

[Summary of Order as prepared by BAI]

**MONOPOLIES AND RESTRICTIVE TRADE
PRACTICES COMMISSION,
NEW DELHI**

RTPE 21 / 2001

CORAM

**Hon'ble Justice O.P.Dwivedi
Chairman**

**Hon'ble Shri M.M.K. Sardana
Member**

**Hon'ble D.C. Gupta
Member**

IN THE MATTER OF;

- 1. Shri Sarabjit S. Mokha
S/o Mr. M.S. Mokha,
R/ 05 / 10, South Civil Lines,
Jabalpur, M.P**
- 2. Shri Naresh Grover
S/o Late Shri V.P. Grover,
R/ 0 127, Adarsh Nagar,
Jabalpur, M.P**

...Complainants

Vs.

- 1. M/s.Cement Manufacturers Association,
Vishnu Kiran Chambers,
1st Floor, 2142-2147,
Gurudwara Road, Karol Bagh,
New Delhi – 110005.**
- 2. Associated Cement Co. Ltd. (Cement House),
121, Maharishi Carve Road,
Mumbai.**
- 3. Gujarat Ambuja Cement Ltd.,
122, Maker Chambers – III,
Nariman Point,
Mumbai – 400021.**
- 4. Parisim Cement Ltd.,
11, Rahejas Plot No. 8E, Main Avenue,
Vallabhi Patel Road, Santa Cruz (W),
Mumbai – 400054.**

5. **Larson & Turbo Ltd.,
Metropolitan Building,
C – 26/ 27, Bardra Kurla Complex,
Bardra East, Mumbai – 400051.**
6. **Laffarge Cement
Sonnadih Cement Works,
Distt., Raipur, M.P.**
7. **Grasim Cement
Grasim Staff Club, Regd. Office, Birlagram,
Nogda, M.P.**
8. **Santa Cement Works
P.O. Birla Vikas,
Santa – 485005.**
9. **Jay Pee Cement
J.A. Annexe, 54, Basant Lok, Vasant Vihar,
New Delhi-110057.**
10. **Diamond Cement
P.O. Narsingh Garh,
Distt. Diamond, M.P**
11. **Maihar Cement Industry House,
159, Church Gate,
Recharator,
Mumbai – 400020.**

.....Respondents

**Appearances: Shri O.P. Dua & Ms. Babita, Advocate
for the applicant / complainant
Shri P.B. Aggarwal with Dr. V.K. Aggarwal
and Ms. Praveena Gautam, Advocate for R1 & R11
Shri U.A. Rana with Shri Nitesh Jain, Advocate for R2 & R3
Shri Amit Kumar Sharma, Proxy Counsel for
Shri Vivek Yadav, Advocate for R4
Ms. P.H. Sarvodaya Lakshmi with Shri Mohd.
Mohsin Beg, Advocate for R6
Shri R.R. Kumar with Shri Bharat Sangal, Advocate for R7
Shri Sanjay Grover, Advocate for R8
Shri P.A.Rao, Advocate for R9
Ms. Sonali Jaitley for R10**

**ORDER OF THE BENCH DELIVERED BY
HON'BLE CHAIRMAN**

The complainants named above have filed this complaint under Section 10 (a) (i) read with Section 36 (d) of the Monopolies and Restrictive Trade Practices Act (hereinafter referred to as MRTP Act). It is alleged that respondent no. 2 to 11 who are cement manufacturers together

control more than 60% share in the cement market. Being dominant players in cement market they are in a position to control the production, distribution and selling prices. They have their cement manufacturing plants at different places in India keeping in view the availability of raw material, power, coal etc. and accordingly have different cost of production. The sale of the cement to the consumers is carried through a network of distributors/stockiest. It is alleged that the cement manufacturers (respondent nos. 2 to 11) herein have been acting in concert through price, quantity and market control. It has been specifically pleaded by the complainant that they have come across minutes of a meeting held on 5th July, 2000 amongst respondent nos. 2 to 11 at Jabalpur wherein the respondents took a concerted action to fix the cement prices artificially and also decided to control the quantity of cement flowing in the market by suspending production and dispatches either from Dump or from factory to direct dealers for five days from 5th July to 9th July, 2000. In the said meeting it was further decided to hike the price of cement from 10.7.2000 to Rs. 107/- Rs. 109/- per bag. The minutes of the meeting allegedly held on 5th July 2000 at Jabalpur, copy of which has been placed on record, reads as under :-

“CMA HELD AT JABALPUR ON 5.7.2000 REPRESENTATIVES FROM THE FOLLOWING COMPANIES WERE PRESENT:

- 1) ACC : MARKETING & LEGAL OFFICER
- 2) GRASIM LOCAL OFFICERS
- 3) SATNA LOCAL OFFICER
- 4) PREM LOCAL OFFICERS
- 5) L & T LOCAL OFFICER
- 6) JP : LOCAL OFFICER
- 7) LAFARGE: LOCAL OFFICER
- 8) DIAMOND LOCAL OFFICER

IT HAS BEEN DECIDED IN THE MEETING THAT DISPATCH HOLDING FROM DUMP AS WELL AS FROM FACTORY TO THE DIRECT DEALERS WILL BE MAINTAINED FOR 5 DAYS (FROM 5TH JULY TO 9TH JULY 2000) FROM MONDAY (10TH JULY 2000) DISPATCHES WILL BE STARTED AT THE FOLLOWING AGREED WHOLE SALE PRICES.

OPC. 43GR: RS. 107/ P. BAG

OPC. 53 GR: RS. 109/P. BAG

MARKETS UNDER DISPATCH, HOLIDAY: JABALPUR, NARSNHPUR, DAMOH, SAGAR & KATNI.

NEW REVIEW MEETING WILL BE AT GRASIM OFFICE, JABALPUR ON 8TH JULY 2000, AT 11.30 A.M

REPRESENTATIVES FROM MEHAR AND AMBUJA DID NOT ATTEND TODAY'S MEETING.

CONTACT NO. PHONE.

- 1) ACC - 516985 Mr. Kailidas
- 2) L & T – 318615 Mr. Nagesh / Pande
- 3) Prisim – 320026
- 4) Santa – 317184, 314694 Mr. Pathak
- 5) J.P. Cement – 341921, 923
- 6) Lafarge – 411025, 316701 Mr. Ganguli

7) **Dimond – 407248, 400391 Mr. D.S. Chauhan**

8) **Grasim – 321881 Mr. Daga”**

4. Being aggrieved by this concerted action of the respondent in raising the price, the Builders' Association of India, Mumbai sent a communication dated 16.1.2001 to the Director General of Foreign Trade Department of Commerce & Industry, New Delhi complaining of cartel formed by the respondents. As against respondent – 6 i.e. Laffarge Cement, it is specifically alleged in para 11(v) that they have increased the cost of the cement per bag from Rs. 98 in September, October 2000 to Rs. 139/- per bag in December, 2000. A chart showing the prices of various cement companies per bag charged by various companies has also been given in the said para. It is contended that the respondents who have their factories geographically well spread and thus having different cost of production, transportation etc. formed cartel and increased the price simultaneously. However, under Government pressure respondents agreed to supply cement to State Jharkhand @ Rs. 90/- per bag which was the price prevailing before the sudden hike. In para 11 (ix) the complainants have alleged that the fact of the cartelization has been confirmed by Mr. Anil Singvi, Executive Officer of respondent no. 3 i.e. Gujarat Ambuja Cement Ltd. whose statement has been published in the issue of “Builders Friends”. Mr. Anil Singhvi is reported to have stated as under:

“Confirm that major cement manufacturers have reached an understanding to bring about a ‘pricing discipline”. Anil Singhvi, Executive Director of Gujarat Ambuja Cements Ltd. (GACL) said the pact was reached at a high-powered meeting of the Cement Manufacturers Association (CMA).”

7. On the basis of the pleadings, the following issues were framed:-

- (i) **Whether the respondents have been indulging in restrictive and unfair trade practices as alleged in the Notice of Enquiry?**
- (ii) **Whether the alleged restrictive trade practices are not prejudicial to the public interest?**
- (iii) **Whether the alleged unfair trade practices are prejudicial to the interest of consumer / consumers generally?**

8. All the issues are being taken up together for discussion. In proof of their case the complainants have filed affidavit of two witnesses namely Mr. Dhruvakumar Lallubhai Desai and complainant himself i.e. Mr. Naresh Grover. The cross examination of AW1/1 was conducted on several dates and concluded on 17.11.2006.

9. We have carefully perused records and considered submissions made by learned counsel for the parties.

10. The allegation of cartellzation is made mainly on the basis of the following events / occurrences:-

1. The meeting held on 5th July, 2000 amongst representatives of cement manufacturers at hotel Utsav, Jabalpur.
2. Simultaneous rise in prices in pursuance of the said meeting.
3. Complaints made by the wholesalers to the Collector who raided some cement dealers as a consequence of which the prices fell.
4. Simultaneous suspension of production / supplies during 5th to 9th July, 2000 and then again from 27.11.2000 to 4.12.2000 and from 12.1.2001 to 19.1.2001
5. Simultaneous raise in the prices during December 2000 and January 2001.

11. On careful scrutiny of the records we find that the allegation of suspension of supplies / production for five days in July 2000 and then one week each in December 2000 and January 2001 has not been proved satisfactorily.

14. It will thus be seen that the respondents have made evasive and mutually contradictory statements in regard to the meeting allegedly held at Hotel Utsav, Jabalpur on 5.7.2000. Some of the respondents namely R5 & R10 have admitted that the meeting of the representatives of the cement manufacturers was held at Hotel Utsav, Jabalpur on 5.7.2000 but they have not proved what decision was taken in the said meeting. No effort has been made by the respondents either to prove the minutes of the said meeting or the decisions taken therein. In these circumstances, even though the minutes dated 5.7.2000 filed by the complainant have not been formally proved, the conduct of the respondents' raises strong suspicion that in that meeting some decisions were taken which they don't want to disclose. Once, the parties are aware of the facts in issue they must come forward with the best available evidence to help the Commission in arriving at a just conclusion. Such parties cannot take shelter under the abstract doctrine of burden of proof. If a party withholds the best available evidence, an adverse inference can be drawn, that if it had produced the evidence so withheld, it would have supported the case of adversity. These aspects have to be borne in mind while examining the subsequent conduct of the respondents.

15. We now propose to scrutinize the evidence regarding spurt of prices of cement bags in the month of July 2000, December 2000, and January 2001. This indicates that the cement prices had a rising trend in July, 2000.

16. According to the complainant on the complaints made to the Collector, a raid was conducted on two dealers as a result of which the prices came down. This has also been stated on oath by Shri Grover AW who was not cross examined on these points nor was any suggestion to the contrary put to him. Some of the companies may not have increased their prices due to this reason. But as regards the spurt of prices in December 2000 and January 2001, there is ample evidence on record to show that prices in the month of December, 2000 – January, 2001 there is ample evidence on record to show that prices in the month of December, 2000 – January, 2001 were about Rs.30/- per bag higher than those prevailing in November, 2000.

22. What clinches the issue is a letter dated 27.1.2001 written by Additional General Manager (Marketing) Shri V. Singh of R11-Maihar Cement to three of their dealers.

This letter exhibit RW11/1A read as under:-

“ 27.01.2001

1. **M/s. Maheshwari Brothers,
Jabalpur**
2. **M/s. Cement House, Jabalpur**
3. **M/s. Piyush Traders, Jabalpur**

Subject: Pricing decision taken at CMA meeting today

It has been decided to increase the price of Cement in the CMA meeting held today at Jabalpur as follows:-

<u>Destination</u>	<u>Price Per Bag</u>	<u>Remarks</u>
1. Jabalpur	145/-	Max. discount Rs. 5/-per bad
2. Narsinghpur	150/-	-do-
3. Seoni/Balaghat	150/-	-do-

The above prices are applicable with immediate effect. There is a sale holiday on 28th January 2001 hence increase any material is received on 28th it should not be sold.

Sd/-
V. Singh
Maihar Cement

Copy to: Additional G.M (Marketing)
Maihar”

25. A perusal of the Annual Report of CMA shows that it undertakes the review of cement prices. The complainant has placed on record a publication of R1 (**Cement Prices: Myths and realities**) which is an analytical study of pricing in cement industry. It advocates hike in cement prices.

26. It was next contended on behalf of the respondents that the minutes of the meeting dated 5.7.2000 itself shows that representatives of R3 & R11 did not attend the meeting at Hotel Utsav, Jabalpur, so the question of these respondents being party to any cartelisation does not arise.

38. In view of our discussion above, we conclude that respondents' no. 2 to 11 (except R3) acted in concert to raise the price of cement bags in Jabalpur during the months of July, December, 2000 and January, 2001 and the R1 CMA provided a common platform to these manufacturers for the purpose. We, therefore, issue a **“Cease & Desist Order”** directing R2 to R11 (except R3) to refrain from indulging in any sort of arrangement through the instrumentality of CMA or otherwise for fixing selling price of the cement in the market. We further direct them to file affidavit of compliance within eight weeks from the date of the order.

Pronounced in the open court on 29th February 2008.

Sd/-
 [Justice O.P. Dwivedi]
 Chairman

Sd/-
 [M.M.K. Sardana]
 Member

Sd/-
 [D.C.Gupta]
 Member