

## **Shri Rajat Verma v. Public Works (B&R) Department Government of Haryana and Ors (2017 SCC OnLine CCI 19)**

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**Decision Date:** 27.02.2017

**Key Words:** *enterprise; abuse of dominance*

**Issue:** Whether a contractor abused its dominant position by incorporating unfair clauses in the bid document?

**Rule:** Sec. 2(h) and (u) and Sec. 4 of the Competition Act, 2002

In the present case, the Informant alleged that OP-1 enjoys a dominant position in execution of works of roads, buildings, bridges and civil construction works in the State of Haryana and it abused its dominant position by incorporating unfair clauses in the bid document.

This case had earlier been closed under sec. 26(2) for the Commission held that OP-1 was not covered under the definition of 'enterprise' within the meaning of the Act because it is not directly engaged in any economic and commercial activities.

However an appeal with filed with COMPAT which allowed the appeal holding that OP-1 is an enterprise. The COMPAT held that it is clear that the legislature has designedly included Government departments in relation to any activity relating to storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind. Further that there is noting in Sec. 2(h) and (u) from which it can be inferred that the definitions of enterprise and service are confined to any particular economic or commercial activity. The only exception to the definition of the term enterprise relates to those which are relatable to the sovereign functions of the Government. In view of this OP-1 was held to be an enterprise and the matter was remitted back to the Commission.

Subsequently the commission defined the relevant market as the market for procurement for construction and repair of roads and bridges through tendering in the State of Haryana. Given the OP-1 is the only procurer of such services in the State of Haryana it is obvious that it is dominant in the relevant market.

The Commission then engages in a prima facie analysis of the clauses and reaches the conclusion that the allegation of the informant that certain clauses of the agreement are unfair, discriminatory and violative of Sec 4 does have some merit. It observes that many of the clauses pointed out by the informant prima facie appear to tilt in favour of the OP's and prejudicial to the contractors. The commission then notes that the OP's have tried to justify the clauses relying on efficiency and other arguments; however the defence taken cannot be ascertained until the matter is investigated.

In conclusion, the Commission directs the DG under Sec. 26(1) to investigate the matter within a period of 60 days.

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