

BEFORE THE
COMPETITION COMMISSION OF INDIA
[Case No 26/2011]

DECISION DATED: 19th JULY, 2011

M/s. V E Commercial Vehicles Limited

Informant

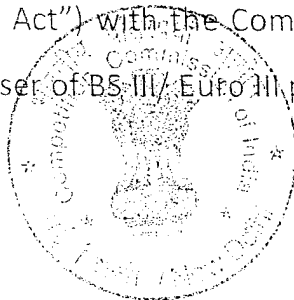
Vs.

Bangalore Metropolitan Transport Corporation

Opposite Party

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

1. The instant information relates to the alleged abuse of dominant position by the Bangalore Metropolitan Transport Corporation (hereinafter referred to as "BMTC") in purchase of bus chassis.
2. M/s. V E Commercial Vehicles Limited (hereinafter referred to as "the Informant") has filed the present information under section 19(a) of the Competition Act, 2002 (hereinafter referred to as "the Act") with the Commission on 30.05.2011 alleging that being the dominant purchaser of BS-III/ Euro III passenger bus chassis in the city



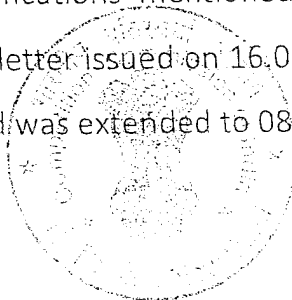
of Bangalore, the BMTC is abusing its dominant position in purchase of bus chassis from the informant.

3. The brief of the facts, as stated in the information, are as under:

3.1. The informant is a public limited company incorporated under the provisions of Indian Companies Act, 1956 and is engaged in manufacturing and sell^{ing} of motor vehicle products and engines including heavy commercial vehicles in India. The Opposite Party, BMTC, is a body under the administrative control of the Karnataka State Road Transport Corporation (hereinafter referred to as "KSRTC") and is engaged in the provision of passenger bus transportation services in the metropolitan territory of Bangalore.

3.2. In response to the tender notification No. KST/ COME/SK/T-71 dated 01.07.2006 of KSRTC [for procurement of 2500 BS II and BS III/Euro III passenger bus chassis with some technical specification for its 4 zones such as; KSRTC (800 chassis), North Western Karnataka Road Transport Corporation - NWKRTC (1050 chassis), North East Karnataka Road Transport Corporation - NEKRTC (200 chassis) and BMTC (400 chassis)], the informant along with Ashok Leyland and Tata Motors submitted pre-qualification (technical) applications to KSRTC for supply of 400 BS III/Euro III passenger bus chassis for BMTC use.

3.3. Subsequently, on 16.08.2006 the KSRTC issued a letter in the name of the informant along with Ashok Leyland and Tata Motors asking them for some additional technical specifications for BS III/Euro III bus chassis. Further, through its letter dated 05.09.2006, KSRTC asked for some more technical specifications for bus chassis over and above the specifications mentioned in the tender notification dated 01.07.2006 as well as in the letter issued on 16.08.2006. Accordingly, the last date for submission of technical bid was extended to 08.09.2006.



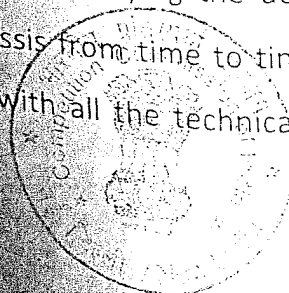
3.4. After being qualified in the pre-qualification technical bid, the informant and other qualified bidders submitted their commercial bid to KSRTC. Having emerged as the most competitive bidder, a purchase order for 400 bus chassis was issued in favour of the informant by the BMTC on 14/10/2006 with technical specifications and price consideration of Rs. 6, 35,657/- per bus chassis. The purchase order issued to the informant contained all the terms and conditions and other compliances which were to be adhered to by the informant in the production and supply of BS III/Euro III bus chassis.

3.5. Accordingly, the informant started manufacturing of BS III bus chassis in consonance to all the technical specifications asked by KSRTC/BMTC in the tender notification as well as in the subsequent letters. But, upon inspection of the chassis BMTC asked the informant to change the design of the chassis beyond the technical specifications given in the tender notification as well as in the subsequent letters. The change in specifications demanded by BMTC was communicated to the informant on 23.11.2006.

3.6. The informant has alleged that BMTC enjoys monopoly power in the provision of passenger bus transportation services in the territory of Bangalore and is the dominant purchaser of bus chassis in the territory of Bangalore. Being the dominant purchaser, BMTC abuses its dominant position by frequently changing the technical specifications and by imposing other unfair conditions on the informant in purchase of bus chassis.

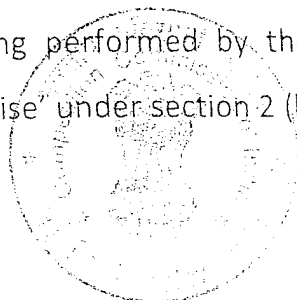
3.7 As per the information following conducts of BMTC are abusive in nature and therefore, are anti-competitive as per the provisions of section 4 of the Act.

i. BMTC has been arbitrarily changing/modifying the design and layout and other technical specifications of the chassis from time to time even though the chassis which are manufactured comply with all the technical specifications, design and

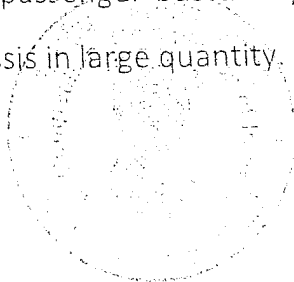


layout, etc. as mentioned in the tender notification as well as in the purchase order.

- ii. The BMTC did not acknowledge the receipt of the bus chassis supplied to it with the intention not only to avoid making prompt payment but at the same time to avail the prompt payment discount also from the informant as per the contractual terms agreed upon by the informant and BMTC.
 - iii. The BMTC is maliciously withholding a balance amount of Rs. 8.64 crore of the informant towards the sale price of the chassis.
 - iv. The BMTC has retained 5% of the total cost of the chassis supplied by the informant as opportunity cost which is to be refunded after satisfactory function of the chassis supplied by it. This act of BMTC amounts to the abuse of dominant position because imposition of this cost was neither a part of the tender notification nor a part of the purchase order. This is an illegal financial imposition which is in contrary to the terms of contract entered into between the BMTC and the informant.
 - v. The BMTC has also retained a sum of Rs. 19 lakh which was to be paid to the informant towards the cost of the tyres of the supplied chassis within three months of submission of the Automotive Research Association of India (ARAI) certificate confirming the road worthiness of the vehicles.
4. The matter was considered by the Commission in its meeting held on 19/07/2011. The Commission has carefully gone through the facts and averments advanced in the information and carefully scrutinized the entire material available on record.
5. It is noted that the activities being performed by the informant and BMTC is covered in the definition of 'enterprise' under section 2 (h) of the Act.



6. The issue before the Commission for consideration in this matter is that whether the BMTC is engaged in any anti-competitive activities which are in violation of section 4 of the Act.
7. The crux of the allegations made by the informant in the matter is that, being the dominant procurer of bus chassis in Bangalore, the BMTC is abusing its dominant position by arbitrarily changing the technical specifications of the chassis which is contrary to the terms and conditions specified in the tender notification as well as in the purchase order issued by BMTC, levying an opportunity cost at the rate of 5% of the total cost of the chassis supplied and withholding a balance amount of Rs. 8.64 crore of the informant towards the sale price of the chassis.
8. It is observed that relevant market in this case would be the "market for procurement of BS III/ Euro III bus chassis in India".
9. On close examination of the matter it is revealed that there is no evidence available on record or in public domain which could show that BMTC is a dominant buyer of BS III passenger bus chassis in India as procurement of bus chassis in large quantity are made by various state road transport corporation throughout India from time to time. Further, the purchase of bus chassis in bulk order is done by many state road transport corporations under the Jawaharlal Nehru National Urban Renewal Mission (JnNURM), a central government initiative for development of urban infrastructure. It is also observed that in the tender notification KSRTC has asked for procurement of 2500 bus chassis for its four zones and the number of chassis required for BMTC is substantially less than the number of chassis required for other three zones. Besides, there are number of private passenger bus transport service providers in India who are also purchasing bus chassis in large quantity.



10. Thus, on the basis of above analysis, the BMTC does not appear to be a dominant procurer of bus chassis in India. Further, the informant has also not been able to bring any cogent evidence on record to show that BMTC is in a dominant position in the market of procurement of BS III bus chassis in India. Therefore, since the BMTC cannot be said to be in a dominant position in the relevant market, the question of abuse of dominance as alleged by the informant does not arise. So, prima facie, it appears that there is no violation of provisions of section 4 of the Act in the matter.

11. 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.

12. Secretary is directed to inform the informant accordingly.

Sd/-
Member (P)

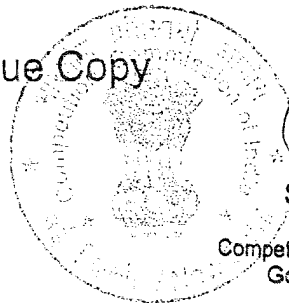
Sd/-
Member (R)

Sd/-
Member (GG)

Sd/-
Chairman

Sd/-
Member (T)

Certified True Copy



S. P. Gahlaut
27/7/2011
S. P. Gahlaut
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Competition Commission of India
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New Delhi