

COMPETITION COMMISSION OF INDIA

March 9th, 2010

Case No.17/2009.

Informants

1. Maharashtra Textile Processor's Association)Through
Gopal Bhawan, 3rd Floor, Princess Street,) Shridhar.
Mumbai-400 002.) Y.Chitale,
) Advocates
) New Delhi
2. Shri Narendra Poddar, Secretary Maharashtra)
Textile Processor's Association, Gopal)
Bhawan, 3rd Floor, Princess Street,)
Mumbai-400 002)

ORDER UNDER SECTION 26(2) OF COMPETITION ACT, 2002

1. This information was filed on 24.12.2009 under Section 19 of the Competition Act, 2002. The informant no. 1 is an Association of Manufacturers and Processors of Textile Goods carrying on business at various places in and around Mumbai. The informant no.2 is a director of informant no.1 i.e. the Association.
2. As per the information, Maharashtra Industrial Development Corporation (MIDC) has been incorporated by an Act of State Government of Maharashtra and is responsible for the smooth development of industrial growth in the State of Maharashtra. In this capacity, the respondent is also engaged in various developmental activities in the industrial sector including the allotment of land, supply of water and electricity etc.
3. The main grievance of the informants is that in relation to supply of water to industrial sector, MIDC is having a monopoly as the members of the informant Association have no alternative but to get water supply only from the respondent. It is stated that the respondent is supplying water to the industries and used to determine rates for such supply on 'per cubic meter bases. According to the informants, this policy was followed in the past and the rates of water supply were determined and revised on the basis of Consumer Price Index. This was also done after holding consultations with various industrial associations in the state of Maharashtra.

4. It is alleged that vide letter dated 28th April, 1999, the respondent Corporation revised its water rates w.e.f. 1.6.1999 from Rs.9.50 per cubic meter to Rs.10.25 per cubic meter and subsequently vide letter dated 8th March, 2000, the said rate was again revised w.e.f. 1.4.2000 from Rs.10.25 per cubic meter to Rs.11.00 per cu.meter. It is stated that up to 30.10.2001, the water was supplied at the rate of Rs.11.75 per cu.mtr. but the respondent unilaterally revised the water charges from Rs.11.75 per cu.mtr. to an exorbitant rate of Rs.18.25 per cu.mtr. and this was done without adhering to Consumer Price Index norms. It is pointed out that subsequently the respondent suo motu reduced this rate from Rs.18.25 per cu.mtr. to Rs.16.50 per cu.mtr. However, the members of the informant Association continued to pay water charges @ Rs.11.75 per cu.mtr. only. The respondents continued to issue bills applying the rate of Rs.16.50 per cu.mts. and demanded arrears calculated @ Rs.4.75 per cu.mtr. in the subsequent bills. It is alleged that the demand for arrears for the period from 1.11.2001 to 30.11.2002 was excluded in the subsequent bills which were issued after November, 2003 but after a lapse of 4 years the demand for recovery of the old arrears was again raised.

5. In para 15 of the information, it is pointed out that vide letter dated 11.5.2007 the respondents justified the increase of water rates on the ground that there was 36% increase in the royalty rates by the Irrigation Department and consequently water tariff was raised by 40%. Through this letter, it was informed that w.e.f. 1.6.2007, the rates would further be revised from Rs.16.50 per cu.mtr. to Rs.20 per cu.mts.

6. It is pointed out that MIDC vide letter dated 16.8.2007 addressed to M/s. Narang Dying P.Ltd., one of the members of the Association again demanded the arrears for the period from 1.11.2001 to 30.11.2002. As per the informants, the recovery of the aforesaid demand was again insisted on vide letter dated 30.4.2008,

7. The main allegation of the informants is that by revising the water rates exorbitantly, the respondent has indulged in monopolistic and unfair trade practice and is abusing its dominant position and, therefore, the action of the respondent falls within the purview of the provisions of Sections 4, 18, 19 and 27 of the Competition Act, 2002.

8. The informants have prayed for the following :

- i) To conduct an inquiry into monopolistic and/or unfair trade practice adopted by MIDC and to pass appropriate orders under Section 27 of the Act.
- ii) to declare that the demands raised by MIDC for recovery of arrears are illegal and the same should be quashed.
- iii) to declare that fresh revision of water tariff w.e.f. 1.6.2007 is illegal and MIDC should be restrained from recovering the same.
- iv) MIDC should be restrained from disconnecting the water connection of the informants in respect of the arrears of the said period.

- v) To pass an order under section 33 of the Act to restrain the respondent from recovering the alleged arrears of water charges along with delay payment charges for the said period i.e. from 1.11.2001 to 30.11.2002 pending hearing and final disposal of the petition.

9. In support of the information, Shri Narendra Poddar has filed his affidavit. In volume 2 of the paper book, the informants have enclosed copies of various documents including the correspondence and bills etc. in relation to water charges.

10. The instant information was considered by the Commission in its meeting held on 5.1.2010. In the meeting held on 4.2.2010, the learned counsel Shri Shridhar Y.Chitale appeared on behalf of the informants and after making submissions requested that further hearing be fixed on or after 15.2.2010. This request was accepted and 16.2.2010 was fixed.

11. On 16.2.2010, Shri Shridhar Y.Chitale and Shri Vijay Aggarwal, counsel for the informants again appeared and made their oral submissions before the Commission. The Commission gave further 10 days time to the informants to file their written submissions and additional information in support of the case.

12. The informants did not submit any material in compliance to the above direction and instead, vide letter dated 24.2.2010, requested a further period of 4 weeks to file written submissions. This request was considered in the meeting held on 9.3.2010. After taking into consideration the fact that enough opportunity had already been granted to the informants, the Commission rejected the prayer and proceeded to consider the matter on the basis of the material on record.

13. The Commission has considered the entire relevant material brought on record by the informants and also the oral submissions made on their behalf.

14. The main grievance of the informants appears to be relating to the recovery of arrears of revised water tariff from 1.11.2001 to 30.11.2001. This is evident from para 16, the relevant portion of which reads as under :-

“The petitioners state that the Respondent Corporation on 16.2.2007 issued a demand letter addressed to the members of the Petitioner Association making a demand for payment of alleged arrears for the period 1.11.2001 to 30.11.2002 in 6 instalments which were not charged in the water bills from May, 2007 onward. The petitioners state that the subject period of dispute in the matter is from 1.11.2001 to 30.11.2002. The alleged arrears at the rate of Rs.4.75 per cubic meter for the water consumed for the said period was initially shown as the arrears in respect of bills of the Petitioners but subsequently such arrears were excluded with effect from November, 2003 suo moto by the respondents. However, by the afore stated letter dated 1.8.2007 the Respondent Corporation now sought to recover the alleged dues for the

disputed period after a period of about 4 years without even affording an opportunity of a hearing to the Petitioners. A copy of the said demand letter dated 16.8.2007 is annexed hereto and is marked as Annexure P.11.”

15. A reference to the letter dated 16.8.2007 and other letters through which demand for this period was raised has been made in various paragraphs including paragraphs from 10 to 22. Even in the letter dated 30.4.2007 which has been annexed as P.12, the demand for recovery of arrears is of the differential water rate for period from 1.11.2001 to 30.11.2002. The transactions in respect of the above mentioned period, which is called '**Disputed Period**', relating to increase of water rates and recovery thereof are thus past transactions which occurred much before the coming into force of the relevant provisions of the Competition Act.

16. MIDC is engaged in the activities of growth and development of industrial sector. It has increased water charges on a uniform basis. As mentioned in the letter dated 28th April, 1999 (Annex. P.5), the Corporation has established its own water supply schemes for supplying water to the industries in the newly developed areas and in the backward areas. The reasons for revision of water rates have been communicated from time to time. The Corporation is a government body which has been entrusted with various activities including supply of water to industries. On going through the material placed before the Commission, it is found that no competition issue is involved and even the allegations levelled in the information are not tenable.

17. The informants have also not been able to substantiate the allegation that the respondent has indulged in any monopolistic or unfair trade practice or have imposed any unfair condition while fixing water tariff. No material has been brought on record to show any discriminatory behaviour on the part of the MIDC. On the other hand, as found on perusal of letter dated 16.8.2007 available on page 65 filed by the informants in Volume II of the paper book, the water charges were raised consequent upon the increase in royalty rates imposed by Irrigation Department of Govt. of Maharashtra and the revision was made on account of the policy decision of the Govt. of State of Maharashtra. Keeping these aspects in mind, the allegation of arbitrariness or unfairness cannot be sustained.

18. In view of the above discussion, the Commission is of the opinion that the informants have not been able to make out a prima facie case in support of the allegations made in the information. Although it is alleged that the MIDC has violated the provisions of Section 4 of the Competition Act by adopting unfair and restrictive trade practices and has abused its dominant position by illegally and arbitrarily revising the water tariff without any basis but despite granting sufficient opportunity, the informant could not place any credible or cogent material to show or establish the infringement of Section 4 in this case. Thus neither the allegations made in the information are found to be tenable in law to attract the provisions of Section 4 of the Competition Act nor the reliefs as sought by the informants are

be maintainable. The Commission, therefore, concludes that since no prima facie case is made out for making a reference to the Director General for investigation into this matter under section 26(1) of the Act, the proceedings relating to this information require to be closed.

In view of the above, the matter relating to this information is closed under section 26(2) of the Competition Act.

As the informants have failed to establish a prima facie case, the question of granting the request of the informants under Section 33 of the Act for passing an order in its favour does not arise. This prayer is also declined accordingly.

Secretary is directed to inform the informants accordingly.

Sd/ -
Member (G)

Sd/ -
Member (R)

Sd/ -
Member (P)

Sd/ -
Member (GG)

Sd/ -
Member (AG)

Sd/ -
Member (T)

Sd/ -
Chairperson