



COMPETITION COMMISSION OF INDIA

Case No. 49 of 2015

In Re

Shri Tarun Patel

Plot No. 171, Opp. Rofel MBA College,

GIDC, Vapi, Gujarat

Informant

And

Haria Lakhmshi Govindji Rotary Hospital

Plot No. 363/1& 364, Housing Sector,

GIDC, Vapi, Gujarat.

Opposite Party No. 1

Rotary Charitable Trust

Vapi Rotary Hospital, Plot No. 363/1& 364,

Housing Sector, GIDC, Vapi, Gujarat

Opposite Party No. 2

Rotary Club, Vapi (Through its President Mr. Sanjay Mehta)

Car Mart, C/o. Zen Motors,

Plot no C-5/101-102, GIDC, Vapi, Gujarat

Opposite Party No. 3

Rotary International (Through South Asia Office)

Thapar House, 2nd Floor,

Central Wing, 124 Janpath, Delhi

Opposite Party No. 4

CORAM

Mr. Ashok Chawla

Chairperson

Mr. S. L. Bunker

Member



Mr. Sudhir Mital
Member



Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. M. S. Sahoo
Member

Justice Mr. G. P. Mittal
Member

Present: The Informant in person

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 (hereinafter, the 'Act') by Shri Tarun Patel (hereinafter, the 'Informant') against Haria Lakhamshi Govindji Rotary Hospital (hereinafter, 'OP 1'), Rotary Charitable Trust (hereinafter, 'OP 2'), Rotary Club, Vapi (hereinafter 'OP 3') and Rotary International (hereinafter, 'OP 4') alleging, *inter-alia*, contravention of the provisions of sections 3 and 4 of the Act.
2. Facts of the case may be briefly noted as under:
 - 2.1 As per the information, OP 1 is stated to be one of the most well-equipped, professionally managed and well maintained hospitals in Vapi, Gujarat. It is submitted that in the year 1982, Haria Group joined hands with OP 2 and subsequently OP 1 made rapid progress.
 - 2.2 The Informant has stated that the generic drugs are essential for effective competition and for ensuring the supply of medicines to consumers at a lower



price. It is alleged that the doctors of OP 1, in collusion with its pharmacy, prescribe branded and expensive drugs to the patients instead of cheaper generic drugs. In this regard, the Informant has highlighted that in terms of Regulation 1.5 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, every physician is required, as far as possible, to prescribe drugs with generic names and ensure that there is a rational prescription and use of drugs.

2.3 The Informant has alleged that the above conduct of OP 1 hurts the Economically Weaker Section/ Below Poverty Line (EWS/ BPL) patients as they have to purchase medicines at high prices and are not able to afford better treatment from OP 1.

2.4 It is averred that there is an arrangement amongst OP 1, its pharmacy and pharmaceutical companies for promoting drugs of a particular brand or of a pharmaceutical company. It is thus alleged that OPs are engaged in a practice of directly or indirectly determining the sale price of drugs and controlling or limiting the supply of drugs through their concerted and restrictive practice. The conduct of OPs allegedly contravenes the provisions of sections 3(3)(a) and 3(3)(b) of the Act.

2.5 The Informant has submitted that OP 1 enjoys a dominant position in Vapi since it is one of the prominent hospitals in the city. It is submitted that because of its dominance, OP 1 is charging rent in the range of Rs.5 lakhs to Rs.7 lakhs for its medical store which is on a higher side as compared to the normal rent in that area. Further, it is alleged that OP 1, being dominant in the market, is restricting the owner of the medical store in giving discount to consumers/ patients.

2.6 Based on the above, the Informant has alleged that the conduct of OPs is in contravention of the provisions of sections 3 and 4 of the Act. The Informant has thus prayed, *inter alia*, for initiating an inquiry under the Act.



3. The Commission has perused the material available on record including the additional documents submitted by the Informant on 29.09.2015 and heard the Informant on 29.09.2015.
4. As per the information, the Informant is primarily aggrieved by the conduct of OP 1 in prescribing branded/ expensive drugs to its patients instead of cheaper generic drugs in terms of Regulation 1.5 of the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 and restricting the owner of the medical store located within the premise of OP 1 from offering discount to consumers on purchase of drugs. The Informant has alleged that the said conduct of OPs is in contravention of the provisions of sections 3 and 4 of the Act.
5. It is alleged by the Informant that there is an arrangement amongst OP 1, the pharmacy and pharmaceutical companies which restricts the medical store from offering discounts on purchase of drugs. Further, OP 1, in collusion with pharmaceutical companies, is working out ways and means to push select brands of drugs leaving little choice for the consumers in contravention of the provisions of section 3 of the Act. The Commission notes that neither the Informant has provided any cogent material to substantiate the allegation nor any information is available in public domain to show any arrangement between OPs which amounts to contravention of the provisions of section 3 of the Act. Thus, the Commission is of the view that there is no case of contravention of the provisions of section 3 of the Act by OPs in the matter.
6. To examine the allegations of contravention of the provisions of section 4 of the Act, it is necessary to delineate the relevant market which comprises of the relevant product market and the relevant geographic market. Considering the issues associated in the present matter, as highlighted *supra*, the relevant product market would be the “*provision of medical services by hospitals*”. With regard to the relevant geographic market, it may be noted that the patients seeking primary medical care may not prefer to avail such facilities/ services from outside. Therefore, the Commission is of the view that relevant



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geographic market to be considered in the present case would be 'Vapi and neighbouring areas'. Accordingly, the market for the '*provision of medical services by hospitals in Vapi and neighbouring areas*' may be considered as the relevant market in the instant case.

7. As regards dominance, the Informant has not placed any material on record to show the strength and the position of OPs in the market. Assessment of dominance of an enterprise is inextricably connected with the concept of market power of the enterprise which allows the same to act independently of competitive constraints. The Informant has merely stated that OP 1 is in a position to affect competition in the market due to its dominance in the area.
8. It is observed from the information available in public domain that there are numbers of public and private hospitals offering similar or better medical care facilities in above mentioned geographic area such as Ashirwad Hospital, Jeevandip Surgical Hospital, Surya Hospital, Nadakarni's and Abhyankar Hospital, Pardi Hospital, Adarsh Hospital, Kasturba Hospital, Amit Hospital, Civil Hospital, Navjivan hospital, Medicare hospital, Sanjivni hospital, Mohan Dayal hospital, Mrunal hospital, Mehta hospital and Rays hospital *etc.* The presence of such major hospitals offering better medical services indicates that OP 1 does not enjoy a dominant position in the relevant market. Another factor for determination of dominance is the dependence of consumers on the enterprise. In this regard, it is observed that all the hospitals are competing with each other in the relevant market. Presence of many hospitals in the relevant market indicates that the patients have varied options to avail medical services from other players also in the relevant geographic market. The patients do not seem to be dependent solely on the medical services being provided by OP 1. The Commission further observes that no information is available in the public domain indicating the position of strength of OP 1, which enables it to operate independently of competitive forces prevailing in the relevant market. Further, the Informant has also not produced any cogent material to show the dominance of OP 1 in the relevant market. Therefore, OP 1 does not appear to be dominant in the relevant market. In the absence of



dominance of OP 1 in the relevant market defined *supra*, the question of examination of abuse of its dominance does not arise.



9. In light of the above analysis, the Commission finds that no case of contravention of the provisions of sections 3 and 4 of the Act is made out against OPs in the present case. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

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

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(SudhirMital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(M. S. Sahoo)
Member

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

New Delhi
Date: 18.11.2015