



Evaluation of the monopolies and restrictive trade practices act, 1969

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Abstract

The Monopolies Restrictive Trade Practices (MRTP) Act, 1969 came into force from 1st June 1970. The Act extends to the whole of India except the State of Jammu and Kashmir. Amendments: The Act was amended in 1974, 1980, 1982, 1984, 1985 and 1991. Amendment in 1991 suggested drastic changes in the MRTP Act Viz., repeal of various provisions of the MRTP Act pertaining to concentration of economic power. The Act empowers Central Government to appoint by notification, a Director General of Investigation and Registration.

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Introduction

The Monopolies Restrictive Trade Practices (MRTP) Act, 1969 came into force from 1st June 1970. The Act extends to the whole of India except the State of Jammu and Kashmir. Amendments: The Act was amended in 1974, 1980, 1982, 1984, 1985 and 1991. Amendment in 1991 suggested drastic changes in the MRTP Act Viz., repeal of various provisions of the MRTP Act pertaining to concentration of economic power. The Act empowers Central Government to appoint by notification, a Director General of Investigation and Registration.

Scope and Objective of the act

The principal objectives of the Act are

1. Prevention of concentration of economic power to the common detriment, and
2. Prohibition of monopolistic, restrictive and unfair trade practices which are prejudice to public interest.

The preamble of the Act and Article 39(b) and (c) of the Constitution say that it was enacted to provide for the operation of the economic system which did not result in the concentration of economic power to the common detriment. We need not strike at concentration of economic power as such should not do so only when it becomes a menace to the common detriment (best production and fair distribution). Thus, it was 'Common good' and "Common detriment" that was the objective in this interpretation. In 1991, the provisions against monopolies were swept vide MRTP (Amendment) Act, 1991. Prior to the amendment, the purpose of the MRTP Act was to limit the size of Corporations, so that they do not become giant powers which could be detrimental to consumer interest. Its purpose was to restrict monopolies if they include to common detriment. Two policy instruments were discretely used. The Industries (Development and Regulation) Act with split capacities, ostensibly to create competition and the MRTP Act which was against the large business houses whereby a large business

house could not become large without the sanction from the Government.

Salient features of the act

Jurisdiction and Power of the MRTP Commission

The Commission is empowered with powers to conduct an inquiry into

1. Any restrictive trade practice.
2. Any monopolistic trade practice, and
3. Unfair trade practice.

In the case of restrictive and unfair trade practices the commission may conduct an inquiry

1. Upon receiving a complaint from any trade or consumer association having a membership of not less than twenty-five persons or twenty-five or more consumers
2. Upon a reference made to it by the Central Government or a State Government
3. Upon an application made to it by the Director General of Investigation
4. Upon its own knowledge or information.

In the case of monopolistic trade practices, the commission is empowered to conduct an inquiry.

1. Upon a reference made to it by the Central Government
2. Upon its own knowledge or information.

Powers of the commission

1. For the purpose of any inquiry under this Act, the commission shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 in respect of the following matters:
 - Summoning and enforcing the attendance of any witness and examining him on oath.
 - Discovery and production of any document or other material object as evidence.
 - Receipt of evidence of affidavits and
 - Requisition of any public record from any court or office.

2. The Commission shall have the power to require any person:
 - To produce the books of accounts or other documents in his custody or under his control, relating to any trade practice and allow to be examined by an officer of the Commission specified for the purpose of this Act.
 - To furnish to an officer so specified such information in respect of the trade practice as may be in his possession relating to the trade carried on by other person.
3. For the purpose of enforcing the attendance of witness, the local limits of the Commission's jurisdiction shall be the limits of the territory of India.
4. Section 12-A of the Act empowers the Commission to grant temporary injunction restraining an undertaking or person from carrying on any monopolistic; restrictive or unfair trade practices until the conclusion of an inquiry or until further orders.
5. Section-12-B empowers the Commission to award compensation for the loss or damage caused to the applicant by reason of any monopolistic, restrictive unfair trade practice carried by an undertaking.
6. The orders passed by the Commission under Section 12-A or 12-B may be enforced by the Commission in the same manner as if it were a decree or order made by a court.
7. Section 13 of the Act, empowers the Commission to make its orders conditional or subject to such provisions as may be necessary. But such orders should not be inconsistent with the purpose of the Act.
8. Section 13-A empowers the Commission to cause an investigation to find out whether or not the orders made by it have been complied with.
9. The Commission has power to regulate the procedure and conduct of business inquiry. Further, the Commission may, by notification, make regulations for efficient performance of its functions under this Act.

As stated earlier, the MRTP Act is now only concerned with the control of monopolistic, restrictive and unfair trade practices. Hence, a brief mention of the above said practices has been made here.

Monopolistic trade practices

A monopolistic trade practice is a trade practice which has, or is likely to have the effect of:

1. Maintaining prices at an reasonable level by limiting, reducing or otherwise controlling the production, supply or distribution of goods of any description or the supply of any services.
2. Unreasonably preventing or lessening competition in the production, supply or distribution of any goods or services.
3. Limiting technical development or capital investment to the common detriment.
4. Allowing the quality of goods produced, supplied or distributed or any services rendered in India.

The Act empowers the Central Government to control and prohibit those monopolistic trade practices that are prejudicial to the public interest. The underlying idea is to safeguard

public interest from any injury that may be caused as a result of such practice.

Restrictive trade practices

A 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:

1. tends to obstruct the flow of capital or resources into the stream of production;
2. tends to bring about" manipulation of prices or conditions of delivery or supply of goods or services in such manner as to impose on consumers unjustified costs or restrictions;

A trade practice which merely regulates and thereby promotes competition, cannot be regarded as a restrictive trade practice even though it may be, to some extent, in restraint of trade.

Section 37 of the MRTP Act empowers the MRTP Commission to conduct an inquiry into any restrictive trade practice, whether registered or not under Section 35. The Commission may conduct an inquiry into any restrictive trade practice either on its own or intuitive upon a reference made to it by the Central Government or State Government or in response to specific complaints by the consumers or consumer association or on a complaint made by the Director General of Investigation. The purpose of the inquiry is to find out whether the said trade practice comes under the definition of the restrictive trade practice and if so, whether the practice is prejudicial to public interest. If the Commission is of the opinion that practice is prejudicial to public interest, it may, by order, direct that:

- a. The practice shall be discontinued or shall not be repeated (Cease and Desist Order)
- b. The agreement relating to the said practice shall be void or shall stand modified thereof in such manner as may be specified in the Order.

Unfair trade practices

The MRTP Amendment Act, 1984 provides for the control of unfair trade practice. Section 36- A of the Act defines an unfair trade practice as follows: -

An unfair trade practice means a trade practice which for the purpose of promotion of the sale, use or supply of goods or of the provision of any services, adopts one or more of the following practices and thereby cause loss or injury to the consumers of such goods or services whether by eliminating or restricting competition or otherwise."

The various unfair trade practices are listed below:

1. The practice of making any statement, whether orally or in writing or by visible representation.
2. Permits the publication of any advertisement, whether in any newspaper or otherwise, for the sale at a bargain price of goods or services that are not intended to be offered for sale, supply at the bargaining price.
3. Permits the
 - a. Offering of gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole

- b. Conduct of any contest, lottery, game of chance or skill, for the purpose of prompting, directly or indirectly, the sale, use or supply of any product or any business interest.
- 4. Permits the sale or supply of goods intended to be used or are of a kind likely to be used by customers, knowing or having reason to believe that the goods do not comply with the standards prescribed by the competent authority relating to performance, composition, contents, design, etc.
- 5. Permits the hoarding or destruction of goods, or refusal to sell the goods or to make them available for sale, or to provide any service, if such hoarding or destruction or refusal raises or tends to raise the cost of those or other similar goods or services.

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