

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

**MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE SYED MANSOOR ALI SHAH**

Civil Petition No. 5599 of 2021

(On appeal from the judgment/order dated 14.09.2021 of the Islamabad High Court, Islamabad passed in WP No. 3454 of 2020).

The Competition Commission of Pakistan, ...Petitioner(s)
Islamabad and others

Versus

Dalda Foods Limited Karachi ...Respondent(s)

For the Petitioner(s) : Mr. Faisal Siddiqi, ASC

For Respondent(s) : Syed Faisal Hussain Naqvi, ASC

Date of Hearing : 22.11.2021

O R D E R

UMAR ATA BANDIAL, J.- Learned counsel for the petitioner-Competition Commission of Pakistan ("**CCP**") has submitted that the paragraph 18 of the impugned judgment dated 14.09.2021 expects the CCP to confront the respondent, recipient of a notice under Section 37 (1) of the Competition Act, 2010 ("**Act**"), with the material on the basis of which CCP has formed its opinion that "a breach of law appears plausible and needs to be enquired into". Such an obligation is invoked under Section 37(2) of the Act and Section 24A of the General Clauses Act. He submits that the

impugned notice under Section 37(1) of the Act is issued in pursuant of a suo moto power whereas the obligation imposed under Section 37(2) of the Act is for a complainant before the CCP to satisfy. Under Section 37(1) *ibid* the inquiry envisaged by the Act is meant to collect and evaluate relevant information and material on which fact finding may be done. At the inquiry stage there are allegations in the field but "relevant facts" in relation thereto are yet to be ascertained. These cannot be provided at the stage of notice of inquiry. Consequently, the direction is onerous and misconceived.

2. He has next drawn our attention to paragraph 15 of the impugned judgment wherein it is held that a notice by the CCP calling for information relating to breach of obligation of an undertaking under Section 3 or Section 4 of the Act must not violate the rule against self incrimination contained in Article 13(a) of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**"). Learned counsel contends that Article 13 of the Constitution is concerned with judicial proceedings of (criminal) prosecution and the resulting punishment and not with the conduct of a fact finding inquiry which lacks the attributes either of the afore-said stages of judicial proceedings. Calling for information is a necessary part of any inquiry. Consequently, the observation made regarding rights and Article 13(a) of the Constitution but

without reference to the law in relation thereto is hasty and unsubstantiated.

3. Thirdly, he has referred us to paragraph 20 of the impugned judgment wherein the different forms of evidence that are admissible before the Commission in its adjudicatory proceedings have been specified in Regulation 26A(2) of the Competition Commission (General Enforcement) Regulations 2007. These include verifiable transcripts of tape recordings, unedited versions of video recording, electronic mail, telephone records etc. He again emphasised that the said regulation identifies the type of evidentiary material that may be adduced in proceedings of the Commission wherein evidence is recorded. At the inquiry stage where the requisite material concerning an allegation collected for fact finding purposes. In this regard, it is the rules of natural justice that are relevant and not the strict application of the Regulations which would hamper the conduct of the inquiry.

4. In response the learned counsel for the respondent has read from paragraph 36 of the impugned judgment wherein the CCP is permitted to exercise its authority through a reasoned order to undertake an enquiry under Section 37 of the Act on material available with it which discloses a plausible case against the respondent. He submits that he would be satisfied if the requisite material is

provided to the respondent even though no reasoned order is passed.

5. We consider that the points raised by the learned counsel for the petitioner-CCP highlight certain weaknesses in the impugned judgment. Also paragraph 36 thereof by requiring a reasoned order to be passed under Section 37(2) of the Act imposes a condition which is not relevant to the present proceedings which have been initiated under Section 37(1) of the Act. It is not explained by the impugned judgment why and to what extent the requirements of Section 37(2) *ibid* ought to be read into Section 37(1) of the Act.

6. Be that as it may, the impugned judgment has adopted a dynamic view of the rights of a respondent before the CCP. We would like to consider the impugned judgment to examine the object and meaning of, *inter alia*, the provisions of the Act on the points that have been highlighted above. Accordingly, leave is granted in this petition, *inter alia*, on the said points.

7. Learned counsel for the petitioners submits that the impugned inquiry proceedings under Section 37 (1) of the Act apply not only to the respondent manufacturer but to all members of the Ghee and Cooking Oil Industry. However, the impugned notices have been assailed by the respondent only. As a result of the impugned judgment the inquiry proceedings against all undertakings who have not even challenged the

notices issued to them by the petitioners are stalled. He has, however, informed that the factual material for initiating the inquiry are available on record in the form of a working paper dated 27.07.2020 prepared by the CCP. That paper explains the basis for initiation of inquiry by the Commission under its resolution passed on 30.07.2020. The petitioner is statedly willing to provide the said material to the respondent through a fresh notice. Let that be done.

8. In the meanwhile the impugned judgment shall remain suspended.

Judge

Judge

Islamabad
22.11.2021
*Naseer+Irshad Hussain/**

Judge