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Functional Ineffectiveness of M.R.T.P

Commission in Curbing Monopolies in India.

(Some Reflection on Legal Provisions)

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The Monopolies and Restrictive Trade Practices Act was enacted by Parliament in 1969 to give Statutory effect to the Directive Principles of State Policy as enshrined in Article 39 (b) and (c) of the Constitution of India, which states as follows :-

39 - The state shall, in particular direct its policy towards securing -

(b) that the ownership and control of the material resources of the Community are so distributed, as best to subserve the common good, and (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."

The object of the M.R.T.P. Act 1969 is clearly laid down in the Preamble:-

"An Act to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidently thereto."

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In order to achieve these objectives the Monopolies and Restrictive Trade Practices Act was constituted in 1970 under the Act. It was expected that this statutory Commission will play a significant role in curbing concentration of economic power and monopolistic trade practices. An evaluation of the functioning of the M.R.T.P. Commission, during last more than twenty years, has proved its inability to meet the aspirations of the society at large. The reasons are varied. Barring few, the various sections of the M.R.T.P. Act present the view that the status of the Commission under the Act is no more than that of inquiry agency.

The M.R.T.P. Act is a measure to arrest the development of huge monopolies having an adverse effect on the market and to prevent concentration of economic power in few hands, to the detriment of many. Out of these three main objectives of the Act the M.R.T.P. Commission is effectively operative only in regard to the prohibition of the restrictive trade practices.

Under Section 10(a) the Commission is empowered to inquire into any restrictive trade practices. Section 10 (b) empowers the Commission to inquire into any monopolistic trade practice upon a reference made to it by the Central Government, or upon its own knowledge or information. It is interesting to note that Section 10 in its totality empowers the Commission to make inquiries into any restrictive trade practices, but does not provide for the necessary steps, which the Commission could take to do away with such practices.

Section 10 read with Section 37 makes it clear that the Commission has the power to inquire into trade practices but is not competent to pass any monopolistic trade practice, whereas it can very well do so in respect of a restrictive trade practice. It is difficult to reconcile why the Commission should inquire into any monopolistic trade practice under Section 10(b), on its own knowledge or information, if it cannot pass any order of discontinuance or prohibition, even if such practice in its opinion is prejudicial to the public interest.

The provision of Sub-section (4) of Section 37 of the Act provides that notwithstanding anything contained in this Act, if the Commission during the course of an inquiry under sub-section (1) of section 37 finds that a monopolistic undertaking

is indulging in restrictive trade practices, it may after passing such orders under sub-section (1) or sub-section (2) with respect to the restrictive trade practices as it may consider necessary, submit the case along with its findings thereon to the Central Government with regard to any monopolistic trade practice for such action as that Government may take under Section 31. In other words, sub-section (4) establishes once again the supremacy of the Central Government over the Commission in controlling the monopolistic trade practices.

The discretion of the Commission to submit its findings to the Central Government relating to any monopolistic trade practice shall only be exercised by the Commission when it finds during an inquiry in any respective trade practice that a monopolistic undertaking is indulging in monopolistic trade practices.

The Commission is, therefore, not empowered to do anything regarding a monopolistic trade practice which it may inquire into on its own knowledge and information under Section 10(b) or a monopolistic trade practice exercised by a dominant undertaking.

In this connection it will be proper to refer to the recommendations of the Sachar Committee, which in its Report in Chapter XXI observed that "Section 10 (b) empowers the Commission to initiate *sub-note* inquiries into monopolistic trade practices but there is no provision for follow-up action in Section 31. This affects the functioning of the Commission.

As far as the achievements of the objects of the M.R.T.P Act are concerned, the functions of the Commission under Section 21, 22 and 23 of Chapter III of the Act hardly convey any material contribution.

Sections 21, 22 and 23 provide for the regulatory control of the Central Government on the undertakings to which Section 10 (Part A) of the Act applies, so that the operation of the economic system does not result in the concentration of economic power to the common detriment.

Section 21 provides that no undertaking to which Section 20 of the Act applies shall substantially expand its activities, unless a notice to that effect is given and the same is approved by the Central Government on being satisfied that the proposed expansion is not likely to lead to concentration of economic power to the Common detriment or is not prejudicial to the public interest.

However, if in the opinion of the Central Government no order as to approval of the proposal can be passed without further inquiry it may refer the application to the Commission for inquiry and the Commission may after such hearing as it may think fit, report to the Central Government its opinion thereon and the Central Government upon receipt of the report of the Commission may pass such order as it considers proper.

Section 22 provides that no person or authority (other than the Government) shall establish the new undertaking which after establishment will become an inter-connected undertaking of an undertaking to which Section 20 of the Act applies except with the permission of the Central Government.

The Central Government shall issue such permission on being satisfied that the proposal to establish new undertaking is not likely to lead to the concentration of economic power to the Common detriment or is not prejudicial to the public interest. The Central Government may also refer the application to the Commission for an enquiry and on the report of the Commission the Central Government may decide and issue orders. such merger, takeover or amalgamation, and undertaking w.

Similarly Section 23 provides that no Scheme of merger, amalgamation or takeover between undertakings to which or to any of which Section 20 applies or that from result to which Section 20 will apply, shall be sanctioned by any court unless it is approved by the Central Government on an application by the concerned undertaking.

The Central Government may also refer the matter to the Commission for further inquiry and its report will be considered by the Government before passing any order.

It is quite clear from the language of Sections 21, 22 and 23 of the Act that to make use of the expertise of the Commission is the sole purpose and absolute discretion of the Central Government in taking decisions on the various applications under Section 21, 22, and 23 of the Act. However such report of the Commission is not binding on the Central Government. The discretion of the Central Government is absolute. /- furnish its report on matters referred by the

It may therefore be stated that the role of the Commission is only to function as an inquiry agency to /- Central Government at its discretion. It is therefore difficult to judge the sanctity of the report of the Commission on the applications referred to it by the Central Government under Sections 21, 22 and 23 of the M.R.T.P. Act.

In this connection reference may be made to the recommendations of the Sachar Committee, as contained in Chapter XX of its Report relating to the concentration of economic power. It is laid down in the Report that there is no justified reason why the Central Government should not avail itself of the services of an important and expert body like the M.R.T.P. Commission in the disposal of applications dealing with matter falling pre-eminently within the Central Government's purview. The role of the Commission needs to be strengthened effectively.

Proposals under Sections 21 and 22 (a) from the dominant undertaking for manufacture of goods or provision of services in which it is dominant or (b) invoking capital outlay exceeding Rs. Five crores or (c) where objections have been received or there is more than one applicant should be compulsorily referred by the Central Government to the Commission for inquiry as well as for passing of final orders instead of reporting back to the Central Government. The other cases can be referred to the Commission at the discretion of the Central Government. However, once a reference has been made to the Commission, it should have power to pass final orders.

Though not invoked even once since the commencement of the Act, yet it is consoling that section 27 of chapter III of the Act confers some sanctity on the report of the Commission vis-a-vis the Central Government. Section 27 provides that if in the opinion of the Central Government the working of an undertaking to which Section 20

(Part 'A' Chapter III) of the Act applies, is prejudicial to the public interest or has led or is leading or is likely to lead to the adoption of any monopolistic or restrictive trade practice, refer the matter to the Commission for an inquiry. The Commission after inquiry, may send its report to the Central Government.

The details of cases referred to the M.R.T.P. Commission under Sections 21 and 22 of the Act and in respect of which orders were passed by the Central Government after receipt of the Reports from the Commission during the period 1-1-81 to 31-12-81 or which were pending with the Commission as on 31st Dec 1981 are given in Table I (See Eleventh Annual Report of M.R.T.P. Commission 1982.)

Under Section 31 of the M.R.T.P. Act three references have so far been made by the Central Government to the M.R.T.P. Commission for enquiry into monopolistic trade practices in respect of the following cases.

- (1) Messers Coca-Cola Export Corporation,
New Delhi. (Reference made on 28th July, 1973)
- (2) Messers Cadbury Fry India Ltd. (Reference
made on 22nd March, 1974)
- (3) Messers Colgate Palmolive (India) Pvt Ltd.
(Reference made on 28th March 1974)

The aforesaid three references were, however, challenged by the concerned companies through writ petitions filed in the Delhi High Court and the proceedings before MRTP Commission in respect of these references were stayed. These companies further went in appeal to the Supreme Court and the Supreme Court has stayed the proceedings before the Commission in respect of these enquiries.

Under Sections 27 and 31 the word "may" is used which gives the discretion to the Central Government to pass or not to pass an order for the division as provided for in Section 27 or to prevent and remedy any mischief as provided in Section 31.

Table No.1-

Particulars of cases under chapter III of the Act referred to the M.R.T.F. Section 21 and 22 for further enquiry as on 31-12-1981.
(Vide Chapter III-Paragraph 3,16)

SI No.	Name of the Undertaking	Group to which belongs and date of receipt of Notice/i Application	Reference made under section and date of reference to the Commission	Nature of the Proposal Eommo - Existing capacity of products	Existing capacity after expansion	Date
1.	2.	3.	4.	5.	6.	7.
1.	M/s.Swadeshi Polytext Ltd.	Jaipuria 26-5-78	21(3)(b) 31-1-79	Polyester Staple Fibre	6,100 tonnes per annum	12,200 tonnes per annum

1.	2.	3.	4.	5.	6.	
2.	M/s. Indian Oxygen Limited.	<u>Independent</u> 16-11-78.	<u>22(3)(b)</u> 15-10-79.		For the establishment of a undertaking for the manufacture of (i) Submerged arc Fluxes 2,000 tonnes per annum; (ii) Flux Cord Wires 300 tonnes Annun and (iii) submerged Arc Welding Wires MIG Wires, Flux Arc/Fusement Wires-4,700 tonnes per annum.	
3.	M/s. Brooke Bond India Limited.	<u>Brook Bond</u> 2-5-78.	<u>22(3)(b)</u> 14-11-78.		For the establishment of new undertaking for the manufacture of 1,500 tonnes per annum of Instant Coffee.	
4.	M/s. Synthetics and Chemicals Ltd.	<u>Kilachand</u> 19-3-80.	<u>21(3)(b)</u> 24-6-80.	Styrene Butadiene	30,000 tonnes per annum	60,000 tonnes per annum
5.	M/s. Synthetics and Chemicals Ltd.	<u>Kilachand</u> 19-3-80.	<u>21(3)(b)</u> 24-6-80.	Styrenated phenol.	-	400 tonnes per annum

1.	2.	3.	4.	5.	6.
6.	M/s.Synthetics and Chemicals Ltd.	Kilachand 3-4-80.	21(3)(b) 24-6-80	VinyI Pyridine tactics	-
7.	M/s. Alkali and Chemical Corporation of India Limited.	ICI 20-3-80	21(3)(b) 2-12-80	Synthetic pyrethroids Insecti- cides.	-
8.	M/s.National Organic Chemicals Industries Ltd.	Mafalla 16-9-79.	22(3)(b) 2-12-80	For the establishment of a new unit for the manufacture of 150 ton annum of Cypermethrin a Synthetic and Formulated Products.	
9.	M/s.Rallis India Limited	Rallis 24-8-79	22(3)(b) 8-12-80.	For the establishment of a new unit for the manufacture of 150 ton annum of Synthetic year a nnum of Synthetic I	
10.	M/s.Amar Dye-Chemical Limited.	Doshi 19-3-80	22(3)(b) 14-1-81.	For the establishment of a new unit for the manufacture of 900 ton annum of Nepthalene based interm	

11.	M/s.Schrader Scovill Duncan Limited.	<u>Goenka</u> 18.6.79	<u>22(3)(b)</u> 19.2.81	For the establishment of a new undertaking for the manufacture of Pneumatic Equip- ments for a capacity of 2,83,500 Nos. per annum.	31.
12.	M/s.Motor Industries Company Limited	<u>Independent</u> 20.2.80	<u>21(3)(b)</u> 21.2.81	New article 11.25 both Nos. vi. Fuel per injection annum equip- ments	3.11
13.	M/s.Hoechst Pharma- ceuticals Ltd.	<u>United Breweries</u> 15.11.80	<u>22(3)(b)</u> 4.3.81	For the establishment of a new undertaking for the manufacture of (i) 30 tonnes per annum of decamethrin and formulation and (ii) 500 tonnes per annum of isoproturon and formulation	2.9
14.	M/s.Kirloskar Engines Ltd.	<u>Oil Kirloskar</u> 1.6.81	<u>22(3)(b)</u> 17.6.81	For the establishment of a new undertaking for the manufacture of 48 lakh Nos. per annum of Fuel Injec- tion Equipments.	3.11
15.	M/s.Locas TVS.Ltd.	<u>TVS</u> 29.6.81	<u>22(3)(b)</u> 4.8.81	For the establishment of a new undertaking for the manufacture of 170 lakhs Nos. per annum of Fuel Injection	3.11

In the light of above discussion, it is suggested that compulsorily it should be made necessary for the Central Government to refer all the applications under Section 21,22 and 23 and under Section 27 for the opinion/report of the M.R.T.P. Commission. The Report of the Commission should be made binding on the Central Government. The Commission is an impartial statutory expert body established to achieve the aims and objects of the M.R.T.P.Act.