

COMPETITION COMMISSION OF INDIA

Case No. 32/2011

DATED: 13.10.2011

Information Filed By:

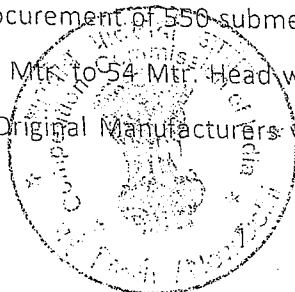
Mr. C. S. Rathore  
Kamal Apartment No. 2  
C 6/404, Bani Park  
Jaipur, Rajasthan

Information Against:

M/s. Superintending Engineer  
Irrigation Department  
Lucknow, Uttar Pradesh.

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

1. The Commission has considered the present matter on the basis of information received from Mr. C. S. Rathore (hereinafter referred to as the "Informant") on 22.06.2011 under section 19 (1) (a) of the Competition Act, 2002 (hereinafter referred to as "the Act"). The case is relating to the alleged anti-competitive practices adopted by M/s. Superintending Engineer, Irrigation Department, Government of Uttar Pradesh (hereinafter referred to as the 'OP') in procurement of submersible pump sets.
2. The fact as stated in the information, in brief, are as under:
  - 2.1 An online e-tender for procurement of 550 submersible pump sets of 1.5 Cusec (153m<sup>3</sup>/hr) Discharge Capacity and 27 Mtr. to 54 Mtr. Head was invited by the OP from the ISO: 9001-2000 certified registered Original Manufacturers vide its tender notice no. TE-689/2010-11



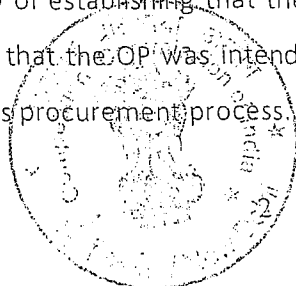
for the use of its various tube well divisions. As per the said notification the application for the e-tender was to be submitted in three parts such as; Part A: Earnest Money Bid, Part B: Technical Bid and Part C: Price Bid.

2.2 In part A of the e-tender notice it is stipulated that the bidders/suppliers have to submit the earnest money of Rs. 9.40 Lacs (Rupees Nine Lakh forty thousand only), bid document fee of Rs. 300 (Rupees Three Hundred only), bid security, proof for tender sample deposition, Power of Attorney and Validity Commitment for participating in the bidding process.

2.3 Part B (Technical Bid) of the tender notice specified that the bidders/suppliers have to submit complete technical offer, bid form, form of agreement, industries registration, ISO Certificate, and document relating to trade tax clearance certificate, technical literature, technical/financial capabilities, tasting facilities, least of plants and machineries, installed quality assurance system, BIS License, type taste report, guarantee of workmanship and material, details of supplies made to government departments and performance certificate with respect to supplies made by the bidder. Part C of the tender notice *i.e.* financial bid specified that the bidders/suppliers have to submit price schedule and other related financial documents.

2.4 It is submitted by the informant that in the tender notice Part B *i.e.* Technical Bid, it is specifically stated that wires to be used in winding of motors of the pump sets should be of Finolex/ Universal make and the motor of the pump sets should be provided with joint less Finolex/ Universal make three core flat cables with bare bunched copper conductor. The informant alleged that this act of OP is amounts to unfair and restrictive trade practice.

2.5 The informant has submitted that these company specific technical stipulations relating to wire and cables used for motor winding in the tender notifications by the OP has created a situation where the use of wires and cables being restricted to the specified two brands. Implying, use of other brands of wires and cables produced by different manufacturers confirming to the BIS specifications, in winding of the motors of pump sets stand excluded and are kept outside the purview of competing in the tender process without having been provided any opportunity of establishing that they also confirmed to the required technical specifications. It appears that the OP was intended to favour some select manufacturers of wire & cables through this procurement process.



2.6 As per the information following clauses in the e-tender notice floated by the OP for procurement of submersible pumps sets are abusive in nature and therefore, are anti-competitive:

- I. Mandatory use of Finolex/Universal brand of wires & cables in winding of motors of the pump sets.
  - II. Utilization of the wires and cables has been restricted to select brands without any appropriate and justifiable basis.
  - III. Arbitrary conditions in the tender notice whereby other manufacturers are debarred from participating in the competitive process of bidding.
3. The matter was considered by the Commission in its meetings held on 26.07.2011 and 13.10.2011. The Commission has carefully gone through the facts and averments advanced in the information and carefully scrutinized the entire material submitted by the informant and the material available on record.
4. It is noted that the OP is a department of the government of Uttar Pradesh and is engaged in the provision of irrigation services in the state of Uttar Pradesh. The activities being performed by the OP is covered in the definition of 'enterprise' under section 2 (h) of the Act.
5. The issue for consideration before the Commission in the matter is to examine whether the alleged conduct of the OP is in violation of the provisions of section 4 of the Act.
6. The essence of the allegations in the information is that by stipulating company specific requirements of use of wire and cables in winding of motors of pump sets and other terms and conditions in the notification for procurement of submersible pump sets the OP abuses its dominant position.
7. On thorough examination of the matter it is revealed that there is no evidence available on record or in public domain which could show that OP is a dominant procurer of submersible pump sets in India as procurement of submersible pump sets in large quantity are made by the Irrigation Department of various state government and other government agencies. The submersible pumps are also widely purchased by many private players and also sold in retail not only for the purpose of irrigation in the agriculture sector but also used in other sectors



for different purposes. Therefore, procurement of submersible pumps by OP is not that significant to be considered as a dominant procurer in India. Further, the informant has also not been able to bring any cogent evidence on record to show that OP is in a dominant position in the market of procurement of submersible pump sets in India.

8. Since there is no material available on record to substantiate that the OP is a dominant purchaser of submersible pump sets in India, the question of abuse of its dominant position as alleged by the informant does not arise. Therefore, the Commission is of the view that *prima facie*, there is no violation of provisions of section 4 of the Act in the present matter.
9. The Commission, therefore, is of the view that no, *prima facie*, case is made out for making a reference to the Director General for conducting investigation into this matter under section 26 (1) of the Act and the proceedings relating to this matter are closed forthwith under section 26(2) of the Act.
10. Secretary is directed to inform the informant accordingly.

Sd/-  
Member (R)

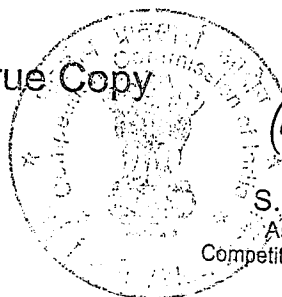
Sd/-  
Member (GG)

Sd/-  
Member (AG)

Sd/-  
Member (T)

Sd/-  
Chairperson

Certified True Copy



S.P. GAHLAUT  
20/10/2011  
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Assistant Director  
Competition Commission of India  
New Delhi