

Prem Prakash v. The Principal Secretary, Madhya Pradesh Public Works Department and Ors (MANU/CO/0025/2017)

Decision Date: 17.03.2017

Key Words: *enterprise; abuse of dominance*

Issue: Whether requiring accreditation is imposing and arbitrary standard?

Rule: Sec. 3 and Sec. 4(2)(a)(1) of the Competition Act, 2002

In the present case the Informant alleged that the OP-1 and OP-2 (Haryana Public Works Dept. and Central Public Works Dept.) were imposing an unfair and arbitrary standard on the informant's laboratory by requiring accreditation from National Accreditation Board for Testing and Calibration Laboratories (NABL). According to the informant, his laboratory is accredited to meet international standards and requiring accreditation from a specific body is unfair and arbitrary and in violation of Sec. 3 and Sec. 4(2)(a)(1).

The Commission had earlier rejected the allegation of abuse of dominant position on grounds that OP-1 and 2 are not enterprises within the meaning of the Act. However based on a contrary decision by the COMPAT, the commission reconsidered the same. In light of this the relevant product market was held as the "market for procurement of services for construction of roads and bridges etc, through tendering" and the relevant geographical markets as Haryana for OP-1 and India for OP-2. Given that the OP's have a monopoly in their relevant markets, they are held to have a dominant position.

Further the commission notes that the purpose of competition law is promotion and "protection of competitive process and ensuring a level-playing field for all market players that will help markets be competitive." Thus accordingly when a department of the Government requires certificates in their tender condition, the terms must not specify any single accrediting entity rather the terms should specify the standards. This would ensure that laboratories, which have been accredited as per the international standards, would not be discriminated based on the accreditation body that certifies them. Thus the Commission held the standard imposed by the OP's to be in violation of Sec. 4(2)(a)(i) of the Act.

However during the pendency of the complaint, certain modifications were made by the OP-2 as per which accreditation by NABL is no longer mandatory instead only compliance with international testing standards is required which is held by the CCI to be in compliance with principles of Competition Law.

The Commission also notes that giving preference to OP owned Laboratories is also not a violation of the Act. In light of these recent modifications the Commission directed the case to be closed under Sec. 26(2) of the Act.

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