

Jindal Steel And Power Ltd. & Anr vs Union Of India & Anr. on 19 December, 2011

Author: Sunil Gaur

Bench: Sunil Gaur

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HIGH COURT OF DELHI : NEW DELHI

Reserved on : November 23, 2011

Pronounced on : December 19, 2011

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W.P. (C) No.8531/2008

C.M. No. 19744/2010 &

C.M. No. 3268/2010

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JINDAL STEEL AND POWER LTD. & ANR ... Petitioners

Through: Dr.Abhishek Manu Singhvi, Senior Advocate,
Mr.Krishnan Venugopal, Senior Advocate with
Mr.S.Patra, Ms.Ranjitha and Mr.Uday
V.S.Rathore, Advocates

versus

UNION OF INDIA & ANR. ... Respondents

Through: Mr.Rajiv Dutta, Senior Advocate with
Dr.Ashwani Bhardwaj, Advocate for
Respondent No. 1 and 2.
Mr.Parag P.Tripathi, Additional Solicitor
General with Mr.Alakh Kumar, Mr.Shadan
Farasat, Mr.Arunabh Ganguli, Advocates for
Respondent No. 3.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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ORDER

19.12.2011 C.M. No. 19744/2010 (Order 6 Rule 17 CPC) & W.P.(C) No.

1. An important jurisdictional issue which arises for consideration herein is whether this writ petition, though filed prior to invoking of jurisdiction of Competition Commission of India (which became fully operational during the pendency of the writ petition), would be still maintainable for primarily assailing Memorandum of Understanding of 1st February, 2003 between the first respondent- Ministry of Railways and the third respondent- Steel Authority of India (SAIL), as the W.P. (C) No.8531/2008 Page 1 petitioner has already challenged it before Competition Commission of India being anti-competitive.

2. Since preliminary objection regarding maintainability of this writ petition was raised by learned senior counsel for the respondents, when petitioner had come up with an application to amend the writ petition to specifically challenge the Memorandum of Understanding of 1st February, 2003, therefore, submissions advanced by both the sides on the aspect of maintainability of this writ petition as well as on the applications for amendment of the writ petition and directions, were heard together and are being dealt with in this common order.

3. Though the relief sought in this writ petition and before the Competition Commission of India is not identical but in substance the nature of relief sought in these two proceedings is substantially the same, as is asserted by Mr. Dutta learned Senior Counsel for the respondent- railways, who fervently urged to terminate these writ proceedings forthwith because according to the respondents, prosecution of the two remedies i.e. the writ petition and the petition before the Competition Commission of India, not only amounts to multiplicity of proceedings leading to conflicting decisions, but would also amount to abuse of the process of this Court.

4. What was precisely emphasised by Mr. Dutta learned senior counsel for the respondent-railways was that purpose to be achieved by pursuing these two overlapping remedies by the petitioner is singular i.e. to render the aforesaid Memorandum of Understanding sterile. It is urged that this purpose can be achieved by resorting to one remedy and not by simultaneously pursuing both the remedies. To put it differently, what is said is that it would be ridiculous to permit the petitioner to ride on two boats simultaneously for reaching one destination i.e. for getting the aforesaid Memorandum of Understanding set at naught.

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5. Mr. Singhvi learned senior counsel for the petitioner astutely urged that statutory remedy cannot dilute the constitutional powers vested in this Court under Article 226 of Constitution of India, as infringement of fundamental rights of the petitioner is alleged in the writ petition, whereas the extent and jurisdiction of Competition Commission of India under The Competition Act 2002, is entirely different and the two remedies are concurrent and so Public Law Remedy cannot be barred. In other words, what is emphasised by learned senior counsel for the petitioner is that the efficacy of the remedy under The Competition Act, 2002, is circumscribed whereas the extra ordinary remedy availed of under Article 226 of Constitution of India by way of this writ petition is infact efficacious one.

6. To contend that the question of resorting to parallel proceedings by the petitioner does not arise, learned senior counsel for the petitioner during the course of hearing, had drawn the attention of this Court to Section 62 of The Competition Act, 2002 to urge that the provisions of the aforesaid Act are in addition to and not in derogation of provisions of any other law for the time being in force.

7. Mr. Singhvi learned senior counsel for the petitioner with his usual persuasiveness had highlighted that The Competition Act, 2002 provides for a mechanism for ensuring fair competition in the Indian market and it does not supplant or impinge upon the writ jurisdiction of this Court and the doctrine of election does not really come into play, as Competition Commission of India is really

not a Forum because Competition Commission of India can suo moto proceed under Section 19 of The Competition Act, 2002.

8. On the aspect of maintainability of the writ petition, the applicability of doctrine of election of remedies put forth by the Respondents, was disputed by learned senior counsel for the petitioner W.P. (C) No.8531/2008 Page 3 and by relying upon the decision of the Apex Court in Transcore vs. Union of India, (2008) 1 SCC 125, it was urged that the doctrine of election will apply only where the remedies in question are repugnant or inconsistent with each other and this doctrine would not apply to the instant case to frustrate the legitimate claim of the petitioner based on promissory estoppel and of legitimate expectation of being considered for empanelment for supply of steel rail tracks to the Respondent - Railways and because the relief sought in the writ petition springs out of the fundamental rights of the petitioner which can be granted by this Court while exercising jurisdiction under Article 226 of the Constitution of India and the relief sought in the writ petition cannot be granted by Competition Commission of India in proceedings under The Competition Act, 2002.

9. To highlight that the two remedies, i.e., on under Article 226 of Constitution of India and another under The Competition Act, 2002 are co-existent, the chart relied upon by learned senior counsel for the petitioner, is as under:-

Article 226 Writ Proceedings Competition Commission Proceedings

1. A writ proceeding is intended A CCI proceeding is confined to to enforce a legal right, enforcing the provisions of the usually under the Constitution Competition Act, in particular or under administrative law. Section 3 which regulates and prohibits anti-competitive Agreements, Sec.4 which regulates and prohibits the abuse of dominance, and Sec.6 which regulates and prohibits acquisitions, mergers and amalgamations. Under Sections 3 and 6, the CCI is required to determine whether these practices have "appreciable adverse effect on competition" but Sec.4 equally W.P. (C) No.8531/2008 Page 4 presupposes it because a dominant or monopoly position necessarily implies that the market is not competitive. Under Section 18 of the Act, it shall be "the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interest of customers, and ensure freedom of trade carried on by other participants, in market in India..."

2. Carriage of proceedings lie Although an "informant" may with the petitioner in the writ bring to the notice of the CCI proceedings. violations of the Competition Act, the CCI under Section 19 of the Act can act suo motu. Therefore, even if an informant wants to withdraw his complaint, the CCI can and must proceed if the practices complained against have an adverse effect on competition.

3. Remedy under Article 226 is The Competition Act has an for the protection of overriding effect over all other constitutional (including statutory bodies. Section 60

of the fundamental) and other legal Competition Act envisages that rights. the provisions of the Act shall have an overriding effect on any other law and all matters concerning matters of competition shall be dealt with exclusively under the Act.

4. As Article 226 is a Section 61 of the Act provides for constitutional provision, the exclusion of jurisdiction of neither Parliament nor the civil courts to "entertain any suit State Legislatures may or proceedings" and the CCI abridge Article 226 by passing alone may enforce the Act.

a law. Even a constitutional amendment would be subject to the basic structure doctrine.

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1. The remedy under Article 226

Section 62 of the Competition Act

is also in addition to the other states that the provisions of the remedies that are available in Act "shall be in addition to, and law including under Statutes. not in derogation of the Although it is a constitutional provisions of any other law for remedy that cannot be taken the time being in force". away by statute, the High Therefore, no one can stop Courts will refrain from Competition Act proceedings on exercising their jurisdiction the grounds of any other under Article 226 where an proceedings pending before any equally efficacious alternate other forum.

remedy is available, subject only to certain well recognized exceptions.

10. On the strength of the decisions in 'Fair Air Engineers vs. N K Modi (1996) 6 SCC 385; 'State of Karnataka vs. Vishwabharti House Building Coop. Society (2003) 2 SCC 412; „Indian Medical Association vs. V P Shantha & Ors (1995) 6 SCC 651; „Ankur Exports Pvt. Ltd. Vs. Monopolies and Restrictive Trade Practices Commisison & Ors., 2010 (116) DRJ 518 (DB); „Transcore vs. Union of India (2008) 1 SCC 125; „Man Roland Druckmaschinen AG vs. Multicolour Offset & Anr., (2004) 7 SCC 447; „A P State Financial Corporation vs. M/s. Gar Re- Rolling Mills & Anr., (1994) 2 SCC 647; „Rabindra Nath Ghosal vs. University of Calcutta & Ors. (2002) 7 SCC 478; „Nilabati Behera vs. State of Orissa (1993) 2 SCC 746, relied upon on behalf of the petitioner, the elaborate submissions advanced by learned senior counsel for the petitioner can be summarized as follows:-

(a) As a constitutional court, a writ Court will only adjudicate upon whether a constitutional right including a fundamental right or other legal right has been violated that would permit a writ or other order or direction to issue to correct the violation. On the other hand, the CCI being a creature of statute with limited jurisdiction and powers can never interpret or enforce the provisions of the Constitution or enforce legal rights not provided under the Competition Act.

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(b) The CCI will only enforce the provisions of the

Competition Act under the powers granted to it by that Act. Thus, under Section 18, the CCI is to eliminate practices that have an "adverse effect on competition" and to

promote competition. At the same time, a writ Court will never seek to enforce the provisions of the Competition Act per se because Section 61 expressly excludes the jurisdiction of the civil courts, thus giving only the CCI jurisdiction with respect to the provisions of the Competition Act.

(c) As such, there can never be an overlap between the Judgment of the writ Court and an order of the CCI in terms of substance because the two would operate in entirely different fields. The writ Court's order will only hold that the challenged action violates constitutional or fundamental rights or administrative law principles, while the CCI will only find that an anti-competitive Agreement or an acquisition, merger or amalgamation has had "appreciable adverse effect on competition" or there has been an abuse of dominance, which only the CCI is competent to do.

(d) To test the proposition that there will never be an overlap, if this Court were to find in the present case that the Railways' decision-making process in entering into the MoU by which it procured its rail requirements only from SAIL or its failure to conduct an annual review of the arrangement with SAIL violates Article 14, there would be no inconsistency if the CCI were to find that the MoU did not have appreciable adverse effects on competition and could continue. The result would be that the Railways would be forced to terminate the MOU but could enter into it again after taking into account relevant considerations while eschewing irrelevant considerations.

(e) On the other hand, if this Court were to find that the Railways' decision-making process in entering into the MoU or its failure to conduct an annual review did not violate Article 14, the CCI could still find that the MoU does have appreciable adverse effects on competition for purposes of Section 3 of the Competition Act and must be terminated.

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(f) In no case, therefore, could there ever be any

inconsistency or repugnancy between the Judgment of this Court in the writ petition and that of the CCI because they operate in entirely different fields."

11. Learned senior counsel for the petitioner thus submitted 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 pre-judged while deciding on the maintainability aspect because the averments in the writ petition have to be read as it is, while deciding the issue of maintainability of the writ petition.

12. Whereas Mr. Tripathi, learned Additional Solicitor General for the respondent-SAIL contended that parallel remedies in two different forums in respect of the same matter are not permissible. To contend so, reliance has been placed upon the decisions in K.K. Modi Vs. K.N. Modi (1998) 3 SCC 573; Jai Singh vs. Union of India, (1977) 1 SCC 1; Mahabir Prasad Jain Vs. Ganga Singh (1999) 8

SCC 274 & Manish Goel Vs. Rohini Goel AIR 2010 SC 1099.

13. It was also urged by learned Additional Solicitor General for the respondent-SAIL that public sector undertakings like respondent No.3 stand on a different footing and can be treated preferentially and in support of this contention, reliance has been placed upon Hindustan Paper Corporation Vs. Government of Kerala (1986) 3 SCC 398; J.Y.Kondala vs. ASPRTC, AIR 1961 SC 82; Union of India vs. Sri Ladulal Jain, AIR 1963 SC 1681; Shashikant Laxman Kale & Anr. Vs. UOI & Anr. (1990) 4 SCC 366; M. Jhangir Bhatusha Vs. UOI AIR 1989 AC 1713; and IDPL Vs. Punjab Drug Manufactures (1999) 6 SCC 247.

14. To assert that auction is not the only constitutional permissible way of awarding the contract and several accepted departures from the Auction Route are recognized, learned Additional Solicitor General for W.P. (C) No.8531/2008 Page 8 the respondent-SAIL placed reliance upon decisions in State of M.P. Vs. Nandlal Jaiswal, (1986) 4 SCC 566; M.P.Oil Extraction & Anr. Vs. State of M.P. & Ors., (1997) 7 SCC 592 and Netai Bag & Ors Vs. State of West Bengal & Ors, (2000) 8 SCC 262.

15. It was asserted by learned Additional Solicitor General for the Respondent-SAIL that the proceedings under the Competition Commission of India have come to their logical end and the orders have been reserved in those proceedings and if it is assumed for the argument sake, that the petitioner succeeds in those proceedings before the Competition Commission of India and if the writ proceedings are allowed to continue and petitioner fails herein, then it would lead to conflicting decisions and to avoid such an eventuality, the doctrine of election of remedies ought to be applied in the instant case.

16. Petitioner's application seeking amendment of the writ petition is based upon the twin considerations, i.e., (i) to clearly demarcate the grounds and the reliefs sought in the writ petition from those in the CCI proceedings; and (ii) the additional information sought by the petitioner under the RTI Act from the Railways, which includes Railways file notings relating to the MoU with SAIL that confirm that no annual review has ever been conducted by Railways as required under the MoU.

17. Although there are averments in respect of the Memorandum of Understanding of 1st February, 2003 in the writ petition but for undisclosed reasons, the said Memorandum of Understanding of 1st February, 2003 was not challenged in the writ petition and is now being sought to be challenged being in violation of Article 14 and 19 of the Constitution of India. It was urged on behalf of the petitioner by Mr. Singhvi, learned senior counsel that the proposed amendment is necessary to decide the dispute herein and it does not result in any injustice to the opposite side and for the delay occasioned, the opposite W.P. (C) No.8531/2008 Page 9 side can always be compensated with costs. It was also urged by Mr. Singhvi, learned senior counsel for the petitioner that the merits of the amendments sought is not required to be gone into, as the same would be seen if the proposed amendment is allowed and solely on the ground of delay, the amendment sought ought not to be refused. To contend so, reliance is placed upon decisions in - „North Eastern Railway Administration, Gorakhpur vs. Bhagwan Das (2008) 8 SCC 511; „Rajesh Kumar Aggarwal Vs. K.K. Modi , (2006) 4 SCC 385; „Prem Bakshi vs. Dharam Dev (2002) 2 SCC 2; 'B K Narayana Pillai vs.

Parameswaran Pillai (2000) 1 SCC 712; „Surender Kumar Sharma vs. Makhan Singh (2009) 10 SCC 626; „A K Gupta and Sons Ltd. Vs. Damodar Valley Corpn., AIR 1967 SC 96; 'Pankaja and Anr. vs. Yellappa (Dead) by Lrs. And Ors. , (2004) 6 SCC 415; 'Lipton India Ltd., vs. Industrial Tribunal No. 11 & Anr., 45 (1991) DLT 452; „Dr. Rabindra Lal Aich & Ors., vs. Municipal Corporation of Delhi „& Ors., 44 (1991) DLT 227; 'Om Prakash and Anr. vs. Delhi Development Authority MANU/DE/1464/2009; 'G Nagamma vs. Siromanamma (1996) 2 SCC 25; „Bakshish Singh vs. Prithi Pal Singh & Ors., (1995) Supp (3) SCC 577; 'Arundhati Mishra vs. Sri Ram Charitra Pandey (1994) 2 SCC 29; „Gulabchand Chhotalal Parikh vs. State of Gujarat AIR 1965 SC 1153; 'Ram Kumar Barnwal vs. Ram Lakhan (2007) 5 SCC 660.

18. The opposition to this application for amendment of the writ petition by learned senior counsels for the Respondents is on the ground that the amendment sought is not bona fide one and is just to keep this matter alive and petitioner has come up with this application when the Respondents had raised the issue of maintainability of this writ petition and just to forestall the decision on the maintainability issue, this application has been brought in and the real purpose of the petitioner is to pursue this remedy in the event of failing before the Competition W.P. (C) No.8531/2008 Page 10 Commission of India and since the Forum shopping by the petitioner ought not to be permitted, therefore this application deserves rejection.

19. At the very outset, it was made clear to learned counsel for the parties, during the course of hearing that first the application for amendment of the writ petition would be dealt with and thereafter the issue of maintainability of the writ petition. Upon conclusion of hearing on these two aspects and on perusal of the record of this case and the decisions cited, I proceed to deal with the application for amendment of the writ petition in the first instance.

20. It needs no reiteration that law regarding amendment of pleadings is quite liberal. Apex Court in a recent decision in Surender K. Sharma vs. Makhan Singh, (2009) 10 SCC 626 has gone to the extent of declaring that even belated application for amendment is not liable to be rejected merely on the ground of delay, if the Court finds that by allowing such application, real controversy between the parties can be resolved, then the wide discretion to deal with such applications should be exercised in such a manner that full and complete justice is done to the parties and for the delay occasioned, the opposite side can be always compensated with costs.

21. Though the averments regarding the Memorandum of Understanding of 1st February, 2003 in question are very much there in the writ petition but it appears that perhaps due to inept drafting, prayer for declaring the Memorandum of Understanding of 1st February, 2003 as null and void was not made in the writ petition. Since this Memorandum of Understanding of 1st February, 2003 is the real dispute between the parties, therefore, even if the application for amendment is belated, still it cannot be thrown out on this ground as for effective hearing and decision in this matter, this Memorandum of Understanding of 1st February, 2003 has to be taken into consideration. Therefore, W.P. (C) No.8531/2008 Page 11 without commenting upon the merits of the proposed amendment, petitioner's application is allowed subject to costs of Rs.30,000/- to be deposited with the Delhi High Court Legal Services Committee within four weeks.

22. Now the main issue; i.e. of the maintainability of the writ petition.

23. In the pursuit of globalisation, India has responded to opening up its economy, removing controls and resorting to liberalisation. The natural corollary of this is that the Indian market should be geared to face competition from within the country and outside. The need to shift the focus from curbing monopolies to promoting competition was recognised by The Competition Bill, 2001, whose notable objects are as under :-

a) The Competition Bill, 2001 seeks to ensure fair competition in India by prohibiting trade practices which cause appreciable adverse effect on competition in markets within India and, for this purpose, provides for the establishment of a quasi-

judicial body to be called the Competition Commission of India (Hereinafter referred to as CCI) which shall also undertake competition advocacy for creating awareness and imparting training on competition issues.

b) The Bill also aims at curbing negative aspects of competition through the medium of CCI. CCI will have a Principal Bench and Additional Benches and will also have one or more Merger Benches. It will look into violations of the Act, a task which could be undertaken by the Commission based on its own knowledge or information or complaints received and references made by the Central Government, the State Governments or statutory authorities. The Commission can pass orders for granting interim relief or any other appropriate relief and compensation or an order imposing penalties, etc. An appeal from the orders of the Commission shall lie to the Supreme Court. The Central Government W.P. (C) No.8531/2008 Page 12 will also have powers to issue directions to the Commission on policy matters after considering its suggestions as well as the powers to supersede the Commission if such a situation is warranted.

c) The Bill confers power upon the CCI to levy penalty for contravention of its orders, failure to comply with its directions, making of false statements or omission to furnish material information, etc. The CCI can levy upon an enterprise a penalty of not more than ten per cent. of its average turn-over for the last three financial years. It can also order division of dominant enterprises. It will also have power to order demerger in the case of mergers and amalgamations that adversely affect competition.

24. The aforesaid objects were achieved when the Competition Bill, 2001 became The Competition Act of 2002 effective from 13 th January, 2003 and it became substantially operative with effect from 15 th May, 2009 i.e, after the filing of this writ petition. Upon close scrutiny of the provisions of the Competition Act, 2002, it transpires that it is a complete Code in itself which even provides for award of compensation to the affected/aggrieved party.

25. For deciding this issue of maintainability of the writ petition, it has to be kept in mind that the averments made in the writ petition have to be read as it is and the merits of the averments are not to be gone into for deciding this issue. Apart from the Memorandum of Understanding of 1st February, 2003, the larger issue raised in the writ petition is the legitimate expectation of the

petitioner for being considered for empanelment for supply of steel rail tracks to the Respondent - Railways and the averments made in the writ petition to invoke the principle of promissory estoppel in view of the huge investments made by the petitioner, are the matters which would strictly come within the domain of this Court in the writ petition, which cannot possibly be considered by the Competition Commission of India.

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26. Keeping in mind the principles governing the doctrine of election of remedies, what emerges is that in the instant case, the two co-existent remedies available to the petitioner cannot be said to be repugnant or inconsistent. Rather, the public law remedy availed by the petitioner to seek redressal of the infringement of the fundamental rights in the writ petition appears to be in addition to and not in derogation of the remedy availed by the petitioner by invoking the provisions of The Competition Act, 2002. It so appears, as in the petition complaining of breach of Section 3 and Section 4 of The Competition Act, 2002 before The Competition Commission of India, initiated in October, 2009 petitioner had on the aspect of cause of action, jurisdiction and the remedies had averred as under :-

"10.2 Understanding the differences between the actions :

10.2.1 Causes of Action : The writ petition before the Hon ble Delhi High Court has been filed against IR on the grounds of, inter alia, violation of Article 14 of the Constitution of India and other guidelines of the Central Government, promissory estoppels, breach of legitimate expectations, discrimination and being against public policy. SAIL has also filed an application for being impleaded as a party to those proceedings, which is also pending. On the other hand, the present information s in respect of SAIL, on grounds of breach of the Sections 3 and 4 of the Act relating to anti-competitive agreements and abuse of dominance.

10.2.2. Jurisdiction : Whereas the writ jurisdiction of the constitutional law action lies with the Hon ble Delhi High Court, the Act specifically excludes the jurisdiction of the civil courts under section 61. Any decision as to breach of the provisions of the Act is to be taken by the Hon ble Commission with a provision to appeal to the Competition Appellate Tribunal. As such, the Hon ble Delhi High W.P. (C) No.8531/2008 Page 14 Court cannot admit or entertain an action under the Act.

Similarly, the Hon ble Commission does not have jurisdiction to deal with the issues related to breach of Constitutional rights, promissory estoppels, legitimate expectations, etc. which can be decided by the High Court in exercise of its writ jurisdiction.

10.2.3 Parties: The writ petition in the Hon ble Delhi High Court has been filed against Union of India. On the other hand, under the Act, the action is being brought against SAIL. By an application dated 1st July, 2009, SAIL requested the Hon ble High Court that it be impleaded as an interested party to the writ proceedings. The decision of the Hon ble High Court on SAIL s application is still

pending.

10.2.4 Remedies: The remedies sought pursuant to the writ petition are to :

- a) pass an writ of mandamus or order, as appropriate, directing IR to procure the rails by way of a competitive bidding process.
- b) direct IR to empanel JSPL for the purpose of purchase of rails; and
- c) strike down the policy of IR to procure its entire requirement of rails from only a single supplier without following a competitive and transparent process.

Under Section 27 of the Act, if there is a finding of an existence of abuse of dominance or anti-competitive agreement, the Competition Commission of India can :

- (d) direct SAIL to discontinue and not to re-enter into an agreement which amounts to an abuse of dominant position or an anti-competitive agreement;
- (e) impose such penalty as it may deem fit on SAIL;
- (f) direct the MoU to be modified to the extent and in the manner specified; and/or
- (g) pass such other order or issue such directions as it may deem fit.

W.P. (C) No.8531/2008 Page 15 The Hon ble Commission also has the power under section 28 of the Act, if it considers appropriate and notwithstanding any other law for the time being in force, to direct the division of SAIL (being a dominant enterprise) to ensure that it does not abuse its dominance. Therefore, the reliefs granted by the Hon ble High Court and the Hon ble Commission would be different in nature though the desired outcome of each set of reliefs may be similar.

10.2.6 Therefore in light of above, it is humbly submitted that, although emanating from same set of facts, as there are two separate causes of actions before separate authorities against different parties seeking different remedies, the information before the Hon ble Commission does not overlap with the jurisdiction of the Hon ble High Court which is also seized with issues arising out of same set of facts and both actions may be pursued concurrently."

27. While considering the question whether discretionary jurisdiction would be refused to be exercised solely on the ground of existence of an alternative efficacious remedy, Apex Court in Sanjana M. Wig (Ms) Vs. Hindustan Petroleum Corpn. Ltd. (2005) 8 SCC 242 had observed as under:-

"13. However, access to justice by way of public law remedy would not be denied when a lis involves public law character and when the forum chosen by the parties

would not be in a position to grant appropriate relief."

28. After having thoughtfully deliberated upon the submissions advanced by both the sides and upon scrutiny of the averments made in the writ petition and the decisions cited, I am of the considered view that though Memorandum of Understanding of 1st February, 2003 is essentially a subject matter of the proceedings before this Court as well as before the Competition Commission of India, 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 of India, W.P. (C) No.8531/2008 Page 16 therefore though the writ proceedings are allowed to continue as issue of promissory estoppel and legitimate expectation cannot be pre-judged at this stage, but the final order in this matter has to be put on hold till the validity of the Memorandum of Understanding of 1st February, 2003 is finally decided in the proceedings under the Competition Act, 2002. 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 as indicated above.

29. Accordingly, in terms of paragraph no: 21 of this order allowing C.M. Appl. No. 19744/2010, petitioner is granted four weeks to place on record the amended writ petition and Respondents are also granted four weeks time to respond to it. Rejoinder, if any, within two weeks thereafter.

30. List before the Registrar on 10th February, 2012 for completion of pleadings.

C.M. No. 3268/2010 (Directions)

31. This application by Respondent - SAIL for staying the proceeding in this writ petition filed on 26th February, 2010, till the issue regarding the maintainability of writ petition is decided, is rendered infructuous as the writ petition is held to be maintainable vide aforesaid order of even date.

32. When this application was heard alongwith the application for amendment of the writ petition, what was urged by learned senior counsel for the Respondent - SAIL was that pendency of this writ petition is being construed as an impediment for taking a decision by the concerned authority under Section 54 of The Competition Act, 2002, which was strongly objected to by learned senior counsel for the petitioner by pointing out that this aspect cannot be urged in the writ petition as this aspect could possibly fall for consideration in proceedings before the Competition Commission of India.

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33. Certainly, pendency of this writ petition cannot possibly be construed as an impediment for the authority concerned to proceed under Section 54 of The Competition Act, 2002 as in this writ petition, the aforesaid enactment is not the subject matter of consideration.

34. With these observations, this application is disposed of as infructuous and CM No. 19744/2010 is allowed in aforesaid terms.

(SUNIL GAUR)
JUDGE

December 19, 2011
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