

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW
DELHI**

Review Application (AT) No.02/2017

in

TA (AT) (Competition) No.06 of 2017

(Old Appeal 18 of 2017)

IN THE MATTER OF:

Karnataka State Road Transport Corporation ...Appellant

Vs

Sree Gajanana Motor Transport Co Ltd & Ors ...Respondents

Present: None for the appellant.

**Mr.Rajshekhar Rao, Mr. Gaurav Gupta, Advocate
for Respondent No.3.**

Mr. Kamal Sultanpuri, Deputy Director, Law.

ORDER

20.02.2018- The review application has been preferred by Competition Commission of India for recall and review of observation made at para 8 of the order dated 2nd August, 2017 passed by this Appellate Tribunal in Transfer Appeal (AT) No.06/2017 relevant portion of which reads as follows:-

“7. In the present case, the 1st Respondent/Informant has not challenged the impugned order and thereby the finding given by the Commission with regard to ‘dominant position’ of the Appellant and that the allegation of unfair and anti-competitive activities is not proved, has reached finality. Otherwise also, we find no reason to disagree with the finding of the Commission, in so far as misuse of dominant position is concerned.

8.However, we are of the view that once the Commission came to a definite conclusion that the person holding ‘dominant position’ has not abused

its power and/or activities and its activities are not unfair and anti-competitive, in absence of any specific evidence and finding, the Commission has no jurisdiction to issue any direction for the alleged prima facie case of contravention. If the 'Flexi Rate Scheme' and 'classification of routes' and 'monopoly' and 'non-monopoly' destination point has not been held to be operative, the Commission has no authority to express its view as to what the State Government is required to do in the larger public interest. In absence of such power vested with the Commission, we have no other option but to set aside the last part of the order and observation as made in paragraph 20, as quoted above. Thereby, the direction, as given in paragraph 20 of the impugned order is set aside, rest part of the order dated 27th February, 2017 is affirmed. The order passed by the Commission stand modified to the extent above."

2. Learned counsel appearing on behalf of Commission submits that while the 'dominant position' of the appellant has been accepted by this Appellate Tribunal, the observation at para 8 is uncalled for, in view of the fact that no direction has been issued by the Commission. It is further submitted that the Commission is also empowered to pass orders/directions as the Commission may deem fit and proper under Section 26(2) of the Competition Act, 2002 and apart from the advisory jurisdiction under Section 18 of the Act.

3. We have heard the learned counsel appearing on behalf of the Commission and perused the order. A plain reading of the para 7 and 8 of the order as quoted above it will be clear that this Appellate Tribunal has given specific finding that the 'dominant position' of the appellant is not under challenge and

thereby the order has reached finality. This Appellate Tribunal has observed that once the Commission came to a definite conclusion that the person holding 'dominant position' has not abused its powers and/or its activities are not unfair and anti-competitive, in absence of any specific evidence and finding, the Commission has no jurisdiction to issue any direction for the alleged prima facie case of contravention. This Appellate Tribunal has not made any specific observation that the Commission has wrongly issued any direction nor have expressed any opinion with regard to powers under sub-section (2) of Section 26 or Section 18 of the Act which can be exercised in appropriate case.

4. For the reasons aforesaid no review or recall of part of the order is called for except the clarification as has been made above. The review application stands disposed of with the aforesaid observations.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)

Bm/gc