



In Re:

Om Prakash,  
S/o Sh. Nand Ram,  
R/o Village Post Bhalot,  
District - Madansur,  
Madhya Pradesh.

Informant

And

1. Central Bureau of Narcotics  
Ministry of Finance,  
19, The Mall,  
Morar, Gwalior,  
Madhya Pradesh - 474006

Opposite Party 1

2. Narcotics Control Bureau  
Ministry of Home Affairs,  
West Block - 1, Wing No. V,  
R. K. Puram, New Delhi - 110066.

Opposite Party 2

**CORAM:**

Dr. Geeta Gouri  
Member

Mr. Anurag Goel  
Member

Mr. M. L. Tayal  
Member

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

Mr. S. L. Bunker  
Member

Present: Ms. Meenakshi Arora, Ms. Anupam Sanghi, Mr. Nikhil Rohatgi,  
Advocates and Mr. Rajiv Arya, Chartered Accountant, for the Informant.

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

The Informant in the present case is a farmer engaged in cultivation of poppy seeds and has filed the present information under section 19(1)(a) of the Competition Act, 2002 (the 'Act') aggrieved by



the practices adopted by the Central Bureau of Narcotics (**‘Opposite Party 1/OP1’**) and Narcotics Control Bureau (**‘Opposite Party 2/OP2’**) in implementing the EXIM Policy 2009-14, EXIM Code No. 12079100, for registration of import contracts of opium, which Informant alleged were anti-competitive.

2. The informant alleged that OP1, solely regulated the import and export of poppy seeds in India and enjoyed statutory monopoly. OP1 was flouting the policy norms and objectives by permitting import of huge quantities of illegally and illicitly produced poppy seeds, into the market, thus harming the domestic cultivators. The Informant alleged that the OP1 was flouting the safeguard mechanisms of NDPS policy by not following mandatory registration of import contracts with OP1 and by not verifying if the poppy seeds were cultivated legally in the country of origin. Thus, OP1 violated the objectives of NDPS Policy by imposing compulsory registration conditions, contradictory to the NDPS policy. The informant challenged the following extract of Notification No. FNO. XVI/4B/144/Narco/Poppy Seed/2013, dated 29.04.2013, issued by OP1.

*“4. Immediately after the dispatch of every consignment from the exporting country, the importer will submit a copy of appropriate certificate issued by the Competent Authority of exporting country that opium poppy have been grown licitly/legally in that country, a copy of Country of Origin Certificate issued by the Competent Authority and a copy of Bill of Lading to the Central Bureau of Narcotics, Gwalior.”*

3. The Informant alleged that OP1, which enjoyed statutory monopoly, was flouting the policy objectives and prescribed norms by permitting huge quantities of imports under Special Import Licence which affected domestic producers. The Informant further alleged that illegally produced opium was being imported from countries like Turkey into India and OP1 was abusing its regulatory power/dominant position by ignoring the safeguards and not following requirements of mandatory registration of contract between importer and OP1.



4. The Informant and other farmers had filed a writ petition before High Court of Delhi, CWP 2267/2013, which was disposed by the High Court with directions to the Respondents to consider the grievance of Petitioners. Accordingly, the representation made by the Petitioners was considered by the Respondents and a reply was given by the Respondents.
5. The informant contended that OP1, flouted the policy objectives and prescribed norms, permitted huge quantities of imports under Special Import Licence which affected domestic producers and resulted into anti-competitive market for the domestic producers.
6. The Commission considered all the material on record and the arguments addressed by the Advocates for the Informant.
7. At the international level, the licit cultivation, import and control of opium is governed by the provisions of United Nations Single Convention on Narcotic Drugs, 1961 (hereinafter referred to as '**UN Convention**'). As per Article 19 of the UN Convention, the States/Countries who are signatories to the UN Convention are required to furnish their estimated requirements with respect to the different quantities of drugs required for scientific, medicinal purposes, existing stocks, area (in hectares) required for cultivation of drugs, approx. quantity to be produced etc. to the International Narcotics Control Board constituted under the UN Convention. Further, as per Article 23 of the UN Convention, each party is required to establish one or more National Opium Agency, for purposes of designation of areas, plots on which opium is permitted to be grown, grant of licenses to cultivators, delivery of physical possession of opium grown to the National Opium Agency etc. National Agency has the exclusive right of importing, exporting, wholesale trading and maintaining stocks.



8. In India, prior to year 2000, poppy seeds were not permitted to be imported and consumers were dependant on domestic production licensed to cultivators in Uttar Pradesh, Madhya Pradesh and Rajasthan only. Subsequently, the bar on import of poppy seeds was removed and a ceiling of 500 metric tonnes was imposed but the same was later removed. Poppy seeds are now freely importable under Chapter - 12 of the Export Import Policy 2009-2014 under entry EXIM Code No. 12079100 by way of Open General Licence, subject to certain conditions. An importer in India, after execution of sale contract with an exporter, is required to get the import contract registered with Central Bureau of Narcotics. The import contract and registration certificate granted by Government specifies:
- (i) Name of Exporter;
  - (ii) Quantity;
  - (iii) Validity/Duration of Licence;
  - (iv) Country of origin also specifying that export is legal from country of origin;
  - (v) Port of exit and port of entry.
9. The Narcotic Drugs and Psychotropic Substances Act, 1985 (the '**NDPS Act**') divides the powers and responsibility of regulation of legitimate activities. Section 9 of the NDPS Act has listed various activities which the Central Government can regulate by rules, whereas section 10 lists various activities which fall under the control of State Governments. Thus, the Rules under the NDPS Act can be framed by the Central Government as well as the State Governments. The NDPS Act also creates statutory authorities such as the Narcotics Commissioner (Section 5), Narcotics Control Bureau (Section 4), etc. each having its specified functions. The Narcotics Control Board (NCB) is constituted under Ministry of Finance, to regulate and supervise the growth, distribution and marketing of opium poppy in India. NCB determines the acreage to be cultivated and grants license for cultivation over 5000-10000 hectares only and on an average, individual farmer is not given licence to cultivate on more than 1000-1500 sq. mts. only. The eligibility criteria for cultivation are prescribed



by Notification of Ministry of Finance, Department of Revenue No. 1/2012-Narcotics Control, dated 21.09.2012.

10. The demand for poppy seeds in India is much higher than the poppy seeds produced in India as a by-product of legally cultivated opium poppy crop and hence, there is always a demand-supply gap for poppy seeds which is currently being met through imports. As such, the National policy on Narcotic Drugs and Psychotropic Substances Policy (the '**NDPS Policy**') was framed for import of poppy seeds by way of import contracts which requires prior registration as well as certificate of original and licit production of poppy. NDPS Policy has been prepared in consultation with the concerned Ministries, organisations and State Governments and aims to:
  - a) Spell out the policy of India towards narcotic drugs and psychotropic substances;
  - b) Serve as a guide to various Ministries and organisations in the Government of India and to the State Governments as well as International Organisations, NGOs, etc.; and
  - c) Re-assert India's commitment to combat the drug menace in a holistic manner.
  
11. The NDPS Policy specifically provides that import of poppy seeds will continue till self-sufficiency is achieved. Import of poppy seeds from any country is allowed provided the country has been authorised internationally to grow opium poppy for export and the poppy seeds so exported by the country are legitimately cultivated. No import is allowed from countries where opium poppy is not legitimately cultivated. All contracts for import of poppy seeds are required to be compulsorily registered with the Narcotics Commissioner. Before registering such contracts, the Narcotics Commissioner is to be satisfied that the country from which the poppy seeds are proposed to be imported legally cultivates opium poppy and can produce the quantity of seeds sought to be imported.



12. It appears that the Informant is aggrieved by the import of poppy seeds, as due to the imports, Indian cultivators are not able to secure good prices for their produce and the prices of poppy produced by Indian cultivators have decreased by almost 50%. Over the time, Indian cultivators are not permitted to produce/grow opium in an unrestricted manner. Presently, demand for opium is much higher than production and deficit is being met by way of imports. Few relevant paragraphs from the NDPS Policy are reproduced as under:

*15. The demand for poppy seeds in India is much higher than the poppy seeds obtained as a by-product of legally cultivated opium poppy crop and hence, there is always a demand-supply gap for poppy seeds which is currently being met through imports.*

*17. Import of poppy seeds will continue till self-sufficiency is achieved. The policy is to allow import of poppy seeds from any country provided it has originated in any of the countries authorised internationally to grow opium poppy for export and that it has been legitimately cultivated. No import will be allowed from countries where opium poppy is not legitimately cultivated. All contracts for import of poppy seeds will be compulsorily registered with the Narcotics Commissioner. Before registering such contracts, the Narcotics Commissioner shall satisfy that the country from which the poppy seeds are proposed to be imported legally cultivates opium poppy and can produce the quantity of seeds which are sought to be imported.*

13. In order to examine the contentions raised by the Informant, first, it has to be ascertained that OPs are enterprises within meaning of Section 2(h) or the group as defined under clause (b) of explanation to Section 5 of the Act. Thereafter, relevant market has to be delineated keeping in view the relevant product market and the relevant geographic market, followed by determination of position of strength (dominance) of the enterprise/group in the relevant market. Ultimately, if dominance of enterprise/group is established, the abuse can be examined in light of provisions of Section 4 of the Act.



14. It is inferred from above discussion that the Opposite Parties are only agencies appointed by the Government of India to regulate and control the import of poppy seeds into India to ensure that illegally cultivated poppy seeds are not smuggled into India. As such, owing to the nature of activities of OPs, they cannot be compared to a commercial organization and do not qualify to be an enterprise within the meaning of Section 2(h) of the Act. Moreover, import of poppy seeds is governed by EXIM policy of Ministry of Commerce. Price of poppy seeds is also not decided/fixed by OPs but the same is discovered by parties through negotiations keeping in view the international market conditions. As prima facie OPs are not enterprises or group as defined under the Act, the provisions of section 4 relating to abuse of dominant position cannot be applied to the present information against the OPs.
15. In view of the above discussion, there does not exist a prima facie case for causing an investigation to be made by the Director General under section 26(1) of the Act. It is a fit case for closure under section 26(2) of the Act and the same is hereby closed.
16. The Secretary is directed to inform the parties accordingly.

New Delhi  
Date 16.09.2013

Sd/-  
(Dr. Geeta Gouri)  
Member

Sd/-  
(Anurag Goel)  
Member

Sd/-  
(M. L. Tayal)  
Member

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