CCI also by clearly stating that they have no further submission to make, would show that the 1st respondent has no

interest in the matter except to act as a forwarding agency of the complaint made by the 4th respondent. The purpose of the Regulation prescribing the Joint Secretary to sign the reference is to show that the whole process is not being done in a casual or mechanical manner. Therefore if the reference made by the 1st respondent fails, the subsequent proceedings automatically fail. The note file filed by the 1st respondent as annexed to the counter does not disclose any 'reference' or what is the new material considered for reference and therefore, there is no scope for placing any new material which were not considered at the time of such reference. At this juncture, the decision of the Supreme Court in AIR 1978 SC 851 is relied on to contend that a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise.

vi) The CCI is vested with sweeping powers including the levy of huge penalty. When an allegation of improper conduct is made, it should contain relevant material facts and particulars. If they are not disclosed, the proceedings of CCI are to be held abinitio void.

vii) In 2007, Section 19(1) was amended with an intention to ensure that sweeping powers of CCI do not get set into motion for frivolous reasons. Therefore, 2009 Regulations 10 to 15 are to be followed strictly, as they are statutory Regulations made under Section 64 of the Competition Act.

viii) The very same issue was earlier rejected by the commission in an earlier proceedings. Whiles, in the present case, the forwarding letter of the 1st respondent does not disclose any additional or new information or particulars which were not available at the time of earlier proceedings. In the absence of such facts, the 1st respondent could not have validly taken recourse to Section 19(1)(b) for making a reference. The CCI has not taken into consideration of certain conclusions made by the Tariff Commission which are favouring the tyre manufacturers. Likewise, the CCI fails to consider various findings made by the very Commission itself in its own order dated 30.11.2012, which was passed more or less on similar circumstances. The present order for investigation relates to a period which was already investigated as per its earlier proceedings in RTPE 20/2008. The order of the CCI is discriminatory as it has not given any clear reason for proceeding only against Indian manufacturers of tyres by exempting the foreign players.

ix) There is no delay on the part of the petitioner in filing the present writ petition before this Court. The petitioner had received the representation on 11.03.2015 which was replied to by the petitioner on 13.03.2015 wherein a copy of the order passed under Section 26(1) was asked for for DG CCI furnished an order under Section (1) vide letter dated 17.03.2015. The petitioner by letter dated 24.03.2015, asked for

a copy of reference made by the 1st respondent and representation of AITDF dated 28.11.2015 which was not furnished. The petitioner, on 13.04.2015, once again made the said request but no copy of the reference or representation was furnished by DG CCI. The petitioner replied by letter dated 14.08.2015 and mentioned that they had to obtain the reference after inspecting the case file on 02.07.2015 and submitted that the reference was not a valid reference under Section 19(1)(b) of the Competition Act. In spite of the said objection, the Competition Commission proceeded to investigate the matter including asking for further particulars. Hence, the petitioner was constrained to approach this Hon'ble Court on 30.10.2015. The balance of convenience for allowing the writ petition is in favour of the petitioner.

13. Mr.A.L.Somaiyaji, learned senior counsel appeared for the 5th respondent and made his elaborate submissions. The learned counsel for the 5th respondent also filed a written submissions. The sum and substance of the submissions made on behalf of the 5th respondent are as follows:

i) This respondent supports the case of the writ petitioner. The writ petition is maintainable and there is no unnecessary delay in initiating the instant proceedings before this Court. In the purported reference dated not a single tyre manufacturer was named as also in the letter dated 28.03.2013 of the 4th respondent. Only in the impugned order certain specific tyre manufacturers were arrayed as opposite parties for the first time. Thus, the specific tyre manufacturers including this respondent became aware of the impugned order only on 11.03.2015 pursuant to a notice issued by the 3rd respondent enclosing a copy of the impugned order.

ii) The respondents 1 to 3 relied on SAIL case, 2010 (10) SCC 744 and Chettinad case (W.P.7233 of 2016) dated 29.03.2016 to contend that the Writ is not maintainable. The above contention is liable to be rejected for the following reasons.

(a) Neither the SAIL nor Chettinad have held that the Writ petition is not maintainable against every order made under Section 26(1) of the act. In fact the observation is made in Chettinad that there can be no general embargo.

(b) The decision in Chettinad is inapplicable to the present case as the objection raised therein were on the merits of the order under challenge and there was no allegation made therein about the violation of principles of natural justice.

(c) Therefore, when such ground of violation of principles of natural justice is raised, this Court can exercise its jurisdiction under Section 226 of the Constitution of India against the impugned order.

(d) The decision in the SAIL and Chettinad were considered by the Division Bench of Bombay High Court in VIL vs. CCI case wherein it was held that there is no total bar in entertaining the writ petition when a case is made out of great injustice, perversity, illegality, hardship and prejudice to the legal

rights of the affected parties.

(e) Assuming without admitting that the impugned order is an administrative order even then judicial review of such administrative order is permissible as held in 1969 (2) SCC 262 (AK Kraipak v. UOI).

(f) It is an admitted fact that selective parties namely 4th respondent and 9th respondent herein alone were heard by the CCI before passing the impugned order and not a single tyre manufacturer was heard. Therefore, it is evident that the impugned order is violative of principles of natural justice insofar as the affected parties are concerned.

iii) The 2nd respondent does not have jurisdiction to order investigation based on the complaint or reference as none of the ingredients either under Section 3 or under Section 4 of the said Act have been made out therein. Both the letter of the 4th respondent and the so called reference made by the first respondent do not confirm to Regulation 10(2), 11(2) and 15 of the said Regulations. Regulation 15 provides for procedure for scrutiny for information/reference and provides for rejection of the reference in case the defects are not cured within 30 days. Having not done so in the present case, the so called reference made by the 1st respondent ought to have been treated as invalid as provided under Regulation 15(3).

iv) The General Regulations are mandatory in nature and cannot be given a go-by merely because they are in the nature of delegated legislation. In this connection 1987(4) SCC 611 is relied on.

v) It is evident from the purported reference dated 16.12.2013 and the impugned order that the present proceedings had arisen out of reference and not of any suo motu action initiated by the CCI. Further the CCI received a copy of the letter dated 28.11.2013 of the 4th respondent and refrained from initiating any action further by exercising its suo motu powers. Therefore, the proceedings were initiated based on the purported reference made under Section 19(1)(b). Therefore it cannot be contended now for the first time before this Court at the time of oral arguments that an invalid reference does not affect the jurisdiction of the CCI merely because of the existence of suo-motu powers under Section 19(1) of the Act. In this connection, the decision of the Supreme Court in 2017(6) SCC 801 (T.P.Senkumar v. Union of India and Ors.) is relied on. In this case, the jurisdiction of the CCI is challenged in the first place, since the complaint made as such by the 4th respondent, which was merely forwarded by the 1st respondent to CCI, does not disclose any specific allegations which would fall under the purview of either Section 3 or Section 4. Therefore, the lack of jurisdiction goes to the root of the case and vitiates the entire proceedings.

vi) The impugned order is vitiated as being arbitrary and violative of principles of natural justice, as none of the affected tyre manufacturers were put on notice while the 4th

respondent and 9th respondents alone were heard. The discretion vesting on the CCI to issue notice to parties cannot be exercised in an arbitrary manner by choosing some parties and leaving the other parties. The CCI is a quasi judicial authority and that any discretion exercised by the CCI has to be fair and reasonable without an element of arbitrariness.

vii) The enquiry conducted by the Director General is in violation of fundamental right to privacy. His power to call for information is not unfettered. In any event when there is no prima facie case made out in the impugned order it has to go and thus consequential investigation conducted by the Director general also is to be set aside.

14. Mr.AR.L.Sundaresan, learned senior counsel appearing for the 9th respondent made his submission supporting the case of the petitioner as well as the sailing respondents. He again made extensive submissions touching upon all the points already raised and submitted on behalf of the petitioner and other supporting respondents. In order to avoid multiplicity, his submissions made on similar lines are not reiterated once again herein.

15. Per contra, the learned Additional Solicitor General Mr.G.Rajagopal, appeared for the 2nd & 3rd respondents and opposed the writ petition with elaborate submissions. A written submission is also filed by the learned counsel for the 2nd and 3rd respondents. The sum and substance of the submissions made on behalf of the 2nd and 3rd respondents are as follows:

i) The petitioner is estopped from questioning the impugned order. There were several correspondence between the petitioner and the CCI after passing the impugned order and when the investigation by the Director general was at an advanced stage, the present Writ petition is moved after one and half years . On 30.10.2015, the leaned single Judge of this Court, while entertaining the writ petition passed an order directing the CCI not to take the final decision until further orders. Hence, the Director general concluded the investigation, submitted the same to the Commission and the Commission, in turn circulated the investigation report to all the parties and they also participated in the enquiry before the Commission including the petitioner. The written arguments were filed and orders were reserved by the Commission. However, the Commission has not passed the final order in view of the interim order granted by this Court.

ii) The various issues raised in the present writ petition are covered in SAIL case reported in 2010 (1) SCC 744. Merely issuing a direction for investigation does not involve any civil consequences. Therefore, there is no cause of action for filing the writ petition. Hence, the writ petition is highly premature. Even final order passed by the Commission is subject to Appeal before the Appellate Tribunal. Hence, the petitioner

is having sufficient remedy and procedural safeguards if final order once passed goes against them. No appeal has been provided against the order made under Section 26(1), since no rights of the parties are affected if an investigation is ordered. In 2015(6) SCC 773 (Union of India and Others Vs. Major General Sri Kant Sharma and Another) it is held that when there is an alternative remedy of appeal is provided, the High Court has no jurisdiction to entertain the writ petition.

iii) The reference made by the Central Government under Section 19(1)(b) is valid. A copy of the minutes of the Ministry of Corporate Affairs enclosed with counter affidavit would clearly indicate that the signature of all officers including the Joint Secretary of the Department are affixed. A reading of the note would show that though the complainants have forwarded a representation to the Government for asking the Competition Commission to suo-motu take action against the domestic tyre manufacturer, the Ministry has consciously decided to make a reference under Section 19(1)(b) and therefore, there can be no doubt that the matter has been referred by the Central Government to the Competition Commission under section 19(1)(b). Even otherwise, if the Competition Commission is satisfied that there is no proper reference, it would have returned the same to the Government for compliance. On the other hand, the Commission was satisfied that there was proper reference and acted upon the same. Therefore, the requirement under Regulations have been complied with. Even otherwise, the Regulation is in the nature of subordinate legislation which cannot control the power of the Commission under the main statute. In this aspect, 2015(2) MLJ 5 para 56 is relied on.

iv) The jurisdiction of Competition Commission is wide as contemplated under Section 18 of the said Act. Therefore, the protection of the interest of the consumers is one of the duties of the commission and if any of the manufacturer/ company affects the consumers, it amounts to abusing the dominant position as referred to under Section 4(2)(a). Sub section 2 and 3 of Section 19 would show that the commission can issue any order that will protect the interests of the consumers encouraging competition etc. Even assuming without admitting that there is any error in making the reference, the representation of the aggrieved persons could be entertained and enquiry could be proceeded based on the Commission suo-motu powers. Therefore, the question of lack of jurisdiction does not arise. If a power is not traceable to Section 19(1)(b), it is traceable to Section 19(1) or under sub-section 3 to 7 of section 19. In this context, 1974 (4) SCC 396 is relied on. The reasons for issuing direction under Section 26(1) is referred to in the order itself. Therefore, Mohinder Singh Gill case reported in AIR 1978 SC 851 is not applicable. Therefore, while determining the jurisdiction of Commission mischief rule should be employed. In this context 2014(1) SCC 188 (Badshah v. Urmila Badshah Godse and Another) is relied on.

v) Whether there is contravention of Section 3 or Section 4 cannot be a subject matter for enquiry under Article 226 since it is a question of fact and law which the Commission alone has to necessarily decide the same after inquiry. It is too premature for the petitioner to contend on this issue at this stage. The decision made in Chettinad International Coal Terminal Pvt. Ltd. By the learned single Judge of this Court supports the case of these respondents.

vi) Merely because the Commission did not entertain similar complaints earlier, it does not mean that the Commission can never exercise the power on a different occasion.

vii) The scope of Section 26(1) has been elaborately considered by the Supreme Court in SAIL case. In view of the categorical findings rendered therein to the effect that an order under Section 26(1) does not attract any civil consequences, there is no compulsion to hear any of the parties on receipt of the reference from the central Government. A pre-conference was held under Regulation 17 in which the 9th respondent participated and only thereafter, a prima facie view was expressed by the CCI while directing investigation by the Director General.

16. Heard Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the petitioner, Dr.V.Venkatesan, learned Senior Central Government Standing Counsel appearing for the first respondent. Mr.G.Rajagopal, learned Additional Solicitor General assisted by Mr.P.Mahaadevan appearing for the second and third respondents, Mr.A.L.Somayaji, learned Senior Counsel appearing for the 5th respondent, Mr.P.S.Raman, learned Senior Counsel appearing for the 6th respondent and Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the 9th respondent.

17. The petitioner and the respondents, 5, 6, 7 and 8 are the tyre manufacturing Companies. The 9th respondent is an association having the tyre manufacturers as its members. The petitioner and the respondents 5 to 8 along with other tyre manufacturers are members of the 9th respondent Association. The 4th respondent is an All India Federation consisting of dealers in tyres. The 4th respondent herein has been periodically agitating an issue in respect of pricing of the tyre and tubes by the manufacturers by contending that 90% of the tyre production in India is controlled by certain tyre manufacturing Companies which are engaged in abusing their dominant position in fixing the price of tyre and tubes. In one such complaint dated 28.11.2013 addressed to the Ministry of Commerce and Industries and Ministry of Corporate Affairs, Government of India, the 4th respondent sought for Competition Commission of India to take suo muto action against domestic tyre manufacturers by contending, apart from other allegations, that none of the leading domestic tyre manufacturers rolled back their tyre prices even after steep drop in raw material prices.

Therefore, the 4th respondent contended that there is a need to dismantle the price control mechanism of domestic tyre makers who are working in unison in regulating the price of tyres. Thus, in the above said communication, they sought action as follows:

(a) The Competition Commission of India (CCI) should be requested by the Government to immediately initiate SUO MOTO action against the restrictive trade practices of domestic tyre majors so that they are stopped from indulging in strangulating free and fair play of market forces and our earlier plea for this action is already pending with the Ministry of Corporate affairs and other Central Government Departments.

(b) Since domestic tyre majors are engaged in self styled 'price control' and are not maintaining their commitment that they have increased the tyre prices due to increase in raw material prices including natural rubber and now prices are supposed to be aligned in line with drop in raw material cost, then it is the duty of Central Government to intervene and direct the domestic tyre majors to roll back tyre prices in line with drop in rubber prices. The prices of all the raw materials i.e. natural rubber, nylon tyre cord, synthetic rubber, carbon black, rubber chemicals etc. and their market movement is in the full public domain and the input prices have been coming down for last 8 - 10 quarters, it should not be difficult for the government to have the tyre prices rolled back with immediate effect.

It cannot be ignored that powerful tyre majors took undue advantage of their dominant position and refused to reduce the tyre prices in year 2008-09 when economy was plunged into down turn and again now in 2012-13, the economy is in bad shape and same set of domestic tyre manufacturers are maintaining indiscriminately high tyre prices even when the raw material prices have slumped significantly.

18. A copy of the above said communication was also communicated to the Competition Commission of India. The Ministry of Corporate Affairs, Government of India, through their communication dated 16.12.2013 addressed the Competition Commission of India and forwarded the copy of the above representation dated 28.11.2013 under Section 19(1)(b) of the Competition Act, 2002, and requested that the matter may be inquired into for appropriate orders. Thereafter, the Competition Commission, after considering the matter in its

meeting held on 07.01.2014, directed the Ministry of Corporation Affairs and All India Tyre Dealers Federation to address their preliminary arguments. At that point of time, the 9th respondent filed an application on 30.01.2014 seeking for inspection of the documents. By an order dated 11.02.2014, the Competition Commission of India allowed the request of the 9th respondent for inspecting the documents filed in the matter. Thereafter, the matter was taken up by the Commission on 18.01.2014 for hearing. The representative for the Ministry of Corporate Affairs stated that they have no further submissions to make and sought exemption from further proceedings. The same was allowed by the Commission. Thereafter, the matter was taken up on 05.03.2014 for hearing the 4th and the 9th respondents. The Commission also granted them liberty to present their written submissions. Consequently, the respective parties placed their submissions. Thereafter, the Commission, after considering the submissions and on perusal of the material available on record, proceeded to pass an order under Section 26(1) of the said Act on 24.06.2014 finding that the Commission is prima facie of the opinion that the case requires investigation by the Director General to find out the presence of any agreement of understanding within the meaning of Section 3 of the Act between the market players and the role of the Association to maintain/increase the prices. Before arriving at such prima facie view, the Commission elaborately discussed the facts and circumstances warranting the formation of such prima facie opinion. Challenging the said order, the present writ petition is filed before this Court.

19. Thus, the point for consideration in this writ petition is as to whether the impugned order passed under section 26(1) of the Competition Act, 2002, is liable to be interfered with based on the facts, circumstances and the grounds raised in this writ petition.

20. Before answering the above question, it is better to understand the object and Scheme of the relevant Act namely, the Competition Act, 2002.

21. The said Act was enacted by the Parliament with an object to provide for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India and for matter connected therewith or incidental thereto, keeping in view the economic development of the country.

22. Chapter II of the said Act deals with prohibition of certain agreements, abuse of dominant position and regulation of combinations. Section 3 deals with Anti-competitive agreements which reads as follows:

3. Anti-competitive agreements.-

1. No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

2. Any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void.

3. Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which-

(a) directly or indirectly determines purchase or sale prices;

(b) limits or controls production, supply, markets, technical development, investment or provision of services;

(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

(d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition:

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Explanation.- For the purposes of this sub-section, "bid rigging" means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar

production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

4. Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including-

- (a) tie-in arrangement;
- (b) exclusive supply agreement;
- (c) exclusive distribution agreement;
- (d) refusal to deal;
- (e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

23. Section 4 deals with abuse of dominant position which reads as follows:

4. Abuse of dominant position.-

1. No enterprise shall abuse its dominant position.

2. There shall be an abuse of dominant position under sub-section (1), if an enterprise or a group,-

a. directly or indirectly, imposes unfair or discriminatory-

i condition in purchase or sale of goods or service; or

ii. price in purchase or sale (including predatory price) of goods or service.

Explanation.-For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of

goods (including predatory price) or service referred to in sub-clause (ii) shall not include such discriminatory condition or price which may be adopted to meet the competition; or

(b) limits or restricts-

i production of goods or provision of services or market there for; or

ii. technical or scientific development relating to goods or services to the prejudice of consumers; or

(c) indulges in practice or practices resulting in denial of market access; or

(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

(e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Explanation.-For the purposes of this section, the expression-

(a) "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to-

(i) operate independently of competitive forces prevailing in the relevant market; or

(ii) affect its competitors or consumers or the relevant market in its favour;

(b) "predatory price" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

24. As the above said provisions of law clearly speak as to what are the agreements which are prohibited and what is the

abuse of dominant position which is to be prohibited, I am not reiterating the same once again herein.

25. Chapter IV of the said Act deals with the duties, powers and functions of the Commission. Under the said Chapter Section 18 deals with the duties of Commission which reads as follows:

18. Duties of Commission - Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by participants, in marketing in India:

Provided that the commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum of arrangement with the prior approval of the Central Government, with any agency of any foreign country.

26. Section 19 deals with enquiry into certain agreements and dominant position of enterprises which reads follows:

19. Inquiry into certain agreements and dominant position of enterprise.-

1. 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 a complaint, 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.

2. Without prejudice to the provisions contained in sub-section (1), the powers and functions of the Commission shall include the powers and functions specified in sub-sections (3) to (7).

3. The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely:-

(a) creation of barriers to new entrants in the market;

(b) driving existing competitors out of the market;

(c) foreclosure of competition by hindering entry into the market;

(d) accrual of benefits to consumers;

(e) improvements in production or distribution of goods or provision of services;

(f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

4. The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:-

(a) market share of the enterprise;

(b) size and resources of the enterprise;

(c) size and importance of the competitors;

(d) economic power of the enterprise including commercial advantages over competitors;

(e) vertical integration of the enterprises or sale or service network of such enterprises;

(f) dependence of consumers on the enterprise;

(g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;

(h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;

(i) countervailing buying power;

(j)market structure and size of market;

(k)social obligations and social costs;

(l)relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;

(m)any other factor which the Commission may consider relevant for the inquiry.

27. Argument was advanced on both sides elaborately on the scope and ambit of the above provision of law. A careful perusal of Section 19 would indicate the following:

(a) Inquiry contemplated under the above provision of law is in respect of any alleged contravention of the provisions contained in Section 3(1) or Section 4(1).

(b) Such enquiry may be held by the Competition Commission either on its own motion or on receipt of any information from any person, consumer or their association or trade association or on a reference made to the commission by the Central Government or the State Government or a statutory authority.

(c) While determining the allegation of contravention of provision contained in Section 3(1), the Commission shall have due regard to all or any of the factors referred to under sub-section (3) of Section 19.

28. Section 26 deals with the procedure of enquiry under Section 19 which reads as follows:

26. Procedure for inquiry on complaints under section 19.—

(1) On receipt of a complaint or a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information, 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 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.

(2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received

under section 19, the Commission is of the opinion that there exists no prima facie case , it shall close the matter forthwith and pass such order as as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned , as the case may be.

(3) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.

(4) The Commission may forward a copy of the report referred to in sub-section (2) to the parties concerned:

Provided that in case the investigation is caused to be made based on a reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to in sub-section (3) to the Central Government or the State Government or the statutory authority, as the case may be.

(5) If the report of the Director General referred to in sub-section (3) recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.

(6) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the state Government or the statutory authority or the parties concerned, as the case may be.

(7) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the commission is of the opinion that further investigation is called for, it may direct further investigation in the matter by the Director general or cause further inquiry to be made in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

(8) If the report of the Director General referred to in sub-section (3) recommends that

there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.

29. Since the impugned order is the one passed under Section 26(1) and both parties have placed much reliance on the above said provision of law in support of their case, the scope of the above said provision needs to be dealt with elaborately as follows:

(a) Once a reference from the Central Government or State Government or a statutory authority or an information from any person, consumer or their association or trade association is received or an alleged contravention of the provisions contained in Section 3(1) or Section 4(1) came to the knowledge of the Commission for its suo motu action, the Commission shall first form an opinion as to the existence of a prima facie case. Once such opinion is formed, the Commission shall then direct the Director General to cause investigation to be made into the matter. Therefore, it is evident that the Commission cannot and need not order investigation in every matter received under Section 19 and on the other hand, only after finding a prima facie case, it can order investigation. On the other hand, if the Commission comes to an opinion that no prima facie case exists, it shall then close the matter forthwith. In case, where the Commission, after forming the opinion that a prima facie case exists, orders for investigation, the Director General shall conduct the investigation and submit a report before the Commission within such time as prescribed by the Commission.

(b) On receipt of such report, the Commission may forward a copy of the same to the parties concerned. Likewise, if the Director General reiterates that there is no contravention of the provisions of the Act, the Commission shall invite the objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned on such report of the Director General. After considering the objections or suggestions from those parties, if the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith.

(c) On the other hand, after considering the objections or suggestions from the parties as stated supra, if the Commission is of the view that further investigation is called for, it may order further investigation by the Director General or further enquiry to be made itself in accordance with the provisions of the Act.

30. Section 27 deals with the orders by Commission after enquiry into agreements or abuse of dominant position which reads as follows:

27. Orders by Commission after inquiry into agreements or abuse of dominant position.—Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:—

(a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;

(b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse:

Provided that in case any agreement referred to in section 3 has been entered into by any cartel, the Commission shall impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty equivalent to three times of the amount of profits made out of such agreement by the cartel or ten per cent. of the average of the turnover of the cartel for the last preceding three financial years, whichever is higher;

(c) award compensation to parties in accordance with the provisions contained in section 34;

(d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;

(e) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;

(f) recommend to the Central Government for the division of an enterprise enjoying dominant position;

(g) pass such other order as it may deem fit.

31. Perusal of the above said provision of law would show that the final orders are passed by the Commission after conducting an enquiry and finding that the agreement is in contravention of Section 3 or action of such enterprise is in a

dominant position and thus, is in contravention of Section 4.

32. The following will emerge from the combined reading of Sections 26 and 27.

(a) An order for investigation passed under Section 26(1) is a preliminary order and does not give room for conclusion on the allegation made against the erring party except for forming an opinion with regard to the existence of a prima facie case. On the other hand, orders passed under Section 26(2), 26(6) are final orders closing the matter by coming to a conclusion that no prima facie case exists even at the threshold view of the matter or when the Director General, after investigation makes recommendation to the effect that there is no contravention and such recommendation is agreed by the Commission. Therefore, under both circumstances, a final order is passed closing the matter.

(b) On the other hand, after enquiry, if the Commission finds that there is a contravention, it will issue appropriate direction and impose penalty on the erring party. Thus, the said order is again a final order passed under Section 27.

33. Section 64 of the said Act empowers the commission to make regulations by notification. Accordingly, the Competition Commission of India (General) Regulations, 2009, was made and published in the gazette of India dated 25.05.2009.

34. Regulation 2 sub clause (j) defines what is a 'reference' which reads as follows:

(2) Definitions: (1) In these regulations, unless the context otherwise requires, -

.....
.....

(j) "reference" means a reference-

(i) received in the Commission from the Central Government or a State Government or a statutory authority under clause (b) of sub-section (1) of section 19 of the Act, or

(ii) received in the Commission from a statutory authority under section 21 of the Act for opinion, or

(iii) sent to a statutory authority for opinion by the Commission under section 21A of the Act, or

(iv) received in the Commission from the Central Government or a State Government for opinion under sub-section (1) of section 49 of the Act.

35. Regulation 10 deals with contents of information or reference which reads as follows:

10. Contents of information or the reference-

(1) The information or reference (except a reference under sub-section (1) of section 49 of the Act) shall, inter alia, separately and categorically state the following seriatum-

(a) legal name of the person or the enterprise giving the information or the reference;

(b) complete postal address in India for delivery of summons or notice by the Commission, with Postal Index Number (PIN) code;

(c) telephone number, fax number and also electronic mail address, if available;

(d) mode of service of notice or documents preferred;

(e) legal name and address(es) of the enterprise(s) alleged to have contravened the provisions of the Act; and

(f) legal name and address of the counsel or other authorized representative, if any;

(2) The information or reference referred to in sub-regulation (1) shall contain -

(a) a statement of facts;

(b) details of the alleged contraventions of the Act together with a list enlisting all documents, affidavits and evidence, as the case may be, in support of each of the alleged contraventions;

(c) a succinct narrative in support of the alleged contraventions;

(d) relief sought, if any;

(e) such other particulars as may be required by the Commission.

(3) The contents of the information or the reference mentioned under sub-regulations (1) and (2), alongwith the appendices and attachments thereto, shall be complete and duly verified by the person submitting it.

36. Regulation 11 deals with signing of information of reference which reads as follows:

11. Signing of information or reference.

(1) An information or a reference or a reply to a notice or direction issued by the Commission shall be signed by - (a) the individual himself or herself, including a sole proprietor of a proprietorship firm;

(b) the Karta in the case of a Hindu Undivided

Family (HUF);

(c) the Managing Director and in his or her absence, any Director, duly authorized by the board of directors in the case of a company,

(d) the President or the Secretary in the case of an association or society or similar body or the person so authorized by the legal instrument that created the association or the society or the body;

(e) a partner in the case of a partnership firm;

(f) the chief executive officer in the case of a co-operative society or local authority;

(g) in the case of any other person, by that person or by some person duly authorized to act on his behalf.

(2) A reference shall be signed and authenticated by an officer not below the rank of a Joint Secretary to the Government of India or equivalent in the State Government or the Chief Executive Officer of the Statutory Authority if the same has been received from the Central Government or State Government or Statutory Authority.

(3) Without prejudice to the provisions of this regulation, the counsel may also append his or her signature to the information or reference as the case may be.

37. Regulation 15 deals with the procedure for scrutiny of information or reference which reads as follows:

15. Procedure for scrutiny of information or reference -

(1) Each information or reference received in the Commission shall be scrutinized by the Secretary to check whether it conforms to these regulations and the defects, if any, shall be communicated to the party within a reasonable time not exceeding,-

(a) fifteen days in case of an information or reference received under clause (b) of sub-section (1) of section 19 of the Act; or

(b) seven days in case of a reference received under section 21 or sub-section (1) of section 49 of the Act.

(2) The information provider referred to in clause (a) of sub-section (1) of section 19

of the Act or the Central Government or the State Government or the statutory authority referred under clause (b) of sub-section (1) of section 19 or in sub-section (1) of section 49 of the Act, as the case may be, shall, on receipt of the communication about the defects under sub-regulation (1), remove the defects within:-

(a) thirty days of receiving the intimation in case of an information or reference under clause (b) of sub-section (1) of section 19 of the Act; or (b) fifteen days of receiving the intimation in case of a reference under section 21 or sub-section (1) of section 49 of the Act.

(3) In case the defects are not removed by the Central Government or the State Government or the statutory authority or the concerned party, as the case may be, as per the provision of sub-regulation (2), the information or the reference or the application connected therewith shall be treated as invalid:

Provided that the Central Government or the State Government or the Statutory Authority or the concerned party shall be entitled to file fresh information, reference or application for consideration by the Commission together with applicable fees.

(4) In the event of the information having been treated as invalid under sub-regulation (3), the fee paid on such information shall stand forfeited.

(5) Nothing contained herein above shall preclude the Commission from using the contents of such information or reference in any manner as may be deemed fit, for inquiring into any possible contravention of any provision of the Act:

Provided that the time taken in removing the defects in such references shall not count towards the period of sixty days provided for giving of opinion by the Commission in sub-section (2) of section 21 or sub-section (1) of section 49 of the Act, as the case may be.

38. Regulation 16 deals with information on existence of prima facie case which reads as follows:

16. Opinion on existence of prima facie case.

(1) The Secretary, after scrutiny and removal of defects, if any, in an information or reference, as the case may be, shall place the

same before the Commission to form its opinion on existence of a prima facie case.

(2) In cases of alleged anti-competitive agreements and/or abuse of dominant position, the Commission shall, as far as possible, record its opinion on existence of a prima facie case within sixty days.

(3) The Commission shall, as far as possible, hold its first ordinary meeting to consider whether prima facie case exists, within fifteen days of the date of placement of the matter by the Secretary under sub-regulation (1).

39. Regulation 17 deals with preliminary conference which reads as follows:

17. Preliminary conference -

(1) The Commission may, if it deems necessary, call for a preliminary conference to form an opinion whether a prima facie case exists.

(2) The Commission may invite the information provider and such other person as is necessary for the preliminary conference.

(3) A preliminary conference need not follow formal rules of procedure.

40. The crux of the contentions of the petitioner and the other supporting respondents based on the above provisions of law is as follows:

(a) The writ petition is maintainable against the order made under Section 26(1) since there is no appealable remedy available under the said Act.

(b) Assuming that the order passed under Section 26(1) is more administrative in nature, still the same is amenable for judicial scrutiny if the mandatory procedures contemplated under the statutory regulations were not followed either before or at the time of passing the said order.

(c) The writ is maintainable since the very jurisdiction of the CCI is questioned, as there is no valid reference made under Section 19(1)(b) and consequently, an order passed under Section 26(1) resulting out of such invalid reference cannot be sustained.

(d) The regulations are made by exercising the power conferred under Section 64 of the said Act. Hence, the Regulations are statutory in nature and consequently, the procedures contemplated therein are also mandatory and not directory or discretionary.

(e) Neither the reference dated 16.12.2013 of the first respondent nor the letter dated 28.11.2013 of the 4th respondent satisfy the requirements of a valid reference since they do not

satisfy the mandatory requirements of Regulations 10 & 11.

(f) The act of the first respondent in mere forwarding the letter of the 4th respondent to the Commission cannot be construed as a reference made or received under Section 19(1).

(g) In the absence of a valid reference, the Commission failed to follow the procedure contemplated under Regulation 15 by scrutinising the same, since the defects in the information if not removed even after notice as provided under Regulation 15, it is liable to be treated as invalid as provided under Regulation 15(3).

(h) The opposite parties before the Commission were not the named parties in the reference of the first respondent or the complaint of the fourth respondent. However, when the Commission has arrayed them as the opposite parties and having chosen to give opportunity of hearing to select few parties to the proceedings, it ought to have given opportunity of hearing to the petitioner as well as the supporting respondents. Failure to do so, violates the principles of natural justice. Consequently, the impugned order is liable to be interfered with on the ground of violation of principles of natural justice as well.

(i) Neither the SAIL case before the Apex Court nor the Chettinad case before the learned single Judge of this Court has considered the question regarding the validity of the reference under Section 19(1)(b) and therefore, those two decisions are not applicable to the facts and circumstances of the present case. Likewise, in SAIL case, the Apex Court has only held that the order under Section 26(1) is not an appealable order and an administrative one. However, in the said case, it was not held that an order under Section 26(1) can never be questioned at all.

(j) Likewise, in Chettinad's case, the learned single Judge of this Court has specifically observed that there is no general embargo against the invocation of the jurisdiction under Article 226 of the Constitution of India against every order made under Section 26(1). The learned Judge also observed that the petitioner therein has not raised the plea of violation of principles of natural justice which would entitle them to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

41. Per contra, the crux of the contentions raised by the contesting respondents namely, the respondents 1 to 3 is summarised as follows:

(a) The writ petition is not maintainable as against the order made under Section 26(1), since no appeal has been provided, against the said order, as no rights of the parties are affected by ordering investigation.

(b) The various issues raised in this writ petition are covered in the order passed in SAIL case.

(c) Mere issue of a direction for investigation does not involve any civil consequences and therefore, there is no cause

of action.

(d) The order passed under Section 26(1) is administrative in nature and thus, the same cannot be questioned.

(e) The reference made under Section 19(1)(b) is valid and the same is in accordance with law and in compliance of the Regulations.

(f) The Joint Secretary of the Ministry of Corporate Affairs also signed the minutes and therefore, the forwarding letter of the 1st respondent dated 16.02.2013 was validly made under Section 19(1)(b). The Competition Commission was satisfied with a validity of the reference and proceeded to order investigation. Hence, the petitioner and other supporting respondents are not entitled to question the validity or the maintainability of the reference made by the first respondent.

(g) Even otherwise, as the requirement of signing the reference by the Joint Secretary is contemplated under a subordinate legislation namely, the Regulations, such subordinate legislation, cannot control the power of the Commission under the main statute.

(h) Even assuming that there is an error in the letter of reference, in view of the power conferred under Section 18 of the said Act, the Commission has a wider jurisdiction and thus, was right in entertaining the reference and passing the impugned order.

(i) The Commission, even in the absence of a reference or any information, has suo motu power to enquire and order investigation. Therefore, the objections raised against the subject matter reference is not valid.

(j) Any interpretation of a provision of law which will deviate the object of Act should not be adopted and on the other hand, such interpretation should advance the object of the Act.

(k) Whether there is a contravention of Section 3 or Section 4 is a matter which can be considered and decided by the Commission only after the investigation and therefore, they cannot be a subject matter of enquiry under Article 226 of the Constitution of India.

(l) The powers of the Commission under the said Act is exercisable from time to time as provided under Section 14 of General Clause Act, 1997 and therefore, as and when an occasion arises, it is open to the Commission to invoke its jurisdiction.

(m) While passing the order for investigation under Section 26(1), the Commission is not bound to issue notice to all or any of the parties as there is no statutory obligation to do so. Therefore, the petitioner and other supporting respondents are not entitled to raise the ground of violation of principles of natural justice as a matter of right.

42. Upon hearing both sides and considering their contentions, it is evident that this Court has to first decide the preliminary objection raised against the maintainability of

the writ petition. Therefore, I proceed to decide the same as hereunder.

43. The main contention of the respondents 1 to 3 on this issue is that the order under Section 26(1) is not a final order and on the other hand, it is administrative in nature, not affecting the interest of the parties and not involving any civil consequences. It is also their contention that the law makers at their wisdom thought it fit not to give an appeal remedy against the said order, since it is not affecting the interest of the parties instantaneously. In support of the above contentions, the decision of the Apex Court made in SAIL case and the order of the learned single Judge made in CHETTINAD case are relied on.

44. On the other hand, it is the contention of the petitioner and the supporting respondents that in the absence of valid reference, the consequential order passed under Section 26 (1), cannot be sustained and therefore, the writ is maintainable. It is their further contention that the reference made by the first respondent is not a valid reference and therefore, the second respondent Commission does not have jurisdiction to proceed, based on such invalid reference. It is also their contention that neither the SAIL nor the CHETTINAD held that no writ petition is maintainable against the order made under Section 26(1).

45. There is no dispute to the fact that the Competition Act, 2002, does not provide for an Appeal against the order made under Section 26(1). On the other hand, Section 53B of the said Act provides an appeal to the National Company Law Appellate Tribunal against an order made under Section 26(1)(2) and (6) etc. Therefore, it is evident that only against the final order passed under Section 26(2), the affected parties are entitled to file such statutory appeal before the said Tribunal, otherwise, a statutory appeal remedy is not available or barred against the order made under section 26(1). Needless to state that when a statute does not provide an appeal remedy, otherwise called an alternative remedy, the affected parties can always approach the Court exercising the constitutional jurisdiction. However, as the respondents 1 to 3 are strongly placing their reliance on SAIL and CHETTINAD to contend against the maintainability, let me first look into those decisions and find out as to whether their contentions can be sustained.

46. Let me first look into the facts and circumstances of the SAIL case before the Apex Court. These are the bare minimum facts, however, relevant to the present case:

One Jindal Steel and Powers Ltd. provided information to the Competition Commission by invoking the provision of Section 19 read with Section 26(1) of the said Act, alleging that M/s.

Steel Authority of India Limited (SAIL), had, inter alia, entered into an exclusive supply agreement with Indian Railways for supply of rails. Thus, the said informant contended that SAIL had abused its dominant position in the market and deprived others in fair competition and therefore, acting contrary to Section 3(4) and Section 4(1) of the said Act. The Commission registered the information and directed SAIL to submit its comments in respect of the information. SAIL requested for extension of six weeks time to file its comments. The Commission declined such request for extension of time and also passed an order on 08.12.2009 simultaneously forming an opinion that a prima facie case exists against SAIL and directed the Director General to make investigation in terms of Section 26(1). The said order of the Commission dated 08.12.2009 was challenged by SAIL before the Competition Appellate Tribunal. The Commission filed an application before the Tribunal seeking impleadment in the Appeal and also for vacating the interim orders granted by the Tribunal stating further proceedings before the Director General. The Commission also questioned the very maintainability of the Appeal before the Tribunal against the order passed under Section 26(1). The Tribunal, by its order dated 15.02.2010, dismissed the application filed by the Commission for impleadment holding that it is not a necessary party and that the appeal filed against the order made under Section 26(1) was maintainable in terms of Section 53B. The Tribunal also set aside the order of the Commission on the reason that it violated the principles of natural justice. Thus, the Tribunal granted further time to SAIL to file reply before the Commission in addition to the reply already filed. The said order of the Tribunal dated 15.02.2010 was challenged before the Apex Court.

47. Thus, under the above facts and circumstances, the Honourable Supreme Court found that the Appeal before the Tribunal will lie only against such direction, decision, orders passed by the Commission which have been specifically stated under Section 53A(1)(a) and that orders which have not been specifically made appealable cannot be treated appealable by implication. Thus, it was held therein that an appeal does not lie against an order made under Section 26(1).

48. Therefore, it is evident from the above facts and circumstances of the SAIL case that the issue with regard to maintainability of an Appeal under Section 53(A)(1) before the Tribunal alone was considered and found that such appeal is not maintainable against the order passed under Section 26(1). Therefore, the issue as to whether, alternatively, a writ petition would lie before the High Court under Article 226 of the Constitution of India, was not an issue either raised or considered therein. In fact, going by the facts and circumstances of the above case, it is evident that there is no

occasion for the Honourable Supreme Court to go into such question at all. Therefore, I find that the above decision of the Apex Court holding that statutory appeal is not maintainable against the order made under Section 26(1) will not come to the support of the respondents 1 to 3 herein to object the maintainability of this writ petition under Article 226 as well.

49. Let me now take the second decision, namely CHETTINAD case, a decision made by the learned single Judge of this Court.

50. The short facts of the said case as as follows:

The petitioner therein entered into a licence agreement with the 3rd respondent Port therein for establishing the common user coal terminal. The 2nd respondent therein is registered Association of power producers in Tamilnadu. The 2nd respondent therein filed an information before the Competition Commission of India, the 1st respondent therein under Section 19(1)(a) of the said Act against the petitioner therein to inquire into the alleged abusive practices of the petitioner therein that violates the provisions of Section 4(1)(a)(i) etc. On notice from the Commission, the petitioner and the 3rd respondent therein filed their replies and after hearing the parties, the Commission, by order dated 04.01.2016, found that, prima facie, the petitioner therein appears to be abusing its dominant position in contravention of provision to section 4 of the Act and accordingly, directed the Director General to investigate under Section 26(1). The said order passed by the Commission under Section 26(1) was challenged by the petitioner therein in the above writ petition. A preliminary objection was raised by the Commission before the learned single Judge that a writ petition is not maintainable in view of the finding rendered in SAIL and that the impugned order was only a prima facie finding as no civil consequence arises on account of ordering investigation. The learned Judge, dismissed the writ petition on the ground that an order under Section 26(1) is only a prima facie view and that neither the petitioner nor the 3rd respondent has raised the plea of violation of principles of natural justice or any other plea which would entitle them to invoke the extraordinary jurisdiction under Article 226 of the Constitution. While specifically dealing with the issue with regard to the maintainability, the learned Judge has observed at paragraph No.21 that the said objection raised by the respondents 1 and 2 therein cannot be stated to canvass a contention that the writ petition is not maintainable as against an order passed by the Commission and that there can be no such general embargo as the facts of each case has to be gone into, as essentially, a writ remedy is an extraordinary power vested with the High Courts to examine the correctness of the orders passed by the authorities.

51. Therefore, the above decision of the learned single

Judge would clearly show that the respondents 1 to 3 herein are not entitled to object against the maintainability of the writ petition in toto by contending that no writ would lie against the order passed under Section 26(1). If such contention is accepted, it would mean that an order passed under Section 26(1) is unquestionable order even if the same was passed without jurisdiction. I do not think that non-provision of appellate remedy against such an order by the law makers does not mean or to be construed as though they thought it fit that such order is an unquestionable one. If no statutory appeal is available, then it would not shut the doors of the affected parties to approach the Court under Article 226 of the Constitution of India seeking exercise of such extraordinary jurisdiction empowered under the Constitution provided such challenge is based upon questioning the very jurisdiction of the Commission itself.

52. Non-availability of the statutory appellate remedy does not mean that the affected party can never have any legal remedy at all. In other words, if no such alternative remedy is available under the statute, the affected party can very well approach the Court under Article 226 of Constitution of India, provided the other parameters such as the jurisdiction, status of the respondent as a 'State' within the meaning of Article 12 etc. are satisfied, apart from satisfying that the order under challenge discloses a cause of action for challenge warranting judicial interference.

53. Further in this case, as already pointed out, the petitioner questioned the very validity of the reference by contending that it is invalid and consequently, no further proceedings can be initiated based upon the same. This was not the issue before the learned single Judge in the CHETTINAD case or before the Apex Court in SAIL case. Therefore, I find that the petitioner is entitled to maintain the present writ petition before this Court and consequently, the power of this Court to exercise its jurisdiction under Article 226 of the Constitution of India is not ousted in any way since a statutory appellate remedy is not provided against the impugned order. It is also relevant to note, at this juncture that even in cases where an alternative remedy is available, the power of this Court to exercise jurisdiction under Article 226 is not taken away and on the other hand, only on its discretion, it can either entertain the writ petition or reject the same and drive the party to avail the alternative remedy, based upon the facts and circumstances of each case. Therefore, I find that the preliminary objection raised by the respondents 1 to 3 against the maintainability of the writ petition is liable to be rejected.

54. At the same time, it is to be stated at this juncture

that holding a writ petition maintainable does not mean that the merits of the matter are also sustainable. In other words, finding a writ petition maintainable under Article 226 of the Constitution, is only to permit the petitioner to contest the matter on merits of challenge and certainly, not to indicate that merits of such contest itself are sustainable. Therefore, this Court has to now proceed to find out as to whether the merits of the contest in this writ petition are sustainable and consequently, warrant interference by this Court against the impugned order passed under Section 26(1). Paragraph Nos.16 to 18 of the impugned order, which are the penultimate conclusion of the Commission read as follows:

16. Thus, not passing on benefit of reduction in prices of major raw materials/ inputs, prima facie, indicates lack of competition and some sort of understanding between the players especially in the replacement market and of the period subsequent to year 2011-12. In view of the foregoing, the commission is prima facie of the opinion that this case requires investigation by DG to find out the presence of any agreement or understanding within the meaning of section 3 of the Act between the market players (OP 1 to 5) and the role of the association i.e., OP 6 to maintain/ increase the prices.

17. The Secretary is directed to send a copy of this direction passed under section 26 (1) along with copy of the information of the office of the DG. DG shall investigate the matter about violation of the provisions of the Act along with cases mentioned above. In case the DG finds Ops in violation of the provision of the Act, it shall also investigate the role of the persons who at the time of such contravention were in charge of and responsible for the conduct of the business of the opposite parties. The report of DG be submitted within 60 days from receipt of the order.

18. Nothing stated in this order shall tantamount to a final expression of opinion on merit of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.

55. Before proceeding to discuss this issue in detail, the first and foremost factor to be borne in mind is about the nature of the order passed under Section 26(1) and its scope. A perusal of the said provision would make it very clear that such an order is only to direct the Director General to cause

investigation into the matter and that such direction is issued after formation of an opinion by Commission that there exists a prima facie case. Therefore, two things emerge as to what is the nature of the order under Section 26(1). Firstly, it is simple process of forming an opinion by the Commission with regard to the existence of a prima facie case. Needless to say that a prima facie opinion, however strong it may be, does not mean or be construed as binding on the Commission, at the time of passing the final order under Section 27. Secondly, the Commission only seeks the assistance of the Director General to conduct an investigation, based upon such prima facie view or opinion in order to take a final decision, based upon the report filed by the Director General, as to whether a contravention of Section 3 or Section 4 is there and consequently, to pass the penalty and directions as provided under Section 27, in case, if the Commission finds that there is contravention of those provisions of law. Further the Commission in this case, has specifically and categorically observed that nothing stated in the order shall tantamount to final expression on merit and that the Director General should conduct investigation uninfluenced by any of the observations made therein.

56. At this juncture, it is relevant to quote the following findings made by the Honourable Supreme Court in SAIL case, while dealing with the nature of the order passed under Section 26(1).

37. As already noticed, in exercise of its powers, the Commission is expected to form its opinion as to the existence of a prima facie case for contravention of certain provisions of the Act and then pass a direction to the Director General to cause an investigation into the matter. These proceedings are initiated by the intimation or reference received by the Commission in any of the manners specified under Section 19 of the Act. At the very threshold, the Commission is to exercise its powers in passing the direction for investigation; or where it finds that there exists no prima facie case justifying passing of such a direction to the Director General, it can close the matter and/or pass such orders as it may deem fit and proper. In other words, the order passed by the Commission under Section 26 (2) is a final order as it puts an end to the proceedings initiated upon receiving the information in one of the specified modes. This order has been specifically made appealable under Section 53A of the Act.

38. In contradistinction, the direction under Section 26(1) after formation of a prima

facie opinion is a direction simpliciter to cause an investigation into the matter. Issuance of such a direction, at the face of it, is an administrative direction to one of its own wings departmentally and is without entering upon any adjudicatory process. It does not effectively determine any right or obligation of the parties to the lis. Closure of the case causes determination of rights and affects a party, i.e. the informant; resultantly, the said party has a right to appeal against such closure of case under Section 26(2) of the Act. On the other hand, mere direction for investigation to one of the wings of the Commission is akin to a departmental proceeding which does not entail civil consequences for any person, particularly, in light of the strict confidentiality that is expected to be maintained by the Commission in terms of Section 57 of the Act and Regulation 35 of the Regulations.

39. Wherever, in the course of the proceedings before the Commission, the Commission passes a direction or interim order which is at the preliminary stage and of preparatory nature without recording findings which will bind the parties and where such order will only pave the way for final decision, it would not make that direction as an order or decision which affects the rights of the parties and therefore, is not appealable.

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87. Now, let us examine what kind of function the Commission is called upon to discharge while forming an opinion under Section 26(1) of the Act. At the face of it, this is an inquisitorial and regulatory power. A Constitution Bench of this Court in the case of Krishna Swami vs. Union of India [(1992) 4 SCC 605] explained the expression 'inquisitorial'. The Court held that the investigating power granted to the administrative agencies normally is

inquisitorial in nature. The scope of such investigation has to be examined with reference to the statutory powers. In that case the Court found that the proceedings, before the High Power Judicial Committee constituted, were neither civil nor criminal but sui generis.

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91. The jurisdiction of the Commission, to act under this provision, does not contemplate any adjudicatory function. The Commission is not expected to give notice to the parties, i.e. the informant or the affected parties and hear them at length, before forming its opinion. The function is of a very preliminary nature and in fact, in common parlance, it is a departmental function. At that stage, it does not condemn any person and therefore, application of audi alteram partem is not called for. Formation of a prima facie opinion departmentally (Director General, being appointed by the Central Government to assist the Commission, is one of the wings of the Commission itself) does not amount to an adjudicatory function but is merely of administrative nature. At best, it can direct the investigation to be conducted and report to be submitted to the Commission itself or close the case in terms of Section 26(2) of the Act, which order itself is appealable before the Tribunal and only after this stage, there is a specific right of notice and hearing available to the aggrieved/affected party. Thus, keeping in mind the nature of the functions required to be performed by the Commission in terms of Section 26(1), we are of the considered view that the right of notice of hearing is not contemplated under the provisions of Section 26 (1) of the Act.

57. From the above categorical pronouncement of the Apex Court, it is evident that the direction issued under Section 26 (1) is a direction simpliciter and an administrative direction without entering upon any adjudicatory process; that it does not effectively determine any right or obligation of the parties to the lis; that mere investigation does not entitle civil consequences for any person; that such direction is at the preliminary stage and of preparatory in nature without recording the findings which will bind the parties; that the function of the Commission to form an opinion under Section 26(1) is in an inquisitorial and regulatory power and therefore, the same is

neither civil nor criminal but sui generis; that the jurisdiction of the Commission to act under Section 26(1) does not contemplate any adjudicatory function.

58. Likewise, the findings rendered by the learned single Judge of this Court in CHETTINAD case at paragraph Nos.33, 34 and 35 are relevant to be quoted wherein the plea raised by the petitioner therein that the order passed under Section 26(1) results in civil consequences was rejected. Paragraph Nos. 33, 34 and 35 reads as follows:

33. As rightly pointed out by the learned counsel for the second respondent, the arguments advanced by the learned Senior counsel for the petitioner and the third respondent appears to be on the premise that the Commission has taken a decision in the matter and such decision is contrary to the factual position when the Commission has only formed a prima facie opinion and issued a direction to cause investigation by the DG who is part of the Commission appointed by the Central Government to assist the Commission and there was no final view of the matter. Hence, the plea raised by the petitioner that the impugned order results in civil consequences, is a plea stated to be rejected.

34. The Commission while passing the impugned order has been carefully enough to form a prima facie view without entering upon any adjudicatory or determinative process. If the plea raised by the petitioner and the third respondent is to be accepted and the Commission be directed to redo the exercise consider the submissions, it would fall foul of Section 26 (1), which clearly places an embargo on the Commission not to adjudicate or determine the matter. Precisely for this reason, the Hon'ble Supreme Court held that an order under Section 26(1) is only a prima facie view and would not be an order appealable under Section 53A of the Act.

35. Thus, the Commission having clearly confined themselves to the restrictive role required to be exercised under Section 26(1) cannot be found fault of having not examined all issues, if done would have been an adjudicatory exercise, which the Commission was not entitled to do while forming a prima facie

view under Section 26(1) of the Act.

59. Therefore, it is to be noted that the order passed under Section 26(1) itself does not give rise to a cause of action to subject the same to judicial interference, as the very challenge by way of statutory appeal against such order itself is barred under Section 53A, since such order does not result in civil consequences.

60. No doubt, the petitioner and the supporting respondents sought to justify their challenge against the impugned order on the ground that the same was an outcome of an invalid reference made under Section 19(1)(b). Therefore, they contend that the impugned order is to be held as non-est or void abinitio in view of the invalid reference made by the first respondent. In support of their contentions, they relied upon the relevant Regulations namely Regulation Nos. 10, 11 and 15.

61. Let me consider the above contention of the petitioner and the supporting respondents. It is stated that the first respondent has simply forwarded the letter of the 4th respondent and except doing so, the first respondent has not made any valid reference and on the other hand, they sought for dispensation of their appearance in further proceedings before the second respondent Commission; that the reference of the first respondent or the information of the fourth respondent does not furnish the mandatory details as required under Regulation 10 and that the signing of the reference was not in accordance with Regulation 11. It is also contended that the Secretary of the Commission before placing the reference before the Commission for forming its prima facie opinion, failed to scrutinise the reference to check whether it confirms to the Regulations as required under Regulation 15; that as the reference made by the first respondent is a defective one, the same ought to have been treated as invalid as required under Regulation 15(3). It is further contended that the impugned order was passed in violation of principles of natural justice as the petitioner and other supporting respondents, except the 9th respondent, were not given an opportunity of hearing.

62. Before answering the above contentions with regard to the allegation of invalid reference, let me first consider the issue raised on the question of violation of principles of natural justice. In my considered view the said issue was already answered against the petitioner and the supporting respondents by the Apex Court in the SAIL case itself wherein it is held as follows:

69. In light of the above principles, let us examine whether in terms of Section 26(1) of the Act read with Regulations in force, it is

obligatory upon the Commission to issue notice to the parties concerned (more particularly the affected parties) and then form an opinion as to the existence of a prima facie case, or otherwise, and to issue direction to the Director General to conduct investigation in the matter.

70. At the very outset, we must make it clear that we are considering the application of these principles only in light of the provisions of Section 26(1) and the finding recorded by the Tribunal in this regard.

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74. Regulation 21(8) also indicates that there is an obligation upon the Commission to consider the objections or suggestions from the Central Government or the State Government or the Statutory Authority or the parties concerned and then Secretary is required to give a notice to fix the meeting of the Commission, if it is of the opinion that further inquiry is called for. In that provision notice is contemplated not only to the respective Governments but even to the parties concerned. The notices are to be served in terms of Regulation 22 which specifies the mode of service of summons upon the concerned persons and the manner in which such service should be effected. The expression 'such other person', obviously, would include all persons, such as experts, as stated in Regulation 52 of the Regulations. There is no scope for the Court to arrive at the conclusion that such other person would exclude anybody including the informant or the affected parties, summoning of which or notice to whom, is considered to be appropriate by the Commission.

75. With some significance, we may also notice the provision of Regulation 33(4) of the Regulations, which requires that on being satisfied that the reference is complete, the Secretary shall place it during an ordinary meeting of the Commission and seek necessary instructions regarding the parties to whom the notice of the meeting has to be issued. This provision read with Sections 26(1) and 26(5) shows that the Commission is expected to apply its mind as to whom the notice should be sent before the Secretary of the Commission can send notice to the parties concerned. In other

words, issuance of notice is not an automatic or obvious consequence, but it is only upon application of mind by the authorities concerned that notice is expected to be issued.

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78. Cumulative reading of these provisions, in conjunction with the scheme of the Act and the object sought to be achieved, suggests that it will not be in consonance with the settled rules of interpretation that a statutory notice or an absolute right to claim notice and hearing can be read into the provisions of Section 26(1) of the Act. Discretion to invite, has been vested in the Commission, by virtue of the Regulations, which must be construed in their plain language and without giving it undue expansion.

63. From the above categorical pronouncement made by the Honourable Supreme Court, neither the petitioner nor the supporting respondents are justified in their contention that they are bound to be heard before passing the direction under Section 26(1). It is observed by the Apex Court that it is for the Commission to consider as appropriate to issue such notice to such of those person. Thus, in the absence of mandatory statutory obligation for issuing such notice on the part of the Commission and when such obligation is vested at the discretion of the Commission, the contesting parties herein cannot seek such notice as a matter of right. Consequently, the question of violation of principles of natural justice does not arise in this case. Even otherwise, the direction for investigation itself is not a finding rendered against the parties, more particularly, when a prima facie view or opinion need not necessarily to be affirmed in the final order, as it depends upon the outcome of the investigation and further consideration of the Commission, based on the report of the Director General. Therefore, at this stage, the parties cannot seek for compliance of the principles of natural justice. It is not in dispute that at the time of investigation, the parties concerned will be given proper notice and they will be allowed to take part in the investigation and thereafter before the Commission as well during the course of passing the final order. Therefore, I reject the above contention of the parties in respect of their claim on principles of natural justice.

64. Now let me look into the main contention of the parties regarding the reference made under Section 19(1)(b). It is true that the first respondent forwarded a communication or information received from the 4th respondent to Commission and such forwarding was treated as reference under Section 19(2)(b).

Perusal of the reference made by the first respondent and the information made by the 4th respondent, no doubt would show that they do not provide the details as required under Regulation 10. However, the Commission, based upon such information and reference as such made available and also after holding few preliminary conferences, in its wisdom, has formed the opinion that there exists a prima facie case. At this juncture, it is to be noted that such formation of prima facie opinion is not to directly pass an order finally under Section 27. On the other hand, it was formed only to issue a direction to the Director General to cause an investigation into the matter further. Therefore, it is evident that the Commission itself is requiring further materials and particulars by conducting an investigation, to arrive at just and proper conclusion as to whether such prima facie opinion arrived is right or wrong. Therefore, investigation ordered under Section 26(1), based on the reference itself does not result in civil consequence and consequently, the same does not give a cause of action for the parties to challenge such proceedings. They cannot be termed as aggrieved parties at this stage. No doubt, it is contended that in the absence of a valid reference, the Commission should have held the reference as invalid as contemplated under Regulation 15(3). But the fact remains that the Commission did not do so and on the other hand, has chosen to proceed further.

65. A statutory power conferred on the Commission to form a prima facie opinion is exclusively within its domain and none of the parties can either insist or dictate as to "this is how the opinion should be". A prima facie view is certainly a preliminary view normally taken after hearing one side of the story. Thus, such view, is always open for change at the time of passing the final order after hearing all the parties and considering all the materials, depending upon the facts and circumstances of each case. When such being the position, the question as to how such opinion could be taken; what are the materials to be considered for arriving at such opinion; whether the 'reference', in this case, could be treated as a valid reference, are all the questions not to be raised at this stage, as the parties, if affected by the final order, can always raise the same as grounds of appeal under Section 53B.

66. At this juncture, it is to be noted that the Commission is also empowered to order investigation by suo motu action. When such power is vested under statute, proceeding to hear the matter further based on a defective reference will not make the proceedings itself invalid or void. At the maximum, it can be termed as irregular procedure and not an illegal procedure.

67. Even otherwise, all these submissions or objections raised against the reference and information can always be raised if an adverse order is passed by the Commission under

Section 27, by filing an appeal before the Tribunal under Section 53B. Needless to say that the Appellate Tribunal being a fact finding authority as well, will consider all these contentions and decide the appeal accordingly.

68. In my considered view, when the very order passed under Section 26(1) is not appealable and the merits of the said order also cannot be questioned before this Court under Article 226, since it is administrative in nature, not deciding the rights of the parties in any manner and on the other hand, it is only in the form of preparatory, that too, at the preliminary stage, the petitioner and the supporting respondents are not entitled to question the said order by disputing or questioning the very reference made under Section 19(1)(b). In other words, what they cannot achieve directly, cannot be achieved indirectly by raising a ground against the reference made under Section 19(1)(b). Moreover, it is to be noted that both the reference and information got merged with the direction issued under Section 26(1) and therefore, such reference even assuming to be a defective one, cannot be segregated independently from the order passed under Section 26(1) and decide about its validity, more particularly, when the resultant order under Section 26(1) itself cannot be questioned as it does not result in civil consequences. Thus, it does not give any cause of action for the parties to challenge.

69. AIR 1978 SC 851, 1969(2) SCC 262 and 2017(6) SCC 801 are relied on to contend that the impugned order though is an administrative order, still open to judicial review and that the validity of such order shall be judged, based on the reasons stated therein and not to be decided based on the supplemented reasons stated in an affidavit or otherwise I do not think that those decisions are helping the parties in any way in view of the categoric pronouncement made by the Apex Court in the SAIL case which is directly on the same subject matter.

70. 1997 (4) SCC 611 was relied on to contend that General Regulations are mandatory in nature and cannot given a go-by. I have already pointed out that the non-compliance of the mandatory Regulations, if any, itself cannot make the order under Section 26(1) nullity as it is only an administrative order, that too, ordering further investigation, not affecting the interest of the parties, as such, in any manner. Therefore, when such order itself is not liable to be interfered with, either by this Court or the Appellate Tribunal, such grounds raised by these parties in respect of the non-compliance of mandatory Regulations can at the best be grounds of challenge, while filing the appeal against the order passed under section 27, assuming that the second respondent is going to decide against these parties. Therefore, at any event, these grounds cannot be raised at this stage. Therefore, the said decision, to

the facts and circumstances of the present case, is not applicable.

71. It is vehemently contended that the second respondent Commission lacks jurisdiction to pass the impugned order based on invalid reference. I do not think that such contention is either permissible or sustainable on the very reason that the act of considering the invalid reference, even assuming to be, cannot mean that the Commission lacks its jurisdiction under sections 19 and 26, more particularly, when Section 19 also empowers the Commission to take suo motu action. Certainly, an action taken on the alleged bereft of material details, cannot be construed as an action without jurisdiction. In other words, considering the sufficiency of such material details for forming a prima facie opinion is a matter for the Commission's satisfaction before ordering investigation and therefore, consideration of such sufficiency by the Commission cannot be questioned as the one without jurisdiction.

72. A decision rendered by the Bombay High Court in W.P.No.8594/2017 in Vodafone India Limited vs. Competition Commission of India and others was relied on by the petitioner and supporting respondents to justify the maintainability of the writ petition as well as for seeking interference against the order passed under Section 26(1). The Division Bench of the Bombay High Court in the said decision has found that the remedy under Article 226 of the Constitution of India is available against the order passed under Section 26(1), since no appeal lies against such order. There is no quarrel about the said proposition, as I have also taken such view in this writ petition as discussed supra. However, insofar as the reliance of the said decision seeking for interference of the order under Section 26(1) is concerned, I find that the facts of that case are totally different and distinguishable. After considering the allegations made against the petitioner therein in the order under Section 26(1), the Bombay High Court found that the authority under the Competition Act has no jurisdiction to decide and deal with various statutory agreements, contracts, including the rival rights/ obligations of its own, arising out of the Telegraph Act and the TRAI Act. It is pointed out by the Division Bench that every aspects of the developments of the telecommunication market are to be regulated and controlled by the concerned Department/Government under the TRAI Act and therefore, the order passed by the Competition Commission under Section 26(1) therein and all the consequential action/ notices of the Director General are under the wrong presumption of law and usurpation of jurisdiction. Under such circumstances, the Bombay High Court interfered with the order under Section 26(1) and other consequential action, by allowing the writ petition. Therefore, it is evident that the main reason for interfering with the said order is want of jurisdiction. In this case, the

facts are totally different as discussed supra. Considering a defective reference or information is stated as an act without jurisdiction. Certainly, the act of considering such defective reference or information cannot make out a jurisdictional issue against the Commission. At the best, it could be considered as improper procedure. What the subject matter under reference alone would decide the jurisdiction and not the manner in which it was made. Therefore, I find that the above Vodofone case will not come to the rescue of the parties seeking for interference against the order under Section 26(1).

73. Another decision of the Delhi High Court made in LPA.No.733/2014 dated 27.04.2015 was relied on in support of the maintainability of the writ petition as well as to interfere with the order impugned herein. The Division Bench of the Delhi High Court found that a petition under Article 226 of the Constitution against the order under Section 26(1) would lie on the same parameters with that of an investigation under Criminal Procedure Code. It is also observed therein, where treating the allegations in the reference/ information/ complaint to be correct, still no case of contravention of Section 3(1) or Section 4(1) of the Act would be made out or where the said allegations are absurd and inherently improbable or where there is an express legal bar to the institution and continuance of the investigation, a petition under Article 226 would lie against such order. Insofar as the maintainability issue is concerned, this Court has already observed in the same line as found in Vodofone case. However, insofar as the finding with regard to the interference against the order on merits is concerned, I find that the decision of the Delhi High Court is also factually distinguishable. In the present case before this Court, it is not in dispute that the parties were agitating the matter on an earlier occasion also arising out of the same allegation and the Commission entertained the same and has given certain findings. Therefore, when the jurisdiction of the Commission is not ousted on the subject matter in issue and in respect of the allegations made against the petitioner and supporting respondents, this Court is of the firm view that it cannot go into the correctness or otherwise of the allegations to find out as to whether any contravention of Section 3(1) or Section 4(10) is made out either in the reference or information, since such exercise is completely within the domain of the Commission as contemplated under the above said Act. Therefore, I find the above decision of the Delhi High Court is also factually distinguishable and not helping the petitioner and supporting respondents in any manner. Likewise various other decisions cited by them on various propositions are also not applicable to the present case, as the facts, circumstances and subject matter in issue therein are totally different and distinguishable.

74. It is true that elaborate argument advanced against the "reference" is attractive and forceful. However, this Court finds the same is not a fatal blow on the impugned order, in view of the above discussed facts and circumstances.

75. No doubt, the submissions made by the petitioner and the supporting respondents against the reference is one way of looking at the issue, but at the same time, it is to be noted that it is not the only way of looking at the issue. While considering the duties and responsibilities of the Commission vested on it under the statute, it should be borne in mind that such statutory obligation will always over weigh and over power the technical objections, since such duties and responsibilities are sought to be exercised for achieving the object of the Act, which is undoubtedly to benefit the public. Therefore, the Court should not step into the shoes of the Commission, at this stage, to find out whether the contentions as raised by the parties in this case will have a bearing on the final decision to be made by the Commission. Needless to say that only when this Court finds that the Commission itself lacks its jurisdiction wholly on the subject matter in issue, it can exercise its discretion and entertain the matter as has been done by the Delhi and Bombay High Courts in the above referred cases. The facts and circumstances of the present case as discussed supra, would show that there is no jurisdictional error involved in this matter, as projected by the parties.

76. Power to go into the merits of the allegation in the reference as well as the information is within the domain of the Commission as the original adjudicating authority, with which, this Court is not expected to interfere, at this stage. It does not mean that this Court is powerless under Article 226 of the Constitution of India, but it is needless. The fact finding authority being the original authority is to be left free to find out the truthness of the allegation and pass orders after conducting due enquiry. Interference at the stage of the investigation would certainly amount to meddling with or usurping the original jurisdiction of such authority, unless such interference is so warranted for want of very jurisdiction itself. Otherwise such interference at the stage of investigation would only defeat the object sought to be achieved by the special enactment.

77. Needless to say that any interpretation of a statute should be in such a way which would facilitate the object sought to be achieved under the enactment and certainly not to defeat the same. The impugned order directing mere investigation will certainly cause no prejudice to the parties as their rights are not finally affected or determined in the said order. It is not that the prejudice caused, if any, even assuming to be, at the stage of investigation, can never be cured. The parties are

at liberty to raise all their objections before the investigating authority and thereafter, before the Commission at the time of enquiry before passing final order. Therefore, the contention of the parties that they are put to severe hardship even at this stage is liable to be rejected.

78. The Competition Commission of India owes a public duty to protect the interest of the consumer public. In discharging such public duty, there is no harm in over looking some procedural lapses, if the resultant order passed out of such non-compliance of procedures is not instantaneously deciding the rights of the parties, in any manner. It is not like a preventive detention order passed against a person to say that the procedural violations and technical lapses would play a major role in deciding the sustainability of such order. In such cases, as the liberty of the person itself is curtailed instantaneously, interference based on such procedural violation or technical lapses is justifiable. It is not so in this case. It is only an order to investigate further. Therefore, the Court should show utmost restraint from interfering with such process of investigation. There are two types of procedural violations. One would result in affecting the rights of the parties at once, whereas the other is not so. Therefore, it has to be seen on the facts and circumstances of each case as to whether such procedural violation requires judicial scrutiny and consequently, the interference with the order under challenge. In this case, this Court finds that the procedural lapses raised by the parties do not fall under the first category.

79. It is to be noted further that the relevant Regulations are only procedures which are to be followed while filing the information or reference and also scrutinising the same for proceeding further to form an opinion on the existence of a prima facie case. Therefore, they are the procedures made to facilitate the Commission to look into the matter and decide as to whether further investigation is required or not. No doubt, it is seriously contended that those procedures are mandatory and non-compliance of the same will make the reference void. When the Commission itself has proceeded to order investigation after forming an opinion that a prima facie case exists in this matter and when the rights of the parties are not affected in any manner, at this stage, as the order for investigation does not attract any civil consequences nor it determines the issue raised against the parties finally, certain procedural lapses taken place while arriving at such prima facie view itself will not make the entire proceedings invalid. On the other hand, the parties are given opportunity to take part in the investigation and thereafter to submit their objection before the Commission so as to enable the Commission to arrive at a just and proper conclusion and pass a final order under Section 27, if the report of the investigating authority, namely, the Director

General goes against the parties.

80. Needless to say, receiving a complaint in the form of reference or information and ordering investigation on the same, that too, after forming a prima facie opinion that there exists a prima facie case are undoubtedly, administrative actions at a preliminary stage and therefore, at that stage, any interference with such order will only allow the parties to escape from the very investigation itself, which ultimately defeat the object sought to be achieved under the relevant statute, in this case, the Competition Act, 2002. It is not that the parties are voiceless or remediless. They are entitled to place the relevant materials before the investigating authority and show that the allegations are baseless. Equally, they are entitled to take part in the proceedings before the Commission and contest the matter after filing of the report by the investigating authority. Assuming that an order is passed against them under Section 27, the parties are having statutory right of appeal before the Tribunal as provided under Section 53-B and further appeal under Section 53-T before the Supreme Court, against any decision or order made by the Appellate Tribunal. Therefore, when such statutory protection by way of two appeals before the two forums is granted to the affected parties, I do not think that at this stage, this Court can interfere with the very preliminary order, that too, directing the investigation, even on the ground of procedural lapses, either in making the reference or entertaining the same. Needless to say that all these contentions even otherwise can be raised by the parties before the Commission or before the Appellate Tribunal, if an order is passed by the Commission against the parties. Therefore, the petitioner and the supporting respondents are not entitled to escape from the clutches of investigation.

81. In this case, admittedly, during the pendency of this writ petition, the investigation has already been completed and all the parties have taken part in the investigation. It is also stated that the report of the investigating officer was submitted before the Commission and all the parties have taken part in the proceedings before the Commission and have advanced their arguments. Therefore, the final order alone is to be passed by the Commission. When such being the factual position, it is for the parties to face the order and thereafter to work out their remedy, if the order goes against them.

82. At this juncture, it is to be noted that the present writ petition itself was filed after such a long time. No doubt, the delay is sought to be explained by the petitioner. In any event, this Court has not considered such delay as the reason for rejecting the writ petition, since this Court has taken the view that the very order impugned herein does not give a cause of action to subject the same for interference. One more factor to be noted herein is that the other supporting

respondents in this case have not chosen to challenge the impugned order and on the other hand, they have taken part in the investigation. However, when this writ petition is filed, these parties raised very many objections with regard to the manner, in which, the investigation has been conducted. I do not think that these parties can raise all these objections in this writ petition as these grounds are the matter to be raised and agitated before the Commission or before the Appellate Tribunal as the case may be.

83. This Court makes it very clear that it is not expressing any view on the merits of the allegations made either in the reference or in the complaint made by the 4th respondent and also on the prima facie opinion expressed by the Commission, since it is not a matter for this Court to go into the same and express its view, that too, at the preliminary stage, more particularly, when the factual aspects of the matter is yet to be finally decided by the Commission by passing a final order.

84. Before parting with this case, I would like to refer an observation made in the decision of the Apex Court reported in 2013 (4) SCC 97 (Laxmibai v. Bhagwantbuva) wherein it is held that when substantial justice and technicalities pitted against each other, the former should be preferred in the larger interest of administration of justice. Paragraph No.49 of the said decision reads as follows:

49. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and the courts may in the larger interests of administration of justice may excuse or overlook a mere irregularity or a trivial breach of law for doing real and substantial justice to the parties and pass orders which will serve the interest of justice best.

85. Considering all these aspects, I find that the present writ petition is liable to be dismissed and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(CS II)

True Copy

Sub-Assistant Registrar

vsi

To

1. The Secretary to Government,
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W.P.No.35255 of 2015

SSV(CO)
SP(07/03/2018)

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