

**MONOPOLIES TRADE REGULATION AND CONSUMER PROTECTION—TEXT AND CASES (1985).** By D.P.S. Verma. Tata McGraw-Hill Publishing Company Ltd., 12/4, Asaf Ali Road, New Delhi-110002. Pp. xv+ 319. Price Rs. 48.

THE LAW relating to monopolies and restrictive and unfair trade practices has assumed great importance the world over. In India too, in view of the socialistic approach to our economic policies in securing social and economic justice to the people, it is imperative for the state to ensure that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. It is to achieve these objectives that the Monopolies and Restrictive Trade Practices Act was enacted in 1969 in order to regulate the operation of the economic system so that it does not result in the concentration of economic power in a few hands to the common detriment. It also aimed at controlling monopolies and prohibiting monopolistic and restrictive trade practices. The scope of the Act has now been widened with a view to extending the prohibition to unfair trade practices in the interests of consumer protection.

The author has laid bare the provisions of the Act in a simple and lucid manner, making the subject easy for the common man to understand. The book<sup>1</sup> usefully serves the purpose for which it is written, *i.e.*, presenting the material in a simplified and intelligible form. It is, perhaps, the author's association with the M.R.T.P. Commission and his consequent practical knowledge that has prompted him to give a comprehensive treatment to the subject.

The book has been divided into eight chapters. The author in the first chapter has done a good job in introducing the reader to such concepts as monopoly, competition, oligopoly, cartel, *etc.*, describing them from both the commercial and economic point of view.

The second chapter traces the historical development of the law relating to monopolies and restrictive trade practices in India, giving a brief account of the recommendations of various committees and commissions responsible for necessary amendments made from time to time. The drastic changes brought about by the Monopolies and Restrictive Trade Practices (Amendment) Act 1984 giving effect to most of the recommendations of the High-Powered Expert Committee on the Companies and the M.R.T.P. Acts, have been incorporated at appropriate places.

In the third chapter the scope of statutory provisions relating to monopolies and restrictive trade practices has been given, stating the

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1. D.P.S. Verma, *Monopolies Trade Regulation and Consumer Protection—Text and Cases* (1985).

exemption in respect of certain territories, sectors of economy, trade practices and agreements. It was felt by the commission and the expert committee that public sector enterprises also indulge in monopolistic, restrictive and unfair trade practices.<sup>2</sup> The provisions controlling such practices were, therefore, recommended to be extended to them.<sup>3</sup> In view of these recommendations the author has critically evaluated the provisions exempting public sector undertakings from the purview of the M.R.T.P. Act.<sup>4</sup>

A detailed account of the enforcement machinery under the M.R.T.P. Act is contained in chapter four. The power of the commission to institute an inquiry *suo motu* is considered to be a unique provision under the Indian M.R.T.P. Act in view of the absence of such a power in the hands of the enforcement authorities under the antitrust laws of other major countries of the world such as the Federal Trade Commission of the U.S.A., the Restrictive Trade Practices Commission of the U.S.A., the Restrictive Trade Practices Court in the U.K. and the Fair Trade Commission of Japan. However, the commission by and large remains an advisory body, in respect of the measures against concentration of economic power and in the case of monopolistic trade practices, for, in such cases it may inquire into the practices and recommend regulatory as well as preventive measures that may be taken by the Central Government by passing final orders. Nevertheless, by the Amendment Act of 1984, the commission has been equipped with some more power enabling it to issue injunctions and to award compensation in appropriate cases. It may pass cease and desist or other kinds of orders in matters of unfair trade practices, keeping in view the interest of the consumers who, in general are illiterate and ignorant and have imperfect product knowledge. The High-Powered Expert Committee had recommended in its report of 1978, that the commission should be empowered to pass final orders in monopolistic trade practices inquiries. This recommendation has, however, not been implemented, leaving the area of decision-making in matters of monopolistic trade practices to the Central Government. Thus, although a unique one, the power of *suo motu* inquiry does not make the commission the supreme authority under the statute.

Chapter five is the largest, containing a detailed account of provisions for prevention of concentration of economic power. An undertaking

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2. This is clear from the following cases: *In re Travancore Cochin Chemicals Ltd.*, R.T.P. Inquiry No. 44 of 1975, order dated 23.1.1976; *Association of Plastic Manufacturers v. Alkali Chemical Corporation of India Ltd.*, R.T.P. Inquiry No. 28 of 1977, order dated 23 10 1978; (1977) Tax L R. 2096; *Association of Plastic Manufacturers v. Union Carbide India Ltd.*, R.T.P. Inquiry No. 29 of 1977, order dated 23.10. 1978; *In re Punjab Tractors Ltd.*, R.T.P. Inquiry No. 12 of 1982, order dated 21.12 82. In these cases public sector or government controlled undertakings indulged in monopolistic & restrictive trade practices but successfully claimed exemption.

3. *Report of the High-Powered Expert Committee on the Companies and the Monopolies and Restrictive Trade Practices Acts*, para 19.24 to 19.27 (1978).

4. *Supra* note 1 at 32-36.

proposing substantial expansion, merger, amalgamation with or takeover of another undertaking is required to obtain prior approval of the Central Government. Such approval is also needed for establishment of new M.R.T.P. undertakings or for appointment of directors in certain cases. Acquisition or transfer of shares by or to the M.R.T.P. undertakings or resulting in such undertakings also requires prior approval of the Central Government in view of the amendments effected in the M.R.T.P. Act in 1984. These provisions have displeased the big business houses which had monopolised the trade and industry in India to the exclusion of others. The author has dealt with these provisions in an elaborate manner, giving at one place all the rules and regulations, the procedure to be followed, the forms of application and public notice to be given, as also the provisions of penalty and prosecution in cases of breach of violation of the law. This has great practical value for all kinds of readers such as a corporate manager, lawyer, teacher, accountant or industrialist.

Chapter six deals with the provisions against monopolistic trade practices. Chapter seven contains an analysis of the provisions relating to restrictive trade practices. Different kinds of restrictive trade practices have been enumerated and discussed in light of the cases that have come up before the M.R.T.P. Commission or the courts of law. Chapter eight discusses the recently incorporated provisions relating to unfair trade practices.

In spite of the scant literature available in India on the subject of the law relating to monopolies and restrictive trade practices, the author has taken pains to discuss every provision of the Indian law on the subject, in some detail. Various provisions relating to particular topics have been assembled at one place. This is an outstanding feature of the book which makes the law relating to monopolies and restrictive trade practices easy for every reader to understand. At the end of every chapter relevant cases, whatever little available on the subject, have been given, thereby providing the reader with a reference to the judicial approach towards various issues that have arisen in the area of antitrust laws.

For the reason that it has an overview of the economic, technological, industrial and commercial conditions obtaining in the country and is consequently in a better position to frame the policies in this regard, the Central Government has been given the overall authority in dealing with the cases of monopoly and concentration of economic power. Thus, cases of substantial expansion, merger, takeover, amalgamation, *etc.*, are generally disposed of by the Central Government, without reference to the M.R.T.P. Commission for inquiry. This is evident from the fact that out of 108 proposals for substantial expansion dealt with by the Central Government during 1983, only 27<sup>5</sup> were referred to the M.R.T.P. Commission for

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5. *Id.*, table 5.2 at 109.

inquiry. Similarly, out of 137 proposals for establishment of new undertakings disposed of during 1983 only 5<sup>6</sup> out of 91 applications for merger and amalgamation only 4,<sup>7</sup> and out of 93 applications for takeover only 3<sup>8</sup> were referred to the commission during the same year. Similar is the position as regards earlier years also. However, the authority of the Central Government in this respect should not be regarded as absolute arbitrary authority. In passing its orders sound reasons have to exist. In this view of the matter the author cites the Supreme Court decision in the case of *Bombay Oil Industries Pvt. Ltd. v. Union of India*.<sup>9</sup> Similarly, the extracts of the cases of *Coca-Cola Export Corporation, Cadbury Fry (India) Ltd.* and *Colgate Palmolive India Ltd.* have been given in chapter six at pages 168-172 while discussing the problem of monopolistic trade practices. These cases have been decided by the Delhi High Court holding that no hearing need be given by the Central Government to the concerned parties, before making a reference to the commission, for sufficient opportunity is envisaged during the inquiry made by it.<sup>10</sup>

At the end of every chapter the author has set out a number of questions, opening a good exercise for students by way of preparation for their examinations.

It may be pointed out that at some places the information is not up-to-date. For example, while discussing the requirement of prior approval in cases of substantial expansion, merger, amalgamation, takeover, etc., the author mentions exemption from the requirement of prior approval in the case of undertakings established in free trade zones. In the footnote, it is stated that there are two free trade zones in India, namely, the Kandla Free Trade Zone and the Santa Cruz Electronics Export Processing Zone. Factually there were six such zones in 1985, the other four being FALTA (West Bengal) NOIDA (U.P.) and one each in Cochin (Kerala) and Madras (Tamil Nadu). It is hoped that the information would be up-dated in the next edition of the book. There are some printing errors which may be taken care of while revising the book. At page 196, first line of serial number 3, *made* is printed as *mane*. At page 199, line 6, *he* is printed as *be*. At page 227, line 17, *supplier* is printed as *sapply*. At page 270, first line, first word, *it* is printed as *if*.

The maintenance of minimum resale price is a restrictive trade practice which has been declared illegal *per se*. The M.R.T.P. Commission can grant exemption from prohibition of minimum price maintenance in respect of a particular class of goods on being satisfied that in the absence

6. *Id.*, table 5.3 at 118.

7. *Id.*, table 5.4 at 131.

8. *Id.*, table 5.5 at 132.

9. A I.R. 1984 S.C. 160. See *id.* at 103.

10. The three companies have filed appeals before the Supreme Court which are pending disposal. However, the proceedings before the commission have been stayed.

11. *Supra* note 1, f. n. 16 at 95.

of maintenance of minimum resale price there may be adverse effects on the consumer interest either because the quality or the variety of goods would be substantially reduced or the retail selling price would be increased or any incidental services would be substantially reduced or denied. The author has discussed two cases on the point and mentioned a third one. In the *Drugs* case,<sup>12</sup> the exemption was denied.<sup>13</sup> The argument that the quality of the product could be controlled by maintaining minimum resale price was rejected by the commission on the ground that the quality could be controlled otherwise also. In the *Newspaper* case<sup>14</sup> the exemption was granted. The plea of the undertaking that in the absence of exemption the quality of newsprint, *etc.*, might deteriorate and the hawkers may get an opportunity to cheat the consumers was accepted.<sup>15</sup> In the *Safety Matches* case<sup>16</sup> also the exemption was granted.<sup>17</sup> Thus, while in the last two cases the exemption was granted, in the *Drugs* case it was denied. At page 232 the author wrongly concludes that safety matches and drugs are the two products in respect of which the minimum resale price has been permitted to be maintained. Actually the exemption was denied in respect of drugs as discussed by the author.<sup>18</sup> It is hoped that the error finds no place in the revised edition.

Lastly, the price of the book is within the reach of every person concerned especially the students, who would be adequately benefitted by it.

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12. Case No. 5(6). ENQ. 173, order dated 16.5 1974.

13. *Supra* note 1 at 230-31.

14. *RRTA v. Kasturi & Sons Ltd.* (R.T.P. Inquiry No. 3 of 1979) order dated 27.7.1982.

15. *Supra* note 1 at 231-32.

16. See the *Third Annual Report on the Working of the M.R.T.P. Act 73 (1973)*.

17. *Supra* note 1 at 232

18. *Id.* at 231-32.

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