



SCOPE OF JUDICIAL INTERVENTION IN COMPETITION LAW VIOLATIONS IN INDIA

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INTRODUCTION

The Competition Act, 2002 was enacted to set up the Competition Commission of India as a multi-member regulatory body:

- a) To promote and sustain competition in markets,
- b) To prevent practices from having an adverse effect on Competition,
- c) To protect consumer interest, and

- d) To ensure freedom of trade carried on by participants in Indian markets.

The Competition Commission of India¹ is a body corporate having perpetual succession and a common seal with authority to acquire, hold and dispose of movable property and immovable property and to contract and can sue and be sued.² The Competition Commission of India shall consist of a Chairperson³ with a minimum of 2 and a maximum of 6 members.⁴

Powers and Functions of the Competition Commission

The Competition Commission has powers to enter into any arrangement or memorandum with the approval of Central Government with any competition regulator of a foreign country to discharge its duties and perform its functions of competition watchdog.⁵

The Competition Act prescribes that the principles of natural justice shall guide the Competition Commission in discharging its functions⁶. The concerned parties can appear before the Competition Commission in person or through authorized Chartered Accountants, Company Secretaries, Costs

¹ The Competition Commission of India was established by the Central Government with effect from 14th October 2003, It became fully functional in May 2009, available at <http://www.cci.gov.in/about-cci> (last visited on 22.05.2019)

² The Competition Act, 2002, section 7

³ *Id.*, section 10 stipulates that the Chairperson and every other member shall hold office as such for a term of five years but shall not hold office after the attainment of age of 65 years.

⁴ *Id.*, section 8(2) stipulates that the Chairperson and the every member shall be a person of ability, integrity and standing and who has special knowledge of and such professional experience of not less than 15 years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy.

⁵ *Id.*, section 18

⁶ *Id.*, section 36



Accountants or Legal Practitioners.⁷ To achieve the objectives of the Competition Act, the Competition Commission is vested with functions and powers to:

- a) Inquiry into certain agreements⁸ and dominant position⁹ of an enterprise¹⁰;
- b) Conduct¹¹ such inquiry and
- c) Pass¹² specific orders which must meet the administrative law standards of reasonableness, fairness, proportionality and be consistent with the parent statute.

Extra-Territorial Jurisdiction¹³

The Competition Commission is empowered to inquire into such cross-border agreement,¹⁴ to find out whether such agreement has caused or is likely to cause an appreciable adverse effect on competition in the relevant market in India and issue any directions as it may deem fit under the provisions of the Competition Act

Leniency Provisions¹⁵

While passing orders in respect of cartels, the Competition Commission is vested with the discretion to impose a proportionate or lesser penalty than leviable under the Competition Act upon a producer, seller, distributor, trader or service providers, provided the following conditions are met:

- a. That producer, seller, distributor, trader or service provider who was one of the cartel participants has made a complete and accurate disclosure regarding the alleged violations, and such disclosure is vital.
 - b. Disclosure has been made before receiving the Director General's report on the investigation order under section 26.
 - c. The party making disclosures continue to co-operate with the Competition Commission till the completion of investigation and proceedings before the Competition Commission.
 - d. The party making disclosures have:
 - (i) Full compliance with the condition on which the lesser penalty was imposed and
 - (ii) Provided real evidence.
- It is noteworthy that the above benefit of leniency may be reversed if, during proceedings, the Competition Commission is satisfied that any producer, seller, distributor, trader or service provider who was a participant in a cartel had:
- a. Noncompliance with the condition on which the lesser penalty was imposed,

⁷ *Id.*, section 35

⁸ *Id.*, section 3

⁹ *Id.*, section 4

¹⁰ *Id.*, section 19

¹¹ *Id.*, section 26

¹² *Id.*, section 27

¹³ *Id.*, section 32

¹⁴ *Id.*, sections 3, 19, 26, 27, 33, & 46

¹⁵ *Id.*, section 46



- b. Given the untrue or false evidence, and
- c. The disclosure made is not vital for the investigation and proceedings.

In such an eventuality, such producer, seller, trader, distributor or service provider may be tried for the offence, and the benefit of the lesser penalty imposed shall be withdrawn. Further, such person shall be liable to the imposition of the sentence to which such person is otherwise responsible.

National Company Law Appellate Tribunal (NCLAT)

National Company Law Appellate Tribunal (NCLAT) was constituted under Section 410 of the Companies Act, 2013 for hearing appeals against the orders of National Company Law Tribunal(s) (NCLT), with effect from June 1 2016.

NCLAT is also the Appellate Tribunal to hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission as per the amendment brought to section 410 of the Companies Act, 2013 by Section 172 of the Finance Act, 2017, with effect from May 26 2017.¹⁶

Appeal from Competition Commission Orders to NCLAT

The Competition Act prescribes 60 days limitation period from the date of receipt of the Order of the Competition Commission for preferring an appeal. The delay in preferring

the request in a specified time may be condoned for sufficient cause after allowing concerned parties to be heard. The NCLAT may pass such orders confirming, modifying or setting aside the direction, decision, or order appealed against. A party can appear before the NCLAT in person or authorize a legal representative¹⁷ to represent him before the NCLAT.

Appeal to Supreme Court

A party can prefer an appeal to Supreme Court against the order of the NCLAT within the 60 days of the receipt of the order, and the delay in preferring in the prescribed period may be condoned if the Supreme Court is satisfied that there was sufficient cause for not filing the appeal within the prescribed period. The Orders of the NCLAT shall be enforced as if decrees made by the courts.

JURISPRUDENTIAL ANALYSIS OF JURISDICTION OF COMPETITION COMMISSION OF INDIA

1. Application of the Competition Act, 2002 before its applicability is notified by the Union of India

The legal question was raised regarding the applicability of the Competition Act, 2002 even before its relevance is notified by the Union of India in *PG Narayanan v. The Union of India*¹⁸, in Public Interest Litigation. Petitioner challenged the issue of a license in violation of Articles 38 and 39C of the Constitution of India by not following the rule of law. In view of the presence of the

¹⁶ COMPAT replaced by NCLAT, available at <http://www.nclat.nic.in/about-nclat.html>, (visited on 09.01.2019)

¹⁷ Advocates, Cost Accountants, Chartered Accountants and Company Secretaries can act as a legal representative before the NCLAT

¹⁸ (2005) 3 MLJ 210



Minister for Communications and Information Technology, who is the brother of the person at the helm of the Sun TV Network Companies in the processing of the application for a license. Hence, there is a chance of being influenced. The entire process is vitiated by mala fide and bias. The license application has also violated the provisions of the Companies Act; the license is liable to be rejected.

While deciding the issue, the Madras High Court held that the Competition Act is not relevant for determining the case because the Competition Act has not come into force or at least the applicable portion, i.e. section 3, which deals with the anti-competitive agreement, has not come into force.

On the issue of applicability of the Competition Act on bidding documents, the High Court held that the provisions of the Competition Act, 2002 come into play only after an agreement has been entered into. In this case, no agreement has been entered into, which is clear from the guidelines for granting the license only after the clearances are obtained, and the applicant pays the entire fee and furnishes the bank guarantee. Therefore, it is only after the licensing agreement has been entered into that the provisions of the Competition Act will come into play, and that stage has not been reached in this case. Therefore, in either case, the Competition Act has no application.

2. Whether sovereign functions are exempted from the operation of the Competition Act, 2002

The Madras High Court held that the grant of license is an exercise of the sovereign function, and the Competition Act specifically exempted sovereign operations of the Government.¹⁹ A similar stance was taken in *Consumer Right Protection Council v. The Secretary, Ministry of Information and Broadcasting*²⁰.

3. Whether the Competition Commission has jurisdiction in respect of agreements entered into before the enforcement of the Competition Act, 2002, i.e., May 20 2009

In *Kingfisher Airlines Limited and Dr Vijay Mallya v. Competition Commission of India and Union of India*²¹, the following issues were raised:

- a) Whether the transactions entered before the commencement of the Competition Act is covered within the jurisdiction of the Competition Act?
- b) Whether Competition Act, 2002 is penal?
- c) Whether the action under sections 3, 4, 19, 36, 27, 43 and 44 of the Competition Act is violative of Article 20 and Article 21 of the Constitution of India.

Kingfisher Airlines and Jet Airways allied to rationalize the rates and provide an improved standard of service of broader choice to the customers in October 2008. The MRTP Commission had taken cognizance of the agreement but did not initiate any action because the alliance had not materialized at that time. Further, the MRTP Commission

¹⁹ *PG Narayanan v. The Union of India*, (2005) 3 MLJ 210

²⁰ MANU/TN/2241/2008

²¹ (2010) 4 CompLJ 557(Bom)



left it open for the Director-General to investigate further developments. The order was passed on September 4, 2009.

The Competition Act, 2002 was enforced on May 20, 2009. Therefore, the MRTP Commission ceases to have existed from October 14 2009. The Competition Commission has passed an order on 4.8.2009 directing the Director-General to investigate the information given by respondent No. 3. The main challenge was the order dated 4.8.2009.

The Hon'ble High Court held that though the nature of transaction and agreement between the parties may be executed before coming into force of the Competition Act, it stands covered by the Competition Act on the date the Competition Act became operational. Further, the High Court opined that the Competition Act is not retrospective. It would cover all the agreements covered by the Competition Act even if entered into before the commencement of the Competition Act and sought to be acted upon.

On the second issue, whether the Competition Act could be said to be penalized. It was submitted on behalf of the Petitioner that section 43 of the Competition Act provides punishment, and therefore, it should be treated as penal law. The Hon'ble held that the Competition Act, strictly speaking, is not a penal law because the Competition Act does not make punishable by itself an act of agreeing.

Further, sections 42 and 43 make contravention of orders of the Competition Commission and non-compliance of the

direction of the Competition Commission an offence. Strictly speaking, no criminal liability is attracted to breach sections 3 or 4 of the Competition Act. The High Court opined that the penalty is provided only to ensure compliance with the directions of the Competition Commission, as can be seen from section 27(1) of the Competition Act. The Competition Commission can only issue such a direction only after an inquiry. Therefore, unless and until an inquiry is held and after that, some specific directions as provided by section 2 (a) to (g) are issued, there would be no question of anybody committing any offence.

The third issue, The High Court held the Competition Act is not retrospective since there is no provision to that effect in the Competition Act. For this reason, the High Court held that the Competition Act is not retrospective and is therefore not affected by Article 20(1) and Article 21.

In *DLF Home Developers Limited v. Competition Commission of India*²², writ petitions have been filed seeking a direction to the Competition Commission (respondent No.1) to frame and decide the issue of jurisdiction before the passing of orders on merits of the cases and deferring the matters until final adjudication by the Supreme Court involving the same jurisdictional issue.

The Competition Appellate Tribunal (COMPAT) had held that the Competition Commission did not have jurisdiction regarding agreements entered into before the enforcement of the Competition Act, 2002, i.e., May 20, 2009.

²² MANU/DE/2552/2014



The High Court held that the High Court has the jurisdiction to pass an order directing the Competition Commission to hear and decide the preliminary issue of jurisdiction. Further, the High Court held that a writ petition is not maintainable as a matter of right to frame a preliminary issue in any proceeding pending before a statutory or quasi-judicial body. It is pertinent to mention that section 36 of the Competition Act gives power to the Competition Commission to regulate its procedure. Furthermore, the Hon'ble High Court held that as far as the argument of deferring the hearing until the Supreme Court's final decision is concerned, such a prayer should have been made before the Apex Court at the time of admission the aforesaid Civil Appeals.

In *Aamir Khan Productions Private Limited and Aamir Hussain Khan v. Union of India and the Competition Commission of India*²³, the following legal issues were raised:

- a) Whether the Competition Commission of India has jurisdiction to initiate the proceedings for violation of provisions of the Competition Act, 2002
- b) Whether the Competition Commission is competent to decide on issues relating to its jurisdiction?

The Hon'ble Bombay High Court held that the protection of interests of consumers is an essential object for the enactment of the Competition Act and, therefore, if the Competition Act has provided for an additional forum for protection of consumers' rights in addition to the forum of Copyright Board. Consequently,

the Competition Commission is acting within its jurisdiction.

The High Court opined that every Tribunal has the power to determine the existence or otherwise of the jurisdictional fact unless the statute establishing the Tribunal provides otherwise. Further, the Competition Commission has the jurisdiction to decide whether the initial State of facts (on which the further exercise of its authority depends) exists. Nothing in the Competition Act indicates that the Competition Commission is not invested with the jurisdiction to determine such jurisdictional fact.

Whether the Competition Commission of India has jurisdiction to initiate or start the proceedings in the fact situation of these cases is a mixed question of law and fact which the Competition Commission of India is competent to decide. The matter is still at the stage of further inquiry. The Competition Commission of India has yet to decide on the issue. There is no reason to believe that the Competition Commission will not consider all the contentions sought to be raised by the petitioners in these petitions, including the argument based on section 3(5) of the Competition Act. If petitioners are not satisfied with the decision of the Competition, they can challenge the same by way of an appeal before the Competition Appellate Tribunal (COMPAT) established under section 53A of the Competition Act

In *Barpeta District Drug Dealers Association v. Union of India*²⁴, an important question was raised: whether the High Court of Gauhati has territorial jurisdiction to try

²³ (2010) 4 CompLJ 580 (Bom)

²⁴ 2013 (5) GLT 30



matters relating to the Competition Commission of India.

One M/s. Sandhya Drug Agency, a Drug Licensee under the Drugs and Cosmetics Act, 1940, filed the information under section 19(1) of the Competition Act for the institution of an inquiry alleging abuse against the petitioners of their dominant position they occupy. The informant alleged that the petitioners had unilaterally and without asking the informant about the veracity of the claims, directly indulged and ensured, by abuse of their dominant position that no drugs and lifesaving medicines were supplied to the informant and the same was done with the active support of the All India Organization of Chemists and Druggists. Further, the informant alleged that the abusive conduct emanates from the collusive designs of directly imposing unfair and discriminatory conditions, thereby denying the informant's market access by using their dominant position in the drug distribution market in the State of Assam.

The Hon'ble High Court relying on the ruling of Apex Court in *Nasiruddin v. State Transport Appellate Tribunal* held that it is well settled that the "cause of action" is inextricably related to the place where the dispute originated from.

This High Court has within its jurisdiction to adjudicate the impugned order as the dispute has originated in the territory over which this Court has the territorial jurisdiction. Even if the final authority was the Competition Commission, which passed the impugned orders having its seat in New Delhi, that could not be the relevant fact for determining

the cause of action to determine the proper territorial jurisdiction.

4. Whether the issue of jurisdiction has to be decided by the Competition Commission before embarking on the proceedings under the Competition Act, 2002

In *Sri A.K. Jeevan v. Competition Commission of India*²⁵, the issue raised was whether the issue of jurisdiction has to be decided by the Competition Commission before embarking on the proceedings under the Competition Act, 2002

In this case, the DG (Investigation and Registration), under the MRTP Act, has issued a notice under section 41(2) read with section 36(2) of MRTP Act, 1969. After that, the Competition Commission of India informed the Petitioner that upon transfer of the matter as per section 66(6) of the Competition Act, it had formed a prima facie opinion that a case was made out under section 26(1) of the Competition Act. Therefore the matter was referred to the Director-General for investigation as ordered dated 29.06.2010. The Director-General, in turn, sent the investigation report to the Competition Commission on 08.11.2010. The Competition Commission considered the report of the Director-General and found it proper to obtain a supplementary report on certain specific issues and therefore had directed the Director-General accordingly.

The Petitioner issued the notice to furnish information regarding the balance sheet, profit, and loss account of the Association for the last three years. Still, the petitioner

²⁵ MANU/KA/2418/2011



association failed to furnish said information, and therefore Competition Commission decided to initiate proceedings against Petitioner for non-compliance of directions. The same was challenged before the High Court.

On the issue of jurisdiction of the Competition Commission to initiate proceedings under the Competition Act, 2002, Hon'ble Karnataka High Court held that once Director-General has completed inquiry, it was not open for him to embark upon another inquiry to submit a supplementary report nor such report could have been called for by MRTP Commission, as MRTP Commission had no jurisdiction to proceed with the matter because of section 66 of Competition Act, It is made clear that consideration of the question regarding the imposition of penalty will arise only after the Competition Commission pronounces upon its jurisdiction. Further, the Court held that the issue of jurisdiction has to be decided by the Competition Commission before embarking on the proceedings under the Competition Act, 2002.

5. Whether Writ Petition filed before invoking of the jurisdiction of Competition Commission is maintainable

In *Jindal Steel and Power Ltd. v. Union of India*²⁶, an essential jurisdictional issue which arose for consideration of the Hon'ble High was that whether the writ petition, though filed before invoking of the jurisdiction of Competition Commission of India (which became fully operational during the pendency of the writ petition before the

High Court), would be still maintainable for primarily assailing Memorandum of Understanding of February 1, 2003, between the Ministry of Railways (Respondent No. 1) and the Steel Authority of India (SAIL) (Respondent No. 3), as the Petitioner has previously challenged it before the Competition Commission being anti-competitive.

The Petitioner contended that in the instant case, fundamental rights of the Petitioner cannot be curtailed and so, the Petitioner ought to be allowed to pursue parallel proceedings as the merits of the writ petition cannot be prejudged while deciding on the maintainability aspect because the averments in the writ petition have to be read as it is while determining the issue of maintainability of the writ petition.

The respondent-SAIL contended that parallel remedies in two different forums regarding the same matter are not permissible. As it would lead to conflicting decisions and avoid such an eventuality, the doctrine of election of remedies ought to be applied in the instant case.

The High Court held that though Memorandum of Understanding of February 1, 2003, is essentially a subject matter of the proceedings before this Court as well as before the Competition Commission, therefore, even if parallel proceedings are allowed to continue, still the ends of justice demands that conflicting decisions have to be avoided. Since orders are awaited in the proceedings before the Competition Commission, the writ proceedings are allowed to continue as an issue of promissory

²⁶ MANU/DE/7229/2011



estoppel, and legitimate expectations cannot be prejudged at this stage. Still, the final order in this matter has to be put on hold till the validity of the Memorandum of Understanding of February 1 2003, is finally decided in the proceedings under the Competition Act. While declaring that the doctrine of election of remedies cannot be applied to the instant case, it is held that this writ petition is maintainable, and the parallel proceedings are permitted to continue in the manner indicated above.

In *Vipul R. Shah Rupali Medical & Provision v. Director General Office of the Director-General Competition*²⁷, the question was whether the Competition Commission has jurisdiction to proceed individually against the Members of the Chemists and Druggists Association and demand their profit and loss accounts and balance-sheets about the last three years, in proceedings against the Association.

Petitioner No.1 is a Member of the Chemists and Druggists Association, Baroda (petitioner No.2). The Competition Commission of India had issued a notice to the petitioner No.2-Association on 26.07.2010, under section 36(2) read with section 41(2) of the Competition Act, 2002. Petitioner No.2 replied to the said notice on 09.08.2010. During the proceedings, the Competition Commission wrote a letter dated 17.03.2011 to petitioner No.1, asking him to submit the balance sheets and profit and loss accounts for the last three years.

The Competition Commission reiterated this request by letter dated 04.04.2011. Petitioner No.1 submitted the profit and loss accounts

and balance sheets of the Association of the last three years vide letter dated 14.04.2011. After that, petitioner No.1 received the impugned notice dated 26.04.2011, issued by the Competition Commission, asking him to submit his profit and loss accounts and balance sheet for the last three years. Aggrieved by this communication, the petitioners have challenged the same by filing the petitions, praying for issuing a writ of mandamus, for quashing and setting aside the impugned communications.

Hon'ble Gujarat High Court held that the Petitioners were directed to appear before the Competition Commission and raise a preliminary objection regarding jurisdiction of the Competition Commission. After hearing the petitioners, the Competition Commission should decide on the primary issue of jurisdiction, following the law, within six weeks from the date of receipt of the preliminary objections. Only after the initial issue regarding jurisdiction was the Competition Commission supposed to proceed in the matter.

The Court further clarified that all rights and contentions available to the respective parties were kept open. If any, the question regarding the imposition of a penalty should arise only after the Competition Commission pronounced upon its jurisdiction.

In *State of Mizoram v. Competition Commission of India*²⁸, before the Aizawl Bench of High Court of Gauhati, an important issue was raised whether the lottery business can be considered as "Trade and Commerce" and fall within the purview of the Competition Act of 2002.

²⁷ 2012 CompLR 107 (Gujarat)

²⁸ 2014 (4) GLT 159



M/s. Tamarai Technologies Private Limited, information was filed before the Competition Commission of India under section 19(1)(a) of the Competition Act, 2002, alleging that the Mizoram Govt. had violated the provisions of section 4 of the Competition Act and that M/s. Teesta Distributors, M/s. N.V. International and M/s. Summit Online Trades Solutions Private Limited are directly or indirectly associated with each other and have been involved in collusive bidding by quoting identical rates for Online and Paper Lotteries against Expression of Interest (EOI) dated December 20, 2011, and thereby forming a cartel concerning the selection of distributors in lottery business of the State of Mizoram.

On receipt of the information/complaint, the Competition Commission passed an order dated 7.6.2012 under section 26(1) of the Competition Act, 2002 after forming an opinion that there was a prima facie case about the existence of a cartel amongst the bidders in contravention of the provision of section 3(1) read with section 3(3) of the Competition Act. The Director-General was directed to cause an investigation into the matter in the order dated 7.6.2012. The Competition Commission also believed that no case was made out for violation of section 4 of the Competition Act of 2002.

The Director-General, after completion of the investigation, submitted its report before the Competition Commission on 17.1.2013 wherein all the allegations levelled against the 4 (four) firms/companies were found to be correct and came to a finding that they had indulged in bid-rigging by forming a cartel and after that, concluded that there was a

violation of section 3(1) read with section 3(3) of the Competition Act of 2002.

After considering the report of the Director-General, the Competition Commission issued an order directing the respondents therein to file their reply/objection within two weeks of receipt of the record. It further decided to hear the parties on 20.3.2013. Being aggrieved by the said order, writ petitions were filed before the High Court.

The Competition Act aims to prevent practices from adversely affecting competition to promote and sustain competition in the market. It also seeks to protect the consumer's interest and ensure freedom of trade carried on by the participants in the market.

The first issue is whether lotteries can be considered a trade under the Competition Act. Under the Lotteries Regulation Act, 1998, the lottery has been defined as a scheme for distributing prizes by lots or chance to those participating in the events of an award by purchasing tickets. Unlike any other trade and commerce, the lottery business is being governed strictly in terms of the Lotteries Regulation Act, 1998 and the Regulations and Rules framed thereunder. The Court referred to the celebrated decision of the Apex Court in determining the status of lotteries.

In the case of *B.R. Enterprises v. Uttar Pradesh*²⁹, the Hon'ble Supreme Court has laid the ratio that the difference between gambling and trade is that gambling inherently contains a chance with no skill. In contrast, trade contains skill with no luck.

²⁹ (1999) 9 SCC 700



Even in the State Lotteries, the same element of chance remains with no talent, and therefore it remains within the realm of gambling, and the same would not be a trade, in any case, would not qualify to be 'trade and commerce' as used in Article 301.

Further, the Hon'ble Supreme Court was of the opinion that no gambling could be commercium and, therefore, the principle laid down in the case of *State of Bombay v. R.M.D. Chamarbaugwala*³⁰ would equally apply to the State organized lottery. Consequently, it was held that Lotteries organized by the State is also gambling in nature and cannot be construed to be a trade and commerce within the meaning of Article 301 to 303 of the Constitution of India.

Further, in the case of *Sunrise Associates v. Govt. of NCT of Delhi*³¹, the Hon'ble Supreme Court has held that a lottery ticket has no value in itself. The sale of a lottery ticket does not necessarily involve the sale of goods and purchasing a lottery ticket; the purchaser would have a right to claim to a conditional interest in the prize money that is not in the purchaser's possession. The right would fall squarely within the definition of an actionable claim and would, therefore, be excluded from the definition of 'goods' under the Sale of Goods Act and the sales tax statutes.

In the case of *Union of India v. Martin Lottery Agencies Limited*³², the Hon'ble Supreme Court has held that the law, as it stands today, recognizes lottery to be gambling. Thus, holding the lottery gambling comes within the purview of the 'doctrine of

res extra commercium'. Organizing a lottery by the State is tolerated being an economic activity to enable it to raise revenue. By itself, the raising of revenue by the State cannot amount to a rendition of any service.

The Hon'ble High Court held that the lottery business gambling and falling within the purview of the doctrine of res extra commercium and not qualifying in the ordinary parlance of trade and commerce would therefore not come within the ambit of the Competition Act. This being the position, the Competition Commission has no jurisdiction and could not have entertained the information/complaint of the respondent.

CONCLUSION

The jurisdictional issues of the Competition Commission of India have been widely litigated in the recent past. The scope of the Competition Commission of India's powers is under challenge for various reasons in several matters before different High Courts and Hon'ble Supreme Court of India.

Competition is the growth engine of the free market economy. Competition laws have been described as the Magna Carta of the free market economy. Competition is essential for preserving, protecting, and promoting economic freedom in a free market economy. The requirement for competition law arises because any economy can suffer from failures and distortions. Various enterprises may resort to anti-competitive activities such as cartels, abuse of dominance, etc., adversely impacting consumer welfare and economic efficiency. Thus, there is a need for solid competition law, regulatory framework

³⁰ AIR 1957 SC 699

³¹ (2006) 5 SCC 603

³² (2009) 12 SCC 209



and clarity about jurisdictional issues to enable the Competition Commission of India to establish effective vigil, control, and oversight over the economic activities of business enterprises.

BIBLIOGRAPHY

1. Alemani, Enrico, Caroline Klein, Isabell Koske, Cristiana Vitale, and Isabelle Wanner. "New Indicators of Competition Law and Policy in 2013 for OECD and non-OECD countries." In *Competition law enforcement in the BRICS and in developing countries*, pp. 59-102. Springer, Cham, 2016.
2. Bhattacharjea, Aditya. "India's New Competition Law: A Comparative Assessment." *Journal of Competition Law and Economics* 4, no. 3 (2008): 609-638.
3. Bhattacharya, Prateek. "Suo Moto Powers of the CCI: A Road Mired with Procedural Potholes." *Cts. & Jst. LJ* 2 (2020): 233.
4. Bhaumik, Saurav, and Shruti Awasthi. "Competition Commission of India on Pre-merger Notification: An Attempt to End the Endless Process Mergers in a Multistage Process: 'Substance' v. 'Structure' of a Transaction." *Business Law Review* 38, no. 2 (2017).
5. Budzinski, Oliver. *The governance of global Competition: competence allocation in international competition policy*. Edward Elgar Publishing, 2008.
6. Dabbah and Lasok, *Merger Control Worldwide*, Cambridge University Press, 2010
7. Dhall Vinod, *Competition Law Concepts, and Practices Relevant for India*, New Delhi, Oxford University Press, 2009
8. Gupta, Aditya. "Statutory inconsistency and jurisdictional conflict between the Controller of Patents and the Competition Commission of India." Available at SSRN 3905903 (2021).
9. Gupta, Ashok Kumar. "Interview with Ashok Kumar Gupta, Chairperson, Competition Commission of India." *COMPETITION LAW INTERNATIONAL* 15, no. 2 (2019).
10. INDIA, E-COMMERCE IN, Mr Sumant Sinha, Mr Ashok Kumar Gupta, Ms Sangeeta Verma, and Mr Bhagwant Singh Bishnoi. "Competition Commission of India." (2019).
11. Jain, Ankesh. "Extra-territorial jurisdiction of Competition Commission of India." *Journal of Financial Crime* (2012).
12. Khandelwal, Pankhudi. "Mechanism for resolving jurisdictional conflicts between Competition Commission & Sector Regulators by the Supreme Court of India in CCI v. Bharti Airtel: a possible approach for the current EU cases in the digital sphere." *Journal of European Competition Law & Practice* 11, no. 5-6 (2020): 287-293.
13. Kumar, Leela. "MRTP Commission and Competition Commission of India." Available at SSRN 2429261 (2014).
14. Kumar, Sumit. "Exercise of Extra-territorial Jurisdiction by CCI Under Section 32 of Competition Act and Process for its Enforcement." Available at SSRN 1501944 (2009).
15. Li, Rita Yi Man, and Yi Lut Li. "The role of competition law: an Asian perspective." *Rita Yi Man Li* (2013): 47-53.



16. Maheshwari, Kartik, and Simone Reis. "Extra-territorial Application of the Competition Act and Its Impact." *Competition Law Reports* January 144 (2012).
17. Rab Suzanne, *Indian Competition Law: An International Perspective*, CCH India-Wolters Kluwer Publishing, 2012
18. Raj, Yash, Vishwa Patel, and Sannidhi Buch. "Marrying innovative bride with competitive groom: Delhi High Court accepts jurisdiction of CCI on abuse of dominance." *Journal of Intellectual Property Law & Practice* 15, no. 11 (2020): 862-864.
19. Ramappa.T, *Competition Law in India: Policy, Issues, and Developments*, New Delhi, Oxford University Press, 2009.
20. Raychaudhuri, Tilottama. "Using Leniency Effectively in Anti-Cartel Investigations: A Study of Recent Trends in Cases Decided by the CCI." *Indian JL & Just.* 11 (2020): 172.
21. Sajlan, Devanshu. "INTERNATIONAL COOPERATION IN THE ENFORCEMENT OF COMPETITION LAW AND THE EFFECTIVENESS OF MOUS SIGNED BY CCI UNDER SECTION 18, COMPETITION ACT." Vijay Kumar Singh, *Competition Commission Of India*, New Delhi (2013): 5.
22. Sharma, Ajay Kr. "Cross Border Merger Control by the Competition Commission of India: Law and Practice." *Freilaw: Freiburg L. Students J.* (2015): 11.
23. Sharma, M. M. "Economics of Exemptions from Competition Law." *Nat'l L. Sch. India Rev.* 24 (2012): 62.
24. Singh, Mr Rupendra, and Kanchal Gupta. "Interaction and Inter-Dependence of CCI & TRAI." *History Research Journal* 5, no. 5 (2019): 2152-2157.
25. Sweeney, Brendan. "International competition law and policy: a work in progress." *Melb. J. Int'l L.* 10 (2009): 58.
26. Whish Richard et al, *Competition Law*, Oxford University Press, 7th edn, 2012.
27. Yadav, Mani, and Abhinav Singh Chandel. "Sports Law in India-An Evolving Discourse Or a Need for Paradigm Shift." *NUALS LJ* 12 (2018): 21.