

THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT,
1969. By D.J. Ganatra. 1971. N.M. Tripathi Private Ltd., Bombay.
Pp. xxii+258. Rs. 25.00

AMONG ALL economic legislation regulating private enterprise passed by the Indian Parliament, the Monopolies and Restrictive Trade Practices Act, 1969 is of the most far-reaching consequences. The history behind the Act may be traced to the *Committee on Distribution of Income and Levels of Living* (popularly known as *Mahalanobis Committee*), appointed by the Planning Commission in 1960, *inter alia*, with a view to ascertaining the extent to which the operation of the economic system had resulted in concentration of wealth and means of production. In view of the suggestions of the Committee in part I of its report dealing with *Distribution of Income and Wealth and Concentration of Economic Power* (1964),¹ the *Monopolies Inquiry Commission* was appointed by the Government of India for enquiring into the extent and effect of concentration of economic power in the private hands and the prevalence of monopolistic and restrictive practices with special reference to the factors responsible for their emergence and their social and economic consequences, and also to suggest legislative and other measures to protect public interest. In its report submitted in 1965, the *Inquiry Commission* gave a draft bill for the purpose of checking concentration of economic power and controlling monopolistic and restrictive trade practices. The recommendations of the *Inquiry Commission*, as given in its draft bill, gave birth to the present Monopolies Act.

Except two major departures, most of the recommendations of *Inquiry Commission* were accepted by the central government. They are : First, whereas the *Inquiry Commission* had recommended compulsory powers to the proposed Monopolies and Restrictive Trade Practices Commission with regard to the monopolistic and restrictive trade practices and concentration of economic power, the Monopolies Act has given such power only with regard to restrictive trade practices and the commission's powers regarding monopolistic practices and the concentration of economic power are only of advisory nature. Secondly, whereas the *Inquiry Commission* suggested not to strike at the concentration of economic power as such but do so only when it becomes detrimental to the common good, the Monopolies Act makes specific provisions with regard to checking of concentration of economic power as such.

It is encouraging to note that commentaries on the provisions of the Monopolies Act are being written in our country immediately after the

1. The reviewer has given a detailed history of the Act in his dissertation : *Restraints on Concentration of Economic Power, Monopolies and Restrictive Trade Practices : A Study of the Monopolies and Restrictive Trade Practices Act, 1969* which was submitted in 1970 in part fulfilment of the requirement of the Degree of Master of Laws of Banaras Hindu University.

passage of the Act and the book under review² is probably the first one of them. The book is a section-wise commentary on the Monopolies Act,³ running into 258 pages plus xxii pages covering foreword, preface, acknowledgement, contents, table of cases and an addenda. The book gives short commentary, rather explanatory legal notes and comments as the author says, below the full text of each section of the Act. The book also contains three appendices. Appendix 1 contains a few provisions of the Companies Act, 1956, which seemed material to the author for the purposes of the Act. The rules framed by the central government under the Monopolies Act are found in appendix 2. Appendix 3 contains a special chapter for trade and industry.

A general thinking regarding the application of the various provisions of the Monopolies Act exists that these provisions are applicable only to the big business and that whenever a new undertaking as defined under section 20 is set up, the provisions of the Act are applicable to it. However, in this connection, the reviewer is happy to note certain learned observations of the author. Thus, the observation that the Monopolies Act is applicable both to big as well as small undertakings^{3a} is commendable. Further, the author's observation, that for setting up a new undertaking of any size, if it is an independent undertaking, no approval of central government under section 22 of the Act is necessary,⁴ is correct. Again, when the author observes that before a presumption regarding a trade practice being contrary to the public interest under section 38 arises, a trade practice must be established to be a restrictive trade practice,⁵ is perfectly correct. Lastly, the author has correctly pointed out a drafting mistake in section 17(2) regarding the use of the word 'offence' in place of 'evidence'.⁶ The Monopolies Act contains a few provisions by way of additions, modifications or changes over some of the provisions of the Industries (Development and Regulation) Act, 1951, the Companies Act, 1956 and the Code of Civil Procedure, 1908. The author has given various provisions of these statutes at relevant places which makes the commentary easily understandable. He has also taken pains to give some provisions of foreign statutes, though not in detail, which will be of help to the reader. The author has also taken pains to quote the opinions of the foreign authors wherever necessary.

The major source of information to the author, as manifest through frequent and copious quotations, has been the report of the *Inquiry Commission*, the draft bill submitted by the *Inquiry Commission* in its report and the report of the Joint Select Committee on Monopolies and

2. Ganatra, D.J., *The Monopolies and Restrictive Trade Practices Act, 1969* (hereinafter referred to as *Ganatra* only).

3. The book does not deal with certain problems of governing industrial undertakings as has been advertised at the back cover of *Current Indian Statutes* of Nov. 1971.

3a. *Id.* at 4, 11⁸.

4. *Id.* at 8⁷.

5. *Id.* at 151.

6. *Id.* at 71.

Restrictive Trade Practices Bill, 1967. If we exclude the quotations, the text of the Monopolies Act and the rules framed thereunder and the extracts of other statutes from the book, the book would be reduced to nearly sixty to seventy pages which is too short a length for writing a commentary on the subject. The frequent citation of long quotations and extracts detracts from the scholarly merit of the book. Further, at some places second-hand materials have been given.⁷ The quotations have been given without explaining their relevance either to the provisions of the Act or with the views of the author. Without giving any particular reference from the book, it may be pointed out that the book contains many wrong sentences, grammatical mistakes, spelling mistakes and printing mistakes.

On page 2 of the book, the author gives the history preceding the passage of the Monopolies Act and starts with the *Inquiry Commission*. The reviewer fails to understand the justification of omitting a reference to the *Committee on Distribution of Income and Levels of Living* which has been mentioned above.

As regards the scope of the Monopolies Act, it may be pointed out that the Act contains elaborate provisions regarding setting up of new undertakings, regulating expansions, mergers and amalgamations and appointment of directors, division of undertakings and controlling or prohibiting monopolistic and restrictive trade practices. The author, while discussing the scope for the application of the Act, has omitted to mention the provisions regarding division of undertakings.⁸

With a view to formulating a legislative policy, the *Inquiry Commission* had given four main considerations. They were: First, the concentration of economic power as such need not be checked; it should be done only when it becomes a menace to the best production or to fair distribution. Second, for the above purpose a constant watch must be kept by a body independent of government in order that big business does not misuse its powers. Third, the monopolistic conditions in any industrial sphere are to be discouraged if this could be done without injury to the interests of the general public. Last, monopolistic and restrictive trade practices must be curbed except when they conduce to the common good. The Monopolies Act, however, makes very elaborate provisions for checking concentration of economic power as such and thus first consideration mentioned above has not been accepted. The author ought to have pointed out this fact.^{8a}

The author has created doubt regarding the constitutional validity of the Monopolies Act when he says that there is no entry in list I in the seventh schedule of the Constitution under which the Act might have been passed.⁹ However, this doubt seems to be unwarranted because the Act has been enacted under entry 21 of the Concurrent List which provides for commercial and industrial monopolies, combines and trusts.

7. *Id.* at 39, 44-47, 100-104, 126.

8. *Id.* at 4, 238.

8a. *Id.* at 3.

9. *Id.* at 182, 183.

At numerous places, the observations of the author are either self-contradictory or contrary to the provisions of the Act. At one place the author says that there is no provision in the Act suggesting any means of reducing 'existing' concentration of economic power, if any.¹⁰ However, on reading the provisions of the Monopolies Act relating to penalties for the appointment of directors in contravention of the provisions of section 25 of the Act,¹¹ registration of undertakings¹² and division of undertakings,¹³ all of which fall under the chapter of concentration of economic power, it becomes clear that the Act aims at checking even 'existing' concentration of economic power. Again, the author says that the most novel feature of the Act is

that the Act seeks to penalise *not default or breach of law* but defaults or breaches of executive and/or quasi-judicial orders of the Central Government. . . .¹⁴

However, a reading of sections 45-48, 51 and 52 of the Monopolies Act leaves no doubt that under those sections it is the contravention of various provisions of the Act that is punishable and not only the orders issued under those provisions. This fact, at one place, has been admitted by the author¹⁵ and thus he has given two contradictory statements. A similar contradictory observation has been made at several other places¹⁶ where the author has stated that under Indian law no agreement relating to any restrictive trade practice becomes "*ipso facto* void" unless so declared by the Monopolies Commission.¹⁷ But at another place,¹⁸ the author rightly says that 'resale price maintenance practice has been declared void' under the Act and this is the only exception where the order of the Monopolies Commission is not required to render such practice void.¹⁹

Further, the reviewer feels that the author has raised unnecessary doubts. Thus, the author has expressed doubts²⁰ regarding the constitution of benches by the Chairman of the Monopolies Commission and also that the Monopolies Act excludes the expression of dissenting opinion by members of the Monopolies Commission. As to the constitution of benches, the analogy of the courts may be drawn. If any bench is constituted of even number of members of the Monopolies Commission and there is equal division of opinion, the matter might be referred to another member whose opinion might be decisive. There is no bar to such a reference. Even in the matter of dissenting opinions, the court's analogy may be apposite. There is no bar in

10. *Id.* at 2.

11. *The Monopolies Act*, s. 25(3) read with s. 47.

12. S. 26.

13. S. 27.

14. *Ganatra* at 13.

15. *Id.* at 240.

16. *Id.* at 156, 235, 248.

17. *Id.* at 156, 235.

18. *Id.* at 248.

19. *The Monopolies Act*, s. 39(1).

20. *Ganatra* at 58, 70.

delivering dissenting opinion if any member does not agree with the majority and, in practice, dissenting opinions have been given by members of the Monopolies Commission.²¹

The author does not seem to have correctly appreciated the role of the Director of Investigation under the Monopolies Act. The Director is appointed only for the limited purpose of causing a preliminary investigation and not for furthering the general objectives of the Monopolies Act²² as the author thinks.^{22a}

The definition of the term 'inter-connected undertaking' given in the Monopolies Act read with the definition of 'dominant undertaking', makes it quite clear that if there are more than one inter-connected undertakings each having assets over a crore of rupees, the provisions of chapter III of Monopolies Act will be applicable to all of them. Thus, there is not much substance in the observation of the author when he states that

There may be 20 inter-connected undertakings each with assets over a crore of rupees. Which of the twenty inter-connected undertakings is an undertaking as contemplated by section 20 of the Act ? The answer may be 'none' or 'all'.^{22b}

A doubt also exists in the mind of the author when he discusses the position of restrictive trade practices²³ not brought before the Monopolies Commission for enquiry. Section 38 of the Monopolies Act applies only to those restrictive trade practices which the commission enquires. However, it may be pointed out that this doubt is without any basis for the following reasons. All the restrictive trade practices registerable under the Act are to be compulsorily registered. Since they are to be registered with the Registrar of Restrictive Trade Agreements, the Registrar may make an application to the Monopolies Commission for enquiry into the harmful nature of any restrictive practice. Further, under section 10 of the Act, besides the Registrar, a number of other entities, including government, can bring the matter before the Monopolies Commission. Further, if the restrictive practice is a practice relating to resale price maintenance, it would automatically become void under section 39 of the Act.

The author's analysis of foreign legislative enactments is not adequate. While dealing with the Sherman Act, 1890 he simply quotes some of the provisions of the Act and then passes on to the Federal Trade Commission Act, 1914. The most important "rule of reason", enunciated by the U.S. Supreme Court in the case of *Standard Oil Co. v. U.S.*²⁴, which to some extent

21. Upto December 1971 the Monopolies Commission had submitted eight reports. Out of these, the opinion of the members of the Commission was divided in four and both majority and minority opinions were recorded in the reports. See, *The Economic Times*, Nov. 20 and Dec. 29 (1971).

22. The Monopolies Act, s. 11.

22a. *Ganatra* at 59, 62-63.

22b. *Id.* at 95.

23. *Id.* at 156.

24. 221 U.S. 1 at 42-43; see also *U.S. v. American Tobacco Co.*, 221 U.S. 106.

abrogates section 1 of the Sherman Act in its application to reasonable or insignificant restraints, has not been mentioned. At some places, the author refers to sections of foreign statutes by way of comparison with Indian law without actually stating the points of comparison or commenting upon them. This is a significant omission. Further, the author has committed a serious mistake while dealing with the provisions of the U.K. Monopolies and Mergers Act, 1965, where he says

The United Kingdom has been examining its laws relating to monopolies recently and a Bill recently introduced in the United Kingdom Parliament seeks to provide for the investigation of mergers and also for the investigation of services.²⁵

It seems that last paragraph given at page 156 of the *Inquiry Commission* report has been taken²⁶ without caring to know that the Monopolies and Mergers Act, 1965 is the outcome of the same bill. The author has failed to notice this fact. The *Inquiry Commission* submitted its report in 1965 and at that time the bill was pending in the U.K. Parliament which became an Act the same year.

At some places in the book a number of cases have been given without discussing any of them.²⁷ The better method might have been to discuss some of them which were important on the point. Further, at places, where the reference of Indian cases was necessary,²⁸ no Indian case has been referred even though a number of cases have been decided by the Supreme Court and High Courts.

Regarding compliance of the Monopolies Act, the author makes a passing remark that surely some better method for compliance of law ought to have been thought of by the legislature²⁹ but fails to suggest any which could have been done.

The book, as evident from the addenda³⁰ appears to contain materials at least up to 17 February 1971, if not of a later date. However, the reviewer is disappointed to note that the materials contained in the book are not even upto the end of 1970. The Restrictive Practices (Inquiry) Regulations had been issued on Dec. 5, 1970 and 1st Dec. 1970 was already fixed as the date for registration of agreements falling within clause (a) to (j) and (l) of section 33(l) of Monopolies Act.³¹ The book contains the Monopolies and Restrictive Trade Practices Rules, 1970. These rules were already amended by the Monopolies and Restrictive Trade Practices (Amendment) Rules, 1971 published on January 12, 1971 laying down the procedure to

25. *Ganatra* at 12.

26. *Monopolies Inquiry Commission* Report, 156.

27. *Ganatra* at 81, 127.

28. *Id.* at 80, 142.

29. *Id.* at 174.

30. *Id.* at xxi.

31. *Gaz. of India*, Ext., Pt. II, s. 3(ii) No. 402 dated Nov. 6, 1970.

be followed in furnishing particulars of agreements registerable under the Monopolies Act.³² These notifications and amended rules should have been incorporated.

Throughout the book, the author has used terms like 'commission', 'Act', and 'Report', indiscriminately. Similarly, the use of the word 'government' generally does not indicate whether he refers to central or state government. This omission tends to confuse the reader.

The author has followed his own style of citing cases without caring to follow the standard modes of citation. The footnotes have been given in the body of the text itself. It would have been better had the author followed uniform mode of citation.

Despite these shortcomings, the reviewer appreciates the efforts of the author in writing a book on the subject. The reviewer hopes that while bringing out second edition of the book the author will revise his book in the light of the suggestions given above.

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32. *Gaz. of India*, Ext., Pt. II, s. 3 (i), No. 8, dated January 12, 1971.

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