



FACULTY OF JURIDICAL SCIENCES

COURSE: B.B.A.LL.B. IX th

Semester

SUBJECT: COMPETITION LAW

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LECTURE 4

TOPIC: RESTRICTIVE TRADE PRACTICES

The Restrictive trade practice is defined to mean a trade practice which has or may have the effect actual or probable of restricting, preventing, lessening or destroying competition, it is liable to be regarded as restrictive trade practice. If a trade practice merely regulates and thereby promotes competition, it would not fall within the definition of ‘restrictive trade practice’, even though it may be to some extent, in restraint of trade. Therefore whenever, a question arises as to whether a certain trade practice is restrictive or not, it has to be decided not on any theoretical or a prior reasoning, but by inquiring whether the trade practice has or may have the effect of preventing, distorting or restricting competition. Further, the trade practice which tends to obstruct the flow of capital or resources into main stream of production or to bring about manipulation of prices, or conditions of delivery or to affect flow of supplies of goods or services so as to impose unjustified cost or restrictions on consumers, is also a restrictive trade practice. The MRTP Act lists out certain types of agreements, which are deemed to be agreements relating to restrictive trade practices and required to be registered with the Director General of Investigation and Registration. Certain common types of Restrictive Trade Practices enumerated in the MRTP Act are:

- a) Refusal to deal
- b) Tie-up sales
- c) Full line forcing
- d) Exclusive dealing
- e) Price discrimination
- f) Re-sale price maintenance

g) Area restriction.

The trade practices do not ipso facto become a restrictive trade practice because it falls within one of the illustrations under section 33 and it has also to fulfill the definition of restrictive trade practice as defined under section 2(o) of the MRTP Act 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,

- (i) which tends to obstruct the flow of capital or resources into the stream of production, or
- (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 a manner as to impose on the consumers unjust costs or restrictions;

The special feature of the MRTP Act had been that inquiry into restrictive nature of the trade practice is related to the effect on competition. The whole thrust of section 2(o) was held to be related to the effect of the trade practice on the relevant competitive situation. Thus, effect on competition was considered to be touch– stone under section 2(o) and before any trade practices could be regarded as restrictive in nature, some damage, however, slight must be indicated in the context of the relevant competitive situation. Section 37 to 40 provides for the control of certain restrictive trade practices. The starting point was registration, under section 33 of an agreement relating to a restrictive trade practice. The Commission had the power under section 37 to investigate into any restrictive trade practices and the nature of the order it could pass. The Commission could act independently and pass final orders itself relating to any restrictive trade practice. Section 38 declared the 'gateways' by which it could be shown that a restrictive trade practice was not prejudicial to public interest. If a restrictive trade practice that was being inquired into could not be justified under any gateway, under the section, the restrictive trade practice was to be deemed to be prejudicial to public interest. Thus, through the amendment, the trade practices mentioned in section 33 falls within the genus of restrictive trade practices and are treated as statutory

illustrations of the same. Hence, the courts could not examine on the basis of surrounding circumstances decide whether the agreement was restrictive or not.

Exercise:

1. If a trade practice merely regulates and thereby promotes competition, it would not fall within the definition of 'restrictive trade practice', even though it may be to some extent, in restraint of trade.

- a) True
- b) False
- c) Both of the above
- d) None of the above

2. Types of Restrictive Trade Practices enumerated in the MRTP Act are

- a) Refusal to deal
- b) Tie-up sales
- c) Full line forcing
- d) All of the above

3. Which section of Competition Act dissolves Monopolies and Restrictive Trade Practices Commission?

- a) 31
- b) 32
- c) 51
- d) 66

4. The Monopolies and Restrictive Trade Practices Act, 1969 came into force on

- a) June 1, 1970
- b) July 1, 1970
- c) August 1, 1970

d) None of the above

5. Monopolies and Restrictive Trade Practices Act, 1969 is the result of the Monopolies and Restrictive Trade Practices Bill,

a) 1963

b) 1964

c) 1965

d) 1967