

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.11.2014

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W.P.(C) 5947/2014 & CM 14538/2014

**RAJKUMAR DYEING & PRINTING WORKS
PRIVATE LIMITED & ANR.**

..... Petitioners

versus

**COMPETITION COMMISSION OF INDIA
& ANR.**

.... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Rakesh Sinha and Mr Pradeep Gupta.

For the Respondents : Mr Vaibhav Gaggar, Mr Abhimanyu Chopra,
Ms Reena kumara and Mr Naveen Kumar for
R-1.

Mr Anuj Aggarwal, Mr Niti Jain and Mr Gaurav
Khanna for R2.

AND

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W.P.(C) 6260/2014 & CM 15146/2014

M/S R S INDUSTRIES

..... Petitioner

versus

COMPETITION COMMISSION OF INDIA & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Rana S. Biswas and Mr Sunil Sharma.

For the Respondents : Mr Vaibhav Gaggar, Mr Abhimanyu Chopra,
Ms Reena Kumari and Mr Naveen Kumar for
R-1.

Mr Vineet Malhotra for R-2.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. These petitions call into question the penalties imposed by the Competition Commission of India (hereafter 'CCI') for non-filing of undertakings to cease and desist from anti-competitive conduct, within the time period as directed by CCI. As the petitions impugn a common order, the same have been taken up together.

2. The petition, W.P.(C) No.6260/2014 has been filed by M/s R S Industries (hereafter 'RSI') and the petition, W.P.(C) No.5947/2014 has been filed by M/s Rajkumar Dyeing & Printing Works Pvt. Ltd. (hereafter 'Rajkumar Dyeing') *inter alia* seeking quashing of a common order dated 06.08.2014 (hereafter the 'impugned order') passed by CCI in Ref. Case No.1/2012 whereby CCI imposed a penalty of a sum of ₹5000/- per day on each of the petitioners, which works out to ₹14,10,000/- in the case of RSI and ₹13,65,000/- in case of Rajkumar Dyeing. The said penalties were imposed under Section 42 of the Competition Act, 2002 (hereafter the 'Act') for failure on part of the petitioners to comply with the direction to file an undertaking to cease and desist from anti- competitive conduct in future, as ordered by CCI in its order of 06.08.2013 passed under section 27 of the Act.

3. Briefly stated, the relevant facts necessary for addressing the controversy are as under:-

3.1 The Directorate General of Supplies & Disposals (DGS&D) issued parallel Rate Contract tenders for supply of Polyester Blended Duck Ankle Boot with Rubber Sole (hereafter 'the product') for the period 01.12.2011

to 30.11.2012. Amongst others, both the petitioners also participated in the tender which was opened on 29.07.2011.

3.2 DGS&D noticed that the difference in the prices quoted by different bidders was in a very narrow range and all the bidders, barring one, had restricted the quantity to be supplied by it during the Rate Contract period. This led DGS&D to file a reference (Ref. Case No.1/2012) before CCI under Section 19(1)(b) of the Act, against all the bidders including the petitioners, *inter alia*, alleging bid rigging and market allocation. It was alleged that the participation in the tender was pre-determined, collusive and the bidding pattern was restrictive, indicating formation of a cartel by the bidders in violation to the provisions of the Act.

3.3 On 08.05.2012, CCI recorded a prima facie opinion, under Section 26(1) of the Act, that a case of contravention of the provisions of the Act was made out and referred the matter to Director General (DG) to conduct an investigation and submit its report. DG submitted its report to CCI on 26.12.2012. Thereafter, on 06.08.2013, CCI passed an order under Section 27 of the Act, *inter alia*, directing the bidders to cease and desist from anti-competitive conduct in future and also file an undertaking to that effect within a period of 30 days from the date of receipt of the order.

3.4 The petitioners and others bidders filed appeals against CCI's order of 06.08.2013, under Section 53B of the Act before the Competition Appellate Tribunal (hereafter 'COMPAT'). By a common order dated 22.04.2014, COMPAT allowed the interim applications by directing the appellants (other than RSI), to deposit 5% of the penalty imposed by CCI. In the case of RSI, COMPAT granted a complete stay of penalty. However,

CCI's direction to cease and desist from anti-competitive conduct was not interfered with.

3.5 CCI, thereafter, issued show cause notices dated 30.05.2014, under Section 42 of the Act read with Regulation 48 of the Competition Commission of India (General) Regulation, 2009, (hereafter the 'Regulations 2009') to the petitioners who had failed to file the undertakings to cease and desist from anti-competitive conduct. After receipt of the notices, the petitioners filed the requisite undertakings.

3.6 By the impugned order, CCI observed that the petitioners had failed to file the undertakings as directed because Rajkumar Dyeing and RSI were required to file their respective undertakings on 20.09.2013 and 15.09.2013 and the same were filed on 20.06.2014 and 24.06.2014 respectively. In the circumstances, CCI passed the impugned order imposing penalty for non-compliance of its order.

4. The learned counsel appearing for the petitioners submitted that the non-filing of the undertaking within the prescribed time was neither intentional nor deliberate and there were 'reasonable causes' which CCI failed to examine and consider. Therefore, CCI had acted *de hors* its powers under Section 42 of the Act in passing the impugned order. It was submitted that, in the alternative, the penalty of ₹5,000/- per day was grossly disproportionate in facts and circumstances of the case as CCI failed to take into account various factors that were relevant for determining the quantum of penalty. It was submitted that CCI failed to take into account that the petitioners are small scale industries and had not willfully acted in defiance of CCI's order.

5. The learned counsel for RSI drew the attention of this court to the fact that RSI had been de-registered as a small scale industry with DGS&D on 21.12.2011 and had neither supplied any products under the Rate Contract in question nor could possibly participate in any other DGS&D tender on account of its de-registration. The learned counsel for Rajkumar Dyeing pointed out that Rajkumar Dyeing and other bidders were blacklisted by DGS&D after the CCI's order dated 06.08.2013 and thus were disabled from participating in future tenders with regard to the product. In the circumstances, there was no question of the bidders indulging in any anti-competitive conduct. Further, the petitioners did not benefit in any manner from not filing the undertaking in question.

6. It was also contended on behalf of the petitioners that the show cause notices were defective and invalid as the period for which the purported penalty was sought to be imposed was not mentioned in the notice. Consequently, the proceedings emanating therefrom were also contended to be invalid. It was further submitted that the impugned order is violative of Article 14, Article 19(1)(g) and Article 300-A of the Constitution of the India.

7. The learned counsel for CCI submitted that the petitioners have not challenged the order dated 22.04.2014 of COMPAT and the relief of stay of direction of CCI to file undertakings to 'cease and desist' from anti-competitive conduct was rejected. It was submitted that the show cause notice was issued to the petitioners for not complying with the directions of CCI and the penalty was imposed by CCI in view of the admissions made by the petitioners. The learned counsel for CCI referred to Regulation 36 of

the Regulations 2009 and stressed that the levy of penalty for non-filing of the undertaking as directed was within the powers of CCI. It was submitted that the pendency of appeal before COMPAT or the interim stay of penalty granted by COMPAT would not inhibit CCI from passing an order under Section 42 of the Act, particularly as COMPAT had declined to stay CCI's direction to file an undertaking to cease and desist from anti-competitive conduct.

8. In the aforesaid backdrop, the controversy that needs to be addressed is whether the levy of penalty of ₹13,65,000/- in case of Rajkumar Dyeing and ₹14,10,000/- in case of RSI is arbitrary and/or unreasonable.

9. CCI by its order dated 06.08.2013 had found that the petitioners had indulged in bid rigging/collusive bidding and had contravened the provisions of Section 3(1) read with Section 3(3)(a) and 3(3)(d) of the Act. Further, CCI also held that the petitioners had controlled/limited the supply of the product in question and shared the market of the product under an agreement/arrangement and thus, acted in contravention of the provisions of Section 3(1) read with Section 3(3)(b), (c) & (d) of the Act.

10. In view of the above findings, CCI imposed a penalty at the rate of 5% of the average annual turnover of the delinquent entities for the preceding three years. In addition, the entities including the petitioners were directed "*to cease and desist from indulging in such anti-competitive conduct in future*". CCI also directed the parties to file an undertaking by way of compliance.

11. The findings of CCI with respect to anti-competitive conduct of the petitioners, the imposition of penalty and the direction to cease and desist

from anti-competitive conduct as ordered by CCI in its order of 06.08.2013 under Section 27 of the Act, are not subject matter of dispute in the present petition; an appeal has been preferred by the petitioners against the said order before COMPAT. However, the directions issued by CCI to cease and desist from anti-competitive conduct and for filing an undertaking to the said effect are relevant for the present proceedings and the relevant extract from CCI's order dated 06.08.2013 is quoted below:-

“48. In view of the above discussion, the Commission directs the opposite parties to cease and desist from indulging in such anti-competitive conduct in future.

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50. The directions contained in para 48 above, should be complied with immediate effect and the opposite parties are also directed to file an undertaking to this effect within a period of 30 days from the date of receipt of this order.”

12. The petitioners had also sought interim relief from COMPAT and although the imposition of penalty was stayed in the case of RSI, other entities including Rajkumar Dyeing were directed to deposit 5% of the penalty imposed by CCI. However, COMPAT did not stay the ‘cease and desist’ order of CCI. The relevant extract of COMPAT's order of 22.04.2014 is as under:-

“7. Be that as it may. We find that there is a prima facie case for grant of interim orders. While considering the fact as to whether the appellants are entitled to absolute stay of the impugned order, the learned counsel for the appellants urged that they are already facing a dire financial calamity on account of the impugned order and there is every likelihood that the industry would come to a grinding halt. That of course does not seem to be such a possibility at least in the near future. The fact

of the matter is that all these manufacturers are small scale industries and there should be at least encouragement to such industries to grow. However, the absolute stay is not possible in view of the proved allegations against these appellants. We, therefore, direct the stay of the operation of the order passed by the CCI in so far as it pertains to the penalty aspect subject to the condition that these appellants shall deposit 5% of the penalty imposed by the CCI within two months from today. It is made clear that if the penalty is not paid as has been ordered above, the appeal itself shall be treated to be dismissed without further reference to this Tribunal.

8. However, in I.A. No. 80/2013 in Appeal No. 43/2013, the situation is slightly different. The learned counsel for the appellant makes a statement which is not controverted by the other side that the concerned manufacturer has not made any supplies under the present Rate Contract as no order was sent to him perhaps on account of the fact that the appellant concern has lost its registration as a small scale industry with the DGS&D because of the internal family disputes. In that case, the appellant is justified in praying for an absolute stay of the penalty. We, therefore, order accordingly.

9. In all the matters, the Tribunal does not see any necessity of staying the 'cease & desist' order of the CCI. Thus this order shall continue.”

13. It is important to note that COMPAT had stayed the deposit of 95% of the penalty in all cases and granted a complete stay in the case of RSI for the reason that all entities were small scale industries and small scale industries required encouragement to grow. COMPAT also noted the submission that the appellants were facing hardships on account of blacklisting pursuant to the orders passed by CCI. In the case of RSI, COMPAT also noted that the manufacturer had not made any supplies under the Rate Contract and had further lost its registration with DGS&D.

14. Before proceeding further, it would be apposite to consider the provisions of Section 27 of the Act which provides for the orders that can be passed by CCI after it has found contravention of Section 3 or 4 of the Act. Section 27 is quoted below:-

“27. Orders by Commission after inquiry into agreements or abuse of dominant position. — Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:—

- (a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;
- (b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse:

Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent. of its turnover for each year of the continuance of such agreement, whichever is higher.

- (d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;

- (e) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;
- (g) pass such other order or issue such directions as it may deem fit:

Provided that while passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group as defined in clause (b) of the Explanation to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.”

15. It is apparent from the plain reading of Section 27 of the Act that CCI has the power to impose such penalty as it deems fit, which is not more than 10% of the average annual turnover of the delinquent entities for the preceding three financial years. This is a substantive provision which circumscribes the power of CCI to impose penalty. In addition, CCI also has the power to direct that the parties involved in an offending agreement/arrangement, discontinue the same and not enter into such agreement in future. The directions passed by CCI in its order of 06.08.2013, imposing penalty and directing the opposite parties (i.e. all bidders including the petitioners) to cease and desist from indulging in anti-competitive conduct in future, are clearly covered within the provisions of Section 27 of the Act; the direction to file an undertaking to cease and desist from anti-competitive conduct, was only to aid and ensure compliance of the ‘cease and desist’ direction as contained in paragraph 48 of the said order. It is, thus, apparent that, in substance, the order passed under Section 27 of the Act by CCI was one of imposing penalty and

directing the parties to cease and desist from anti-competitive conduct in future. In this perspective, the direction to file an undertaking was not a part of the substantive measures taken by CCI. It was necessary for CCI to bear this aspect in mind while considering imposition of penalty under Section 42 of the Act. At this stage, it is necessary to refer to Section 42 of the Act which reads as under:-

“42. Contravention of orders of Commission.— (1) The Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act.

(2) If any person, without reasonable cause, fails to comply with the orders or directions of the Commission issued under sections 27, 28, 31, 32, 33, 42A and 43A of the Act, he shall be punishable with fine which may extend to rupees one lakh for each day during which such non-compliance occurs, subject to a maximum of rupees ten crore, as the Commission may determine.

(3) If any person does not comply with the orders or directions issued, or fails to pay the fine imposed under sub-section (2), he shall, without prejudice to any proceeding under section 39, be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to rupees twenty-five crore, or with both, as the Chief Metropolitan Magistrate, Delhi may deem fit:

Provided that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence under this section save on a complaint filed by the Commission or any of its officers authorised by it.”

16. It is apparent from the above that penalties as contemplated under Section 42(2) of the Act are levied as a punitive measure for non-compliance of orders including orders under Section 27 of the Act. Given

the nature of penalties and the wide discretion vested with CCI, the same are to be considered keeping in view several relevant factors including the nature of directions that have remained uncomplied – whether they are substantive or merely formal, the effect of such non-compliance, the intention of the parties accused of non-compliance, the benefit derived by such parties, causes for non-compliance. Penalties by their very nature are punitive measures and thus, have to be considered in light of the gravity of the offence in respect of which they are imposed.

17. In the present case, there is no allegation that the petitioners had indulged in any anti-competitive conduct or had failed to comply with the directions to cease and desist from anti-competitive conduct as directed by CCI. In the case of R.S. Industries, W.P.(C) 6260/2014, the petitioner (RSI) had lost its registration with DGS&D on 21.12.2011. Thus even prior to the information being filed with CCI and CCI recording its *prima facie* opinion, the petitioner had ceased to be a DGS&D Rate Contractor. Consequently, the petitioner had neither participated in the Rate Contract nor was capable of doing so. In the circumstances, the question of the petitioner entering into any arrangement or bid rigging or indulging in anti-competitive conduct proscribed by CCI, did not arise. In W.P.(C) 5947/2014, the petitioner - Rajkumar Dyeing was blacklisted and debarred from participating in Rate Contract by the DGS&D after CCI's order of 06.08.2013 and so were other bidders.

18. In the given circumstances, it is amply clear there was neither any allegation that the petitioners had failed to comply with the 'cease and desist' order nor in fact the petitioners could have indulged in an anti-

competitive conduct after CCI's order of 06.08.2013. Thus, in the present case, CCI has imposed penalty even though CCI's 'cease and desist' order was not violated and had been fully complied with.

19. Essentially, the petitioners have been faulted for not filing an undertaking, which direction – as stated earlier – was only in aid of the substantive 'cease and desist' order. The learned counsel appearing for CCI argued that CCI had acted fully within its jurisdiction in directing an undertaking to be filed in exercise of its powers under Regulation 36 of the Regulations 2009. The said Regulation 36 reads as under:-

“36. Compliance of orders of Commission.—The Commission shall have power to direct the parties concerned to file an affidavit of compliance of its order or such other documents in the manner specified in its order.”

20. The plain language of Regulation 36 of the Regulations 2009 clearly supports the view that the direction to file an undertaking was, in substance, a direction seeking compliance of the substantive orders passed under Section 27 of the Act, namely, the directions to cease and desist from anti-competitive conduct.

21. It was contended on behalf of CCI that COMPAT had rejected the interim prayer for stay of the direction for filing an undertaking to cease and desist from anti-competitive conduct as directed by CCI. However, this is not entirely accurate. COMPAT had not found the necessity to interfere with CCI's direction to 'cease and desist' and had declined to stay the same; the question of filing the undertaking was not commented upon by COMPAT as the same was merely in aid to ensure compliance to the 'cease

and desist' order; COMPAT did not in any manner either enhance or dilute the substantive direction to cease and desist from anti-competitive conduct as issued by CCI.

22. In the aforesaid view, I find the penalty imposed by CCI to be shockingly disproportionate, as it has been imposed only on account of non-filing of a document in aid of compliance of a substantive direction that was, undisputedly, complied with.

23. The doctrine of proportionately is well established in our jurisprudence and is a recognised facet of Article 14 of the Constitution of India. Article 14 of the Constitution of India strikes at arbitrariness, as the same is opposed to the rule of law. The Supreme Court in the case of **A.P. Dairy Development Corpn. Federation v. B. Narasimha Reddy: (2011) 9 SCC 286** has held as under:-

“29. It is a settled legal proposition that Article 14 of the Constitution strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. This doctrine of arbitrariness is not restricted only to executive actions, but also applies to the legislature. Thus, a party has to satisfy that the action was reasonable, not done in unreasonable manner or capriciously or at pleasure without adequate determining principle, rational, and has been done according to reason or judgment, and certainly does not depend on the will alone.”

24. In recent years, in matters relating to punitive measures, the emphasis has shifted from the wednesbury principle of unreasonableness to one of proportionality. A disproportionate punitive measure, which is not commensurate with the offence, would fall foul of Article 14 of the

Constitution of India. The Supreme Court in *Coimbatore District Central Coop. Bank v. Employees Assn.*: (2007) 4 SCC 669 observed as under:-

“Doctrine of proportionality

17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the “doctrine of proportionality”.

18. “Proportionality” is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of permissible priorities.

19. de Smith states that “proportionality” involves “balancing test” and “necessity test”. Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [*Judicial Review of Administrative Action* (1995), pp. 601-05, para 13.085; see also Wade & Forsyth: *Administrative Law* (2005), p. 366.]

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28. Applying the doctrine of proportionality and following *CCSU* [(1984) 3 All ER 935 (HL)], Venkatachaliah, J. (as His Lordship then was) observed: (SCC p. 620, para 25)

“The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. *The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.*”

(emphasis supplied)”

25. Applying the aforesaid principles to the facts of the present case, it is clear that CCI has imposed a punitive measure which has little co-relation with the gravity of the offending acts.

26. In my view, the impugned order even fails the Wednesbury test of unreasonableness, which was explained by Lord Diplock in **Council of Civil Service Unions v Minister for Civil Service**: (1984) 3 All ER 935 as “*So outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it*”.

27. The learned counsel for CCI sought to draw the attention of this court to various provisions of the Act and contended that CCI has wide discretion

and extensive powers. Undoubtedly so. But, greater the powers, larger the responsibility on the authority vested with it to exercise the same judicially and in public interest. The question involved in the present case is not one of width of CCI's power but the exercise of it.

28. The discretion vested with CCI has to be exercised in a reasonable manner and after considering the relevant factors. In **Associated Provincial Picture Houses v. Wednesbury Corporation**: [1948] 1 KB 223 Lord Greene, M.R had explained acting unreasonably as under:-

“It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably."”

29. The Supreme Court in the case **Indian Rly. Construction Co. Ltd. v. Ajay Kumar**: (2003) 4 SCC 579 also considered and noted the decision of **Wednesbury Corporation** (*supra*) and held as under:-

“18. Therefore, to arrive at a decision on “reasonableness” the court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one.”

30. It is well settled that discretion with the public authority must be applied after taking into account relevant considerations. In the present case, CCI failed to apply its mind to most of the relevant considerations. First of all, CCI has not taken into account that its substantive direction to cease and desist from anti-competitive conduct had not been violated. Secondly, CCI has not considered any element of public interest, warranting an imposition of such penalty. Undisputedly, in absence of violation of the cease and desist order, the failure on the part of the petitioners to file an undertaking did not have any adverse effect on public interest. CCI seemed to have completely ignored this aspect. It is also clear that the petitioners did not benefit from non-filing of the undertaking and there was no reason why the petitioners' contention that their failure to file undertaking was unintentional, should not have been accepted. I find it also strange that CCI did not consider fit to be guided by the order dated 22.02.2014 passed by COMPAT which had considered the mitigating circumstances and stayed the deposit of penalty to the extent of 95% in case of Rajkumar Dyeing and entirety in the case of RSI. COMPAT had stayed the penalty on account of the petitioners being small scale industries. This consideration was completely ignored by CCI.

31. It is relevant to note that CCI in impugned order observed as under:-

“.....It is also observed that OP 6 and OP 9 did not file the undertaking even after the COMPAT order dated 22nd April 2014, wherein, it was clearly stated by COMPAT that there is no stay against the Commission's direction to the OPs to file “cease and desist undertaking” as required by the Commission's order dated 6th August 2013.”

32. This observation made by CCI is also erroneous and misquotes the order passed by COMPAT. COMPAT had not commented on the 'cease and desist undertaking' in its order of 22.04.2014 but had expressed that "*it does not see any necessity of staying the 'cease & desist' order of the CCI*". Thus, not only CCI has overlooked the reasons of COMPAT for staying the penalty imposed by CCI, it has also sought to justify the levy of penalty by misquoting the operative part of COMPAT's order of 22.04.2014.

33. In view of the aforesaid, the impugned order is, clearly, without application of mind and has been passed in wanton exercise of powers, ignoring the relevant factors and the constitutional principles.

34. Accordingly, the petitions are allowed and the impugned order is set aside. The applications stand disposed of. The parties shall bear their own costs.

NOVEMBER 19, 2014
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VIBHU BAKHRU, J