

COMPETITION COMMISSION OF INDIA

Case No. 39 of 2022

In Re:

Shri Ravinder Singh

A-7, Lane No. 2, Sarvodaya Colony,

Behind ITI Meerut, UP - 250001

Informant

And

Dr. Janaki Jangpangi, Additional Director,

Central Government Health Scheme (CGHS),

19-20, Navyug Enclave, Phase III, Milan Vihar,

GMS Road, Dehradun - 248001

Opposite Party

CORAM:

Ms. Ravneet Kaur
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. The present information has been filed by Shri Ravinder Singh, owner of Ratan Medical Store, Dehradun (**'Informant'**) under Section 19(1) (a) of the Competition Act, 2002 (**'Act'**), alleging contravention of the provisions of Section 3 and 4 of the Act by Dr. Janaki Jangpangi, Additional Director, Central Government Health Scheme (CGHS), Dehradun (**'Opposite Party'**).

2. As per the Information, the Opposite Party invited an E-tender (No. 1552/2022-23/CGHS/D.Dun/19-4 dated 06.09.2022) from the chemists shops located in Dehradun for appointment of Authorised Local Chemists (ALC) for supply of Allopathic medicines/drugs to the CGHS Wellness Centres in Dehradun. That, CGHS is providing comprehensive medical care facilities to the Central Government employees and pensioners and certain other category of persons covered under the scheme.
3. It is stated that the Informant participated in the said E-tender alongwith four other bidders. The Informant has alleged that the technical bids of participating bidders were not decrypted for the bidders on time by the Opposite Party to observe any irregularities in the tender process. It is stated that this was done with an aim and intention to discourage the bidders from observing any irregularity in the bids. Further, the Informant has submitted that despite irregularities in the bid (Bid No. 2664042) submitted by one of the bidders namely, M/s Goel Medicos, its bid was accepted by the tendering authority by ignoring the eligibility criteria as stipulated in the tender document.
4. The Informant has stated that as per Comparative Statement of Technical Bids (CST) dated 06.10.2022, technical bid of M/s Goel Medicos was found eligible in terms of Clause 2 of the tender document and the same was recommended for inspection of bidder's premises in terms of Clause 17 of the tender document, which state that if the technical bid of a bidder appears to be in fulfilment of eligibility, the premises of the bidder will be inspected by a team of Officers of the Opposite Party. However, the Informant has averred that the bid of M/s Goel Medicos was not fulfilling the eligibility criteria as outlined in the tender document.
5. The Informant has also pointed out some other irregularities in the bid submitted by M/s Goel Medicos which were allegedly ignored by the Opposite Party. Such irregularities include: (a) EMD was deposited in the name of Mr. Manish instead of M/s Goel Medicos, (b) The bidder was not qualifying the 3 years drug licence criteria, (c) It submitted ITR of Urmila Goel instead of Mr Manish Goel, the proprietor, (d) requirement of furnishing audited balance sheet was not fulfilled, *etc.* Moreover, it is averred that inspection of bidder's premises was not conducted as per provisions mentioned in the bid document.

6. Furthermore, the Informant has alleged that the Opposite Party has not only accepted the bid of M/s Goel Medicos despite various irregularities pointed out *supra*, but also rejected a competitive bid (No. 2648164) of the Informant on vague grounds such as printer is not working, bar code reader is not functioning, boxes of medicines were empty, etc. It is averred that the Opposite Party has not disposed of his representations against the aforesaid irregularities and the said practices of the Opposite Party has caused elimination of competitive bids and therefore causing irreparable loss to the Informant.
7. Based on the above averments, the Informant has alleged that the Opposite Party has abused its dominant position and accordingly, requested the Commission to issue a notice to the Opposite Party and the Director General, CGHS, New Delhi, for examining the eligibility of bidders in aforementioned E-tender. The Informant has also sought interim relief under Section 33 of the Act.
8. Having considered the averments and allegations made in the Information, the Commission notes that the Informant is primarily aggrieved by the alleged irregularities in bidding process by the Opposite Party such as favouring one of the bidders and rejecting the bid of a competitor on vague grounds in response to its E-tender No. 1552/2022-23/CGHS/D.Dun/19-4 dated 06.09.2022, invited for appointment of ALC for supply of allopathic medicines to its Wellness Centres in Dehradun. The Informant has alleged that the aforesaid conducts of the Opposite Party are in contravention of the provisions of Section 3 and 4 of the Act.
9. As regards the allegation of contravention of Section 3 of the Act, the Commission notes that provisions of Section 3(1) of the Act read with Section 3(3) thereof have no application to the facts and circumstances of the present case, as Section 3(3) of the Act requires an agreement between two or more enterprises engaged in identical or similar trade of goods or provision of services. However, in the instant case, no such allegation has been made. Moreover, neither is there an allegation of bid rigging nor the facts and circumstances of the present matter reveal any meeting of minds by the bidders in response to the aforementioned E-tender of the Opposite Party, for the matter to be covered under the provisions of Section 3(3) of the Act.

10. The Commission observes that though for an examination of allegations from the perspective of abuse of dominant position in terms of Section 4 of the Act requires delineation of relevant market and establishment of dominance of the enterprise in the relevant market so defined; considering the facts and circumstances of instant case and the alleged conduct of the Opposite Party, no purpose would be served by defining the relevant market. The Commission is of the view that the alleged conduct of the Opposite Party whereby it selected one of the bidders and rejected the bid of the Informant cannot be termed as abusive within the meaning of Section 4 of the Act. Moreover, the Informant has not alleged any tender conditions to be one sided/ unfair or abusive. In view thereof, no case of contravention under Section 4 of the Act is made out.
11. In the light of the above analysis, the Commission is of the opinion that *prima facie* no case of contravention of the provisions of the Act is made out, and the Information filed is directed to be closed forthwith in terms of the provisions of Section 26(2) of the Act. Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises, and the request of the Informant for the same is also rejected.
12. The Secretary is directed to communicate to the Informant accordingly.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Date: 17.07.2023

New Delhi