

ITEM NO.1B
[FOR JUDGMENT]

COURT NO.9

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).28463/2011
(From the judgement and order dated 20/05/2011 in CA No.110/1997
of The COMPETITION APPELLATE TRIBUNAL, NEW DELHI)

GIRISH CHANDRA GUPTA Petitioner(s)

VERSUS

U.P INDL.DEV.CORPN.LTD AND ORS Respondent(s)

WITH SLP(C) NO. 17380 of 2012

Date: 11/12/2012 These Petitions were called on for
pronouncement of Judgment today.

For Petitioner(s) Mr. T. Mahipal, Adv.

Mr. Alex Joseph, Adv.

For Respondent(s) Mr. Rakesh Uttamchandra Upadhyay, Adv.

Hon'ble Mr. Justice A.K. Patnaik pronounced the judgment of the
Bench comprising His Lordship and Hon'ble Mr. Justice Swatanter
Kumar.

The appeals are allowed in terms of the signed reportable
judgment.

(G. SUDHAKARA RAO)
COURT MASTER

(SHARDA KAPOOR)
COURT MASTER

(SIGNED REPORTABLE JUDGMENT IS PLACED ON THE FILE)
Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO._8920_ OF 2012
(Arising out of S.L.P. (C) No. 28463 of 2011)

Girish Chandra Gupta ... Appellant

Versus

M/s Uttar Pradesh Industrial
Development Corporation Ltd. & Ors. ... Respondents

With

CIVIL APPEAL NO._8921_ OF 2012
(Arising out of S.L.P. (C) No. 17380 of 2012)

James Kutty P.C. & Anr. ... Appellants

Versus

M/s Tread Stone Ltd. & Ors.

... Respondents

J U D G M E N T

A. K. PATNAIK, J.

Leave granted.

2. The facts very briefly in these two appeals are that the appellants filed compensation applications C.A. No.110 of 1997 and C.A. No.126 of 2008 under Section 12B of the Monopolies and Restrictive Trade Practices Act, 1969 (for short 'the MRTTP Act') before the Monopolies and Restrictive Trade Practices Commission (for short 'the MRTTP Commission') constituted under the MRTTP Act. By Section 66(1) of the Competition Act, 2002, the MRTTP Act was repealed and the MRTTP Commission was dissolved. Section 66(3) of the Competition Act, 2002 provided that all cases pertaining to monopolistic trade practices or restrictive trade practices pending before the MRTTP Commission shall, on the commencement of the Competition (Amendment) Ordinance, 2009, stand transferred to the Competition Appellate Tribunal constituted under the Competition Act, 2002 and shall be adjudicated by the Appellate Tribunal in accordance with the provisions of the MRTTP Act as if the MRTTP Act had not been repealed. Consequently, the two compensation applications filed by the appellants stood transferred to the Competition Appellate Tribunal. Before the Competition Appellate Tribunal, the respondents in the two appeals raised preliminary objections to the maintainability of the compensation applications filed by the appellants. They contended that the appellants had not initiated separate proceedings either under Section 10 or under Section 36B of the MRTTP Act alleging unfair trade practices by the respondents and in the absence of any such separate proceedings initiated by the respondents before the MRTTP Commission, the compensation applications of the appellants under Section 12B of the MRTTP Act were not maintainable.
3. This preliminary question raised by the respondents was also raised in C.A. No.108 of 2005 filed by Info Electronics System Ltd. against Sutran Corporation and the Competition Appellate Tribunal by its order dated 29.03.2011 passed in C.A. No.108 of 2005 (Info Electronics System Ltd. v. Sutran Corporation) held, relying on a judgment of this Court in Saurabh Prakash v. DLF Universal Ltd. [(2007) 1 SCC 228], that in the absence of separate proceedings alleging unfair, monopolistic or restrictive trade practice, an application for compensation under section 12B of the MRTTP Act is not maintainable and accordingly dismissed C.A. No.108 of 2005. Following the aforesaid order dated 29.03.2011 in C.A. No.108 of 2005, the Competition Appellate Tribunal also dismissed C.A. No.126 of 2008 on 26.04.2012 and C.A. No.110 of 1997 on 20.05.2011 filed by the appellants in the Civil Appeals before us. Aggrieved, the appellants have filed these appeals.
4. Mr. Siddharth Bhatnagar, learned counsel for the appellant in the Civil Appeal arising out of S.L.P. (C) No.28463 of 2011, submitted that this Court has not held in Saurabh Prakash v. DLF Universal Ltd. (supra), on which the Competition Appellate Tribunal has placed reliance, that in the absence of any separate proceedings either under Section 10 or Section 36B of the MRTTP Act, an application for compensation under Section 12B of the MRTTP Act is not maintainable. He submitted that a reading of Section 12B of the MRTTP Act rather shows that an independent proceeding under Section 12B of the MRTTP Act

for compensation can be initiated by an applicant. He relied on the decision in *M/s Pennwalt (I) Ltd. & Anr. v. Monopolies and Restrictive Trade Practices Commission & Ors.* [AIR 1999 DELHI 23] in which, after examining the provisions of Sections 10, 36B and other provisions of the MRTP Act, the Delhi High Court has held that the proceedings under Section 12B of the MRTP Act are not dependent on proceedings under Section 10 or 36B of the MRTP Act and that a preliminary inquiry as envisaged in Section 11 or Section 36C is not a condition precedent to the maintainability of the claim under Section 12B of the MRTP Act.

5. Mr. Rakesh Uttamchandra Upadhyay, learned counsel for the respondents in the Civil Appeal arising out of SLP(C) No.28463 of 2011, on the other hand, submitted that a claim for compensation under Section 12B of the MRTP Act cannot be decided without an inquiry either under Section 10 or under Section 36B of the MRTP Act. He submitted that the view taken by the Competition Appellate Tribunal that without a proceeding either under Section 10 or Section 36B of the MRTP Act a claim for compensation under Section 12B of the MRTP Act was not maintainable is, therefore, correct. He further submitted that the case of the respondent U.P. Industrial Development Corporation Limited in C.A. No.110 of 1997 was that the grievance of the appellant did not relate to any unfair trade practice but relates to a breach of contract and such a claim for compensation cannot be entertained under Section 12B of the MRTP Act.
6. Mr. Alex Joseph, learned counsel for the appellants in the Civil Appeal arising out of S.L.P. (C) No.17380 of 2012, submitted that the Delhi High Court in yet another decision in *R.C. Sood And Co. (P.) Ltd. & Ors. v. Monopolies and Restrictive Trade Practices Commission & Anr.* [1996 Vol.86 Company cases 626 Delhi] has held that it is not necessary that the MRTP Commission should first inquire or investigate into the allegations of monopolistic, restrictive and unfair trade practices carried on by any person or undertaking under Section 10, Section 36B or Section 37(1) of the MRTP Act before issuing notice in the application filed under Section 12B of the MRTP Act and sub-section (3) of Section 12B of the MRTP Act clearly shows that the MRTP Commission is required to make an inquiry into the allegations set out in the application filed under sub-section (1) of Section 12B and only after making such an inquiry pass an order directing the owner of the undertaking or the person who has indulged in monopolistic, restrictive and unfair trade practice, to make payment to the applicant of the amount determined by the MRTP Commission.
7. Mrs. Kiran Suri, learned counsel for the respondent in the Civil Appeal arising out of S.L.P. (C) No.17380 of 2012, submitted that the jurisdiction of the MRTP Commission is based on a finding of unfair trade practice and such finding can only be recorded under Section 36B of the MRTP Act. She submitted that Section 11 of the MRTP Act empowers the Director General to make an inquiry and there is no mechanism of inquiry in Section 12B of the MRTP Act. She vehemently argued that Section 12B of the MRTP Act, therefore, cannot be read as an independent Code.
8. We have considered the submissions of the learned counsel for the parties and we find that in *Saurabh Prakash v. DLF Universal Ltd.* (supra) this Court was called upon to decide whether the MRTP Commission had jurisdiction to entertain an application under Section 12B of the MRTP Act when no case of indulgence in unfair trade practice or restrictive trade practice was made out and this Court held that the power of the MRTP Commission to award compensation is restricted to a case where loss or damage had been caused as a result of monopolistic or restrictive or unfair trade practice but it had no jurisdiction where damage is claimed for mere breach of contract. In the aforesaid decision in *Saurabh Prakash v. DLF Universal Ltd.* (supra) on which reliance has been placed by the Competition Appellate Tribunal in the impugned orders, this Court did not at all consider the question whether an application under Section 12B of the MRTP Act was maintainable without initiation of separate proceedings either under Section 10 or under Section 36B of the MRTP Act.

9. The decision of the Division Bench of the Delhi High Court in M/s Pennwalt (I) Ltd. & Anr. v. Monopolies and Restrictive Trade Practices Commission & Ors. (supra) and the decision of the learned Single Judge of the Delhi High Court in R.C. Sood And Co. (P.) Ltd. & Ors. v. Monopolies and Restrictive Trade Practices Commission & Anr. (supra), cited before us by the learned counsel for the appellants, however, hold that an application for compensation under Section 12B of the MRTTP Act was maintainable without any proceeding being initiated under Section 10 or Section 36B of the MRTTP Act. We have perused the aforesaid two decisions of the Division Bench and the learned Single Judge of the Delhi High Court and in our considered opinion the Division Bench as well as the learned Single Judge of the Delhi High Court have correctly interpreted the provisions of Sections 10, 12B and 36B of the MRTTP Act.

10. Sections 10, 12B and 36B of the MRTTP Act are extracted hereinbelow:

"10. Inquiry into monopolistic or restrictive trade practices by Commission - The Commission may inquiry into -

(a) any restrictive trade practice -

(i) upon receiving a complaint of facts which constitute such practice from any trade association or from any consumer or a registered consumers' association, whether such consumer is a member of that consumers' association or not, or

(ii) upon a reference made to it by the Central Government or a State Government, or

(iii) upon an application made to it by the Director General, or

(iv) upon its own knowledge or information;

(b) any monopolistic trade practice, upon a reference made to it by the Central Government or upon an application made to it by the Director General or upon its own knowledge or information.

12B. Power of the Commission to award compensation. - (1) Where, as a result of the monopolistic or restrictive, or unfair trade practice, carried on by any undertaking or any person, any loss or damage is caused to the Central Government, or any State Government or any trader or class or traders or any consumer, such government or, as the case may be, trader or class of traders or consumer may, without prejudice to the right of such government, trader or class of traders or consumer to institute a suit for the recovery of any compensation for the loss or damage so caused, make an application to the Commission for an order for the recovery from that undertaking or owner thereof or, as the case may be, from such person, of such amount as the Commission may determine, as compensation for the loss or damage so caused.

(2) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Commission, make an application, under that sub-section, for and on behalf of, or for the benefit of, the persons so interested, and thereupon the provisions of rule 8 of Order I of the First Schedule to the Code of

Civil Procedure, 1908 (5 of 1908), shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Commission and the order of the Commission thereon.

(3) The Commission may, after an inquiry made into the allegations made in the application filed under sub-section (1), make an order directing the owner of the undertaking or other person to make payment, to the applicant, of the amount determined by it as realisable from the undertaking or the owner thereof, or, as the case may be, from the other person, as compensation for the loss or damage caused to the applicant by reason of any monopolistic or restrictive, or unfair trade practice carried on by such undertaking or other person.

(4) Where a decree for the recovery of any amount as compensation for any loss or damage referred to in sub-section (1) has been passed by any court in favour of any person or persons referred to in sub-section (1), or, as the case may be, sub-section (2), the amount, if any, paid or recovered in pursuance of the order made by the Commission under sub-section(3) shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance, if any, left after such set off.

36B. Inquiry into unfair trade practices by Commission - The Commission may inquire into any unfair trade practice, -

(a) upon receiving a complaint of facts which constitutes such practice from any trade association or from any consumer or a registered consumers' association, whether such consumer is a member of that consumers' association or not; or

(b) upon a reference made to it by the Central Government or a State Government; or

(c) upon an application made to it by the Director General; or

(d) upon its own knowledge or information."

11. On a reading of sub-section (1) of Section 12B of the MRTTP Act, it will be clear that where, as a result of the monopolistic or restrictive, or unfair trade practice, carried on by any undertaking or any person, any loss or damage is caused to the Central Government, or any State Government or any trader or class or traders or any consumer, such government or, as the case may be, trader or class of traders or consumer may make an application to the MRTTP Commission for an order for the recovery from that undertaking or owner thereof or, as the case may be, from such person, of such amount as the MRTTP Commission may determine, as compensation for the loss or damage so caused. Sub-section (3) of Section 12B of the MRTTP Act further provides that the MRTTP Commission may, after an inquiry made into the allegations made in the application filed under sub-section (1), make an order directing the owner of the undertaking or other person to make payment, to the applicant, of the amount determined by it as realisable from the undertaking or the owner thereof, or, as case may be, from the other person, as compensation for the loss or damage caused to the applicant by reason of any monopolistic or restrictive, or unfair trade practice carried on by such undertaking or other person. Thus, the MRTTP

Commission has been vested with the powers under sub-section (3) of Section 12B of the MRTP Act to make an inquiry to the allegations of monopolistic or restrictive or unfair trade practice made in the application filed under sub-section (1) of Section 12B of the MRTP Act and to determine the amount of compensation realizable from the undertaking or the owner thereof, or, as case may be, from the other person, towards loss or damage caused to the applicant by reason of any monopolistic or restrictive, or unfair trade practice carried on by such undertaking or other person. These powers vested in the MRTP Commission under sub-section (3) of Section 12B of the MRTP Act are independent of its powers under Section 10 and Section 36B of the MRTP Act.

12. In fact, Section 12B was introduced in the MRTP Act by Act 30 of 1984 as an independent remedy for a claimant in addition to a suit that he may file to claim any loss or damage that he may suffer by reason of any monopolistic or restrictive or unfair trade practice as would be clear from sub-section (4) of Section 12B quoted above. There is no reference at all in Section 12B of the MRTP Act to the provisions of either Section 10 or Section 36B of the MRTP Act and if Parliament intended that the power of the MRTP Commission to award compensation under Section 12B of the MRTP Act was to be dependent on the exercise of power of MRTP Commission either under Section 10 or under Section 36B of the MRTP Act, Parliament would have made this intention clear in the language of some provision in Section 12B of the MRTP Act. There is also no reference in either Section 10 or in Section 36B of the MRTP Act to any of the provisions of Section 12B of the MRTP Act and if the Parliament intended to make Sections 10, 12B and 36B of the MRTP Act interdependent, there would have been some indication of this intention of Parliament in Section 10 or in Section 36B of the MRTP Act. In the absence of any such indication of this intention of Parliament to make the provisions of Section 12B of the MRTP Act dependent on initiation of an inquiry or proceeding under Section 10 or Section 36B of the MRTP Act, the Competition Appellate Tribunal clearly erred in coming to the conclusion that interdependence of the provisions of Section 10 or Section 36B with Section 12B cannot be lost sight of and in the absence of a separate proceeding alleging unfair, monopolistic or restrictive trade practice, an application for compensation under Section 12B of the MRTP Act is not maintainable.

13. We, therefore, set aside the impugned orders of the Competition Appellate Tribunal, but leave it open to the respondents to raise a plea before the Competition Appellate Tribunal that the appellants have not made out any case of monopolistic or restrictive trade practice or unfair trade practice in terms of Section 12B of the MRTP Act and if such plea is raised it will be decided by the Competition Appellate Tribunal on its own merits following the decision of this Court in Saurabh Prakash v. DLF Universal Ltd. (supra). The appeals are allowed. There shall be no order as to costs.

.....J.

(A. K.

Patnaik)

.....J.

(Swatanter

Kumar)

New Delhi,
December 11, 2012.