A RAYMOND WOOLLEN MILLS LTD. (NOW KNOWN AS M/S RAYMOND LTD.) AND ANR.

V.

DIRECTOR GENERAL (INVESTIGATION & REGISTRATION), AND ANR.

B (Civil Appeal No.1120 Of 2001)

MAY 15, 2008

[TARUN CHATTERJEE AND DALVEER BHANDARI, JJ.]

C

Monopolies and Restrictive Trade Practices Act, 1969:

ss.10(a)(iv), 33,37 and 38 – Tie up sales – Allegation of tie up of sales of trousers with other garments – Held: Since all garments including trousers are in short supply and have D *great demand hence allegation that supply of trousers had been tied up with any other garment is without basis.*

s.38(i)(h) –Restriction of competition to material degree – Allegation of – Held: Negligible market share of appellants in relevant trade – Hence it cannot be alleged that competi- E *tion was affected to material degree – There was no charge or allegation of termination of dealership in the notice of enquiry, therefore, the Commission was not justified in passing the order based on "termination of dealership" – Even otherwise also, the termination of single dealership cannot affect competition* F *to any "material degree" in the relevant trade or industry within the meaning of clause (h) of s.38(1) of the Act.*

A Notice of Enquiry under s.10(a)(iv) and s.37 of the Monopolies and Restrictive Trade Practices Act, 1969 was G **issued to the appellants wherein it was alleged that the appellants had indulged in restrictive trade practice within the meaning of s.2(o)(ii) and s.33(1)(b) of the Act.**

The complainant/informant complained that it was appointed as a retail dealer on 19.4.1982 and that it was get-

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ting regular supplies of blazers, suits, safaris and trousers till December 1986 when the appellants stipulated that blazers, suits and safaris would be supplied only if substantial orders were placed for readymade trousers.

The Commission, after evaluating the evidence, observed that there was pressure on the dealers to accept higher quantity of trousers than required and when he showed his unwillingness to accept the large quantity of trousers, his dealership was terminated and the security deposit was refunded to him, thus the allegation of tie-up of sales of trousers with other garments supplied by appellant no. 2 appeared to have been fully established; that the termination of the dealership or appellants' refusal to deal with a well established retailer was bound to have an adverse effect and impact on competition in so far as it would reduce the number of retail dealers in the local market and thus would have the effect of restricting and lessening of the competition in the sale and supply of readymade garments and, therefore, would also be prejudicial to public interest; and that by restricting and reducing the supply of ready to wear garments would also attract the provisions of s.2(o)(ii) of the Act. The Commission directed the appellants to cease the aforementioned restrictive trade practice forthwith and furnish an undertaking that they shall not repeat or indulge in same or similar trade practices in future. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1. The evidence of the sole witness produced by the respondent, the complainant retail dealer, would show that the allegation of 'tie up" of sales of "trousers" as a condition for sale of "other garments" like blazers, coats, safaris, suits has not been established. On the contrary, the evidence of the said witness establishes that there was no "tie up", as alleged. In fact, the evidence shows that all readymade garments manufactured by

A appellant no. 2 were in short supply since it could not expand its manufacturing capacity due to licensing controls. When all items are in demand and are in short supply, there cannot be any question of "tie up" of sales, which is resorted to for the purpose of selling an unB wanted item along with an item having high demand. [Para 20] [1011-C,D,E]

1.2. The evidence of witness on behalf of appellant no.2 reveals that all garments including trousers were in short supply and had great demand. Therefore, the alleC gation that the supply of trousers had been tied up with any other garment for sale is without any basis. There is no allegation of any "Agreement" entered into between the parties, either oral or in writing under which any practice of "tie-up" sales was specified. As such, s.33 of MRTP D Act has no relevance. [Paras 23, 34] [1012-C, 1015-F]

Tata Engineering and Locomotive Company Ltd., Bombay v. Registrar of the Restrictive Trade Agreement, New Delhi (1977) 2 SCC 55; *Mahindra and Mahindra Ltd. v. Union of India & Another* (1979) 2 SCC 529 – referred to.

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2. Clause (h) of s.38(1) of the MRTP Act provides that it is only when the restriction directly or indirectly discourages competition to any 'material degree' in any relevant trade or industry that such restriction would be considF ered as "prejudicial to public interest". In a case where the alleged restrictive trade practice does not have the impact of restricting competition to any 'material degree' in any relevant trade or industry, such trade practice cannot be considered as "prejudicial to public interest" and no order of "cease and desist" can be passed under s.37 of the Act. G Similarly, for invoking s.38(1)(h) of the MRTP Act to show that in any event, it could not be said that competition was affected to any "material degree" in the relevant trade or industry, the appellants' witness has clarified in the affidavit of evidence that in view of the negligible market share

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of the appellants in the relevant trade, it cannot be even alleged that the competition was affected to any "material degree". When the evidence on behalf of the appellants clearly shows that there are several manufacturers including small scale manufactures, the little share of the complainant/informant does not affect the competition in the relevant trade or industry and, accordingly, in these circumstances, to pass any order under s.38(1)(h) cannot be justified. [Paras 30,31,45] [1014-E,H, 1015-A, 1018-G]

3. The preliminary investigation report cannot be taken into consideration as it is not produced in evidence. It is only a report submitted in terms of s.11 of the MRTP Act for initiating the enquiry. Only those facts contained therein, which are proved on record by evidence, can be looked into. [Para 36] [1016-B,C]

M/s. Lakhanpal National Ltd. v. MRTP Commission and Anr. **(1989) 3 SCC 251 –referred to.**

4. The complainant/informant had requested for refund of the security amount and, therefore, it was refunded. It was really not a case of "termination of dealership". There was no charge or allegation of termination of dealership in the notice of enquiry, therefore, the Commission was not justified in passing the order based on "termination of dealership". Even otherwise also, the termination of single dealership cannot affect competition to any "material degree" in the relevant trade or industry within the meaning of clause (h) of s.38(1) of the MRTP Act. [Para 46] [1019-A,B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1120 of 2001

From the final Judgment and Order dated 12.10.2000 of the Monopolis and Restrictive Trade Practices Commission, New Delhi in R.T. P. Enquiry No. 204 of 1988

A Ravinder Narain, Subrat Deb, Nupur Singh and Rajan Narain for the Appellants.

T.S. Doabia,V.S. Mahahan, M.S. Doabia, P. Parmeshwaran, B.K. Prasad and Shreekant, N. Terdal for the Respondents.

B **DALVEER BHANDARI, J.** 1. This appeal is directed against the judgment/order dated 12.10.2000 passed by the Monopolies and Restrictive Trade Practices Commission (hereinafter referred to as "the Commission") in R.T.P. Enquiry No. 204 of 1988.

C 2. Brief facts which are necessary to dispose of this appeal are as under:

A Notice of Enquiry under section 10 (a)(iv) and section 37 of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the 'MRTP Act') was issued to the D appellants wherein it was alleged that the appellants had indulged in restrictive trade practice within the meaning of section 2(o)(ii) and section 33(1)(b) and of the MRTP Act.

3. In order to comprehend the controversy involved in this E case properly, sections 2(o)(ii) and 33 (1)(b) of the MRTP Act are reproduced as under:

"**2.** In this Act, unless the context otherwise requires –

xxx xxx xxx

F xxx xxx xxx

(o) "restrictive trade practice" means a trade practice which has, or may have, the effect of preventing, distorting or restricting competition in any manner and in particular,-

G (i) .....

(ii) which tends to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers unjustified

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cost or restrictions." A

33. Registrable agreements relating to restrictive trade practices.- (1) Every agreement falling within one or more of the following categories shall be deemed, for the purposes of this Act, to be an agreement relating to restrictive trade practices and shall be subject to B registration in accordance with the provisions of this Chapter, namely:-

(a) .....

(b) any agreement requiring a purchaser of goods, as a C condition of such purchase to purchase some other goods;

xxx xxx xxx"

4. The appellants herein denied the allegations made in D the Notice of Enquiry and it was categorically stated that it neither manufactured nor sold any garments and such allegations of restrictive trade practice made against it was without any foundation.

5. The Commission directed respondent no. 1 [Director E General (I&R)] to furnish a copy of the Preliminary Investigation Report on the basis of which the Notice of Enquiry was issued to the appellants.

6. Respondent no.1 in evidence produced one Viren Shah, F partner of M/s Roop Milan, Bombay and his examination-in-chief and the cross-examination was recorded. In his evidence, he referred the following documents:

i) Letter dated 23.7.87

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ii) Letter dated 15.1.88

iii) Letter dated 12.9.87

iv) Refund Memo dated 28.9.87.

7. The appellants filed the affidavit of evidence of Pradeep H

A H. Paranandan, Sales Manager of appellant no. 2. The said witness was also cross-examined on behalf of the Director General (I&R).

8. The complainant/informant M/s Roop Milan complained that it was appointed as a retail dealer on 19.4.1982 and that it B was getting regular supplies of blazers, suits, safaris and trousers till December 1986 when the appellants stipulated that blazers, suits and safaris would be supplied only if substantial orders were placed for readymade trousers. From the information furnished by the complainant/informant, it transpired that C out of 139 items supplied by the appellants, 119 were trousers and the balance 20 were blazers and suits.

9. The complainant in his statement further stated that his dealings with the appellants came to an end in July 1987 when D appellant no. 2 compelled him to place an order for trousers along with order for blazers, safaris and suits.

10. Pradeep H. Hiranandani appeared as a witness on behalf of appellant no. 2 herein. He stated that the readymade garments including trousers manufactured and marketed by E appellant no. 2 enjoyed good demand in the market and the supply of garments was made to the dealers on the basis of order placed by them and subject to availability of stock. It was also stated by him that the manufacture of readymade garments was reserved for the small scale sector and the appellants had F a negligible market share.

11. The Commission, after evaluating the evidence, observed that 133 trousers were supplied to the complainant/informant in the year 1985-86. However, no record of the order placed with the appellants could be produced, but the complain- G ant/informant stated that he was compelled by the appellants to place substantial order for trousers in order to get supplies of blazers, safaris and suits. The invoices which were produced as part of evidence revealed the quantity of garments supplied by the appellants and undoubtedly, the quantity of trousers was H substantial. It was further observed that there was pressure on

the dealers to accept higher quantity of trousers than required and when he showed his unwillingness to accept the large quantity of trousers, his dealership was terminated and the security deposit was refunded to him. The Commission arrived at the conclusion that the allegation of tie-up of sales of trousers with other garments supplied by appellant no. 2 appeared to have been fully established.

12. On the basis of the aforementioned complaint, the Commission arrived at the conclusion that the appellants had indulged in restrictive trade practice within the meaning of sections 2(o)(ii) and 33(1)(b) of the MRTP Act.

13. The Commission further observed that the termination of the dealership or appellants' refusal to deal with a well established retailer was bound to have an adverse effect and impact on competition in so far as it would reduce the number of retail dealers in the local market and thus would have the effect of restricting and lessening of the competition in the sale and supply of readymade garments and, therefore, would also be prejudicial to public interest. It was further observed that by restricting and reducing the supply of ready to wear garments would also attract the provisions of section 2(o)(ii) of the MRTP Act.

14. The Commission directed the appellants to cease the aforementioned restrictive trade practice forthwith and furnish an undertaking that they shall not repeat or indulge in same or similar trade practices in future. The Commission further directed the appellants to file an affidavit of compliance within six weeks of the pronouncement of the order.

15. The appellants, aggrieved by the said order of the Commission, preferred this appeal. The appellants submitted that the complaint filed by the retail dealer cannot be dealt with under section 10(a)(i) of the MRTP Act since a complaint thereunder could not be entertained from a retail dealer who was not a consumer.

16. Section 10(a) (i) & (iv) of the MRTP Act reads as under:

A **"10. Inquiry into monopolistic or restrictive trade practices by Commission.-**

The Commission may enquire into –

(a) any restrictive trade practice -

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(i) upon receiving a complaint of facts which constitute such practice from any trade association or from any consumer or a registered consumers' association, whether such consumer is a member of that consumers' association or not or

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(ii) .....

(iii) .....

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(iv) upon its own knowledge or information."

17. It was submitted on behalf of the appellants that a complaint under the said provisions could only be filed by any trade association, or from any consumer or a registered consumers' association, the said complaint was treated as "information" and dealt with by the Commission under section 10(a)(iv) "upon its own knowledge or information" and a suo motu enquiry was initiated in respect of the aforesaid allegation of "tie-up" of sales.

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18. According to the appellants, the allegation of "tie up" of sales is to be considered in the light of the above provisions of the MRTP Act, before any order directing that "such practice shall be discontinued and shall not be repeated," can be passed. Such an order is also referred to as a "cease and desist order". For passing such an order under section 37 of the MRTP Act, the followings have to be established:

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(i) That the evidence clearly establishes that a practice of "tie up" of sales of "trousers" as a condition of sales and supply of "other garments" like blazers, coats, safaris, suits was insisted upon.

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(ii) That the aforesaid trade practice, in fact, had the

effect of restricting or distorting competition within the meaning of section 2(o) of the MRTP Act.

(iii) That such competition is affected to a material degree in the relevant trade and industry.

According to the appellants, It is only when the above aspects have been established that an order of "cease and desist" can be passed under section 37 of the MRTP Act.

19. According to the appellants, on the basis of the record, none of the above conditions is satisfied in the present case.

20. The evidence of the sole witness produced by the respondent, being Viren Shah, partner of M/s Roop Milan, the complainant retail dealer, would show that even the allegation of 'tie up" of sales of "trousers" as a condition for sale of "other garments" like blazers, coats, safaris, suits has not been established. On the contrary, the evidence of the said witness establishes that there was no "tie up", as alleged. In fact, the evidence shows that all readymade garments manufactured by appellant no. 2 were in short supply since it could not expand its manufacturing capacity due to licensing controls. When all items are in demand and are in short supply, there cannot be any question of "tie up" of sales, which is resorted to for the purpose of selling an unwanted item along with an item having high demand.

21. The appellants submitted that the sole witness produced by respondent no. 1 who had the carriage of proceedings in a suo motu enquiry under section 10(a)(iv), it is clear that trousers were supplied as ordered. The supply of trousers was not tied-up with the supply of "other garments" like blazers, suits etc. As such, there is no justification for any finding of "tie-up" of sales.

22. The appellants referred to the evidence produced by P. H. Hiranandani, Sales Manager. It was stated as under:

"It may be clarified that the manufacture of readymade garments is reserved for the small scale sector in India

A and accordingly the second respondent is not in a position to meet the market demand for its readymade garments including trousers. All the readymade garments including the trousers manufactured and marketed by the second respondent enjoyed a good demand in the market. Dealers
B placed order and supplies of goods are made by the second respondent to the dealers depending upon the orders subject to availability of stocks. In the circumstances, the question of any alleged tie-up sale of trousers with other garments like blazers, coats, safaris, cannot and
C does not arise."

23. The evidence of P. H. Hiranandani reveals that all garments including trousers were in short supply and had great demand. Therefore, the allegation that the supply of trousers had been tied up with any other garment for sale is without any
D basis.

24. The appellants also submitted that the allegation of "tie up" of sales is not established, in any event, it is submitted that section 2(o) of the MRTP Act relating to the existence of restrictive trade practice can only be invoked when as a result
E of the alleged practice, competition is in fact restricted or affected. In the absence of any such proof of competition having been restricted, no allegation of restrictive trade practice can be established.

F 25. In support of their submissions, the appellants have placed reliance on the judgment of this court in *Tata Engineering and Locomotive Company Ltd., Bombay v. Registrar of the Restrictive Trade Agreement, New Delhi* (1977) 2 SCC 55. In this case, the scope of restrictive trade practice, as de-
G fined under section 2(o) of the MRTP Act, has been considered by this court. The practice of imposing territorial restriction and exclusive dealings in the agreements with dealers were considered in the context of section 2(o) of the MRTP Act. It was alleged that the restriction not to deal outside the prescribed territory and not to deal with competing products was a restriction
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which affected and restricted competition within the meaning of section 2(o) of the MRTP Act. This court, while dealing with these allegations applied the "rule of reason" while dealing with the scope of section 2(o) of the MRTP Act and not the doctrine that any restriction as to area will "per se" be a "Restrictive Trade Practice". The relevant portion of para 29 reads as under:

> "Every trade agreement restrains or binds persons or places or prices. The question is whether the restraint is such as regulates and thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine this question three matters are to be considered. First, what facts are peculiar to the business to which the restraint is applied. Second, what was the condition before and after the restraint is imposed. Third, what is the nature of the restraint and what is its actual and probable effect."

26. In para 37 of the said judgment, it was held that the area restriction did not constitute "Restrictive Trade Practice". In para 56 it was observed as under:

> "The question of competition cannot be considered in vacuo or in a doctrinaire spirit. The concept of competition is to be understood in a commercial sense. Territorial restriction will promote competition whereas the removal of territorial restriction would reduce competition"

It was further observed in para 59 that:

> "In the present case the restriction imposed by Telco on dealers not to sell bus and chassis outside their territories does not restrict competition for the foregoing reasons."

27. With regard to "exclusive dealings", this court further observed in para 60 as under:

> "The other term of exclusive dealership in Clauses 6 and 14 of the agreement between Telco and the dealers that the dealer will not sell commercial vehicles of other

A manufacturers, does not amount to a restriction in competition because other manufacturers can appoint other persons to deal in their commercial vehicles. It is also in public interest to see that vehicles of other manufacturers are sold in the same territory by other B dealers. Therefore, there will be competition between the manufacturers of different commercial vehicles and as far as exclusive dealership of Telco commercial vehicles is concerned, it will be in public interest and not be a restriction in competition."

C 28. With regard to "territorial restriction" and "exclusive dealings", this court held in para 61 that these conditions were not "prejudicial to public interest" and that both these restrictions were in public interest.

D 29. The appellants have also relied upon the judgment of this court in the case of *Mahindra and Mahindra Ltd.* v. *Union of India & Another* [(1979) 2 SCC 529] and laid stress on paras 14 and 15 of the said judgment.

30. Clause (h) of section 38(1) of the MRTP Act provides E that it is only when the restriction directly or indirectly restricts or discourages competition to any 'material degree' in any relevant trade or industry that such restriction would be considered as "prejudicial to public interest". In a case where the alleged restrictive trade practice does not have the impact of restricting F competition to any 'material degree' in any relevant trade or industry, such trade practice cannot be considered as "prejudicial to public interest" and no order of "cease and desist" can be passed under section 37 of the Act.

31. Similarly, for invoking section 38(1)(h) of the MRTP G Act to show that in any event, it could not be said that competition was affected to any "material degree" in the relevant trade or industry, the appellants' witness Pradeep H. Hiranandani has clarified in para 8 of the affidavit of evidence that in view of the negligible market share of the appellants in the relevant trade, it H cannot be even alleged that the competition was affected to

any "material degree". A

32. The relevant portion of the evidence of Pradeep H. Hiranandani reads as under:

> "I say and submit that there are several manufacturers of readymade garments in India including several small scale manufacturers..." B
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> "in the circumstances, the market share of the second respondent is very negligible in the relevant trade in India and accordingly circumstances exist within the meaning of section 38(1)(h) of the Act...." C

33. The appellants submitted that the Commission did not even consider the aforesaid aspect that in the present case competition was not affected to any "material degree" and as such it could not be held that the alleged "Restrictive Trade Practice" was "prejudicial to public interest", keeping in view clause (h) of section 38(1) of the MRTP Act. The gateway contemplated under clause (h) was specifically pleaded by the appellants and was supported by positive evidence, but the said evidence was not even considered in the impugned order. This itself vitiates the order. Reference to section 38(1)(h) was necessary in order to arrive at the finding relating to the practice being "prejudicial to public interest". D E

34. The learned senior counsel appearing for the respondents referred to section 33(1)(b) of the MRTP Act. Section 33 only deals with "Agreements relating to Restrictive Trade Practices". In the present case, there is no allegation of any "Agreement" entered into between the parties, either oral or in writing under which any practice of "tie-up" sales was specified. As such, section 33 has no relevance to the present case. F G

35. The appellants further submitted that even in cases where section 33 may be invoked, before passing an order of "cease and desist" under section 37, it would still be necessary to determine whether the alleged "restrictive trade practice" is "prejudicial to public interest" within the meaning of section 38 H

A of the MRTP Act. In a case where the alleged "restrictive trade practice" does not restrict competition to any "material degree" in the relevant trade or industry, it could not be considered as "prejudicial to public interest" and no order under section 37 can be passed.

B 36. The learned senior counsel for the respondents referred to the "preliminary investigation report" submitted by the Director General (I&R). The preliminary investigation report cannot be taken into consideration as it is not produced in evidence. It is only a report submitted in terms of Section 11 of the MRTP C Act for initiating the enquiry. Only those facts contained therein, which are proved on record by evidence, can be looked into. The preliminary investigation report, as such, is not evidence on record. As such, any reference to the contents thereof, which have not been put in evidence and subjected to cross examina- D tion, cannot be looked into. This is without prejudice to the contention that there is nothing stated in the preliminary investigation report, which in any way establishes that any competition was affected within the meaning of section 2(o) of the Act and that competition was affected to any "material degree" in the E relevant trade or industry, as contemplated under clause (h) of section 38(1) of the Act.

37. The appellants submitted that the findings given by the Commission that the dealership of the complainant was "terminated" by the appellants herein and held it to be a "restrictive F trade practice", was wholly uncalled for and untenable.

38. The appellants submitted that no finding with regard to termination of dealership could be made since there was no such charge or allegation made in the Notice of Enquiry. A reference has been made to the case of *M/s. Lakhanpal National* G *Ltd. v. MRTP Commission and Another* [(1989) 3 SCC 251]. This court in para 9 of the said judgment observed as under:

> "The argument was rightly repelled on behalf of the appellant on the ground that this aspect cannot be H examined in the present case in view of the limited scope

> of the charges as mentioned in the Show Cause Notice quoted above."

39. The appellants contended that since there was no allegation of "restrictive trade practice" on account of the alleged termination of the agreement, no order in respect thereof could be passed by the Commission. The order passed in respect of the same is clearly illegal and without jurisdiction.

40. The appellants further contended that, in any event, the evidence in the present case clearly establishes that the complainant firm M/s Roop Milan had itself asked for return of its security deposit from appellant no. 2. which was duly returned and thereafter, there was no dealing between the parties. As such, there can be no case of termination of dealership. The said complainant firm was mainly dealing with the products of other manufacturers and out of its total turnover of Rs.25 lakhs per annum, its purchases from appellant no. 2 was only to the extent of Rs.50,000 per annum. In these circumstances, the said complainant firm did not desire to continue to deal with the appellants' products and as such sought refund of its security deposit, which was duly made. The relevant extract in this behalf from the evidence of Viren Singh, partner of the complainant firm is reproduced as under:

> "It is correct that in our letter we had asked a refund of the security deposit which was refunded to us by the respondent no. 2 along with their aforesaid letter dated 28.9.1987. In fact we received the refund as per memo dated 28.9.1987. It is not a letter as such and this is Exh. AW1/R-18."

41. The appellants submitted that, in any event, mere termination of dealership agreement does not affect competition within the meaning of section 2(o) of the MRTP Act and cannot be treated as a "Restrictive Trade Practice". Further, the termination, if any, of a single retail dealer cannot affect competition to any "material degree" in the relevant trade or industry, within the meaning of clause (h) of section 38(1) of the Act.

A 42. The appellants submitted that the Commission was not justified in passing any order regarding termination of dealership. The appellants also submitted that appellant no.1 is only a holding company of which appellant no. 2 is a subsidiary company. There is no transaction of sale or dealing by appellant no. B 1. No manufacturing or selling activity is carried out by appellant no. 1 and as such, no "tie-up" of sales could be resorted to by appellant no. 1. Therefore, the Commission was not justified in passing any order against appellant no. 1. The appellants submitted that the impugned order of the Commission ought to C be set aside and the notice of enquiry be discharged.

43. We have carefully gone through the entire record in this case and heard the learned counsel for the parties at length. From the proper analysis of the entire evidence on record, we reach to an irresistible conclusion that no "tie-up" of sales of D trousers as a condition has been established. Therefore, the Commission's passing any consequential order on the basis of tie-up is wholly untenable and unsustainable in law.

44. The court would be justified in passing the order on alleged restrictive trade practice only when it is "prejudicial to E public interest" under clause (h) of section 38(1) of the MRTP Act. The pre-condition for passing such an order is that the restriction as imposed directly or indirectly when restricts or discourages competition to any "material degree" in any trade or industry, then only it would be considered as "prejudicial to pub- F lic interest". The court should not pass an order of "cease and desist" where the alleged restrictive trade practice does not have the impact on restricting competition to any material degree.

G 45. When the evidence on behalf of the appellants clearly shows that there are several manufacturers including small scale manufactures, the little share of the complainant/informant does not affect the competition in the relevant trade or industry and, accordingly, in these circumstances, to pass any order under section 38(1)(h) cannot be justified.

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46. In the instant case, the complainant/informant had requested for refund of the security amount and, therefore, it was refunded. It was really not a case of "termination of dealership". There was no charge or allegation of termination of dealership in the notice of enquiry, therefore, the Commission was not justified in passing the order based on "termination of dealership". Even otherwise also, the termination of single dealership cannot affect competition to any "material degree" in the relevant trade or industry within the meaning of clause (h) of section 38(1) of the MRTP Act.

47. On consideration of the totality of the facts and circumstances, the appeal is allowed and the impugned order passed by the Commission is accordingly set aside. The Notice of Enquiry is also discharged. In the facts and circumstances of the case, the parties are directed to bear their own costs.

D.G. Appeal allowed.