



Case No.11/2013

In Re:

27 May, 2013

Anil Gambhir Informant
r/o G-53, West Patel Nagar, New Delhi

And

The Union of India
Through the Director General, CPWD
CPWD, NirmanBhawan, New Delhi

Opposite Party

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. Justice (Retd.) S. N. Dhingra
Member

Mr. S.L. Bunker
Member

Present : Shri R. Rajappan, Advocate for the informant.



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

The informant is a CPWD Class-II (Civil) Registered Contractor, having his office at New Delhi and is eligible to tender for CPWD works costing up to Rs. 5 crores of any civil nature in the northern region (Punjab, Haryana, Himachal Pradesh, Jammu & Kashmir, Uttar Pradesh, Rajasthan, Uttarakhand, Delhi and UT of Chandigarh only). The informant had been doing the said works in CPWD, local bodies and other organisations.

3. The OP is an agency of the central government operating throughout the country for planning, construction, maintenance and repairs of all works and buildings financed from civil works budget. It carries out the said works through its established divisions by inviting tenders from the registered contractors.

4. It is stated in the information that the construction and maintenance works were executed by the respective divisions of the OP, depending upon the magnitude of works and the tenders for the same were open to all registered contractors till 2008-09. However, in the year 2009, the Division entrusted with the maintenance work classified the annual repair and maintenance works as a specialised nature of work and issued tender notice only for the specialized agencies or contractors. The informant alleged that the OP reclassified the above said maintenance work as a special category without any logical basis and the works of annual repair and maintenance do not require any special technical expertise or experience.

5. The informant also alleged that CPWD officers in order to favour certain general category contractors, categorized them as special agencies for annual repair and maintenance works. The said agencies since had worked in the maintenance division for some years and gained experience, got themselves classified as specialized agencies.

6. The Informant further alleged that OP was the sole authority responsible for construction and maintenance of public works in India and thus, was able to abuse its dominant position by imposing unfair and discriminatory conditions in the purchase of services. The informant alleged that the OP indulged in practice that resulted in denial of market access to him.



7. It is also alleged that the works of annual repair and maintenance were being awarded only to a few so called specialized contractors. It is revealed from the works awarded by few divisions like S Division, Pushpa Vihar Maintenance Division, Q Division, Electrical Division 13 that the works were being awarded only to a few favoured parties like Swastik Electrotech P. Ltd., Niranjan Kumar Garg, N.D Sharma, Devinder Singh etc. The Informant alleged that these few agencies in the garb of specialized agencies got the work awarded year after year because of the restrictions put in tender notice by the OP.

8. The informant also submitted that the rates being quoted were very high ranging from 30-40% above the Delhi Schedule Rates 2012. The Informant quoted the instance of Delhi Aviation Division CPWD, which had floated tenders for the same nature of maintenance work and got the rates 30% below and the works were being carried out satisfactorily by Shri J.P. Gupta in the year 2012.

9. The informant alleged that the OP abused its dominant position by awarding civil repairs and maintenance works to the Contractors registered as specialized / categorised agencies whereas the work could be done by any ordinary civilcontractor.

10. In order to examine the allegations of the informant, first of all, the relevant market is to be identified. Considering the facts of the present matter, the relevant product market would be *“the, maintenance and repairs of civil works and buildings”* and relevant geographic market would be *entire India*. Maintenance and repair of civil works is not confined only to Central Govt. buildings. This service is extensively needed by all agencies and private bodies, individuals owing residential or commercial properties in India. Similarly service field of repair maintenance service is open to all those in this field throughout India. Thus, the relevant service market in the present case would be *the provision of maintenance and repairs of all civil works and buildings within India*.

10. In order to attract the provisions of section 4 of the Act, the dominant position of the enterprise in the relevant market needs to be examined. The OP has been seeking services throughout the country for maintenance and repairs of all civil works and buildings, as it does



not carry out the said work on its own and invites tenders from various registered contractors for the performance of the work. However the OP cannot be considered as a dominant purchaser of services in the field of repair and maintenance of civil works in view of its minuscule presence as compared to vast number of buildings owned by private bodies, individuals, several states and autonomous organizations.

11. In view of the foregoing, the Commission finds that no *prima facie* case of even dominance of OP was made out against the OP. The question of abuse of dominance therefore does not arise. The Commission deems it fit to close the proceedings of the case under Section 26(2) of the Act.

12. The Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Dr. Geeta Gouri)
Member

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(Anurag Goel)
Member

Sd/-
(M.L. Tayal)
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