COMPETITION COMMISSION OF INDIA

22nd November, 2011.

Case No. 58/2011

Filed by

Technology Products,
114, Udyog Vihar, Phase IV,
P.O. Maruti, Gurgaon-122015 — Informant

Against

1.Bangalore Electricity Supply Co.Ltd.,
Corporate Office, IV Floor, K.R. Circle,
Bangalore-560001.

2.The Motwande Manufacturing Co.Pvt.Ltd.,
Gyan Baug, Motwane Road, Nasik Road,
Nasik-422101. — Respondent

Order Section 26(2) of the Act

The applicant filed this application under section 19(1) of the Competition act giving information regarding anti competitive practice and violation of provisions of the Competition Act by opposite parties in respect of procurement of 1600 Nos. of High Voltage detector instruments by OP No. 1. It is stated by the applicant that OP 1 advertised for purchase of above instruments through e-tendering with dates of bids availability from 18th July, 2011 to 28th July, 2011 (i.e. only time margin of 11 days). The bidders were to submit bids along with all documents and a sample of instrument. The supply period for these High Voltage Detector Instruments as stated in the bid document was 30 days only. The total value of these 1600 instruments would have been Rs.2,53,81,334/-. He submitted that OP No. 1 deliberately imposed unfair and discriminatory condition for tendering of aforesaid goods by giving a very short time of 11 days for bidding and by providing other conditions in the bid document to see that all other bidders but OP No. 2 were eliminated from the competition.

The applicant submitted that another condition was that bidder must have obtained order for supply of at least 25% of the tendered quantity of High Voltage Detector Instruments from another public electricity utility or government institution. He pleaded that High Voltage Detector Instrument was not required even by public utility concerns in such a large quantity as was sought to be procured by the OP No. 1. The other electricity supply companies do not procure this item in bulk as it was not a bulk consumption item and their requirement had never been of such a high quantity as was projected by party No. 1 in this tender. The requirement of other electric supply companies of big cities had been between 200 and 300 Nos. It was intriguing that party No. 1wanted to place a bulk order of 1600 numbers and wanted supply of the entire quantity within 30 days. This condition itself was highly unfair and prohibitory and the other condition that 25% or the tendered quantity i.e. 400 numbers should have been supplied to public sector undertaking was also prohibitory since the requirement of PSUs had never been too huge as was reflected in this tender. It was further submitted that OP No. 1 had already purchased 400 numbers of aforesaid instruments in 2009. Even at that time, the time for supply was stipulated as 4 months. This sudden tendering of 1600 numbers of instruments and supply to be made within a span of one month was made as it would suit to party No. 2 alone and eliminated competition.

It was submitted that bid was to be given in two parts, one technical and the other financial. Along with the bid, a sample of the item was also to be submitted for trial. The applicant did submit sample of his instrument but was neither called for trial inspection nor the reasons for rejection were informed. He submitted that calling of sample was for demonstrating the performance of instrument of bidders and comparison of the performance. No such demonstration ever was done before the party No. 1.

He had obtained information under RTI from Respondent No. 1 and as per letter dated 14th October, 2011 issued by BESCOM (Bangalore Electricity Supply Co.Ltd.), whenever a tender was for value upto Rs.2 crores, as per KTPP Act, 30 days time was to be given for submission of bids. Any reduction in the time stipulated was to be specially authorized by an authority superior to the tender inviting authority. It was also informed that sample was asked so as to know how the instrument performs and to see whether it was as per technical specifications or not. Sample was to be got tested in field to observe working of the instrument. In RTI information it was denied

that technical specifications in the tendered document were so designed so as to benefit Party No. 2.

The other plea taken by the applicant is that the conduct of opposite party No. 2 in the last few years has been to manage the contracts in government and semi government departments/ organizations and wherever the applicant was even the lowest bidder, the tender was cancelled and process of retendering started. In all cases opposite party No. 2 managed to get the contracts later. No tender was cancelled whenever opposite party No. 2 got the contract. He has placed on record a list of such cancelled contracts.

The applicant further submitted that life of equipment i.e. High Voltage Detector Instrument was around 15 years and respondent No. 1 had procured 400 numbers in 2009. The tender in question for 1600 numbers seemed to be a collusive effort by opposite party No. 1 to benefit opposite party No. 2.

It is pleaded by the applicant that despite the fact that the Act requires 30 days time to be given for submission of tenders, party No. 1 reduced the time for giving tenders only to 11 days and BESCOM and other State Electricity Supply Companies reduced time to 25 days. He submitted that this was unfair and uncompetitive practice and amounted to an abuse of dominant position.

The applicant had along with the application filed documents showing how the tenders had always gone in favor of party No.2 before various state electricity supply companies. He also placed on record certain documents to allege that party No. 2 was involved in forgery of documents in order to jack up the prices.

Section 3(3) of the Competition Act, 2002 deals with bid rigging or collusive bidding and reads as under :

> "3(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which –
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> (a) directly or indirectly determines purchase or sale prices;
> (b) limits or controls production, supply, markets, technical development, investment or provision of services;
> (c) shares the market or source of production or provision of services by way of allocation of geographical area of market,

We, therefore, consider that the information given by the applicant does not disclose an anti competitive agreement within the meaning of section 3 of the Act. The case is, therefore, closed under section 26(2) of the Act.

Secretary is directed to inform all concerned in the matter.

Sd/-
Member (G)

Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Chairperson

Certified True Copy

15/12/2011

S. P. GAHLAUT
ASSISTANT DIRECTOR
Competition Commission of India
New Delhi