®

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JUNE, 2021

BEFORE

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

WRIT PETITION No.3363 OF 2020
C/W
WRIT PETITION No.4334 OF 2020 (GM-RES)

IN W.P. NO.3363 OF 2020

BETWEEN :

AMAZON SELLER SERVICES PRIVATE
LIMITED, REGISTERED OFFICE
8TH FLOOR, BRIGADE GATEWAY
26/1, DR.RAJKUMAR ROAD
BENGALURU-560 055
REPRESENTED BY ITS
AUTHORIZED SIGNATORY
MR. RAHUL SUNDARAM
AGED ABOUT 46 YEARS. ... PETITIONER

(BY SHRI. GOPAL SUBRAMANIUM, SENIOR ADVOCATE AND
SHRI. SAJAN POOVAYYA, SENIOR ADVOCATE FOR
SHRI. NIKHIL JOY, ADVOCATE)

AND :

1. COMPETITION COMMISSION OF
INIDA, 9TH FLOOR
OFFICE BLOCK-1
OPPOSITE RING ROAD
EAST KIDWAI NAGAR
NEW DELHI-110 023
REPRESENTED BY ITS SECRETARY

2. DELHI VYPAAR MAHASANGH
#877, 1ST FLOOR, QUATAB ROAD
SADAR BAZAR, DELHI-110 006

REPRESENTED BY
AUTHORIZED SIGNATORY

3. FILPKART INTERNET PRIVATE
LIMITED, BUILDINGS ALYSSA
BEGONIA AND CLOVER
EMBASSY TECH VILLAGE
OUTER RING ROAD
DEVARABEESANAHALLI VILLAGE
BENGALURU-560 103
REPRESENTED BY ITS
DIRECTOR

4. CONFEDERATION OF ALL INDIA
TRADERS VYAPAR BHAWAN,
#925/1, NAIWALAN, KAROL BAGH
NEW DELHI-110 005
REPRESENTED BY ITS
SECRETARY GENERAL ... RESPONDENTS

(BY SMT. MADHAVI DIWAN, Addl. SG A/W
SHRI. B.N. HARISHA, ADVOCATE FOR R1;
SHRI. S. GAUTAMADITYA AND
SHRI. ABIR ROY, ADVOCATES FOR R2 & R4;
SHRI. UDAYA HOLLA, SENIOR ADVOCATE AND
SHRI. DHYAN CHINNAPPA, SENIOR ADVOCATE FOR
SHRI. AASHISH GUPTA, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH AND SET ASIDE THE IMPUGNED ORDER DATED JANUARY 13, 2020, IN CASE NO.40/2019 PASSED BY R-1, I.E., COMPETITION COMMISSION OF INDIA QUA THE PETITIONER, PENDING BEFORE THE COMPETITION COMMISSION OF INDIA, VIDE ANNEXURE-A.

IN W.P. No.4334 OF 2020

BETWEEN :

FLIPKART INTERNET PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE
AT BUILDINGS ALYSSA
BEGONIA AND CLOVER
EMBASSY TECH VILLAGE
OUTER RING ROAD
DEVERABEESANAHALLI VILLAGE

BENGALURU-560 103
THROUGH ITS AUTHORIZED SIGNATORY
SHRI. SUKANT DUKHANDE ... PETITIONER

(BY SHRI. UDAYA HOLLA, SENIOR ADVOCATE AND
SHRI. DHYAN CHINNAPPA, SENIOR ADVOCATE FOR
SMT. VINUTA WAMAN RAYADURG, ADVOCATE)

AND :

1. COMPETITION COMMISSION OF INDIA
OFFICE BLOCK-1
KIDWAI NAGAR (EAST)
OPPOSITE RING ROAD
NEW DELHI-110 023
THROUGH ITS SECRETARY

2. DELHI VYAPAR MAHASANGH
#877, 1ST FLOOR, QUTUB ROAD
SADAR BAZAR, DELHI-110 006
THROUGH ITS SECRETARY

3. AMAZON SELLER SERVICES
PRIVATE LIMITED, 8TH FLOOR
BRIGADE GATEWAY, 26/1
DR.RAJKUMAR ROAD
BANGALORE-560 055
REP. BY AUTHORIZED REPRESENTATIVE

4. CONFEDERATION OF ALL INDIA TRADERS
A SOCIETY REGISTERED UNDER
THE SOCIETIES REGISTRATION ACT, 1860
(AS APPLICABLE TO NCT OF DELHI)
HAVING OFFICE AT
VYAPAR BHAWAN, #925/1
NAIWALAN, KAROL BANGH
NEW DELHI-110 005 ... RESPONDENTS

[AMENDED AS PER ORDER DATED 08.01.2021]

(BY SMT. MADHAVI DIWAN, ASG A/W
SHRI. B.N. HARISHA, ADVOCATE FOR R1;
SHRI. S. GAUTAMADITYA AND
SHRI. ABIR ROY, ADVOCATES FOR R2 & R4;
SHRI. GOPAL SUBRAMANIUM, SENIOR ADVOCATE AND
SHRI. SAJJAN POOVAYYA, SENIOR ADVOCATE FOR
SHRI. NIKHIL JOY, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER DTD.13.01.2020 ISSUED BY THE R-1 CASE NO.40/2019 DIRECTING INVESTIGATION UNDER SECTION 26(1) OF THE COMPETITION ACT ANNEXURE-A.

THESE WRIT PETITIONS, HAVING BEEN HEARD THROUGH VIDEO CONFERENCING AND RESERVED FOR ORDERS ON 23.04.2021, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

ORDER

Amazon Seller Services Pvt. Ltd.[1], and Flipkart Internet Pvt. Ltd.[2], have filed these writ petitions with prayers *inter alia* to quash order dated January 13, 2020 passed by the Competition Commission of India[3], in Case No.40/2019, directing an investigation under Section 26(1) of the Competition Act, 2002 ('Act' for short) by the Director General[4].

Facts of the case:

2. Amazon and Flipkart have averred that they are private limited Companies. They operate 'Online Market

[1] 'Amazon' for short
[2] 'Flipkart' for short
[3] 'Commission' for short
[4] 'DG' for short

Places' on which, products listed for sale, are owned and sold by third parties.

3. Amazon has pleaded that it also provides certain support services to third party sellers to facilitate sale of goods. Those services are integral and non-separable from retail trade and include warehousing, packing, shipment, delivery/return of products centralized payment processing, refund etc.

4. Delhi Vyapar Mahasangh (respondent No.2) is a Society comprising of Micro, Small and Medium Enterprises registered under the Societies Registration Act, 1860. It has filed information alleging contravention of Section 3(1) read with Section 3(4) and Section 4(1) and 4(2) of the Competition Act and sought directions for investigation under Section 26(1) of the Competition Act. Upon consideration of the said information, Commission has passed the impugned order.

5. The main grounds urged on behalf of petitioners are:

(a) The impugned order is *ultra vires* the object and purpose of Competition Act;

(b) The impugned order suffers from non-application of mind;

(c) Delhi Vyapar Mahasangh, the informant has acted on behalf of Confederation of All India Traders[5] which has initiated multiple proceedings against petitioners, but failed to obtain any order;

(d) The impugned order cannot be improved by additional justification in the Statement of objections by the Commission;

(e) Commission has deviated from its own earlier practice;

(f) Petitioners are not provided with any notice. On earlier occasions, while dealing with similar allegations, the Commission had provided opportunity of hearing before forming a *prima facie* view.

[5] 'CAIT' for short

(g) The impugned order is not a reasoned order as there is no analysis with regard to Appreciable Adverse Effect on Competition[6];

(h) The Commission has not formed any *prima facie* opinion with regard to contravention of any provision.

(i) The jurisdiction of CCI is barred on account of pending investigation by the Enforcement Directorate; and

(j) The impugned order is abuse of process of law and would cause grave hardship to the petitioners.

6. Amplifying the grounds urged in support of writ petitions, Shri. Gopal Subramanium, learned Senior Advocate has submitted that:

- The Competition Act is to foster the competition in the Country. An Online Market place, in fact, promotes Competition and cannot be treated as anti-competitive, unless, there is clear and cogent evidence

[6] 'AAEC' for short

to that effect. This factor has not been considered by the Commission;

- Commission's main objects are, to prevent practices having adverse effect on Competition, to promote and sustain Competition in the markets, to protect the interests of consumers and to ensure freedom of trade. The Commission has not considered these aspects. Therefore, the impugned order is contrary to the law laid down in *Competition Commission of India Vs. Steel Authority of India Ltd., and Ors.*[7] and *Competition Commission of India Vs. Bharathi Airtel Ltd., and Ors.*[8], and *ultra vires* the object and purpose of the Competition Act;

- In *Star India Pvt. Ltd., Vs. Competition Commission of India*[9], the Hon'ble High Court of Bombay has held that to initiate investigation, it would be necessary for Commission to come to a *prima facie* view with regard to practices complained of and if they result or likely to result in some AAEC;

- Three jurisdictional facts are necessary. Firstly, there must be an agreement, secondly, such agreement must be between the enterprises situated at different

[7] (2010)10 SCC 744 (paragraphs No.6 & 13)
[8] (2019)2 SCC 521 (paragraph No.74)
[9] (2019) SCC Online Bombay 3038

levels of the production or supply chain and thirdly, such agreement should cause or likely to cause AAEC. These requirements have not been satisfied. Therefore, there is no application of mind;

- The informant has come with unclean hands. CAIT has filed writ petitions before High Courts of Delhi and Rajasthan on similar issues. In the writ petition filed before Delhi High Court, based on the statement made by the learned Standing Counsel for the Central Government, direction has been issued to the Directorate of Enforcement to examine whether there is any violation of FDI[10] Policy. As CAIT has failed to obtain favourable orders before the High Courts, it has approached the Commission by using Delhi Vyapar Mahasangh to pursue its cause. The Demand Draft for Rs.50,000/- accompanying the information has been obtained by CAIT. Thus, the informant has not approached the Commission with clean hands;

- The Commission has attempted to improve its case during the course of the proceedings by resorting to new submissions in the Statement of Objections and the same is impermissible in law;

[10] Foreign Direct Investment

- Subsequent to the decision in *CCI Vs. SAIL*, the Commission has started publishing orders passed under Section 26(1) of the Act, on its website. This shall have serious repercussions and adversely affects petitioners' reputation.

7. Shri. Udaya Holla and Shri. Dhyan Chinnappa, learned Senior Advocates have mainly urged following contentions:

- There must be an agreement in place and it must cause or likely to cause AAEC;

- The Commission must form a *prima facie* opinion before ordering investigation;

- No agreement is placed on record. Therefore, the Commission did not have 'jurisdictional facts' while considering the information. It has not recorded its *prima facie* opinion. Therefore, the impugned order is unsustainable in law;

- The manufacturers of products sell them on Flipkart's online market place. If a seller chooses to sell exclusively on Flipkart's market place, it is his/her prerogative and Flipkart cannot be held responsible;

8. The Competition Commission of India has contended in the Statement of objections as follows:

- An order made under Section 26(1) of the Act by the Commission is an 'Administrative Order' directing one of its wings to conduct Departmental proceedings. It does not determine any right or obligation of parties nor entail any civil consequences.

- Petitioners have not challenged the inherent jurisdiction of the Commission to direct investigation;

- e-Commerce is not regulated by any specific legislation or by a sectoral regulator;

- Malafides or exercise of jurisdiction in unreasonable or extraneous way are the only grounds to exercise power of judicial review of administrative orders. Petitioners have not alleged any malafides on the part of Commission while passing the impugned order;

- Petitioners have not pleaded whether the impugned order is contrary to *Wednesbury* Principles of unreasonableness namely that no rational person can come to the conclusion recorded in the impugned order;

- In *Bharathi Airtel*, Hon'ble Supreme Court of India has held that High Courts would not be competent to adjudge the validity of an order made under Section 26(1) of the Act nor review it on merits;

- It is alleged by the informant that petitioners have entered into vertical agreements with 'preferred sellers' and this has led to foreclosure of 'non-preferred sellers' from the Online Market places;

- Commission has analyzed several aspects in the context of violation of Section 3(4) of the Act and the complexity involving the parameters of 'inter-platform', 'intra-platform' and 'inter-channel distribution'. Commission has recorded the existence of preferred sellers, preferential listing etc., in the impugned order;

- Paragraphs No.21 to 26 of the impugned order contain detailed discussions with regard to petitioners' conduct;

- Commission has taken into consideration the factual instances alleged by the informant and reports in public domain which provide for the exact number of mobile phones launched in the year 2018, which is 45 and 67 on the platforms of petitioners herein

respectively. The whole purpose of investigation by the Director General is to test the veracity of allegations made in the information;

- In *CCI Vs. SAIL,* the Hon'ble Supreme Court of India has held that parties do not have vested right of hearing at the stage of order under Section 26(1) of the Act. Regulation 17 of Commission (General) Regulations, 2009 gives discretion to the Commission to call parties for preliminary conference, if deemed necessary;

- After *All India Online Vendors Association*[11] *Vs. Flipkart India Private Limited and another*[12], Commission has developed greater knowledge of functioning in e-Commerce. It has also conducted detailed market study on the subject. Therefore, in this case, there was no occasion for petitioners' assistance at the preliminary stage. In *AIOVA's case,* Commission was dealing with allegations of abuse of dominance under Section 4 of the Act. In such a case, to assess the dominance of an entity, competitor's behaviour in a given case may be relevant. In the case on hand, such opportunity is not warranted on distinct facts. Further, Commission's order in AIOVA

[11] 'AIOVA' for short
[12] 2018 SCC OnLine CCI 97

has been set-aside by NCLAT and matter has been remitted to the Commission with a direction to the Director General to cause investigation;

- Information under Section 19(1)(a) of the Act, is one of the three possible 'starting points' for an enquiry. Commission can also *suo moto* direct investigation. In the light of investigation mechanism provided under the Act, the contents of information will become secondary after the investigation report is filed;

- So far as Commission is concerned, the aspect whether informant has acted independently or at the instance of CAIT, is wholly irrelevant. The Commission is concerned only with the material allegation disclosed in the information, which in its wisdom deserves to be investigated. Further, Commission has also called upon the informant to furnish Certificate under Section 65(b) of the Indian Evidence Act, 1872;

- Commission has prepared 'Market Study' on e-Commerce as required under Section 49(3) of the Act. Observations contained in the Market Study do not determine whether a specific conduct is anti-competitive or not. The issue with regard to 'platform

neutrality' arises from a situation where an e-Commerce Platform acts both as Market place and a Competitor;

- Exclusive agreements and deep discounting raise potential competition concern, as an e-Commerce Platform with market power can thwart competition by entering into exclusive contracts;

- Foreign Direct Investment in e-Commerce is regulated by FDI Policy. e-Commerce business is not regulated by any specific sectoral regulator. An entity engaged in e-Commerce and having no foreign investment will not be required to follow the FDI Policy or any Press note. Foreign Investment related aspects can be investigated by the concerned authorities under Foreign Exchange Management Act, 1999[13]. However, issues relating to 'Exclusive Agreement', 'Preferred Sellers' and 'Deep discounting' which may have adverse effect on the competition in the e-Commerce market in India are within the realm of the Act and therefore, must be left for exclusive enquiry by the Commission;

- Commission is not the only anti-trust regulator which has initiated enquiry against Amazon. European

[13] 'FEMA' for short

Commission, in July 2019 has initiated formal investigation against Amazon on the aspect of collection of competition sensitive data of sellers on the market place and its potential misuse.

9. Delhi Vyapar Mahasangh have filed their Statement of Objections contending *inter alia* that;

- Amazon has made several factual averments in the writ petition with regard to 'fulfilled by Amazon', 'the success of seller's ability', 'discount on products', 'Amazon's business model', 'market place services being non-discriminatory', 'sellers in Amazon market place procure products directly from brand manufacturer and offer to end customers', 'exclusive launches' etc. These factual aspects cannot be gone into in a writ petition and therefore, investigation is necessary;

- Amazon has admitted in paragraph No.70 of the writ petition that 'certain agreements between smart phone manufacturers and Amazon' were signed in Bengaluru;

- Amazon has stated in paragraph No.71 of the writ petition that 'various correspondences/agreements between Amazon and Smart phone manufacturers

have been executed in Bengaluru'. This shows the existence of such agreements;

10. The CAIT (respondent No.4) has filed summary of arguments through Shri.Gautamaditya, learned Advocate contending *inter alia* that:

- It adopts all the arguments made by the Commission and Delhi Vyapar Mahasangh. In addition, it is submitted that this Court has no territorial jurisdiction to entertain these petitions because no part of the cause of action has arisen in the State of Karnataka. This Court also cannot exercise jurisdiction under Article 227 because Commission is situated in Delhi and every High Court has superintendence over the Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction;
- These petitions are appeals in the garb of writ petitions.

11. Smt. Madhavi Diwan, learned Additional Solicitor General for Commission, Shri. S. Gautamaditya, learned Advocate for Delhi Vyapar Mahasangh and Shri. Abhir Roy, learned Advocate for CAIT argued opposing the writ

petitions. Their submissions will be referred to, while discussing the points for consideration.

12. I have carefully considered rival contentions and perused the records. Following points arise for consideration in this case:

A. *What is the nature of the impugned order passed under Section 26(1) of the Act?*

B. *Whether a prior notice and opportunity of hearing is mandatory at the stage of issuing direction to the Director General to hold inquiry under Section 26(1) of the Act?*

C. *Whether impugned order calls for interference?*

Re. Points A & B

13. Both points A & B are inter-connected and hence they are dealt together.

14. The preamble of the Act states that, keeping in view the economic development of the Country,

Competition Act has been brought for establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in the markets, to protect the interests of consumers and to ensure 'freedom of trade' carried on by other participants in the market in India.

15. Under Section 19 of the Act, the Commission may inquire into allegation of contravention of provisions of the Act either on its own motion or on receipt of any information accompanied by such fee as may be determined by the Regulations or upon a reference made by the Central Government or a State Government or a Statutory Authority.

16. Delhi Vyapar Mahasangh has given information against petitioners under Section 19(1)(a) of the Act alleging contravention of Section 3(1) read with Section 3(4) and Section 4(1) read with Section 4(2) of the Act. It has filed a summary of its case together with documents

which it has considered supportive of its allegations. Though, the informant has alleged contravention of Sections 3(1), 3(4), 4(1) and 4(2) of the Act, the Commission has held that Act does not provide for an enquiry or investigation in cases of Joint/Collective dominance and has directed inquiry by the Director General for alleged violation of Section 3(1) read with Section 3(4) of the Act.

17. The informant has alleged that the petitioners have entered into several vertical agreements with preferred sellers and following aspects require investigation and consideration by the Commission:

- Deep discounting;
- Preferential Listing; and
- Exclusive Tie-ups.

➢ **Deep Discounting**

18. With regard to deep discounting the informant has alleged that; Amazon has several preferred sellers and notably among them are 'Cloudtail India' and 'Appario Retail', which are related to Amazon. It provides incentives

to its preferred sellers to sell their products at 'predatory prices' throughout the year to the detriment of non-preferred sellers, who are not compensated for the amount of loss which they would incur to keep competing in the market.

19. 'Appario Retail' is wholly owned subsidiary of a Joint Venture between Amazon and another entity. It has received investments from Frontizo Business Services Pvt. Ltd. Both Appario and Frontizo have common Director by name Ankit Popat. Frontizo and Amazon Retail India Pvt. Ltd., also have a common Director.

20. Cloudtail is a joint venture between Amazon and Catamaran Ventures.

21. It is alleged that Flipkart follows a model of providing deep discount to few preferential sellers such as 'Omnitech Retail', and it adversely impacts non-preferred sellers. Flipkart sends communications to its sellers stating that it would incur a part of the 'burn'.

22. Preferred sellers such as 'Omnitech Retail' are connected with Flipkart. Flipkart's founder Sachin Bansal and Binny Bansal owned WS Retail till 2012. Reports confirm that more than 90% of Flipkart’s sale is routed through WS Retail. 'Omnitech Retail' is owned by Consulting Rooms Pvt. Ltd., whose Director Ajay Sachdeva was also a Director of WS Retail till September 2016.

- **Preferential Listing**

23. It is alleged that Amazon perpetuates the practice of listing its preferred sellers in the first few pages of the search results, thereby creating a search bias. In number of search results, the products are sold by preferred sellers such as 'Appario Retail' and 'Cloudtail' and they dominate the first few pages, whereas, products with same ratings, which are sold by non-preferred sellers are listed in later pages.

24. Flipkart lends the words 'assured' to the products sold by its preferential sellers.

- **Exlusive Tie-ups**

25. It is alleged that petitioners herein have several exclusive tie-ups and private labels, which get more preference in terms of sales.

26. It is further alleged that providing discounts and preferential listing to preferential sellers creates *defacto* exclusivity to the detriment of other sellers.

27. Thus, in substance, informant's case is, though petitioners claim that 'any person' can sell his product in their market place, in fact, petitioners promote only selected few and do not maintain platform neutrality.

28. Shri. Abhir Roy, learned Advocate for CAIT submitted that Amazon's market place is owned by M/s. Amazon Sellers Services Pvt. Ltd. Adverting to Company's Master data (at pages No.154 & 155 of Statement of Objection by informant), he submitted that the said Company and Amazon Retail India Pvt. Ltd. have a common

e-mail ID namely 'gulatip@amazon.com'. The registered address of Amazon Sellers Pvt. Ltd., is in the 8th Floor, Brigade Gateway, 26/1, Dr.Rajkumar Road, Bengaluru. He pointed out that though the registered office of Amazon Retail India Pvt. Ltd., is shown as Nehru place, New Delhi, the place where Books of Accounts are maintained, is shown as the registered office of Amazon Seller Services Pvt. Ltd. (petitioner in W.P. No.3363/2020). He submitted that these facts clearly establish that the Contact e-mail ID of both Companies is the same and maintenance of Books of Accounts of both Companies is at the same address.

29. Shri. Abhir Roy further submitted that Amazon Retail India Pvt. Ltd., and Frontizo Business Services Pvt. Ltd., have a common Director by name Sameer Kshetrapal. Appario Retail is a wholly owned subsidiary of Frontizo business. He pointed out that this aspect has been admitted by Amazon by stating thus in paragraph No.19 of its rejoinder:

"19. That the contents of paragraph 22 of the Objections are also denied. ***It is a matter of public knowledge that Cloudtail India Pvt. Ltd., ("Cloudtail") is a wholly owned subsidiary of Prione Business Services Private Limited ("Prione"), a Joint venture, wherein Amazon Asia Pacific Resources Pvt. Ltd.,*** *and Amazon Eurasia Holdings S.a.r.l, collectively hold a minority, non-controlling interest of 24% shares.* ***It is submitted that Apparío Retail Pvt. Ltd., ("Apparío") is a wholly owned subsidiary of Frontizo Business Services Private Limited ("Frontizo"), a Joint venture wherein Amazon Asia-Pacific Holdings Pvt. Ltd., and Zafar LLC*** *together hold a minority, non-controlling interest of 24%. While both, Cloudtail India and Apparío Retail are third party sellers, who partner with the petitioner to offer products for sale to end consumers on the Amazon market place, it is denied that they are preferred sellers or that the Petitioner has entered into any agreements with either of them to anoint them as preferred sellers. It is further denied that there is a common director between the petitioner and either Cloudtail India or Apparío Retail."*

(Emphasis supplied)

30. He contended that, obviously, Frontizo and Amazon Retail India Pvt. Ltd., shall have common business interest and this is fortified by the fact that both companies have a common Director namely, Sameer Kshetrapal.

31. Shri. Abhir Roy further submitted that on Flipkart Market Place, Omnitech Retail is the preferred and favoured seller. The said Trademark is registered in the name of 'Consulting Rooms Pvt. Ltd.', of which Ajay Sachdeva is one of the Directors. Earlier, he was a Director on the board of WS Retail. He submitted that Flipkart also practices selling its own inventory at discounted prices to its preferred sellers. Flipkart also indulges in 'loss funding' in case of preferred sellers as recorded in *Flipkart India Pvt. Ltd., Vs. Assistant Commissioner of Income Tax* in ITA No.202 & 693/Bang/2018 (Annexure-10 to the informant's Statement of Objections).

32. On the aspect of ‘cash burning’, Smt. Madhavi Diwan, Learned Addl. Solicitor General, adverting to paragraph No.7 of order dated 25.04.2018 in I.T.A. No.202/Bang/2018, also contended that Flipkart's Senior Vice President and Finance Controller of Flipkart Group, has admitted in his statement before the Income Tax Authorities that the strategy of selling at a price lower than

the cost price (predatory pricing) is to capture the market and to earn profits in the long run.

33. With regard to the nature of the impugned order, Smt. Madhavi Diwan, submitted that it is an administrative order. In support of this submission, she relied upon *CCI Vs. SAIL* and *CCI Vs. Bharathi Airtel.* She submitted that, in CCI Vs. SAIL, it is held that threshold requirement for establishing prima facie case at the stage of Section 26(1), is a low threshold. She adverted to *Martin Burn Ltd., Vs. R.N. Banerjee*[14] and submitted that *prima facie* case does not mean a case proved to the hilt, but a case which can be said to be established, if the evidence which is led in support of the same were believed.

34. It may be also be profitable to recall the words of Lord Diplock in *American Cyanamid Co Vs. Ethicon Ltd*[15], a case involving injunction at interlocutory stage, wherein, that Court is not justified in embarking upon anything

[14] 1958 SCR 514
15 (1975) 1 All E.R. 504

resembling a trial of the action upon conflicting affidavits in order to evaluate the strength of either party's case.

35. Both petitioners and the Commission have placed reliance on *CCI Vs. SAIL and CCI Vs. Bharathi Airtel.*

In *CCI Vs. SAIL,* it is held as follows:

> ***38.*** *In contradistinction, the direction under Section 26(1) after formation of a prima facie opinion is a direction simpliciter to cause an investigation into the matter. Issuance of such a direction,* ***at the face of it, is an administrative direction*** *to one of its own wings departmentally and is without entering upon any adjudicatory process. It does not effectively determine any right or obligation of the parties to the lis. Closure of the case causes determination of rights and affects a party i.e. the informant; resultantly, the said party has a right to appeal against such closure of case under Section 26(2) of the Act. On the other hand, mere direction for investigation to one of the wings of the Commission is akin to a departmental proceeding which does not entail civil consequences for any person, particularly, in light of the strict confidentiality that is expected to be maintained by the Commission in terms of Section 57 of the Act and Regulation 35 of the Regulations.*
>
> *xxx*
>
> ***71.*** *The intimation received by the Commission from any specific person complaining of violation of Section 3(4) read with Section 19 of the Act, sets into motion, the mechanism stated under Section 26 of the Act. Section 26(1), as already noticed, requires the Commission to form an opinion whether or not there exists a prima facie case for issuance of direction*

to the Director General to conduct an investigation. ***This section does not mention about issuance of any notice to any party before or at the time of formation of an opinion by the Commission on the basis of a reference or information received by it.*** *Language of Sections 3(4) and 19 and for that matter, any other provision of the Act does not suggest that notice to the informant or any other person is required to be issued at this stage. In contradistinction to this, when the Commission receives the report from the Director General and if it has not already taken a decision to close the case under Section 26(2), the Commission is not only expected to forward the copy of the report, issue notice, invite objections or suggestions from the informant, the Central Government, the State Government, statutory authorities or the parties concerned, but also to provide an opportunity of hearing to the parties before arriving at any final conclusion under Sections 26(7) or 26(8) of the Act, as the case may be.* ***This obviously means that wherever the legislature has intended that notice is to be served upon the other party, it has specifically so stated and we see no compelling reason to read into the provisions of Section 26(1) the requirement of notice, when it is conspicuous by its very absence.*** *Once the proceedings before the Commission are completed, the parties have a right to appeal under Section 53-A(1)(a) in regard to the orders termed as appealable under that provision. Section 53-B requires that the Tribunal should give, parties to the appeal, notice and an opportunity of being heard before passing orders, as it may deem fit and proper, confirming, modifying or setting aside the direction, decision or order appealed against.*

In *CCI Vs.Bharathi Airtel,* it is held as follows:

116. We may mention at the outset that in SAIL [CCI v. SAIL, (2010) 10 SCC 744] , nature of the order passed by CCI under Section 26(1) of the Competition Act [here also we are concerned with an order which is passed under Section 26(1) of the Competition Act] was gone into. ***The Court, in no uncertain terms, held that such an order would be an administrative order and not a quasi-judicial order. It can be discerned from paras 94, 97 and 98 of the said judgment,*** *which are as under: (SAIL case [CCI v. SAIL, (2010) 10 SCC 744] , SCC pp. 785 & 787)*

"94. The Tribunal, in the impugned judgment [SAIL v. Jindal Steel & Power Ltd., 2010 SCC OnLine Comp AT 5] , has taken the view that there is a requirement to record reasons which can be express, or, in any case, followed by necessary implication and therefore, the authority is required to record reasons for coming to the conclusion. The proposition of law whether an administrative or quasi-judicial body, particularly judicial courts, should record reasons in support of their decisions or orders is no more res integra and has been settled by a recent judgment of this Court in CCT v. Shukla & Bros. [CCT v. Shukla & Bros., (2010) 4 SCC 785 : (2010) 3 SCC (Civ) 725 : (2010) 2 SCC (Cri) 1201 : (2010) 2 SCC (L&S) 133], wherein this Court was primarily concerned with the High Court dismissing the appeals without recording any reasons. The Court also examined the practice and requirement of providing reasons for conclusions, orders and directions given by the quasi-judicial and administrative bodies.

xxx

97. *The above reasoning and the principles enunciated, which are consistent with the settled canons of law, we would adopt even in this case. In the backdrop of these determinants, we may refer to the provisions of the Act. Section 26, under its different sub-sections, requires the Commission to issue*

various directions, take decisions and pass orders, some of which are even appealable before the Tribunal. ***Even if it is a direction under any of the provisions and not a decision, conclusion or order passed on merits by the Commission, it is expected that the same would be supported by some reasoning. At the stage of forming a prima facie view, as required under Section 26(1) of the Act, the Commission may not really record detailed reasons, but must express its mind in no uncertain terms that it is of the view that prima facie case exists, requiring issuance of direction for investigation to the Director General.*** *Such view should be recorded with reference to the information furnished to the Commission. Such opinion should be formed on the basis of the records, including the information furnished and reference made to the Commission under the various provisions of the Act, as aforereferred. However, other decisions and orders, which are not directions simpliciter and determining the rights of the parties, should be well reasoned analysing and deciding the rival contentions raised before the Commission by the parties.* ***In other words, the Commission is expected to express prima facie view in terms of Section 26(1) of the Act, without entering into any adjudicatory or determinative process and by recording minimum reasons substantiating the formation of such opinion, while all its other orders and decisions should be well reasoned.***

98. Such an approach can also be justified with reference to Regulation 20(4), which requires the Director General to record, in his report, findings on each of the allegations made by a party in the intimation or reference submitted to the Commission and sent for investigation to the Director General, as the case may be, together with all evidence and documents collected during investigation. The inevitable consequence is

that the Commission is similarly expected to write appropriate reasons on every issue while passing an order under Sections 26 to 28 of the Act."

117. There is no reason to take a contrary view. Therefore, we are not inclined to refer the matter to a larger Bench for reconsideration.

36. Thus, from the above authorities, it is clear that:

- An order under Section 26(1) of the Act passed by the Commission is an '***administrative direction'*** to one of its wings departmentally and without entering upon any adjudicatory process; and

- Section 26(1) of the Act **does not mention about issuance of any notice to any party before or at the time of formation** of an opinion by the Commission on the basis of information received by it.

Accordingly, Points A and B are answered.

Re: Point C:

37. The aspect that needs to be examined now, is whether the Commission has acted in consonance with the settled law.

38. As held in paragraph No. 71 of *CCI Vs. SAIL*, the intimation received complaining of violation of the provisions of the Act, sets into motion the mechanism stated under Section 26 of the Act. At this stage, the Commission is required to form an opinion whether or not there exists a *prima facie* case.

39. The informant has alleged violation of Sections 3(1) read with 3(4) and Sections 4(1) read with 4(2) of the Act, by the petitioners. In the impugned order, Commission has recorded that the Act does not provide for inquiry into the cases of Joint/Collective dominance and proceeded further to deal with the violation under Section 3 of the Act.

40. Perusal of the impugned order from paragraph No.20, shows that the Commission has examined the material produced by the informant. It has analyzed the information under various heads such as exclusive launch of mobile phones, preferred sellers on the market places, deep discounting, and preferential listing of private labels. It has

recorded that mobile manufacturing Companies like One plus, Oppo and Samsung have exclusively launched several of their models on Amazon and Vivo, Realme, Xiomi etc., have exclusively launched several of their models on the Flipkart. Commission has noticed that Flipkart has launched 67 mobile phones and Amazon has launched 45 mobile phones exclusively on their platforms. Commission has recorded (in paragraph 23) that petitioners have their own set of preferred sellers and there are only few online sellers which sell the exclusively launched smart phones.

41. Commission has further recorded (in paragraph 23) that based on the evidence adduced by the informant and the information available in public domain, it has *prima facie* inferred that there appears to be exclusive partnership between smart phone manufacturers and e-Commerce platforms for exclusive launch of smart phones.

42. The Commission has also recorded that it has taken note of the emails dated 31.03.2019 and 20.09.2019

etc., allegedly sent by Flipkart and Amazon to their sellers offering to incur a part of discounts offered during big sale events. It has further recorded that certain smart phone brands/models are available at significantly discounted price on petitioners' platforms and are sold largely through the sellers identified by informant as 'preferred sellers'. With regard to the allegations such as funding of discount, the Commission has opined that it is a matter that merits investigation.

43. Adverting to preferential listing, the Commission has noted that the allegations are inter-connected and therefore, a holistic investigation is necessary.

44. The Commission has further noted (in paragraph 26) that the exclusive arrangements between smart phone brands and e-Commerce platforms, demonstrated in the information coupled with the allegations of linkage between preferred sellers and the petitioners, merits investigation.

45. Thus, a plain reading of the impugned order shows that Commission has looked into the information in detail and applied its mind.

46. It was argued by Shri. Gopal Subramanium that on the earlier occasions and particularly in the AIOVA case, though the allegation was against Flipkart, in order to understand the nuances of the trade, the Commission had held preliminary conference with Amazon. In this case, when Commission has taken a drastic decision to initiate an inquiry, it has not chosen to issue notice to the petitioners.

47. As recorded hereinabove, the law on the point with regard to the procedure to be followed at the stage of 26(1) of the Act has been declared by the Apex Court in *CCI Vs. SAIL* and *CCI Vs. Bharthi Airtel*, holding that no notice is necessary at the stage of 26(1) of the Act. Therefore, the said ground is untenable.

48. It was contended by Shri. Gopal Subramanium, Shri. Udaya Holla, Shri. Dhyan Chinnappa, learned Senior

Advocates that the informant had not approached with clean hands and acted as a front-man for CAIT which has filed writ petitions in High Courts of Delhi and Rajasthan and failed to get any favourable order. They pointed out that the Demand Draft for Rs.50,000/- tendered along with the information was obtained by CAIT and argued that informant has not approached the Commission with clean hands.

49. Countering this argument, Smt. Madhavi Diwan, submitted that so far as Commission is concerned, what is relevant is the 'information'. With regard to CAIT approaching through Delhi Vyapar Mahasangh, placing reliance on following passage in *Swaraj Infrastructure (P) Ltd. Vs. Kotak Mahindra Bank Ltd.*[16], she submitted that when a citizen/litigant is driven to wall, he blows hot and hotter.

> ***"29.*** *When secured creditors like the respondent are driven from pillar to post to recover what is legitimately due to them, in attempting to avail of more than one remedy at the same time,*

[16] (2019)3 SCC 620

they do not "blow hot and cold", but they blow hot and hotter. ...
"

50. The next contention urged by Shri. Gopal Subramanium is, in *CCI Vs. Bharathi Airtel,* the Apex Court has upheld the judgment of the High Court that the Commission could exercise jurisdiction only after conclusion of proceedings and TRAI returned its findings. He submitted that in the instant case, Enforcement Directorate is already investigating the matter. Therefore, CCI could not have exercised its jurisdiction whilst investigation by Enforcement Directorate is in progress.

51. In response, Smt. Madhavi Diwan rightly submitted that TRAI is a sectoral regulator and in view of the issues involved in *CCI Vs. Bharathi Airtel,* it has been held that CCI could exercise its jurisdiction after TRAI returned its findings. She contended that the Statement of objects and reasons of FEMA aim at consolidating and amending the law relating to Foreign exchange with the objective of facilitating external trade and payments for

promoting orderly development and maintenance of Foreign Exchange markets in India. The FDI policy issued under FEMA specifies entry conditions for Foreign Companies in various sectors. The FDI policy does not offer any immunity or exemption from the law of the land. She submitted that the Hon'ble Supreme Court of India in number of cases has upheld parallel investigation/adjudication by different Regulators/Agencies/ Adjudicators. She submitted that in *Securities Exchange Board of India Vs. Pan Asia Advisors Limited and another*[17], it is held that SEBI can exercise its powers while action is taken for violation under FEMA or RBI Act. In *S. Sukumar Vs. Secretary, Institute of Chartered Accountants in India and Ors.*[18], it is held that Institute of Chartered Accountants, a statutory body can investigate while ED and ROC investigations are in progress.

52. Smt. Madhavi Diwan further submitted that the Foreign Exchange Management Act is an earlier Act, and Competition Act has come into force later. Section 60 of the

[17] (2015)14 SCC 71 (paragraph No.92)
[18] (2018)14 SCC 360 (paragraphs No.45 & 46)

Competition Act provides that it shall have overriding effect. Section 62 of the Act provides that the provisions of Competition Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.

53. With regard to investigation by the Enforcement Directorate, Shri. Abhir Roy submitted that ED is not a regulator but a quasi-judicial body. Placing reliance on *Lafarge Umiam Mining Pvt. Ltd., Vs. Union of India and others*[19], he submitted that the regulator is a pro-active body with power to frame statutory Rules and Regulations. Regulatory mechanism warrants open discussion, public participation, and circulation of draft paper inviting suggestions. ED is not clothed with those powers and does not have other attributes. Therefore, ED is not a regulator.

54. It was next contended by learned Senior Advocates for petitioners that the Commission has substantially altered the decision in *CCI Vs. SAIL* with

[19] (2011)7 SCC 338 (paragraph No.122)

regard to confidentiality and Web-hosting of the impugned order which adversely affects petitioners' business reputation.

55. In reply, Smt. Madhavi Diwan, submitted that decision in *CCI Vs. SAIL* does not mandate any blanket confidentiality. She argued that paragraphs No. 38 and 135(e) of the said judgment, state that confidentiality is to be maintained only in terms of provisions of Section 57 read with Regulation 35. She rightly contended that Section 57 merely protects the confidentiality of the information belonging to any enterprise which has been obtained by or on behalf of the Commission or the Appellate Tribunal and the same cannot be disclosed otherwise than in compliance with or for the purpose of this Act or any other law for the time being in force. She further, rightly submitted that an order under Section 26(1) cannot be described as being outside the purposes of the Act and therefore, position is not altered with regard to confidentiality. So far as the aspect of business reputation is concerned, placing reliance

on *Cadila Health Care Limited & Another Vs. Competition Commission of India & Ors.*[20], she submitted that allowing enquiry is akin to adjudicating a tax or commercial dispute or regulatory dispute. The relevant passage reads as under:

> *44. [….] Cadila's reliance on Rohtas Industries and Barium Chemicals is, in the opinion of this court, irrelevant given the facts of this case. Granted, administrative orders should be reasoned; however, where they trigger investigative processes that are not conclusive, having regard to the clear enunciation in SAIL, that notice is inessential, accepting the argument, that inquiry would harm the market or commercial reputation of a concern, would be glossing over the law in SAIL. Moreover, the Rohtas Industries related to the affairs of a company, which implicated its internal management. Allowing inquiry, even an innocuous one, without application of mind, is a different proposition altogether from acting on the information of someone who alleges either direct or indirect or tacit dominance in the market place in the course of one's business. The latter is regulatory of the marketplace rather than the core management of the concern;* ***it is akin to adjudicating a tax or commercial dispute, or a regulatory dispute****. As stated by Justice Brennan, natural justice in such instances should not —unlock the gate which shuts the court out of review on the merits." (in this case, preclude or chill the exercise of jurisdiction by the DG into a potential abuse of dominant position of a commercial entity).* ***Therefore, this court finds no merit in the argument that the procedure adopted by the DG in going ahead with the inquiry and investigating into the market behaviour of Cadila in anyway affects it so prejudicially as to tarnish its***

[20] 2018 SCC OnLine Del 11229 (paragraph No.44)

reputation. *The CCI has not as yet examined the investigation report in the light of Cadila's contentions; all rights available to it, to argue on the merits are open.*

(Emphasis supplied)

56. In response to petitioner's contention that CCI could not have taken a contrary stand to the one taken in AIOVA case, Smt. Madhavi Diwan submitted that there is no *res judicata* in the case of orders passed by CCI because, Competition Act relates to preservation of competitive forces in the market place. She submitted that the Hon'ble Supreme Court of India has held in *Samir Agrawal Vs. Competition Commission of India*[21], that Competition Act operates in 'rem' and not in 'personam', since it concerns public interest. Placing reliance on *Cadila Healthcare Limited and Anr Vs. CCI*,[22] she submitted that the CCI or an expert body should *ordinarily* not be crippled or hamstrung in their efforts by application of technical rules of procedure.

57. With regard to the market study aspect, Smt. Diwan submitted that market study was undertaken as a

[21] 2020 SCC Online SC 1024
[22] 2018 SCC OnLine Del 11229 (paragraph 59)

part of the 'Advocacy mandate' under Section 49 of the Act and market study is in no manner inconsistent with the impugned order.

58. Petitioners have pleaded *in extenso* and submitted elaborate arguments on the merits of the matter. But, in a writ petition filed under Article 226 of the Constitution of India, seeking judicial review, the High Court can examine only the decision making process with the exception namely the cases involving violation of fundamental human rights. The law on the point is fairly well settled. It may be profitable to recall following opinion of Lord Greene in *Associated Provincial Picture Houses Ltd., Vs. Wednesbury Corporation*[23] :

> *"It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology 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*

23 (1948)1 KB 223

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'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington L.J. in Short v. Poole Corporation [1926 Ch 66] gave the example of the red-haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another."

59. In *G. Veerappa Pillai, Proprietor, Sathi Vilas Bus Service, Porayar, Tanjore District, Madras Vs. Raman and Raman Limited, Kumbakonam, Tanjore District and Three Others.*[24], it is held that writs referred to in Article 226 are intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it is not so wide or large

[24] AIR 1952 SC 192

as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made.

60. In *T.C. Basappa Vs. T. Nagappa and Another*[25], it is held that a tribunal may be competent to enter upon an enquiry but in making the enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice. A writ of certiorari may be available in such cases. An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision. Quoting Morris J, it is held as follows:

> *10. ..... "The essential features of the remedy by way of certiorari have been stated with remarkable brevity and clearness*

[25] AIR 1954 SC 440

by Morris, L.J. in the recent case of Rex v. Northumberland Compensation Appellate Tribunal [(1952) 1 KB 338 at 357]. The Lord Justice says:

> *"It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for re-hearing of the issue raised in the proceedings. It exists to correct error of law when revealed on the face of an order or decision or irregularity or absence of or excess of jurisdiction when shown."*

61. In *G.B. Mahajan and others Vs. Jalgaon Municipal Council and others*[26], the Hon'ble Supreme Court of India speaking through Justice M.N. Venkatachaliah (as he then was), referring to Prof. Wade's comment on Wednesbury doctrine, has held that the point to note is that a thing is not unreasonable in the legal sense merely because Court thinks it unwise. Prof. Wade's comment reads thus:

> *"This has become the most frequently cited passage (though most commonly cited only by its nickname) in administrative law. It explains how 'unreasonableness', in its classic formulation, covers a multitude of sins. These various errors commonly result from paying too much attention to the mere words of the Act and too little to its general scheme and purpose, and from the fallacy that unrestricted language naturally confers unfettered discretion.*

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26 (1991)3 SCC 91 (at para 44)

Unreasonableness has thus become a generalised rubric covering not only sheer absurdity or caprice, but merging into illegitimate motives and purposes, a wide category of errors commonly described as 'irrelevant considerations', and mistakes and misunderstandings which can be classed as self-misdirection, or addressing oneself to the wrong question …."

Further, following observations of Lord Scarman in *Nottinghamshire County Council Vs. Secretary of State for Environment* have also been quoted and they aptly apply to these cases.

"… But I cannot accept that it is constitutionally appropriate, save in very exceptional circumstances, for the courts to intervene on the ground of "unreasonableness" to quash guidance framed by the Secretary of State and by necessary implication approved by the House of Commons, the guidance being concerned with the limits of public expenditure by local authorities and the incidence of the tax burden as between taxpayers and ratepayers. Unless and until a statute provides otherwise, or it is established that the Secretary of State has abused his power, these are matters of political judgment for him and for the House of Commons. They are not for the judges or your Lordships' House in its judicial capacity."

"For myself, I refuse in this case to examine the detail of the guidance or its consequences. My reasons are these. Such an examination by a court would be justified only if a prima facie case were to be shown for holding that the Secretary of State had acted in bad faith, or for an improper motive, or that the consequences of his guidance were so absurd that he must have taken leave of his senses …."

(Emphasis supplied)

62. Noted jurist, Shri. V. Sudhish Pai, in his Article '*Is Wednesbury on the Terminal decline?*'[27] has opined that the Wednesbury test, long established as ground of judicial review will be applicable in examining the validity of the exercise of administrative discretion. After analyzing the law with regard to Constitutional review in UK and the cases involving human rights, he has stated that it is quite inappropriate to speak of the decline or demise of Wednesbury test. He has concluded that Wednesbury Principles are still alive as follows:

> *"In the ultimate analysis, it can be said that the Wednesbury principles are still alive and applicable in judicial review of administrative discretion where no constitutional/fundamental rights are involved. Wednesbury, is but a facet and an enduring facet of the larger landscape of judicial review.*
>
> *These issues and aspects are not a matter of mere semantics but are the constitutional underpinnings of the exercise of judicial power and the limits thereof."*

27 (2008)2 SCC J-15

63. In the case on hand, the informant has filed information and appended material papers, which according to the informant support its allegations. It was submitted by the learned Additional Solicitor General that the Commission has also called upon the informant to file a Certificate under Section 65B of the Indian Evidence Act and the penalty for incorrect information is upto Rs. One Crore under Section 44 of the Competition Act**.**

64. It is expected that an order directing investigation be supported by 'some reasoning' (*CCI Vs. SAIL para 97),* which the Commission has fulfilled. Therefore, it would be unwise to prejudge the issues raised by the petitioners in these writ petitions at this stage and scuttle the investigation. Therefore, the impugned order does not call for any interference. Accordingly, point (c) is answered.

65. Resultantly, these writ petitions must fail. Accordingly, Rule is discharged and writ petitions stand ***dismissed***.

No costs.

Sd/-
JUDGE

SPS