



In re:

Mr. R. Rajaraman Informant
No. 5 C, Ayyanar Street, Melakalkandarkottai, Trichirapalli - 620011

And

The Commissioner,
Trichirapalli City Municipal Corporation, Bharathidasan Road, Cantonment,
Tiruchirappalli, TN 620001

The Commissioner,
Vellore City Municipal Corporation, Vellore - 632001

The Commissioner,
Salem City Municipal Corporation, Saradha College Road,
Hasthampattisalem-636007

The Commissioner,
Erode City Municipal Corporation, 246, Brough Road, Erode – 638 001

The Commissioner,
Tiruppur City Municipal Corporation, Kumeran Road, Tiruppur-641602

The Commissioner,
Coimbatore City Municipal Corporation, Coimbatore-641005

The Commissioner,
Tirunelveli City Municipal Corporation, S.N. High Road, Tirunelveli-627001

The Commissioner,
Thuthukodi City Municipal Corporation, Tuticorin-628002

The Commissioner,
Madurai City Municipal Corporation, Thallakkulam, Madurai-625002
....Opposite Parties

Present: R. Kamala Rani (Advocate for all Opposite Parties)

CORAM:

Mr. Ashok Chawla
Chairperson

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member



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

Mr. S.L.Bunker
Member

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

The present information was filed by the Informant under section 19 of the Competition Act, 2002 (the 'Act') alleging contravention of section 3(3) of the Act. The informant submitted that OP1 invited RFQ (Request for Quotation) proposals for installing energy efficiency projects in 65 wards of Trichirapalli City Municipal Corporation. The tenders were allegedly invited for converting all tube lights to energy saving LEDs, involving expenditure of Rs. 140 crores for next 3 years and Rs. 300 crores for next 10 years. The project was stated to be intended to be carried out by way of private public partnership (PPP). As per the informant, the other remaining eight OPs also invited similar RFQ proposals for their respective townships/cities.

2. The Informant contended that the conditions in the tender were very stringent with the intent to oust light manufacturing Energy Service Companies (ESCOs) and leading light manufacturing companies. The informant was aggrieved by tender conditions pertaining to eligibility criteria and 10 years engagement of the tender awardee which was alleged to be restricting the competition. Since all the OPs kept the same conditions, the informant pointed out collusion in the bidding process.

3. The advocate of the opposite parties, on the other hand, contended that the informant did not participate in the tendering process and is, therefore, not aggrieved by any action of the state authorities. Before, we move further to evaluate this information, it is relevant to point here that the informant need not be an affected party to bring a case under the Act. Even if the informant did not participate in the tendering process and is unaffected by it, he can still file an information to the Commission for any alleged anti-competitive practice/behaviour by opposite parties.



4. Coming to the other submissions of the opposite parties, it was submitted that the primary object of the tender was to implement energy efficiency in street lighting and not just supply of equipment alone. The tender was open to all ESCO's (Energy Service Companies) accredited by Bureau of Energy Efficiency (BEE) through credit grading agencies like CRISIL and ICRA.

5. It was further pointed out that the RFQ and RFP were called for replacement of 40W tube light with 20W LED. There was no mention of any particular technology in the tender condition and it was completely kept open to all types of energy efficient lamps. More so, the advocate for the opposite parties submitted that there was no stipulation relating to any particular technology either in the tender document or in the pre bid clarification. Automatic switching was made mandatory on all switching points in the tender and hence it was false for the informant (as per opposite parties) to state that bidders who wanted to bid through alternate ways like Induction lamps and automatic switching were discouraged.

6. With regard to the specification for the load content of 4MW mentioned as pre condition in the tender, it was submitted that it was an average load required of all the eleven tenders (9 Corporations & 2 Regions Tanjore and Tirupur) for which a common bid document was brought out. The advocate of the opposite parties highlighted that as per the draft PPP Rules issued by the Ministry of Finance, Government of India, it was required for the bidder to have similar or more experience in the same work. So it was incumbent upon the bidders to have previous experience of 4MW load maintenance for implementing Energy Efficiency Projects. Further, the eligibility condition of 4MW experience was not expected from a single project and could be from a number of projects e.g. minimum 1MW totalling to 4MW could be met by 2 to 3 firms bidding as a consortium.

7. With regard to the informant's grievance pertaining to the ten years period of contract, the advocate of opposite parties mentioned that in projects involving operation and Maintenance (Q&M), the general payback period for the energy efficiency project is minimum 7 to 10 years. The remuneration to



the contractors/successful bidders was generally payable only at intervals of once in 4 years. Hence the period of 10 years was reasonable to ensure just payment to successful bidders as per the opposite parties.

8. Further, in order to execute the implementation of the Energy Efficiency projects, global firms were allowed to participate to enable the best technology providers to participate in the tender. With an ultimate motive to give the best service of Energy Efficiency projects to be implemented, the bidders were even allowed to form consortiums of up to 3 partners. The best technology provider, best ESCO, best O&M contractor and financially sound investors joining together for this project satisfying the eligibility criteria was also entertained as per the opposite parties. LED, Induction Lamps, Automatic Switching Voltage Controllers (dimers) were all encouraged for the best combination. Hence, the opposite parties contended that the tender documents were floated to encourage the open technology with the most efficient and cost effective solution. Moreover the eleven tenders were called by a common tender document. It was contended that these eleven tenders were won by four different consortiums.

9. The Commission has considered the submissions of informant as well the opposite parties. The Informant had been aggrieved by the tender specifications prescribed by the opposite parties in the tender for installing energy efficiency projects for converting all tube lights to energy saving LEDs which according to the informant were ousting light manufacturing Energy Service Companies (ESCOs) and leading light manufacturing companies, besides engaging successful bidders for a unusually long period of 10 years. This, as per the informant, had distorted the competition amongst bidders and resulted in the contravention of section 3(3) of the Act.

10. Having heard the opposite parties, the Commission is *prima facie* of the opinion that the primary object of the tender was to implement energy efficiency in street lighting and not just supply of equipment alone and the tender was open to all ESCO's (Energy Service Companies) accredited by Bureau of Energy Efficiency (BEE) through credit grading agencies like CRISIL and ICRA. The grades by these agencies were based on the ability of



the ESCO's of 'average ability' and 'very high ability'. ESCO's with 'poor ability' and 'very poor ability' were disallowed. It appears that probably during the course of evaluation; it was found that some of the bidders did not possess the necessary ESCO Performance Contracting Experience and Street light O&M experience as required to perform the project and therefore did not qualify to the REP bidding process.

11. The opposite parties also submitted that the bidding process had been completed and various brands of lamps have been approved including M/s. Phillips, M/s. Shreder and M/s. Bajaj etc. This also shows that *prima facie* the tender process was not manipulated to oust some of the bidders or to favour any particular company, rather it seems to be designed with the objective to select the most efficient bidders.

12. Considering the foregoing, there does not appear to be any kind of anti-competitive practice adopted by the opposite parties in this case in inviting the tender within the meaning of section 3(1) read with section 3(3) of the Act. The tenders were invited for street lighting projects and as is evident from the conditions mentioned in the RFQ, the OP1 had invited tenders from entities possessing the requisite experience, turnover and who had handled similar projects before.

13. 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.



14. The Secretary is directed to communicate the decision of the Commission to all concerned accordingly.

New Delhi
Dated: 27/11/2013

Sd/-
Mr. Ashok Chawla
Chairperson

Sd/-
Mr. Anurag Goel
Member

Sd/-
Mr. M. L. Tayal
Member

Sd/-
Mr. Justice (retd.) S. N. Dhingra
Member

Sd/-
Mr. S.L.Bunker
Member