

NOTES AND COMMENTS

HEARING TO AN OBJECTOR TO CONTROL MONOPOLIES

THE DECISION of the Supreme Court in *Oramco Chemicals Pvt. Ltd. v. M/s. Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd.*¹ is a significant judicial pronouncement under the Monopolies and Restrictive Trade Practices Act 1969 (hereinafter referred to as the Act) in so far as the application of the principles of natural justice is concerned. This case recognises in unequivocal terms the right of hearing to a person objecting to a proposal under chapter III of the Act for prevention of concentration of economic power which is likely to be detrimental to public interest. Till now, an objector was generally at the mercy of the Central Government and the Monopolies and Restrictive Trade Practices Commission (hereinafter referred to as the commission) as regards his right to be heard in proceedings before them under the Act. This is not really so and the present case clearly establishes that the Central Government is under a legal duty to make all the relevant materials available to the objector, consider each and every objection raised by him and dispose of the case by passing a speaking order indicating that all objections have been considered and the government had applied its mind to each one of them.

In this case, the respondent was a large company, belonging to the Birla group, dominant in the manufacture of viscose staple fibre and machinery for rayon and synthetic fibre plant. It applied under section 22 of the Act seeking prior approval of the Central Government for establishment of a new undertaking, as their division, for manufacture of 7,500 metric tonnes per annum of activated earths at Nagda in the Ujjain district of the State of Madhya Pradesh. The cost of the project was estimated at Rs. 202 lakhs proposed to be financed by issue of debentures, loans from public financial institutions and internal accruals. As required by rule 4A of the Monopolies and Restrictive Trade Practices Rules 1970, public notices were published by the respondent in the newspapers and periodicals. The appellant and an individual submitted objections against the proposal.

Section 29 of the Act requires the Central Government to give a reasonable opportunity of being heard to any person who is or may be, in its opinion, interested in the matter under consideration before making any order under chapter III.^{1a} At the public hearing held on the proposal, the appellant raised four major objections. *First*, that it was in the

1. A.I.R. 1987 S.C. 1564.

1a. Ss. 21-27B, Monopolies and Restrictive Trade Practices Act 1969.

process of setting up a plant for the manufacture of activated earths in the State of Madhya Pradesh and if a dominant company like the respondent was allowed to set up a unit in the same state to manufacture the same item, it would be adversely affected. *Second*, most of the units manufacturing activated earths were in the small scale sector and if large industrial houses were allowed to enter the field, the interests of that sector would be jeopardised. *Third*, it was putting up its plant in a "no-industry district" in Madhya Pradesh whereas the respondent's proposed location was not even a "backward area". *Fourth*, the plant proposed by the respondent would pollute drinking water.

The respondent justified its proposal on the ground that the item to be manufactured was open to large industrial houses as declared in the policy of the Government of India.² With regard to location, it pleaded that the very purpose of setting up the plant at Nagda was to utilise chlorine produced in its caustic soda project at that place which was to some extent being let off at that time in the atmosphere and therefore causing pollution. It undertook that all anti-pollution measures would be taken to the satisfaction of the government and there would be no discharge of chemicals into water so as to cause any water pollution.

The Central Government in its order took the view that the objections raised by the appellant had been satisfactorily met by the respondent. The item in question was open for manufacture by large industrial houses and there was scope for creation of additional capacity for manufacture of the item. It therefore approved the proposal subject to the conditions that might be laid down in the letter of intent and others specified in the order itself. They were: (i) the project cost was to be financed by issue of debentures subject to approval of the controller of capital issues, loans from banks/financial institutions and internal resources amounting to Rs. 81, 80 and 41 lakhs respectively; (ii) the financing by the banks/financial institutions was to be on terms and conditions acceptable to them; and (iii) adequate steps were to be taken to the government's satisfaction to prevent air, soil, water pollution and measures must conform to the effluent as well as emission standards prescribed by the State of Madhya Pradesh.³

The appellant, being aggrieved by the order of the Central Government, preferred an appeal to the Supreme Court under section 55 of the Act on the ground that it had not been given reasonable opportunity to support its objections and that the points raised by it had not been taken into consideration by the authorities concerned. The court was

2. See appendix I of the industrial policy statement laid down by the Government before Parliament on 21 April 1982, contained in Press Note No. 11/15/80 LP dated 21-4-1982 issued by the Department of Industrial Development, Ministry of Industry, Government of India.

3. For the text of the order dated 17 June, 1986, see *XXV Company News and Notes* 33-35 (July 1986).

satisfied that the impugned order did not notice all the objections raised by the appellant. Further, it was not satisfied as regards the conclusion of the government that the objections raised by the appellant had been met by the respondent. This was so because all of them had not been really taken into account, only a few having been referred to in the order. The court, however, did not express any further opinion on the merits of the objections which might have prejudiced either side since the matter was remitted back to the Central Government for a fresh disposal in accordance with law.

In this case, the court reiterated its earlier view expressed in *Bombay Oil Industries Pvt. Ltd. v. Union of India*⁴ that while considering any proposal under sections 21-23 of the Act, the relevant materials must be made available to the objectors because without them, the contentions/ claims of the applicants cannot possibly be met. If that was not done, the action of the government would amount to denial of a reasonable opportunity of hearing and violation of the principles of natural justice. It was also held that while disposing of applications under those provisions, the government must give good reasons in support of its order and not merely state its bald conclusion. Regrettably, these salutary principles of natural justice have not been appreciated by the Central Government and the commission while exercising their quasi-judicial powers under various provisions of the Act.

A reasonable opportunity of hearing presupposes certain basic norms of hearing, viz., (i) there must be adequate notice to all concerned in the subject matter particularising the details; (ii) the persons entitled to be heard must be allowed full access to all documents, pieces of information and evidence connected with the matter except those which are confidential or privileged; (iii) the parties must be allowed to produce documents and other evidence and cross-examine witnesses; (iv) the persons concerned must also be allowed to present their cases with the help of legal practitioners unless the latter's presence is barred, but this is not the case under the present Act;⁵ and (v) the order passed by the Central Government must give reasons indicating that it had applied its mind to all the points raised in the case.⁶

4. A.I.R. 1984 S.C. 160. See S.N. Singh, "Administrative Law", XX *A.S.I.L.* 499 at 530 and 535 (1984). Some other relevant cases on the subject referred to in this case were : *Uma Charan v. State of M.P.*, A.I.R. 1981 S.C. 1915; *Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India*, A.I.R. 1976 S.C. 1785 and *Union of India v. Mohan Lal Capoor*, A.I.R. 1974 S.C. 87.

5. The rights of cross-examination and legal representation have expressly been recognised under section 18(2) of the Act read with clauses (9) and (10) of regulation 36 of the Monopolies and Restrictive Trade Practices Commission Regulations, 1974, in respect of enquiries before the commission under chapters III and IV of the Act.

6. Reasons were insisted upon by the court in respect of restrictive trade practices order in *Mahindra & Mahindra Ltd. v. Union of India*, A.I.R. 1979 S.C. 798. In service matters, the court has insisted that the order of the appellate authority must indicate that

Hearing under section 29 is to be given not only to the applicant, who has sought the approval of the Central Government, but also to all those who are, or considered to be, interested in the subject matter. A person interested need not necessarily be an 'aggrieved' person adversely affected by the order of the government. He may be a public-spirited citizen having interest in the welfare of the general public. The commission has held that every citizen is concerned with the prevention of concentration of economic power which is to the common detriment and therefore entitled to appear before it and participate in the proceedings at the public hearing for furnishing information or offering comments on the subject matter of the proposal subject to the provisions of sections 17 and 18.

For effectively meeting the requirement of hearing under section 29, rule 4A of the M.R.T.P. Rules 1970 prescribes, as a general rule, the procedure for wider publicity of any proposal under sections 21, 22 and 23. A general notice is required to be published by the applicant for members of the public in the prescribed form in a trade journal, English newspaper circulating in the whole country, in a regional newspaper where the proposed undertaking is to be located or to which the proposal relates and the regional newspaper where the principal office of the applicant is situated. Any person interested in the matter has a right to file his objections against the proposal and has a right to be heard if he so wishes. This right of hearing has not been properly given in the past by the Central Government and the commission. Thus *In Re Anil Starch Products Ltd.*,⁷ the Commission held a public enquiry after a reference was received by it from the Central Government in respect of an application made by Anil Starch Products Ltd. under section 22 for establishing a new undertaking for the manufacture of speciality starch with technology supplied by National Starch of USA. Two other manufacturers of starch products from maize in India—Maize Products, Ahmedabad and Laxmi Starch Ltd., Bombay—applied to the commission for twenty-one documents including the contents of the application of Anil Starch Products Ltd. and the requisitions of information collected by the commission from the applicant, Central Government departments, research institutions and others. The commission conceded the *locus standi* of the applicants to appear before it in the proceedings but refused them permission to show cause against the application of Anil Starch Products Ltd. because these were neither adversary ones nor the two applicants were party. It also refused disclosure of certain information that was of a confidential nature.

it applied its mind to all the points and therefore reasoned order must be passed by it : *Ram Chander v. Union of India*, A.I.R. 1986 S.C. 1173 and *R.P. Bhatt v. Union of India*, A.I.R. 1986 S.C. 1040.

7. (1975) 45 Comp. Cas. 600. For further details, see S.N. Singh, "Law of Monopolies and Restrictive Trade Practices", XI *A.S.I.L.L.* 229 at 230-31, 233 (1975); with regard to restrictive trade practices, see S.N. Singh, "Law of Monopolies and Restrictive Trade Practices", XII *A.S.I.L.L.* 433 at 439-42 (1976).

There can be no two opinions that the above view of the commission is most unsound and untenable. But unfortunately it held the field for a considerable period of time. Moreover, the commission has been taking a very restrictive view of the objector's right of hearing and participation under the cloak of sections 17 and 18 of the Act which empower it to (i) prohibit or restrict, the publication of evidence given before it in public or private or of any matters contained in documents filed before it; and (ii) determine the extent to which persons interested or claiming to be interested in the subject-matter of any proceeding before it are allowed to be present or to be heard, either by themselves or by their representatives or to cross-examine witnesses or otherwise to take part in the proceeding.⁸ Despite the authoritative judicial verdict of Bhagwati J. (as he then was) in *Mahindra and Mahindra Ltd. v. Union of India*⁹ that the commission's order must be a speaking order, and if it does not contain reasons it is a nullity on the ground that there is an error of law apparent on the face of record, such orders have been sketchy and contain no reasons for passing them.¹⁰ The trend discernible from the Central Government's orders passed even after the Supreme Court decision in *Bombay Oil Industries Pvt. Ltd.*¹¹ has equally been dismal as is evident from the present *Oramco* case.¹² It is hoped that these three decisions of the Supreme Court will guide the exercise of power by the Central Government and the commission in accordance with the principles of natural justice.

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8. See S.N. Singh, "Law of Monopolies and Restrictive Trade Practices", XI *A.S.I.L.*, *id.* at 232-34; XII *A.S.I.L.*, *id.* at 439-47 and XIV *A.S.I.L.* 40 at 44-47 (1978).

9. *Supra* note 6.

10. See S.N. Singh, "Law of Monopolies and Restrictive Trade Practices," XVI *A.S.I.L.* 436 at 445 (1980).

11. *Supra* note 4.

12. *Supra* note 1.

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