



COMPETITION COMMISSION OF INDIA

Case No. 14 of 2017

Prem Prakash

Proprietor, Venus Testing and Research Laboratory

Industrial Area, Khurai Road, BINA

Distt. Sagar (M.P) - 470113

Informant

And

Director General,

Bureau of Indian Standards

9, Bahadur Shah Zafar Marg

Manak Bhawan

New Delhi-110002

Opposite Party No. 1

Secretary

Department of Consumer Affairs

Ministry of Consumer Affairs

Food and Public Distribution

Krishi Bhawan

New Delhi-110001

Opposite Party No. 2



CORAM

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**

**Justice G. P. Mittal
Member**

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

1. The present information has been filed under Section 19(1)(a) of the Competition Act, 2002 (the 'Act') by Shri Prem Prakash (hereinafter referred to as the '**Informant**') against the Director General, Bureau of Indian Standards (hereinafter referred to as '**Opposite Party 1/ OP 1**') and the Secretary, Department of Consumer Affairs, Food and Public Distribution, (hereinafter referred to as '**Opposite Party 2/ OP 2**') alleging contravention of the provisions of Section 4 of the Act.
2. As per the information, the Informant is the proprietor of a material testing laboratory namely, Venus Testing and Research Laboratory, which provides testing services throughout the state of Madhya Pradesh and is accredited as per



ISO/IEC-17025. OP 1 is the Director General of the Bureau of Indian Standards ('BIS'), a body formed under Bureau of Indian Standards Act, 1986 ('BIS Act'). OP 2 is the Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution.

3. The grievance of the Informant primarily relates to a scheme of BIS *i.e.* 'Bureau of India Standards, Laboratory Recognition Scheme' ('LRS'). One of the conditions in this scheme is that a laboratory seeking recognition under this scheme should have an accreditation to IS/ISO/IEC-17025 or ISO-IEC-17025 in the respective field of testing such as mechanical, electrical, chemical or microbiological as applicable. Further, the accreditation body (through which the accreditation is taken by the applicant lab) should be a full member of Asia Pacific Laboratory Accreditation Corporation (APLAC) and/or International Laboratory Accreditation Corporation (ILAC).
4. The Informant has stated that although lab recognition activity is mentioned in the BIS Act, neither the standard ISO/IEC-17025 nor the name APLAC/ ILAC has been mentioned in the Act or its Rules. However, BIS has made the standard IS/ISO/IEC-17025 as well as full membership of ILAC/APLAC mandatory in the LRS without any justification and without obtaining any document regarding their legal identity, office addresses, *etc.*
5. The Informant has alleged that by imposition of such a condition in the LRS, BIS has contravened the provisions of Section 4 of the Act as the laboratories which are accredited by an accreditation body that is not a member of APLAC/ILAC cannot get recognised under the LRS and are not in a position to provide their services to OP 1 for conformity assessment.



6. In view of above, the Informant has prayed that the Commission suspend the unfair condition of accreditation body to be full member of Mutual Recognition Arrangement (MRA) of ILAC/APLAC; initiate inquiry against OPs under Section 26 (1) of the Act; and pass any further order in the facts and circumstances of the present case.
7. The Commission has perused the information and material available on record. It is observed that the allegation in the information is primarily against OP 1 *i.e.* Director General, BIS. The grievance of the Informant relates to the criteria laid down for seeking recognition from BIS under the LRS, particularly clause no. 1.5.1.1 of LRS regarding accreditation. This clause provides as follows:

“1.5.1.1 Accreditation: The laboratory seeking recognition shall have accreditation to IS/ISO/IEC 17025 or ISO/IEC 17025 in the respective field of testing, such as Mechanical, Electrical, Chemical and Microbiological, as applicable. The accreditation body (through which the Accreditation is taken by the applicant lab) shall be a full member of Asia Pacific Laboratory Accreditation Co-operation (APLAC) and/or International Laboratory Accreditation Co-operation (ILAC).”

8. The Informant has alleged that the condition imposed by way of the above clause by OP 1 that accreditation body has to be a full member of MRA of ILAC/APLAC is an unfair condition. This prevents those laboratories, which are accredited by an accreditation body that is not a full member of ILAC/APLAC from providing their services to OP 1 for conformity assessment. With respect to OP 2, the Informant has alleged inaction on a complaint of the



Informant by OP 2. However, it is noted that no specific allegation of contravention of the provisions of the Act has been made against OP 2.

9. Keeping in view the grievance of the Informant, the issue for consideration before the Commission in the present case is whether prescribing of the criteria for recognition as laid down by BIS in the LRS amounts to contravention of the provisions of Section 4 of the Act.
10. However, before examining whether the conduct of OP 1 violates Section 4 of the Act, the issue that first needs to be determined is whether the Bureau of Indian Standards falls within the scope of definition of 'enterprise' in terms of Section 2(h) of the Act.
11. For the purposes of ascertaining whether an entity is an 'enterprise' or not within the meaning of Section 2(h) of the Act, it is essential to examine the nature of the activity undertaken by the entity. Further, the assessment of whether an entity is an 'enterprise' or not is to be done based on the facts of a particular case and the conclusion may vary from case to case depending upon the activity under consideration.
12. In terms of the facts and the allegations in the instant case, the impugned activity of BIS under consideration appears to be '*prescribing of criteria for recognition of laboratories under LRS*'. The Commission notes that OP 1 is a statutory body established under the BIS Act with the objective of harmonious development of the activities of standardisation, marking and quality certification of goods and for matters connected therewith or incidental thereto. BIS has carried out the impugned activity of prescribing of criteria for recognition of laboratories under



LRS with a purpose to ensure quality in laboratory testing services by outside laboratories, which would provide product certification under its product certification scheme and assist BIS in carrying out its statutory duties/ functions under the BIS Act. Thus, the activity under consideration appears to have been carried out by BIS/ OP 1 under the mandate vested in it under the BIS Act. Whether BIS has acted within the scope of that Act is not an issue that the Commission can determine. As far as the nature of impugned activity of BIS/OP 1 under consideration is concerned, it does not seem to be an economic activity as envisaged under Section 2(h) of the Act.

13. With respect to the issue raised by the Informant regarding exclusion of laboratories from providing services under the LRS, it is noted that mere exclusion of some laboratories from being recognised under the LRS due to the criteria prescribed by BIS does not imply that the impugned criteria is anti-competitive and there has been contravention of the provisions of the Act. When criteria for quality are prescribed, it is inevitable that those entity(s) that do not satisfy the prescribed criteria would be excluded. In fact, the very purpose is to qualify only those laboratories that satisfy the criteria, so that a particular level of quality in services can be assured to the end consumers. In the present case, the prerogative of deciding the criteria to be prescribed is vested in the BIS under the BIS Act and it appears to have acted in accordance with mandate vested in it.
14. In view of the above, the Commission is of the opinion that no *prima facie* case of contravention of Section 4 of the Act arises in the facts and circumstances of the aforesaid case and the matter is closed forthwith in terms of the provisions of Section 26 (2) of the Act.



15. The Secretary is directed to communicate to the Informant accordingly.

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(Justice G. P. Mittal)
Member

New Delhi
Dated: 29/06/2017