



2024:DHC:9697



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 03 December 2024**
Judgment pronounced on: 16 December 2024

+ **CONT.CAS(C) 1371/2024 & CM APPL. 50365/2024 , CM APPL. 50367/2024**

FORECH INDIA PVT LTDPetitioner
Through: **Mr. Krishnan Venugopal,**
Senior Advocate with Mr.
Rahul Goel, Ms. Anu Monga,
Mr. Shobhit Sharma,
Advocates.

versus

SHRI INDER PAL SINGH BINDRA SECRETARY
COMPETITION COMMISSION OF INDIA & ANR.

.....Respondents
Through: **Mr. Akhil Mittal, Adv. with**
Ms. Sanskriti Jain/Dy. Director
(Law), Mr. Amit Tayal/Addl.
DG and Mr. Sanjay
Bhatrtacharya/D.DG.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner company is seeking initiation of contempt proceedings against the respondents in terms of Article 215 of the Constitution of India, 1950 read with Section 12 and 2(b) of the Contempt of Courts Act, 1971 ["**CC Act**"] for alleged wilful non-compliance by way of overreaching the order dated 22.01.2020 passed by the Division Bench of this Court in LPA¹ 97/2017 read with orders

¹ Letters Patent Appeal



dated 02.12.2015 and 29.09.2016 passed by the learned Single Judge in W.P. (C) 11072/2015.

2. Having given my anxious consideration to the arguments advanced by the learned Senior Advocate for the petitioner and the learned Additional Solicitor General for the respondents and on perusal of the record, this Court proceeds to decide the present petition.

FACTUAL BACKGROUND

3. Shorn of unnecessary details, it appears that the petitioner company is under investigation by the respondent/Competition Commission of India (*for short 'the Commission'*) on alleged information indicating existence of a bid-rigging cartel in the Conveyor Belt sector in India. Based on the information made available to the Commission, *vide* order dated 06.11.2013, it found that there was an apparent *prima facie* case for contravention of Section 3 of the Competition Act, 2002 [**"the Act"**], thereby directing the Director General [**"DG"**] to cause an exhaustive investigation into the matter, encompassing all potential violations of the provisions of the Act by the parties involved.

4. Pursuant thereto, the DG issued notices to the petitioner company to furnish information, which *inter alia* included information with respect to the company and its business activities, plant addresses, names of all the persons comprising the Sales and Marketing team, besides other persons responsible for tendering and bidding of contracts specifically for the period 2009-10 to 2012-13 (*for short 'reference period'*). It appears that thereafter, a spate of



exchange of correspondences between the parties ensued, whereby the petitioner company sought inspection of the relevant record based on which the inquiry had been initiated under Section 26(1) of the Act, and eventually summons dated 23.11.2015 were issued by the DG under Section 41(2) read with Section 36(2) of the Act.

5. Aggrieved thereof, the petitioner company preferred a writ petition bearing W.P. (C) 11072/2015 seeking *inter alia* permission to inspect the documents/evidence that were being relied upon by the Commission besides issuance of necessary directions to the Commission and the DG to allow the petitioner company an opportunity to cross-examine the witnesses whose statements might have been recorded. The aforesaid proceedings led to passing of the following order dated 02.12.2015:

- “1. This order is in continuation of the previous orders dated 30th November, 2015 and 1st December, 2015.
2. The counsel for the respondents states that without prejudice to the rights and contentions of the respondents and without constituting a precedent, the respondents are ready to furnish all the documents of investigation available with the respondents, ***save those with respect to which any party has claimed confidentiality***, to the petitioner on the date when the statement of the official of the petitioner who has been summoned to appear is recorded and after confronting the said official with some of the documents with which it is deemed expedient to confront him.
3. It is further stated that the respondents will similarly give an opportunity to the petitioner to cross examine any witness whose oral statement pertaining to the petitioner has been recorded. It is yet further stated that the petitioner shall be given an opportunity to make a further statement after copies of the documents have been given to the petitioner and after the official of the petitioner has been confronted with some of the documents.
4. The senior counsel for the petitioner has expressed apprehension that the respondents, in the guise of confidentiality, may deny all documents to the petitioner.



5. The counsel for the respondents' states that the orders passed on the application of any other person claiming confidentiality with respect to any document / material shall also be supplied to the petitioner.

6. In this view of the matter, the petition is disposed of keeping all contentions of both the parties open and giving liberty to the parties to apply if any difficulty arise.

Dasti under signature of the Court Master.”

(emphasis supplied)

6. It appears that the Commission filed CM APPL. 32052/2015 for modification of the aforesaid order and the Court *vide* order dated 29.09.2016, after taking into consideration the previous directions passed, modified the order, the operative portion of which is as follows:

“12. I may at the outset notice that the order dated 2nd December, 2015 of which modification is sought is not adjudicatory in nature but is an order passed on the statement of the counsel for the respondents and which statement itself was “without prejudice to the rights and contentions of the respondents and without constituting a precedent.” Supreme Court, not only in *Abdul Kareem* supra cited by the senior counsel for the petitioner but also in *Delhi Administration Vs. Gurdip Singh Uban* 2000 (7) SCC 296 and in *Inderchand Jain Vs. Motilal* (2009) 14 SCC 663 held; i) that no application for review will be entertained in a civil proceedings except on the grounds mentioned in Order XLVII Rule 1 of the Code of Civil Procedure, 1908; ii) that there is a real distinction between a mere erroneous decision and a decision which could be characterized as vitiated by error apparent; iii) that a review by no means is an appeal in disguise; iv) that sometimes applications are filed for 'clarification', 'modification' or 'recall' not because any such clarification, modification is indeed necessary but because the applicant in reality wants a review and also wants a re-hearing – such applications if they are in substance review applications deserve to be rejected straightaway; v) the limitations on exercise of power of review are well settled; vi) a re-hearing of the matter is impermissible in law; vii) that power of review can be exercised for correction of a mistake and not to substitute a view and such power can be exercised within the limits of statute dealing with the exercise of power. Reference in this regard may also be made to *Cine Exhibition Private Ltd. Vs. Collector, District*



Gwalior (2013) 2 SCC 698 and **Villianur Iyarkkai Padukappu Maiyam Vs. Union of India** (2010) 15 SCC 230.

13. The respondents indeed, in the garb of modification, are seeking to wriggle out of the consent given by them i) to furnish to the petitioner all the documents of investigation available with the respondents save those with respect to which any party has claimed confidentiality; ii) to give an opportunity to the petitioner to cross-examine any witness whose oral statement pertaining to the petitioner has been recorded; iii) to give to the petitioner an opportunity to make a further statement after copies of the documents have been given to the petitioner and after the official of the petitioner has been confronted with some of the documents; iv) to give to the petitioner the orders passed on the application of any other person claiming confidentiality with respect to any document / material.

14. The respondents, though while seeking modification of their statement to give to the petitioner orders on the application of any other person claiming confidentiality with respect to any document / material have given reasons therefor, for seeking modification of their statement to furnish to the petitioner all documents of investigation with the respondents save those with respect to which any party has claimed confidentiality, have not given any reasons whatsoever save for expressing “difficulties” therein and which reasons were shown to the undersigned subsequently in confidence.

15. I am not satisfied with the reasons shown to me in confidence for withdrawing the consent given on 2nd December, 2015 to furnish to the petitioner all documents of investigation available with the respondents save those with respect to which any party has claimed confidentiality.

16. Since the order disposing of the petition was not adjudicatory order and was without prejudice to the rights and contentions of the respondents and without constituting a precedent for the respondents, I do not deem it appropriate to in this application for modification of the said order enter into an adjudicatory exercise as the counsels have argued. The same would clearly be beyond the scope of modification and even beyond the scope of review. Reference in this regard can be made to the order dated 16th September, 2016 of the Division Bench of this Court in Review Petition No.542/2014 in W.P.(C) No.3821/2014 titled **Rosa Power Supply Co. Ltd. Vs. Union of India**. I therefore decline to adjudicate, whether the respondents under the law are required to at the stage of investigation before the DG of CCI supply all material to the person being investigated against or not.

17. Though the respondents on 1st April, 2016 and as recorded in the order of that date reproduced above further agreed to grant full



opportunity to the petitioner including of adducing evidence and cross-examining witnesses before the CCI also and it appeared that the same offered a viable solution but the same was not acceptable to the senior counsel for the petitioner. In the light of consent earlier given by the respondents in this regard and to withdraw which no satisfactory reason is given, the same cannot be permitted to be withdrawn without consent of the petitioner.

18. The modification of that part of the order sought is thus declined.

19. However as far as the other modification sought with respect to furnishing to the petitioner copies of all the orders passed on the application of any other person claiming confidentiality with respect to any document / material is concerned, **I am of the view that the consent of the respondents thereto may affect third parties and thus the respondents cannot be held to be bound thereby.** The modification with respect thereto offered on 1st April, 2016 and as recorded in the order of that date i.e. of furnishing the orders of CCI upholding the confidentiality plea with respect to documents / material after redacting therefrom the portions which may disclose the nature of the documents / material in terms of Regulation 35(14) and Regulation 6 of the Competition Commission of India (Lesser Penalty) Regulations, 2009 is found to be more appropriate and is permitted.

20. **Accordingly, the application is partly allowed. The order dated 2nd December, 2015 is modified to the extent that the respondents may furnish to the petitioner orders passed on the application of any other person claiming confidentiality with respect to any document / material after redacting therefrom the portion which may disclose the nature of the documents / material.** Else the orders dated 30th November, 2015 and 2nd December, 2015 remain the same and bind the respondents.

The application is disposed of.” **(Emphasis supplied)**

7. The aforesaid modifications/directions were assailed by the Commission in LPA 97/2017 before the Division Bench of this Court, which after recording the submissions of the learned counsel for the parties and alluding to the order dated 02.12.2015, dismissed the said appeal on 22.01.2020 while observing as under:

“9. As is apparent from a perusal of the aforesaid order, the statement of the learned counsel for the appellant/CCI was recorded to the effect that it was ready to furnish all the documents



of the investigation available with it to the respondent herein, except for those with respect to which a party had claimed confidentiality, without it being treated as a precedent. The very same fact had weighed with the learned Single Judge at the time of passing the impugned order on 29.9.2016.

10. In view of the said statement made on behalf of the appellant/CCI, duly recorded by the learned Single Judge in the order dated 02.12.2015, we do not find any merit in the submission made before us now that the order dated 02.12.2015 or for that matter, the impugned order dated 29.9.2016, shall have wide ramifications or shall be treated as a precedent in the future.

11. It is also relevant to extract below the observations made by the learned Single Judge in paras 13 to 18 of the order dated 29.9.2016:-

“13. The respondents indeed, in the garb of modification, are seeking to wriggle out of the consent given by them i) to furnish to the petitioner all the documents of investigation available with the respondents save those with respect to which any party has claimed confidentiality; ii) to give an opportunity to the petitioner to cross-examine any witness whose oral statement pertaining to the petitioner has been recorded; iii) to give to the petitioner an opportunity to make a further statement after copies of the documents have been given to the petitioner and after the official of the petitioner has been confronted with some of the documents; iv) to give to the petitioner the orders passed on the application of any other person claiming confidentiality with respect to any document / material.

14. The respondents, through while seeking modification of their statement to give to the petitioner orders on the application of any other person claiming confidentiality with respect to any document / material have given reasons therefor, for seeking modification of their statement to furnish to the petitioner all documents of investigation with the respondents save those with respect to which any party has claimed confidentiality, have not given any reasons whatsoever save for expressing “difficulties” therein and which reasons were shown to the undersigned subsequently in confidence.

15. I am not satisfied with the reasons shown to me in confidence for withdrawing the consent given on 2nd December, 2015 to furnish to the petitioner all documents of investigation available with the respondents save those with respect to which any party has claimed confidentiality.



16. *Since the order disposing of the petition was not adjudicatory order and was without prejudice to the rights and contentions of the respondents and without constituting a precedent for the respondents, I do not deem it appropriate to in this application for modification of the said order enter into an adjudicatory exercise as the counsels have argued. The same would clearly be beyond the scope of modification and even beyond the scope of review. Reference in this regard can be made to the order dated 16th September, 2016 of the Division Bench of this Court in Review Petition No.542/2014 in W.P.(C) No.3821/2014 titled **Rosa Power Supply Co. Ltd. Vs. Union of India**. I therefore decline to adjudicate, whether the respondents under the law are required to at the stage of investigation before the DG of CCI supply all material to the person being investigated against or not.*

17. *Though the respondents on 1st April, 2016 and as recorded in the order of that date reproduced above further agreed to grant full opportunity to the petitioner including of adducing evidence and cross-examining witnesses before the CCI also and it appeared that the same offered a viable solution but the same was not acceptable to the senior counsel for the petitioner. In the light of consent earlier given by the respondents in this regard and to withdraw which no satisfactory reason is given, the same cannot be permitted to be withdrawn without consent of the petitioner.*

18. *The modification of that part of the order sought is thus declined."*

12. We are in complete agreement with the observations made by the learned Single Judge as reproduced hereinabove. There is no justification to modify the impugned order in the light of the statement made by learned counsel for the appellant/CCI on 2.12.2015, as noted in the order dated 2.12.2015. Thus, even on merits, no case for interference is made out by the appellant/CCI.

13. Accordingly, the application for seeking condonation of delay is dismissed as meritless and as a sequel thereto, the appeal and the pending application are also dismissed."

8. It is pertinent to mention that the aforesaid order dated 22.01.2020 was assailed in SLP No. 9018-9019/2020 before the Supreme Court, which was dismissed *vide* order dated 28.01.2021, however, leaving the question of law open.



9. In the aforesaid background, the petitioner company assails the impugned *ex parte* order dated 08.05.2024 (alleged to have been received on 30.05.2024) which affirms the previous *ex parte* order dated 16.03.2021 passed by the Commission (alleged to have been received on 20.04.2021), which is claimed to be in deliberate and wilful violation of the undertakings given by it before the Court.

10. At this juncture, it would be relevant to reproduce the operative portion of the aforesaid order passed by the Commission on 16.03.2021 which reads as under:-

“8. In view of the above, the following is required to be done:

- (a) furnishing to Forech, all materials available, including all documents of investigation, save those with respect to which any party has claimed confidentiality;
- (b) granting to Forech, opportunity to cross-examine any witness as desired by it, whose oral statement pertaining to it has been recorded;
- (c) granting to Forech, opportunity to make further statement after copies of documents have been provided to it and after officials of Forech have been confronted with some of such documents; and
- (d) furnishing to Forech, orders passed on application of any other person claiming confidentiality with respect to any document/material, after redacting therefrom the portion which may disclose the nature of the documents/ material.

9. As such, *vide* separate orders of even date, the Commission decides to call from all parties, including from the lesser penalty applicant(s), if any, non-confidential versions of their confidential submissions/documents, for the purposes of opening them for inspection and grant of certified copies to Forech, if sought, in terms of Regulation 37 read with Regulation 50 off the Competition Commission of India (General) Regulations, 2009 ('**General Regulations**').

10. Further, in the interest of justice and parity, the Commission decides to allow inspection and grant of certified copies, if sought, of such non-confidential versions, to all the other Opposite Parties in the matter as well.

11. Such non-confidential versions shall be prepared by the parties, in accordance with the nature of the information, the waivers, if any, granted upon certain information qua the other parties before the DG, in accordance with the confidentiality order(s), if any, passed by the DG and the Commission, and keeping in mind the parameters prescribed under Regulation 35 (3) of the General Regulations.



12. Further, the non-confidential versions of lesser penalty application(s)/ submission(s), if any, may be prepared by the lesser penalty applicant(s), if any, in such a manner that their identity which is confidential under Regulation 6 of the Competition Commission India (Lesser Penalty) Regulations, 2009 (PR'), may not be disclosed.

13. Such non-confidential versions shall be submitted by all parties, latest by 26.04.2021. The Opposite Parties may thereafter apply for inspection and grant of certified copies of the same, after 10.05.2021.

14. The DG may also call from the parties, including from the lesser penalty applicant(s), if any, non-confidential versions of their confidential submissions/ documents, if not already available, and open them for inspection and grant of certified copies to all the Opposite Parties, if sought, in terms of Regulation 37 read with Regulation 50 of the General Regulations. Confidentiality orders, if any, passed by the DG, shall also be opened for inspection and grant of certified copies, if sought, after redacting therefrom the portion which may disclose the nature of the information over which confidentiality has been granted.

15. The DG may decide the time frame for submission of such non-confidential versions by the parties and the parameters for preparing the non-confidential versions, accordingly. The DG shall thereafter inform the Opposite Parties, including Forech, when the non-confidential versions are available. The needful shall be done by the DG on an expedited basis.

16. The DG shall also grant to Forech and other Opposite Parties, opportunity to cross-examine of any witness as desired, whose oral statement pertaining to that party has been recorded by the DG. Further, the DG shall also grant to Forech and other Opposite Parties, opportunity to make further statement(s), after copies of documents have been provided to them and after their officials have been confronted with such documents, as deemed necessary.

17. It is made clear that the aforesaid mechanism has been devised in the present matter in light of the peculiar facts and circumstances of the present case to comply with the orders passed by the Hon'ble Delhi High Court in W.P. (C) No. 11072 of 2015. As submitted before the Hon'ble High Court and recorded in order dated 02.12.2015 (extracted above), the same shall not constitute a precedent for other matters before the Commission."

11. It appears that the aforesaid directives dated 16.03.2021 (alleged to have been received on 20.04.2021) were challenged by the petitioner company *vide* applications dated 10.05.2021 and



13.12.2023 and the said applications came to be dismissed *vide* the impugned order dated 08.05.2024, which reads as follows:

“COMPETITION COMMISSION OF INDIA

08.05.2024

Suo Motu Case No. 06 of 2013

In Re: Cartelization in the Conveyor Belt Sector

ORDER

1. The present matter was listed in the ordinary meeting of the Commission held today to consider the following applications:

(a) Application filed by Oriental Rubber Industries Limited ('Oriental Rubber') on 05.12.2023, inter alia, praying for a direction to the DG to complete the case records at the earliest, and to be provided with available case record as well as additional case record as and when completed, in soft copy.

(b) Applications filed by Forech India Limited ('Forech') on 13.12.2023 and 10.5.2021 assailing the order dated 16.03.2021 passed by the Commission and seeking, inter alia, all non-confidential document(s) and order(s) granting confidentiality passed by the Commission and/or the DG, in terms of the order(s) passed by the Hon'ble Delhi High Court in W.P. (C) No. 11072/ 2015, as they existed on or before 02.12.2015.

(c) Application filed by Hindustan Rubbers (Silvassa) ('HRS') on 28.05.2021 making submissions similar to those made by Forech in its application dated 10.05.2021.

(d) Letter dated 21.12.2021 filed by Continental AG and its group companies, including Phoenix Conveyor Belt India (Private) Ltd., in response to the applications dated 10.05.2021 and 28.05.2021 filed by Forech and HRS, respectively.

2. Upon consideration of the matter today, the Commission observed that the order dated 16.03.2021 is to be read and acted upon for ensuring compliance in letter and spirit, with the order(s) dated 30.11.2015 and 02.12.2015 passed by the Hon'ble High Court of Delhi in W.P.(C) No. 11072/2015, as modified *vide* order dated 29.09.2016, which attained finality upon passing of the order dated 28.01.2021 by the Hon'ble Supreme Court of India in S.L.P. (C) No. 9018-19/2020.

3. The order dated 16.03.2021 passed by the Commission nowhere directed or allowed any party (including lesser penalty applicants, if any, in the matter) to file any new information/submission/evidence/ document(s) etc. or for the creation of any fresh documentation or amounted to fresh adjudication of any confidentiality claims. If any non-confidential version already existed, no new version thereof was called for. Further, no fresh



confidentiality order(s) were passed pursuant to the order dated 16.03.2021 of the Commission and confidentiality as existing on 02.12.2015 continues to be in force. Vide order dated 16.03.2021, the parties were only directed to file non-confidential version(s) of their existing submissions made before the Commission and/ or the DG, wherever not already available, in accordance with the existing confidentiality order(s) already passed by the Commission and/or the DG, if any, under the relevant provisions as existing on that date.

4. Therefore, in light of the above, all applications mentioned in Para I above stand disposed of with a direction to the DG to complete its case records at the earliest in accordance with the abovesaid order(s) passed by the Hon'ble High Court of Delhi and the Hon'ble Supreme Court and to provide to the Opposite Parties, soft copies of the document(s) sought, if available.

5. DG is directed to complete its investigation while ensuring compliance with all orders of Hon'ble Courts issued from time to time and submit the investigation report along with case record within a period of 120 days from receipt of the present order as the matter is pending for over ten years.

6. The Secretary is directed to inform the DG, and the applicants, accordingly.”

12. Learned counsel for the petitioner company has vehemently urged that the aforesaid *ex parte* order dated 08.05.2024 received on 30.05.2024 affirming the previous order dated 16.03.2021 is a sheer attempt by the Commission to wriggle out of its undertaking given before the learned Single Judge and recorded *vide* order dated 02.12.2015. It is urged that the Commission is bound to supply all documents immediately and unconditionally at the stage of investigation and on the date when the summoned officials of the petitioner company gave their statement in compliance with the directions of this Court.

ANALYSIS AND DECISION

13. Unhesitatingly, this contempt petition lacks merit and appears to be a deliberate attempt to stall the ongoing investigation with



ulterior motives. In contempt law, it is well established that to hold a person guilty of contempt, it must be proven that the disobedience is wilful, deliberate, and intended to defy the authority of the Court. The primary objective of contempt proceedings is to ensure compliance with the Court's orders, thereby maintaining its authority and dignity. It is well ordained that mere technical or unintended breaches do not warrant contempt proceedings.

14. Given the underlying objective of contempt proceedings, it is noteworthy that an undertaking was given on behalf of the respondents to provide all relevant documents, including confidential witness statements. Accordingly, the respondents agreed to redact necessary details pertaining to the identity of the witnesses concerned, in terms of directions dated 02.12.2015 as modified later *vide* order dated 29.09.2016 and eventually confirmed by the Division Bench of this Court in LPA *vide* order dated 22.01.2020.

15. First things first, certain lame and inconsequential instances are cited to the effect that the petitioner was not allowed inspection of non-confidential records on 02.06.2015, 05.06.2015, 08.06.2015, 23.06.2015 and 17.08.2015. It is undisputed that the facility of inspection was never denied, rather, certain technical compliances were required regarding the manner in which inspection applications were to be submitted. A thorough review of the order dated 16.03.2021, as approved *vide* order dated 08.05.2024, reveals that the Commission is aware of its obligation to comply with this Court's directions dated 02.12.2015.

16. Evidently, the Commission's order dated 16.03.2021, as



approved on 08.05.2024, merely acknowledges the delay in the progress of the investigation and the conclusion of the inquiry. Consequently, the Commission has issued directions that: (i) provide all parties, including the lesser penalty applicant(s), with non-confidential versions of confidential submissions/documents; and (ii) allow inspection and grant certified copies to concerned parties, if requested. However, instead of complying with the DG's directions, the petitioner is raising a misconceived legal plea, by claiming that this process amounts to creating fresh documentation or evidence in the matter. This Court is unable to comprehend as to how the directions issued by the Commission could possibly lead to the disclosure of new information, submissions, evidence, documents, or any other material by any of the concerned parties.

17. During arguments, counsel for the respondents submitted that the investigation involves 17 opposite parties and multiple third parties. The records and documentation pertaining to the investigation with the DG run into approximately two lakh pages. However, about one-third of the parties are yet to comply with the direction to provide non-confidential versions of their submissions. It was pointed out that multiple parties had filed submissions before the Commission and the DG by 16.03.2021. To expedite the investigation and its outcome, the Commission directed the parties to file non-confidential versions of their submissions, if not already done. The Commission explicitly stated that no new information, submissions, evidence, or documents were required to be filed.

18. From the tone and tenor of the arguments presented on behalf of



the petitioner, it appears that the real grievance is that the DG should provide them with copies of the voluminous record instead of allowing inspection. However, providing copies of such a massive record would be a Herculean task. The respondents cannot be expected to perform an impossible act.

19. Learned Counsel for the respondents further submitted that, in the ongoing investigation, preliminary statements of approximately 20 officials of the opposite party have been recorded. However, the stage of cross-examination of these witnesses has yet to be reached. It was assured that the petitioner would be permitted to cross-examine the witnesses once the statements of all witnesses have been completed. The respondents acknowledged their obligation to comply with this Court's directions regarding providing copies of witness statements and allowing the petitioner to inspect the records.

20. In summary, the petitioner has failed to demonstrate any prejudice caused to him in the ongoing investigation following the impugned order dated 16.03.2021. It is in the interest of all parties concerned that the investigation concludes as expeditiously as possible, while affording the petitioner and other parties under scrutiny the opportunity to cross-examine witnesses. In this context, the Commission's direction to complete the investigation within 120 days does not constitute contempt of this Court's directions. Therefore, the petitioner's apprehension that the Commission is not complying with this Court's directions appears unfounded.

21. It is axiomatic that the Commission retains its plenary power to modify its orders as necessary, pursuant to the investigation conducted



under Section 26 of the Act. This power cannot be restricted or curtailed in any way. Reference in this regard can be invited to decision of this Court in the case of **Google Inc. & Ors. v. Competition Commission of India**² wherein this Court delineated the powers of the Commission as also the DG while exercising powers under Section 26(1) of the Act and *inter alia* held as under:

“(C) The DG, during the course of such investigation, by virtue of Section 41(2) read with Section 36(2) of the Act has the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit in respect of, (i) summoning and enforcing the attendance of any person and examining him on oath, (ii) requiring the discovery and production of documents, (iii) receiving evidence on affidavit, (iv) issuing commissions for the examination of witnesses and documents, and (v) requisitioning public records or documents from any public office. The DG is further empowered by Section 41(3) read with Sections 240 and 240A of the Companies Act, 1956 to keep in its custody any books and papers of the person/enterprise investigated against/into for a period of six months and to examine any person on oath relating to the affairs of the person/enterprise being investigated against/into and all officers, employees and agents of such person/enterprise are also obliged to preserve all books and papers which are in their custody and power.

(D) Failure to comply, without reasonable cause, with any direction of the DG, under Section 43 of the Act has been made punishable with fine extending to rupees one lakh for each day of failure, subject to a maximum of rupees one crore.

(E) It would thus be seen that the powers of the DG during such investigation are far more sweeping and wider than the power of investigation conferred on the Police under the Code of Criminal Procedure. While the Police has no power to record evidence on oath, DG has been vested with such a power. Our experience of dealing with the matters under the Competition Act has shown that not only statement on oath of witnesses summoned during the course of investigation is being recorded but the said witnesses are being also permitted to be cross-examined including by the informant/claimant and which evidence as part of the report of the DG forms the basis of further proceedings before the CCI. Thus

² 2015 SCC OnLine Del 8992



while in investigation by Police under the Cr.P.C., the rule of audi alteram partem does not apply, there is no such embargo on the DG, CCI.

(F) Thus, investigation by DG, CCI tantamount to commencement of trial/inquiry on the basis of an ex parte prima facie opinion. Though the Supreme Court in Para 116 of SAIL (supra) has held that inquiry by CCI commences after the DG, CCI has submitted report of investigation but, in the facts of that case, had no occasion to consider that the DG, CCI in the course of investigation has powers far wider than of the Police of investigation. Para 29 of the judgment also notices that the counsels had addressed arguments on issues not strictly arising for adjudication in the facts of that case; however since it was felt that the said questions were bound to arise in future, the Supreme Court proceeded to deal with the said contentions also.

XXX

(I) In the absence of any statutory remedy against investigation commenced on the basis of a mere reason to suspect in the mind of the Police, writ petition under Article 226 of the Constitution of India for quashing of FIR has been held to be maintainable albeit on limited grounds. Reference in this regard may be made to State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 arising from a writ petition for quashing of the entire criminal proceedings including the registration of the FIR. It was held, (i) that the Police do not have an unfettered discretion to commence investigation and their right of inquiry is conditioned by reason to suspect and which in turn cannot reasonably exist unless the FIR discloses the commission of such offence; (ii) that serious consequences flow when there is non-observance of procedure by the Police while exercising their unfettered authority; (iii) in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court is convinced that the power of investigation has been exercised by a Police Officer mala fide, the High Court can always issue a writ of mandamus restraining the Police Officer; (iv) the fact that the Cr.P.C. does not contain any provision giving power to a Magistrate to stop investigation by the Police, cannot be a ground for holding that such power cannot be exercised under Article 226; (v) the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen except in accordance with the procedure established by the Constitution and the laws - the history of personal liberty is largely the history of insistence on observance of procedure -observance of procedure has been the bastion against wanton assaults on personal



liberty over the years - under our Constitution, the only guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law; (vi) that though investigation of an offence is the field exclusively reserved for the Police, whose powers in that field are unfettered so long as the power to investigate into the offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code of Criminal Procedure and the Courts are not justified in obliterating the track of investigation when the investigating agency is well within its legal bounds; though a Magistrate is not authorized to interfere with the investigation or to direct the Police how that investigation is to be conducted but if the Police transgresses the circumscribed limits and improperly and illegally exercises investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court on being approached has to consider the nature and extent of the breach and pass appropriate orders without leaving the citizens to the mercy of Police since human dignity is a dear value of our Constitution; (vii) no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos - any recognition of such power will be tantamount to recognition of divine power which no authority on earth can enjoy; (viii) if the FIR discloses no cognizable offence or the allegations in the FIR even if accepted in entirety do not constitute the offence alleged, the Police would have no authority to undertake an investigation and it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused person and in such an eventuality the investigation can be quashed; (ix) in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 and if the High Court is convinced that the power of investigation has been exercised by the Police mala fide, the High Court can always issue a writ; (x) the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings but the High Court does not ordinarily inquire as to whether the evidence is reliable or not; (xi) if no offence is disclosed, an investigation cannot be permitted as any investigation, in the absence of offence being disclosed, will result in unnecessary harassment to a party whose liberty and property may be put to jeopardy for nothing; (xii) where there is an express legal bar engrafted in any of the provisions of the Cr.P.C. or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the



Cr.P.C. or the concerned Act, providing efficacious redress for the grievance of the aggrieved party, power under Article 226 could be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice; (xiii) Similarly, where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, power under Article 226 of the Constitution of India can be exercised; (xiv) whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case; (xv) however, the power of quashing should be exercised sparingly and with circumspection.”

22. To reiterate, the petitioner has failed to demonstrate that the respondents have committed contempt of this Court’s directions. The Commission possesses independent and plenary powers to shape the investigation methodology and timeline. In reality, while the petitioner ostensibly seeks contempt proceedings, it is attempting to secure a judicial review of the investigation methodology through the back door, which cannot be entertained.

23. Based on the foregoing discussion, unhesitatingly, the Commission hasn't deviated from or watered down the Court's directions in any way. Therefore, the contempt petition is dismissed with a cost of Rs.1,00,000 upon the petitioner for using delaying tactics and trying to stall the ongoing investigation, ultimately wasting this Court’s precious time. The cost be deposited with Delhi High Court Legal Services Committee within three weeks from today.

24. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

DECEMBER 16, 2024

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