

Shri Rajat Verma v. Public Works (B&R) Department, Government of Haryana & others (Case No 84 of 2014)

Decision date: 09.07.2018

Keywords: *Abuse of dominant position; bid; public works*

Issue: Whether Public Works (Building and Road) Department, Government of Haryana (PWD) enjoyed a dominant position and whether there was an abuse of this position?

Rule: Sec. 4 of the Competition Act, 2002

It was alleged that PWD enjoyed a dominant position in the execution of roads, buildings, bridges and other civil construction works in the state of Haryana. It was also alleged that PWD abused this position by incorporating unfair terms in the bid documents for construction of approaches to lane rail over bridge. The informant in the instant case was a bidder in the process.

Even though PWD is a government department, Competition Appellate Tribunal held that it comes under the purview of the Act as it is covered under enterprise (Sec. 2(h)). Being procurer of construction services, PWD was under scrutiny of abusing buyer's power. DG placed reliance of two other decisions in *Adcept Technologies Pvt. Ltd. v Bharat Coking Coal Limited* and *V.E. Commercial Vehicles Limited v UPSRTC* to reach a conclusion. Following the approach adopted in these cases, DG applied the concept of 'demand side substitutability' inversely *i.e.* "by assessing the availability of substitutes for suppliers and their ability to switch to alternative sales opportunities both in terms of products as well as geographies".

After an analysis of the different kinds of roads and bridges and the associated services, relevant product market was identified. Moreover, there was an expansion of relevant geographic market to states other than Haryana since contractors have the ability to supply their services to various parts of the nation. The relevant market was held to be '*the market for procurement of construction services for construction/ repair/ maintenance of roads and bridges (other than railway bridges for railway traffic in the territories of the States of Haryana, Himachal, Rajasthan, Punjab, Bihar, Madhya Pradesh, Uttar Pradesh, Uttrakhand and Delhi*'.

Taking into account factors such as PWD's size and resources, size and importance of its competitors, dependency of contractors on PWD for supplying their services for construction of roads and bridges and entry barriers, it was held that PWD did not enjoy a dominant position in the relevant market. Since there is lack of a dominant position primarily, the issue of abuse of this position loses significance.

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