



COMPETITION COMMISSION OF INDIA

Case No. 12 of 2022

In Re:

Mr. Savinder Singh
172-173, Village Lahian
Teshil and District Tarn-Taran
Punjab – 144 629.

Informant

And

Secretary
Department of Food & Civil Supplies
Consumer Affairs, Government of Punjab
Anaj Bhawan, Sector 39-C
Chandigarh

Opposite Party No. 1

Director
Department of Food & Civil Supplies
Consumer Affairs, Government of Punjab
Anaj Bhawan, Sector 39-C
Chandigarh

Opposite Party No. 2

CORAM

Ashok Kumar Gupta
Chairperson

Sangeeta Verma
Member

Bhagwant Singh Bishnoi
Member

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

1. The present Information has been filed by Mr. Savinder Singh (**‘Informant’**) alleging contravention of the provisions of Sections 3 and 4 of the Competition Act, 2002 (the **‘Act’**) by Secretary, Department of Food and Civil Supplies Consumer Affairs, Government of Punjab (OP-1) and Director, Department of Food and Civil



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Supplies Consumer Affairs, Government of Punjab (OP-2). Both OP-1 and OP-2 are officials of the Department of Food and Civil Supplies Consumer Affairs, Government of Punjab and therefore, it would be appropriate to refer OP-1 and OP-2 collectively as ‘**Opposite Party**’/ ‘**OP**’.

2. The Informant is stated to be a contractor engaged in the business of transporting food grains (mainly, wheat and paddy) which are purchased and dispatched by various procurement agencies viz. Punjab State Civil Supplies Corporation Ltd. (PUNSUP), Punjab State Co-operative Supply & Marketing Federation Ltd. (Markfed), Punjab Grains Procurement Corporation Ltd. (PUNGRAIN), Punjab State Warehousing Corporation and Food Corporation of India (FCI), on behalf of Government of India from various purchase centres / mandis situated across the State of Punjab.
3. The Department of Food and Civil Supplies Consumer Affairs, State of Punjab, is *inter alia* engaged in the Public Distribution System, procurement process of food grains and their storage in Punjab¹. As per the Information, for the purpose of transportation of food grains, OP frames a policy every year for the subsequent crop year in Punjab. On 16.12.2021, the OP framed the “*Transportation Policy of Food grains for the year 2022*” (‘**Policy**’). According to the Informant, the need for the said policy arises for carrying out minimum rates through open competitive tenders, in a transparent manner.
4. The Informant has stated that, in the policy issued for the year 2022, OPs, by using their dominant position, have inserted clause Nos. 5(C) and 5(D) which prohibit new entrants / bidders having insufficient / no experience to participate in the tenders relating to the transportation of food grains issued by concerned procurement agencies in Punjab. Besides this, the said policy has various clauses having adverse effect on competition and therefore violative of the provisions of Sections 3 and 4 of the Act. This also has the effect of creating monopoly in favour of the big / old contractors in the State of Punjab besides curbing healthy competition.

¹ <http://foodsuppb.gov.in/>



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5. It is alleged by the Informant that, as per Clause 5(C) of the Policy, “a tenderer must possess a work experience of the transportation of food grains of State Procurement Agencies (‘SPAs’) for a minimum period of one year in the last three Years i.e. from Financial Years, 2018–19 to 2020–21, equivalent to the capacity of each cluster applied for. Tenderer will upload the experience certificate issued by the concerned agency in this regard along with the technical bid”. Due to the insertion of this clause in the Policy, only the old contractors having experience of one year are allowed to submit bids in tenders for transportation of food grains in Punjab. Resultantly, the old contractors are getting the contract year after year for the same cluster. In the State of Punjab, 75% work is being awarded to the old contractors, as there remains no competition from new entrants.
6. Further, in Clause 5(D) of the Policy, a condition has been inserted whereby a tenderer must have a minimum turnover from the transportation work of food grains of SPAs in any one of the previous three FYs, i.e., from 2018–19 to 2020–21, depending on the capacity (in Metric Tonnes (MT)) of the cluster applied for, as per the following table:

Sr. No.	Total arrival of wheat/paddy in mandis in RMS/KMS falling under one cluster (whichever is higher)	Minimum turnover required (in Rupees)
1.	Up to 5000 MT	10,00,000
2.	5001 MT to 10,000 MT	20,00,000
3.	10001 MT to 20,000 MT	40,00,000
4.	20001 MT to 30,000 MT	60,00,000
5.	30001 MT to 40,000 MT	80,00,000
6.	40001 MT to 50,000 MT	1,00,00,000
7.	50001 MT to 75,000 MT	2,00,00,000
8.	75001 MT to 1,00,000 MT	3,00,00,000
9.	Above 1,00,000 MT	4,00,00,000

7. With respect to Clause 5(D) of the Policy, the Informant stated that the turnover in quantity as well as in amount does not match with each other and is, therefore, detrimental to healthy competition. The Informant has also pointed out that tenders floated by FCI prescribed only one condition i.e. *turnover in financial terms*.



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8. Apart from the allegations of insertion of unfair and discriminatory clauses, *i.e.*, Clause 5(C) and 5(D) in the Policy, the Informant alleged that the Policy does not allow a bidder to add another partner.
9. Accordingly, the Informant has, *inter alia*, prayed to the Commission to hold the actions of OP in issuing the policy for transportation of food grains in violation of the provisions of Sections 3 and 4 of the Act, direct OP to not issue further policies with such clauses and impose penalties, as the Commission may deem fit.
10. The Commission considered the present Information in its ordinary meeting held on 16.03.2022 and decided to pass an appropriate order in due course.
11. Having considered the averments and allegations made in the Information, the Commission observes that the gravamen of the Information pertains to creation of alleged entry barriers for new entrants through insertion/amendment of certain clauses of the Policy which is essentially a policy for transportation of food grains and procurement of such services. The Commission further observes that the Informant, apart from making just a passing reference to violation of the provisions of Section 3 of the Act, has not mentioned any specific conduct of the OP which can be examined under the provisions of Section 3 of the Act.
12. For the reasons detailed in the succeeding paras, it is not necessary to delineate relevant market and to establish dominance of OP therein.
13. The Commission observes that essentially, the Informant is aggrieved of the stipulation of requirement of work experience of transportation of food grains of SPAs for a minimum period of one year in the last three years. Also, Informant is aggrieved of the stipulation of requirement of minimum turnover as specified in the Policy.
14. The Commission is of the opinion that a work experience requirement of one year or minimum turnover requirement as alleged in the Information, does not in itself can be said to be anti-competitive. In this connection, it is also pertinent to point out that the potential provider of transportation service may have work experience of one year



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from “State Government Procurement Agencies”, which has been defined in the Policy and *inter alia* includes FCI also. In this regard, it is noted that the Informant itself has enclosed copy of a tender issued by FCI for procurement of such services, which clearly enables service providers with no experience or insufficient experience to participate in the bidding process. As such, the impugned clauses do not appear to foreclose Informant from acquiring the work experience required for participating in the tender floated by OP.

15. In relation to allegation of the stipulation of certain requirement relating to the work experience in tenders by a procurer, the Commission in various decisions has upheld the choice of the procurer as a consumer by holding that a consumer can decide what is best for it and will exercise its choice in a manner which would maximise its utility derived from the consumption of a good / service. In this regard, the Commission further observes that a procurer, as a consumer, can stipulate certain technical specifications/ conditions/ clauses in the tender document as per its requirements which by themselves cannot be deemed anti-competitive. It may be noted that the party floating the tender is a consumer and it has the right to decide on the appropriate eligibility conditions based on its requirements. The Commission also observes that in a market economy, a consumer must be allowed to exercise its choice freely while purchasing goods and services in the market. It is expected that a consumer can decide what is the best for it and will exercise its choice in a manner which would maximise its utility that is derived from the consumption of a good/ service.

16. Specifically, the Commission, in *Suntec Energy Systems and National Dairy Development Board and Another, Case No. 69 of 2016* decided on 10.11.2016, observed as under:

“a procurer, as a consumer, can stipulate certain technical specifications/ conditions/ clauses in the tender document as per its requirements which by themselves cannot be deemed anticompetitive. It may be noted that the party floating the tender is a consumer and it has the right to decide on the appropriate eligibility conditions based on its requirements. The Commission also observes that in a market economy, consumers’ choice is considered as sacrosanct and in such an economy, a consumer must be allowed to exercise its choice freely while



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purchasing goods and services in the market. It is expected that a consumer can decide what is the best for it and will exercise its choice in a manner which would maximise its utility that is derived from the consumption of a good/ service.”

17. Thus, it is the prerogative of the procurer to decide the tender conditions/technical specifications/conditions/clauses in the tender document as per its requirements. Further, as brought out *supra*, the impugned clauses of the Policy do not appear to contravene the provisions of Section 4 of the Act.
18. In the light of the above, the Commission finds that no case is made out against the OP in the instant matter. Accordingly, the Information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
19. The Secretary is directed to communicate to the Informant accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Date: 04.04.2022
New Delhi