

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT: REGISTRATION OF PLAYERS WITH FEDERATION

Date of Decision: 04.11.2011

W.P.(C) 5770/2011

HEMANT SHARMA AND ORS

..... Petitioners

Through: Ms. Rekha Palli, Advocate

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Neeraj Chaudhari, CGSC with Mr. Khalid Arshad, Advocate for UOI.
Ms. Manmeet Arora with Ms. Fareha Ahmed Khan, Advocates for respondent no.2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (Oral)

1. By this petition, the petitioner seeks the issuance of a writ of mandamus to direct respondent no.1 i.e. UOI to the Secretary, Ministry of Youth Affairs & Sports, to take appropriate steps so that respondent no.2 i.e. All India Chess Federation does not ban/threaten to ban chess players, associating themselves with other chess associations. Respondent no.2 is the National Federation for the sport of chess, recognized by respondent no.1. Respondent no.2 also is the body recognized by the concerned international federation i.e. Federation Internationale Des Echess (FIDE).

2. The petitioners claim to be chess players. In the past, they have registered themselves with respondent no.2 on an annual basis. They have been participating in chess tournaments organized by respondent no.2, and those which respondent no.2 has authorized or approved. The case of the petitioners is that the petitioners being amateurs, like to play chess whenever an opportunity presents itself, even in those tournaments not organized by respondent no.2 or which may not have the blessings of respondent no.2.

3. The submission of the petitioner is that respondent no.1 has issued the revised guidelines for assistance to National Sports Federation (NSF). Under these guidelines, it is provided that National Sports Federations shall be fully responsible and accountable for the overall management, direction, control, regulation, promotion, development and

sponsorship of the discipline for which they are recognized by the concerned International Federation. They are expected to discharge their responsibilities in consonance with the principles laid down in the Olympic Charter, or in the charter of the Indian Olympic Association, or the relevant International Federation as the case may be. These guidelines further provide that the NSFs should maintain certain basic standards, norms and procedures with regard to their internal functioning, which conform to the high principles and objectives laid down by the concerned international federation, and which are also in complete consonance with the principles laid down in the Olympic Charter or in the constitution of the Indian Olympic Association. The sports federations seeking recognition as NSFs are required to apply as per the guidelines contained in Annexure P-II to the said guidelines contained in Memorandum No.F.6-6/94-SP-III. The considerations which the Ministry of Youth Affairs & Sports shall take into account and be guided by, inter alia, are that the sports federation is recognized by the international federation and the Asian federation, the role played and contribution made by the association in promoting and developing sports in India, and the role played by the association in protection and promotion of players interest and welfare.

4. Ms. Palli, learned counsel for the petitioner points out that the FIDE has laid down the moral principles of FIDE which are applicable to FIDE for non-FIDE chess competitions. The second principle laid down is that FIDE reaffirms its commitment to the right to play chess and opposes all actions that would hinder that right. Ms. Palli further submits that under the guidelines issued by the Ministry of Youth Affairs & Sports, it is the obligation of respondent no.2 to protect the right of the players to play chess and to oppose all organized actions which would hinder that right of the petitioners to play chess. Ms. Palli further submits, by reference to the aforesaid guidelines that the NSFs are primarily responsible for judicious selection of sports persons for participation in major international events based on merit and with the object of enhancing national prestige and bringing glory to the country. The NSFs are expected to introduce seeding and ranking systems which would provide an automatic and transparent system of selection. The NSFs are also required to introduce machinery for the redressal of players' grievances. Such federations are also expected to evolve a system of extensive local competitions.

5. The procedure for suspension/withdrawal of recommendation is contained in Annexure III of the said guidelines. One of the reasons for which the recommendation may be withdrawn by respondent no.1, in respect of NSF, is that where in the judgment of the Government of India, the federation is not functioning in the best interest of development of sports for which the federation was granted recognition.

6. The grievance of the petitioners is that respondent no.2 prohibits chess players who are registered with it from playing in any tournament, or participating in any competition of chess, if such a tournament/competition is organized by an association/federation or other body which does not have the approval of respondent no.2. Ms. Palli submits that the said conduct of respondent no.2 is highly monopolistic and anti-competitive. Respondent no.2 being the internationally recognized sports federation is exploiting its dominant position to impose such unreasonable restrictions on the rights of the players, by issuing

caution notices and by claiming that such conduct of the players is detrimental to the interest of respondent no.2. In this respect, Ms. Palli has drawn my attention to the caution notice displayed by respondent no.2 on its website. The said caution notice reads:-

Caution

“This is to inform all chess players/organizers/officials that any chess event organized under the banner of “Chess Association of India” is not recognized by the All India Chess Federation.

A reminder of our earlier circular

CAUTION

A set of disgruntled elements have announced that they have formed a Chess Association as rivals to the All India Chess Federation. In their mails the Chess Association of India has announced that, with the permission of World Chess Federation Inc (a rival to FIDE) they will organize an open tournament at Delhi from 23rd Dec weith a Prize fund of Rs.15 lakhs.

All India Chess Federation cautions all chess players affiliated to us not to participate in these tournaments or any other tournament to be organized by Chess Association of India in future as their events are not recognized by All India Chess Federation and as such not authorized by AICF. This is to further remind all AICF registered players that you have signed a declaration in the players registration form, which we quote for your ready reference.

“I also declare that I will not participate in any unauthorized tournament/championship.”

By playing in the tournaments conducted by Chess Association of India, the registered players of AICF will attract disciplinary action and hence are cautioned against playing in the tournaments to be organized by the rival body. – Published on 09th December, 2009.”

7. Ms. Palli submits that one of the petitioner’s made an enquiry under the Right to Information Act on respondent no.2. The first query was whether respondent no.2 had removed or recommended the FIDE to remove the rating of some chess players of India. The said query was answered in the affirmative by respondent no.2. The second query was that on what charges and under which clause of the byelaws of Federation such recommendation was made? The answer to the said query given by respondent no.2 reads as follows:-

“Ans: Action was taken under the following Sections/Clause of the bye laws of All India Chess Federation,

Section 9(n) : To take disciplinary action against its members, the office bearers, officials and players recognized by the federation or of any recognised Members.

Section 16(b)(XV) : To take disciplinary action against Officials and Players concerning the charges leveled.

Section 27. Rules and Regulations:

All Rules and Regulations framed for relevant purposes or on any matters and adopted by the Central Council and the General Body shall have the same force as this Constitution.

Rule II of Annexure to the Bye Laws:

(C) Players shall desist from indulging in any act detrimental to the interests of Federation.

(j) Players shall not fraudulently participate in events.

(v) Any other act which is against the aim and objects of the Federation and detrimental to its interests.

(x) Players shall strictly abide by the Constitution, Rules Regulations and Orders/Instructions of the Federations in force from time to time and also abide by the instructions of the Arbiters and AICF Office Bearers.

As per players Registration form

DECLARATION

2. I also declare that I shall abide by the rules and regulations and the latest amendments and decisions of the State/District Chess Association/Federation as the case may be and cooperate with the officials in participating in State and National Tournaments/Championships.

3. I also declare that I will not participate in any unauthorized tournament/championship”.

8. Ms. Palli submits that the Railway Sports Promotion Board, which is also affiliated to respondent no.2 federation issued a circular dated 24.6.2011 to the effect that some railway chess players had participated in chess tournaments which were not authorized by respondent no.2. Respondent no.2 had relied upon its rule that a player who is registered with respondent no.2 cannot play in any unauthorized tournament and if he does so, he shall attract disciplinary action. The Railway Sports Promotion Board has, therefore, directed that chess players who have participated in any chess tournament which does not figure in the tournament calendar of respondent no.2 and is not

recognized by respondent no.2 should not be allowed to participate in the tournament organized by Railway Sports Promotion Board. Ms. Palli submits that when the petitioner made a representation to respondent no.1 against the aforesaid conduct of respondent no.2, respondent no.1 has merely forwarded the petitioners grievance to respondent no.2 and obtained its response without examining the position itself. Respondent no.2 in its communication dated 10.05.2011 has, inter alia, stated as follows:-
“The players who are registered with All India Chess Federation are bound by the Rules and Regulations of the Federation. Those players who want to be part of the Federation have to follow these rules. As per the Rules of the Federation no player can participate in unauthorized/illegal tournaments which are not recognized or approved by the Federation. This fact is known to all the players and the same is posted on our website.

Some former office bearers of the Federation who have been expelled /suspended for their acts of omissions and commissions have floated a new body called the “Chess Association of India” claiming themselves to be a parallel body to the All India Chess Federation. They are organizing tournaments and also naming some of these tournaments as National Championships. This according to us is a criminal act as the players are duped that the certificates issued by them is valid for employment opportunities in government and public sector undertakings.

We have prominently displayed on our website that players participating in such tournaments are liable for disciplinary proceedings and cautioned them against participating. Despite this some players have participated in unauthorized tournaments and as such they seized to become our members. The Federation is not duty bound to offer secretarial services to these players. Moreover, the Federation pays a fee to each of our members to the FIDE annually.

Our Central Council has decided to inform FIDE about the players who are no longer our members and to withdraw their ratings. They are free to play in tournaments not approved by us. We cannot stop them in playing unapproved/illegal tournaments. But they cannot continue to be our members. So it is wrong to say that our actions are undemocratic or illegal.

We enclose the players registration form wherein the players have to sign a declaration stating that they will not play in unauthorized tournaments, is highlighted for your immediate reference. We are also enclosing a copy of our notification on our website cautioning the players against participating in unauthorized/illegal tournaments”.

9. The aforesaid conduct or stand of respondent no.2 is not denied by learned counsel for respondent no.2. In fact, she has drawn my attention to the declaration that chess players make at the time of seeking registration. The said declaration, inter alia reads as follows:-

“I also declare that I shall abide by the rules and regulations and the latest amendments and decisions of the State/District Chess Association/Federation as the case may be and cooperate with the officials in participating in State and National Tournaments/Championships.”

10. She has also drawn my attention to the annexure to the constitution and byelaws of respondent no.2 which, inter alia provides in clause(z) as follows:-

“No player shall participate in any tournament not authorized by All India Chess Federation or by its affiliate members or District Associations and units affiliated to them. The above violation shall attract disciplinary proceedings including cash penalties apart from debarring from participating in any tournaments in future.”

11. Learned counsel for respondent no.2 submits that there is no challenge by the petitioner to the constitutional byelaws of respondent no.2 in the present petition and even if such a challenge were to be raised, this is not the right forum. She also submits that respondent no.1 does not retain any supervisory jurisdiction over respondent no.2. Consequently, this Court cannot issue any direction to respondent No.1, as prayed for in this petition. She further submits that respondent no.2 is not even located within the jurisdiction of this Court and, even according to the petitioner, no relief is directed against respondent No.2 directly. The prayer made in the petition is directed only against respondent no.1, though it affects respondent no.2 as well.

12. The petitioner indeed has not been able to point out any statutory obligation on the part of respondent no.1 to issue the directions as sought for in this petition pertaining to respondent no.2. In the absence of such authority and responsibility vested in respondent no.1, this Court is not inclined to entertain the present writ petition and grant the relief as sought for in this petition.

13. However, in my view, the matter does not end there. Prima facie, it appears to me that the endeavour of respondent no.2 appears to be to exercise its monopolistic and dominant position to stifle the growth of any other association of chess players, by threatening the chess players registered with it, with disciplinary action/expulsion and a virtual boycott in case they participate in tournaments organized by such other associations. The policy and conduct of respondent No.2 may, therefore, call for examination by the Competition Commission constituted under the Competition Act, 2002.

14. Learned counsel for the petitioner has relied upon the decision of the Supreme Court in State of West Bengal and Others Vs. Committee for Protection of Democratic Rights, West Bengal and Others, AIR 2010 SC 1476. The issue considered by the Supreme Court in this decision was whether the High Court, in exercise of this jurisdiction under Article 226 of the Constitution has the power to direct the CBI to investigate a case within its territorial jurisdiction without the concurrence of the State Government, as is required under Section 6 of the Delhi Special Police Establishment Act, 1946 under which the CBI has been constituted. The Supreme Court has held that, in deserving and exceptional cases, the Court may direct the CBI to cause an investigation to be made in such like cases.

15. Learned counsel for respondent no.2 has sought to explain that under the scheme of things, as it exists not only in this country, but internationally, only one federation is recognized at the district, state and national level- which also obtains recognition from

the international body pertaining to the discipline of sport in question. By reference to the guidelines, she submits that only that sports federation, which is recognized by the concerned international sports council, is granted national recognition by the Government of India.

16. The issue is not about the recognition of respondent no.2 as the NSF. The issue is with regard to the right of the players of chess to form another association and to organize tournaments in the country without the involvement of or the blessings of respondent No.2. The issue is with regard to the right of the players to freely participate in tournaments so organized, without the fear of being hounded by respondent no.2 and without the fear of the Sword of Damocles falling on their heads, if they participate in such so-called illegal or unauthorized tournaments.

17. Respondent no.2 has been given the mandate to select the players who would eventually be entitled to participate in international tournaments. Respondent no.2 also flexes its muscles by instructing FIDE to remove the ranking of the chess players who participate in unauthorized or illegal tournaments. Therefore the dependence of all players on respondent no. 2 for registration cannot be overemphasized.

18. I have put it to learned counsel for respondent no.2 as to why this Court should not refer the constitutional provisions, rules and regulations and the aforesaid conduct and practice of respondent no.2 for investigation and inquiry by the Competition Commission constituted under the Competition Act, 2002, as I am inclined to do so. Learned counsel for respondent no.2 submits, by reference to the Statement of Objects and Reasons, and the preamble of the Competition Act, that the said Act has been enacted to deal with commercial matters only. The Statement of Objects and Reasons of the said Act shows that the said Act has been enacted by the Parliament as a result of the opening up of the economy, in pursuit of globalization. The purpose is to gear up the Indian market to face competition from within, and outside. The Preamble of the Act provides that the Act is enacted in view of the economic development of the country, to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried out by other participants and markets in India. She also refers to the judgment of the Supreme Court in Competition Commission Vs. Steel Authority of India Limited and Another, (2010) 10 SCC 744, wherein the Supreme Court sets out the background in which the Competition Act has been enacted and the purpose for which it has been enacted.

19. Ms. Manmeet Arora, submits that respondent no. 2 NSF is not covered by the Competition Act. She further submits that the power to make a reference under Section 19(1)(b) of the Competition Act is vested with the Central Government, or the State Government or the statutory authority. She submits that the expression “statutory authority” is defined in Section 2(w) of the Act to mean any authority, board, corporation, council, institute, university or any other body corporate established by or under any Central, State or Provincial Act for the purposes of regulating production or supply of goods or provision of any services or markets therefor or any matter connected

therewith or incidental thereto. She submits that this Court is not a statutory authority as it is constituted under the Constitution of India.

20. She further submits that the reference can be made by a statutory authority under Section 21 of the Act. This Section postulates that where the statutory authority, during the course of any proceedings before it, is inclined to make any decision which would be contrary to the provisions of the Competition Act, such authority may make a reference to the Competition Commission. Upon receipt of such reference, the Competition Commission is required to give its opinion and to send the same to the statutory authority. She submits that this Court is in the process of disposing of this petition and the situation contemplated by Section 21 of the Act does not exist in the facts of this case. She submits that the opinion of the Competition commission is not binding on this Court. In fact, the decisions of the Competition Commission are subject to judicial review before this Court. She also submits that this Court is not exercising territorial jurisdiction over respondent no.2 and, therefore, this Court has no jurisdiction to refer the case of respondent no.2 for examination by the Competition Commission.

21. Learned counsel for the respondent submits that the decision in State of West Bengal (supra) is of no avail to the petitioner for the reason that the issuance of the direction by the High Court for the conduct of investigation by the CBI was upheld in the peculiar circumstances of that case. It was found, as a matter of fact, that the local police was not investigating the case which involved the death of eleven persons while few others were missing. The allegation in that case was that the ruling party in the State was not interested in the conduct of fair and local investigation. She submits that it is open to the petitioner to approach the Competition Commission on its own and this Court should not, therefore, make a reference to the Commission under Article 226 of the Constitution. She also relies on T.C.Thangaraj; P.Suganthi & Anr Vs. V. Engammal & Ors., 2011(8) Scale 120, wherein the Supreme Court reversed the decision of the High Court directing investigation by the CBI in a case where the allegation was that, since one of the accused was a police officer, the local police was not conducting the investigation properly. The Supreme Court held that if the High Court found that the investigation was not being completed because one of the accused was an Inspector of Police, the High Court could have directed the Superintendent of Police to entrust the investigation to an officer, senior in rank to the Inspector of Police under Section 154(3) Cr.P.C and not to the CBI. The Supreme Court also referred to Section 156(3) of the Cr.P.C which provides a check on the performance by the police of their duties, and where the Magistrate finds that the police have not done their duty or not investigated satisfactorily, he can direct the Police to carry out the investigation properly, and can monitor the same.

22. In her rejoinder, learned counsel has drawn my attention to Section 2(h) of the Competition Act, which defines the expression 'enterprise' to mean "a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions

or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.”

23. The expression ‘activity’ has been defined to include profession or occupation. Respondent no.2, admittedly, charges a registration fee on an annual basis. She submits that respondent no.2 also charges fee from players to participate in tournaments organised by it.

24. Section 2(f) defines the expression ‘consumer’ to, inter alia, mean, ”any person who (i)-----
(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use;”

25. It is argued that when the departments of the government, engaged in, inter alia, provision of services of any kind are covered by the expression ‘enterprise’, certainly respondent No.2 cannot escape from the scope of that expression. It is argued that respondent No.2 itself claims to be rendering service to the players registered with it for a charge, and the petitioners are the consumers of the said services. Respondent No. 2, admittedly, charges a registration fee on an annual basis. She submits that respondent No. 2 also charges fee from players to participate in tournaments organized by it. It is, therefore, argued that respondent No.2 is covered under the Competition Commission Act, 2002. She further submits that the caution that the High Court needs to exercise, in exercise of its jurisdiction under Article 226, while referring a case for investigation to the Competition Commission is not comparable to the situation where the High Court seeks to substitute the CBI as the investigating agency. This is because the said direction of the Court seeks to substitute the normal investigating agency i.e the local police concerned with the CBI, and that too without the concurrence of the State Government. She submits that under Section 19 of the Competition Act, the power of the Commission to cause an investigation can be exercised suo moto or upon information being received from any person, consumer or their association or trade association. When any person or consumer can seek investigation of a case by the CCI, certainly this Court, in appropriate cases, can ask the CCI to look into a case.

26. Having heard learned counsel for the parties, prima facie, it appears to me that respondent no.2 is rendering services to the petitioners and to all others who are registered with it as chess players. The responsibilities of respondent no.2 as an NSF are set out in the guidelines issued by respondent no.1, some of which have already been referred to earlier. Admittedly, respondent no.2 organises chess tournaments and

provides technical support and expertise for conduct of such chess tournaments. That, in my prima facie view, would constitute service rendered by respondent no.2 to the players who are registered with it. Such service is being rendered for a consideration received from the players, as is evident from the registration form, a copy whereof has been filed on record by respondent no.2. It is also borne by respondent No.1 for the benefit of all chess players who provides grants to respondent No.2.

27. Respondent no.2, prima facie, would also fall within the expression 'enterprise' as used in the Act which is very widely worded to even include a person or a department of the government rendering services "of any kind" and excludes only those activities of the government which are relatable to sovereign functions of the government and all activities carried out by the departments of the Central Government dealing with atomic energy, currency, defence and space. Respondent no.2 does not fall in any of the said exceptions.

28. As aforesaid, it is engaged in rendering services of a kind. The reference to the Statement of Objects and Reasons only shows that the Competition Act came to be enacted in the wake of globalization and opening up of India's economy. However, the said Act was also enacted to replace the obsolete Monopolies and Restrictive Trade Practices Act, 1969 which empowered the MRTP commission to enquire into monopolistic and unfair trade practices. The reliance on the Statements and Objects and Reasons of the Competition Act by respondent no.2 is also of no avail in view of the express provisions contained in the said Act which do not show that the provisions of the said Act are applicable only to commercial establishments who provide goods or render services. In *Tribhuban Parkash v. Union of India*, AIR 1970 SC 540, the Supreme Court held that only when there is a doubt as to the meaning of a provision, recourse may be made had to the preamble to ascertain the reasons for the enactment and hence the intention of the Parliament. If the language of the enactment is capable of more than one meaning then that one is to be preferred which comes nearest to the purpose and scope of the preamble. In other words, Preamble may assist in ascertaining the meaning but it does not affect clear words in a statute. The courts are thus not expected to start with the preamble for construing a statutory provision nor does the mere fact that a clear and unambiguous statutory provision goes beyond the preamble give rise by itself to a doubt on its meaning. Since the meaning of the expression 'enterprise', 'service' and 'consumer' as used in the Competition Act is very clear, I am not inclined to accept the submission of respondent no.2 founded upon a reading of the Statement of Object and Reasons and Preamble to the Competition Act, 2002.

29. The Preamble of the Competition Act, when closely read, shows that the said Act has been enacted to provide, keeping in view the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto."(emphasis supplied).

30. Therefore, one of the purposes of the said Act is to prevent practices having adverse effect on competition. The said practice need not necessarily be related to trade or commerce.

31. The definition of the expression 'enterprise' as used in the Competition Act read with the definition of "service" thereof, in my view, clearly shows that the respondent no.2 is an enterprise which is covered by the said provisions. The allegation against respondent no.2 is that respondent no.2, by virtue of its agreement with the petitioners, is seeking to control the provision of services which is causing adverse effect on competition within India, inasmuch, as, the chess players registered with respondent no.2 are not free to form another association or to organize tournaments and participate therein, without facing the consequence of losing their registration with respondent no.2 which is the nationally recognized sports federation for the sports of chess. The allegation also is that respondent no.2 is abusing its dominant position as the NSF.

32. The submission of learned counsel for respondent no.2 is that, in terms of its mandate, respondent no.2 is regulating the sport of chess by preventing players registered with it from participating in chess tournaments organized with other chess associations and organizations which are not recognized by respondent no.2. she submits this is done to protect the interest of the players from being exploited by such other associations/organizations. Whether or not the said activity of respondent no.2 falls foul of the Competition Act would be an issue to be determined by the Competition Commission, and I am not required to go into the said issue.

33. The power of this Court under Article 226 of the Constitution of India extends to the issuance of appropriate directions, orders or writs for enforcement of any of the rights conferred by Part III of the Constitution or for any other purpose. Since in the present case the petitioner has brought to this Court's notice the aforesaid state of affairs in relation to respondent no.2, this Court is of the opinion that the said aspects need thorough investigation under the provisions of the Competition Act by the Competition Commission. There could be breach of the petitioners fundamental rights to freedom, resulting from the policies and practices of respondent No.2, as guaranteed under Article 19(1)(c) and 19(1)(g) of the Constitution of India.

34. The Supreme Court in State of West Bengal (supra) has recognized the power of the High Court, in appropriate cases, to require the CBI to cause an investigation in relation to a case falling within its territorial jurisdiction. If the High Court can direct the investigation to be made by the CBI in appropriate cases, whereby the provision of Section 6 of the Delhi Special Police Establishment Act, 1946 is over ridden, certainly the High Court can direct the making of a reference to the Competition Commission under Section 19 of the Competition Act, particularly when the Competition Commission can cause the investigation to be made not only suo motu, but on receipt of intimation "from any person". In fact, in State of West Bengal (supra), the Supreme Court in paragraph 45 observed that being the protectors of civil liberties of the citizens, the Supreme Court and the High Courts have not only the power and jurisdiction, but also an obligation to protect the fundamental rights, guaranteed by Part III in general, and under

Article 21 of the Constitution in particular, zealously and vigilantly. The judgment in the case of T.C.Thangaraj (supra) has no application in the light of the aforesaid discussion and the substantially different positions of the Competition Act, 2002 and the Delhi Police Establishment Act whereunder CBI is constituted.

35. I, therefore, direct the Competition Commission to enquire into the alleged contravention of the provisions of Section 3 and Section 4 by respondent no.2 by its aforesaid constitutional provisions and conduct under Section 26 of the Competition Commission Act, 2002. The petitioner may appear before the Commission on 28.11.2011. The petitioner shall present before the Commission a memorandum containing its grievances in this respect on the said date.

36. It is made clear that observations made by me in relation to the case of respondent no.2 are only prima facie, and shall not prejudice their case and the Commission shall enquire into the same independently.

Sd./-

VIPIN SANGHI, J

NOVEMBER 04, 2011