

IN THE SUPREME COURT OF INDIA
CIVIL/CRIMINAL APPELLATE/ORIGINAL JURISDICTION

CRIMINAL APPEAL NO. 76-77 OF 2019
(@ SLP(Cr1.) 5899-5900 of 2018)

COMPETITION COMMISSION OF INDIA

Appellant(s)

VERSUS

JCB INDIA LTD. & ORS.

Respondent(s)

WITH

T.C.(C) No. 44 OF 2016

T.C.(Cr1.) No. 4 OF 2016

O R D E R

Leave granted in the special leave petitions.

The appeals arise from an ad interim order of the learned Single Judge of the Delhi High Court dated 2 June 2016. On a petition instituted under Article 136 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, the High Court has issued the following direction:

"In my opinion, *prima facie*, the impugned order did not in any manner, authorize respondent No. 1 to seize the said material for which a search warrant had been issued.

In view of the foregoing, the respondent No. 1, who have seized the subject material, are restrained from utilizing the same for any purpose whatsoever, till the next date of hearing."

On 11 March 2014, the Competition Commission of India passed an order under Section 26(1) of the Competition Act, 2002 directing the Director General to make an investigation into certain allegations against the first and second respondent on the basis of information which disclosed a prima facie case of the abuse of dominance. The first respondent filed a writ petition before the Delhi High Court¹.

In an interim order dated 4 April 2014, the High Court directed that while the appellant may require the first and second respondents to furnish the information called by the Director General of the Competition Commission, no final order/report shall be passed either by the Commission or by its Director General.

During the pendency of the writ petition, the Additional Director General filed an application before the Chief Metropolitan Magistrate under Section 41(3) read with Section 240A of the Companies Act, 1956 seeking authorisation to conduct a search in the premises of the first respondent. The relief which was sought in the application was in the following terms:

"It is prayed before this Hon'ble Court that search warrants as per the provisions of subsection 3 of section 41(3) of the Competition Act, 2002 read with section 240A of the Companies Act, 1956 may please be issued for conducting searches at the aforesaid premises for recovering incriminating documents and papers related with the case."

¹ Writ Petition (Civil) No. 2244/2014

The Chief Metropolitan Magistrate allowed the application on 17 September 2014. The search operation was carried out on 19 September 2014.

An interim application² was filed before the Delhi High Court in the pending writ petition for quashing the search and seizure and for the return of all documents, hard drives and laptops seized during the course of the search and seizure operation and for a stay on the investigation.

The Delhi High Court, by its order dated 26 September 2014, stayed further proceedings before the Director General of Investigation. In appeal, the Division Bench by an order dated 2 December 2014 directed that the parties would be at liberty to raise their contentions before the learned Single judge and left it open to the Competition Commission or, as the case may be, the Director General to apply for vacating the order dated 26 September 2014.

Pursuant to the above direction, the appellant applied for vacating the interim order before the learned Single Judge. In the meantime, the first and the second respondent had filed another writ petition³ before the High Court praying for setting aside of the search and seizure. It is in that writ petition that the impugned order has been passed by the learned Single Judge on 2 June 2016

² C.M. No. 15787 of 2014

³ W.P. (Cr1.) No. 1823 of 2016

restraining the appellant from utilising the seized material for any purpose whatsoever till the next date of hearing.

The learned Single Judge has observed that prima facie, a reading of the order passed by the Chief Metropolitan Magistrate does not indicate any authorisation to the Director General to carry out any other exercise other than searching for relevant material. The ad interim order has been assailed in these proceedings.

Mr. P.S. Narasimha, learned senior counsel appearing on behalf of the appellants submitted that Section 41(3) of the Competition Act, 2002 stipulates that the provisions of Section 240 and 240A of the Companies Act, 1956 so far as may be, shall apply to an investigation made by the Director General or any other person investigating under his authority. The submission is that Section 240A specifically provides that an authorisation may be obtained from the Magistrate of the First Class for an order to seize books and papers which, it is apprehended, may be destroyed, mutilated, altered, falsified or secreted. Moreover, it has been submitted that sub-section (2) of Section 240A specifically authorises the Magistrate to pass an order allowing for the seizure of books and papers which he considers necessary for the investigation, apart from authorising a person to enter upon and search premises. Hence, it has been urged that the ad interim order passed by the learned Single Judge effectively obstructs the

investigation by the Director General. Mr. Narasimha, learned senior counsel urged that the Competition Commission has been constrained to approach this Court in view of the interference which has resulted in a matter of investigation.

On the other hand, Mr. Kapil Sibal and Mr. Shyam Divan, learned senior counsel appearing for the first and the second respondents have urged that substantive questions in regard to the jurisdiction of the Competition Commission have been raised before the Delhi High Court in the first of the two writ petitions. Learned senior counsel submitted that the case of the first and the second respondents is that they have taken recourse to their remedies in a civil suit against a third party which infringed their rights to design and other forms of intellectual property. Hence, the recourse taken by them to their rights and to the due process of law cannot be construed as an abuse of a dominant position. Learned senior counsel urged that the jurisdiction of the Competition Commission has been questioned. In the circumstances, the impugned order of the learned Single Judge restraining the Competition Commission from utilising the seized material cannot be faulted. Moreover it has been submitted that the pre-condition under Section 240A has not been fulfilled.

Section 240A of the Companies Act, 1956 reads as follows:-

"240A. Seizure of documents by inspector.

(1) Where in the course of investigation under section 235 or section 237 or section 239 or section 247, the inspector has reasonable ground to believe that the books and papers of, or relating to, any company or other body corporate or any managing agent or secretaries and treasurers or managing director or manager of such company or other body corporate, or any associate of such managing agent or secretaries and treasurers may be destroyed, mutilated, altered, falsified or secreted, the inspector may make an application to the Magistrate of the First Class or, as the case may be, the Presidency Magistrate, having jurisdiction for an order for the seizure of such books and papers.

(2) After considering the application and hearing the inspector, if necessary, the Magistrate may by order authorise the inspector

(a) to enter, with such assistance, as may be required, the place or places where such books and papers are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize books and papers he considers necessary for the purposes of his investigation.

(3) The inspector shall keep in his custody the books and papers seized under this section for such period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing agent, or the secretaries and treasurers or the associate of such managing agent or secretaries and treasurers or the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return Provided that the inspector may, before returning such books and papers as aforesaid, place identification marks on them or any part thereof.

(4) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898

(5 of 1898), relating to searches or seizures made under that Code.”

Section 41(3) specifically incorporates a reference to Section 240A in its application to an investigation by the Director General under the provisions of the Competition Act 2002.

Under Section 240A, an Inspector who has reasonable ground to believe that books and papers of, or relating to, any company may be destroyed, mutilated, altered, falsified or secreted may apply to the Magistrate to secure an authorisation for the seizure of the books and papers.

The provisions of Section 240A do not merely relate to an authorisation for a search but extend to the authorisation of a seizure as well.

Unless the seizure were to be authorised, a mere search by itself will not be sufficient for the purposes of investigation.

Having due regard to the provisions of Section 240A and the underlying purpose of Section 41(3), we are of the view that the blanket restraint which has been imposed by the learned Single Judge on the appellants utilising the seized material for any purpose whatsoever was not warranted. The High Court has blocked the investigation on an erroneous construction of the powers of the Director General. The High Court should, in our view, be more circumspect before it restrains an investigation under the

statutory authority of the Director General.

Having said this, we are of the view that since the writ proceedings before the High Court are pending, the ultimate order that we pass would be such as would protect the interests of the appellants in a fair investigation and would not prejudice the case of the respondents on the issue of jurisdiction which has been raised before the Delhi High Court.

Accordingly, we vacate the order of injunction which has been granted by the learned Single Judge on 2 June 2016.

While vacating the injunction, we leave it open to the Delhi High Court, at the hearing of the writ petitions to determine whether and if so to what extent a reference to the seized material should be permitted to be made for the purposes of testing the issue of jurisdiction.

The writ petitions were transferred to this Court by an ad interim direction dated 19 September 2016. We have been apprised of the issues in these writ petitions and we are of the opinion that it would be appropriate if the petitions are remitted back to the Delhi High Court for determination by a Division Bench of the High Court.

We order accordingly.

Transferred Case (C) 44 of 2016 and Transferred Case (Cr1.) 4 of 2016 are accordingly remitted back to the Delhi High Court. All the rights and contentions of the parties are kept open, to be decided in the pending writ petitions.

The appeals and transferred cases are, accordingly, disposed of. No costs.

Pending application(s), if any, shall also stand disposed of.

.....J.
(DR. DHANANJAYA Y. CHANDRACHUD)

.....J.
(HEMANT GUPTA)

NEW DELHI,
January 15, 2019

ITEM NO.16

COURT NO.11

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 5899-5900/2016

(Arising out of impugned final judgment and order dated 02-06-2016 in WPCRL No. 1823/2016 passed by the High Court Of Delhi At New Delhi)

COMPETITION COMMISSION OF INDIA

Petitioner(s)

VERSUS

JCB INDIA LTD. & ORS.

Respondent(s)

(IA 12993/2016 - PERMISSION TO FILE ANNEXURES, IA 12571/2016-PERMISSION TO FILE SYNOPSIS AND LIST OF DATES, IA 16692/2016-PERMISSION TO FILE ANNEXURES)

WITH

T.C.(C) No. 44/2016 (XVI-A)

T.C.(Cr1.) No. 4/2016 (XVI-A)

Date : 15-01-2019 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE HEMANT GUPTA

Counsel for the parties-

Mr. Arjun Krishnan, AOR

Mr. Kapil Sibal, Sr. Adv.

Mr. Shyam Divan, Sr. Adv.

Mr. G.R. Bhatia, Adv.

Mr. Abdullah Hussain, Adv.

Ms. Kanika C. Nayar, Adv.

Mr. Arjun N. Singh, Adv.

Mr. Nizam Pasha, Adv.

Mr. Vinayak Bhandari, Adv.

Mr. Chandramauli Dwivedi, Adv.

Mr. Abhay Kumar, AOR

Mr. A.N. Haksar, Sr. Adv.

Mr. Udayan Jain, Adv.

Mr. Sonal Jain, AOR
Mr. Kamal Sharma, Adv.
Ms. Sitwatnari, Adv.
Mr. Sahil Sharma, Adv.

Mr. P.S. Narasimha, Sr. Adv.
Mr. Arjun Krishnan, AOR
Mr. Ankur Singh, Adv.
Mr. V.C. Shukla, Adv.
Mr. Sumit Srivastava, Adv.
Mr. Rahul G. Tanwani, Adv.
Mr. Kaustav Som, Adv.
Ms. Khushboo Mittal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted in the special leave petitions.

The appeals and transferred cases are disposed of in terms of
the signed order.

Pending application(s), if any, shall stand disposed of.

(MANISH SETHI)
COURT MASTER (SH)

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed order is placed on the file)