

(2023) 11 CCI CK 0001

Competition Commission Of India

Case No: Case No. 24 Of 2023

XYZ (Confidential)

APPELLANT

Vs

Survey of India, Uttarakhand &
Another

RESPONDENT

Date of Decision: Nov. 30, 2023

Acts Referred:

- Competition Act, 2002 - Section 3, 3(3), 4, 19(1)(a), 26(2), 33

Hon'ble Judges: Ravneet Kaur, Chairperson; Anil Agrawal, Member; Sweta Kakkad, Member; Deepak Anurag, Member

Bench: Full Bench

Final Decision: Dismissed

Judgement

Order under Section 26(2) of the Competition Act, 2002

1. The present Information has been filed by XYZ ("Informant") under Section 19(1)(a) of the Competition Act, 2002 ("Act") against the Surveyor General of India, Survey of India ("OP-1") and the Technical Committee for Purchase of Plotter, Survey of India ("OP-2"), alleging contravention of the provisions of Section 3 of the Act in the procurement of LED Plotters with Folders, by the Survey of India, Department of Science and Technology ("Survey of India/SoI")
2. At the outset, it may be noted that the Informant has sought confidentiality over its identity in terms of Regulation 35 of the Competition Commission of India (General) Regulations, 2009. The Commission, in the Ordinary Meeting held on 15.11.2023, considered the said request of the Informant and agreed to grant confidentiality over its identity.

3. Survey of India is the oldest scientific department of the Government of India. It was set up in 1767 and in its assigned role as the nation's principal mapping agency, it bears a special responsibility to ensure that the country's domain is explored and mapped suitably <https://www.surveyofindia.gov.in/pages/who-we-are>.

4. As per the Information, a tender bearing no. GEM/2022/B/2897455 dated 01.03.2023 was floated by Survey of India for procurement of 4 LED Plotters with Folders. It was alleged that the bidding process followed in the said tender was anti-competitive as the tender was for a particular category of product and favoured a cartel of bidders who have a monopoly on the said product type. It was stated in the Information that the bidding process helped a cartel of bidders, which consists of M/s Reprographics India and its two alleged resellers namely Indi Innovation and Solutions and CADMARC Software Pvt Ltd., enabling them to quote exorbitant rates due to lack of any competition. The Informant also averred that better and cheaper products giving the desired performance are available in the market.

5. As such, the Informant has alleged that Survey of India, by engaging in favouritism, denying competition and helping a cartel of bidders, has violated the provisions of Section 3 of the Act. The Informant has also sought interim relief under Section 33 of the Act and prayed to stay the tender proceedings or cancellation of the concerned bid till any decision is taken by the Commission.

6. The Commission has considered the averments and allegations made in the Information and notes that the gravamen of the Informant emanates from the alleged favourable treatment being extended by Survey of India by incorporating certain clauses and specifications in the 2023 tender for procurement of LED Plotters with Folders.

7. It is noted from the bid document annexed by the Informant that a tender was floated by Survey of India for the procurement of 4 LED Plotters with Folders by way of a two-packet bid. As per the conditions, *inter alia* the bidders must have had a minimum average turnover of INR 60 lakhs in the last three years and one year of past experience. Further, exemptions were granted to micro or small enterprises and startups from bidder turnover criteria and experience criteria. In addition, preference was afforded to Make in India products and micro and small enterprises.

8. From the Information, the Commission observes that the Informant has alleged that Survey of India facilitated a cartel of bidders in its tender. However, there is nothing in the Information to show that any cartel among the bidders existed and accordingly, examination of the alleged conduct under Section 3 (3) of the Act is not warranted.

9. As regards the allegations pertaining to the stipulation of certain conditions in the tender document, the Commission has consistently affirmed through its earlier

decisions that a procurer is entitled to prescribe technical criteria, conditions or provisions within the tender documentation in accordance with its particular need and that the Commission does not interfere unless the procurer is a dominant player in a relevant market.

10. In this regard, it is noted that the order of the Commission, in **Shri Prem Prakash v Power Grid Corporation of India Ltd., Case No. 41 of 2016 decided on 21.09.2016**, observed as under:

“18. The Commission further observes that every consumer/procurer must have freedom to exercise their choice freely in the procurement of goods and services. Such choice is sacrosanct in a market economy as the consumers are in the best position to evaluate what meets their requirements and provides them competitive advantage in provision of their services. While exercising such choice, they may stipulate standards for procurement which meets their requirement and the same as such cannot be held as anti-competitive.”

11. Further, the Commission, in Mr. Dushyant v. National Accreditation Board for Testing and Calibration Laboratories (NABL) & Ors., Case No.48 of 2021 decided on 24.02.2022, observed as under:

“18....the Commission notes that every consumer/ procurer must have the freedom to exercise its choice freely in the procurement of goods/services and such a choice is sacrosanct in a market economy. While exercising their choice, OPs are free to stipulate standards for procurement, and the same cannot be held to be out-rightly anti-competitive and will depend, inter alia, on factors such as the nature of the procurement, the size of procurer, the goods / services sought to be procured by it, and whether such buying will result in foreclosure for other sellers operating in the market who are competing to sell and are substantially dependent on such buying process. Further, the autonomy to specify the requirements of procurement is inherent in the procurers. When the procurer is a dominant buyer in its sphere of economic activity and its unilateral conduct in the buying process can tend to distort competition on the supply side of such market, then there is reason to be circumspect...”

12. The Commission notes from the Information that the Informant has neither levelled any allegation under Section 4 of the Act nor defined any relevant market or averred dominance of Survey of India. Even from the information available in the public domain, it is noted that there are numerous buyers procuring LED Plotters apart from the Survey of India. In this regard, the Commission observes that considering the facts, circumstances, and market construct it is not necessary to delineate relevant market and to assess the dominance of Survey of India therein.

13. Accordingly, in view of the above, the Commission is of the opinion that no case of contravention of provisions of either Section 3 or Section 4 of the Act is made out in the present matter. Hence, the matter is directed to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act. Consequently, no case for grant of relief(s) as sought under Section 33 of the Act arises and the prayer for the same also stands rejected.

14. The Secretary is directed to communicate to the Informant accordingly.