COMPETITION APPELLATE TRIBUNAL
New Delhi

APPEAL NO.1 OF 2009
(Arising out of order dated 08.12.2009 passed by the
Competition Commission of India in Case No.11 of 2009)

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Mr. Rahul Sarin
Member

Hon'ble Mrs. Pravin Tripathi
Member

IN THE MATTER OF :-

Steel Authority of India Limited,
Having its Registered office at :
Ispat Bhawan, Lodi Road,
New Delhi – 110003.
Through its M.D. ….Appellant

Versus

M/s. Jindal Steel & Power Limited,
Having its Registered officiate at
Jindal Center,
12-Bhikaji Camma Place,
New Delhi – 110006.
Through its Director ….Respondent

W I T H

Interim Application No.02 Of 2010
(Application for dismissal of Appeal and Vacation of stay
Order dated 11.01.2010)

W I T H

Interim Application No.03 Of 2010
(Application for impleadment of CCI as a party)

A N D

Interim Application No.04 Of 2010
(Application for setting aside the order dated 11.01.2010)

Appearance : Mr. Jagdeep Dhankar, Senior Advocate with Mr. P.K. Basu Majumdar, Mr. Sunil Kumar Jha and Mr. Aneesh Mittal, Advocates for the Appellant.

Mr. C.A. Sundaram, Senior Advocate with Ms. Pallavi Shroff, Ms. Shweta Shroff, Mr. Anandh Kumar and Mr. Harman Singh, Advocates for the Respondent.

Mr. Dushyant Dave, Senior Advocate with Mr. Tarun Gulati, Mr. Neil Hildrath and Mr. Sameer Gandhi, Advocates for the CCI.

O R D E R

This appeal has been filed under Section 53B of the Competition Act, 2002 (Act 12 of 2003) (hereinafter referred to as the Act) questioning correctness of the direction as contained in order dated 8.12.2009 by the Competition Commission of India (in short the 'Commission') in Case No. 11 of 2009. The said direction was in terms of Section 26(1) of the Act.

2. Background facts as highlighted by the appellant are as follows :-

Jindal Steel and Power Limited (hereinafter referred to as the 'informant') provided information to the Commission alleging that the appellant has entered into anti competitive agreement and/or there has been abuse of dominant position by it. The original information is dated 16.10.2009. On 26.10.2009 an application was filed for submission of additional information purportedly in terms of Regulations 12 & 28 of

Competition Commission of India (General) Regulations, 2009 (in short the 'Regulations')".

3. On 27.10.2009 amended information about the alleged breach of Sections 3(4) & 4(1) of the Act by the appellant was provided. Similarly additional information dated 27.10.2009 about the alleged breach of the aforesaid provisions were furnished. It appears from the order of the Commission dated 10.11.2009 that the aforesaid information including corrected/additional information was considered by the Commission in its meetings held on 4.11.2009 and 10.11.2009. On the later date, the Vice President and Head Legal and learned counsel for the applicant appearing before the Commission had made detailed submissions. The informant/ its counsel was directed to file an affidavit regarding the current status of the writ petition filed in the Delhi High Court, particularly indicating its admission or otherwise and as to whether any other order has been passed by the High Court in the matter so far. After detailed deliberations it was decided by the Commission that the views/comments of the appellant may be obtained within two weeks time. Accordingly, the Secretary was directed to issue notice to the informant and request the appellant for their views in the matter within two weeks. Direction was given to place the matter before the Commission in the meeting of 8.12.2009. Pursuant to the aforesaid direction of the Commission, the Secretary of the Commission by communication dated 19.11.2009 indicated to the appellant that the informant has filed information on 16.10.2009 under Section (19)1 of

the Act alleging that the appellant is in breach of Sections 3(4) and 4(1) of the Act. It was further indicated that the Commission in its ordinary meeting held on 10.11.2009 decided that views/comments of the appellant may be obtained in the first instance. Accordingly copies of several documents were forwarded. The documents in question are as follows :

(1) Original Information dated 16.10.2009 alongwith Annexures (Vol.A&B)

(2) Application dated 26.10.2009 for submission of additional information pursuant to Regulation 12 and 28 of CCI (General) Regulations, 2009.

(3) Amended information dated 27.10.2009 about breach of Sections 3 and 4 of Competition Act, 2002 by SAIL.

(4) Additional information dated 27.10.2009 about breach of Section 3 & 4 of the Competition Act, 2002 by SAIL (Vol.-C).

4. The appellant was requested to submit the views/comments in the matter within two weeks. On 30th November, 2009 the appellant wrote to the Secretary that the application along with documents and annexures filed by the appellant were voluminous and required more time for perusing and filing response which was to be done by 3.12.2009. It was also indicated that the appellant needed time to collect relevant details from the Steel Plants concerned which are manufacturing and selling the Rails. Therefore the Commission was requested to allow extension of time from 3rd December, 2009 for a further period of six weeks. A request was made that a new date may

be fixed and intimated to the appellant for filing its response. In the meeting held on 8.12.2009, the Commission took up the matter. The Commission took on record the affidavit filed by the informant on 30.11.2009 regarding the current status of the writ petition filed and certified copies of orders passed by the High Court. It was also noted that appellant had not filed its reply within the stipulated time and had requested to allow extension of time from 3.12.2009 for a further period of six weeks. The Commission considered the above request of appellant but did not allow any further extension. The Commission, after considering the details filed by the informant with the information and entire relevant material/records available in the context as well as the detailed submissions made by the advocates for the informant on 10.11.2009, formed an opinion that there exists a prima facie case. The Commission therefore decided to refer the matter to the Director General (in short 'DG') for investigation. The Secretary was accordingly directed to refer the case to DG for investigation and submission of report within 45 days of the receipt of the order of the Commission. The appellant was also directed to be informed that they may furnish their views/comments in the matter to the DG.

5. The basic grievance in the appeal is that the request for time as made by the appellant was reasonable. As noted in its application, the appellant had indicated the reasons for seeking extension of time. The time as was granted was grossly inadequate considering the voluminous records and volume of materials which were to be furnished

along with the views and comments. The Commission did not even indicate any reason as to why it did not accept the prayer for extension. The direction for investigation by the DG is therefore unsustainable in law.

6. It is also submitted that no reason or basis has been indicated by the Commission in its impugned order which formed the foundation for the opinion that the prima facie case exists for investigation. It is pointed out that all the aspects indicated by the Commission for directing investigation existed on 10.11.2009. Obviously the Commission on consideration of those aspects did not find adequate/ sufficient reason/ material for forming the opinion about the existence of prima facie case. It had categorically indicated in the letter dated 19.11.2009 that after detailed deliberations that views/comments of the appellant were to be obtained. Since there was no other material which came into existence after 19.11.2009, the Commission could not have in law formed an opinion, as stated in the impugned order, about the existence of the prima facie case warranting investigation.

7. On 16.12.2009 appellant furnished its reply which was labeled as an interim reply and a request was made that a reasonable time of about four to six weeks may be granted to file the detailed reply. After receipt of this reply, the Secretary of the Commission wrote to the appellant that since it did not file the reply within stipulated time and made a request for extension of time, the Commission had considered the request but did not allow any further extension and had referred the

matter to the DG and if any views or comments were to be furnished by the appellant, the same was to be given to the DG. Reference was made in the communication to the order dated 8.12.2009. Thereafter this appeal has been preferred questioning correctness of the direction given by the Commission for investigation by the DG.

8. In reply the respondent has raised a preliminary objection about the maintainability of the Appeal. It has also been submitted that adequate opportunity was granted to the appellant to place its views or comments on record. The time granted cannot by any stretch of imagination be considered to be inadequate, as the appellant could have furnished the reply which it did belatedly on 16.12.2009 and not within the time stipulated by the Commission. In any event, it has been afforded the opportunity to furnish the material (views/comments) before the DG which has to conduct investigation in terms of the directions of the Commission. It has also been submitted that the Commission is necessary party in this appeal and the appeal is bound to be dismissed for non-impleadment of the Commission.

9. An application has been filed by the Commission seeking impleadment on the ground that it is a proper and necessary party in the appeal.

10. The grounds of challenge in the appeal were reiterated by Mr. Jagdeep Dhankar, learned counsel for the appellant at the time of hearing Mr. C.A. Sundaram and Ms. Pallavi Shroff for the respondent

and Mr. Dushyant Dave for the Commission opposed the submission. We shall first deal with the application filed by the Commission seeking impleadment. In the application, the Commission has made reference to Section 7(2) of the Act stating that because the Commission can sue or be sued as a body corporate, therefore it is a necessary and proper party in the appeal. It is also highlighted in the application that the Commission's duties, powers and functions are of considerable importance which are questioned in the appeal. As the Commission was of the view that there was urgency in the matter and the applicant would be provided adequate opportunity to submit material before the DG on a subsequent stage, there was no necessity for granting extension of time as prayed for. The Commission was very clear at that stage as it was only incumbent to form a prima facie view and not an appropriate stage for the party to make detailed submission before it. The Commission is vitally interested and affected by the proceedings in the appeal. The plea relating to maintainability raised by the respondent is also raised by the Commission. It has been submitted that the proceedings before the Commission are not adversarial in nature and is an investigative process and therefore there was no necessity for hearing the parties at any stage before taking a decision or forming an opinion about the existence of prima facie case. It has also been indicated in the application that the order dated 8.12.2009 really is an order merely instituting an investigation before commencing inquiry. It does not cause any prejudice to the appellant because only

after receiving a report of the DG recommending that there is any contravention of any provision of the Act and further forming an opinion that further inquiry is called for, it shall inquire into such contravention. Reference is made to Sub-Sections (8) of Section 26 to contend that it is only thereafter when further inquiry is initiated, the appellant can participate and the scheme of the Act is clear in this regard. The appellant's intervention either before the Commission or in the appeal would hinder a statutory investigation and would impede in collection of evidence by the DG investigating the alleged contravention. Reference is also made to Section 53S and 53T of the Act to contend that the Commission is proper and necessary party.

11. The first question raised is regarding maintainability of the appeal. According to the respondent and the CCI whose application for impleadment shall be dealt with a little latter, the expression "any direction issued or decision made or order passed by the commission" relates to sub sections (2) & (6) of Section 26, Section 27, Section 28, Section 31, Section 32, Section 33, Section 38, Section 39, Section 43, Section 43A, Section 44, Section 45 or Section 46 of the Act.

12. According to them Section 53B deals with appeal to the Appellate Tribunal in relation to any direction, decision made or order referred to in clause (a) of Section 53A(1). It is their stand that since there is no coma after "any direction issued" or "decision made", obviously they have to be read *ejusdem gensis* and since the direction given by the

Commission was in terms of Section 26(1) of the Act, no appeal lies against such direction.

13. Though the argument is attractive at first flush, it does not bear close scrutiny. Even a bare reading of the enumerated provision referred to in Section 53A(1) (a) shows that none of them deals with any direction or decision taken.

14. Section 53A and 53B reads as follows :-

> "53A.(1) The Central Government shall, by notification, establish an Appellate Tribunal to be known as Competition Appellate Tribunal –
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> (a) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-Sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of the Act;
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> (b) to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under subsection(2) of section 53Q of this Act, and pass orders for the recovery of compensation under section 53N of this Act.
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> (2) The Headquarter of the Appellate Tribunal shall be at such place as the Central Government may, by notification, specify.
>
> 53B.(1)The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (a) of section 53A may prefer an appeal to the Appellate Tribunal.
>
> (2) Every appeal under sub-Section (1) shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the Central Government or the State Government or a local authority or enterprise or any person

> referred to in that sub-Section and it shall be in such form and be accompanied by such fee as may be prescribed:
>
> Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.
>
> (3) On receipt of an appeal under sub-Section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.
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> (4) The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.
>
> (5) The appeal filed before the Appellate Tribunal under sub-Section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal."

15. The expression "direction" occurs in sub-Sections (1) and (7) of Section 26 and sub-Section (4) of Section 36, Section 29, sub-Section (2) of Section 31. Significantly sub-Section (11) of Section 31 refers to both "order" and "direction". The expression "decision" does not necessarily mean the conclusion, it embraces within its fold the reasons which form the basis for arriving at the conclusion. Decision as was noted by the Supreme Court in Tirumalachetti Rajaram v. Tirumalachetti Radhakrishnayya Chetty (AIR 1961 SC 1795) means the decision on the points for determination. The word "or" is normally disjunctive. The use of the word "or" in a statute manifests legislative intent of the alternatives provided under law. [see : Fakir Mohd. (d) by Lrs. v.Sita Ram (2002 (1) SCC 741)]. There is gulf of difference between words "or" and "and". Though some times the expressions are

interchangeable. As was noted in Municipal Corporation of Delhi v. Tek Chand Bhatia (1980 (1) SCC 158), the word "or" is normally disjunctive. Since there is no express provision for direction or decision in the enumerated provisions, the legislative intent is crystal clear that they provide for alternatives and the word "or" is disjunctive and not conjunctive as contended by the respondent. To read otherwise would render the expressions "direction" or "decision" superfluous.

16. Section 26 reads as follows :-

> "26.(1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter:
>
> Provided that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.
>
> (2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.
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> **(**3) The Director General shall, on receipt of direction under sub-Section (1), submit a report on his findings within such period as may be specified by the Commission.
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> (4) The Commission may forward a copy of the report referred to in sub section (3) to the parties concerned:
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> Provided that in case the investigation is caused to be made based on reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to in subsection (3) to the Central Government or the State Government or the statutory authority, as the case may be.

(5) If the report of the Director General referred to in sub-Section (3) recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.

(6) If, after consideration of the objections and suggestions referred to in sub section (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(7) If, after consideration of the objections or suggestions referred to in sub section (5), if any, the Commission is of the opinion that further investigations is called for, it may direct further investigation in the matter by the Director General or cause further inquiriy to be made by in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

(8) If the report of the Director General referred to in sub-Section (3) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.]"

17. When the meaning of words is plain, it is not the duty of the Courts to busy themselves with the supposed intentions. The legislature does not waste its words. Ordinary, grammatical and full meaning is to be assigned to the words used while interpreting a provision to honour the rule. The legislature chooses appropriate words to express what it intends, and therefore, must be attributed with such intention as is conveyed by the words employed so long as this does not result in absurdity or anomaly or unless material - intrinsic or external - is available to permit a departure from the rule. [see : Harbhajan Singh v. Press Council of India and Ors. (2002 (3) SCC

722)]. It is a settled law of interpretation that words are to be interpreted as they appear in the provision, simple or grammatical meaning is to be given to them, and nothing can be added or subtracted. The intention of the legislature is to be gathered only from the words used by it and no such liberty can be taken by the Courts for effectuating supposed intention of the legislature. [see : Sri Ram Ram Narain Medhi v. The State of Bombay (AIR 1959 SC 459) and His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr. (1973 (4) SCC 225)]. The general rule is not to import into statutes words which are not found therein. Words are not to be added by implication into the language of a statute unless it is necessary to do so to give sense and meaning in its context. When there is no repugnancy, ambiguity or inconsistency, the Court cannot either add to or detract from the particular text appearing in the statute for the purpose of avoiding supposed injustice. The words of the statute speak of the intention of the legislature.

18. Mr. Dave submitted that if appeals are permitted to be filed by making the interpretation of Section 53A(1)(a) relating to the “direction” or “decision”, it may open a flood-gate of litigation encouraging litigants to file appeals against legitimate directions. Even if that is the factual scenario, that would not be a ground to read the provision in the manner suggested by learned counsel for the Commission and the respondent. Wilberforce Statute Law at page 104-105 said “Courts are fully constrained to give words of statute with natural meaning, even

when there was strongest ground for supposing that such consequence was not consistent with the intention of the legislature". A Court of law is not concerned with the policy of the administration nor with the effect of the piece of legislation on any section of the society. Courts have to administer the law as they find it, they cannot twist the clear language of any enactment to avoid the real or imaginary hardship to which it may result. Use of the word "any" is also of great significance. "Any" is a word which excludes limitation or qualification (per Fry L.J. in Duck v. Bates 53 LJQB344, "as wide as possible" (per Chitty J in Beckett v. Sutton 51 LJ. Ch. 433). It connotes wide generality. As noted by the Supreme Court in Lucknow Development Authority v. M.K. Gupta, (AIR 1994 SC 787), the use of the word "any" in the context it has been used indicates that it has been used in wider sense extending from one to all. It is often synonymous with "either", "every" or "all". [see : Black's Dictionary 6th Edition, Shri Balagansan Metals v. M.N. Shanmugam Chetty, (AIR 1987 SC 1668), K. Prabhakaran v. P. Jayarajan (AIR 2005 SC 688)]. The word "any" indicates "all" or "every" as well as "some" or "one" depending on the context and subject matter of the statute. "Any" is an adjective and in the provision under consideration, qualifies the nouns "direction", "decision" or "order". The inevitable conclusion is that the appeal is maintainable.

19. Before dealing with the merits of the appeal, which involves two questions, as to whether the appellant was afforded a reasonable opportunity to have its say and whether reasons were required to be

recorded, it is necessary to deal with the question as to whether the Commission is a proper and necessary party in the appeal. A necessary party is one without whom no order can be made effectively, while the proper party is one in whose absence an effective order can be made, but whose presence is necessary for a complete and final decision on the question involved in the proceeding. [see : Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, (AIR 1963 SC 786), Aliji Monoji & Co. v. Lalji Mavji and others (AIR 1997 SC 64), Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay and Ors. (1992 (2) SCC 524).

20. In Dhannalal v. Kalawatibai and Ors. (2002 (6) SCC 16), the Supreme Court observed that the maxim "*dominus litis"* means one having dominion over the case and having control over an action. The addition of the party should be ordered in terms of Order 1, Rule X of the Code of Civil Procedure, 1908 (in short the 'CPC') only if in the opinion of the Court in the absence of the party, it cannot effectually and completely adjudicate upon and settle all the questions. A necessary party therefore, is one who has legal interest in the litigation. In Ramesh Hirachand Kundanmal's case (supra) it was observed as follows :-

> "What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought of relevant arguments to advance. The only reason which

> makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action."

21. The stand of the Commission is that it can justify the order impugned by placing materials in that regard. This plea is totally devoid of merit in view of what was stated by the Supreme Court in Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors., (AIR 1978 SC 851). In paragraph-8, it was inter-alia observed that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Reference was made to observations in Commissioner of Police, Bombay v. Gordhandas Bhanji (AIR 1952 SC 16) to the effect that public orders, publicly made in exercise of statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actions and conduct

of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

22. So far as the reliance on Sub-Section (2) of Section 7 is concerned, the plea has really no substance. The provision says that the Commission shall be a body corporate by the name and shall be sued or be sued by the said name. This is with reference to the power of the Commission to hold and dispose of property, both movable and immovable, and to contract. In that background, it can sue or be sued by the name Competition Commission of India.

23. The learned counsel for the Commission in support of the plea for impleadment also made reference to Section 53S and 53T of the Act and particularly Sub-Section (3) of Section 53S. Sections 53S and 53T read as follows :-

> "53S.(1) A person preferring an appeal to the Appellate Tribunal may either appear in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.
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> (2) The Central Government or a State Government or a local authority or any enterprise preferring an appeal to the Appellate Tribunal may authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorized may present the case with respect to any appeal before the Appellate Tribunal.
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> (3) The Commission may authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorized may present the case with respect to any appeal before the Appellate Tribunal.
>
> Explanation – The expressions "chartered accountant" or "company secretary" or "cost accountant" or "legal practitioner" shall have the

meanings respectively assigned to them in the Explanation to section 35.

53T. The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them;

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days."

24. Section 53S relates to "Right to Legal Representation" while Section 53T deals with "Appeal to Supreme Court". According to the learned Counsel for the Commission, under Section 53T, the Commission can file an appeal to the Supreme Court if it is aggrieved by any decision or order of the Appellate Tribunal. sub-Section (3) of Section 53S relates to presentation of the case by the Commission through the authorized persons with regard to any appeal before the Tribunal. It is of significance that in Sub-Section (1) of Section 53S provision is made for legal representation by a person preferring an appeal. Sub-Section (2) relates to the Central Government or State Government or a legal authority or any other enterprise as the case may be to authorize presentation of its case. In the first provision, a person preferring the appeal may either appear in person or authorize any of the enumerated categories of professionals or officers to present his or its case before the Tribunal. In the second provision, the Central Government or the State Government etc. can authorize one of the enumerated categories of professionals or officers to act as presenting

officer and every person so authorized may present the case with respect to any appeal before the Tribunal. Significantly, there is no specific reference to respondent. Does it really mean that the respondent has no right to legal representation? The answer is a definite no. Section 35 of the Act provides that a person or an enterprise or the Director General may either appear in person or authorize any or one or more of the categories of professionals or any of his or its officer to present his or its case before the Commission.

25. Section 35 deals with appearance before Commission. It provides that a person or an enterprise or the Director General may appear in person or authorize one or more of the enumerated professionals or his or its officers to present his or its case before the Commission. Under Section 19, inquiry into certain agreements and dominant position of enterprise can be made. The inquiry can be undertaken under any of the three modes provided i.e. on its own motion, or, on receipt of any information from any person, consumer or their association or trade association, or, on a reference made by the Central Government or a State Government or a statutory authority. Obviously Section 35 relates to the first two categories enumerated above. Clause 35 of the Notes on Clauses on Competition Bill, 2002, it provides that a complainant, defendant or Director General may appear in the manner provided, before the Commission.

26. Section 53S relates to right to legal representation - Sub-Section (1) thereof relates to presentation of the case before the Appellate

Tribunal by one or more of the professionals enumerated in Section 35. This has been specifically indicated in the Explanation appended to Section 53S. Additionally it has been provided that any of its officers can present his or its case before the Appellate Tribunal.

27. Sub-Section (2) of Section 53S relates to presentation of the case "with respect to any appeal" before the Appellate Tribunal by any of the enumerated category of professionals authorized or officer of the Central Government, State Government or a local authority or any enterprise. Obviously it must be a party in the appeal either as appellant or respondent. The expression "any appeal" cannot mean an appeal where it is not a party or is not connected with it.

28. The difference in terminology in Section 35 and Sub-Section (1) and (2) of Section 53S needs to be noted. The former provision relates to both a person and an enterprise. Sub-Section (1) and (2) of Section 53S makes a difference between a person preferring an appeal and an enterprise. In the latter case it can appoint a presenting officer to present the case with reference to any appeal before the Appellate Tribunal.

29. At this juncture, it is necessary to note that under Section 19, the Commission may inquire into any alleged contravention of the provisions contained in Sub-Section (1) of Section 3 or Sub-Section (1) of Section 4 either on its own motion or on receipt of any information etc. or a reference made to it by the Central Government or State

Government or a statutory authority. So far as an appeal before the Appellate Tribunal is concerned, obviously the Commission cannot question any order passed by it before the Appellate Tribunal. It is only when it is a respondent in an appeal, the question of presentation of its case by the presenting officer arises. On a careful analysis of the scheme, it is clear that the Commission can be respondent in an appeal which arises out of a proceeding initiated on its own motion by the Commission. In other cases, it cannot be a respondent in view of the accepted position of the Commission that it has no adversarial role and its role is clearly investigative in nature. In all other proceedings the informant and the defendant are the necessary parties to the dispute. This position is further clear from Section 53T by which the Commission is authorized to prefer an appeal to the Supreme Court if it is aggrieved by any decision or order of the Tribunal.

30. Even if it is held that the Commission is a proper party its non-impleadment shall not be fatal in view of Order 1 Rule X CPC.

31. It needs to be stated at this stage that in Savitri Devi v. District Judge Gorakhpur & Ors. 1999 (2) SCC 577, it was held that the practice of impleading Courts or Tribunals has to be deprecated. In the said case the Additional Civil Judge, Junior Division and the District Judge were impleaded as parties and were shown as respondents.

32. Similar view was taken in Fakeerappa and Anr. v. Karnataka Cement Pipe Factory and Ors. 2004 (2) SCC 473 where the Supreme

Court deprecated the practice of the Motor Accident Claims Tribunal, the High Court of Karnataka being impleaded as respondents, retreating the views expressed in Savitri Devi's case (supra).

33. Therefore, the prayer for impleadment as filed by the Commission is without any merit and deserves dismissal, which we direct.

34. Coming to the merits of the case, the first question that needs to be decided is whether the appellant had a reasonable opportunity to present its case. It is rightly contended by learned counsel for the respondent that there is no requirement of the Commission to invite parties to present their point of view before forming a prima-facie opinion. But the Commission may for the purpose of satisfying itself on any aspect permit the parties to present their point of view. This is clear from sub-regulation 5(c) of Regulation 3 of the Regulations. In fact, in the present case, the respondent was granted opportunity to place materials and to make detailed submission. Further, the Commission felt that before forming prima-facie opinion it was necessary to obtain the views of the appellant, who was the defendant in the case before the Commission. It is certainly open to the Commission to adopt a particular procedure because ultimately in view of the Section 36 of the Act it has powers to regulate its own procedure and is to be guided by the principles of natural justice. Commission after elaborate deliberation decided to ask appellant to indicate its view and give its comments. After having done that, it is not open to the Commission to abandon the opportunity granted midway. Therefore,

the moot question is whether as noted above adequate opportunity was granted. This has to be considered in the background of the principles of natural justice. The rules of natural justice intend to invest law with fairness and secure justice. Negatively put it prevents miscarriage of justice. They aim at preventing not only bias against any person, but also prevent the possibility of such bias. The opportunity granted should be fair and real and not illusory. Where there is violation of natural justice, no resultant or independent prejudice need to be shown, as denial of justice is, in itself sufficient prejudice and it is no answer that even with observance of natural justice the same conclusion would have been reached. In brief, the essential requirement of natural justice is reasonable opportunity to the person charged with which in turn, means (a) a reasonable notice; (b) an adequate notice; (c) a fair consideration of the explanation; and (d) passing of a speaking order. [see : Grindlays Bank Ltd. v. Central Government Industrial Tribunal And Other (AIR 1981 SC 606) and Union of India v. Mohan Lal Capoor and Ors. (AIR 1974 SC 87).

35. The rules of natural justice operate only in areas not covered by any law validly. In other words they do not supplant the law of the land but supplement it. The rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body or persons appointed for that

purpose. In paragraph-52 of Mohinder Singh Gill's case (supra), it was observed as follows :-

> "52. Once we understand the soul of the rule as fairplay in action-and it is so-we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation; nothing more-- but nothing less. The 'exceptions' to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Text-book excerpts and ratios from rulings can be heaped, but they all converge to the same point that audi alteram partem is the justice of the law without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the commonsense of the situation."

36. As rightly contended by the learned counsel for the appellant, the materials required to be placed for consideration by the Commission along with the views, the comments were voluminous and large number of documents were needed to be filed. The reason indicated for seeking extension of time was certainly plausible and it cannot be said to be an endeavour for wasting of valuable time. Though the Commission in its application for impleadment has tried to justify the rejection of the prayer for extension of time. That is not borne out from the impugned order itself. As observed in the Mohinder Singh Gill's case (supra), the Commission cannot be permitted to supplement

whatever has been specifically stated in the order, which merely states that the prayer for extension was considered and rejected. As noted above, no reason was indicated. The appellant is granted time till 22nd February, 2010 to file its further reply, if any, in addition to what has been filed on 16.12.2009. The Commission shall consider that along with other materials on record and take a fresh decision. We make it clear that we have not expressed any opinion on the merits of the case.

37. The second question is whether it would be necessary to indicate reasons while forming opinion that a prima-facie case exists. The Commission has to indicate reasons which need not be elaborate but should be sufficient to show application of mind. But sufficiency of foundational material for the recording of reasons cannot be questioned.

38. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless. [see : Raj Kishore Jha v. State of Bihar 2003 (11) SCC 519]

39. Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union (1971) 1 All ER 1148, observed: "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 ICR 120 (NIRC) it was observed: "Failure to give reasons amounts to denial of justice." "Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or

conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. [see : Steel Authority of India Ltd. v. Sales Tax officer, Rourkela-I, Circle and Others, 2008 (9) SCC 407]

40. In Krishna Swami v. Union of India AIR 1993 SC 1407, the Supreme Court observed that the rule of law requires any action, decision of a statutory or public authority must be founded on the reasons stated in the order or borne out from the record. The Court further observed that reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary,

unfair and unjust, violating Article 14 or unfair procedure offending Article 21.

41. Similar view has been taken by the Supreme Court in Institute of Chartered Accountants of India v. L.K. Ratna [1987] 164 ITR1 (SC) : [1987] 61 Co. Case 266 (SC) : [1986] 4 SCC 537, Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni AIR 1983 SC 109. In Vasant D. Bhavsar v. Bar Council of India [1999] 1 SCC 45, the Supreme Court held that an authority must pass a speaking and reasoned order indicating the material on which its conclusions are based. Similar view has been reiterated in Indian Charge Chrome Ltd. v. Union of India AIR 2003 SCW 440, Secretary, Ministry of Chemicals & Fertilizers, Government of India v. CIPLA Ltd. [2003] 7 SCC 1 and Union of India v. International Trading Co. [2003] 5 SCC 437.

42. It is settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order. In Kumari Shrilekha Vidyarthi v. State of U.P. AIR 1991 SC 537 it was observed as under :-

> “Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you'. This is what men in power must remember, always.”

43. In Life Insurance Corporation of India v. Consumer Education and Research Centre [1995] 5 SCC 482 the Supreme Court observed that

the State or its instrumentality must not take any irrelevant or irrational factors into consideration or appears arbitrary in its decision. "Duty to act fairly" is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty must be received and guided by the public interest. Same was the view of the Supreme Court in Mahesh Chandra v. Regional manager, U.P. Financial Corporation AIR 1993 SC 935 and Union of India v. M.L. Capoor AIR 1974 SC 87.

44. In State of West Bangal v. Atul Krishna Shaw [1991] Suppl. 1 SCC 414, the Supreme Court observed that "giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review".

45. In S.N. Mukherjee v. Union of India AIR 1990 SC 1984, it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

46. In the application for impleadment, the Commission has stated that at the stage of directing investigation there is no inquiry in

existence and instituting an investigation is before commencement of inquiry. That is not a correct statement in law. The Commission has referred to Sub-Section (8) of Section 26 in support of its stand that the instituting an investigation is before commencement of an inquiry. A bare reading of Section 19 (1) makes the position clear that the inquiry commences as soon as the aspects highlighted in Sub-Section (1) Section 19 are fulfilled. Even Sub-Section (7) of Section 26 makes reference to further inquiry and further investigation. There cannot be any investigation before commencement of inquiry; it is a part of the process of inquiry.

47. No order is necessary to be passed in the application for vacation of the interim order. The application for impleadment as noted above is rejected. Appeal is allowed to the aforesaid extent.

(Dr. Arijit Pasayat)
Chairman

(Rahul Sarin)
Member

(Pravin Tripathi)
Member

15th February, 2010