



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.27063 of 2021

Royal Motors

... Petitioner

Vs.

1.Competition Commission of India,
rep.by its Chairperson,
9th Floor, Office Block-1,
Kidwai Nagar (East),
New Delhi 110023, India.

2.Yamaha Motors Company Limited,
2500, Shingai, Iwata, Shizuoka,
Japan.

3.India Yamaha Motor Private Ltd.,
having registered office at
1st Floor, The Great Eastern Centre,
70, Nehru Place, Behind IFCI Tower,
New Delhi 110019, India.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the 1st respondent to consider the representation of the petitioner dated 27.10.2021 and 30.11.2021.

For Petitioner : Mr.Anirudh Krishnan

For RR1 : Mr.Thirunavukkarasu
Central Government Standing Counsel

For RR2 to 5 : Mrs.Indu Karunakaran for R3 to R5

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus to direct the 1st respondent to consider the representation of the petitioner dated 27.10.2021 and 30.11.2021.

2. Mr.Thirunavukkarasu, learned Central Government Standing Counsel takes notice for the first and second respondent and



Mrs.Indu Karunakaran, learned counsel for R3 to R5. In view of the limited relief sought for in this petition, On the consent expressed by the Learned counsel appearing for either side, this petition is taken up for final disposal.

WEB COPY

3. The case of the petitioner is that they are a dealer authorised by the respondents 2 and 3 to manufacture bi-wheelers, including fitting and spare parts accessories thereof for the past 28 years. They are having an exclusive showroom at Mayiladuthurai, Tamil Nadu. The dealership agreement between the petitioner and the third respondent was extended from time to time and the last such agreement was entered into on 01.04.2018. While so, the petitioner came to know that the second and third respondents are in the process of authorising a new dealership to a person in Mayiladuthurai, Tamil Nadu, which is in gross violation of terms and conditions of the Dealership agreement between the petitioner and the third respondent and the provisions of Section 4 of the Competition Act, 2002. Therefore, they submitted a representation dated 16.09.2021 to the respondents 2 to 5 with a request not to appoint any new dealer in contravention of the terms and conditions of the agreement. A reply dated 28.09.2021 was sent by the third respondent stating that it was the prerogative of the company to decide the number of dealership in a location and establishing any such dealer will not in any way infringe the terms and conditions of the agreement entered into with the petitioner. Thereafter, the petitioner has sent an e-mail dated 06.10.2021 along with annexures and requested the first respondent to take appropriate action against the respondents 2 to 5 as contemplated under Section 19 (1) of the Competition Act. The contents of the e-mail were also sent by way of a representation through registered post on 07.10.2021 to the first respondent and since no action was taken thereof, a Writ Petition was filed in W.P.No.22350 of 2021, to direct the 1st respondent to investigate into the affairs of the respondents 2 and 3 for anticompetitive nature of business carried out by them. In the meantime, the 3rd respondent issued a termination notice to the petitioner which would be effective after the expiry of 60 days and thereby, the Writ Petition was dismissed vide order dated 29.10.2021. Further it is the claim of the petitioner that since the representation dated 07.10.2021, was not filed in the proper format, the petitioner had filed another representation dated 27.10.2021 in the requisite format to the 1st respondent. However, no action was taken by the 1st respondent till date, but the construction process is till continuing at a very high pace, especially after issuance of legal notice. It is also pertinent to note that the petitioner has sent another representation dated 30.11.2021, for which also there has been no response till date. Further if no action is taken by the 1st respondent on the representation, the petitioner will be put to great hardship, as



१२.५ : प्रमेय ५२८

8. The facts in the present case is not in dispute that admittedly the petitioner made representation to the 1st respondent Competitive Commission on 06.10.2021 by challenging the clause containing in the Dealership Agreement and once again, the representation was made on 27.10.2021 for the very same relief and also on 30.11.2021 to know the status of the said representation. Since the same was not considered, the petitioner is before this Court. While such being the position, now it is represented by the learned Central Government Standing Counsel appearing for the 1st respondent that already the representation of the petitioner was considered and the order was reserved. It is the claim of the petitioner that though such being the submission of the learned counsel for the 1st



respondent, no liberty was given to the petitioner to put forth his case. For which, the learned counsel for the 1st respondent replied that there is no provision available under the Competition Act, 2002, for providing opportunity of personal hearing to the petitioner.

9. Though the petitioner challenging inaction on the e-mail representation dated 06.10.2021, filed the Writ Petition, it was dismissed on the ground that Writ Petition was filed within four days of submission of the representation. Thereafter, the respondents has issued termination notice dated 21.10.2021 to cancel the petitioner's Dealership Agreement, which would be effective after the expiry of 60 days and the said 60 days duration as stated in the termination notice would come to an end on 19.12.2021. However it is the stand of the petitioner that without considering the representations of the petitioner dated 27.10.2021 and 30.11.2021, the order of termination has been passed in haste. Therefore, in view of the above fact, this Court considering the expiry of the termination period, without expressing any opinion on the merits of the case, directs the 1st respondent to consider the petitioner's representations dated 27.10.2021 and 30.11.2021 and afford an opportunity of hearing for the petitioner and the respondents 2 to 5, after hearing the parties, shall pass appropriate orders on merits and in accordance with law. Further this Court deems it fit to fix the date of hearing on 21.12.2021, on which date, the petitioner and the respondents 2 to 5 shall appear before the 1st respondent for the personal hearing and after hearing, the 1st respondent shall pass orders, within a period of two weeks from the date of 21.12.2021.

This writ petition is accordingly disposed of. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sk

To

1.The Authorized Officer,
RBI, OMBUDSMAN (Chennai)
No.16, Rajaji Salai,
Fort Glacis, Chennai 600 001.



2.The Manager,
Sundaram Home Finance Limited,
Sundaram Towers,
No.46, Whites Road,
Chennai 600 014.

WEB COPY

+1cc to Mr.Anirudh Krishnan, Advocate, S.R.No.67411

W.P.No.27063 of 2021

SR II(CO)
KM(17/12/2021)