

**BEFORE THE
COMPETITION APPELLATE TRIBUNAL, ISLAMABAD**

**SALEEM HABIB GODEL, SOLE PROPRIETOR OF TOYOTA
CENTRAL MOTORS AND PRESIDENT PAMADA**

.... APPELLANT

VERSUS

COMPETITION COMMISSION OF PAKISTAN

...RESPONDENT

Appeal No.01/2016

Present: Justice (R) Mian Fasih Ul Mulk, Chairperson
Mr. Ahmed Owais Pirzada, Member Technical.
Justice (R) Miftah-Ud-Din, Member Technical.

For the appellant: Syed Ali Raza Shah and Zohaib
Sheikh, Advocates.

For the Respondent: Mr. Amjad Hameed Ghouri, Advocate

Date of hearing: 13.04.2016, 21.09.2016, 28.09.2016,
30.11.2016, 21.12.2016, 25.01.2017 &
08.03.2017

JUDGMENT

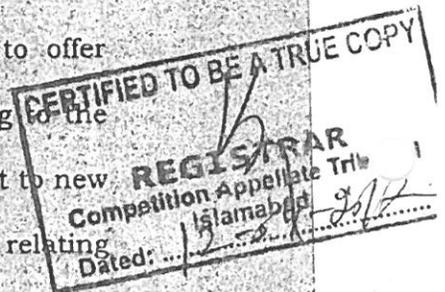
MIAN FASIH-UL-MULK, CHAIRMAN:- This appeal No. 01 of 2016 filed by Saleem Habib Godel, sole Proprietor of Toyota Central Motors and Appeal No. 02 of 2016 filed by Toyota Sahara Motors (Pvt) Ltd are directed against the order dated 10.04.2015 passed by the learned Competition Commission of Pakistan with the prayers that the Search Order/Enquiry Report dated 01.10.2014, Show Cause Notice dated 16.10.2014 and the impugned Order dated 10.04.2015 be declared as illegal, void and without lawful authority thereby exonerating PAMADA from the charged violations.

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Islamabad
Dated: 12-09-2017

(Signature)

2. As both the appeals are directed against one Order of the learned Competition Commission, therefore, the same shall stand disposed off through this common judgment in Appeal No. 01 of 2016.

3. It appears from the record that Pakistan Automobile Manufacturers Authorized Dealers Association (hereinafter called PAMADA) alongwith its Forty Three (43) Member Undertakings were issued Show-Cause Notices for violating the provisions of Section 4 of the Competition Act, 2010. As per Enquiry Report dated 1st October 2014, PAMADA had taken decisions regarding the rates of automotive body repairs and paint job services offered by its members, especially for insurance companies; it had also taken decision relating to fixing the prices of genuine spare parts supply by automobile manufacturers by strictly prohibiting its members to offer discounts; that PAMADA had taken decisions relating to the division of market and allocation of quota with respect to new automobile sales, and that it had also taken decisions relating to restrict the movement of human resources between automobile dealers, which acts appeared to have the object and effect of preventing, restricting or reducing competition in the market and thus in contravention of sub-section (1) of Section 4 read with clauses (a), (b) and (c) of subsection (2) of Section 4 of the Act.



4. The learned Competition Commission, after affording proper opportunity of hearing of the said Undertakings, vide impugned Order directed PAMADA to cease its collusive practices and to pay a total sum of Pakistani Rupees one Hundred Forty Million (PKR 140,000,000), while the Member Undertakings were exonerated having committed no violation; hence the Show-Cause Notices issued to them were disposed of without penalty.

5. During the course of arguments, it came to surface that PAMADA had not filed any appeal against the impugned Order and when the learned counsel for the appellants were asked to convince this Tribunal, whether the appellants are 'aggrieved persons' within the meanings of Section 42 of the Competition Act 2010 (hereinafter referred to as the "Act") to file an appeal before this Tribunal, they contended that PAMADA is not a registered association which does not provide any services and thus is not a natural or legal person. Further stated that Saleem Habib Godel besides being the Proprietor of Toyota Central Motors is also the President of PAMADA ~~and~~ that the appellant/undertakings have filed the appeals because they have the apprehension that ultimately the penalty in question would be recovered from them and other Member Undertakings.

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SD/ed: 25/12/2012

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6. A look at appeal No.01 of 2016 would reveal that it has been filed by Saleem Habib Godel, who is the sole Proprietor of Toyota Central Motors. Although he has shown himself to be the President of PAMADA but it cannot by any imagination be termed as an appeal filed by PAMADA itself against the impugned order. Had it been so it would have been with the title "PAMADA through its President". In the appeal in hand, the appellant has filed the appeal as Sole Proprietor of Toyota Central Motors and President of PAMADA which only means to show his status that being the Sole Proprietor of an Undertaking he is also the President of PAMADA.

7. The appellants in Appeals No. 01 and 02 of 2016 cannot be termed as aggrieved persons because no penalty has been imposed on them or the Member Undertakings by the learned Competition Commission in its impugned Order. Section-7 of the Competition Appellate Tribunal Rules, 2015 empowers this Tribunal to reject an appeal if, (a) it considers that the memorandum of appeal discloses no valid ground of appeal; (b) it considers that the appellant is not an aggrieved party or person under section-42 of the Act; (c) The appellant fails to comply with any provision of these rules, or any direction, or order of the Tribunal. A person can be said to be aggrieved by an Order only when it causes him some prejudice in some form or another. Unless the person is prejudicially or

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Dated: 12/5/17

adversely affected by the Order, he cannot be entitled to file an Appeal as an aggrieved person. The appellants in these appeals are not aggrieved persons from the order of the learned Competition Commission, on whom no penalty has been imposed for violation of Section 4 of the Act. The word 'person aggrieved' does not mean a man who is merely disappointed of a benefit which he may have received if some other order had been passed; the person aggrieved must be a person who has suffered a legal grievance; a person against whom a decision has been pronounced, which has wrongfully deprived him of something; or wrongfully refused him of something; or wrongfully affected his title of something. When a person had not been deprived of a legal right; when he has not been subjected to a legal wrong; when he has not suffered any legal grievance; when he has no legal peg for a justifiable claim to hang on; he cannot claim that he is a person aggrieved.

In **Blacks Law Dictionary**, aggrieved has been defined as having suffered loss or injury and aggrieved party or aggrieved person has been defined as one whose rights invaded by an act complained of or whose pecuniary interest is directly and adversely affected. The apex Court of the Country in the cases of **Dr. Imran Khattak Vs. Ms. Sofia Waqar Khattak, PSO to Chief Justice (2014 SCMR 122)** and **Nisar Ahmed Vs. Additional Secretary (1979 SCMR 299)** has held that a

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Dated: 12-09-2015

person must establish a direct or indirect injury to himself and substantial interest in the subject matter of the proceedings. In the case of **Ayaaub Khan Noor Khan Pathan Vs. State of Maharashtra & others (AIR 2013 SC 58)**, it has been held that it is a legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfied the Authority/Court that he falls within the category of aggrieved person. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. This Tribunal is, therefore, of the view that the appellants are those Undertakings against whom no adverse action/order has been passed and the Association, known as PAMADA, has not filed any appeal against the impugned order, therefore, the appellants have no locus standi to file the instant appeals.

8. May be, PAMADA is not an incorporated entity with the requisite legal personality to sue and be sued but proceedings before the Competition Commission under the Act are not equivalent to civil litigation and thus not akin to a party being "sued". The Member Undertakings, however, by their own admission, have conceded before the Commission that PAMADA is a platform which allows its members to raise collective concerns. The most interesting aspect of the case is that before the learned Competition Commission, PAMADA had

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Dated: 12-08-2014

also submitted Power of Attorney on behalf of the Member Undertakings duly signed by its President and embossed with the stamp of the Association. This being the position, the aggrieved person was PAMADA to file an appeal before this Tribunal as penalties were imposed on it.

9. The argument that the appellants apprehended that the penalty imposed upon PAMADA would be recovered from the Member Undertakings is also not sustainable because on mere apprehension neither an appeal can be entertained nor it can justify the interference of this Tribunal with proceedings of the learned Commission, which acts within the scope of its powers.

10. The nutshell of the above discussion is that the appeals in hand being not maintainable are hereby dismissed as such.

Announced in open court
29.03.2017

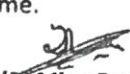

Justice (R) Miftah-Ud-Din
Member Technical
CERTIFICATE:


Justice (R)
Mian Fasih Ul Mulk,
Chairperson


Anwar Owais Pirzada
Member Technical



This judgment consists of (7) seven pages, each dictated, read over, corrected and signed by me.


Justice (R) Mian Fasih Ul Mulk,
Chairperson

Application No.	188
Dated	12-04-2017
Applicant	CCP
Respondent	08
Forum	FOC
File No.	12-04-2017
Date of Disposal	12-04-2017
By	M. Noman Sheh