

COMPETITION COMMISSION OF INDIA

[Case No. 53/2011]

Dated ..30.11.2011.

Informant: M/s. Pitambra Books Private Ltd
Gali Lohe Wali, Charkhe Walan
Chawri Bazar, Delhi - 6

Opposite parties: 1) Primary Education Department,
Government of Andhra Pradesh,
Director, Andhra Pradesh, Open School
SCERT Campus, 3rd Floor, Opp. L.B.
Stadium
"E" Gate, Basheerbagh, Hyderabad, A.P.

2) Shri S V Prasad, Chief Secretary,
Chairman, Andhra Pradesh Open School, C-
Block, Floor 3, Government of Andhra Pradesh
Secretariat, Hyderabad – 500001

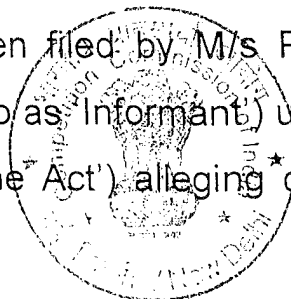
3) Dr. D Sambasiva Rao, Principal Secretary,
Vice-Chairman, Andhra Pradesh Open
School, J-Block, Floor -3, Room No. 312,
Government Of Andhra Pradesh
Secretariat, Hyderabad -500001

Order

Per R. Prasad, Member (dissenting)

Order under section 26(1) of the Competition Act

1. The present information has been filed by M/s Pitambra Books Private Ltd. (hereinafter referred to as 'Informant') under section 19 of the Competition Act, 2002 ('the Act') alleging contravention of



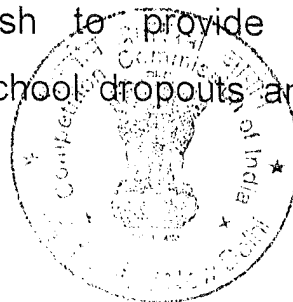
provisions of Section 3 and 4 of the Act by the Primary Education Department, Government of Andhra Pradesh (hereinafter referred to as OP1), Chief Secretary, Chairman, Andhra Pradesh Open School (hereinafter referred to as OP2), Principal Secretary, Vice-Chairman, Andhra Pradesh Open School (hereinafter referred to as OP3).

2. The facts and allegation as stated in the information, in brief, are as under:

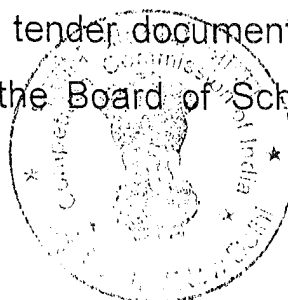
2.1 The Informant has submitted that it is engaged in the business of printing and publications of books and is an ISO 9001: 2000 certified company. The Informant has also done various printing jobs wherein it supplied / exported books in India and abroad.

2.2 The Informant has printed various books including text books for a number of state bodies in India including Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka, Andhra Pradesh, Rajasthan, Punjab, Jharkhand and Assam etc. in various languages including Hindi, Marathi, Tamil, Telgu, Kannad, Bodo etc. Orders for printing text books of various states are received through tenders floated by the state bodies.

2.3 The Director, Andhra Pradesh, State Open School, Basheerbagh, Hyderabad (OP1) is an autonomous organization under Government of Andhra Pradesh to provide a non-formal education to children who are school dropouts and to the neo-literates.



- 2.4 It has been stated that on 24 August 2011, OP1 floated a tender notice on behalf of Primary Education Department, Government of Andhra Pradesh inviting sealed tenders under two cover system from eligible ISO approved registered firms *situated in the State of Andhra Pradesh , Karnataka, Tamil Nadu and Kerala* having their own web offset & sheet-fed offset printing press for printing and supply of text books of SSC and Intermediate (APOSS- Andhra Pradesh Open School Society) courses, all over the State of Andhra Pradesh for the years 2011-12, 2012-13 & 2013 -14.
- 2.5 The informant has submitted that Andhra Pradesh Government Text Books Press, in 2008 floated a tender for printing, binding and supply of books, on all India basis for the academic year 2009-10, and in 2009 for academic year 2010-2011, (i.e. there was no restriction by virtue of a prospective bidders' geographical location). According to Informant, he had bid on these two occasions and was a successful, thereby receiving orders from the Andhra Pradesh Text book Press, under both the tenders in 2008-2009.
- 2.6 In his additional submissions, informant has stated that many other states do not indulge in such practices of excluding firms from a particular part of the country. In support of this argument the informant has attached tender documents for printing and supply of various text books by Haryana government, for the academic session 2012-2013 and tender document for printing & supply of various text books by the Board of School Education Haryana, Bhiwani.

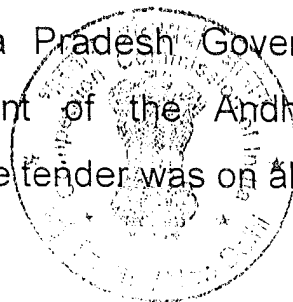


2.7 The informant has alleged that OP1 has indulged in anti-competitive practice of *collusive bidding*. By putting up the tender notice in such restrictive terms, the respondent is entering into an agreement which has its object and effect the restriction of competition in the market for sale and provision of children's textbooks.

2.8 It is also alleged by the informant that the OP (1) is arbitrarily restricting the scope for potential bidders and is *denying access to market* to them.

2.9 It has been further alleged that the OP1 is abusing its dominant position by laying down unfair and discriminatory conditions in the tender notice and the stipulation in the tender notice for firms only from the four south Indian states to bid, has barred the Informant from participation in the tender process without considering technical or financial qualifications or experience. The Informant has alleged that the actions of the OP1 violate *section 3 & 4 of the Competition Act, 2002 ("Act")*.

3. Regarding allegation of collusive bidding, there is no submission by the informant about any agreement between the OPs and other parties (publishing firms of four states). The informant has not named any publishing firm of the four southern states having collusion with the OPs which have restricted the eligibility criteria to the four southern states. As stated in the information, for a similar tender floated by "Andhra Pradesh Government Text Books Press" another department of the Andhra Pradesh Government, the participation in the tender was on all India basis.



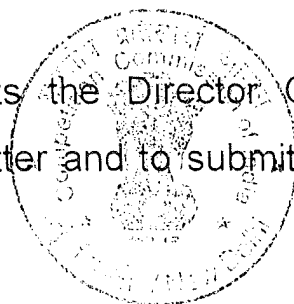
4. It is gathered from the website of Andhra Pradesh government, "ANDHRA PRADESH OPEN SCHOOL" (the tender issuer in the present case) comes under Sarva Shiksha Abhiyan department. It provides free text books to the learners at Head Quarter level. A P Government Text Books Press works under the School Education (SE Wing). It provides free text books to children of classes I to X in schools run by the state. Therefore both these bodies have similarity in the functions relating to the Printing and supplying the study material. Therefore the restriction that only firms from four southern states can bid in the tender for books by one organization, and no restriction by the other appears to show that the restriction may be unjustified. Another state, Haryana does not have such restriction and has called for tenders on all India basis.

5. This tender condition restricting firms from other than four states (Tamil Nadu, Karnataka, Kerala and Andhra Pradesh) from taking part in the tender for supply of textbooks, appears to affect competition in the market for printing of books by denying the access to some firms and may lead to existing competitors exiting the market due to scarcity of orders. Also, the said tender condition prima facie appears to be foreclosing competition in the textbook printing market by hindering entry into the market. It appears likely that due to reduced competition the government may end up paying higher than competitive price for the text books.

6. OP1 is the sole government body dealing with supply of school textbooks in the state and has monopoly in the said function due

to the authority delegated to it by the Andhra Pradesh government to carry out such functions. It appears that OP1 is abusing its dominance by imposing unfair and discriminatory conditions in procurement. The restrictive clause prima facie denies market access to publishing firms which are not from the four southern states. But for the restriction, many other firms would be eligible to participate in the tender. This appears to violate the provisions of the Act.

7. The Commission has carefully gone through the facts and averments advanced in the information. On thorough perusal of the entire material submitted by the informant, the Commission finds force in the submission made in the information about unfair and discriminatory conditions put in the tender by the OP1, which lead to a prima facie inference of 'abuse of dominant position' by the OP1. The allegation of bid rigging against OP1, however, does not appear to be sound.
8. In view of the above and considering the submissions in the information with material on record in support of the allegations made by the informant, the Commission, at this stage, is of the opinion that there exists a prima facie case to order the Director General to investigate into the matter. The Commission, however, makes it clear that the observation made in this order is not final and shall not, in any manner, influence the investigating authority.
9. Accordingly, the Commission directs the Director General to conduct an investigation into the matter and to submit the report



within a period of 60 days from the date of communication of this order.

10. The Secretary is directed to send a copy of the order and information to the Director General in terms of the relevant provisions of the Act and the Regulations made thereunder.

Sd/-
Member (R)

Certified True Copy

