

India Glycols Ltd. v. Indian Sugar Mills Association & others (Case No 94 of 2014)

Decision date: 11.05.2018

Keywords: *Abuse of dominant position; collusion; artificial pricing*

Issue: 1. Whether the process of mandatory Ethanol Blending Programme notified by Ministry of Petroleum and Natural Gas as well as procurement of ethanol by the Oil Manufacturing companies at fixed notified prices contravene any provision of the Act?

2. Whether Indian Sugar Mills Association (ISMA) has abused its dominant position in the market for supply of ethanol to the PSU Oil Manufacturing companies?

3. Whether ISMA and National Federation of Cooperative Sugar Factories Ltd (NFCFSF), acted in collusion to create an artificial scarcity of ethanol by limiting production and supply of ethanol to force the PSU Oil Manufacturing Companies to purchase ethanol at an artificially higher price?

Rule: Sec. 4 and Sec. 3(3)(a) of the Competition Act, 2002

India Glycols manufactures and markets ethanol based chemicals and is dependent on sugar industry in order to procure ethanol from molasses. There were numerous allegations made against sugar mills and factories along with challenges to some governmental policies as it potentially adversely impacted competition in the market.

One of the prayers sought by India Glycols was to declare the notification on Ethanol Blending Programme (EBP) issued by the Ministry of Petroleum and Natural Gas to be void as it was alleged to be anti-competitive. Commission in addressing this issue held that policy formulation is an executive prerogative and Commission is not the requisite forum to address its validity.

To address ISMA's abuse of dominant positions, the primary requirement was to check if it is an enterprise for this purpose at all. Primary activities of ISMA are to provide "*a platform to its constituent members to discuss matters of common interest relating to the sugar industry besides making representations to the government authorities and agencies to espouse the*

cause of its members in respect of the matters of policy and procedures governing the sugar industry". It was held that ISMA is not involved in any economic or commercial activity, and hence does not satisfy the definition of enterprise. Consequently, the question of abuse of dominant position does not arise.

In order to understand if there was collusion to increase prices of ethanol artificially, the factors affecting ethanol production were focused upon. It was accepted that production of sugarcane is inconsistent in the nation and, therefore, supply of molasses in the country is limited. This has a decisive impact on the production and supply of ethanol. Since the decisions on ethanol production are largely market driven, it was held that there is no collusion between ISMA and NFCSE.

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